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REVERSIBLE ASSETS: HISTORICAL EVOLUTION AND CURRENT REGULATION IN BRAZIL

By Ricardo Barretto Ferreira and Isabella De Castro Satiro Aragão

According to Resolution No. 447, of October 19, 2006 of the National Telecommunications Agency (Anatel), “Reversible Assets” are those essential to the continuity and timeliness of the service provision in the public regime. These assets are so named because, at the end of the concession agreements, they can be reverted to the Federal Government (as in the case of their extinction, in which the transference of ownership of these properties will occur automatically).

In addition to the aforementioned regulation, and also the General Telecommunication Law (Law No. 9,472/97 - “LGT”), the concession agreements or permission terms (entered into by and between the providers and Anatel) and other applicable instruments govern the control of Reversible Assets used in the provision of telecommunication services in the public regime.

In mid-2013, staunch debates were held between Anatel, the Ministry of Communications and consumer rights entities on the destination and control of the assets transferred to the telephony service concessionary companies, due to complaints that the fixed telephony companies are selling such assets and appropriating the value, without rendering account to Anatel. Consequently, since 2014, the concessionaires of the Fixed Switched Telephone Service (“STFC”) declare, annually, the assets that are essential to the service provided in public regime in the List of Reversible Assets (“RBR”).

However, due to an increasing insecurity and feeling of insufficiency in relation to these RBRs, Audit Report No. 024.646/2014-8 was presented, aimed at identifying failures in the compliance and timeliness of Anatel's information in these RBRs.

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Within the scope of this report, Minister Walton Alencar Rodrigues, of the Federal Court of Accounts (“TCU”), through Judicial Order 2142/2019, expressed severe criticism about the regulation, monitoring and inspection of Reversible Assets carried out by Anatel. The Judicial Order supported the need to reinforce control over the allocation of resources from disposals of Reversible Assets and over the occurrence of disposal, disconnection, replacement and encumbrance of Reversible Assets without the prior consent of Anatel.

This decision also granted 210 days for Anatel to present a list and assessment of Reversible Assets delivered to fixed telephony concessionaires after the privatization of the Telebrás System; however, recently, the Agency asked for another 120 (one hundred and twenty) days to complete the survey, which was impacted by the health crisis of COVID-19.

It should be noted that, in the past year, the Bill No. 79 of the House of Representatives, which intended to change the LGT to allow the adaptation of the granting mode of telecommunication service from “concession” to “authorization”, dispensing competitive bidding and allowing the contract to be revoked at any time by the Government, was transformed into Law No. 13.879/2019, on the eve of the above mentioned Judicial Order.

It should be noted that Law No. 13.879/2019 has caused a great impact on the Reversible Assets regime, mainly due to the provision that considers these assets for the calculation of the economic value associated with the adaptation of the concession instrument for authorization, making the equivalent value of the Reversible Assets held by concessionaires to be reverted in investments for the expansion of broadband networks.

Furthermore, the issue of Reversible Assets was also addressed in two public consultations (already completed) by Anatel:

Public Consultation No. 5, which deals with the Regulation for the Adaptation of STFC Concessions for Authorizations; and

Public Consultation No. 19, which addresses the regulation of the STFC Provision Continuity, **which will replace the Reversible Assets Control Regulation**. In addition to providing for the sending of proposals for Reversible Assets lists on an annual basis, in principle, and quarterly, as of 2023, the proposal also provides for the waiver of prior consent by the Agency, sending justification only in cases of loss of essentiality of the asset, improper insertion in the list of Reversible Assets or unserviceable assets.

In addition, taking into account the

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controversial point of calculation of Reversible Assets, Anatel intends to propose and submit to Public Consultation an operational manual to facilitate the evaluation of Reversible Assets, and the one which is unnecessary or unusable may be refused, so that, by 2025, such assets are returned to the Government or have their value destined to investments in broadband.

However, recently, in contribution to Public Consultation No. 5, Intervozes - Coletivo Brasil de Comunicação Social questioned the calculation of Reversible Assets proposed by Anatel, due to the lack of past inventories on the sale of these assets, which would imply the loss of large public resources; and it has problematized the fractional functional view proposed by the Agency, which would contradict the TCU Judicial Order when considering as Reversible Assets only those that are strictly necessary in the provision of STFC services, to the extent that they are actually used.

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