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**UNCERTAINTIES IN
THE REGULATION OF
POLES SHARING**

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By Ricardo Barretto Ferreira and Sylvia Wermüller von Elgg Roberto

The uncertainties related to the sharing of poles between electricity concessionaires and telecommunications service providers continue and it may still take some time for the parties involved to reach a final consensus on the matter.


Initially, it is important to highlight that Law No. 9,472, dated July 16, 1997 (General Telecommunications Law, "LGT"), deals with the subject by stating that providers of telecommunications services of collective interest (such services being understood as those that must be provided by operators to any party interested in their use, under non-discriminatory conditions, in compliance with the applicable regulatory terms) have ensured their "right to use poles, ducts, conduits and easements belonging to or controlled by a provider of telecommunications services or other services of public interest, in a non-discriminatory manner, and at fair and reasonable prices and conditions". The LGT text also clarifies that the conditions for compliance with such order must be defined by the regulatory body of the

forementioned structures' assignee.

In June of this year, Decree No. 12,068/2024 was published, which, when dealing with the bidding and extension of electricity distribution concessions, also stipulated guidelines for the modernization of said concessions, imposing the onerous transfer of poles' operation as an obligation.

The wording of Decree No. 12,068/2024 sets forth that "electricity distribution concessionaires must transfer to a different legal entity the space in the distribution infrastructure, the occupation bands, and the fixing points of the poles of the aerial distribution networks intended for sharing with the telecommunications sector".

This led to the creation of a figure that has been called "pole company", which is a third-party company, not linked to energy distributors or telecommunications operators, which will manage the poles' sharing, monitoring their use and the related charges.



The aforementioned Decree also determined that the sharing of these structures must be subject to joint regulation by the National Telecommunications Agency (“ANATEL”) and the National Electric Energy Agency (“ANEEL”).

Regarding ANATEL's regulatory provisions, it is important to mention that in 2023, the Agency had already approved the draft of a new joint resolution. Furthermore, after several discussions between the abovementioned regulatory entities of the electricity and telecommunications sectors, the draft of a new regulation applicable to the sharing of structures was under analysis by ANEEL.

However, in July of this year, ANEEL decided to dismiss, without prejudice, the process that would give rise to a new regulation on its part, under the allegation that Decree No. 12,068/2024 brought a new fact, which is the obligation to share infrastructure spaces present on poles. This Agency raised against such an obligation and, additionally, referred to the end of the term of office of the then Reporter of the respective procedure as a second reason for deciding to dismiss it.

Since the agreement of both regulatory agencies, ANEEL and ANATEL, is necessary for the approval of a regulation, there was an impasse to be overcome.

The importance of the matter was emphasized by the National Federation of Telecommunications Network Infrastructure Companies (in Portuguese, *Federação Nacional das Empresas de Infraestrutura de Rede de Telecomunicações*, “Feninfra”), which submitted a request to ANEEL for the reconsideration of the process’ dismissal, in which the entity also intended to ensure the co-responsibility of companies in the energy and telecommunications sectors with regard to the costs of cleaning and rearranging the poles.

Regulating the sharing is, in fact, a relevant issue. According to Feninfra, the irregular occupation of poles is “unsustainable”, causing risks to the provision of telecommunications services, and to the safety of the population and workers with access to the networks; furthermore, it was mentioned that the lack of poles’ management is related to the increase in thefts of cables and equipment.

In turn, ANEEL highlighted that access to the poles is provided at prices that need to be reviewed, in order to reach the economic symmetry between the parties involved. In this sense, it is worth mentioning that ANATEL carries out studies on the real costs of sharing infrastructure.

After the dismissal of the process within ANEEL, more precisely in August of this



year, a representative of this regulatory Agency stated that the debates could be resumed in the short term, without the need for a completely new negotiation. This would be possible by rescuing the process, or reanalyzing it based on Feninfra's request. And, in fact, at the end of the same month, the process for the analysis of the joint resolution was reopened by ANEEL, with the appointment of a new Reporter.

Regarding ANATEL's action on the matter, several months after the aforementioned decision was made in 2023, the appellate decision was published last August, by means of which the Agency approved its proposal for a new regulation, in which it defends that the transfer of infrastructure spaces on poles should be mandatory, thus in disagreement with what ANEEL intends. However, the appellate decision has no practical effects, since, as emphasized, ANEEL's analysis is also necessary.

Telecommunications services and the adequacy of their provision depend, to a large extent, on the sharing of poles, especially when it is taken into consideration that the demand for access to connectivity tends to increase more and more. Therefore, the new joint regulation should address practical issues such as the reorganization of poles' occupation, the correction of irregular installations, which parties should assume the related costs, as well as the regulated price to be charged for the infrastructure's use and the respective calculation methodology; therefore, it becomes important to monitor future developments on the subject.

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