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BRASIL

Satellite Exploitation | Recent Developments

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In October 2021, the National Telecommunications Agency (ANATEL) published the new General Regulation for Satellite Exploitation, modernizing the country's regulation, eliminating the need to conduct bidding procedures for orbital position and simplifying rules previously dispersed in several regulations. Notwithstanding the new Brazilian provisions, there might also be the need to comply with the Radiocommunication Regulations (RR) of the International Telecommunication Union (ITU) and guidelines of the United Nations Office for Outer Space Affairs (UNOOSA).

When there is communication with earth stations in Brazil, satellite exploitation over its territory requires the grant of satellite exploitation rights; authorization for the use of the radio frequencies (RFs) used by such stations, as well as authorization for the exploitation of telecommunications services; or authorization to perform amateur radio services, depending on the case, although in specific situations the grant may be waived.

According to the terms of the new Regulation, the right to exploit satellites is an administrative act, which authorizes the use of orbit resources and RFs for satellite control and monitoring, satellite telecommunication, and provision of satellite capacity over the Brazilian territory, whether by a Brazilian or foreign satellite.

The Regulation sets forth that a Brazilian satellite is the one that uses orbit and radioelectric spectrum resources notified by Brazil to the ITU, with its control and monitoring station installed in the national territory. Foreign satellites, in turn, use such resources as notified to the ITU by other countries.

According to the Brazilian regulation, the provision of satellite capacity does not constitute a telecommunications service; the latter corresponds to the set of activities that enables the offer of transmission, emission or reception, by wire, radio electricity, optical means or any other electromagnetic process, of symbols, signs,

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characters, writings, images, sounds, or information of any nature, as provided for in the General Telecommunications Law (LGT).

Therefore, after the granting of the right to exploit satellites, operators might only provide satellite capacity to companies that hold a concession, permission, or authorization to provide telecommunications and radio broadcasting services, or even to the Armed Forces. However, it is not forbidden for satellite operators to be telecommunications services providers as well, if the requirements for such purpose are complied with.

The satellite exploitation should be previously coordinated with the satellite communication systems having coordination priority at the national level, in case of overlapping frequencies. Such priority is given to satellite networks notified in the name of Brazil, exploitation rights granted, and those which exploitation authorization has been requested at a previous time. It should also be noted that if technical changes are made to the system and these might cause additional interference to the coordinated one, a new coordination process should be carried out. In any case, satellites should contain resources allowing the immediate interruption of RF emissions, with transmission and reception equipment respectively designed to reduce unwanted

emissions and the susceptibility to interference from stations operating in accordance with the regulations.

In order to obtain, change or extend the satellite exploitation right, the interested party should submit a request to ANATEL, proving that certain requirements are met, such as being a legal entity governed by public or private law, organized according to Brazilian law, with its principal place of business and administration in Brazil; not being prohibited from bidding or contracting with the Government; having legal and technical qualifications for the satellite exploitation; submit the technical project of the satellite communication system, and others.

The Regulation sets forth that the aforementioned request should also indicate the Satellite Networks Filings (i.e., the satellite communication system projects submitted to the ITU), the satellite's name or the indication of the system to which the right should be associated, the orbital position, the frequency bands, the geographic area of coverage, the exploitation right's intended term, the necessary coordination agreements and any satellites co-location agreements.

Although changes in the satellite to which the exploitation right granted refers and in its nominal orbital position are not allowed (except by virtue of coordination), new

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frequency bands may be added thereto, with no changes in the validity period of the right.

In the event of an agreement in this regard, exploitation rights might be granted to different companies concerning the same satellite or the same non-geostationary satellite system, also covering the same frequency bands. In order to ensure that competition is not restricted, coexistence with systems already in operation or to be authorized at a later time must be ensured.

According to the definition established by the Regulation, a geostationary satellite should be understood as the “geosynchronous satellite with a circular orbit located in the plane of the Earth's equator that remains relatively fixed in relation to a specific point on Earth”. Non-geostationary satellites, in turn, are those that do not fit into this concept.

Preference in obtaining a new right, in accordance with the Regulation, is granted to operators holding another grant related to the same orbit and spectrum resources. However, they should express their interest in this regard at least two (2) years before the original right's expiry; the provision of satellite capacity should also not have been discontinued.

The request for the right of exploitation, extension thereof, or the addition of

frequency bands, might be denied, in whole or in part. Also relevant, restrictions, limits or conditions regarding the acquisition and extension of satellite exploitation rights, as well as the transfer thereof (which requires ANATEL's approval), might be determined to promote broad and fair competition, preventing the economic concentration of this market.

Some specific requirements apply for the right to exploit a Brazilian satellite to be obtained. Among these, we can mention the submission of a guarantee regarding the commitment to put the space segment into operation, equivalent to 100 times the public price of said right. Space segment, as defined in the Regulation, corresponds to satellites and earth stations for tracking, telemetry, command, control, monitoring, and other operation support equipment.

Regarding the exploitation of a foreign satellite, there are still other requirements to be met. For example, the appointment of legal representatives in Brazil, who will be responsible for making the payment related to the exploitation right, must be formalized with ANATEL. Additionally, documentation evidencing the conditions of the satellite's authorization in its country of origin should be submitted.

Even though the legal representatives mentioned in the previous paragraph are to be companies incorporated in accordance

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with Brazilian legislation, with their principal place of business and administration in Brazil, nothing prevents them from providing telecommunications services. However, the satellite capacity that these companies represent might only be used if there is an agreement formalized through another legal representative. As specified in the Regulation, the “contract for the commercialization of space capacity referring to the right to exploit a foreign satellite must be entered into in Brazil by and between the legal representative of the operator and the telecommunications service provider, separate contractual parties”.

From the publication of the respective Grant Act, the operation of Brazilian geostationary satellites must start within five (5) years, and this period is reduced to two (2) years in the case of foreign satellites. Regarding the non-geostationary satellites, the respective period will be set by ANATEL, taking into account the characteristics of the systems, the ITU RR provisions, and the public interest.

The exploitation right may be granted for up to 15 years. However, if the requirements established by the aforementioned Agency are met, this period might be extended, also for periods of up to 15 years, for the remainder of the useful life of the authorized satellite. The same term applies to the extension of rights to exploit systems

containing more than one non-geostationary satellite, regardless of the useful life of the satellites comprising it.

The extinction of the right to exploit satellites, which may occur due to expiration of the term, end of the satellite's useful life, cancellation, expiration, nullification, waiver or bilateral termination, does not imply the discharge of the operator from its obligations before ANATEL and/or third parties, and there may be verification of infractions (subject to penalties) and the collection of amounts due, as applicable. Furthermore, the operator may be liable for damages caused to providers due to interruption in the provision of the satellite capacity.

As the safe and sustainable use of space is a topic of worldwide relevance, it is easy to infer that the regulation of satellite exploitation, not only in Brazil, is of paramount importance. There are several discussions about the existence of satellite equipment, including Low Earth Orbit (LEO, which operate at a distance of up to 2000 km from Earth), among a large number of other objects located around the planet, and the effects of their debris. The Brazilian **operator Embratel** Star One is one of the companies that spoke up on the subject.

But even despite the controversy, the number of satellites tends to increase. A very recent example of this is the

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plan announced by the European Union for the construction of a new satellite system aimed at providing connectivity to the economic block. In line with this trend, ANATEL has recently approved satellite exploitation rights for companies such as **Intelsat** until 2025, SpaceX until 2027 (**covering thousands of satellites** of the Starlink constellation) and **Swarm** until 2035.

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