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NEUTRAL NETWORKS AND THE
BRAZILIAN MARKET

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Neutral Networks and the Brazilian Market

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In line with the world trend, Brazil has seen a growing demand for fast and reliable Internet connections. The relevance of telecommunications services, it is worth mentioning, became even more evident from the beginning of the Covid-19 pandemic.

Just to get an idea of the profile of the Brazilian market, according to data provided by the National Telecommunications Agency (Anatel), in January 2022 there were 340.1 million telecommunications service contracts in force in the country, of which 40.2 million were related to fixed broadband accesses, with optical fiber technology representing 62.3% of this total.

Furthermore, [according to a report](#) made available by the Association of Information and Communication Technology and Digital Technology Companies (in Portuguese, Associação das Empresas de Tecnologia da Informação e Comunicação e de Tecnologias Digitais - Brasscom), the production of the telecommunications sector reached the amount of BRL 251.7 billion (approximately USD 46.6 billion) in 2021 alone, representing 2.9% of the Brazilian GDP, with a growth of 4.7% compared to 2020.

The Brazilian market is, in fact, a scenario of expressive numbers. Data recently published by the Regional Center for Studies on the Development of the Information Society (in Portuguese, Centro Regional de Estudos para o Desenvolvimento da Sociedade da Informação - Cetic.br) in its Research on the Use of Information Technologies in Brazilian Homes in 2020 (TIC Domicílios 2020) show that, in that year, more than 61 million homes had some kind of Internet connection (equivalent to 83% of the country's total), which corresponds to approximately 152 million users or 81% of the population aged ten years or over. However, in contrast, more than 11 million homes still did not have access to the Internet in 2020, with the cost being reported as a major obstacle to accessing the world wide web. In rural areas, the unavailability of connection was also reported as an impediment to Internet access.

Also in accordance with the aforementioned Research, the highest download and upload speeds in Brazil in 2020 were noted in the Southeast region of Brazil (equivalent to 23.3 and 20.1 Mbps, respectively, in November/December), while the worst were

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verified in the North region (4.0 and 8.7 Mbps, respectively, in the same last two months), which means that there are great opportunities for the implementation of improvements and, consequently, interesting business possibilities.

Comparatively, according to the latest results published by the Brazilian Institute of Geography and Statistics (in Portuguese, Instituto Brasileiro de Geografia e Estatística - IBGE) (PNAD Contínua of 2019), which conducts constant studies on the Brazilian panorama, in 2019 the fixed broadband was present in 46.6 million homes, while mobile broadband services were provided to 48.5 million homes.

According to data published by Anatel based on information related to 2021 obtained from telecommunications service providers that provide broadband access, in fact the number of high-capacity optical fiber networks used in such services (backhaul) has shown a constant increase over the years. Although the largest shares of participation in the fixed broadband market are held by Claro and Vivo (shares of 24.2% and 15.7%, respectively, in January 2022), in this same context, small providers (PPPs) have a relevant presence, being present in 4214 municipalities in the country in 2021; of the total number of Brazilian municipalities, 24% were served by optical fiber technology only by PPPs (2021 data). Also relevant, PPPs have stood out positively in terms of their performance in the market,

which was reflected in the 2021 satisfaction and quality survey conducted by Anatel, the results of which were recently published.

Given the trend of continuous growth, access to the connection will increasingly require telecommunications networks. Therefore, it is evident that companies providing connectivity will need to make significant expansions in their networks so that the needs of their users can be properly met, but with due compliance with the applicable regulatory requirements. However, such expansion is a process that does not occur quickly and without economic impacts.

In order to circumvent the difficulties implied in expanding the capacity, operators might benefit from the so-called “neutral networks”. According to Anatel's understanding, a neutral network is the one that contains all the elements necessary for the provision of a telecommunications service (which includes authorizations for the use of radio frequencies), but the entity that holds the control of this network does not offer said service in the retail market, but rather “makes its network resources available in the wholesale market to other grantees of Anatel that will in fact serve the end user”.

In general terms, this is the same concept given by the Brazilian Association of Competitive Telecommunications Service Providers (in Portuguese: Associação

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Brasileira das Prestadoras de Serviços de Telecomunicações Competitivas – TelComp), an institution that represents telecommunications companies and promotes competition in the sector, according to which a neutral network is "the one that contains all the necessary elements (including authorizations for the use of radio frequencies) for the provision of a telecommunications service, but the entity that holds the control of such network, despite not offering the telecommunications service in the retail market, promotes the offer of telecommunications services in wholesale, making its network resources available to other grantees of Anatel that will in fact serve the end user".

By means of this type of business, companies in the sector that own infrastructures and networks rent the items composing them, which are then shared between several providers. The infrastructure can be optical fiber, cables, mobile networks, and satellites. Thus, it is possible to make the intended expansion feasible, but without the investment costs that would be necessary to achieve this objective. The holders of neutral networks, therefore, make the onerous offer of the infrastructure, in an isonomic and non-discriminatory way, and do not provide telecommunications services to end users.

Infrastructure sharing is provided for in Brazilian legislation, as is the case, for example, of Law No. 9,472/1997 (General

Telecommunications Law – LGT). In fact, LGT specifically sets forth that "providers of telecommunications services of collective interest will have the right to use posts, ducts, conduits and easements belonging to or controlled by providers of telecommunications services or other services of public interest, in a non-discriminatory way and at fair and reasonable prices and conditions".

Law No. 13,116/2015 (the Antenna Law), in turn, in order to promote and foster investments in telecommunications network infrastructure, also mentions the importance of expanding the installed capacity of the aforementioned networks in view of technological updating and the improvement of both the coverage and the quality of services, and encourages infrastructure sharing. In addition, the Antenna Law also mentions the issue of urban, landscape and environmental impact caused by the presence of excessive infrastructure installations. Furthermore, it is worth emphasizing that neutral networks might enable the decrease of potentially idle capacities.

Anatel's Resolution No. 683/2017, which approved the Regulation for Sharing Support Infrastructure for the Provision of Telecommunications Service, also discusses the subject matter. As set forth in this regulation, infrastructure sharing comprises the onerous assignment of excess capacity (i.e., the infrastructure that is installed and

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is not used in whole or in part, and which is therefore available for sharing) of a support infrastructure (which corresponds to fixed physical means, such as posts, towers, ducts, conduits, surface and suspended structures, among others) for the provision of services by providers of other economic groups, for the purpose of optimizing resources and reducing operating costs, benefiting service users. However, there must be compliance with sectoral regulations.

At this point, it is worth emphasizing that, according to the aforementioned Resolution, except for technical reasons, the sharing of excess capacity is mandatory, and should occur in a non-discriminatory way and under fair and reasonable prices and conditions after a request in this regard by a telecommunications service provider. However, it is up to the infrastructure holders to dimension the excess capacity and define the sharing conditions. The sharing of towers by providers that use radiocommunication transmitting stations is also mandatory when the distance between them is less than 500 meters.

However, the abovementioned obligation may be waived in certain cases, such as, for example, if this results in harmful interference between regularly installed telecommunications systems; compromises the coverage, capacity and/or quality of services of collective interest; exceeds the capacity to support new equipment, compromises the security and/or stability of

the infrastructure; involves service stations of restricted interest, as well as in other cases, such as in situations where sharing is justifiably unfeasible.

Also important, the Organization for Economic Cooperation and Development (OECD), in its 2020 [review](#) on telecommunications and broadcasting in Brazil, specifically mentioned that Anatel should encourage the sharing of infrastructure between operators, stipulating the conditions for this to occur. However, the same OECD points out that if the spectrum is not assigned efficiently in the primary market, there is no way to ensure that there will be efficiency in the secondary market.

Furthermore, it is interesting to note that, in 2020, Anatel conducted a Public Consultation to obtain subsidies aimed at the possibility of simplifying the regulation of telecommunications services. Such Consultation dealt with regulations relating to different types of services, such as the Personal Mobile Service (SMP, which allows communication between mobile stations, and between them and other stations), Multimedia Communication Service (SCM, referring to the offer of capacity for the transmission, emission and reception of multimedia information, as well as Internet access) and Conditional Access Service (SeAC, which refers to the contracting of pay television), among others, specifically recognizing that the convergence between these types of services is an increasing

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reality in the sector. In the consultation, the Agency pointed out that, with the sharing of infrastructures providing support to the most diverse services, there may be traffic, through the same telecommunications station, of fixed telephony calls, SCM data, SeAC audio/video signals, even from different providers.

The issue of neutral networks was included in the aforementioned Public Consultation. On the occasion, the Agency deemed relevant “to assess the regulatory framework necessary to make it possible to implement neutral networks for the provision of telecommunications services in Brazil, especially for services of collective interest, based on the logic that authorizations for the use of radio frequencies must always be linked to a service grant”, in accordance with the provisions of the LGT. In addition, issues such as consumer rights, quality of services provided, coverage and service commitments, as well as maximum limits of radio frequencies allowed for each provider, must also be the object of attention.

The aforementioned Consultation had several contributions and, with regard to neutral networks, for example, the Brazilian Association of Internet and Telecommunications Providers (in Portuguese, Associação Brasileira de Provedores de Internet e Telecomunicações - ABRINT) mentioned that neutral networks are indeed a model that enables the

expansion of competition and the provision of services to the population; however, according to it, there must be equal and non-discriminatory access to the offers, having defended the relevance of Anatel establishing that there is an obligation to offer wholesale network and spectrum with predefined prices, as a “tool pro-competition and expansion of services”, with strict control in relation to providers with significant market power. In another contribution, the need to also establish the concept of neutral network operator was emphasized, with the due clarification regarding requirements and obligations to be fulfilled by interested parties in the exploitation of neutral networks.

The business model of neutral networks can strongly benefit small regional providers, which provide services in locations traditionally less attractive to the traditional giants of the telecommunications sector, and which make up a group of connectivity providers with an extremely relevant participation in the market.

In addition to the expected increase in Internet access in the future, it is also necessary to pay attention to the fact that the implementation of 5th generation technology (5G) in Brazil in 2022 will directly impact the national market, and will certainly result in an exponential growth in demand for connectivity, improved bandwidth quality and lower latency, giving rise to numerous business opportunities in the country.

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the country.

Although it is still deemed a relatively new niche, some companies are already operating in the neutral networks market in Brazil. This is the case, for example, of FiBrasil, which has as partners companies of the Telefônica group and a Canadian investment fund. Despite having started its operations in mid-2021, FiBrasil has already reached the mark of 2 million homes passed and obtained [net operating revenue of BRL 55.4 million](#) in 2021.

In turn, V.tal, which belongs to the Oi group (which is undergoing several changes in the corporate control of its components), has more than 400 partnerships with Internet providers and PPPs. In March 2022, [the company announced](#) that it had entered into new contracts for the provision of Internet services in the Northeast region of the country, which will ultimately benefit homes located in more than 40 municipalities.

As another example, Anatel and the Brazilian Antitrust Authority (in Portuguese, Conselho Administrativo de Defesa Econômica - CADE) [approved](#) in 2021 the creation of FiberCo, a new optical fiber access operator having as partners TIM and IHS Fiber Brasil, covering more than 6 million homes.

Therefore, it is possible to verify that the published results reflect all the benefits that the presence of neutral networks in the Brazilian national market might bring to the most diverse interested parties.

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