

## TELECOMS SERIES

ANATEL MEASURES TO MITIGATE  
ABUSIVE TELEMARKETING  
PRACTICE IN BRAZIL

BRAZIL

# ANATEL Measures to Mitigate Abusive Telemarketing Practice in Brazil

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According to the National Telecommunications Agency (“ANATEL”), the largest number of unwanted advertising calls made in the world occurs in Brazil. This fact was also revealed by Truecaller, a Swedish company that provides a caller ID and spam blocking application with more than 310 million users worldwide, according to which, from January to October 2021, Brazil top-ranked the list of the 20 countries most affected by connections of this nature, being ahead of Peru, Ukraine, India, Mexico, Indonesia, Chile, Vietnam, South Africa, Russia, Colombia, Spain, Ecuador, Turkey, Italy, Honduras, Costa Rica, Greece, United Arab Emirates, and United States of America, in descending order of occurrences.

The practice has long been causing discomfort for many users of Brazilian telecommunications services, both due to the number of calls made, and the fact that many of these calls are made on weekends and at night.

As a result, not rarely, recipients cease to answer calls originating from unknown

numbers, even though this can have negative consequences for the services users themselves. On the other hand, individuals who choose to answer unidentified calls often suffer from the annoyance arising from the unwanted abusive offer of products and services.

The issue has been monitored by ANATEL for some time and was the object of internal analyses, as well as dialogue between the Agency and the telecommunications operators, aiming at the search for effective solutions to mitigate the practice.

So much so that, for example, in 2019, the telecommunications service providers of the Algar, Claro, Oi, TIM, Vivo, Sky, and Sercomtel Groups sent the Agency a correspondence in which, despite recognizing the relevance of telemarketing activities for the growth of telecommunications services in Brazil, “by means of the offer and marketing of goods and services of interest to the population in general”, they also pointed out the need to establish principles to “guide the proper use of telemarketing tools, from the perspective

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of consumers, applicable exclusively in the sphere of action of telecommunications service providers". Such principles, in the understanding of the companies, would be: to call consumers only at appropriate times; not to call insistently to consumers; to respect consumers' will not to receive calls; to receive and handle complaints about unwanted calls; to ensure adherence to the General Data Protection Act (Law No. 13,709/2018); and to cooperate in improving telemarketing practices in other sectors.

Also in 2019, based on an ANATEL's Decision, the "Não Me Perturbe National List" was created, a national sectorial registry of landline and mobile telephone numbers of consumers who do not wish to receive calls with offers of telecommunications products and services, but which also started to include the offer of automatic-paycheck-deduction loan and automatic-paycheck-deduction credit cards, being open to the insertion of companies from other economic sectors. The registration of a significant number of telecommunications services users, since its launch, reflects "the annoyance that such calls have been causing to consumers", in the words of the Brazilian regulatory agency. In this sense, according to Conexis Brasil Digital, an entity that brings together telecommunications and connectivity companies, in April 2022 the platform reached the mark of 10 million registered phone numbers, most of them referring to the states of São Paulo, Paraná and Minas Gerais.

Subsequently, in 2021, within the scope of ANATEL, a Telemarketing Working Group (composed of several Agency's Superintendencies) was created, with the purpose of submitting to its Board of Directors possible short, medium, and long-term alternatives with the objective of suppressing the abusive telemarketing practice. The result of the analysis carried out by the aforementioned Group showed that the mandatory assignment of specific numbering codes to companies that carry out active telemarketing activities would be one of the feasible measures, in addition to the proper identification at the terminal for which the calls are made, as well as the option of preventive blocking of the originators of such calls.

Until recently, there was no imposition in Brazilian regulatory legislation regarding the use of specific numbering for making active advertising calls, i.e., the companies originating such calls could use any code for such practice.

However, with the publication of Act No. 10413/2021 of the ANATEL Superintendent of Grant and Resources for Provision in December 2021, which approved the Operating Procedures for the Assignment of Numbering Resources, the Agency set forth, among other regulatory provisions, the allocation of the non-geographic code (CNG, which corresponds to the set of characters that allows its subscriber to receive calls, univocally, throughout the Brazilian

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territory) 303 for exclusive use for active telemarketing activities, prohibiting, for this purpose, the use of any other codes. Based on the aforementioned Act, the call generator code started to be identified on the display of users' terminals in the format 0303N7N6N5N4N3N2N1.

Additionally, the aforementioned Act specified that the active telemarketing activity corresponds to the practice of offering products or services that is carried out by means of telephone calls or messages, whether recorded or not, having also determined that, at the request of users, operators must carry out preventive blocking of this kind of call.

The adoption of this numbering was in line with the provisions of ANATEL's Resolution No. 709/2019 (which approved the General Numbering Regulation - RGN), which stipulates that telecommunications service providers must properly use the assigned numbering resources, i.e., in compliance with the rules of use, the efficient use, and the marking procedures defined by the aforementioned Agency. The same Resolution also establishes that the destination, allocation or designation of numbering resources can be changed at any time, provided that the public interest or compliance with international conventions or treaties so determines, as well as that, in the event of a change, the applicable costs must be borne by the telecommunications service providers, and there cannot be any damage to the continuity or quality of the services provided.

In addition, it is worth mentioning that the codes in the 303 format were already previously attributed by switched fixed telephony service (STFC) providers to those subscribers which carry out activities that can cause an intense volume of calls in short periods of time, in accordance with ANATEL's Resolution No. 388/2004.

It was also established by Act No. 10413/2021 that telecommunications networks must make it possible for the code of active telemarketing companies originating the calls to be clearly visualized by the user receiving the calls. Therefore, since June 2022, all telemarketing companies that offer products or services must use the 0303 code, providing consumers with the possibility to identify the originator of the call and then decide whether to answer the call or not.

Furthermore, the same regulation stipulates that active telemarketing companies must use a single CNG 303, being able to use said code to receive calls, according to the regulation. It should also be noted that if 303 numbering resources are released, they cannot be reassigned before a minimum period of 6 months, a period that may be disregarded if the reassignment is attributed to its last holder.

In accordance with the terms of Act No. 10413/2021, providers are civilly, criminally, and administratively liable for the information they enter in the New Numbering Plan Administration System (nSAPN), a support system for the manage-

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ment of numbering resources (i.e., the sets of access and/or identification codes used to allow the establishment of connections between different network terminations, enabling the enjoyment of telecommunications services). In addition, the use of unauthorized numbering, or also in noncompliance with the regulations, subjects operators to sanctions, and it is worth emphasizing that the providers of said services must create adequate processes for numbering control and administration, so that their proper and efficient use remains assured.

Another important measure was adopted by ANATEL at the meeting of its Board of Directors held in June 2022. On the occasion, it was mentioned that telemarketing companies often make use of the so-called robocalls (i.e., automated calls, made using robots, the ability of which to generate calls is infinitely superior to that of humans), causing great annoyance to telecommunications services users, often without even being charged for such telephone calls. As a result of what has been discussed and decided on the occasion, by means of Resolution No. 752/2022, ANATEL revoked the regulatory provisions which previously stipulated that only calls lasting longer than 3 seconds were billable, both within the scope of the STFC and the personal mobile service (SMP), so the decision can be expected to discourage this kind of practice.

The possibility of billing automated calls, in fact, is an important complementary

measure to what ANATEL had already decided at the beginning of the same month of June 2022 by means of Decision Order No. 160/2022/COGE/SCO, which determined that several telecommunications service providers, including the Brazilian market leaders Claro S.A., Telefônica Brasil S.A., and TIM S.A., must (i) block calls that do not use the numbering resources assigned by the Agency, whether originating from their own STFC or SMP networks or from interconnection; (ii) consider the use of a technological solution for the massive triggering of calls at a volume greater than the human dialing, service, and communication capacity (completed or disconnected within 3 seconds) as improper use of numbering resources and inappropriate use of telecommunications; (iii) identify and send to ANATEL a list of users which, in the 30 days prior to the Order, had generated 100,000 or more calls per day lasting between 0 and 3 seconds, as well as information on the volume of daily calls with said characteristics; (iv) 15 days after the publication of the Order (issued on June 06, 2022), identify users which originate at least 100,000 calls, in one day, lasting between 0 and 3 seconds, blocking their origination for a period of 15 days; (v) send to ANATEL, fortnightly, a report on the users which were blocked and the respective numbering resources used, the volume of traffic, and the dates when calls were blocked. The determinations mentioned in items (iv) and (v) above, namely, will remain in force for a period of 3 months.

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Additionally, said Decision Order provides for the possibility of imposing a fine of up to BRL 50 million in case the aforementioned measures are not complied with by the telecommunications service providers and identified offending users (i.e., telemarketing companies).

Also important, the same Order established that the blocking of calls should not harm the maintenance of other types of services contracted by users that do not constitute an abusive practice. In addition, it was specifically provided that, if the user formally undertakes, with ANATEL, not to practice the aforementioned conducts and presents the measures adopted in this regard, the blocking of calls may be suspended. Such measures, however, are not applicable to users providing emergency and public utility services.

Finally, in this month of July 2022, ANATEL started a procedure for gathering assistance information on abuses in active telemarketing calls, aimed at presenting contributions and suggestions on the subject. Such procedure will be ongoing until August 2022, and includes the following questions:

- ▶ What practices can be considered as misuse of numbering resources and inappropriate use of telecommunications services?
- ▶ What objective and/or subjective criteria can be adopted to characterize these practices?

▶ What measures can be taken to minimize the negative effects of these practices?

▶ What are the impacts of prohibiting these practices on the networks of telecommunications service providers?

▶ What are the impacts of prohibiting these practices on call center activities and on the activities of the respective customers?

▶ What additional measures could be taken to stop the misuse of numbering resources and the inappropriate use of telecommunications services in the context of abusive calls to the general population?

Thus, it is clear that ANATEL has been acting repeatedly to adopt various measures to mitigate abusive calls, in order to protect the telecommunications services users as a result of monitoring this relevant issue in the context of the Brazilian consumer.

With the same objective of suppressing the numerous unwanted calls, and in line with the measures adopted by ANATEL, on July 18, the National Consumer Secretariat (Senacon), in an action that involved state consumer protection bodies (Procons) across the nation, suspended the activity of 180 telemarketing companies in Brazil that carried out abusive practices, including telecommunications companies and financial institutions. If the companies affected by the decision fail to comply with

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the order, they will be subject to fines of up to BRL 13 million.

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