# Privatization of ports in Brazil: is it a way to increase its efficiency?

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**Abstract.** The present paper aims to analyze the privatization of the Port of Vitória, which was carried out in 2022, marking the first privatization of a port authority in Brazil. Given the novelty of the port management model introduced with this privatization, the so-called private landlord port, replacing the landlord port, the question arises whether the privatization is an effective way to increase efficiency, balancing the risk of having a private company responsible of a matter of national sovereignty. To address this, it was made an analysis of the regulatory framework applicable to the sector, the New Ports (Law 12.815/2013), focusing on the possibilities of private sector exploration of port services. Along with that, it was researched the major ports in the world and its administration model, discussing the advantages and disadvantages of them.

**Keywords.** Port Authority, Ports, Law, Ports administration models, Port of Vitória, Brazil, Privatization.

## 1. Introduction

Whether for the transportation of people or for the transportation of goods and merchandise, ports have been and continue to be essential for the development of cities and states, as well as for society, serving as the links that integrate logistical chains. Throughout history, port structures have evolved and modernized, needing to keep pace with the economic growth of states. After the advent of capitalism and the industrial revolution, ports underwent a significant technological leap, in response to the needs of industrialized countries to export their products and, naturally, import. Currently, with globalization, the world has never been so interconnected, and port development is proof of that. Therefore, for the economic growth and development of a country, it is necessary for its port infrastructure to grow and keep pace with other sectors.

In Brazil, the 1988 Constitution of the Republic, in its article 21, item XII, paragraph "f," establishes the competence of the Federal Government to directly or through authorization, concession, or permission, operate maritime, river, and lake ports. Thus, the Federal Government has the power to operate port infrastructure directly or indirectly. Based on this law, the Brazilian state controls the administration of ports through public companies, that can be by the federal government, state government of city government.

However, for a long time, there was little public investment that would enable the modernization and growth of port facilities, which became obsolete and outdated, and their administration became inefficient. Brazilian public ports have suffered (and still suffer) for a long time due to political influence in their management, which is not always based on technical requirements. For this reason, there is often no administrative continuity from one management to another, undermining and preventing a long-term strategic policy, which is essential for a sector like the port industry, greatly influenced by international economic and trade issues. Furthermore, in a country like Brazil, being subject to direct political influence in a state-owned company is a significant risk, given the numerous cases of corruption that are reported every day.

Because of this issue, the privatization of ports became an option to increase its efficiency and investments. With that, the Espirito Santo Port Company, responsible by the Port of Vitória, was sold to a private company for a value of 106 million Brazilian reais (approximately 20 million US dollars). This marked the first privatization of a port authority in Brazil.

The need for investments in Brazilian ports is evident, with the private sector showing interest and capital to address this deficiency. However, as a strategic sector related to national sovereignty, it is necessary to determine if this is a secure measure for the country.

The port sector is of utmost importance for a country, requiring continuous investments to keep pace with economic and commercial growth. Therefore, in a historically public sector, the first privatization of a port authority in Brazil holds significant importance, as it has the potential to set the pace for the port sector going forward.

In this context, this study aims to analyze the privatization of the Port of Vitória and compare it with other port privatizations around the world, such as the administration model of the major ports worldwide, to understand whether the administration model, private or public, has an impact and is a determining factor in port efficiency.

## 2. Methodology

The method chosen to analyze the present topic is the inductive method. The inductive method is relevant to be used in this research since a specific event, the privatization of the Port of Vitória, will be observed, and its application in a broader scope, the possibility of privatizing other ports in Brazil, will be studied.

To achieve this, the legislation applicable to port matters will be analyzed, especially the New Ports Law (Law 12.815/2013) along with bibliographic research to understand the perspectives of key authors and researchers in the field. Additionally, there will be an investigation on the major ports in the world and its administration, if public or private, to see if this really impacts and determines the success and efficiency of them.

## 3. Port administration models

The Port Reform Toolkit [1] is a document of the World Bank to establish the bases of a redesign on the types of administration models in the ports, describing every analysis of each model. In the document, there are four different types.

The Service Port is a model entirely state-owned, where the government holds the property, the infrastructure, the administration, and the operation of the ports, and does not seek profit with it. Only few countries still use this model, for instance, the ports of Sri Lanka and India. The Tool Port is a model in which the public port authority is responsible for managing the infrastructure and superstructure of the port, while only the operations activities are assigned to the private sector, that must pay tariffs to operate. This model is seen in ports in France and Bangladesh [2]. However, in the world, the most used port administration model is the Landlord Port, in which the administration of the port is public, while the private sector is responsible for investing in the superstructure and port operations. Countries such as Brazil, the USA, Germany, and Canada all use it. Finally, there is the Fully Privatized Port management model, which is characterized by the total responsibility for port facilities and services in the hands of the private sectors, for this reason there are very few numbers of ports using this type of model [3].

In this context, the privatization of the Port of Vitória adopted a hybrid model known as the Private Landlord Port, in which all assets of the port are controlled by the state. Otherwise, it is up to the private sector the management of the port, having control of port operations and administration. It differs from the Fully Privatized model because the propriety of the infrastructure and land areas of the port remains with the state, whereas in the Full Privatized they are all propriety of the private company.

## 4. Brazilian port legislation and the privatization of the Port of Vitória

In Brazil, during many years the port sector was monopolized by the state, especially during the president Getúlio Vargas era, in the 30s and 40s, when government investments led to the modernization of port facilities, making them compatible with international ports.

Over the years, however, public investment in infrastructure declined. The limitation of the State's investment capacity at a time when ports and technology were evolving incredibly quick worldwide hampered the growth of the sector in Brazil, leading to problems that persist to this day. The inefficiency of the State in managing and ensuring the necessary investments for the expansion and evolution of ports caused their structures to stagnate and not keep pace with international modernization, becoming stagnated, obsolete, and deteriorated, creating a huge went through a lengthy process of deterioration, creating a significant technological gap between them and the more advanced ports in the world, such as those in Rotterdam, Hong Kong, and Singapore [4].

As stated, state bureaucracy along with port inefficiency, partly due to service delays caused by active labor unions in the sector who used their bargaining power to negotiate services at ports without the slightest qualification of the workers [5], resulted in extremely high port costs. Furthermore, political influence started to directly affect port management through the appointment and selection of executive directors and other positions. As a result, public port management became political rather than technical and professional, hindering the growth and efficiency of ports.

As the state monopoly became unsustainable, the Ports Law of 1993 was enacted, initiating a process of introducing private sector involvement in the port sector, allowing for the operation of public or private port terminals, following a global trend. In other words, it meant that Brazil changes its port model from Service Port, where the government controls both the administration and terminals, to the Landlord port, in which the port authority is state-owned, while the private sector is responsible for port operations through terminal leases.

This policy of allowing more private participation persisted with the enactment of the New Ports Law in 2013, the current regulatory framework of the sector, which allows for privatization at three levels: the concession of port authority functions within an organized port; the leasing of port terminals within the organized port area; and authorization for the operation of private port terminals outside the organized port area.

In this context, the first privatization of a port authority in Brazil occurred with the concession of the public Port of Vitória. This move aims to increase investments and management efficiency by leveraging the agility of private law, with principles of freedom in managing port areas, tariff policy reform, contractual freedom, and managerial freedom. This privatization inaugurates the Private Landlord Port model in the country, where both port operations (port terminals) and the port authority are private, but under a predefined 35-year concession contract, considering the public ownership of assets and the port itself, differing from a Fully Privatized Port.

The Institutional and Regulatory Model Report [6] made by the Brazilian government establishes that the privatization was to be made based on the following premises: freedom in the management of port areas; reformulation of tariff policy; contractual freedom; and administration freedom.

Freedom in the management of port areas aims to ensure that the private company has the right to negotiate the grant of the right to use port organized areas as they see fit (portion, term, object, etc.).

Tariff policy would be one of the ways of remunerating the private company, allowing for commercial flexibility to adopt practices they deem relevant, based on their business strategy, and adjusting based on market conditions, which would bring efficiency and competitiveness to the port. However, it was established a minimum and max limitation too prevent excessive financial burdens on users and a price far above the market, with the regulatory agency responsible for supervising and monitoring to prevent potential abuses of economic power through prior administrative proceedings.

As for contractual freedom, it allows the private company to contract and negotiate the terms and conditions of lease agreements for the exploitation of the port areas. This point is highly relevant because, being a private company, there is no obligation to contract through bidding, which ensures efficiency and speed in contracting. Therefore, through streamlined negotiations with minimal bureaucracy, it is expected that there will be greater private interest in investing in and operating port terminals.

Finally, administration freedom allows the private company to administer and manage the port according to their own strategy, including setting planning guidelines, performance parameters, commercial and personnel management policies, investment decisions, and community engagement, among other aspects.

## 5. Major ports in the world: public or private administration?

As previously discussed, the privatization of the Port of Vitória sought to provide greater freedom and means of action for the port authority to address all the defects and problems mentioned so far. It is well known that with a private port authority, private law rules apply, namely, the free market and supply and demand, professionalization of company management, focus on technical management free from political interests, and profit generation.

For example, Greece, in a model almost identical to the one applied in the Port of Vitória, sold its two largest ports, Piraeus and Thessaloniki, to Chinese and German companies respectively, to act as port authorities. There was an increase in container terminal activity and a growth of about 27% in net profit [7]. In the Greek case, concession contracts include clauses with minimum operational requirements, aiming to be a tool for the new port authority to make the necessary investments, even if not foreseen, to maintain the port with the established operational performance indexes, as well as to continuously seek new partners to achieve the set minimum movement, creating incentives to prevent price abuses [8]. Similar privatizations took place in Australia, which also shifted port governance from landlord port to private landlord port [9].

Despite the apparent advantage of a private model due to investment capacity and efficient management linked to factors like agility and freedom of operation, when analyzing the global panorama of the relationship between port management models and efficiency and operational capacity, it is observed that most of the world's largest ports have public management. What proves that is a study [3] that identified the six most efficient ports in the world: Shanghai, Hong Kong, Ningbo-Zhoushan, Lianyungang, and Qingdao (all Chinese), and Singapore. Among these, Shanghai and Lianyungang are landlord ports, while Qingdao and Singapore are service ports, meaning both the port authority and operations are public. Finally, only Hong Kong and Ningbo-Zhoushan have private port management.

As a conclusion from the research, the author indicates that although private participation contributes to increased operational efficiency of the port, "privatization is not an effective way to increase it, which means that the relationship between efficiency and privatization is not linear" [3].

Therefore, it is necessary to understand that it is not simply private management that will bring investments, efficiency, operational growth, and infrastructure modernization to a port, but rather the consequences that this management model typically brings, namely agility and freedom to handle management contracts, leases, tariffs, and investment power. These characteristics, although more common in the private sector, can also be present in public management.

An example of this, as seen, are the Chinese ports, where most are publicly managed, but due to the economic capacity of the State, coupled with agile, flexible, and fast management, they become the most efficient and cargo-moving ports in the world.

Similarly, the port sector is strategic for a country. The tariff policy and the infrastructure of a port directly impact international trade, either bringing importers and exporters closer or pushing them away, depending on the efficiency and operating costs. For this reason, port authorities must align with national and collective interests.

As mentioned, a private company's main (and sometimes only) objective is profiting, not necessarily national development. Because of this, there is concern that private management might excessively increase tariff prices and promote anti-competitive and anti-competitive policies.

## 6. Conclusion

The global trend, where the number of fully public ports has been decreasing in recent decades, as governments in various countries have sought greater private sector involvement in the port industry, either to encourage new investments or to improve operational efficiency.

Thus, it is possible to say that states are increasingly seeking to increase private sector participation in the port industry, given the potential to boost investments and enhance service efficiency, and Brazil is no exception.

In this context, the first privatization of a port authority in Brazil occurred. The goal was to increase investments and management efficiency by employing the agility of private law, emphasizing freedom in port area management, reformulation of tariff policies, contractual freedom, and managerial autonomy.

This privatization inaugurates the private landlord port model in the country, where both port operations (port terminals) and the port authority are private entities. However, the concession contract is for a predetermined period of 35 years, considering the public ownership of assets and the port itself.

This model immediately ensures increased investments and the implementation of technical and professional management, aiming for efficiency and profit generation. Internationally, some countries have adopted this model, such as Greece, which experienced overall growth and port improvements, and Australia, characterized by excessive tariff and operation increases, along with low regulatory control by the state, leading to possible anticompetitive actions.

Despite efficiency being a more common trait in private management, studies aiming to relate efficiency to the management model have shown that out of the six most efficient ports in the world, four have public port administration. Thus, research concluded that there is no direct relationship between the management model and port efficiency. What truly matters is the investments and technical, professional management, which can occur in both public and private enterprises. However, public companies are subject to the bureaucracy and slowness typical of the state, while private entities, driven by the constant pursuit of profit, seek to optimize the model for maximum efficiency.

Another crucial factor is the strategic importance of the port sector for a country, serving as the gateway for international trade. Consequently, the improvement or deterioration of a port directly and indirectly impacts the entire population. The concession model for the ports in Espirito Santo includes clauses and measures explicitly designed to mitigate inherent risks, preventing outcomes like those in Australia.

Hence, the relatively short duration of the contract (35 years compared to Australian ports), limitations on tariff values (maximum and minimum), prohibition of direct exploration of port terminals by the concessionaire, and mandatory minimum investments throughout the contract period serve as safeguards. Therefore, port privatization emerges as an alternative to address the sector's challenges. Understanding the concession model for the Port of Vitória led to the conclusion that the risks associated with private exploration of this strategic sector in the Brazilian context are very low.

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