

## SESSION IV

### EFFECTIVE APPLICATION OF LAW AND REGULATIONS IN TELECOMMUNICATIONS

#### **Obligations contained in the Authorizations/ Concessions, Consumer and Gender**

**Coordinator:** To join the Panel for this IV Session of the Seminar “Real Questions regarding the Effective Application of the Regulation, Politics and Legislation in Telecommunications”, on “Obligations contained in the Authorizations/Concessions, Consumer and Gender”, we invite Mr. Marcos Bafutto, who will be acting as the Mediator. We would like to inform you that the dynamics of this session will be the same from this morning.

Dr. Marcos Bafutto is an Electrical Engineer graduate, having gotten his masters at the University of Uberlândia-MG and his Telecommunications Doctorate at the Stuttgart University, in Germany. He began his career in telecommunications at TELEGOIÁS, in 1984, as an engineer. Back from Germany, he was assigned to TELEBRÁS where he managed the Department of Planning of Specialized Nets. At ANATEL, he worked as General Manager, Radiofrequency and Enforcement Superintendent and Substitute Counselor.

We invite Dr. Rachel Bejla Mejlachowicz, from the law office Pinheiro Neto Advogados. Rachel Bejla Mejlachowicz is a Law graduate from the Centro de Ensino Universitário de Brasília – UNICEUB. She is a member of the entrepreneur area of the law Office Pinheiro Neto Advogados since October 1997. She is experienced in the telecommunication sector, having worked in the privatization of the TELEBRÁS system as well as in several bids done by ANATEL. She also worked in administrative processes, and as a foreign consultant in the elaboration of ANATEL’s regulations. She has written articles about the telecommunication sector, which were published in 2001 and 2003.

We invite Dr. Angélica Noboa Pagán, Assistant of INDOTEL’s Presidency, Dominican Republic. Dr. Angélica Noboa Pagán is a Law Doctor, graduated from the Ibero-Americana University and Head Professor at the Pontifícia Universidade Católica Madre y Maestra. She is a Technical Legal Assistant for the Directory Counsel President at INDOTEL, regarding telecommunication regulation. She worked as a consultant in contracts for international trade, foreign investments, foreign operations, labor matters, regulatory and litigation topics.

We invite Dr. Oscar Petersen, Director of Legal Matters at EMBRATEL, Brazil. Law graduate from the Law University of São Paulo, Pontifícia Universidade Católica, with emphasis in the areas of International Public Law, International Trade Law and Economic Law. He is also an Economy Graduate from the Fundação Armando Alvares Penteado and a member of the Directory of ABDI since 2001. He is the founder of the ABDI Broadcasting Committee and an honorary member of the Centre for International Legal Studies – CILS, in Austria. He was an external consultant of ANATEL, for regulatory matters, from 1998 to 2002. He was an associate at the Law Office Carvalho de Freitas e Ferreira Advogados Associados, which he left to lead the legal area at EMBRATEL.

We invite Dr. Amélia Regina Alves, from ANATEL, Brazil. Dr. Amélia Regina Alves is a psychologist, graduated from University of Brasília – UNB. Still a graduate student, she defined profiles for the theme of her Masters thesis, always motivated by the young professors of the Psychology Institute of UNB. She started as a psychologist at TELEBRÁS, right after graduating, where she worked for 19 years. She has published various articles in scientific index-linked magazines. Presently, she works at the National Telecommunication Agency, ANATEL, at the Private Services Superintendence. She is a Doctor in Social and Organizational Psychology.

We invite Dr. Fernando Dionísio, Law firm Associate at Brandi Advogados. Dr. Fernando dos Santos Dionísio is a law graduate at the Faculdade de Direito da Universidade do Estado do Rio de Janeiro – UERJ. Master in Legal Sciences, Law and International Relations by the Pontifícia Universidade Católica do Rio de Janeiro – PUC/RJ and Pos-Graduate in Tributary Law by the Faculdade de Direito da Universidade de São Paulo – USP. He has been a consultant for 25 years, in matters of Tributary Public Law, specialized in the regulatory area and applicable legislation in governmental agencies. He works in the development and coordination of projects of establishment and organizational restructure of Brazilian multinational companies. Here is Dr. Marcos Bafutto.

**Marcos Bafutto – Mediator:** Good afternoon Ladies and gentlemen. I would like to welcome all of you to Session IV of this seminar, regarding the Effective Application of the Law and Regulation in Telecommunication, more specifically the topic “Obligations contained in the Authorizations/Concessions, Consumer and Gender”.

Regarding our general topic, specially the contractual obligations, contractual obligations have to be seen as a product of public interest, especially in regards to the globalization aspects, be it in the definition of what should be globalized; competition aspects in all its elements; as well as quality aspects.

The topics related to the contractual obligations embody, specifically, the technical aspects regarding the modernization of the nets, digitalization level, that usually are obligations included in contracts; numbering technical aspects, such as adopted patterns; numeration plans; portability aspects; interconnection questions, like adopted interfaces, availability levels and a number of other aspects; as well as the net technical quality level, the accepted level of congestion, time to repair and other aspects.

Besides these technical aspects, there are a determined number of actors in the telecommunication segment that must be noted. These are basically the telecommunication users, the provider serving those users, the regulator agency and other providers. So, the obligations and the needed elements to the contracts of concession and authorization come from the inter-relation and the management between the actors.

Within this topic, I would like to call our first lecturer of today, Dr. Rachel Bejla Mejlachowicz, from Pinheiro Neto Advogados.

**Rachel Bejla Mejlachowicz – Pinheiro Neto Advogados:** Thank you very much, Dr. Bafutto. First of all, I would like to thank you for the opportunity to talk here today about a theme that I've had the opportunity to follow for some years, which is enforcement. Here in Brazil, the organization of telecommunication services - that has been given to ANATEL, right in the 1st Article of the General Communications Law - foresees the regulation as well as the enforcement.

The regulation has been put into practice by ANATEL, since its creation, in 1997. Today, we count with approximately 400 regulations that delimitate and regulate the exploration of different types of infra-structure services, the use of radiofrequency and the use of telecommunication equipments. The regulation happened in a quick and urgent way, according to its own necessity, because of the change in sector, the privatization, and with the gradual opening of the market which demanded new rules.

The enforcement has the purpose of not only to guarantee the effective application of these new laws and regulations approved by the agency, but also to guarantee the accomplishment of the obligations foreseen in the Concession Contracts, in the Authorization Terms, in the permits, meaning in all of the contractual tools set by the telecommunications services providers and the State, by ANATEL. The contractual obligations are the topic of our discussion today.

The discussion is limited because I will be talking about the contractual obligations. We must remember that ANATEL has difficulty applying its regulation to the companies that are not subject to direct regulation by ANATEL, meaning that they are not formally part of the regulated telecommunication sector and are out of the enforcement circuit and the direct action of ANATEL for not having the appropriate license to give services. But now there is a great academic discussion about this to find out whether these companies are subject to the agency's enforcement. We will be discussing the contractual obligations today.

It is also important to clarify, to the people who have had the opportunity to listen to Dr. Edilson dos Santos - The Superintendent of Radiofrequency and Enforcement of ANATEL - when he spoke at CBC last year, about how the expression "enforcement", foreseen in the 1st Article of LGT, was not used in the sense of the action of inspecting or the activity of enforcement, but in a biggest sense, referred to the "enforcement", a expression greatly used today. So, when I refer to the necessity of an efficient enforcement, I will be talking about one that is not the action or activity of a specific enforcement, but the action of ANATEL as a whole in this theme.

Speaking of contractual obligations, I would like to talk quickly about certain contractual obligations that are imposed on the providers in the concession contracts of STFC and some other obligations imposed in the authorization terms of the MPs, the Moving Providers. And also, the prevision contained in these two tools that guidelines the action of ANATEL and gives ANATEL the power to inspect. Meaning, the concession contract of the STFCs (Commutated Fixed Telephone Service ) is very clear when it says that the provider pledges itself to provide the service that is the object of the concession, under not only the terms of the contract itself, but also under the regulation of the SFTC and all its applicable rules. This non accomplishment gives the chance to the application of the penalties foreseen in the law and in the concession contract itself. This way, the contract states very clearly that the concessionaire is under ANATEL's enforcement, and that ANATEL has the power to exercise the inspecting action within the circuit of the given service and, inclusively, it gives the prevision of the sanctions to be applied in the case of the non accomplishment of the obligations that go up to 50 million reais, which is the ceiling foreseen in the General Telecommunication Law.

The Authorization Term of the SMP (Personal Mobile Service) is also clear when it says that the SMP provider, in the case of the non accomplishment of any of the assumed obligations when of the celebration of its term with ANATEL's authorization is subject to enforcement and the possible sanction of the agency. The Authorization Term is clear when it establishes ANATEL's ability to follow, manage and inspect these companies and the accomplishment of services for

them. We ask ourselves why - although we have such clear dispositions in the Concession Contract of the Fixed Telephone Service, in the Authorization Term of SMP and in other authorizations approved by ANATEL - on one side there is difficulty in the effective accomplishment of these obligations by the companies and on the other side there is difficulty in the enforcement itself, in the action of enforcement of ANATEL

Based on a study done by UIT, we see that difficulties are not faced only by ANATEL, but by agencies worldwide, and the representatives of the countries present here, please do correct me if I am wrong. There is a generic need for the suitable equipment. Specifically in Brazil, given its wide territorial extension, this is an obstacle for ANATEL's enforcement. You have a very big area to be covered. There is a process that, by nature, is very slow and bureaucratic. Ultimately, there is a need of an enforcement properly introduced, equipped and trained to exercise the powers given to them. This is a problem that has been faced by ANATEL in relation to its human resources. On the other hand, throughout the years, the agency has done an exemplary work with the resources that it has.

But I think that there is still a long way to go, an improvement to be made. The action of enforcement of ANATEL, mainly in the effective accomplishment of these contractual obligations, foreseen in the Authorization Terms and in the Concession Contracts, need, first of all, to be legitimate since its constitution, from the action of enforcement of the ANATEL's agent that goes all the way to the company, initiates the infraction record that relates all the examination already done, all the enforcement process, until the effective application of the sanction.

The legitimacy of ANATEL action of enforcement is foreseen in the General Law of Telecommunications. The LGT, in several of its articles - Art. 19, Art. 97, Art. 137, for example - gives legitimacy to ANATEL to apply sanctions, to the service providers in the private regime as well as to the service providers in the public system. As far as the legitimacy of the actions of enforcement, ANATEL has a commendable initiative to elaborate, study and put it into public consultancy the Regulation of Enforcement. This regulation was submitted to public comment, via the Public Consultation 489/2003 and looks to establish a juridical procedure proper to the enforcement agents of ANATEL. The actions of enforcement of ANATEL will be oriented based on this juridical regulation. Thus, they will become more legitimate with time.

As a result of this action of enforcement there might be installed a Process of Verification of a non accomplishment of Obligations - PADO. Regarding this process, there is an aspect worth commenting. I am not sure if you know, but according to data provided to us by ANATEL, up to 2003, in the first six years of its existence, ANATEL installed more than 42.000 PADOs, that means it is 7.000 PADOs per year. For an agency with limited resources, that is a lot. But I think that it should be considered whether the installation of PADOs, by itself, represents an efficient enforcement.

You also have the General Plan of Quality Goals which is very specific when it foresees obligations to be followed by the concessionaires and, many times, processes are installed due to the non accomplishment that could be simple, or that are of no big concern. I am not being flexible in regards to the practice of infractions, but I do think that a bigger analysis must be made regarding the efficiency and the placing of ANATEL's resources for an efficient enforcement. Following the example of other countries, at ANATEL, some areas wait the reports

of 12 months that are sent by the providers so that they can make a global evaluation of that company and thus, can exercise an enforcement that can reach its objective.

It is important that the PADO be transparent, legal, and that it can be exercised within all the legal limits and parameters foreseen in the legislation. And that it culminates, if that's the case, in the application of sanctions that are adequate to that specific case. By adequate, we understand sanctions that are proportional to avoid that the companies try to question sanctions by its excessiveness, or by allegation of addition of regularity in the Judicial and that, this way, the power of enforcement of ANATEL and its legitimacy be harmed.

So, this is the general view in relation to the exercise of enforcement of ANATEL in regards to the obligations foreseen in the Concession Contract and in the Authorization Term. If on one side there is the legitimate basis of the enforcement power of ANATEL and it does not suffer any type of questioning because it was the General Law of Telecommunications that delegated the competence, on the other side, on its daily implementation, it needs more improvement. But, as you all know, ANATEL is still a young agency that faces difficulties regarding its human resources, and recently, regarding its own competence, which somehow affects what is being said here.

There is a Bill, from the Chief Staff Office of the Presidency of the Republic, that was submitted to Brazilian Congress and deals with the competence of Regulatory Agencies, and that foresees a greater external control of such agencies. Regarding the enforcement I think it is important to point out that this Law Project foresees the celebration of a conduct contract between the Regulatory Agencies and the Ministries responsible for each area. This contract will foresee the goals of development to be fulfilled by the agencies, also in regards to the enforcement. You will have ANATEL assuming the obligation to inspect one thousand stations per month, inspect a Brazilian state. I don't know, this is something that needs to be discussed further, inclusively by ANATEL, in the Congress.

Other impacts of this Law Project in the activity of enforcement of ANATEL are in relation to the enforcement of ANATEL in its ability, that is part of the ability role of a regulatory agency. By this Law Project, this action of ANATEL is limited to help the defense agencies in the competition. Also it is foreseen a bigger articulation of ANATEL with local agencies to the accomplishment of enforcement. This way, some changes are suggested to the text of the General Law of Telecommunications.

That is what I wanted to talk about here for a bigger discussion of the subject. Thank you.

**Marcos Bafutto – Mediator:** Thank you, Rachel. You saved me one minute and forty seven seconds. I would like to open for questions regarding Dr. Rachel's presentation.

I myself would like to bring out some points for reflections. You mentioned the difficulty, after you work in the enforcement, of the process of verification of the infraction, that is the PADO, and you even showed the simplification of this process. How do you see this simplification in regards to all the requisites and the elements of the Brazilian Administrative Law, that guidelines the conduction of the processes in the administrative sector. Today, the processes are this way because the Administrative Law itself sets all the difficulties. How do you see a possible simplification, in face of the premises of the Brazilian Administrative Law?

**Rachel Bejla Mejlachowicz – Pinheiro Neto Advogados:** You are referring to what I see as the installation of PADO. I mean, not necessarily in the elapsing of the process, that obviously must foresee the opportunity of defense, resource, etc. The agency suffers certain difficulties in the execution of the process, not because of juridical questions, but because of the question of equipment and the necessity of a greater technical capacity. So, I think that the main point is in the enforcement done by the agent and in the establishment of a PADO. I think that what needs to be reflected upon is the manner of how a PADO is established. I don't know if you are aware of this, but one way of doing the enforcement is the enforcement agent of ANATEL going to the companies, with a check list, that contains several conditions to be observed by the company and by that specific telecommunication station. This is a very detailed check list because, many times, you have there the height of the antenna that has been previously approved, the potency, etc. What happens is that the company, after some time operating, lowers the height of the antenna, or changes the potency without causing any damage or interference. Many times, a PADO is established because of an antenna not being in the right height, being 10 cm above. I am giving an extreme example to make it clear that ANATEL must rethink the way of conducting the enforcement, I mean, based on such a detailed check list. I think that maybe the enforcement could focus on bigger matters, without losing its respect.

**Marcos Bafutto – Mediator:** I have a last question. It is a question that troubles us because, many times, to make a gradation of the penalty, you need to count the damage. According to the LGT, you need to evaluate the damage to the user, the benefits to the company, etc. But, during the enforcement, many times, you need to work with samples. How do you see the use of a sample to apply a sanction and how could it be treated in the juridical sector. What is your vision regarding this topic?

**Rachel Bejla Mejlachowicz – Pinheiro Neto Advogados:** I think that the sampling really is difficult, but I think that one of the guidelines foreseen by UIT is the existence of a multidiscipline team in the regulatory agency. So, when you have not only lawyers, but experts in other areas, such as economy, or Competition Law, depending on the case, you can, at least, give more value and make better statistics. I think that then we go again into the question of ANATEL's ability with teams and multidiscipline agents. You need technicians, lawyers, analysts, etc. The question ends up getting away from the juridical view, but I think that is the key to a more efficient enforcement.

**Marcos Bafutto – Mediator:** Thank you very much, Dr. Rachel. I would like to give the word to Dr. Angélica Noboa Pagán, for your presentation.

**Angélica Noboa Pagán – INDOTEL:** Thank you very much. I am very glad to be part of a Brazilian-Dominican discussion. The last time it happened was in the Pan-American Games, but, sadly, I do not practice any sports, so, let's talk about regulation

First of all, I would like to thank UIT and ANATEL for inviting us to share the Dominican experience in regards to the accomplishment of the obligations of the public service concessionaires in telecommunications.

Our regulatory mark that goes back to 1998, in big part is similar to the regulatory marks explained here yesterday and today. Not to go into many details, it is important to point out, in attention to the social and public interest, for which the regulatory agency must look after, that the goals of the law incorporate the basic whole of contributions to global service; the promotion

of free loyal competition; the respect to the rights of the users; the efficient use of radiofrequency resources; as well as the respect to the regulatory and enforcement functions, from the regulatory agency, that must be independent and efficient. The companies' obligations come from legal contracts which establish these objectives that are, in big part, similar to the ones that the countries which signed the Basic Telecommunication Agreement agreed on.

But, the law not only establishes these principles, but also gives the companies a series of obligations, called "Essential Obligations". Obviously the telecommunication companies, like any Dominican Republic individual, must fulfill the law, any type of law, as well as respect the State of the Law and the constitutional rules. But, of interest to our sector, there are six Essential Obligations to be fulfilled by the concessionaires:

Fulfill the minimum plan of expansion of services foreseen in the document of concession, in regime similar to the case in Brazil;

The obligation to provide service continuously to the solicitors within the service zone, without discriminating;

The participation and contribution to the expansion of telecommunications;

Give permission to the agents of the regulatory agency to do their job and inspect the fulfillment of the rules and regulations. It is worth to mention here that this specific obligation was an advance to the Dominican Administrative Law and facilitates the enforcement work in certain cases established by the legislation;

Keep separate bookkeeping for each service, with the intention of facilitating an effective competition;

Fulfill every other obligation established by the law, its regulations and the concession contracts and licenses.

Obviously, the obligation is not limited to what the law establishes, and the regulator must look for the effectiveness of his function, and not only prescribe but also execute and take decisions in regards to the fulfillment of these obligations.

This set of rules is set by several regulations, such as: the regulation of the development of telecommunications, in support of the universal service; the regulation of concessions, Inscriptions in Special Records and Licenses, that contain the rules of market access; the general regulation of net interconnection for telecommunication public services; the Directing Plan; The National Plan of Frequency Attribution; the Regulation of Electrical Radio Use. Regarding the users we have: the regulation of Controversy Solution and Providers and Users and the Functional Organic Regulation of the Collegiate Bodies.

Some regulations remain to be set and are in the study process, to make the legal system more precise. Amongst the processes in study we have: the Regulation of Fees and Costs; a Regulation of Separate Accounting; the Regulation of the Use of Phone Services; and the other Fundamental Technical Plans, recommended to the Dominican Government by UIT. Together with all the mentioned Regulations, INDOTEL studies the elaboration of a Regulation of Free and Loyal Competition.

But, in reality, I want to concentrate a little on a product task that has been discussed in Public Consultation, that is the Regulation for the Application and Collection of the Contribution to the Expansion of the Telecommunications (CDT). In the Dominican Republic, like in other countries, such as Peru, there is a contribution to the expansion of the telecommunications that

support the Collection of the Expansion of the Telecommunications. In my country, this margin is 2% of the income billed to the users, as well as the net income, directly applicable to the companies that provide such services.

Before, the agencies were managing with a brief disposition that was published by the General Direction of Telecommunications, when there was no INDOTEL, but it did not follow the mentioned requisites of discussion in public consultation and it did not improve the principles of transparency, no discrimination, established by the law and that gave origin to the new process. In a general sense, technical and legal procedures were established for the gaining of economic resources and to sanction the non fulfillment without sidestepping the rights of the users

An innovative aspect of this regulation is that it gives the authorities the permission to accomplish auditing activities, for the violation of the fulfillment of the obligations of PADO of CDT. It establishes some administrative procedures in the case of error in the calculation. If the found error is contrary to INDOTEL, an administrative sanction is applied, a decision that can be appealed by the interested part, not without paying the rate of the sanction first, until the decision is reconsidered.

Finally, I would like to mention that INDOTEL keeps a web page, with information related to the captioning of Collection for the Expansion of the Telecommunications, the income, as well as the description of the projects that they are intended to support. Information regarding the resources is so detailed that you can find out my salary in there. The principle of transparency is kept. I believe this covers it all and I am at your disposition to answer any questions.

**Marcos Bafutto – Mediator:** Thank you, Mrs. Noboa, for the presentation of the main aspects regarding the contractual obligations. I would like to open for questions.

**Participant:** Thank you very much. Good afternoon. You said that the value of the contributions is according to the income reported by the company. Is this the case whether the operator is using the radiofrequency or not? If so, there would be an unbalance between the operators who use radiofrequency and the ones who don't use it. How do you solve this problem?

**Angélica Noboa Pagán – INDOTEL:** Very Good. I like this question. Everyone pays. All the public service providers pay, except the broadcasting services. In the Dominican Republic, the General Law is not only for telephone services, but for cable, television, radio, all the telecommunication services. So, there is an exception to the broadcasting services and it is applied to all the final services - fixed telephone services, mobile phone services, long distance and international services, etc. Your question is interesting because the law contains a declaration that all of these are public services. From this, comes the principle of generalization that applies to any rate. This represents a tax and it justifies the imposition on all of these services.

**Philippe Mege – Thales:** It is the following. In Europe, for example, we search for better competition. So, we credit the occupation rate for all. If you have less than 20%, the license is cut, there is a fine and you go to court. This means that people use this to avoid the incoming. We can see this with technicians that verify the rate of occupation for 24 hours. This is also an UIT rule. It happens because there are services that will not use this spectrum. For example, the fixed phone service does not utilize this spectrum. The mobile phone service will use this spectrum. So, if you generalize the contribution, solely for the income, you would be charging,



like Angelica said, a tax or rate for providing the final service. And the use of the spectrum really did not have a service. That's the uneasiness.

**Angélica Noboa Pagán – INDOTEL:** Yes. There is a Dominican Law that the licensed company must pay a special rate to maintain the license. Any user of the spectrum, besides paying the CDT, contributes to the sector in this manner. There is also the contribution to the provider company of long distance services and the rate for the use of the spectrum of the electrical radio. It is not like in Europe.

You have the right to say that it is not enough to pay the tax to maintain the license. It would be too easy. The Dominican regime, not only obliges the company to pay the tax, but also obliges it to initiate and maintain the operations. Besides many other obligations of technical character in a given time. This is the legal system. If you don't keep up with your obligations, the regulator agency, or any interested part can propose a recourse requiring the revocation of the license. Obviously, there is also the need to adopt a Special Regulation of Free and Loyal Competition, the Institutions of Right to Competition help support the electrical radio spectrum, by establishing an entry barrier by gathering licenses. It is very important the preoccupation that you point out. I believe the best way to solve this problem is with a set of rules, and also with the regulation of the regulator agency to maintain effective competition.

**Marcos Bafutto – Mediator:** Any other questions? I have a last question. A big problem that we regulators face is exactly in the questions of mediation and arbitration of conflict between the operators. Especially in the interconnection area, a fertile area for the emerging of conflicts. How is this treated at INDOTEL?

**Angélica Noboa Pagán – INDOTEL:** In the Dominican Republic there is a principle of obligatory interconnection that is very similar with the system in Bolivia and Costa Rica that we heard this morning. Last year we had a big problem with a conflict of interconnection that incorporated all the interconnected companies and took about four months. And obviously it was based in the rules of the administrative process established in the Regulation of Interconnection and the Law of Telecommunications. But, to lower a bit the tone of the discussion, the Director Counsel of INDOTEL decided to nominate as the technical mediator the person who collaborated with the Dominican State in the elaboration of the General Law of Telecommunications and who, through UIT, worked years before in the protection of the law. So, the mediation done by this person, with his technical knowledge, his preparation and his impartiality facilitated greatly the friendly agreement reached. The mediation really is a very useful tool. The difficulty in finding local mediators is hard because the lawyers and the economists are usually hired by the same sector, so INDOTEL has been thinking lately about adopting a regulation especially for mediators and making a list of foreign consultants who could serve as mediators in the future.

**Marcos Bafutto – Mediator:** Thanks to Mrs. Noboa. Even though the discussion regarding the regulatory aspects is very interesting, we have to go on with the agenda. I pass the word to Mr. Oscar Petersen, from EMBRATEL.

**Oscar Petersen – EMBRATEL:** Good afternoon to everyone. I would like to thank UIT and ANATEL for having invited us. It is an honor to be here presenting a bit of EMBRATEL's vision regarding the questions about the applicability of contracts, law and regulations.

I was specifically asked to talk about a topic, that was an event occurred in Brazil last year and that goes to the end of 2005, which is the renovation of the concession contracts of the local fixed telephone services, long distance and international long distance.

At the time of the privatization and the General Law of Telecommunications, the law established that the concession contracts would last until December 2005 and that from then on there would be a renovation of these contracts with the possibility to introduce new conditions to these concession contracts. Such renovation would last for 20 more years, until 2025. Because of this, there was a work done during 2002 and 2003, conducted by Dr. Bafutto, by the Superintendence of Public Services and that culminated with a public consultation to the society regarding these new conditions. Since I only have 15 minutes, I will talk about a specific item that I find very important and that has effect over the whole competition topic.

This transparency has the objective of showing how the competitive process has been developed in Brazil, especially in the market-share debate by the sector. The pizza graphic shows how the division of the recipe of the telecommunication market as a whole is done. The local telephony is, without a doubt, the biggest source of revenue in the telecommunications sector, followed by the mobile telephony, then long distance and lastly, data. When we see how the division by the companies is being done, we verify, in the blue picture, that the fixed concessionaires, the incumbents, have 71% of the recipe of telecommunication services in the country, each one in its respective region. There was a substantial evolution since 1998. EMBRATEL has something around 10% and the other operators around 19%.

Because of this, EMBRATEL has been more aggressive, I may say that, in relation to the need to fight for a more competitive space so that it can effectively conquer bigger markets. Within the contract's renovation, some premises guided the work taken by EMBRATEL during this process: (1) competition is the most efficient mechanism to guarantee the continuing benefit to users; (2) the emphasis of the discussion must be in the guaranteed competitive process in the country; (3) the competition's impact over the quality of services, prices, innovations and repercussions over the social and economical development; (4) access to the essential riches, meaning, the copper wiring, in equal conditions, is the main challenge in the competition promotion.

The concession contract foresees clause 3.2 which establishes that : The present concession will be prorogated by the concessionaire's wish, by onerous title, only one time for 20 (twenty) years, as long as the concessionaire follows the conditions on this contract, and the new contract could include new conditions". The General Law itself is also a guarantee to the question of renovation of the contract and, among all the questions under public consultation, I emphasize these four big items which were the object of new inclusions and reformulations in the concession contract, for I believe they are the most relevant: tariff for the use of the net; reduction of the local area numbers; public's tariff; strict regulation which will be done to guarantee the countable separation between modalities of local and long distance service. I will be discussing the last item further.

Regarding the creation of a specific regulation to guarantee the countable separation of the concessionaires and to avoid the crossed subsidy between the concessions, an idea was put under public consultation about enterprise separation. The company vertically integrated to local concession and to long distance and data concession would be separated. A company would be created to provide local services and would retain the monopoly, and the other company would provide long distance services. This was put under public consultation. You can imagine all the questioning that arose from the economical, technical and juridical points of view regarding this topic. But the point is that within this whole process - conducted by ANATEL with absolute

transparency - there was a public audience where all the items for the discussion of the new conditions in the contracts renovation were presented. The counselors' votes were open.

I transcribe part of the specific question of the enterprise separation which was the report of the Public Service Superintendence. The technical report had the following analysis: "The technical position of the Superintendence, after analyzing all the contributions, was to consider the existence of other mechanisms which would help us reach the proposed objectives in the enterprise separation. These mechanisms would basically be a bigger detailing and a bigger regulatory interference in countable aspects, as well as the competitive aspect that could be approached through a source of the interconnection tariff, which we will be discussing later in the document". Thus, the technical foundation was in the sense that it is possible to reach the same objective, meaning, to stop the crossed subsidy or questions related to the mix of local and long distance concessions through a regulation related to the countable separation, than to impose enterprise separation. This was put under vote by ANATEL counselors and the Council member Reporter, Dr. Antonio Carlos Valente, Vice-President of ANATEL, followed the same understanding of the Superintendence of Public Services. His vote states clearly: "We understand that, right now, the benefits gained if we adopt the enterprise separation could be equally gained by adopting a plan of standard accounts, for the agency/concessionaire relationship, that would separate the exploration the modalities of services and within each modality would be established cost centers. This solution would not bring relevant additional costs to the concessionaires, and could possibly be passed on to the consumers. It is important to remember that the obligation of countable separation already exists in the law and in the concession contracts themselves".

The counselor José Leite Pereira Filho interpreted it differently and voted as following: "To facilitate the regulatory action and ANATEL's enforcement and thus develop short term competition, it is of great importance to obligate the enterprise separation which I consider the most efficient in the countable separation because it isolates the services of monopoly nature."

The third counselor, Dr. Luiz Alberto da Silva, agreed with counselor Valente's vote in the sense that a regulation should be created to do the separation and not necessarily to impose the separation on the companies.

Counselor Luiz Tito Cerasoli, followed counselor Leite's line. I will read some parts I found important: "I maintain the conviction that the enterprise separation for the local STFC exploration is more adequate to the Brazilian competition regulation and the users' protection of services. However, our regulation's competition is basically centered in the concept of isonomy of treatment between service providers". So, counselor Luiz Tito Cerasoli's position was the same as counselor Leite. There is a need of an enterprise separation because the monopoly degree reached a level that the creation of a regulatory tool would not be enough. I will point out another part: "The enforcement of isonomic treatment would be greatly facilitated if there was more transparency between the local STFC concessionaires and other telecommunication service providers, such transparency, on my opinion, would be privileged with enterprise separation. Finally, it seems clear that the enterprise separation would be better than the countable separation, to guarantee bigger visibility to the dominant concessionaire in the provision of local service".

Finally, having two votes for and two votes against, we had the position of Ex-President of ANATEL, Dr. Schymura, who followed the vote of Council member-Reporter, Dr. Valente, that he finds it more reasonable not to impose the obligation of the separation on the companies, but

that it would be better to create a regulatory tool that would be enough to guarantee the same effects.

This is an important discussion because that's exactly where we are. The agency is getting ready to operate on the renovation of contracts, for the companies to sign the new contracts and also to publish the public consultations needed for the new regulations. I believe this is a basic question, because even though EMBRATEL has defended the local operation separation, because of the monopoly degree, the result was effectively a victory for the competition process in the country. Why? Because the concept discussed was that there is a problem, there is a situation out of control and there is the need to create a specific regulation, a strong and heavy regulation to get the same results of an enterprise separation.

Thus, the next steps that we understand are already in progress, which are the studies for the creation of the regulation that have to be put under public consultation and that will be an important step for the competitive process in Brazil. Thank you very much.

**Marcos Bafutto – Mediator:** I would like to open for questions.

**Philippe Mege – Thales:** Thank you. I would like to ask about the definition of what you call enterprise separation. Does it mean that a subsidy is made for the local service? That is the question.

**Oscar Petersen – EMBRATEL:** The whole discussion was exactly that a split would be made and it would result on a company that would retain all of the local services. The other company would have the long distance, data, etc. The local company would be isolated to guarantee that the monopoly effects, known in the economical literature, not contaminate the other telecommunication services, causing advantage of crossed subsidies, etc.

**Philippe Mege – Thales:** Thank you very much. If I understand it well, it is not to impose one accounting for each service, but to create a company for the local service and one for the long distance and other services. Is that it?

**Oscar Petersen – EMBRATEL:** The initial proposal was to split the incumbents. The decision however, demands the creation of a regulation with countable criteria, strong enough to guarantee that local concession results accounting result transparent, to prevent it from contaminating other concessions.

**Marcos Bafutto – Mediator:** Any other questions?

**Ana Luiza – TELEMAR:** My name is Ana Luíza. I am a lawyer at Grupo TELEMAR. We act as providers of fixed and mobile telephony, through the company OI. I would like to ask Dr. Oscar what he understands by competition. Today, what we see in the market are companies that want to compete only in the corporate market, ignoring a market that would reach users all over the country. So, is this competition understood in the restricted meaning of the word, being it a competition only in the corporate market, or is it a market as a whole, that reaches all users?

**Oscar Petersen – EMBRATEL:** The corporate market is already a market taken care of by EMBRATEL. EMBRATEL reaches the whole corporate market and passes on services to the corporate market as a whole. When we speak of competition, we are talking about small and

medium companies and the residential market. We have been fighting for some years now, for the unbundling. For it to be a reality in Brazil. This way the residential area can be taken care of.

**Marcos Bafutto – Mediator:** Any other questions? I would like to comment on some things, since the transparencies presented are related to a work that was under our responsibility in the last year, that was the process of renovation of the concession contracts for the local service, the long distance service and the international service. It was a long, discussed, transparent process. So that you have an idea, we had 3.400 contributions in the process of public consultation. We had six public audiences throughout the country, meetings in different Brazilian capitals, discussing the topic with the population. It was a work that gave us many other tasks for the implementation. One of them is the one that Dr. Oscar approached.

Our strategy regarding the tariffs of interconnection of nets is to take them to a more oriented cost methodology. To do this, the discussion worldwide is limited to two words – “*common and shared costs*”. What is the methodology to divide the costs that are usually placed by the profits of scale and the profits of target? Our understanding was that it was not necessary to have an enterprise separation, as long as you had a well defined account plan and also division criteria and shared costs that would guarantee that the interconnection tariff would be a tariff directed to the cost. But there is an important detail in this process worth mentioning to the other countries present here, that the implementation process of an interconnection tariff directed to the cost is a long process because you need to define the countable plans, you need to define the account division, you need to define the criteria of cost division, you need to give companies the time to implement it in their accounting. You will have a huge discussion with the operator. Imagine, in a telephony center, how the cost of the air-conditioning is divided, or the cost of the cleaners, or the company's president's salary. Since it is a very long process, we foresaw that we could only implement the tariff from the beginning of the year 2008. So, we opted for a transition, in Brazil, where in the two first years of contract - the year 2006 and the year 2007 - we will have a retail-based interconnection costs. In the first year, 2006, we will have the fixed tariff as 50% of the value of the public tariff, or the retail value. In 2007, this value drops to 40% and finally, from January 1st 2008, we will implement the first value cost oriented. Why 50% and 40%? Why not 70% and 60%? Why these values? Because we note that the international experience, particularly in the European experience, when the interconnection is cost oriented, it reaches a value around 35% of the public tariff, or the retail value. That's why in the first two years we have a transition rule, where we have 50%, 40%, and finally a cost oriented value, that we foresee will stay around this value.

Even though I haven't been asked any questions, I would like to make a complementation, since I would like this experience to be passed on, especially to the countries present here. It really is a gigantic work, a work that demands lots of regulatory action, a long and hard work with critical phases, because the regulator can define something but the operator has to have the conditions to implement it, otherwise it cannot follow the rules. Good sense dictates that you have reasonable criteria, reasonable prices, and good conditions so that the operator can follow the established rules. We cannot define a nirvana that the market operators will not be able to follow. That's what I wanted to add. I thank Oscar for the presentation.

Now, I would like to go to the next presentation, of our colleague Amélia Regina.

**Amélia Regina Alves – ANATEL:** Thank you. Like all the other speakers, I thank the two institutions organizing the event for the opportunity to be here to call the attention to the gender debate. It seems to me that the world of the woman evolved significantly in the last 30 years, so

much so that I can speak in an event like this one, to talk about the cultural diversity in gender and what it means for the competition.

The script of my presentation is simple. It is more of a reflection regarding the diversity in gender. First of all, I will analyze the gender problem. It is almost a philosophical analysis, but it has a social and sociological basis and a little social psychology in it. Later, I will discuss the concept of gender diversity, the concept of cultural diversity in gender. And finally, the actions adopted by ANATEL in relation to the topic.

I understand that, in the world context, we have basically two ways to approach the cultural and the gender diversities. There are also two boats. I think we have the feet in two boats. I will be bringing the attention to two basic points. The first one is the absence of sociology and the second one is the neoliberal classic Austrian school.

You understand that it is important to discuss the hegemony of the centers that produce the social science in the world. We observe that we can fight or find alternative routes - local or remote - made by ONGs or communities that look for an alternative to the hegemonic capitalism as a way to treat the absence of sociology. When I refer to the absence of sociology, I mean that we must have another way of treating experience and culture as a way of knowledge production, that is not from the scientific pattern established by the classic positivism, which is the traditional way to make science. I am trying to say that the experiences lived by social centers, by people, by race, by ethnic, etc - must be considered as a way of including people in the neoliberal world.

So, it is interesting to notice that the idea that the social transformation processes and even the economical ones are anchored in values. The human being, besides his psychological constitution, is also a motivational being. The human being is basically moved by faith, ideas and values. Adam Smith puts it very clearly when he says that the material effort of each individual to better his condition, when it is permitted that he does it with freedom and safety, is extremely positive and valid.

Considering the referred reflection, we have the first reason. People resist change. There is the conception: "I know you are different. I recognize your existence, but stay put and do not bother me". The Status Quo must be kept.

Another interesting point to be observed is the reason that transforms interests in real knowledge and this is very complicated. And that the amplification of the world starts with the absence of sociology, which Santos Boaventura puts as being the search of the integration of experience, in all its diversity. It is the search of the integration of experiences of those who are different.

The absence of sociology transforms impossible objects in possible ones. It transforms the absence in presence. What's in a woman that is independent from her relation with the man? There is production of non-existence when an entity, in one of the parts, is disqualified. This way we are producing absence.

The social production of these absences results in a subtraction of the world, in the contraction of the present world and in the waste of experience. This is in relation to the second point I will be approaching next, which are the steps of the neoliberal Austrian school, that has the following idea: in a short period of time, the ideas are harmless, but in the long term, they can rule the world. Hayek was the most devoted philosopher of this thesis. The power of ideas in the process of formation of values and social change is unquestionable. And the power of ideas, more

specifically the moral and religious ideas, is at least as important as physical resources. So, I am thinking that what is the worth of having such a fabulous technology vehicle at our disposition today, if we cannot add to this vehicle the power of ideas so that we can in fact include those who are absent.

I call the attention to the World Conference of Human Rights, which was held in Vienna. The conference was a divider of waters in relation to the inclusion of the woman. Woman's rights are an indivisible, integrant and inalienable part of the universal human's rights.

Focusing more in our discussion that is the cultural diversity, I would like to call attention to the fact that cultural diversity would be the representation of people with different identities, group identities that have diverse cultural signification in the social system. The company which ignores the fact that there is a cultural diversity can be losing a competitive potential in a short period of time. So, it is necessary to have a management of cultural diversity.

To manage the cultural diversity means to maximize the advantages of such diversity, to maximize the advantages of what's different, from where the difference is. It means to better the employee's abilities to contribute to the organizational objectives. The importance of treating the diversity calls for the discussion of the moral paradigm, where there is the promotion of social responsibility and equal chances of ascension within the work's world. Besides, we have the legal requirements. Certain countries already demand that there is a reserved quota for the minorities in all its personifications. And also, in the world context, diversity is looked at as a factor in the organizational performance.

The world's context calls attention to the main reason for the management of cultural diversity which is to understand the diversity atmosphere, so that we can foresee the results of the workers and the organization. It affects the crucial aspects for surviving in the globalized market. The creativity, the quality of problem solving. Those who are different, many times, have the creativity we need.

And now, to focus more specifically in the concept of gender. Gender is understood as being a social structure that has its origins in the development of the human culture. Gender claims universal and cultural aspects which affect individual lives and social integration. Gláucia Diniz, Professor at the University of Brasília, argues that it is an institution which establishes expectations and orders the social processes. I particularly understand gender as being the whole knowledge process that occurs in the context of what is feminine and what is masculine.

Now I will present some data regarding diversity and gender. I want to call your attention to the gender problems of today. The entrance in the job market for men and women is quite different, even though here we have 50% and 50%. The statistics we made in the telecommunications sector, it is almost half to half.

There are significant salary differences with women that occupy the same qualification level jobs as men. In Brazil, women have more degrees than men; however, men have better work conditions than women. In Brazil, men have medium gain of 55.68% superior to women. In Brazil, black women have 25% less chances to reach the age of 75 than her white counterparts.

I got this interesting information from the rehearsal of a sociologist from the University of São Paulo - Mr. José Pastore - whom you all might know very well. He points out an observation

done in the Brazilian rural interior: "The day was cold and cloudy. Father and son were riding horses covered with a coat, while mother and daughter, shoeless, followed them by feet".

There are still some feminine professions in Brazil. We have the maids, the manicures and secretaries. Only 36% of working women are in the formal work market in Brazil.

The first demography and concrete actions in telecommunications is a way to investigate the situation and treat politics of inclusion in gender. The work's world is masculine and quite homogenic. Managers believe that this inequality means inefficiency. However, these managers will be losing market in the short term. In the competitive market, one cannot neglect the intellectual capacity, the creativity and talent, be it for any reason. This is a prerogative in the competitive market of today. In the Netherlands, for example, between 1988 and 1991, the Ministry of Labor hired specialists to promote affirmative actions in favor of the minority groups. Observe that this is a way to answer the requisites of the global neoliberal model.

In England, there are already studies that show that affirmative interactions in the telecommunications sector, such as politics of total quality, contribute to the rise of competitiveness in the international market. British Telecom searches to balance the internal interaction of men and women with the preoccupation of mirroring the external characteristics of the market and its clientele. In France, there is an award given to the industries and companies which implement politics of inclusion in gender and cultural diversity.

I called your attention to the question of "look at home". In terms of adopted actions, when I say "look at home", I think to look at our own institution, in this case, at ANATEL. When look at home, we have to think about an organizational demographic, what is the number of women and men distributed per occupations, how many women and men demand to enter the work market and what is the rate of success for each one of these groups. It is interesting to observe if legislations is applied regarding salary equality. ANATEL has developed a study in the mobile-cellular segment. When I call your attention to look at the city zones, I think about looking at the society, in a more including way, with all of the former questions.

So, ANATEL developed the first research in diversity; it is a participant in a working group at UIT, which discusses the theme gender; it debates the problem of gender in academic communities, it is organizing a national seminar for June of this year regarding cultural and gender diversity; it intends to rejoin, still in this first semester, in two national companies, the research made last year, in the mobile-cellular segment and it has been trading ideas with opinion shapers in various circuits of the society regarding the question of diversity and gender and it is establishing quotas for training in relation to this topic.

The fight against discrimination and exclusion has been promoted by ONGs. Like I said in the beginning, the woman's world has been transformed in the last 30 years. There is an educational level - more freedom, family reduction - however, the general order of difficulty is still there. The reduction of problems goes through the transformation of values and the understanding of the importance of this topic. In this century, for sure, who will prevail is the one who knows and the one who is capable, regardless gender, race or color.

So, I leave a message to the men of the world - Be united! Study, work, take care of the women and share with the women what is already your responsibility and that you are not aware that it is a responsibility. Men of the world, wake up! That is what the sociologist José Pastore says. Wake up, so that, together with the women, we can produce a better society.



The diversity in gender is considered one of the factors which disable accomplishments with more competitiveness for the organizations.

I leave you this thought which I find simply fabulous. Thank you for your attention and let's be united. Thank you. Sorry for exceeding my time.

**Marcos Bafutto – Mediator:** Not a problem. For the gender issue, since there were some male speakers who exceeded their time, we have to give you the same treatment. I would like to open for questions, and to focus in the gender topic, we will divide the questions equally between men and women.

**Helena Xavier – Xavier, Bernardes, Bragança Advogados:** I did not understand very well the reduction of the family factor. What was the qualification, the cause and the value of this phenomenon?

**Amélia Regina Alves – ANATEL:** The necessity of the woman entering the work market is not only a professional and personal development, but also a motive to share the expenses at home. This would not be simple for a woman who had a big quantity of children at home because it is she who gives them attention, food and education. So, the bigger the number of children at home, the bigger the family, the bigger the difficulty of the woman being able to account all of this. The work's world, the woman's role as a professional, the woman's role as a mother, the woman's role as wife and educator.

**Philippe Mege – Thales:** I am not going to ask a question regarding parity, because it is a political problem and all. I come from an African country where 75% of all graduates are women. What is up with the parity? That is why we have to take into consideration the value of the human being, nothing else.

**Angélica Noboa Pagán – INDOTEL:** I have interest to know a little more about ANATEL's initiative in the telecommunications sector to favor special groups, such as women, in a special area. I would like you to comment on that.

**Amélia Regina Alves – ANATEL:** The first initiative we took was to study the real conditions, the environment. It would be hard to take any decisions if we did not know the real condition of the woman in the telecommunications environment. So, we investigated the mobile-cellular segment in Brazil. It was a research done via internet because it was the most adequate way to conduct the research at the time. It was not an on-site research, even though we wish it had been, but there were too many difficulties. Following the first survey we found out some very interesting things, not only related to women, but also related to race (training hours designed for the black race and the yellow race, for example) and information regarding management levels, in relation to gender and race. This research will be developed for companies in the seminar that will be held in June of this year. The topic of the seminar is "Social Responsibility". We will debate what can be done with this data we got to change personal development, professional development, personnel training and what would be the ideal procedure to eliminate what we call "glass ceiling". For example, the black, women and the Asians see a "glass ceiling" within the institution that stops them from reaching better jobs.

**Marcos Bafutto – Mediator:** I have a question from the masculine side. What are the barriers and difficulties that you see in treating this problem, especially in the region here represented - Brazil and Latin America.

**Amélia Regina Alves – ANATEL:** The barrier I see really is cultural. I think culture is the biggest impediment in questions of gender. In Brazil and Latin America we have a culture basically conceived over the understanding of what's masculine. This loss of hegemony is threatening. I recognize that women are competent, that Asians are good with pragmatic tasks, but stay where you are, do not bother me, the status quo can not be touched, the hegemony can not be deposed. But, I also notice that this understanding, slowly, tends to change. Changing values, changing culture is a slow process. However, I think that there is a strong calling in the sense of transformation, which is the question of citizenship and competition. I can not exclude citizenship from a model of competition. Actually, a professor from the Fundação Getulio Vargas in São Paulo, who works in the quality area, talks about how to conduct competition without citizenship, in an article published in the *Correio Braziliense* about a month ago.

**Marcos Bafutto – Mediator:** We have two more questions. Please be brief.

**Déa – ANATEL/Rio de Janeiro:** It is not really a question, but I would like to make a comment. I am from ANATEL, Amelia, but I am being introduced to the preoccupation of ANATEL with diversity of gender today. The cultural diversity I had an idea of, because of the tentative to take of the excluded in the area of telecommunications, with the universalization program, etc. So, I will give you the data that you might not know. I am taking this opportunity to do so. I work at ANATEL in Rio de Janeiro. We are 40% of women in a regional office and, in the technical area, in the management functions, we are 67%. We have women occupying the economical-administrative management, the management of grants, the technical enforcement management and the technical advisory, where I work.

**Amélia Regina Alves – ANATEL:** Your observation is interesting. Inclusively, the data of the first survey we made showed us that, in relation to the insertion of women in the technological sector, about 49% of workers are women. That is in the mobile segment. However, in relation to management functions, women can not get there and the percentage of women in leading titles is insignificant, within our survey.

**Clovis Baptista – CITEL:** I would like to ask a question regarding a mandate from OEA to CITEL to plan and implement politics of gender, of hemispheric reach, in the area of telecommunications. We started to work with the Inter-American Women Commission, which exists in the OEA for 75 years, and with the Technology and Science Office, to look to identify some basic initiatives to begin the development of the mandate. We identified the capacity part as being an important part, meaning, capacity for the inclusion of women in the global society of information and knowledge. But we are missing information and we do not know where to get it. Because of all the advancement that ANATEL has had, I would like to know in what way ANATEL could collaborate with CITEL, to help us formulate this hemispheric politics and implement it, bearing in mind that we have already solicited contributions from other countries and, so far, only one member state of OEA, not being Brazil, has answered. So, I would like to present this question and, at the same time, ask for your collaboration. Thank you.

**Amélia Regina Alves – ANATEL:** I imagine that you will not have difficulties. The questionnaire we adopted is ready and valid and can be translated to any language and

implemented. We only have to define the procedure of research, the methodology of data collection.

To end, I would like to add that the question of inclusion of gender goes beyond many questions. I think the problematic of the question of revenue is also very serious. Analyzing the data from CEPAL, from last December, they stated that in Brazil there are 90 million of people that are considered poor or miserable. So, these are 90 million people who, in some way, are excluded from a social benefit. Thank you.

**Marcos Bafutto – Mediator:** Thank you very much, Dr. Amélia. We pass the word to Dr. Fernando Dionísio to begin his presentation.

**Fernando Dionísio Brandi:** Good afternoon everyone. I will be talking about the consumer's topic. First I would like to congratulate UIT, ANATEL and the event's organizers for the way the topics were put. Throughout the years we have seen a technical preoccupation in the telecommunications sector. The technical preoccupation is important. Earlier, we had some colleagues speaking of concession contracts, enforcement, taxes, rates, etc. But the colleague who spoke before me, Dr. Amélia, brought us a very interesting topic. Even though she was speaking of women, a minority group, there is also a group that has always been a minority for all of us, the consumer.

Throughout the years, the consumer was put in second plan, inclusively in the telecommunications sector. So, the message that Dr. Amélia left for the men, I believe it is also important to the consumers - "Wake up!"

When we speak of the consumer, we are basically talking about the relation of two subjects. One is the consumer himself, the final user of the service that is being provided. When a company is providing services to another company, it is not recognized as being a consumer by our legislation. The other is the service provider, who can be any person who provides or develops an activity, or sells a product. In our case, they are the providers and the regulated beings.

For Brazil, the question of the consumer is a very new one. If we look at the Brazilian Constitution of 1988, there was no preoccupation in relation to the consumer in our country. In truth, the Constitution of 88 was the tool that began to give protection to the consumer and give him rights. And then, in 1990, we had the Law 8078/90, which gave us the Consumer's Defense Code. It applies to the relation of consumption in a general way, inclusively in the telecommunications sector. In 1997, this law was regulated by the Decree 2181/97, which tried to organize a National System of Defense to the Consumer, establishing general rules and the applicable sanctions in the services provided and in the products provision, creating, as well, mechanisms where that would be an interaction, at federal level, by the Ministry of Justice and, at state level, by the Agencies of Consumers Defense.

Up to now, I am trying to show, generally, how the consumers' protection happened in our Brazilian legislation. We are speaking a little about the general consumers and not focusing only in the telecommunications sector.

If you start to think about the telecommunications sector, the service provider sector, we also have a new figure in Brazil, which are the Regulator Agencies. The Regulator Agencies, in or juridical order, aim to guarantee the quality and effectiveness of the public services provision, sanctioned by the concession regime, permission or authorization. They are inspired in the

American Law and they are institutions of Direct Administration. They have to exercise the politics defined by the Executive Power and the Legislative Power, aiming the organization of the public services.

Specifically in reference to ANATEL, besides other attributions, it aims to discipline and inspect the execution, commercialization and use of the services and the implanting and functioning of the telecommunications nets. It establishes rules to the operators, inclusively in the protection of the users' rights. When it exercises the enforcement activity, in truth, a bigger interaction between ANATEL and the telecommunications service users arise.

Speaking specifically of the consumer, our Telecommunications General Law, in 1997, worried for the first time about the rights of the consumer in a more effective way. Before this General Law, we had the Brazilian Telecommunications Code, from 1962, that did not worry much about the consumer. The new Telecommunications General Law - Law 9472/97 – brings out some provisions aimed at protecting the consumer. If you examine, right on Art. 3º, it has all the users rights, and, in Art. 19, specifically regarding ANATEL, it establishes that one of the obligations of ANATEL is to reprimand the infractions to the rights of the users. ANATEL was also organized through a Decree that establishes that ANATEL has to act in the protection of the rights of the consumers, joining with the National System of Consumers Rights itself, and the state PROCONs.

When we are talking about the user, ANATEL, the Regulator Agency, all this activity related to the user's consideration, in truth, we are not referring to a direct user's protection, but we are talking about a tool of the enforcement activity, as it was reminded by Dr. Rachel earlier on.

We were speaking of two types of agencies. We have the Regulator Agency – ANATEL – and we have the Agencies of Consumer's Defense, which do not worry specifically with the telecommunications sector, but with consumers in a general manner. We have to understand better what are the sanctions and attributions of each one of these agencies. Or how the Regulator Agency acts and what it can do to defend the consumers, and how the Consumer's Defense Agencies, generally, must act in relation to the consumers. When we speak of the Agencies of Consumer's Defense in a general way, it can be any entity or any public administration agency, be it federal, state or municipal, having the objective to defend the interests and rights of the consumer and each one acts within their respective competence to improve and to punish eventual practiced infractions. The causes are, effectively, the infractions to the rules of the Consumer's Defense.

When we speak of ANATEL, the Regulator Agency specific of the telecommunications sector, first we verify the agency's competence, in protecting the consumers' interests, it is much bigger and always prevails in the suspension of product or service provision, be it in the temporary suspension of the activity, the eventual revocation of authorities or licenses detained by the operators. These sanctions come from the exercise of the regulatory and enforcement activity of the agency. If a company that provides service does not follow a rule, it is up to the Regulator Agency to punish that company, for failing to follow a rule or failing to follow a contract disposition.

Because of this, we have to understand certain things when we talk about the consumer. The activity and the sanctioning power of the Agencies of Consumer's Defense, generally, and of ANATEL, seem to have distinct and independent nature. Here in Brazil, an Agency of Consumer's Defense, linked to PROCON, for example, has to inspect the relations of

consumption and aims to protect the consumer himself. ANATEL also must protect the consumer, but it also has to guarantee the correct execution of the services that are being delegated to a third party. The intersection point between ANATEL and the Agencies of Consumer's Defense is in the user's figure, who will denounce the irregularities practiced by a provider, by a service provider. That denunciation assists the Agency of Consumer's Defense in punishing and repairing the damage caused. And it helps ANATEL establish the way which the regulation must be done and applied. In truth, it has the objective to evaluate and make the normalization of the sector possible. That is what I had to say. Thank you very much.

**Marcos Bafutto – Mediator:** I would like to thank the presentation of Dr. Fernando and to open for questions.

**Philippe Mege – Thales:** Thank you for the explanations. I'd like to ask if the employees of the National System of Defense are employees of the Ministry of Justice, if they are employees of the State.

**Fernando Dionísio Brandi:** Actually, the National System of Consumer's Defense is not yet functioning. But, the idea is that it will be an agreement with the various Agencies of Consumer's Defense - federal, state, and even the Regulator Agencies themselves - and that it will act in the defense of the consumers. So, we have the Agencies of Consumer's Defense that are at federal level, and others that are within the states. Each one has its own employees. Actually, the National System of Consumer's Defense aims to establish a way to join the performance in the interests of the consumer's rights, by the Union's part, the state's part or by the Regulator Agencies' part. That is the system's idea.

**Philippe Mege – Thales:** One more question. Is there in Brazil an association of telecommunications users or something like that? I ask because in various countries, inside the Administration Council there is a representative of the consumer. So, it is almost like a public consultation because all the members make decisions. For example, when we have a public consultation in Europe, in Russia and in other countries in Asia, we send the public consultation directly to the subscribers association. So, the power is stronger because, the day that the users say "I will not pay" - you know what happens.

**Fernando Dionísio Brandi:** Here in Brazil, we also have associations of users of telecommunication services and associations of all types of consumers. On the other side, there is a Consultant Council at ANATEL. This Council is made by representatives of several areas. Not only government representatives, but service providers' representatives and also some consumers. So, you have two mechanisms – you have the Consultant Council mechanism within the Regulator Agency, and you have the associations of consumer's protection or specific associations of telecommunications users, which are effectively operating and try to protect the consumer's interests.

**Philippe Mege – Thales:** This is very important for a Regulator or the State. With these associations, we can see if users are ready to get new equipment and pay the rates. This is an indication, for example, with the introduction of the digital, the broadcasting, that we have in 118 countries to know if the users are ready to pay, because, if they don't pay, nothing happens. You can have economical studies to make good use of the market. This is a good way to find out if there is a market or not.

**Marcos Bafutto – Mediator:** Any other questions? I only have a question to make. I think it is important to point out to our audience the importance of an effective contact with these Agencies of Consumer's Defense. Many times, you have quality problems or problems with a company, that acts at national level, in several regions of Brazil, and hardly, by the sampling process, the enforcement detects this problem. The Agency of Consumer's Defense is an important indicator to help the Regulator Agency identify problems.

Within this context, I would like to know Dr. Fernando's opinion. In this initial stage of structure of the National System of Consumer's Protection, we, from ANATEL, already have contacts in Brasília with the DPDC from the Ministry of Justice. We try to participate in the seminars of the federal PROCONs, however, we have a determined difficulty in making the information flow by the state PROCONs and reach the municipal PROCONs. How do you think this integration could be made, that is something very desirable and also important to the Regulator Agency?

**Fernando Dionísio Brandi:** Like I said, by the strength of the Decree that establishes the regulation of the Agency, ANATEL has to act in the interest and defense of the users, linked to the National System of Consumer's Defense. It is a fact that in a country as big as Brazil, it is possible that in certain areas, the enforcement of ANATEL is not verifying a problem that could be occurring with certain users or with a company, because the country is very big. Without a doubt, it is of great importance for ANATEL to search, through these agencies that have a more direct, personal contact with the consumer, information on how the providers are behaving in the provision of services. The most careful solution, in my opinion, are agreements that ANATEL establishes with the local PROCON, being able to give the technical support, that certainly will be a lot bigger than that of the local PROCON, and in return, PROCON would give to ANATEL, information and details that could help the Agency to establish its enforcement activities, its rules and even eventual positions to the companies, if that's the case. I think ANATEL has already tried to do this, through ANATEL's hearing.

**Marcos Bafutto – Mediator:** Very well. I thank Dr. Fernando. Since we have had extensive sessions of questions and answers following our presentations, some of which I had to use my dictatorial power of mediator, I would like to thank all of this session's speakers for the excellent level of presentations and for the discussions we've had. I would also like to thank our plenary for your participation. I thank you all. Thank you.

**Coordinator:** We will have a coffee break, which will be served at the mezzanine, and we shall return, in exactly 15 minutes for the round table "Better Practices for the Effective Application of Rules". Thank you.