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VAS - VALUE-ADDED SERVICES IN THE TELECOMMUNICATIONS SECTOR

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Technological innovations in the telecommunications sector have faced, in the past, difficulties in reaching end consumers effectively, due to the lack of adequate business models for the provision of convergent services. The expansion and success of telecommunications, therefore, depends directly on adding value to the products and services offered - which is possible through the value-added services.

According to the definition provided for by article 61 of the General Telecommunications Law (Law No. 9,472/1997), value-added service – VAS “is the activity that adds, to a telecommunications service that supports it and with which is not to be confused, new utilities related to access, storage, presentation, transfer or recovery of information”.

In addition, paragraphs 1 and 2 of the legal provision provide that the **value-added service does not qualify as a telecommunications service**, as its provider is classified as user of the

telecommunications service that supports it, with the rights and duties inherent to this condition. It is also assured to the interested parties the use of telecommunications service networks for the provision of VAS, and the Brazilian National Telecommunications Agency - ANATEL is responsible for ensuring this right, regulating conditions, as well as the relationship between those and telecommunications service providers.

Within ANATEL's regulatory scope, Resolution No. 73/1998 expressly determines, in its article 3, that the following do not constitute telecommunications services:

- (I) The provision of satellite capacity;
- (II) The activity of enabling or registering users and equipment to access telecommunications services; and
- (III) **Value-added services**, pursuant to article 61 of the LGT.

Furthermore, article 64-A of the

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aforementioned regulation, included by Resolution No. 693/2018, provides that it is assured to the interested parties the use of telecommunications service networks to provide value-added services, under a free agreement regime, and in an isonomic and non-discriminatory way, observing the principles and foundations of the Civil Rights Framework for the Internet (Law No. 12,965/2014) and its regulatory decree (Decree No. 8,771/2016).

VAS, therefore, is a service linked to a telecommunications service, helping to provide it, but it is not a telecommunications service itself - and, therefore, it is not subject to specific obligations of telecommunications operators, such as:

(I) Obtainment of a grant for the provision of telecommunications services under the public and private regime before ANATEL (concession, permission and authorization of services);

(II) Continuity, which aims to enable users of public telecommunications services to enjoy it uninterruptedly, without unjustified stoppages, making the services available to users, under appropriate conditions of use;

(III) Universalization, that aim to enable access by any person or institution of public interest to public telecommunication services, regardless of;

their location and socioeconomic condition, as well as those designed to allow the use of telecommunications in essential services of public interest

(IV) Minimum quality requirements, in addition to technical requirements for certification of telecommunications products subject to approval by ANATEL;

(V) Consumer services, which, according to Resolution No. 632/2014, may include automated service cancellation, immediate return of interrupted calls during service, prepaid credits with validity of 30 days (at least), recording of all calls regardless of who originated the call to the operator's call center, unification of service for combos, consumer space on the provider's portal (with information such as contract, invoices, consumption history and protocol history) and service in any establishment associated with the brand;

(VI) High and complex tax burden, which involves taxes levied on gross revenue, taxes levied on stations and terminals and other taxes, in addition to contributions to the Fund for the Universalization of Telecommunications Services (FUST), Fund for Technological Development of Telecommunications (FUNTTEL) and the Telecommunications Supervisory Fund (FISTEL), for example;

Among other obligations.

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The lack of a regulatory and inspection burden on VAS directly implies a reduction in costs related to investments in infrastructure and operationalization, enabling an increase in the provision of these services - which is quite positive to respond to the rapid technological evolution and the growing demand for data and faster connections, like the 5G.

However, it is possible to identify setbacks to consumers related to the offer of VAS, derived from the offer and commercialization of VAS at a cost to the consumer, when added to telecommunications service plans; and practices that are abusive and harmful to the consumer, such as the charge of VAS in a bill for a telecommunications service plan without prior and express authorization from the consumer, in addition to the absence of assistance to cancel undue charges and refund undue payments.

In this regard, State Law No. 17,961/2019 was published in Santa Catarina, aiming to prohibit mobile telephony operators from including paid value-added services in their telecommunications plans in the State. Although driven by a legitimate concern of consumer protection, contrary to the packaging of VAS in telecommunications plans, the regulation was declared unconstitutional by a majority of the plenary of the Federal Supreme Court, under the argument that the Union has exclusive jurisdiction to legislate on telecommunications.

Although there is no regulation on the topic, ANATEL and other bodies have positioned themselves several times to establish the limits and definitions of VAS in practice. In this regard, the VoIP (voice over IP) as a service that allows PC-to-PC communication through a computer program, implementing all the necessary functionalities and protocols, in order to establish voice communication using packages that travel through IP networks (as the case of the Internet) is considered a VAS by ANATEL, for example.

Furthermore, according to Decree No. 9,854/2019, which establishes the National Plan of Internet of Things (IoT), it is defined as the infrastructure that integrates the provision of value-added services with capacity of physical or virtual connection of things with devices based on existing information and communication technologies and their evolutions, with interoperability.

It is admitted, therefore, that IoT services would be VAS, i.e., an activity that adds, to a telecommunications service that supports it and with which is not to be confused, new utilities related to access, storage, presentation, transfer or recovery of information. Furthermore, ANATEL's competence for the regulation and inspection of the machine-to-machine communication system is determined.

Finally, as mentioned in a previously published article, there is a major discussion about the regulatory definition

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of over-the-top (OTTs) services offered through linear TV channels on the Internet - which may include videos on demand (VOD) - as value-added services (VAS) or as conditional access services (SeAC).

The interpretation of OTTs as SeAC would imply the need for grant and obligations imposed by Law 12,485/2011 (SeAC Law), such as those related to the number of public channels and quotas of national audiovisual content, for example. The distribution of content over the Internet, considered as VAS, would maximize the social benefit, by allowing greater access to services by users.

In the face of the new era of entertainment, the exploration of value-added services is increasingly present and necessary. However, considering the exponential advance of disruptive technologies and services, it is also essential to fill their interpretive gaps, in order to create legal certainty for telecommunications operators and its users.

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