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MEASURES TO COMBAT PIRACY AND IRREGULARITIES IN THE ELECTRONIC COMMERCE OF TELECOMMUNICATIONS EQUIPMENT

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For a long time, the National Telecommunications Agency (“Anatel”) has been consistently and firmly acting to combat piracy in the scope of telecommunications services, as well as to exclude from the market devices in non-compliance with the sector’s regulatory legislation.

For example, in 2023, measures adopted by Anatel resulted in the blocking of almost 4,000 addresses of servers broadcasting audiovisual content through set-top boxes (“TV boxes”) using technologies that do not comply with the regulations of the pay TV service (which, in Brazil, is called “Conditional Access Service” or, in short, “SeAC”). In this action, Anatel blocked the sharing of encryption keys for SeAC signals, pirated subscriptions, as well as the transmission of television signals over internet protocol networks (“IPTV”).

At the end of the same year, an operation that involved not only Anatel, but also broadband service providers and the

Ministry of Justice, blocked 1,200 illegal streaming websites and piracy applications during the broadcast of the final of an important Brazilian soccer tournament.

Regarding devices used in telecommunications, another inspection action carried out by Anatel in 2023 within the scope of its Action Plan to Combat Piracy (“PACP”), which involved the distribution center of a company that manufactures, imports, and sells electronic and computer products, sealed 112,000 products that did not comply with the sectoral regulations, such as cell phone chargers, earphones, wireless devices, drones, and several other items, which were valued at more than BRL 2 million.

According to information provided by Anatel, the PACP actions carried out between 2018 and November 2023 resulted in the withdrawal from the market of 7.5 million irregular products with an estimated value of BRL 630 million.

Other relevant actions by Anatel targeted cell phones available for purchase on e-commerce websites (“marketplaces”) in the country. Due to the significant number of non-homologated devices sold in Brazil, Anatel contacted some marketplaces requesting the adoption of measures aimed at discontinuing the sale of devices without data proving their regulatory compliance (and which could even be the object of smuggling and other illicit activities), such as requiring sellers to publish advertisements containing the EAN (“European Article Number”) code of the items sold, as well as the homologation number of the respective models.

It is worth clarifying that the EAN code is a barcode, containing 13 numbers, which includes data such as country of origin, manufacturer, and model. As a matter of interest, the product’s country of origin is identified by the first three digits, with Brazil being identified by the number 789. This code is generated by the manufacturer and identifies a product individually.

It should be emphasized that, according to the sectoral legislation, product certification and homologation are mandatory, and the use and sale in Brazil of equipment that is not homologated by Anatel is prohibited.

According to the Agency itself, these procedures “guarantee consumers the acquisition and use of telecommunications products that comply with quality, safety, and regulated technical functionalities standards that aim at the efficient and rational use of the radioelectric spectrum, electromagnetic compatibility, and non-aggression to the environment”. This is a procedure to which all items determined by the Agency must be submitted, such as smartphones, batteries and chargers, among others.

Although Anatel has given marketplaces a period to adapt their platforms, these measures were not mandatory and, as assessed by the Agency, the mediation attempts were unsuccessful in preventing the sale of non-compliant items. Therefore, on June 21, 2024, Decision No. 5657/2024/ORCN/SOR (“Decision”) of Anatel’s Superintendence of Granting and Resources for Provision was published.

The aforementioned regulation contains several requirements that should be met by marketplaces within 15 days from its publication:

(i) mandatory inclusion of the homologation code number of the cell phones offered, to which the publication of the respective advertisements is subject;



(ii) implementation of a procedure aimed at validating the homologation codes in light of the information contained in Anatel's database, in order to be possible to place the advertisement on the marketplace; (iii) prevention of the registration of devices with codes that do not comply with the validation mentioned in the previous item; and (iv) removal of advertisements that were not subject to the aforementioned validation procedure.

The Decision also clarifies that marketplaces are now classified into different categories, as follows:

- Compliant companies – marketplaces with 100% of homologated cell phones offered (within the 15 days of adjustments, this percentage would be up to 90%);
- Partially compliant companies – those that demonstrate the implementation of an electronic mechanism for identifying products that are subject to homologation (through a validated approval code) and that do not contain more than 30% of non-homologated phones (within the aforementioned 15-day period, the marketplace should adopt measures to regularize the respective advertisements); and
- Non-compliant companies - platforms with more than 30% of advertisements for non-homologated phones, as well as those that have not adopted measures for publishing advertisements in accordance with

Anatel's determinations.

Furthermore, the Decision listed and classified marketplaces that were inspected at the beginning of June 2024. Three marketplaces were considered compliant companies; two were listed as partially compliant companies, with 22.86% and 7.79% of non-homologated phones, respectively; and two others were identified as non-compliant companies, presenting, respectively, 51.52% and 42.86% of non-homologated cell phones.

It is important to note that, according to the terms of the Decision, other companies may be inspected by Anatel and, from the moment these additional companies are identified, they will also be subject to the Decision's provisions.

The Decision also specified that companies that failed to comply with its determinations within 15 days would be subject to punitive measures. The described penalties are:

- Daily fine of BRL 200,000 until the 25th day of verification;
- If, after the 11th day of verification, they failed to adopt measures to remove irregular advertisements, they would have to remove all existing cell phone advertisements until they become in compliance with Anatel regulations, with additional daily fines of BRL 1 million being applied;



- From the 21st day of verification without adopting the measures mentioned in the previous item, all advertisements for radio frequency emitting equipment using WiFi, Bluetooth, 2G, 3G, 4G and 5G should be removed until compliance with Anatel standards is verified, with an additional daily fine of BRL 6 million being applied;
- After 25 days without implementing the measures mentioned in the Decision, Anatel could proceed to block the platform's domain until the advertisements comply with the regulations.

An additional provision contained in the Decision is of great value to consumers: marketplaces must disclose Anatel's electronic address, which allows checking the compliance of devices with regard to the required homologation. It is worth noting that compliance with the Decision's provisions will be reported to the Federal Revenue Service and the National Consumer Office.

Indeed, combating piracy and measures dedicated to eliminating non-compliance with the telecommunications regulatory rules is of great importance. According to [news published in the press](#) in May 2024, a survey carried out by the Alliance Against Pay Television Piracy (in Portuguese, Aliança Contra a Pirataria de Televisão Paga) found that pirated content is watched by more than 16 million Brazilian homes, with more than 38% of them having illegal connections. Also according to the same entity, it is estimated that revenue losses exceed BRL 3 billion and losses for Brazilian industry exceed BRL 19 billion.

Moreover, Anatel stated that it intends to remove non-homologated TV boxes from Brazilian homes, i.e., those that did not follow the necessary procedure for the legalized marketing of the devices.

It is worth remembering that the use of such equipment enables digital attacks on users and/or the networks of telecommunications service providers.

On this subject, it is also important to know that in March 2024, the first criminal conviction relating to piracy of audiovisual content via IPTV occurred in Brazil, with penalties attributed to copyright violations and crimes against consumer relations. In this case, several devices were involved in accessing the administration panel of an illegal IPTV service, which had more than 20,000 users and an estimated revenue exceeding BRL 4.5 million in a 12-month period.

Given the scenario as a whole, it is easy to understand that actions aimed at combating piracy of audiovisual content in Brazil and inspecting the regulatory compliance of equipment will certainly continue to occur and, therefore, full compliance with telecommunications regulations must be observed by all market players.

To receive the main legislative news and positioning on this and other topics related to telecommunications, follow the Technology, Media, and Telecommunication (TMT) team of Azevedo Sette Advogados.

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