

LATINLAWYER
ONLINE

Tuesday, 31st July 2012
by Rachel Hall

More than mobile phone operators to blame for poor service, say lawyers

As three of Brazil's largest mobile phone operators see light at the end of the tunnel following telecoms regulator Anatel's ban on selling new contracts in certain states in a bid to improve the level of service they provide, the country's telecoms and regulatory lawyers say the operators are not the only ones to blame for poor infrastructure.

The Anatel ruling, which took effect on 23 July, imposed a ban on Carlos Slim-owned Claro, the Brazilian subsidiary of Italy's TIM and local group Oi from selling new services in certain states. The operators have also been given 30 days to present investment plans aimed at resolving customer complaints, facing a fine of 200,000 reais (US\$98,890) per region for each day they are late. Each of the three companies has already handed in their plans.

[Pereira Neto | Macedo Advogados](#) partner Caio Mario da Silva Pereira Neto explains that one of the reasons behind the problems is the fast rate of expansion in Brazil's mobile phone service, especially over the past few years, which the country's infrastructure has struggled to keep up with. "In the last 12 months alone, there was 20 per cent growth in mobile lines in service, which poses a big challenge to service providers to keep up with quality levels," he says.

[Barretto Ferreira, Kujawski e Brancher Advogados](#) partner Fabio Ferreira Kujawski points out that municipal and state legislation have also made things difficult for the mobile phone operators. "One of the significant bottlenecks in infrastructure rollout in Brazil is the hundreds of regulations enacted by municipal and state authorities concerning the installation of antennas," he says. This includes prevention of antennas in areas close to hospitals, schools and other areas where they risk causing harm to health, despite the fact that there is considerable worldwide debate over the scientific basis for fears of the damage to health caused by radiation from mobile antennas. He adds that the environmental authorities are often slow to grant permits to antennas.

[Koury Lopes Advogados](#) partner Guilherme Ieno agrees: "These mobile operators allege that such inadequate level of their services is mainly due to municipal and state legislation, which set forth restrictions for the installation of antennas." However he adds that the situation is one of shared blame, as other possible reasons include the "inefficiency of Anatel's inspection, which is based mainly on data provided by the service providers, and low level of investments [from the mobile phone companies]".

The measures, which both the operators and Brazil's telecoms union SindiTelebrasil contest the validity of, have been defended by Brazil's communications minister Paulo Bernardo. He told local business magazine *Valor Econômico* last week: "It's not a case

of demonising the mobile phone operators, or making them out to be the villains. They're important and they make major investments in in the sector, but that doesn't mean they can stop treating their customers well."

Despite the fact that customer complaints have made it essential to take some form of action, Kujawaski opines that Anatel should have "adopted a different approach". He says it's important to bear in mind that mobile telephone companies provide private, not public, services, meaning that regulator interference should be "minimum" in line with Brazil's telecoms act. "In my view, Anatel could have overseen the creation of a contingency plan by each operator, for instance establishing a schedule for service quality improvement, and only in case of breach of such a plan, would a measure of this nature be taken," he says, adding that the operators were "caught by surprise" by Anatel's decision.

Neto too views Anatel's ban on the sale of chips in several states as "too drastic and disproportionate". He says: "This measure reduces alternatives to consumers and distorts competition during the implementation of the ban of sales," suggesting instead that Anatel could have imposed fines and demanded that the providers up their levels of investment instead.

Neto is optimistic that eventually the service providers and Anatel will reach an agreement with respect to "the investments needed to achieve the required quality levels". He points out that in terms of new regulation, there is no need for new rules given that Anatel issued a new resolution dealing with mobile quality of service a few months ago. "Thus, it is more a question of applying the existing regulations than drafting new ones," he says.

A further possible remedy would be to introduce new legislation. Ieno suggests that new legislation should be introduced "to foster competition and the increase of number of service providers". For Kujawaski, the antennas act, of which a draft is scheduled to be sent to congress by the end of this year, should prevent many of the existing problems. The law aims to regulate the installation of antennas at a federal level, unifying municipal legislation. This, combined with an increased level of investment on behalf of the operators, should make some steps towards providing Brazilians with the level of mobile phone service they seek.