
Regulatory Entity

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ANATEL - BRAZIL

Development Symposium for Regulators
Geneva, 20 - 22 November 2000

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Introduction

Objective

- ✓ To present the main steps in the creation of the Telecommunication Regulatory Entity in Brazil - ANATEL.

Argument

- ✓ The particular creation of a Regulatory Entity in one country enriches the knowledge of the whole process in this type of creation and permit other countries to take advantage when creating its own Regulatory Entity.



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The Regulatory Power

The Context

- ✓ The State had “the natural monopoly” of all telecommunications services.
- ✓ It detains simultaneously the power as regulator and operator.
- ✓ Its capacity as regulator was very poor, since it always privileged the operator’s point of view. The user was practically excluded.
- ✓ The investment from the Government wasn’t enough to cope with the demand and the modernization of the necessary infrastructure.



The Regulatory Power

The New Model

- ✓ The State role as regulator was separated from the role as operator.
- ✓ The regulation activities were transferred to an Regulatory Agency - ANATEL and the operator functions were privatized .
- ✓ The State control is now indirect and users take part of the whole process.
- ✓ The State gives up its magisterial character and ANATEL begins to worry about:
 - ✓ a) the motivation of its acts;
 - ✓ b) the legal and ritual aspects of its acts;
 - ✓ c) the involvement of the operators and users in the formulation of the new regulation;
 - ✓ d) the total transparency of its acts.



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The Main Attributes

Public Credibility:

- ✓ To obtain public credibility the Regulatory Entity has to :
- ✓ a) regulate taking into account the existing interests of society;
- ✓ b) have great mediation capacity;
- ✓ c) represent a government policy and not a tool for implementation of policies of an specific government
- ✓ d) respect the the established rules
- ✓ e) give transparency for its procedures.



The Main Attributes

Technical Capacity

- ✓ To achieve technical capacity the Regulatory Entity has to:
- ✓ a) have a staff of highly qualified professionals;
- ✓ b) pay salaries compatible with the market;
- ✓ c) detect the technical knowledge of the telecommunication sector
- ✓ d) detect the legal and economical principles applicable to the sector.



Main Attributes

Independence

- ✓ To obtain independence the Regulatory Entity must :
- ✓ a) have stability for its directors;
- ✓ b) management autonomy;
- ✓ c) have its own resources for maintenance;
- ✓ d) have no hierarchical dependence;
- ✓ e) have no hierarchical instance revision of its acts.



INDEPENDENCE

Management Autonomy

- ✓ The Advisory Board is the Agency's entity for social institutional participation;
- ✓ Its members are not remunerated and shall have three years term of office;



INDEPENDENCE

Own Resources

- ✓ It was created a Telecommunications Inspection Fund (FISTEL) to maintain Anatel.
- ✓ The concession, permit or authorization to exploit telecommunication services, and the use of radio-frequencies for any services will always be charged and the product of such collection will constitute a revenue for FISTEL.
- ✓ Anatel will include in its budget proposals a multi-year planning statement of its revenues and expenses, with the objective of balancing its budget and finances over the next five years.



INDEPENDENCE

Hierarchical

- ✓ The law which created Anatel states:
- ✓ The Agency is characterized by administrative, independence and lack of hierarchical subordination.
- ✓ Termination of the Agency shall only occur by means of specific law.



INDEPENDENCE

Authority

- ✓ Anatel is charged with:
- ✓ adopting the measures required to foster the public interest and the development of Brazilian telecommunications;
- ✓ exercising normative authority in the telecommunication sector;
- ✓ managing the radio frequency spectrum;
- ✓ issuing acts involving licenses .



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- Administrative Control
- Activity Control



Concluding Remarks

Administrative Control

- ✓ The resources applications and the public regime that the Regulatory Agency has to obey have to be followed by the existing instruments such as Courts of Accounts and Public Ministry.
- ✓ Its important to say that this controlling activity have to be accomplished taking into account the new characteristics of the Regulatory Entity.

Concluding Remarks

Activity Control

- ✓ The activity control must be triple: executive, legislative and the society.
- ✓ Some instances must be specifically created for this purpose such as: ombudsman and an advisory board.
- ✓ This type of control must be exercised not only retrospectively but permanently.