

Planning and Regulations Department  
ANATEL

# **Regulatory Discussions and Advancements for Digital Platforms in the Context of Audiovisual Services in Brazil**

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ITU Workshop Future of Television in the Americas



# Agenda

- ❖ **Status of audiovisual content consumption and delivery in Brazil**
  - Background and Status for the Transition to DTT
  - Other audiovisual distribution platforms in Brazil
- ❖ **Regulatory Discussions in Brazil: Digital Platforms**
- ❖ **Towards a Regulatory Impact Assessment (RIA) for the establishment of a new enabling environment for the digital ecosystem**

# Status of audiovisual content consumption and delivery in Brazil

Background and  
Status of the Transition to DTT



# Digital Switchover in Brazil



**Adoption:** In June 2006, the Brazilian government adopted, by means of Decree n. 5820/2006, the ISDB-T system as a base for the Digital Terrestrial Television (DTT) transmissions. On December 2nd, 2007, the official system launch date in the city of São Paulo.

**It is a very relevant audiovisual content distribution platform, with 69.6 million free-to-air tv households (from a total of 71.5 mi households with television, 94.9%, source: [IBGE,2022](#)). As a comparison 91.5% of households used internet, 68.9 million.**



**Strategy:** ASO in two phases, the first between 2016 and 2018, in all capitals and other main cities to allow for 4th generation IMT advanced system in the 700 MHz, and the second phase, which started in 2021 to complete the switchover in all locations where analogue TV is still in operation.



**Governance:** Transition activities funded by the 700 MHz band auction in Brazil and operationalized by a third-party entity, constituted by the winning bidders on the auction. A Steering Committee constituted by telecom providers, broadcasters and the Ministry of Communications and Anatel was also instituted to decide on important guidelines and milestones.



**Deadline:** The deadline for the analogue switch-off in the areas of the second phase was set to December 2023, based on a projection of the expected lifespan of existing analogue TV sets in Brazilian households.



# Digital Switchover in Brazil

- ❖ Brazil is in the process of completing its digital switchover and shutdown the last analogue TV stations in remote areas and municipalities.



- **First phase results:**

- 1,379 municipalities, comprising 129.6 million people, completed the analogue switch-off, including all state capitals, metropolitan areas, and other areas where the analogue switch-off was required to clear the 700 MHz band, corresponding to 62.6% of the Brazilian population.

- **Second phase targets:**

- The second phase comprehends 2,896 municipalities, some of them having partially digitized its transmissions, and others with analogue TV only (1,639 municipalities).
- **Digitaliza Brasil Program.**

# Needs on Broadcasting: Brazil

## ❖ Digitaliza Brasil Program:



**Objective:** Completing the transition to digital terrestrial television by December 2023, the final deadline for the switch-off;



### **Actions:**

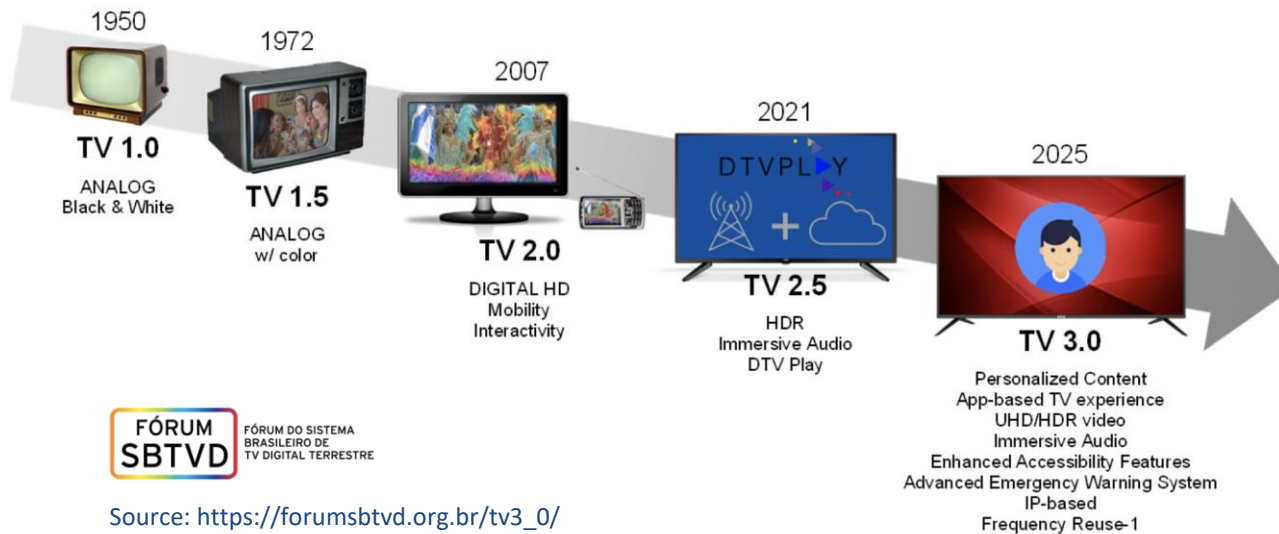
- Continue the distribution of DTV reception kits to low-income families, where deemed necessary;
  - Estimates are that 4.2 million DTV kits will be distributed (in addition to the 12 million that were distributed in the first phase of the ASO);
- Digitize stations in analogue-only locations;
  - **Acquiring and installing DTV transmitters for the analogue broadcasters**, as well as bearing costs with regulatory demands (mainly taxes and engineering labour);
  - Standardized transmission assembly will be used as a reference for the deployment of stations in each of the municipalities, which can be modified to meet local conditions;
  - The equipment will allow **sharing of common infrastructure between up to 8 DTV broadcasters' channels.**

# DTT Evolution in Brazil

## ❖ Evolution of the DTV in Brazil:

### ▪ TV 3.0 Project

#### Background – Terrestrial TV Evolution in Brazil



# Status of audiovisual content consumption and delivery in Brazil

Other Audiovisual Distribution Platforms in Brazil





# Other Audiovisual Distribution Platforms in Brazil

## ❖ Distribution Platforms:



### Several distribution platforms available:

- DTT (69.6 million or 94.9% of TV households);
- Traditional Pay TV distribution platforms (19.8 million or 27.7% of TV households, source [IBGE,2022](#));
  - Cable and Satellite TV;
  - IPTV Linear TV and VoD offers from Pay TV companies;
- OTTs:
  - Among households with a television, 43.4% (or 31.1 million) used some kind of pay video streaming service (source [IBGE,2022](#));
  - Among households with this service, 95.3% also accessed television channels, 93.1% on free-to-air TV and 41.5% on pay TV.
  - xVoD Offers: Netflix, Amazon Prime, GloboPlay, etc;
  - User Generated Content: Youtube, Social Media, etc, also relevant.

# Other Audiovisual Distribution Platforms in Brazil

## ❖ Distribution Platforms (cont.):



### Regulatory Environment:

- Traditional Pay TV and OTTs have different regulatory and legal frameworks;
  - Pay TV and IPTV Linear TV and VoD combined offers in a subscription-based offer – TELECOM SERVICES OFFER (subject to the General Telecommunications Law);
  - OTTs, several xVoD offers on the internet – VALUE ADDED SERVICES - VAS (subject to specific regulations)
    - ✓ Judgment n. 472/2020 (Claro x Fox Sports Case).

# **Regulatory Discussions in Brazil Digital Platforms**



# Public Consultation n. 13, of 2023



## Item n. 6 of the Regulatory Agenda for the 2023-2024 biennium, referring to the new User Duties Regulation.

- Regulatory discussions underway to assess the current regulatory environment and evaluate if other stakeholders in the digital ecosystem value chain need to be considered in the regulatory scope going forward.



**Objective:** Promote a **dialogue** amongst all interested parties to **identify regulatory problems and gather evidences** about the use of telecommunication networks by big traffic generators, to establish a **healthy and enabling environment** for service provisioning with quality and that promote **solid and lasting investments**, ensuring **meaningful connectivity** that can allow the Brazilian population not only access, but a safe, satisfactory, enriching and productive online experience, with accessible prices.

[Public Consultation n. 13, of 2023](#)



# Public Consultation n. 13, of 2023

## ❖ Initial Motivations for the Regulatory Discussions:

### ✓ Regulate the provisions of article 4, item I, of the LGT:

- General Telecommunications Law – LGT (Law No. 9,472/1997):

“Art. 4º The user of telecommunications services has the duty to:

I - properly use telecommunications services, equipment and networks;

II - respect public goods and those intended for use by the general public;

III - report irregularities and illegal acts committed by a telecommunications service provider to the authorities.”

- The agenda item in question seeks to debate the need for specific rules for large users, or those that require some peculiar regulatory treatment, such as, for example, those users who make massive use of telecommunications networks or large traffic generators, audiovisual streaming platforms included.
- Assumption that Valued Added Services (VAS) providers constitute users of telecommunications services.

# Regulatory Discussions – Background

## ❖ *Claro x Fox/Topsports Case Study*

- Judgment of the Anatel Board of Directors No. 472, of September 10, 2020, which recognizes that **“Offers of Programmed Audiovisual Content via the Internet through Subscription (sVOD) do not qualify as a Conditional Access Service (SeAC)”**.
  - ✓ VASs can use telecommunications networks to provide their services.
  - ✓ It is fully valid for VASs to develop a business model in which they not only sell the facility itself, but also, following the conditions set out in the regulations, guarantee the enjoyment of their VAS.
  - ✓ **Anatel's competence to evaluate and decide on whether or not the activity subject to the process is classified as a telecommunications service.**
  - ✓ Impacts of VASs in general on the use of telecommunications networks.
    - ❖ Competitive impacts and use of net resources with impact in quality and resilience of networks, among others.

# Regulatory Discussions – Background

## ❖ Action Plan to Combat Piracy (Mapping and blocking of TV Boxes)

- Action Plan to Combat Piracy (PACP), based on **Anatel's competence to assess the misuse of telecommunications networks and exercise regulation over platforms constituted as VAS**, in their capacity as users of telecommunications services.

## ❖ Case of Improper Use of Telecommunications Networks (Abusive Calls)

- Injunction embodied in Decision Order No. 250/2022/COGE/SCO (SEI No. 9294884).
- The Decision Order in question, roughly speaking, understands that it is the **misuse of numbering resources and inappropriate use of telecommunications services** to employ a technological solution for the massive triggering of calls.

## ❖ Corporate SMS Messages (Case Zenvia x Telefônica)

- Pricing policy for SMS messages promoted by SMP providers, with the establishment of a minimum consumption deductible regime and increased perceived prices.
- **Competence to assess the merits of the matter**, since it is a complaint of a VAS against telecommunications service providers, as provided for in art. 61, §2, of the LGT.

## ❖ Network Security and Integrity Case Study (Port 25 Management and IPv6 Implementation Plan)

- **Anatel's work with application providers, users and telecommunications providers that make up the internet**, with the aim of guaranteeing the integrity and security of telecommunications networks and their users.
  - ✓ “Cooperation Agreement to Implement the Port 25 Management Recommendation” and GT-IPv6 for the implementation of the plan.

# Regulatory Discussions – Background

## ❖ *Case General Interconnection Regulation (RGI) - ADPF nº 546*

- This is the Allegation of Non-compliance of §§ 1 and 2 of art. 64-A of Resolution No. 73/1998 (Regulation of Telecommunications Services), as amended by art. 8th of Anatel Resolution No. 693/2018 (General Interconnection Regulation – RGI).
- In his decision, Justice Roberto Barroso summarizes the request as follows:

“The applicant maintains that the contested rules attribute, ‘without any legal basis, competence to Anatel to resolve conflicts between telecommunications service providers and value-added service providers’. It claims that the rule allows ANATEL regulation also in relation to the added service provider, which would distort the rule established in § 2 of the art. 61 of Law No. 9,472/1997. It states that the contested norms violated the principles of separation of Powers (CF, art. 2), legality (CF, arts. 5, II, and 37), due legislative process (CF, art. 5, LIV) , freedom of initiative and free competition (CF, art. 170, caput and item IV).
- **In his decision, Justice Roberto Barroso did not accept the applicant claims, enforcing Anatel’s competence.**



# **Towards a RIA for a new enabling environment for the digital ecosystem**



# Towards a RIA for a new digital ecosystem

## ❖ *Initial diagnosis based on the evidence gathered*

- **Synergy between the digital world and telecommunications.**
- **New and innovative digital platforms are essentially based on telecommunications services and networks.** Therefore, the efficient and sustainable performance of the actors in this relationship is fundamental to promoting a healthy digital economy, in the most diverse sectors, applications, products and services.
- **Digital platforms consist of users of telecommunications networks, whether direct or indirect, and it is important to emphasize that the relationship between these users and the providers of these services must be fruitful and balanced, in order to guarantee investments in access and connectivity.**
- **Anatel's competence to establish a favorable environment** in the relationship between telecommunications service providers and users of these services, including, obviously, digital platforms that constitute themselves as Value Added Service providers.
- **Impacts of the massive use of telecommunications network resources**, for example, audiovisual streaming services.
- **Balanced regulation that curbs anti-competitive practices**, especially between both sides of the relationship between telecommunications service providers and Value Added Service providers, including digital platforms, can encourage more sustainable business models, promoting important public policy objectives in the sense of meaningful and inclusive connectivity.

# Towards a RIA for a new digital ecosystem

## ❖ *Next Steps in the Regulatory Process*

- Regulatory Impact Analysis (AIR) in progress;
- Completion of the Problematization stage, with the identification of preliminary regulatory problems and their alternatives;
- Preparation of the Executive Summary of the RIA Report, with the problems, the context of the problem and preliminary evidence, and the preliminary alternatives;
- Another Public Consultation seeking more data and evidences for the Executive Summary of the RIA Report until the end of 2023.

# Thank you!

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