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# Network Interconnection/ Interconnection Agreements

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There is no doubt that the mobility of people is increasingly present in contemporary life. The facilities provided by modern means of transport, with journeys occurring more quickly, end up impacting the telecommunications market. The growing demand for full-time connectivity, both domestically and globally, mirrors such mobility. Given this scenario, it is easy to understand the importance of interconnection among networks of different operators to ensure the continuous access to telecommunications services.

Law No. 9472, dated July 16, 1997, known as the General Telecommunications Law (“LGT”), recognizes the relevance of interconnections and contains several provisions in their regard.

Initially, it is worth mentioning that in accordance with LGT, interconnection is defined as “the connection among functionally compatible telecommunications networks, so that users of services of one of the networks can communicate with users of services of another or access services available on it.”

The mandatory interconnection among telecommunications networks supporting the provision of collective-interest services exploited under the public or private regime is guaranteed by LGT and should occur in compliance with the applicable regulations.

By way of clarification, as per Resolution No. 73 of the National Telecommunications Agency (“ANATEL”), dated November 25, 1998, a collective-interest telecommunications service is defined as “the service the provision of which must be supplied by the provider to anyone interested in enjoying it, under non-discriminatory conditions, in compliance with the regulatory requirements”, and the exploitation of which should meet the community interests. Exploitation under the public regime occurs based on a concession or permission, being the provider of the respective services subject to universalization and continuity obligations. Exploitation under the private regime, in turn, depends on an authorization granted by ANATEL, and the aforementioned universalization and continuity obligations do not apply to the provider. In Brazil, only the fixed switched telephone service

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("STFC") is provided under the public regime, although exploitation can also occur under the private regime. All other types of telecommunications services, such as the personal mobile service ("SMP") and the multimedia communication service ("SCM"), are offered under the private regime.

As determined by LGT, networks must be organized as integrated routes of free circulation, with their property rights being conditional on the fulfillment of their social function. Furthermore, the integrated operation of the networks, nationally and internationally, is also guaranteed by LGT.

The same Law highlights that the implementation, operation, and interconnection of networks are regulated by ANATEL, in order to guarantee compatibility among them, and their harmonization at the domestic and international level. The Agency is also responsible for regulating numbering plans for telecommunications services, ensuring compliance with international commitments.

However, it should be noted that issues concerning interconnections are governed not only by LGT, but also by regulations, specific rules for each service, as well as regulations related to competition.

ANATEL's Resolution No. 693, dated July 17, 2018, which approved the General Interconnection Regulation ("RGI"), is the

regulation that contains the basic principles and rules governing the interconnection of networks and systems of collective-interest telecommunications services providers, including with regard to related commercial, technical, and legal aspects.

In this Regulation, the same definition given by LGT is attributed to the interconnection, but the RGI provisions additionally clarify that the "contracting of a collective-interest telecommunications service by another telecommunications service provider in order to provide internet connection to users" also constitutes an interconnection relationship. Furthermore, the RGI sets forth that the feasibility of interconnections might be achieved not only by using the provider's own means, but also with the hiring of third-party means, for example.

Other important concepts concerning the issue of interconnections can be found in the RGI. For example, telecommunications network is defined as the "continuous operational set of links and equipment, including transmission, switching or any other functions essential to the operation of telecommunications services". Also relevant, the provision area should be understood as the "geographical area, established in the concession agreement, permission instrument or authorization instrument, in which the provider can offer the telecommunications service". Point of interconnection ("POI"), in turn, is the "network element used as an entry or exit

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point for the traffic to be routed through interconnection with another network, constituting the reference point for defining rights and obligations of each of the parties involved in the interconnection agreement". Furthermore, point of presence for interconnection ("PPI") corresponds to the "network element used as remote access of an Interconnection Point, becoming the reference point for defining the duties and obligations of each of the parties involved in the interconnection agreement".

Providers of collective-interest telecommunications services are obliged to make their networks available for interconnection when there is a request in this sense from another provider of collective-interest telecommunications services; however, this obligation does not apply to interconnection for data transit, unless there is a contrary provision in competition regulations.

The interconnection request should contain a series of information. Therefore, the qualification of the applicant company must be included; regarding the applicant company's area of activity, its concession, permission or authorization, the type of service to be provided, the geographic coverage area, and the date for starting activities must be indicated. Other required information, including with regard to the purpose of the requested interconnection and related technical aspects, are listed in the RGI.

Interconnection must occur at technically feasible points on the network and, additionally, in accordance with the terms of the applicable Public Offer of Interconnection, if any. It is worth knowing that each provider bears the costs of delivering traffic from its network to the POI or PPI of the provider receiving the traffic, including in collect calls, but agreements on different conditions are not prohibited by the RGI in case they are in line with the regulations in force.

The RGI determines the minimum number of POIs or PPIs to be made available, in addition to clarifying that all technologies deemed suitable for providing interconnection should be available at these points to any interested parties, in accordance with the terms of the relevant Public Offer of Interconnection. In the event of unavailability of means or facilities at the requested POI, the provider which received the request should offer a compatible alternative, as well as bear any additional costs that may be incurred with the interconnection with the applicable alternative point.

Moreover, in case a provider plans to make changes to the network and if these might affect the networks of other operators, such changes must be communicated at least 90 days in advance. Counterparties have 30 days to comment on the matter, and changes can only be made subsequently to an agreement between the parties.

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The RGI also clarifies that Public Offers of Interconnection should be submitted by collective-interest telecommunications services providers to ANATEL for approval at least once every 12 months or, also, in the case of changes. Providers with significant market power (i.e., those the position of which might significantly influence the conditions of the relevant market, in accordance with the terms of ANATEL's Resolution No. 600, dated November 8, 2012) might replace the aforementioned Offer with a Reference Offer of Wholesale Products in cases where the interconnection is in fact a relevant wholesale market provided for in competition regulations. On the other hand, small-sized providers (i.e., the group holding a national market share of less than 5% in each retail market in which it operates, in accordance with the terms of Resolution No. 600/2012) are exempt from this obligation.

ANATEL's statement concerning the approval of the aforementioned Offers must occur within 60 days, a period that may be suspended in case submission of clarifications and documents necessary for its analysis is pending, or even extended for an equal period if there is a rationale in this regard. Once approved, the Public Offer must be made available on the provider's website, thus giving it widespread publicity.

The aforementioned Offers should contain several information, such as the company's name, corporate taxpayers' registry number

("CNPJ"), and headquarters address of the applicable operator; identification of the concession, permission or authorization, types of services provided and geographic coverage area; geographic location of POIs or PPIs, description of their technical limitations and technical standards; draft standard agreement for interconnection and the prices to be charged, among other items listed in the RGI. Furthermore, the Offers must include the direct interconnection for exchanging telephone traffic, indirect interconnection for exchanging telephone traffic, and for exchanging data traffic. Interconnection for data transit might also be included.

Additionally, said Offers must be guided by the following principles set forth in the RGI: non-discriminatory treatment of applicants; preservation of the connected network's integrity; confidentiality of information, including information that is private to users; efficient allocation of network resources necessary for operating the interconnection; reasonable and objective criteria for the forecast of traffic, network growth, sizing and expansion of routes; requirements strictly necessary for operating the interconnection; and technological updating of the available network solutions.

As per the RGI provisions, practices aimed at routing artificially generated traffic are prohibited (which means that traffic on the network must accurately reflect what was

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agreed in the interconnection agreement); and practices which compromise the security, stability and/or proper operation of the networks, the traceability of connections and/or calls, the interconnection regulatory model and/or the networks' remuneration structure; or characterize improper use of stipulated regulatory asymmetries are also prohibited.

Furthermore, in order to ensure continuity and quality in the event of failure at interconnection points, contingency alternatives must be provided by telecommunications services providers.

The sharing of equipment, infrastructure, facilities, and other means for operating the interconnection is expressly allowed by the RGI, and access to the area in which the equipment owned by the other provider is installed must be guaranteed, in accordance with the due procedures contained in the interconnection agreement.

It is important to highlight that although the interested parties might freely negotiate the conditions applicable to the interconnection of networks, provision thereof should occur in a non-discriminatory manner, with adequate technical conditions, as well as ensure equal and fair prices, as determined by LGT.

When conducting negotiations of interconnection agreements, free, broad, and fair competition among operators must

be preserved, and the RGI therefore prohibits (i) the practice of subsidies aimed at artificially reducing tariffs or prices; (ii) the use of competitor's information resulting from interconnection agreements, in the absence of the due authorization; (iii) the omission of information of a technical and commercial nature that is relevant to the provision of services; (iv) the imposition of abusive conditions as a requirement for the conclusion of the agreement, or which imply the inefficient use of interconnected networks or equipment; and (v) obstruction or intentional delay in negotiations. The use of interconnection agreements to change regulatory conditions applicable to telecommunications services is expressly prohibited.

In line with LGT, the RGI sets forth that the covenants resulting from negotiations must be formalized in an agreement, the effectiveness of which depends on ANATEL's approval, an approval that may be denied in case the agreement is detrimental to broad, free, and fair competition. It is also important to note that ANATEL may arbitrate the interconnection conditions if an agreement between the parties is not reached.

ANATEL must comment on the approval of the agreement or amendments thereto within 60 days; however, it may request the inclusion of adjustments to the document, in which case the deadline will be suspended.

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The agreement that is fully in accordance with the draft included in the Public Offer of Interconnection or Reference Offer of Wholesale Product previously approved by ANATEL, and which contains a clause of awareness and agreement with the aforementioned Offers will be deemed approved and effective.

A copy of the concluded interconnection agreement, as well as of amendments thereto (except if such amendments refer to certain aspects of the technical project or changes in the parties' qualifications due to already approved corporate transactions, which must merely be communicated to the regulatory authority), must be sent to ANATEL and will be available in the Agency's Library for consultation by the general public, except for the confidential parts.

When there is no Public Offer of Interconnection or Reference Offer of Wholesale Product, the effectiveness of interconnection agreements for data transit will occur from their execution, and approval by ANATEL is not required, although the Agency may request a copy of these instruments.

It is very important to note that the interconnection agreement should contain several information, such as the purpose; mode, form, and conditions of interconnection provision; rights, guarantees, and obligations of the relevant parties; prices to be charged (if not

determined by ANATEL); conditions relating to infrastructure sharing; technical conditions relating to the interconnection's implementation and quality; treatment given to fraudulent traffic; fines and sanctions. However, in case of non-compliance with the obligations agreed in the interconnection agreements, ANATEL itself may apply sanctions.

If the content of the concluded agreement complies with the terms of a Public Offer of Interconnection or Reference Offer of Interconnection Wholesale Product, the implementation of the interconnection should be operational within a period ranging from 60 to 90 days. However, in case the contractual provisions' content differs from that included in the previously mentioned Offers, the deadlines for operating the interconnection will only be counted from the agreement's approval by ANATEL.

If there is a delay in the aforementioned deadlines, the responsible operator should compensate the aggrieved party, in accordance with the conditions and values set forth in the relevant agreement. However, due to certain situations and if agreed upon by the parties, such deadlines and the applicable sanctions for non-compliance might be changed.

In the event of non-payment of amounts due for the networks' use and if the contractual rules on the contestation

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thereof have been exhausted, the interconnection may be suspended, provided there is a notification to this effect and at least 30 days have elapsed since the receipt thereof. The suspension might be in full (with the interception of all calls) or in part (with the interception of all calls originating on the defaulting party's network and directed to the creditor provider's network). While the suspension is in effect, both providers involved should issue a statement about the suspension of call forwarding. Furthermore, ANATEL must be notified.

ANATEL should also be notified in case of interconnection interruption, which may occur after 3 months of continuous suspension due to default or if there is lack of traffic for 6 consecutive months, in which cases a prior notification is also required; or, in addition, due to agreement's termination.

Finally, it should be noted that traffic exchange agreements involving telecommunications services providers from other countries are subject to the provisions and procedures that have been determined in agreements entered into by the Brazilian Government with other countries or economic blocs.

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