

A different approach to protect consumers in Brazil in a digital transformation environment: nuisance calls and mechanisms of enforced self-regulation

Anatel, Brazilian Telecom Regulatory Agency, <http://www.anatel.gov.br>

This contribution presents the Brazilian status on nuisance calls (abusive calls), telemarketing and the institutional framework in which occurs Anatel's approach to enforce consumer protection and rights.

Considering the absence of federal regulation on the subject in Brazil, Anatel belied in the possibility of enforced self-regulation to address the issue of unwanted connections from the telecommunications sector.

Background

There is no specific federal law that address the issue of unsolicited/abusive calls, although some states and municipalities have. In Brazil, consumer protection is subject to a diffuse approach which means that not only can there be federal laws but also state and municipal laws.

In the last few years, nuisance calls have increased among telecommunication services consumers. Data and studies made by the Brazilian National Telecommunications Agency indicate that the problem mainly comes from the use of predictive mechanisms to offer legitimate products and services, telecommunications included.

Taking Action

In 2019 Anatel appointed unsolicited/abusive calls as major problem and acted to seek instruments in its legal competence framework to reduce the nuisance caused by these calls.

In six months, Anatel and Telecommunication Operators were able to build a new environment based in enforced self-regulation.

Telecommunication Operators, under a responsive approach, were asked by Anatel (in March) to step up and help address the problem, considering self-regulatory measures rather than a regulation process.

The Operators answered positively. A *Letter with Six Principles* and a commitment to create and put them into practice by September/2019 through a *Code of Conduct for offering Telecommunications Services through Telemarketing*.

The six principles that gave rise to the Code are: do not call at inappropriate times; do not call insistently to consumers; respect the consumers desire to not receive telemarketing calls; receive and answer complains about unsolicited calls; ensure adherence to the Personal Data Protection Law; cooperate to improve telemarketing practices in other sectors.



During this period of Code elaboration (in May), Operators signalled they were considering to implement by September 2019 a single and national Do not Disturb Me list. However, in a context of social pressure and demand for response, Anatel understood relevant to order (in June) them to implement it within 30 days.

This was done and there was a very positive social impact: 1 million/1.5 million registered in 24 hours/7days with intense press coverage.

The *Code of Conduct for offering Telecommunications Services through Telemarketing* was launched in September.

Complaints about nuisance calls dropped substantially in the first weeks after the launched of the national Do not Disturb Me list and stabilized at a 40% reduction in comparison to the numbers observed prior to implementation of the list.

Anatel remains studying about telemarketing, robocalls, spoofing, predictive dialler tools, number allocation and the technological status of Telecommunications Operators networks to better assess which measures could be considered feasible to address the nuisance calls (even outside telecommunications sector). Anatel is also observing the national scene (dialoguing with other sectors and different actors) and international benchmarking. There is always the option of Anatel establishing rules on the issue and that possibility is transparent to Operators.

It should be highlighted that the Brazilian banking sector sought the telecommunications sector to join the Do Not Disturb List. After 5 months, January 1st, the banking sector joins the list and the two sectors that most bother the consumer unite in this self-regulation initiative.

Conclusion

Considering the growth of the digital economy and the rate at which technological innovations come to be, the Regulator shouldn't focus on regulating every detail. Therefore, Anatel is increasingly betting on stimulating the development of ethics, trust and transparency in a direct company-consumer relationship.

It's a challenge that Anatel decided to face based on dialogue to shape better solutions, without forgetting its role and the possibility of creating enforcement mechanisms. For that purpose, Brazil is interested in exchanging experiences and cooperating with regulators from other nations.

Regulatory Simplification Process at the Telecom Sector in Brazil: preparing an enabling environment for investments and the digital economy

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The regulatory simplification of the telecommunications sector in Brazil conducted by Anatel aims to give more consistency and quality to the rules that govern the telecommunications market, facilitating the understanding of the regulation by the whole society and also revoking the rules that are no longer justified, and preparing an enabling environment that allows for investments in closing the digital divide and paving the way for the digital economy.

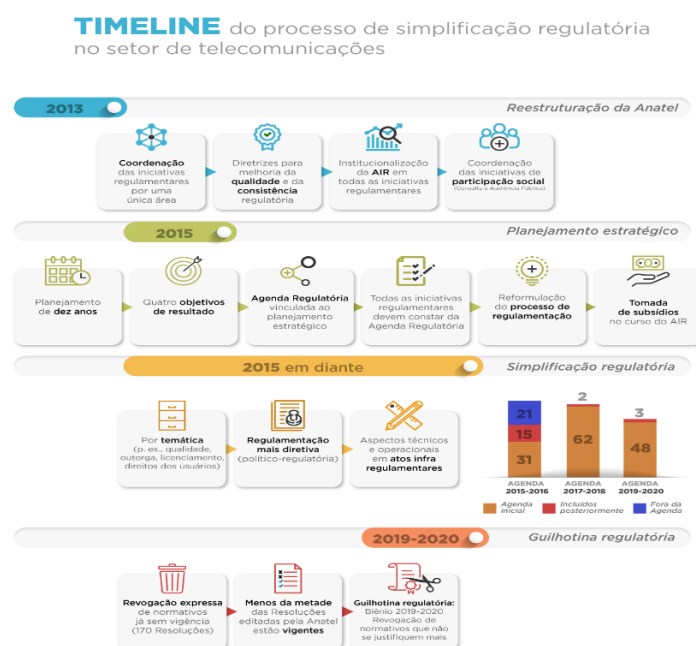
Benefit for society

The simplification process encourages the rules to be more focused on the real problems that affect the telecom sector, especially those related to consumers. In addition, regulatory simplification also makes the environment more conducive to investment, which results in the expansion of networks, the quality of services provided and the prices of these services.

Finally, with the reduction of the complexity of the normative collection, more space is opened for different groups of stakeholders to start contributing to Anatel, identifying new challenges and points for improvement.

Milestones in Anatel's regulatory simplification process

This process at Anatel began with its restructuring in 2013, with the coordination of all regulatory processes by a single area and the institution of Regulatory Impact Analysis (RIA) in the regulatory process. After this, the construction of the Regulatory Agenda began in 2015, in line with the Agency's strategic planning.

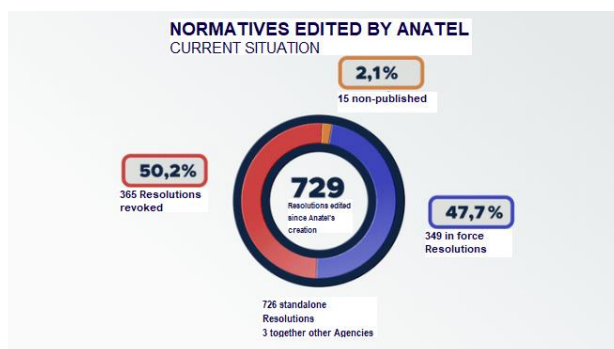


Fonte: Superintendência de Planejamento e Regulamentação/ANATEL

Source: Planning and Regulation Superintendence (SPR), Anatel.

Current situation: what are we doing?

Simplification started with a focus on major industry themes, such as granting, licensing, quality, certification, competition and consumer rights. In the 2019-2020 biennium, 170 resolutions were expressly revoked that were no longer worth tacitly. Today, the process moves forward to address the other rules of the Agency through the regulatory guillotine project.

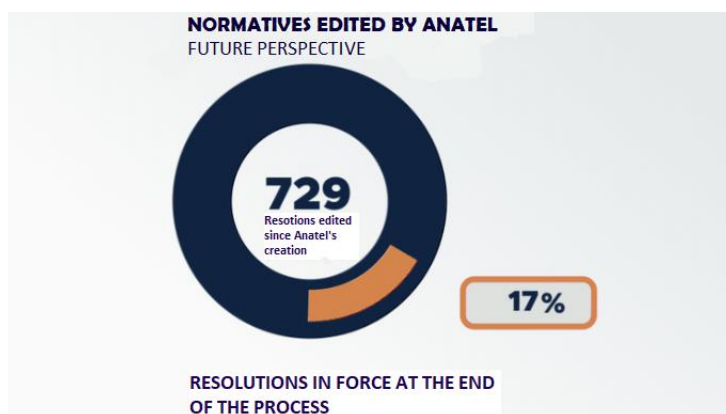


Source: Planning and Regulation Superintendence (SPR), Anatel, May 2020.

Future scenario

The expectation is that several projects will be contemplated in the next biennium and that, thus, the Agency will finish the process of normative consolidation.

In the end, less than 20% of the Resolutions issued by the Agency since its creation will remain in force, all of them consolidated in their respective theme, as provided for in Decree No. 10,139, which provides for the review and consolidation of normative acts.



Source: Planning and Regulation Superintendence (SPR), Anatel, May 2020.

More information, including dashboards, infographics, audios and videos, etc, regarding the simplification process can be found at the following website:

<https://www.anatel.gov.br/setorregulado/simplificacao-regulatoria>.