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OECD Reviews of Regulatory Reform: Brazil
Strengthening Governance for Growth

Chapter 7

Horizontal Institutional Architecture

Regulatory authorities are part of an overall regulatory system that needs to be considered as a whole. This means that account must be taken of transversal institutional architectur, in terms of relations with other agencies and across levels of government, and the definition of the role of authorities and their relationship to the institutional environment. Included in that environment are the Brazilian competition authorities, consumer protection bodies and regulatory agencies at the state level.

Issues relating to transversal architecture by function or by sector

Horizontal specialisation can take a variety of forms within the regulatory system. Regulators may be entrusted with one or more sectors, and also with one or more functions within the sector(s) in question. It is uncommon for a regulatory authority to have merely one mission. A regulator in the transport sector, for example, may well supervise the auctions for highways, and also ensure safety rules and enforcement for transportation. The health insurance regulator ensures a role in terms of prudential financial oversight, but also in terms of ensuring the quality of care of the plans offered to the citizens. The agencies studied in this report have an economic function, but there is also a significant safety component to ANTT, and a general health promotion function for ANS.

Wide-ranging sectoral competence may allow greater distance between regulators and individual interests. However, regulators operating in a single sector may also have several functions and therefore several objectives, which could imply sensitive tradeoffs. The disadvantages of having several objectives and functions can theoretically be limited by establishing specialised regulators with a clearly defined function, one clearly aimed at market efficiency in some cases or safety in others. However, that may also not be desirable, given the need to concentrate the available expertise and to minimise co-ordination costs. Technological convergence and also other technical factors may result in the need for streamlining regulatory frameworks in some cases, such as for telecommunications or transport.

Institutional architecture by sector

In the case of telecommunications, the issue of convergence exists in Brazil as in many other OECD countries. OECD countries such as the United Kingdom have decided to merge their telecommunication and broadcasting regulators. However, in Brazil, broadcasting is still under the competence of the Ministry of Communications. Broadcasting also involves sensitive issues at the level of the States, as licences for communication may be awarded at the state level. Working groups on convergence have been established in Brazil. This occurs in the midst of significant political demand: according to a study by AMCHAM (2006), 75% of interviewees agree that a single entity should regulate broadcast and telecommunications.

ANTT has competence only over part of the transport sector, while ANTAQ *(Agencia Nacional de Transportes Aquaviarios)* has responsibility over the ports and ANAC over civil

aviation. The fragmentation between ANTT and ANTAQ did not exist in the original projects that had been presented when ANTT was established. According to De Paula and de Avellar (2007), the fragmentation was due to a political demand, as it would benefit local interests in the State of Rio de Janeiro, particularly shipbuilding. The current setting resulted from a substitute to the original project, presented in Parliament. This fragmentation may not allow the regulatory authorities to deal properly with the issue of combined transportation between rail and road transport, or that of connecting to port terminals. The discrepancy in policy framework between ANTAQ and ANTT may not offer the most relevant policy response, given the need for a co-ordinated approach to transportation issues. This is also compounded by the fact that the transportation system currently lacks an overall planning unit that could design an overall framework. Another issue is the bus terminal in the case of passenger transport, which is under the responsibility of the municipal or state authorities. The National Plan for Logistics and Transport (PNLT, *Plano Nacional de Logística e Transportes*) may offer some opportunities to address these issues.

In the energy sector, there is a discernible trend across OECD countries, toward integrating gas and electricity regulation into a single regulator, and another towards centralisation of regulatory responsibilities where – the case in many federal countries for example – responsibilities are dispersed across central and local levels of government. Gas-electricity regulatory convergence is encouraged by regulatory synergies and market interdependence. Centralisation of responsibilities helps to address the issue of different regulatory regimes for markets that need or want to trade, and to encourage the development of integrated regional markets across unitary states (the EU) or within a federation (Australia) (see Annex 7.A1, Table 7.A1.2).

However, in Brazil, a complete merger may not be appropriate, at least at this stage; the interdependence of the two sectors will require appropriate co-ordination mechanisms, discussed below. The power sector's use of natural gas as a fuel can help to amortise upstream development and pipeline investments, which Brazil wants to encourage. The use of gas in the power mix supports the reliability of the Brazilian power system.

Functional architecture

A regulator's mission should also be clear and unambiguous, with clear strategic objectives and a transparent demarcation of responsibilities between the ministry and the regulator. This supports accountability, and the courts can decide more easily in case of challenge.

In Brazil, the situation of the authorities studied concerned varies. The objectives of the Brazilian regulators are often complex, reflecting a mix of economic, social and other supervisory issues (see Annex 7.A1, Table 7.A1.1). These may reflect the complicated process that led to establishing the regulatory authorities. For ANTT, they are relatively clearly defined. According to the law, the role is to implement national policies, control the provision of services, preserve the public interest, reconcile the interest of users, concessionaries, and delegated entities, and deal with issues affecting imperfect competition or infractions to the economic order. For ANS they are specified in general terms, so as to promote the public interest in terms of supplemental health insurance, and to contribute to the development of health actions. This perspective also shows that the actions of ANS are part of an integrated approach to health issues, which may also be

related to the relatively more restricted autonomy enjoyed by this agency (see Annex 7.A1, Table 7.A1.3).

ANEEL's mission and strategy are defined in the broader context of the government's Pluri-annual Governance Plan (*Plano Plurianual de Governo 2004-07* – PPA), which sets the direction for implementation of sectoral policies. Strategic objectives for the power sector are to:

- Secure the expansion of the national power system via a planning process co-ordinated by MME, adapted to the government's orientation and current realities, so as to guarantee Brazilian energy needs and expectations in the short, medium and long term, stimulating a diversification of the energy mix, the financial/economic balance, social justice and environmental sustainability.
- Guarantee a balance between supply and demand with the necessary quality, continuity and security of service across the whole Brazilian territory, with pricing that attracts and remunerates investment needed for expansion, under fair conditions.

ANEEL's particular mission within this context is to regulate and control the production, transmission, distribution and supply of power, in accordance with the government's political directives. Its role is to establish the conditions favourable for development of the power market, balancing the needs of the different agents and the benefits to society. ANEEL is responsible for carrying out the Programme for a Quality Electric Service (*Programa Qualidade do Serviço de Energia Elétrica*), the objective of which is to establish the conditions for a quality electric system, as defined by indicators of duration and interruption of service. Objectives for these indicators are set out in the PPA.

ANEEL also has a public service mission, consisting of:

- Ombudsman (*ouvidor*) – to handle, identify and find solutions to user issues.
- Mediator – to mediate solutions to conflicts between agents, and between agents and consumers.
- Public hearings – to organise public hearings whenever a decision process affects agents/consumers.
- Delegation of tasks to state regulatory agencies – these cover monitoring, regulation, mediation and ombudsman tasks aimed at securing an efficient service to consumers at ground level.

To give effect to the PPA, ANEEL has established a Strategic Challenges Agenda (*Agenda de Desafios Estratégicos*) for 2006-08. The centrepiece of the agenda is to stabilise the regulated market so as to secure a positive climate for investment and establish a coherent regulatory framework, with effective tarification, transparency, and dialogue with society. Eleven specific challenges are identified, including:

- Regulation – reduce power costs, review methodologies for tariff review, remove gaps in the regulatory framework (these include regulations regarding the trading of energy from renewable sources, and the management of concessions for the isolated parts of the grid with a view to integration with the main grid), guarantee the achievement of universal service objectives, stimulate R&D.
- Society – strengthen methods of dialogue with society, improve means of satisfying consumers.
- Institutional – strengthen autonomy and role of the regulator (this largely refers to the need to improve financial autonomy), structure and develop services.

This represents a worthy effort by ANEEL to strengthen the expression of its objectives and transform them into action.

ANATEL is in charge of implementing the policies for telecommunications, to ensure the provision of access to telecommunication services at reasonable prices and tariffs to the entire population. The measures adopted foster competition and a diversity of services that increase supply and provide quality standards. The goal is to extend universal services at reasonable prices. ANATEL in addition has to apply sanctions, settle disputes among service providers, repress violations to users' rights, and control, prevent and repress violations against the economic order. This is the widest set of objectives and some may be contradictory. One key issue here is that the focus on access in the current definition of the public service, with switched fixed lines, is totally inadequate, given the current technological, human and economic circumstances of the country. The mobile phone is more diffused than the switched line, and any definition of universal access around fixed lines only will not in a foreseeable future provide every Brazilian citizen with the opportunity to connect to the telecommunications network.

As a result, while the institutional architecture is relatively clear, overall the functional aspects are more complex and fuzzy at times. However, some of the agencies have taken steps to facilitate a clear expression of their strategic goals. The long set of objectives, some of which may be partly unattainable, set for some of the agencies may not facilitate the economic assessment of their performance, as it might be difficult to select an appropriate standard.

Co-ordination with other agencies

Co-ordination of regulatory authorities can take one of three guises: application of a common doctrine for the implementation of regulations; co-ordination of decision-making timetables; and co-ordination of compliance schedules. Co-ordination makes it possible to minimise the burden imposed by the obligation on the parties concerned to apply regulations. Modern regulatory systems have a multiplicity of entities with related and sometimes overlapping responsibilities. This requires effective co-ordination as well as a policy and regulatory framework that allocates responsibilities clearly and transparently, and that provides effective mechanisms for dealing with cross-cutting issues. This is essential to minimise regulatory uncertainty (and burdens) and to boost investor confidence.

An analysis of the co-ordination mechanisms helps to understand the performance of the current system, with issues concerning the lightening of regulatory burdens and the improvement of efficiency for regulatory processes. In Brazil this involves the relations with the competition authorities, but also relations with important environmental and safety agencies, and consumer and business associations, as well as relations at the state level.

Relationship between competition authorities and regulators

When countries engage in regulatory reform in specific sectors,[1] which aim at narrowing the scope of regulation and ensuring that it better serves public interests, an adequate definition of the relationship between sectoral regulatory authorities and competition oversight bodies is a core concern. Some of the functions of the sectoral regulators may require co-ordination or generate overlaps in the assignment of their

respective responsibilities. This poses the question of relative responsibilities of the two types of authorities and the role of sectoral regulatory authorities in promoting competition in their respective sectors. A clear division of tasks and complementary approach between competition authorities and regulators, and harmonious co-operation are prerequisites for the regulatory system to function properly as a whole. However, differences in approach may arise, as sectoral regulators have to pay attention to issues that are not necessarily related to competition, such as safety, universal access and prudential issues.

Introducing competition in sectors previously dominated by state-owned or heavily regulated, vertically integrated firms and protecting consumers from supra-competitive pricing are difficult tasks. For the transition from government ownership or heavy regulation to a more liberalised market, authorities must deal with several issues: industry structure (*i.e.* the need to horizontally or vertically split dominant incumbent firms); issues involving stranded costs and the implementation of universal service obligations; competition protection – controlling anti-competitive conduct and mergers; access regulation – ensuring non-discriminatory access to necessary inputs, especially network infrastructures; economic regulation – adopting cost-based measures to control monopoly pricing; technical regulation – setting and monitoring standards so as to assure compatibility and address privacy, safety, and environmental protection concerns; periodically reassessing the scope and degree of remaining market power in markets where competition is being introduced, in order to recommend whether such power justifies continuation of any sector-specific competition law or regulations (other than technical regulation). The best allocation of these tasks will depend on a mix of comparative advantage and synergy issues, and will also be heavily influenced by a country's general legal framework and regulatory history. This varies from country to country and even across industries within the same country.

Competition authorities and regulators have generally different cultures. Sector-specific regulators often work to attenuate the effects of market power, monitor (and sometimes define) behavioural conditions, apply an *ex ante* prescriptive approach, and intervene more frequently. They require a continual flow of information from regulated entities. Competition authorities usually have a stronger focus on reducing market power and, except in merger review, apply *ex post* enforcement tools, including fines and orders to cease and desist in the future. Competition agencies have important expertise in identifying and helping to reduce excessive market power, protecting competition from anti-competitive behaviour and mergers. They can help to address issues related to incumbent firms, and to define methods for recovering stranded costs and to ensure that universal service conditions do not result in unnecessary competitive distortions. Technical regulation requires ongoing monitoring and application of sector-specific expertise that may have less direct relevance to competition questions, such as prudential oversight or safety. On other issues the division is less clear-cut, for example when access regulation is concerned, which is to promote and protect competition in certain situations where access to a portion of a vertically integrated incumbent firm's assets is vital to the development of competition. This can be the case with the rail, energy or telecommunication networks. Whatever the allocation of tasks, it is vital that the regulatory agencies and competition authorities have a good flow of information and expertise exchange, in addition to clearly divided tasks. Co-operation can benefit from an

institutional framework, but it will also rely on a joint and shared effort and on a mutual understanding of the two types of institutions.

Brazilian competition law and enforcement

In Brazil, competition authorities are fragmented, and are part of the Brazilian Competition Policy System (BCPS; the Brazilian acronym is SBDC). This system consists of three bodies (see Box 7.1):

- CADE, the Administrative Council for Economic Defence, an autonomous autarchy that has adjudicative authority in BCPS cases.
- SDE, the Economic Law Office in the Ministry of Justice, which has the principal investigative role.
- SEAE, the Secretariat for Economic Monitoring in the Ministry of Finance, which also has investigative authority but is primarily responsible for providing economic analysis in BCPS proceedings.

Box 7.1. **The Brazilian Competition Policy System (SBDC)**

The approval of Competition Law 8 884 in 1994 defines Brazil's entry into the modern era of the competition enforcement. This Law reformulated the role of the Administrative Council for Economic Defence (CADE) linked to the Ministry of Justice, which became an administratively and financially autonomous body with authority of last instance. This means that CADE´s decisions can only be reviewed by the Courts in matters concerning defence of competition. Together with the Secretariat for Economic Monitoring (SEAE) of the Ministry of Finance and the Secretariat for Economic Law (SDE) of the Ministry of Justice, which have analytical and investigative functions, and the Administrative Council for Economic Defence, CADE constitutes the Brazilian Competition Policy System (or *Sistema Brasileiro de Defesa da Concorrência* – SBDC). There are no specific exemptions from the competition law for any of the regulated sectors. Law 8 884/94 on its face applies fully to them and also to privatisations, which are considered similar to mergers.

The main role of SBDC is to promote competition through a combination of correction, prevention and advocacy. Competition Law 8 884/94 forbids mergers and conduct that are anti-competitive (Articles 20, 21 and 54). Article 20 defines violations of the economic order in general, in terms of its undesirable effects such as limiting or injuring open competition or controlling markets. Article 21 lists some of the acts that would be illegal if they produced any of the effects described by Article 20. Approval for mergers and concentrations is required under Article 54. CADE, as the last administrative instance, makes the final decision of a case. SDE and SEAE have analytical and investigative functions. Most of the cases begin in SDE, which conducts a preliminary investigation in partnership with SEAE before submitting the case and their recommendation to CADE.

This system was analysed as part of an OECD Peer Review on Competition Law and Policy (2005), following on an earlier 2000 review. The 2000 review also recommended increased enforcement attention to newly privatised sectors, particularly telecommunications, energy and transportation. The 2005 review acknowledged progress made in Brazil in terms of implementing sound competition policy. Following this review, there has been a general agreement to implement statutory revisions that will remodel the institutional structure (see Box 7.2.).

Box 7.2. **Project on restructuring the competition authorities, Law Bill 5 877**

The Law Bill 5 877/2005 is following the legal process in the Deputy Chamber with some priority. This project restructures the SBDC and regulates the prevention and repression to infractions against the economic environment. Within the main changes are:

1. CADE would perform all of the roles of investigation, analysis and judgement of competition matters. SDE will cease to exist after its investigative functions are transferred to CADE, while the consumer function would be transferred to the Department for Consumer Protection and Defence (DPDC) within the structure of the Ministry of Justice. SEAE will remain active in competition advocacy.
2. CADE will no longer comprise the Council and the Procuratorship. Its new structure would comprise a General Superintendence, with a General Procuratorship, investigating suspect enterprises and instructing cases; a Department of Economic Studies; and an Administrative Court.
3. Analyses of concentrations will be performed before the consummation of the concentration.
4. Criteria for notifying concentrations would be based solely on revenue.
5. The procedure would be simplified for cases that do not represent a threat to competition, and require only the approval of the General Superintendence.
6. Concentration cases could be resolved without the systematic need of a court decision, and a process would be provided for consensual proposal to resolve complex cases where the approval of the Court is needed.
7. Prosecution of crimes against the economic order would be handled at the federal level, under the competence of the Federal Justice, instead of the common judicial procedures.

Relationships between regulators and competition authorities

There are several possible configurations for the relationship between regulators and competition authorities:[2]

- Combine technical and economic regulation in a sector-specific regulator and leave competition law enforcement entirely in the hands of the competition agency.
- Organise technical regulation as a stand-alone function and include economic regulation within the competition agency.
- Combine technical and economic regulation in a sector-specific regulator and give it all or some competition law enforcement functions.

At first, it is slightly difficult to classify Brazil according to these categories, as independent regulatory authorities are still at a relatively early stage of development. In addition, the regulatory and competition frameworks are about to change. Competition law applies across the board to all sectors. Sectoral regulators are not the main authority in charge of ensuring compliance with the competition law in their sector, as the final administrative decision lies with the Administrative Council for Economic Defence (CADE). However, regulators certainly play an important role in the enforcement of competition law, as they are constantly monitoring the sector and have the necessary expertise and information. As a result, there is a certain overlap of tasks: CADE can also be called to solve cases that are being investigated both by the sector-specific regulator and by a competition authority. Still, there tends to be a division of labour by type of mandate, while both types

of authorities play an important role in enforcing competition law and economic regulation. They have generally collaborated well, even if more systematic agreements could be implemented.

In terms of the general relationship between the SDBC and the regulators, SEAE is mostly involved though its advocacy function, but it also has a role in contributing to tariff revisions. SEAE analyses regulatory rules in order to evaluate their impact in terms of competition, performing a sort of Competition Impact Assessment, even though a formal regulatory impact analysis system is not yet in place in Brazil (see Chapter 1). This anticipates in some sense the formal attribution concerning regulated industries given to SEAE by Law Bill 3 337 (see Box 6.2 on the Law Bill). It is also in accordance with Article 11 of Decree 6 193/07, which defines prices in general and public tariffs as a competence under the Ministry of Finance. Article 12 of this same Law stipulates that SEAE has responsibility for following the implementation of regulation and management models developed by the agencies, and for manifesting their opinion concerning readjustment of tariffs and prices of public service, on biddings, and on market evolution of industries that have been privatised. In addition, Article 70 of Law 9 069 states that readjustment and revision of public prices and tariffs of public services are set according to annual rules defined by the Ministry of Finance. A number of Decrees of the Ministry of Finance have authorised regulatory agencies to set prices, tariffs and readjustments. SEAE's latest contributions in 2006 include their opinions on ANEEL's methodology for tariffs revision in electricity distribution, on the X factor applied by ANATEL, and on the methodology of price readjustment of interstate and international passenger road transport.

Except in the case of telecommunications, where ANATEL has specific prerogatives, the Secretariats of the SDBC may request opinions of the regulators, both in conduct and mergers and as part of the analysis and investigation process. At the level of CADE, the agencies may be invited to submit an opinion on the remedies to be imposed on a merger or on behavioural obligations to be imposed on a case of conduct. In general, as there are no specific legal provisions, this relationship is at the discretion of the SDBC. But generally, CADE has had co-operative agreements with ANATEL, ANS and ANEEL. Lately, CADE has been promoting studies and debates on specific sectors and issues – for example on the health sector, where a number of cases have been detected, and on issues of technological convergence, with the participation of ANATEL staff.

Sectoral aspects

In terms of sectoral aspects:

- In the telecommunications sector, general competition rules are applicable as long as they do not conflict with the specific provisions of the General Telecommunication Law. GTL and the law that created ANATEL are more detailed in matters related to competition, as they were well specified. The authority is in charge of supervising, preventing and repressing actions against the economic order except for those belonging to CADE. The agency has specific rules related to competition aspects and observes the competition legislation (Law 8 884) when it does not conflict with the rules and principles established by the LGT. The agency also needs to consider competition principles when reaching decisions (Article 5 of the Telecommunications Law).
- This reflects the tendency among OECD countries to allow for joint responsibility in the telecommunications sector between competition authorities and the sector-specific

regulator. In certain cases formal mechanisms exist for co-operation, while they do not exist in other cases. In Brazil as in OECD countries, good co-operation between the two types of authorities is essential. At the moment, there is no formal co-operation agreement between CADE and ANATEL, but co-ordination seems to have operated well until now, based on informal procedures. In addition, ANATEL has taken several resolutions that regulate administrative procedures involving competition. Resolution 76/1998 approves Norm 4/98 and establishes that ANATEL examines merger documents first and CADE issues final approval.[3] ANATEL is the only agency with such authority to investigate merger cases, replacing SEAE and SDE in this case. SEAE and SDE only issue opinions if specifically requested by a commissioner from CADE. ANATEL has special units for general management of competition defence. Resolution 195/99 approves Norm 7/99 and establishes procedures for investigation of violations of competition rules. In the context of mergers, the responsibility would be with the competition authority. ANATEL has issued several decisions on these issues, such as the one that defines the concept of Significant Market Power.

- In the electricity sector, the law that establishes the new regime for that market requires ANEEL to facilitate competition in the industry whenever possible. There is competing authority with the SDE. However, ANEEL's Decree 2 338 is not very detailed or explicit in terms of competition-related matters. Still, ANEEL and the three agencies that constitute the SBDC already have formal co-operation agreements to share information and technical expertise. ANEEL committed itself to work with SDE in its conduct of investigations, and to provide technical opinions to SDE and CADE on mergers and privatisations in the industry, which are fully subject to the competition law.
- In the transport sector, the main Transport Law 10 233/2001 stipulates in its Article 31 that any infringement to the economic order that would come under the scrutiny of ANTT must be communicated to the antitrust authorities and the SDBC (CADE, SDE or SEAE). This results in a situation where the agency supervises and monitors the market falling under its authority on a daily basis, while the antitrust authority's intervention is called whenever anti-competitive conduct might be taking place. In the transport sector, there is a constant relationship between the ANTT and the antitrust authority, and a technical co-operative agreement with CADE. There was also an agreement in 2002 between SEAE and ANTT for the exchange of information, joint analysis of techniques for applying competition principles, and tariff regulation. A co-operative agreement is also currently negotiated with SDE.
- As a result, when some issue involves both the regulatory agency and the antitrust authority, cases of overlapping functions may occur and there is a need to co-operate. The analysis of a concentration act in a regulated sector is a classical example. In these cases, the remedies that are available to the antitrust authorities may not be sufficient to establish competition, leading to suggestions for improving regulations. Brazil offers such an example, with the recommendation that SEAE provided in 2008 concerning the concentration act involving two big companies providing interstate passenger transport, Gontijo and São Geraldo. The analysis concerned some lines where both companies were present and their economic relevance over each section within the line. It was difficult, though, to apply a remedy against the concern that the combined firm would be protected from new biddings and permissions. So, even though SEAE recommended approval of the merger, it suggested broadening the possibilities of biddings and permission in the lines. This example highlights the necessary complementary role of

the regulatory agency and the antitrust authorities with the need for them to co-operate. Fortunately, the co-operation is assessed as going rather smoothly. In the transport sector, there has also been a finding of a bus company cartel by a CADE decision in 2005.

- ANTT regulates rail freight transportation tariffs through a system of price caps established by contracts. These caps are reviewed every year and adjusted for the general price index (IGP-DI, Resolution 1 212/ANTT). However, any tariff revisions must be previously communicated to SEAE. In addition, changes of tariffs for passenger transport within a term of less than a year must be approved by the Ministry of Finance.
- In the private health insurance sector, the Competition Law 8 884 is also applicable. ANS has no antitrust authority, which fully belongs to the SDBC. The authority, ANS, has to approve any operation involving a change in the control of an operator following rule RDC 83/2001. There has also been increasing concentration in the private health insurance market in recent years, as the result of a process of consolidation. Interventions of the antitrust authorities have also concerned more specific aspects of anti-competitive practices in that market. There have been cases where some health co-operatives had required exclusivity for the provision of services by the physicians, and this was attacked in CADE by the national association for group medicine and by the prosecutors of São Paulo and of the municipality of Bauru São Paulo, through SDE in 2002.[4] ANS also denounced such practices to CADE in 2004.[5] Another case concerned an abuse of dominant position by the medical co-operatives.[6] Yet another was a cartelised practice of price setting by medical associations through the setting of a Central Commission to fix tariffs in Rio Grande Do Norte; this was attacked by a national association of health plans. In another, older case, a state association for inpatient services in Parana was attacked by a national association of group medicine, for cartelised price fixing.[7]
- Finally concerning tariffs, ANS has responsibility for reviewing the prices of private plans after hearing the Ministry of Finance, according to MP 2177-44/2001 and Order 75/2003 of the Ministry of Finance. However, lack of co-operation between these entities is an issue of concern, and does not allow much scope for efficiency improvement in the healthcare sector through lower prices.

This section highlights the need for competition enforcement in those sectors, in a way that takes into account the economic realities of the sectors and the relative strengths of the agencies and the competition authority. Until now, relationships seem to have been relatively satisfactory in spite of the lack of systematic co-operation agreements, even if these exist in some cases. Still, the Joint Ministerial Group considered that there was scope for improving the setup of co-operation procedures between the regulators and the SDBC. As a result, the New Law Bill 3 337 will give more institutional basis for the co-ordination procedures and the exchange of information. They will ensure that SDBC agencies work in close co-operation with regulatory agencies, while making it clear that competition authorities are to enforce competition law regardless of the sector. A new feature of the bill would also require that all new rules and regulations be submitted to the SEAE for the review of competition aspects, as part of the normal public consultation phase, thus instituting a form of competition impact assessment, in line with practice to date. However, the New Bill makes no specific recommendations concerning SEAE's role for public tariffs.

Co-ordination between regulators and consumer protection bodies

The rights and duties of consumers of public utilities and services are defined by the Federal Constitution, the Concession Law, the laws creating the regulatory agencies and the Consumer Defence Code (CDC) (Law 8 078 adopted in 1990). There is at present a Law Bill 5 877/2005 in the Chamber of Deputies that proposes reform of the National Brazilian Consumer Defence System. At the moment, the National Consumer Defence System in Brazil as organised by the CDC includes:

- The Consumer Protection and Defence Department in SDE (which will stay in the Ministry of Justice when SDE is suppressed by the new law – for more detail, see OECD, 2005).
- The state and local protection agencies, called "PROCONS".
- The States and the Federal Prosecuting Counsels, located in 26 Brazilian States and 670 Municipalities also have an important role in consumer defence. The offices of the prosecutor are in charge of the defense of the collective interests of the consumers. As a result, they do not take action on individual issues but can engage in class action litigation. For individual matters, consumers can appeal to the Public Defender, the Special Civil Courts and the local PROCONs. The PROCONSs also have a general information system. The cases that are most likely to occur in the sectors of the study are those of supplemental health insurance (problems of access to treatment) and of telecommunication services (disputes related to mobile services and contracts).
- Non-governmental Consumer Organisations (NGCOs) – this group includes three national organisations and more than 40 state organisations.[8] Among them, the Brazilian Institute of Consumer Defence (*Instituto Brasileiro de Defesa do Consumidor* – IDEC) plays a leading role. IDEC is a non-profit, nonpartisan consumer association founded in 1987 to promote education, awareness and defence of consumer rights and to encourage ethics in consumer relations; it enjoys political and economic independence, and is funded by contributions from its members and international financial organisations. Discussions with consumers form part of the overall policy dialogue with the citizens.

Consumer defence in regulated sectors in Brazil is facing two challenges. The first is the fact that the CDC is, according to Consumer Defence Entities and the Public Prosecutors,[9] not always in accordance with sector-specific regulation. The second is the relative lack of full social engagement, in a country where society participation and consumer co-ordination and organisation are still relatively limited and with a short history.

In spite of their limited resources, non-governmental organisations play an important role advising, orienting and defending consumers' interests. The most widely published record of the relationship between regulators and consumer groups is the "evaluation of effectiveness" by the Brazilian Institute for Consumer Defence (IDEC) (*www.idec.org.br/arquivos/site_agencias.doc*). Since 2003 IDEC has been publishing a yearly analysis of seven regulatory authorities and their relationships to consumers. Thirty questions are distributed under five categories (existence of institutionalised channels and conditions for consumer participation; transparency; access to information; publicity; and effectiveness on behalf of the consumer).[10] The public bodies include: ANEEL, ANATEL, ANS, ANVISA (*Agência Nacional de Vigilância Sanitária)*, Inmetro (*Instituto Nacional de Metrologia, Normalização e Qualidade Industrial)*, the Central Bank, and the Agriculture Secretariat for Farming and Cattle Raising (*Secretaria de Defesa Agropecuária* SDA). In the

overall rankings produced by IDEC for the years 2003, 2004 and 2005, ANS rated worst among the seven in terms of consumer friendliness.

In the private health insurance sector, a first issue was the abusive readjustment of prices, both for older contracts and for residuals. In terms of collective plans, IDEC finds that ANS chooses a restrictive interpretation of the law in terms of exerting regulatory powers, which results in losses for society at large. In addition, given the increasing role of these collective plans – representing over 72% of the market – the whole action of ANS could then lose ground in terms of its relevance. The positive elements rated by consumers were initiatives of quality assurance and qualification.

In the telecommunications sector, ANATEL holds public hearings where consumer groups may debate and present their views on subjects of general interest.[11] It also has a specific advisory unit that treats users' claims and also has an Ombudsman, which responds to calls from individual consumers. The reports of IDEC also illustrate deficiencies with ANATEL, even if there has been some progress. When asked whether the regulator protects consumers' interests efficiently, 34% of interviewees in 2006 responded that the agency never acts efficiently, vs. 5% in 2005. IDEC acknowledges the lack of resources of the agency and the implementation of a call centre, and of receiving complaints against fixed and mobile phone companies. For example, the process for involving consumers in the prorogation of the concession contracts for fixed telephone lines was rather superficial (IDEC, 2006).

In the energy sector, consumer advocacy acts as a counterweight to the companies, and gives the regulator a demand perspective in an otherwise supply-driven framework. The law provides for consumer consultative bodies (*conselhos de consumidores*), with a remit to consider supply, prices, and quality of service to end-users. ANEEL is required to promote these, and helped their establishment in 2000. They come to meetings and present relevant information for the better management of the power sector. The consumer organisation IDEC's latest overall assessment is that ANEEL is one of the most effective regulators from the consumer perspective. There is, however, room for improvement. ANEEL's responsibility for carrying out the Programme for a Quality Electric Service requires it to establish and monitor indicators of duration and interruption of service, as well as voltage stability. IDEC notes that in a resolution addressed to distribution companies in São Paulo, the regulator set lower voltage stability standards than in the original contracts, with low penalties for failure to meet targets. A second resolution aggravated the situation by lengthening the time available for restoring adequate voltage levels, and weakening penalties further. IDEC notes that relevant information is not available on the ANEEL website.

Low-income consumers are also an issue, particularly in the energy sector. ANEEL also audits the programme for subsidised electricity to these consumers. IDEC has criticised the programme, not for its objective but for its efficiency in serving the needs of the real poor. Restrictions for monophase lines and a qualifying requirement for consumers to be registered in federal government social programmes mean that the programme often fails to deliver to those who really need it. IDEC also notes a failure by ANEEL and the companies (Eletrobrás and related companies) to publicise the programme and explain the criteria.

From a general perspective, consumer groups have manifested their opposition to the decisions of the agencies several times, especially in the sector of telecommunications. The complexity of the regulatory process, characterised by new rules and actors, is a subject of

controversy and conflict. In addition, there is a collision between general consumer protection rules and sectoral rules for each sector (Sundfeld and Câmara, 2005). One of the most controversial issues of the post-privatisation period is related to the adjustments of the fees for public utilities, including for telecommunication services, and the validity of the charge of the so-called subscription fee by the concessionaire of the Fixed Commuted Telephone Services (STFC). The debate around this issue reveals a complex picture of the limits of the regulatory power of the agencies, mainly when sectoral rules and actions do not seem to be coherent with the Consumer Defence Code or other general norms.

A specific case was the controversy over the adjustment index of the fees of fixed telephone services in 2003. The Deputy Federal Judge of the 2nd Court of the Jurisdiction of the Federal District granted a preliminary injunction for public civil action initiated by the Federal Public Prosecutor's Office, ensuring the that a general price consumer index would be used (IPCA), instead of the IGP-DI, for readjusting the fees. The IGP-DI had been rising rapidly as a result of external macroeconomic shocks. However, the final judicial decision by the Supreme Court (STJ) guaranteed a return to the *status quo* of the policy for setting fees defined by the ANATEL.

Another case in which consumer groups had a decisive role was the review of ANATEL's regulation concerning the conversion of pulses into minutes for charging fees for commuted fixed telephone services. Due to the opposition of those associations, the ANATEL reviewed its methodology and started offering an Alternative Plan for Obligatory Offering Services (PASOO) to the Basic Plan. Initial work by ANATEL in that process for changing local charges from pulse to minutes had been an example of disrespect for consumers' interest, according to those associations. The methodology used to calculate the price of a minute in the basic plan was not clear and would have resulted in "absurd increases" in the prices of calls over three minutes. (For additional information, go to *www.idec.org.br/*.)

However, except for ANATEL – which legally establishes the obligation of examining suggestions/proposals presented at the public consultations – there are no administrative procedures that guarantee such feedback or a systematic procedure for inviting consumer groups to comment on regulation proposals in other agencies. Bill of Law 3 337 attempts to expand those mechanisms to all regulatory agencies.

These actions will be further strengthened by the fact that IDEC is developing a project in partnership with the Inter-American Development Bank Multilateral Investment Fund, aiming to improve co-ordination between consumer organisations and regulatory agencies, and to strengthen mechanisms for social participation in the regulatory processes of two agencies: the National Health Surveillance Agency (ANVISA) and the National Telecommunications Agency (ANATEL). This project, which involves a USD 1 million grant to IDEC matched by local funds, will improve the institutional capacity of consumer protection organisations to participate effectively in those agencies' public consultations and hearings.

Co-ordination in the energy sector

Three other regulators are relevant to the power sector:

- National Agency for Petroleum, Natural Gas and Biofuels (*Agência Nacional do Petróleo, Gas Natural e Biocombustiveis* – ANP). ANP regulates upstream gas issues; its jurisdiction stops at the city gate, where state regulators take over.

- Federal Water Regulatory Agency (*Agência Nacional de Águas* – ANA). The 1997 National Water Resources Policy Law created a framework for integrated water resources management (covering multiwater usages and flood control as well as issues related to the use of water for hydro power) and a National Plan of Water Resources. ANA's duties under this framework include the maintenance of an inventory of hydrographic basins, and running fluviometre/rainmetre stations, which provide essential data for the management of hydro power plants.
- Brazilian Environmental Institute (*Instituto Brasileiro do Meio Ambiente* – IBAMA). IBAMA is responsible for overseeing a licensing regime (see Box 7.3) covering environmental issues alongside the economic licensing and concession regime. A new power facility generally requires a green light from IBAMA as well as the energy regulatory authorities.

Relations with ANP are very important in the gas market, while relations with IBAMA are very important concerning environmental licensing (Box 7.3). This framework raises issues of co-ordination and co-operation that are important for the healthy future development of Brazil's power sector, especially given that institutional weaknesses were one of the reasons why the pre-2004 reforms failed. There are two levels at which co-operation is needed. The first is in relation to policy decisions that affect more than one part of the government, and the CNPE was established for this. But there appear to be delays or difficulties in taking decisions and achieving consensus, for example in relation to the environment and reform of the downstream gas market.[12] This can leave ANEEL very exposed, tackling issues as best it can without a clear policy steer. The issue of the overlapping functions between ANEEL and ANP was also identified by Fujiwara, as ANEEL has jurisdiction over input for thermoelectricity but ANP is the natural gas regulator, and distribution is regulated at the sub-national level. The second level of co-operation is between agencies, and between ANEEL and the Ministry. *Ad hoc* working groups have been

Box 7.3. **Environmental licensing: The sequence of events**

The process for the environmental approval of a project broadly follows four stages (assuming that a licence is needed at federal level):*

- Feasibility study. IBAMA triggers a feasibility study of the environmental and social impacts (effects on fauna, flora, water, and not least, people) of the proposed project, which it must approve before the process can go to the next stage. This is usually done by external consultants. A public hearing is arranged, the proceedings are filmed and stored, and this can add new elements. A synthesis of the feasibility study, once it has been agreed, is prepared for the wider public.
- Provisional licence (Licença Prévia- LP), with conditions that are drawn out of the feasibility study. The law says that this should be issued within a year of the PBA, but in practice legal challenges generate delays. ANEEL's authorisation comes after the LP.
- Installation licence (Licença de Instalação- LI). Construction may begin at this stage. In principle there should be six months between the LP and the LI.
- Operational licence (Licença de Operação- LO). The reservoir can be filled (if it is a hydro-plant), and power production can start.

* There are three possible levels – federal, state and municipality – and the division of role is not always clearcut. The judiciary often becomes involved, and as they are not always very experienced they may come under pressure from NGOs opposed to the project.

set up between the regulator and the Ministry to discuss issues of common interest, but not all relevant issues are discussed in these forums, and sensitive issues are sometimes taken forward by the regulator without adequate consultation.

A lack of consultation/co-ordination is even more apparent between ANEEL and two of its most important interlocutors, IBAMA and ANP. A strong relationship with IBAMA is important because the environmental licensing regime is demanding, with three stages that must be successfully completed before a facility can become operational (a provisional licence, installation licence, and operation licence). Failure to meet the conditions set out in the environmental licences results in delays in obtaining the authorisation for a plant to start generating power. Working through the process of obtaining an environmental licence is likely to be hard going at the best of times. This may be due to the importance of NGOs and the local opposition to projects; IBAMA's resources; compensation; and /or multi-level issues, with Federal/state responsibilities. Personal liability may also be an issue. While this represents a widely supported provision against corruption, it may also discourage decision making when officials at an agency like IBAMA know they could be held personally responsible if it goes wrong. This may also be an issue why IBAMA's decisions were deemed to be relatively slow, raising some policy concerns. The situation is very complex. This was further impacted by the fact that national authorities decided to split IBAMA into two agencies in the Spring of 2007. The result of this institutional shift remains unclear at this stage.

In the case of ANP, as matters stand the relationship is very distant, and the regulatory framework does not encourage dialogue even on matters that are highly relevant for both regulators. For example, ANEEL has responsibility for ensuring that gas-fired thermal plant owners have the necessary supply contracts to run if required, which includes, not least, Petrobrás. A strong dialogue could help ensure that specific regulatory developments in each sector are mutually reinforcing and consistent, to spot broader issues in the evolution of the regulatory regime for each sector that may need to be drawn to the attention of the MME and CNPE, and to have a good understanding of each other's markets. This can be achieved without a merger, and there are some advantages in keeping two regulators at this stage, not least to provide two different sources of regulatory oversight for the main company Petrobrás.

Economies of professional competence can be shared, too. Consideration could be given to staff exchanges, for example. This can be very helpful for economic regulators working in sectors sharing important characteristics (for example, a dominant operator, the need to oversee competition and access to monopoly facilities), and also reduces isolation and the risk of regulatory capture (adopting the mindset of the regulated companies). The second level of co-operation is between agencies, and between ANEEL and the Ministry. *Ad hoc* working groups have been set up between the regulator and the Ministry to discuss issues of common interest, but not all relevant issues are discussed in these forums, and sensitive issues are sometimes taken forward by the regulator without adequate consultation.

Co-ordination with SUSEP in the health sector

There are comparatively fewer co-ordination issues in the field of private health insurance. Another general insurance supervisory body exists: SUSEP (*Superintendencia de Seguros Privados*). The insurers specialised in health are subject to ANS supervisions. However, at the start of ANS there was an injection of expertise from SUSEP, which had a

longer history. In terms of economic and financial regulation, the accounting framework used for prudential supervision by ANS is derived from the one used by SUSEP. This is similarly the case for the norms for financial guarantees and the forms for periodic information. Even if the scope of their regulatory oversight does not overlap, there is no standing co-operation between ANS and SUSEP. It seems that, past this initial period, the exchange of information and methods has been reduced, while the ANS was increasingly focusing on specific health-related issues. This may not necessarily be the most appropriate way to develop consistent expertise and policy approaches across governmental agencies.

Co-ordination with the broadcasting authority in the telecommunications sector

In the telecommunication sector, the currently fragmented regulatory framework raises issues of co-ordination. ANATEL and the Ministry of Communications share responsibilities for the regulation of broadcasting activities. This is particularly important in light of recent convergence trends mentioned above. The issuance of grants for the exploitation of broadcasting services is under the responsibility of the Ministry and is ruled by Law 4 117/1962 of the Telecommunications Code (revoked in part by the Telecommunications Law) and by subordinate legislation. According to the GTL, ANATEL is in charge solely of the preparation and maintenance of the respective channel distribution plans and for the inspection, as to technical aspects, of the respective broadcast stations. In practice, dealing with cross-cutting issues has often resulted in confusion and decision delays for the operators involved.

While on paper the division of responsibilities seems more obvious, in practice there seems to be scope for confusion and procedural inefficiencies. This, coupled with the global trend towards consolidation of broadcasting and telecommunication, explains why a significant demand has emerged for consolidation of the activities of both regulators. This was not facilitated by the tense relation between the regulator and the Ministry on other issues, such as financing or price readjustments. Steps towards formal co-operation agreements in this field would help to improve the regulatory framework.

Co-ordination in the transport sector

Several authorities exist in the transport sector, which requires a co-ordinated approach. A group of interface operated in 2004-05 in the context of ANTT's strategic planning activities. The Ministry of Transport is developing the National Planning for Logistics (PNLT), and ANTT is conducting a study of transport on central Brazil. However, this included meetings with both academics from a number of universities and regulatory authorities at state level, as well as co-operation with the Department of the Federal Highway Policy for the Control of the Transport Operators, and with the National Securities Commission, Embratur, the DNIT, the Ministry of Transport and the Ministry of Defence and competition authorities. There are some contacts with IBAMA concerning the transport of dangerous products. Contacts with ANTAQ are made on an *ad hoc* basis. There are resolutions by the ANTT to oversee the difficulties of connection between land and maritime transport, including access to the ports of Santos and Itaqui for various railroad concessionaries. ANTAQ is also a much smaller agency. The efficiency of the Brasilian ports also depends on other bodies, such as those charged with sanitary vigilance, with setting up triage terminals for trucks, and with overseeing the transhipment of merchandise. In addition, a special Secretary for Ports has been set up recently to oversee the 40 public

federal ports; this Secretary is independent from the Ministry of Transports, and has to work in a co-ordinated manner with ANTAQ.

While this working group has certainly contributed to exchanges of information, it may not by itself be sufficient to address the need for co-ordination in the transport sector. There is at the moment no standing agreement of co-operation between the two agencies operating in the sector, ANTAQ and ANTT, even though these two agencies might have been part of a single body to address regulatory issues in the whole sector. Similarly, co-operation with IBAMA may be required in relation to wider environmental issues related to pollution standards, building permits for roads and other matters. As a result, while the co-ordination may be close to the Ministry or even to the competition authorities on relevant points, it may not be designed for long-standing schemes to resolve the sector's fragmented policy setting. The lack of co-ordination has been underlined by a number of analysts, including Carvalho (2005) and Mendes de Paula and Paula Macedo de Avellar (2007). The result is that it hampers loading and unloading at harbours, as ANTT and ANTAQ cannot reach an agreement on what can be done. The split was also criticised by the Confederação Nacional da Indústria and the Associação Brasileira da Infra-estrutura e Indústrias de Base (ABDIB).

Co-ordination across levels of government, state regulatory authorities

In Brazil, the Federal Constitution divides authority across levels of government. Three different types exist: competing, exclusive and complementing authorities. This is illustrated in two sectors of the study, where there is a compelling need for co-ordination: energy and transport.

In the energy sector, the states have virtually no regulatory powers of their own for electricity as such, as electric energy and the use of water for generating energy are clearly federal competencies, but the law provides for delegation of certain activities to state regulators and the Federal District, via agreements and contracts that are paid for out of the tax on companies that funds ANEEL. For the moment, agreements have been signed between ANEEL and 12 entities at state level. This concerns in particular the control of distribution companies, and adjusting supervision and mediation activities, audits, and the management of consumer complaints to local conditions. However, a co-ordinated approach of the energy sector – including gas, which is an important factor for electricity generation – faces the fact that the federal competence of ANP only concerns upstream gas issues and stops at the city gate, where state regulators take over. In this case, there are no co-operation agreements for monitoring activities, which is a problem since authority in the area of transported gas is divided between the federal level, for production and transport, and the state level, for commercialisation and distribution. This fragmentation across two agencies at the federal level and across levels of government does not facilitate co-ordinated handling of this crucial part of the electricity system.

Monitoring at state level faces the fundamental issue of the efficiency and probity of distribution companies, especially those that are still federally owned. Although performance is improving, distribution companies are still prone to losses, due to theft and fraud. Distribution company supervision is delegated to state-level entities. However, ANEEL considers that it does not have effective mechanisms to control the efficiency of their work. Control mechanisms are not part of the co-operation agreements that underpin the delegation, as these are voluntary agreements and focus on process rather than results: a Plan of Activities and Goals defines which activities are to be delegated (depending on the

state regulator's capacities), and their cost. The state regulator executes the activities agreed in the Plan and reports back to ANEEL on the completion of the tasks as well as costs. Once this is approved by ANEEL, it pays the state regulator for its services.[13] ANEEL is seeking to address this by developing a different form of agreement more focused on results, including performance indicators. The aim is to sign a new form of contract with state agencies that defines time-limited goals as well as penalties. Reference costs will be used to assess results. ANEEL hopes that this will strengthen state regulators' autonomy as regards the means by which they carry out their tasks, at the same time as it provides for a more effective form of delegation.

In the field of transport, technical co-operation and co-operative agreements exist with the States and the Municipalities, even if effective monitoring of the licences granted may be better exercised at the local level.

Besides these issues of co-operation, the federal authorities in Brazil coexist with a wide network of "state regulatory authorities". Any measures or decisions concerning the federal authorities, such as the Bill of Law for Constitutional Amendment (PEC) 81 from 2003, would have immediate effects across all levels of the federation. Issues concerning the autonomy of regulatory authorities are also posed at the state level (Peci, Cavalcanti, 2000). There is hesitation at state level to guarantee the autonomy of regulatory bodies. Similarly, any challenges such as the need for resources, autonomy or institutional clarity that exist at the federal level are also faced, with even greater acuity, at the state level (Queiroz, 2001). However, an important consideration is that the state regulators are often pluri-sectoral – in the same way as the public utilities commissions in the United States – while the federal agencies are specialised by sectors.

Policy implications

A horizontal approach reveals broader issues concerning the Brazilian regulatory system, across sectors, policy objectives, and levels of government. The sectoral distribution is generally clear, even if it reveals a number of challenges. One challenge faced by Brazil, as it is by all OECD countries, concerns technical convergence in the field of telecommunications. Another challenge more specific to Brazil concerns the duality of regulatory authorities for the land transport sector, which is compounded by the lack of co-ordination between the two agencies. Other countries, such as Canada, have opted for an integrated approach. In terms of functional approach, the objectives set by Brazilian regulatory authorities are very complex, and in a sense, almost impossible to achieve simultaneously. This requires strategic vision by the regulators in order to fix a way forward to conduct their mission. ANEEL has adopted this strategy, with some success. The issue of telecommunications is more complicated, and the institutional nature of the notion of *public service* has not contributed to a clear and consensual understanding of the notion of "universal service" in the sector.

Relations with competition authorities vary from sector to sector, as the distribution of competences is relatively uneven between ANATEL at one extreme and ANS at the other. It seems that the working relationship has generally been satisfactory, even if formal co-ordination mechanisms were not made mandatory by the laws. The foreseen institutional strengthening offered by the New Bill of Law may offer an opportunity to systematise such relationships in the future.

The most challenging part concerns technical co-ordination within specific sectors among various agencies, with overlapping competences on the same sector. This concerns mainly the energy and transport sectors. In these sectors, the co-ordination mechanisms established both across levels of government and with agencies that may have related competences are partly inadequate. This challenge is beginning to be faced in agreements concluded across levels of government by ANEEL, but much remains to be done. Similarly, limited co-operation seems to occur across several agencies with a similar responsibility for prudential supervision of health and non-health insurance companies. Perhaps a certain notion of autonomy and independence has prevented some regulators from developing closer relations with other federal agencies, probably for fear of losing some operational autonomy. However, in the future, institutional consolidation of the regulators may offer a more fruitful environment, in which some of the gaps of the current system could be addressed more systematically.

Notes

1. Particularly concentrated in communications, electricity, natural gas, water/sewerage, transportation, financial services, professional services and agriculture.
2. For further details see the conclusions of the OECD Roundtable on the subject of the relationship between regulators and competition authorities (OECD, 1999).
3. For more detail, see OECD, 2005b for telecommunication merger cases.
4. Administrative Processes 08012002475/2002-83 8012.005459/2002-42, 8012.001410/02-11.
5. Administrative Process 08012.001892/2004-71.
6. Administrative Process 08012004156/2001-21.
7. Administrative Process 08000.002322/96-57.
8. Twenty-four relevant NGOs can be found at *www.mj.gov/br/controleprocon*.
9. IDEC and CREMESP, 2007 and *www.emdefesadoconsumidor.com.br/stj/2005/maio_2005_04.htm*.
10. *Avaliação de agências e órgãos reguladores* (Evaluation of regulatory agencies and bodies). Brazilian Institute for Consumer Defense, *www.idec.org.br*.
11. ANATEL Consultas publicas.
12. President Lula attended his first meeting of the CNPE only very recently (according to *The Economist*, 18 August 2007).
13. For a detailed study of the case of energy in São Paulo, see Queiroz, 2001.

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ANNEX 7.A1

Sectoral Responsibilities and Missions of Regulatory Authorities

Table 7.A1.1. **Selected regulatory authorities: assignment and tasks**

Authority	Missions, objectives	Tasks
ANATEL	The provision of access to telecommunication services, at reasonable tariffs and prices, and under adequate conditions to the entire population; and the adoption of measures that foster competition and diversity of services, that increase the supply and that provide standards of quality compatible with user requirements. ANATEL's mission is to extend universal service at reasonable prices, foster competition and increase service quality.	ANATEL is in charge of implementing the national telecommunications policies established by the Executive and the Legislative Branches, through the organisation of the exploitation of telecommunications services. ANATEL is responsible for granting concessions or, exceptionally, permissions for the rendering of services under the public regime, subject to universal service and continuity obligations. ANATEL is also responsible for granting licences (authorisations) for rendering services under the private regime.
ANEEL	Regulate and monitor the production, transmission, distribution and supply of power, and to establish conditions for power market development which balances the interests of market players (agents) for the broader benefit of society, and in accordance with the government's political directives.	Regulate and supervise the production, transmission, distribution and commercialisation of electricity energy according to the policies and directives established by the Federal Government.
ANTT	To preserve the national interests and promote the social and economic development. To assert the national unit and regional integration. To protect users.	Enforcement of the Conselho Nacional de Integração de Políticas de Transportes' politics and regulation and inspection of transports' services. To regulate, supervise, and monitor the activities of services provision and transport infrastructure exploitation by the private sector.
ANS	To promote the defence of the public interest in the supplementary assistance to health. To regulate the sectorial operators. To contribute to the development of health activities in the countries.	Regulation and inspection of the activities that guarantee health supplemental assistance.
CADE	Competition policy.	Guiding, monitoring, preventing, and investigating economic power abuses.

Source: OECD Secretariat, based on questionnaires related to supervisory authorities.

Table 7.A1.2. **Mission and responsibilities of energy regulators in selected countries**

Regulator	Mission	Responsibilities
Argentina, ENRE	Ensure that activity in the electricity sector follows national policies related to supply, transport and distribution of electricity, always taking into consideration the protection of consumer interests.	Protect consumer rights. Promote market competition in electricity demand and production markets and foment private investments that ensure adequate supply in the long term. Promote the operation, trustworthiness, free access, non-discrimination, and generalised use of services of electricity installation, transmission and distribution. Regulate transmission and distribution of electricity, ensuring fair and reasonable tariffs. Encourage the supply, transmission, distribution and efficient use of electricity using adequate tariff methodologies.
Australia, AER	Govern and manage electricity resources efficiently.	Regulate the revenues of transmission network service providers by establishing revenue caps. Monitor compliance with the national electricity law, national electricity rules and national electricity regulations. Investigate breaches or possible breaches of provisions of the national electricity law, rules and regulations. Institute and conduct enforcement proceedings against relevant market participants. Establish ring-fencing guidelines for business operations with respect to regulated transmission services. Exempt network service providers from registration.
Brazil, ANEEL	Regulate and monitor the production, transmission, distribution and supply of power, and establish conditions for power market development which balances the interests of market players (agents) for the broader benefit of society, and in accordance with the government's political directives.	Regulate and supervise the production, transmission, distribution and commercialisation of electricity energy according to the policies established by the Federal Government. Secure the expansion of the national power system via a planning process co-ordinated by MME. Guarantee a balance between supply and demand with the necessary quality, continuity and security of service across the whole Brazilian territory, with tarification that attracts and remunerates investment needed for expansion, under fair conditions. Carry out the Programme for a Quality Electric Service (*Programa Qualidade do Serviço de Energia Elétrica*), the objective of which is to establish the conditions for a quality electric system, as defined by indicators of duration and interruption of service. Objectives for these indicators are set out in the PPA. Handle, identify and find solutions to user issues. Mediate solutions to conflicts between agents, and between agents and consumers. Organise public hearings whenever a decision process affects agents/consumers. Delegate tasks to state regulatory agencies. These tasks cover monitoring, regulation, mediation and ombudsman tasks, aimed at securing an efficient service to consumers at ground level. To give effect to the PPA, ANEEL has established a Strategic Challenges Agenda (*Agenda de Desafios Estratégicos*) for 2006-08. Reduce power costs, review methodologies for tariff readjustments, remove gaps in the regulatory framework (these include regulation regarding the trading of energy from renewable sources, and the management of concessions for the isolated parts of the grid with a view to integration with the main grid), guarantee the achievement of universal service objectives, stimulate R&D. Strengthen methods of dialogue with society, improve means of satisfying consumers. Strengthen the autonomy and role of the regulator (this largely refers to the need to improve financial autonomy, structure and develop services).

Table 7.A1.2. **Mission and responsibilities of energy regulators in selected countries** *(cont.)*

Regulator	Mission	Responsibilities
Canada, NEB	Promote safety, environmental protection and economic efficiency in the Canadian public interest within the mandate set by Parliament in the regulation of pipelines, energy development and trade.	Ensure regulated facilities and activities are safe and secure and are perceived to be so. Ensure regulated facilities are built and operated in a manner that protects the environment and respects the rights of those affected. Guarantee that Canadians benefit from efficient energy infrastructure and markets. Co-operate with other public bodies and deliver quality incomes through innovative leadership and effective support processes.
Chile, CNE	Elaborate and co-ordinate plans, policies and norms for the adequate functioning and development of the energy sector, ensure compliance with these and assist the government in all matters related to energy.	Draft and propose energy plans and policies. Enforce energy plans and policies. Monitor market evolution. Perform or request any necessary sector studies.
New Zealand, EC	Ensure electricity is produced and delivered to all consumers in an efficient, fair, reliable and environmentally sustainable manner. Promote and facilitate the efficient use of electricity.	Ensure that the government's objectives for the electricity sector are met. Current areas of priority are: security of supply and reserve generation, priority investment in the transmission grid and hedge market arrangements and demand-side participation. Develop the Electricity Regulations and Rules to ensure best conditions exist for workable and effective competition. Ensure that electricity is generated and distributed in a reliable way, that the market for buying and selling electricity is administered efficiently and that disputes that arise in the course of the operation of the system and the markets are managed effectively.
Norway, NVE	Ensure an integrated and environmentally sound management of the country's water resources, to promote efficient energy markets and cost-effective energy systems and to work to achieve a more efficient use of energy.	Control and regulate monopoly operation. Facilitate the electricity market and safeguard consumer interests. Regulate network access arrangements and set methodology for network tariffs. Co-ordinate administrative procedures for licensing the construction and operation of generation and network infrastructure.
Spain, CNE	Ensure that the energy market is competitive, objective and transparent, for the benefit of all market operators and consumers.	Ensure market competitiveness. Elaborate detailed market regulation (when entitled by sectoral laws). Elaborate market analyses and provide information to the autonomous regions. Ensure consumers have access to a continuous supply of adequate quality and that their rights are respected.
United Kingdom, GEMA and Ofgem	GEMA: Monitor activities of electricity companies and take enforcement action where necessary to ensure compliance with statutory and licence obligations. OFGEM: Protect consumer interests by promoting competition where appropriate.	GEMA: Promote efficiency and economy on the part of licence holders, protect the public from dangers arising from generation, transmission, distribution or supply of gas and electricity, contribute to the achievement of sustainable development, secure a diverse and viable long-term energy supply. Ofgem: Promote market competition, protect consumer interests, regulate the monopoly companies that run the gas and electricity networks, ensure uninterrupted energy supply, contribute to curb climate change and work towards sustainable development. *Note:* GEMA determines the strategy, considers major policy issues and oversees the electricity regime. Ofgem manages day-to-day issues under GEMA.
United States, FERC	Regulate and oversee energy industries in the economic, environmental, and safety interests of the American public.	Promote the development of a strong energy infrastructure. Support competitive markets. Prevent market manipulation. Regulate interstate transmission.

Table 7.A1.3. **Missions and tasks of regulatory authorities in the private health insurance sector in selected countries**

Regulator	Missions, objectives	Tasks
Australia: PHIAC	Section 264-5 of the Act requires PHIAC to achieve a balance between three broad objectives: • Foster an efficient and competitive health insurance industry. • Protect consumers' interests. • Ensure the prudential safety of individual private health insurers.	• Administer the Private Health Risk Equalisation Trust Fund. • Administer the registration of private health insurers. • Provide information to the government and other stakeholders on private health insurance membership and utilisation, reinsurance benefits and gap cover. • Collect financial and statistical returns from each registered health benefits organisation quarterly and annually. • Co-operate with other regulatory agencies on matters affecting the private health industry.
Brazil: ANS	Promote the defense of public interests in the healthcare sector, regulate the health insurance sector, including the relationship with healthcare providers and consumers, and contribute to the development of the health system in Brazil.	• Issue licences to insurers operating in the market. • Ensure that all insurance institutions respect the regulations in force, including sanitary and epidemiology requirements. • Establish quality parameters, monitor price evolution and ensure compliance with insurance policy obligations. • Gather information from private healthcare providers and integrate it with the Public Health System databank.
Canada: OSFI	• Protect depositors, policyholders and pension plan members from undue loss. • Advance and administer a regulatory framework that contributes to public confidence in a competitive financial system.	• Supervise the financial conditions of insurers as well as compliance with their governing law. • Advise institutions in financial trouble and take or require necessary corrective measures. • Promote the adoption of policies and procedures designed to control and manage risk. • Monitor and evaluate system-wide or sectoral issues that may impact institutions negatively.
France: ACAM	Protect the interests of policy holders and beneficiaries of guarantees by controlling and monitoring all players of the French insurance market.	• Ensure that all insurance institutions respect the regulations in force. • Monitor the sound finances of insurance institutions to ensure they can keep their commitments to policy. holders and to Ensure that insurance institutions put in place adequate measures against money laundering. • Register associations that have subscribed to contracts of collective insurance and national pension schemes (Plans d'épargne retraite populaire). • Participate in the selection process of certain experts in the field of real estate and actuaries. • Participate in the development of new regulations at EU and international level.
Ireland: HIA	• Benefit the common good by facilitating a competitive health insurance market while preserving community rating, open enrolment and lifetime cover. • Safeguard the interests of current and future health insurance consumers.	• Register private health insurers. • Monitor the conduct of health insurance business and its developments. • Take or recommend disciplinary action when health insurers are found to have breached statutory rules. • Report to the Minister for Health and Children on risk equalisation, and make recommendations on health issues and to review consumer complaints and monitor advertising and promotional material produced by insurers and to investigate complaints in relation to health insurers.
Mexico: CNSF	• Ensure the smooth operation of the insurance and surety industries and guarantee the users' interests. • Promote sound development of the insurance and surety industries with the purpose of extending its services to the majority of population. • Provide stability to the insurance and surety sectors .	• Monitor solvency and financial stability of insurance and surety institutions. • Ensure that all insurance and surety institutions respect applicable regulations. • Promote a culture of insurance in Mexico and promote product innovation. • Authorise insurance and surety business operating in the Mexican market. • Generate provisions for the regulation of the insurance and surety markets.
Portugal: ISP	• Regulate and supervise insurance and re-insurance activities, pension funds and insurance mediation activities in Portugal.	• Regulate, control and supervise insurance activities as well as connected or complementary activities. • Assist the Minister of Finance in defining sector policies. • Execute and control the execution of insurance sector policies. • Co-operate with the equivalent authorities of other states, particularly other EU states and other national authorities.

Table 7.A1.3. **Missions and tasks of regulatory authorities in the private health insurance sector in selected countries** *(cont.)*

Regulator	Missions, objectives	Tasks
Netherlands: CVZ	• Guarantee and develop the public preconditions of the healthcare system.	• Administer the basket of insured healthcare interventions and manage healthcare funds. • Monitor risk-based budgeting for healthcare insurers. • Centralise healthcare administration procedures.
Switzerland: BPV	• Ensure that private insurance institutions offer necessary guarantees relating to solvency, organisation and management to policy holders. • Ensure that private insurance institutions comply with the law and do not commit abuse against the insured. • Promote a favourable development of private insurance organisations at national and international level.	• Monitor the entire business operations of private insurance companies subject to state supervision. • Licence business operations, approve insurance products, check annual reports, inspect companies and manage complaints. • Participate in the drafting of legislation and international agreements in the private insurance sector. • Promote self-regulation processes and transparency in the insurance industry. • Support the national and international development of supervision.
United Kingdom: FSA	• Maintain confidence in the financial system; promote public understanding of the financial system; protect consumer interests and reduce the scope for financial crime.	• Monitor rule implementation, control market abuse and provide consulting services for firms. • Influence legislation negotiation at early stages and co-operate with national and international regulators. • Provide financial guidance to consumers and improve the relevance of the product information consumers receive. • Develop risk-based regulation through firm-specific and thematic supervision and policy. Establish risk mitigation plans. • Tighten service standards and benchmark FSA performance against industry best practices.

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