GOVERNMENT & REGULATORY

CLIENT ALERT

JULY/2019

NATIONAL LAND TRANSPORTATION AGENCY ENACTS (AND SUSPENDS) NEW RESOLUTION ON MINIMUM FREIGHT RATES

Last Thursday, July 18, 2019, Resolution No. 5,849 — by means of which the National Land Transportation Agency ("ANTT") established a new set of rules and parameters for the calculation of national minimum freight rates — was published on the Official Gazette. Yesterday, nevertheless, upon a request made by the Ministry of Infrastructure, such resolution was suspended by ANTT.

The result of technical studies prepared by the University of São Paulo ("USP") and of a public hearing in which more than 500 contributions were submitted, the new resolution aims at complying with art. 6 of Federal Law No. 13,703/2018, according to which minimum freight rates should be set by ANTT through a "*technical and widely publicized procedure, with the participation of representatives*" of the affected groups. Resolution No. 5,820/2018, which was enacted by ANTT on May 30, 2018, had not been preceded by such measures.

However, as it resulted in freight rates lower than those set forth in Resolution No. 5,820/2018, Resolution No. 5,849/2019 quickly drew opposition from truck drivers — upon whose complaints the Ministry of Infrastructure asked ANTT, yesterday, to suspend the new resolution. Almost immediately, ANTT held an extraordinary meeting and granted the Ministry's request: by means of Resolution No. 5,851/2019, the Agency reinstated Resolution No. 5,820/2018 *"until further decision by ANTT's Board of Directors."* The Ministry of Infrastructure officially stated that there were "*conceptual differences, regarding the value of freight rates and their price floor, which may affect the income of truck drivers*", and that a consensus would be sought with such group.

The reinstatement of Resolution No. 5,820/2018, nevertheless, may lead to new legal hurdles: the National Congress Joint Committee entrusted with the analysis of Provisional Measure No. 881, of April 30, 2019, (the so-called "Provisional Measure of Economic Freedom") proposed to grant an amnesty for all fines arising from the violation of Resolution No. 5,820/2018 — explaining that, since such resolution had not complied with the requirements set forth by art. 6 of Federal Law No. 13.703/2018, it was "*inconsistent*" and caused "*legal uncertainty*". The approval of a statute embodying such position will deprive Resolution No. 5,820/2018 of meaningful effects — which may lead to additional pressure by dissatisfied truck drivers.

PRACTICE AREA
Government & Regulatory

COORDINATION
Mauro Hiane de Moura

For further information, please send a message to **news@veirano.com.br**

This document was prepared exclusively for informational purposes and does not constitute legal advice or an invitation to an attorney-client relationship. If you have any questions, our lawyers are available for clarification.

The reproduction or publication of this content is permitted, as long as followed by this copyright notice: © Veirano Advogados.

© 2019 Veirano Advogados. All rights reserved.

FEDERAL CONSTITUTION

- Guarantees freedom of enterprise and recognizes the fundamental value of free competition.

FEDERAL LAW No. 13,703/2018

- Requires minimum freight rates to be set by through a "*technical and widely publicized procedure, with the participation of representatives*" of the affected economic groups.
- The Federal Supreme Court will decide in September whether state action setting minimum freight rates is constitutional.

RESOLUTION ANTT No. 5,849/2019

- Repealed Resolution ANTT No. 5,820/2018, which had not been preceded by the "technical procedure" ordered by Federal Law No. 13,703/2018;
- Upon a request made by the Ministry of Infrastructure, such resolution was suspended by ANTT through Resolution No. 5,851/2019. Until a new decision is made by ANTT, Resolution No. 5,820/2018 shall be deemed effective;
- National Congress Joint Committee tasked with the analysis of Provisional Measure nº 881 claimed that Resolution nº 5,820/2018 was "*inconsistent*" and led to "*legal uncertainty*" because it did not comply with article 6 of Federal Law No. 13,703/2018. Therefore, it proposed that all fines arising from the violation of such resolution should be pardoned.

The Supreme Federal Court ("STF") is yet to rule on the constitutionality of Federal Law No. 13,703/2018 — in lawsuits the judgment of which is scheduled for the 4th of September 2019. Earlier this year, the Chief Federal Prosecutor rendered a legal opinion stating that the setting of mandatory minimum freight rates was constitutional. If ANTT had drafted a set of mandatory rates deemed to be satisfactory by all the affected economic groups, the STF would now be in a comfortable position to hold that Federal Law No. 13,703/2018 is constitutional. Conversely, political and social pressure over ANTT for the enactment of higher minimum freight rates may lead to a new wave of motions to the Federal Supreme Court — which may have to bear the responsibility of solving the conflict.

For further clarifications on this subject, please contact any of the undersigned or your regular Veirano Advogados lawyer.

Mauro Hiane de Moura
mauro.moura@veirano.com.br

Fernanda Rossetto Fossatti Santa Maria
fernanda.fossatti@veirano.com.br

Amanda Dudenhoeffer Braga
amanda.braga@veirano.com.br

Maria Clara Seabra Sallum
mariaclara.sallum@veirano.com.br