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5G CHALLENGES IN BRAZIL

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In a global context, the fifth generation of mobile networks (5G network) has several advantages and promises, which go hand in hand with the most varied challenges in the implementation of this technology, such as the increase in the volume of shared data, the use of specific technical equipment, the construction of complex and dense networks, the potentially high costs of network operation/maintenance and the security risks. From a national perspective, based on the discussions on the “Future of Telecom” online panel, organized and promoted by the Brazilian Ministry of Economics on June 12, 2020, we hereby do our analysis of the main challenges that 5G currently faces for its full development in the Brazilian territory.

Initially, the availability of the 5G spectrum raised a number of discussions, related to the auction model provided for in Anatel’s Public Consultation No. 9/2020, due to the lack of incorporation of municipal granularity, lack of provision on spectrum for vertical markets (use in private networks), expansion of spectrum of the 3.5 GHz band, allocation of 400 MHz of the C band and possibility of prejudice to the maximization of the spectrum value or not selling its full capacity, among many other relevant questions.

Furthermore, in the same regard as our other published articles, inquiries related to interferences in TVRO reception (satellite TV transmission) due to 5G transmissions, as well as the doubts about the automatic renewal of radio-frequency licenses, represented threats to the 5G auction in Brazil, creating obstacles for the “unfolding” of the technology at national level.

In addition to the challenges mentioned above, according to the panel discussions promoted by the Ministry of Economics, the three biggest current bottlenecks for the arrival of 5G in Brazil are: i) the release of investments, mainly to enable urban, suburban and rural coverage of 5G; ii) tax reform; and iii) the network neutrality review.

With regard to the release of investments, the need to guide applications in the passive urban infrastructure was pointed out, mainly due to the problems of reorganization of cables and wires of poles that hinder the installation of antennas for the 5G. The main suggestions for this infrastructure bottleneck have been the unlocking of investment for private equity funds (demanding format innovations in the value chain and improving allocation

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efficiency to create market entry conditions for new investor agents), which depends on transversal policies, coordinated action between agents in the telecommunications sector and proposal for incentive normative infrastructure (instead of focusing on state command and control), in order to bring legal security to future investors.

As to the tax reform, it has been emphasized that the high tax burdens applied to the telecommunications sector cause distortions, including the attempt of evasion of smaller providers, who are unable to grow with large enterprises, and the difficulty in reaching various segments of the population, due to high costs of accessing the telecommunications service. As a solution, it has been recommended not only a general tax reform, but also the review of specific aspects – such as the payment of the Telecommunications Inspection Fund (Fistel) levied on communication of Internet of Things (IoT) and Very Small Aperture Terminals (VSATs) –, in order to minimize barriers to the consumption of infrastructure to provide a surplus of productivity and a digital equality between the populations of urban, suburban and rural areas.

Finally, a modification of the national legislative panorama has been suggested – particularly, a review of the Civil Rights Framework for the Internet (Law 12,965/14). Said standard defines network neutrality as the isonomic treatment of data packages, regardless of content, origin and destination, service, terminal or application by the person responsible for transmission, switching or routing.

However, the prohibition of discrimination or degradation of network traffic is incompatible with 5G, since some new technologies (such as autonomous vehicles and distance surgery) would demand preference for the use of the network and, consequently, the breaking of this principle.

Other points raised in the online discussion were: (i) the difficulty of enabling and adapting new technologies such as 5G, due to the increasingly disruptive infrastructure demands; (ii) the need for initiatives with greater private regulatory autonomy to guarantee innovation, while adapting the Government to the new reality; (iii) guarantee of access to the spectrum (via secondary market and new future mechanisms); and (iv) ANATEL's role in releasing 5G antennas.

Little by little, barriers to the development of the telecommunications system in Brazil are being overcome. The review of the regulation for the sharing of poles, initiated by ANATEL and the National Agency of Electric Energy (Aneel) in 2019, should result in the publication of a new Joint Resolution still in 2020, enabling the effective reorganization of aerial infrastructure and the expansion of competition in the sector, to guarantee access to electricity distribution poles under fair, reasonable and non-discriminatory conditions.

In addition, in response to the difficulties faced by operators in the installation of antennas, mainly due to the gap in municipal legislation and the bureaucracy in the licensing of this equipment,

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it is expected that the Decree that will regulate the Law of Antennas (Law no.13,116/2015) in Brazilian territory (a) establishes rules that are updated and compatible with the current growing demand for telecommunications services, in order to facilitate the installation of mobile network antennas with greater speed and the right of way on highways, and (b) is published soon.

In conclusion, recently, one of the main barriers to the 5G frequency auction in Brazil was overcome: through Decree No. 10,402/2020, doubts about the automatic renewal of radio-frequency licenses were resolved, through the establishment of elements to be considered in the examination of requests for extension of grants, providing greater security for investments in the telecommunications sector.

We are living a moment of optimism in the transformation of Brazilian telecommunications networks. It is worthy emphasizing the importance of public policies, an efficient regulatory environment, an incentive for investment (instead of a collection vision) in the 5G model and a democratic dialogue process for presenting solutions, in order to overcome the challenges mentioned above, foster competitiveness and drive a solid implementation of fifth generation technology in Brazil.

To receive the main legislative news and positionings on this and other topics related to telecommunications, follow the Technology, Media and Telecommunication (TMT) team of Azevedo Sette Advogados.



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