

# Concentration and competition in the ICT sector: Brazilian case

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# Summary

- Regulatory framework
- Antitrust framework
- Market structure
- Recent trends in consolidation
- Lessons learned

# Regulatory framework

- Brazilian General Telecommunications Law (Law 9,472/1997 – LGT)
- Privatization of the Telebrás system
- Competition and universal service as key principles
- Independent regulatory agency – ANATEL

# Regulatory framework

## ANATEL

- Broad regulatory powers on a case-by-case basis and through the issuance of rules
- Issue licenses to operators
- Licenses in general may only be transferred with approval of ANATEL
- Consolidations are subject to the approval of ANATEL – overlap with antitrust authority

# Antitrust framework

- Law 12,529/11, which entered into force on May 29, 2012
- Consolidated the investigative, prosecutorial and adjudicative competition functions into one independent agency: CADE
- Mandatory pre-merger notification system

# Antitrust framework

## Merger filing thresholds:

- *Concentration acts*
- Minimum size thresholds, expressed in total revenues derived in Brazil in the last fiscal year by each of at least two parties to the transaction: BRL 750 million and BRL 75 million

# Antitrust framework

## Merger review parameters:

- Law does not contain language specifically setting forth substantive standard
- Interpretation of the law by CADE allows us to conclude that the standard applied in Brazil contains both a dominant position and a lessening or restriction of competition tests

# Antitrust framework

## Merger review parameters:

- No Merger Guidelines have been issued by CADE to date
- CADE takes into account SDE's and SEAE's Horizontal Merger Guidelines issued under the old law, which employ traditional merger analysis and describe five steps in the review process



# Antitrust framework

## Merger review parameters:

- Step 1: Defining the relevant product and geographic markets
- Step 2: Determining whether the market share of the merged entity is sufficiently large to permit the exercise of market power
- Step 3: Assessing the probability that market power will be exercised post-merger

# Antitrust framework

## Merger review parameters:

- Step 4: Examining the efficiencies generated by the transaction
- Step 5: Evaluating the net effect of the transaction on economic welfare – historically, all the times CADE reached Step 5, the transaction was either blocked or subject to substantial remedies

# Market Structure

- Telebrás system was privatized in the 90s. It was separated in different companies and the control of these companies was sold in a public auction
- After almost two decades of liberalization and privatization, companies that originated from the Telebrás system are still dominant

# Market Structure

- High level of concentration in local network and wholesale market
- Companies became multimarket players

# Market Structure

	Fixed-line	Mobile	Broadband	Pay-TV
Vivo (Telefonica)	X	X	X	X
Oi/Portugal Telecom	X	X	X	X
Claro/Net/Embratel (América Móvil)	X	X	X	X
Sky/ATT	Limited	-	X	X
GVT (Vivendi)	X	-	X	X
TIM (Telecom Italia)	Limited	X	X	-

# Recent trends

- Pressure on mobile operators regarding investments
- Move from 4 to 3 operators
- Ownership of Vivo and TIM by Telefonica

# Recent trends

- To approve the indirect acquisition by Telefonica in 2007 of a stake in Telecom Italia, CADE and ANATEL imposed significant restrictions
- In 2013 CADE understood Telefonica violated these restrictions. The agency also blocked the 2010 acquisition by Telefonica of the stake of PT in Vivo
- CADE ordered Telefonica to divest its indirect shareholding in TIM or 50% of its stake in Vivo

# Recent trends

- Telefonica did not want to sell its stake in TIM and risk the sale of the company to a new entrant
- It is forwarding the idea of splitting TIM in three and divide it with Claro and Oi
- TIM reacted making an offer for GVT, but Telefonica immediately afterwards also made an offer for GVT



# Lessons

- Lesson 0: Difficult to foster competition after privatization
- Lesson 1: Investments required by 4G networks and expansion of services will lead to further pressures for consolidation; national regulators may have to accept a more concentrated market to reach these objectives

# Lessons

- Lesson 2: Behavioural remedies are resource-intensive and will likely be viewed with skepticism as a remedy under new premerger review system
- Lesson 3: The regulatory and antitrust agencies are expected to conduct independent reviews. Even if regulator accepts a more concentrated market, antitrust agency might press for more competition

# Lessons

- Lesson 4: Minority shareholdings in the telecom market raise substantial antitrust concerns
- Lesson 5: Enhanced skepticism towards the role of economics in minority shareholdings cases

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