



MVNOs in Brazil

At long last, resale of mobile phone services is permitted in Brazil, but with some specific features when compared to the many countries where it has already been a reality for quite some time.

Almost one year after the public consultation on regulation of Mobile Virtual Network Operators (MVNOs), marked by extensive discussions between government agencies, professional entities, associations and the society, the National Telecommunications Agency (ANATEL) published Resolution No. 550 on November 24, 2010, dealing with the operation of Personal Communication Service (SMP) through a virtual network.

Two new players were created on the SMP market: the virtual network representative and the company authorized to exploit SMP by virtual network. The virtual network representative is defined as the legal entity accredited to a mobile operator, which can represent the operator in the rendering of mobile services (being, therefore, very similar to a commercial representative). The company authorized to exploit SMP by virtual network, in turn, can render mobile services by itself, using the network of other operators.

To qualify as virtual network representative, the applicant should sign a representation agreement with the Original Provider (the company holding the SMP service and spectrum licenses). Such agreement must then be ratified by ANATEL.

On the other hand, only a company previously authorized by ANATEL, which has signed a network sharing agreement with an Original Provider, may act as an authorized MVNO.

Therefore, instead of simply establishing a resale model, ANATEL allowed third

parties unlicensed to use the spectrum of wireless channels to exploit the SMP networks, which is much closer to infrastructure sharing than to a resale itself.

To clear several doubts and concerns voiced during the 2009 public consultation, Resolution 550/2010 expressly stipulated that the companies authorized to exploit virtual networks may sign network sharing agreements with more than one Original Provider in the same registration area, and further established that the representation agreements to be signed with representatives should not be confused with business agency agreements under Law No. 4886 of December 9, 1965 (though, in practice, this provision may not be effective).

Although praiseworthy, innovative and in line with short-term targets established in the General Plan for Updating Telecom Regulations (PGR),¹ while overcoming certain issues that emerged in the 2009 public consultation on MVNOs, ANATEL's initiative still leaves certain crucial matters unanswered, such as whether representatives are to be classified as telecom service providers (with important regulatory and tax implications) or whether representatives should be bound to a single authorized provider for each registration area.

One cannot deny, however, that even in an election year – when it is impossible to foresee the effects of the political scenario on the economy in the years to come – ANATEL has taken measures to foster competition in the wireless phone industry. Good examples of this are the issuance of Resolution 550/2010 and the bidding procedure for the H-Band that took place in December 2010, which is widely regarded as an excellent opportunity for the entry of new players in this sector.

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¹ Resolution No. 516 of October 30, 2008.