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Promotion and legal certainty as instruments for regulating the telecommunications sector

Fomento e segurança jurídica como instrumentos de regulação do setor das telecomunicações

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ABSTRACT: The research evaluates how the instruments of administrative promotion and legal certainty assist in telecommunications sector regulation. It starts from the initial hypothesis that the environment of constant technological disruption permeating the telecommunications sector demands a revision of sectoral regulatory activity. In this sense, administrative promotion is studied as a necessary form of action within a technological landscape that requires rapid state response. Under a similar logic, the principle of legal certainty is presented based on its characteristic presumption of predictability. The study focuses on balancing the relationship between regulator and regulated entity to reduce potential information asymmetries that may mitigate the effectiveness of state intervention and the development of the sector itself. Ultimately, it concludes that these instruments are relevant in constructing adequate regulation for the sector. The research methodology employed is deductive, utilizing the indirect documentation technique.

KEYWORDS: Promotion. Legal certainty. Regulation. Telecommunications. Innovation.

RESUMO: A presente pesquisa tem como objetivo avaliar de que maneira os instrumentos do fomento administrativo e da segurança jurídica auxiliam na regulação do setor econômico das telecomunicações. Parte-se da hipótese inicial de que o ambiente de constante disrupção tecnológica que permeia as telecomunicações demanda uma revisão da atuação regulatória setorial. Nesse sentido, estuda-se o fomento administrativo enquanto formato de atuação necessária dentro de uma redoma tecnológica que demanda uma reação estatal rápida. Sob lógica semelhante, apresenta-se o princípio da segurança jurídica a partir da presunção de previsibilidade que o caracteriza. Pauta-se no equilíbrio da relação entre regulador e regu-



lado para diminuir eventuais assimetrias informacionais que mitiguem a eficácia da intervenção estatal e o próprio desenvolvimento do setor. Ao final, conclui-se pela relevância dos instrumentos na construção de uma regulação adequada para o setor. A metodologia de pesquisa utilizada é a dedutiva e a técnica de pesquisa é a documentação indireta.

PALAVRAS-CHAVE: Fomento. Segurança jurídica. Regulação. Telecomunicações. Inovação.

1 INTRODUCTION

Within the telecommunications sector (including, for the purposes of this research, audiovisual services), it falls within the remit of Anatel and Ancine to ensure that the sector develops both in technological terms and in relation to the legal framework (i.e., regulation per se). The identification of an appropriate regulatory model for the sector – one that must also take into account the technological differences among the services provided – depends on a case-by-case analysis conducted by the regulatory agencies.

However, as the investigation advances, it becomes clear that regulatory activity in innovation-driven environments depends on certain general assumptions. On the one hand, disruptive innovations hinder the work of regulators and legislators because: (i) they are positioned within the “blind spots” of existing legal frameworks, thereby gaining competitive advantages; and (ii) they make use of the global computer network to gain popularity to the point of becoming too big to ban (Ribeiro, 2016, p. 197). On the other hand, public administration appears to be capable of identifying approaches and mechanisms that enhance regulatory efficiency.

In this regard, two important guidelines for regulatory action in the sector are presented. First, attention is given to the need for regulation to promote both technological and social development. This does not refer to a State intervention concerned solely with technological advancement, but rather one that also considers the social

impact of innovation, its effect on the population's quality of life, and the provision of adequate telecommunications services serving the public interest. In this context, reference is made to a State that encourages economic actors through regulation, engages in administrative activities aimed at promotion (“fomento” in portuguese), and, to a certain extent, takes on an entrepreneurial role within the sector.¹ Subsequently, a relevant perspective for the regulator's role is addressed: the need to ensure legal certainty, as a fundamental principle of the Democratic Rule of Law, with the aim of mitigating informational asymmetries in the regulator–regulated relationship.

The research methodology employed is deductive, through which the possibility of applying administrative promotion as a regulatory instrument and the application of legal certainty mechanisms as a means of balancing the relationship between regulator and regulated entity were analyzed. Also, the research technique is indirect documentation, through the use of scientific texts (books and articles) and normative documents.

2 REGULATION, PROMOTION AND DEVELOPMENT IN THE TELECOMMUNICATIONS SECTOR

The internet has emerged as a space of convergence for services provided by both private entities and public authorities.² In this

¹ Regarding the “entrepreneur” role of the State see, for all: Mazzucato, 2014.

² According to Ana Cristina Aguilar Viana, there is a burgeoning need for the Administration itself to develop within the digital environment, insofar as, with new technologies, the very notion of electronic government becomes outdated. ‘From this emerges the necessity for the administration to shift its focus from automation and cost reduction (present in the electronic government proposal) to emphasize co-creation with citizens and companies. This new stage of maturity in technologies and their employment by governments is the symbol of the transformation towards digital government’ (Viana, 2021, p. 127).

context, the role of the regulator – by combining legal expertise with specialized technical knowledge – must be to “promote the necessary techno-legal changes with the agility demanded by modern society, in light of the inherent inability of the legislative function to keep pace with developments across all technical fields” (Cardoso; Soares, 2022, p. 149).³

Lucía Bellocchio and Alfonso Santiago clarify, in relation to the issue of internet accessibility within the framework of this new Digital Rule of Law, that the promotion of the development and implementation of broadband plans – especially those focused on underserved areas – together with the deployment, promotion, and operation of the necessary infrastructure and technologies, are essential measures for reducing existing socio-economic gaps (2020, p. 97). In the same vein, Analía Antik recalls that reflecting on digital transformation in the current technological landscape goes beyond merely adapting public services and content to digital environments (e.g., digital signatures and certificates, payment of fees and taxes, digital identity). According to the author, it is necessary to think in terms of networks in order to ensure access to the flow of information available, allowing citizens to participate in an omnipresent digital environment (2023, p. 32–36). This, in turn, requires public administration to adopt an innovative perspective and not delegate this task entirely to the private sector (Sanmiguel, 2022, p. 96).

Within the regulatory sphere – specifically in the context of indirect intervention in economic activities – it may be noted that “regulatory incentives may lead to public policies involving the granting of loans to small and medium-sized entrepreneurs to invest in their businesses, and may even support the development of action plans for entrepreneurial markets” (Sena, 2020, p. 113). Nevertheless, it appears

³ Translated from the portuguese: “promover as mudanças técnico-jurídicas com a agilidade que a sociedade moderna exige, tendo em vista a incapacidade de a função legiferante, por sua própria natureza, acompanhar a evolução de todos os campos técnicos”.

accurate to assert that, in order to address the persistent digital divide in Brazil – particularly the lack of universal access to fixed broadband services – additional measures must be proposed.

According to Marçal Justen Filho, promotion (*fomento*) is an administrative function aimed at “applying public resources and adopting measures intended to guide the use of public resources with a view to encouraging the development of economic activities to achieve constitutionally protected objectives” (2024, p. 20).⁴ In a similar vein, and drawing on the theoretical framework of Norberto Bobbio, Carolina Zancaner Zockun, Flávio Garcia Cabral, Leandro Sarai, and Maurício Zockun indicate that promotion seeks to influence behaviors in a manner aligned with normative prescriptions, “through indirect incentive measures, either by facilitating such behaviors or by offering advantages” (2024, p. 275).⁵ Thus, as an indirect State activity aimed at fostering improvements in social life, promotion should not be confused with police power (when the State acts to supervise, prevent, and repress through coercive mechanisms) nor with the effective provision of public services (when the State supplies or promotes utilities directly or through delegation) (Andrade, 2022, p. 385–386).

In differentiating promotion (*fomento*) from other State activities, Adriana Schier clarifies that the practice of promotion must comply with the administrative legal framework, guided by the constitutional principles that govern State action, notably the principle of the supremacy of the public interest and the principle of the non-availability of the public interest (2019, p. 160). Accordingly, the practice of promotion “must seek to create conditions for private partners to extend access to fundamental rights to citizens, within the scope of

⁴ Translated from the portuguese: “aplicar recursos públicos e adotar providências destinadas a orientar o uso de recursos públicos visando a incentivar o desenvolvimento de atividades econômicas para atingir os fins constitucionalmente protegidos”.

⁵ Translated from the portuguese: “por meio de medidas indiretas de incentivo, seja por meio da facilitação desses comportamentos, seja por meio do oferecimento de vantagens”.

social development”.⁶ Therefore, promotion can be understood as an administrative activity in which the State encourages, promotes, or induces private parties to carry out activities of public interest, which must observe benefits of a collective nature and be accessible to the entire population (Andrade, 2022, p. 385).

Within the context of technological development and as digital devices cease to be ends in themselves and instead become a means for the population to access a wide range of services, products, and goods – enabling citizens to exercise social rights such as access to health, culture, leisure, and information – their significance becomes intrinsically linked to the improvement of living conditions. Hence, there is an urgent need to guarantee a high-quality, continuous, and stable infrastructure for the entire Brazilian population (Muñoz, 2023, p. 108). It is at this point that the administrative function gains prominence. The development of infrastructures related to Electronic Government (which evolves into Digital Government) requires a shift in the public regulatory agenda (Nohara; Colombo, 2019).

Even when encouraging private entities, including those with profit motives, the State is authorized to promote and incentivize research and development of innovative products, services, and processes (Zockun et. al, 2024, p. 290). Through instruments such as grants, financing, tax incentives, and scholarships, it is incumbent upon State action to promote national industrial and technological policies that are relevant and prioritized for the country’s development. Within the telecommunications sector (including audiovisual services), the paths of promotion and regulatory action must be aligned in pursuit of a common objective. In this regard, considering the continuous breaking down of technological barriers in the sector, the development of quality infrastructure and adherence to constitutional principles (with

⁶ Translated from the portuguese: “deverá buscar a criação de condições para que os parceiros particulares possam estender aos cidadãos o acesso aos direitos fundamentais, na dimensão do desenvolvimento social”.

respect to the realization of fundamental rights and the protection of national culture) should be priorities.

Contributions for Intervention in the Economic Domain (CIDE), as provided for in Article 149 of the 1988 Constitution, can be cited as instruments that assist in this process. CIDEs are types of contributions that serve as instruments of State intervention in the Economic Order, as they provide resources for the Union to carry out activities in their respective areas of interest (Schouri, 2024, p. 220–225). Their objective, when intervening in the economic domain, is to ensure that the Union addresses specific interests of an economic sector in favor of the collective good (Carrazza, 2023, p. 534). Unlike taxes (for which revenue earmarking to an agency, fund, or expenditure is prohibited), “the constitutional framework of these contributions inherently includes the concept of allocation,” since they are constitutionally mandated to fulfill predetermined purposes. This is because their creation aims precisely to guarantee faithful observance of constitutional principles related to the specific economic sector. In the telecommunications sector, the Fust and Funttel funds stand out; in the audiovisual sector, the Condecine fund is prominent.

The Fund for the Universalization of Telecommunications Services (Fust) was established by Federal Law No. 9,998, dated August 17, 2000, and has as its main objectives to “stimulate the expansion, use, and improvement of the quality of telecommunications networks and services, reduce regional inequalities, and encourage the use and development of new connectivity technologies to promote economic and social development” (Art. 1). The resources of Fust shall be allocated to cover investments and costs related to: (a) programs, projects, plans, activities, initiatives, and actions for telecommunications services; (b) policies for technological innovations in telecommunications services in rural areas; and (c) governmental programs, projects, and initiatives aimed at expanding society’s access to telecommunications services provided under both private and public regimes (Art. 1, § 1, Federal Law No. 9,998/2000).

Although Fust is managed by a Council linked to the Ministry of Communications (which is responsible for defining the policies, general guidelines, and priorities for the fund's application), Anatel is competent to monitor and oversee the programs, projects, plans, activities, initiatives, and actions that utilize Fust resources (Art. 4, item I, Federal Law No. 9,998/2000) and to collect the fund's revenues related to the public price charged by the Agency as a condition for the transfer of concession, permission, or authorization for telecommunications services or the use of radiofrequency, as well as the 1% (one percent) contribution on gross operational revenue derived from the provision of telecommunications services under both public and private regimes (Art. 4, item IV, Federal Law No. 9,998/2000).⁷

Fust is, par excellence, the main sectoral fund in the telecommunications sector aimed at expanding access to services for the entire population. It should be noted that its operation goes beyond the mere public-private dichotomy, broadly fostering the expansion of networks. Thus, it appears accurate to assert that “the fund was created to provide funding or compensatory coverage for the fulfillment of public goals related to the nationwide generalization of telecommunications activities” (Melo, 2013, p. 232-233).⁸

The Fund for Technological Development of Telecommunications (Funttel), established by Federal Law No. 10,052, dated November 28, 2000, aims to stimulate the process of technological innovation, encourage human resource training, foster job creation,

⁷ It is at this point that the nature of Fust as a CIDE resides, given that one of its revenue sources is the contribution paid by telecommunications sector companies at a rate of 1% on gross operating revenue, arising from the provision of telecommunications services under both public and private regimes, ‘excluding the Tax on Operations Related to the Circulation of Goods and on Interstate and Intermunicipal Transportation and Communication Services (ICMS), the Social Integration Program (PIS), and the Contribution for Social Security Financing (Cofins)’, pursuant to art. 6, inc. IV, of the legislation.

⁸ Translated from the portuguese: “o fundo foi criado para o suprimento ou a cobertura ressarcitivo-indenizatória da execução de metas públicas de generalização, no território nacional, das atividades de telecomunicações”.

and promote access by small and medium-sized enterprises to capital resources, thereby enhancing the competitiveness of the Brazilian telecommunications industry (Art. 1). Among the revenues constituting the fund, two CIDEs are identified: (i) a contribution of 0.5% (half a percent) on the gross revenue of telecommunications service providers operating under both public and private regimes;⁹ and (ii) a contribution of 1% (one percent) owed by authorized institutions, as provided by law, on the gross proceeds from participatory events conducted via telephone calls. The fund's resources shall be applied exclusively in the interest of the telecommunications sector (Art. 6), with twenty percent of this amount being directly allocated to Fundação CPqD (Research and Development Center in Telecommunications), a private non-profit foundation formerly linked to Telebras prior to its privatization (Art. 6, § 1).

Finally, it is important to highlight the existence of the Telecommunications Inspection Fund (Fistel), established by Federal Law No. 5,070, dated July 7, 1966, whose purpose is to provide resources to cover expenses incurred by the Federal Government in the execution of telecommunications services inspection, develop means, and improve the techniques necessary for such execution (Art. 1). Its resources shall be used exclusively for the enhancement and improvement of inspection systems (facilities, operational costs, maintenance, acquisition of specialized equipment) and for the implementation of inspection plans within the sector (Art. 3). However, it should be noted that part of the sources constituting Fistel will be transferred to Fust for application in its universalization guidelines.

Regarding the applicability of Fust, Fistel, and Funttel, Jua-rez Quadros do Nascimento, former Minister of Communications,

⁹ To determine the tax base, canceled sales, granted discounts, the Tax on Operations Related to the Circulation of Goods and on Interstate and Intermunicipal Transportation and Communication Services (ICMS), the contribution to the Social Integration Program (PIS), and the Contribution for Social Security Financing (Cofins) are excluded.

advocates for the existence of a sectoral policy encompassing all the aforementioned funds (2016, p. 15–16). On one hand, this assertion reflects a concern with uniformity in the collection and centralized management of the resources from the three funds. On the other hand, these are three established funds, each with its own management and distinct scopes of operation. Their merger, in this sense, could be detrimental by addressing different objectives under varying priority levels. At first glance, it seems natural to affirm that the universalization of access networks is more relevant than the enhancement of inspection activities within the sector. However, when considering a cause-and-effect logic, appropriate and efficient inspection may generate more resources for the other funds.

To the extent that resources indirectly transferred by telecommunications services in the strict sense – through contributions, payment of fees and fines, or other mechanisms – constitute the sectoral funds, it seems reasonable to affirm that, being classified as telecommunications, these charges are also borne by value-added telecommunications services (in addition to, of course, telecommunications services in the strict sense).

Regarding broadcasting, it is observed that the legislator chose not to subject concessionaires to the CIDEs (Fust and Funttel). This decision is grounded in the separation established by the reforming Constituent Assembly. When requested to opine on the matter, the Attorney General's Office (Advocacia-Geral da União, AGU) concluded that the contribution does not apply to broadcasting on the basis that this tax species only covers operational revenue directly derived from the provision of telecommunications services under both public and private regimes (Teletime, 2019). From a technological standpoint, it would make little sense for broadcasting services not to contribute to the CIDEs. However, under the specific criterion of revenue derived from the provision of the service itself, broadcasting does not generate operational income from service provision. In this sense, although broadcasting services may be indirectly benefited by

the CIDEs, a careful reading of the legislation precludes charging the concessionaires of this public service.

Within the audiovisual sector, the Contribution for the Development of the National Cinematographic Industry (Condecine), provided for in Article 32 of Provisional Measure No. 2,228-1/2021, has as its taxable event: (i) the broadcasting, production, licensing, and distribution of cinematographic and videophonographic works for commercial purposes, by market segment to which they are directed (item I); (ii) the provision of services that utilize means that can, effectively or potentially, distribute audiovisual content pursuant to the law governing audiovisual communication with conditional access (item II); (iii) the broadcasting or distribution of audiovisual advertising works included in international programming (...) in cases where there is direct participation by a national advertising agency (item III); and (iv) the payment, credit, employment, remittance, or delivery, to producers, distributors, or intermediaries abroad, of amounts related to income arising from the exploitation of cinematographic and videophonographic works or for their acquisition or importation, at a fixed price (sole paragraph).

The developmental potential of Condecine is evidenced by the fact that the proceeds from its collection are utilized, pursuant to Article 34, to foster audiovisual activities included in the Support Program for the Development of Brazilian Cinema (PRODECINE, which relates to projects involving independent production, distribution, commercialization, and exhibition by Brazilian companies), the Support Program for the Development of Brazilian Audiovisual (PRODAV, aimed at projects involving production, programming, distribution, commercialization, and exhibition of independently produced Brazilian audiovisual works), and the Support Program for the Development of Cinema and Audiovisual Infrastructure (PRÓ-INFRA, which seeks the development, expansion, and modernization of services and capital goods of Brazilian companies and self-employed professionals in the sector).

Condecine has two modalities – classified according to the taxpayer subject to the tax species: (a) Condecine Title (or Condecine License), which applies to the exploitation of audiovisual works in each market segment (movie theaters, home video, pay television, broadcasting, and other markets); and (b) Condecine Telecom (or Condecine Teles), which applies to services provided through means capable of distributing audiovisual content – that is, telecommunications services in the strict sense (concessionaires, permit holders, and licensees). Based on this classification, it appears evident that various telecommunications services in the broad sense (with the exception of VoIP services and sound broadcasting) are, to some extent, liable taxpayers of the CIDE. This is because telecommunications services in the strict sense must contribute to Condecine Telecom; and sound and image broadcasting concessionaires, streaming services, and broadcasters linked to the Conditional Access System (SeAC) must comply with the rules of Condecine Title.¹⁰

If regulatory law holds, as verified, a relevant role for the telecommunications sector (and, consequently, for the audiovisual sector) as an instrument, as an institutional arrangement, and as a channel for demands, the decision regarding legal contours may influence the success of public policies in more than one aspect (Rodrigues, Ferreira Filho, 2021, p. 238). It is the duty of regulatory agencies to balance – based on the Federal Constitution and governing legislation – the aspirations of economic agents, the State's commitment to the proper provision of services to the population, and the need for innovation, technological development, and promotion of the domestic audiovisual market (Sahel, 2019, p. 115-121). Although the task is not easy,

¹⁰ It is important to emphasize that the understanding that OTT services must also contribute to Condecine stems from the previously established argument that their activities are identifiable in Provisional Measure No. 2,228-1/2001 as 'market segments' (art. 1, inc. VI). Regarding the principle of isonomy and the collection of Condecine, see, for all: Martins, 2020, p. 293-323.

the citizen-centered perspective must be prioritized in regulatory action. The collective and public interest must be pursued, aiming at the efficient provision of telecommunications services under both public and private regimes.

Jaime Rodríguez Arana Muñoz argues that good governance and effective administration “must not forget that the knowledge society should improve the quality of civic culture among people; otherwise, a ‘magnificent opportunity to have a positive impact on improving citizens’ living conditions’ would be wasted” (2023, p. 107).¹¹ The incentive for technological development must also take into account existing inequalities in the country and the particularities of each concrete case (e.g., access to high-quality mobile broadband is greater in capitals than in inland cities), so as to avoid the growth of digital marginalization (Valle; Felisberto, 2022, p. 167). Digital infrastructure, therefore, must keep pace with the demand for digital services in the pursuit of guaranteeing access and connectivity within the digital environment (Bukht; Heeks, 2018). As aptly noted by Diogo Rosenthal Coutinho, although regulation can leverage technological convergence to create competitive stimuli and promote equity gains, it also holds significant potential to foster social inclusion and the universalization of telecommunications services (2014, p. 59).

In light of the foregoing, the Public Administration must pursue a path that allows for the customization of solutions that enable technological development and higher quality services for its consumers and users, as well as identify the appropriate tools and incentives to achieve the efficient provision of telecommunications services (Ribeiro, 2016, p. 198-199). Such solutions should be aligned with planned sectoral public policies that ensure security for the sector and engage with the

¹¹ Translated from the Spanish: “El buen gobierno, la buena administración no puede olvidar que la sociedad del conocimiento ha de mejorar la calidad de la cultura cívica de las personas, pues de lo contrario estaremos desaprovechando una magnífica oportunidad para incidir positivamente en la mejora de las condiciones de vida de los ciudadanos”.

relevant stakeholders. Finally, it is important to emphasize that there can be no discussion of telecommunications infrastructure without guaranteeing, at a minimum, basic services, including electric power. It is recalled that in 2020, during the pandemic, the state of Amapá experienced two blackouts and twenty-two days of rotating power supply (G1, 2020). The fundamental right to internet access requires adequate infrastructure (Gabardo; Viana; Freitas, 2022). Access to the internet is futile without electric power.

3 LEGAL CERTAINTY AS A DUTY OF THE ADMINISTRATION AND A RIGHT OF THE REGULATED ENTITY

The principle of legal certainty, although not explicitly enshrined in any provision of the 1988 Constitution, is fundamental to the Democratic Rule of Law (Mello, 2023, p. 107). It ultimately ensures that behaviors established by the legal system are observed by any public or private agent (Melo, 2006). Almiro Couto e Silva asserts that this principle represents a conservative element embedded in the Brazilian legal order, aimed at the “maintenance of the status quo and the prevention of individuals being surprised by changes in positive law or in the conduct of the State, even when manifested in unlawful acts, which could harm the interests of the governed or frustrate their legitimate expectations” (2004, p. 275–276). Therefore, the principle represents both respect for the foundations developed through the exercise of legal rights and the legal protection of trust in the stability of legal conduct (Bercovici, 2023).

As the anchor of legal predictability, legal certainty represents “the idea of a set of conditions that make it possible for society to have prior knowledge of the consequences of its acts in light of the norms pre-established by the legal system” (Guerra, 2017, p. 366). Drawing on the doctrine of Humberto Ávila, Thiago Priess Valiati indicates that the ideal of the notion of legal certainty is based on

the conjunction of three autonomous assumptions: knowability, reliability, and calculability. Knowability relates to citizens' awareness, preventing them from being misled or confused regarding actions undertaken based on the legal framework. Reliability refers to the consolidation and stability of the law, aiming to ensure that the past endures in the present time. The ideal of calculability, finally, seeks not only to preserve the present into the future but also to promote the continuity of the law, preventing state conduct from unexpectedly surprising the population (Valiati, 2018, p. 14-15).

Referring to the doctrine of Regina Helena Costa, the authors Luiz Alberto Gurgel de Faria, Lucilene Rodrigues Santos, and Marcela Ribeiro Cardozo indicate that the principle of legal certainty comprises: "(i) the existence of state institutions that must be governed by the principles of legality, reasonableness, and good faith; (ii) the stability of legal relations arising from the durability of legal norms and the observance of the principles of anteriority and non-retroactivity of laws; and (iii) equal treatment for equal or similar situations" (2023, p. 3). Irene Patrícia Nohara recalls that the principle of legality is also closely linked to the principle of legal certainty, insofar as "in the case of administrative legality (art. 37, caput, of the Federal Constitution), it restricts state action to the limits of normative commands, for the security of society as a whole" (2024, p. 85).

It is further noted that its semantic content within the scope of the Democratic Rule of Law can be approached from two dimensions: an objective one and a subjective one. Regarding the objective dimension, it refers to the "elements of the legal order that guarantee the inviolability of individual situations, such as forfeiture, prescription, and the protection of acquired rights, perfected legal acts, and *res judicata*" as provided in Article 5, item XXXVI, of the 1988 Constitution. These are the instruments that ensure stability in the application of the law. In turn, the subjective approach holds that the principle of legal certainty "arises as a manifestation of the principles of protection of legitimate expectations and good faith, which, in turn,

reflect the reflective efficacy of the principle of legal certainty, oriented towards a specific subject and a particular concrete case” (Faria; Santos; Cardozo, 2023, p. 3–4). In summary, in the objective sphere, the principle acts to consolidate legal situations; and in the subjective sphere, as a source of “people’s trust in the acts and procedures of the State in its various manifestations” (Santos; Maia, 2021, p. 97–98).

Therefore, the effect of legal insecurity is the application of law with a high degree of unpredictability: “each authority decides differently in similar cases. The same authority decides identical cases in divergent ways” (Justen Filho, 2018, p. 24). Such a mode of law enforcement would undermine the predictability of the application of legal norms, even if these are general and abstract rules. In this vein, the principle becomes a crucial element to guide the “precision and determinability of normative prescriptions, to impose limits on their vagueness or indeterminacy, and to ensure the consistent application of law” (Santos; Maia, 2021, p. 95–96). Moreover, it is necessary to clarify that legal certainty is not limited to the immutability of law, which would fossilize the legal order and prevent the State from fulfilling the public interest. Its true objective is to prevent state action, at all levels, from adopting measures contradictory to its previous acts and from surprising the population (Silva, 2004).

In this context, the analysis of Articles 20 and 21, incorporated by Federal Law No. 13,655 of April 25, 2018, into the Law of Introduction to the Rules of Brazilian Law (LINDB), demonstrates that the principle of legal certainty and the foreseeability of the practical consequences of decisions have formally gained a prominent role in the application of Brazilian law. Article 20 establishes that no decision – whether within administrative, supervisory, or judicial spheres – shall be made solely based on abstract legal values without the competent public agent duly considering the practical consequences of their act. Furthermore, pursuant to the sole paragraph, the reasoning behind the act must elucidate the necessity and appropriateness of the decision. This implies that the practical effects of the decision

must be thoroughly assessed, “since it is inadmissible to acknowledge the existence of an applied social science that completely disregards its practical consequences” (Cardoso; Soares, 2022, p. 150). Likewise, Article 21 of the LINDB mandates that the public agent, within the aforementioned spheres, must expressly indicate the legal and administrative consequences of any decision invalidating an act, contract, agreement, proceeding, or administrative norm, explicitly specifying its legal and administrative effects. According to scholarly doctrine, this provision privileges the principle of legal certainty and “imposes limits on the vagueness or indeterminacy of normative prescriptions and ensures greater comprehensibility of state action” (Santos; Maia, 2021, p. 107).¹²

Article 30 (and its sole paragraph) of the LINDB also merits emphasis insofar as it unequivocally establishes that public authorities must act with the purpose of enhancing legal certainty “in the application of norms, including through regulations, administrative summaries, and responses to consultations” – which, in turn, “shall have binding effect on the agency or entity to which they are addressed, until further revision”. This provision reflects the intention to standardize the application of legal norms (Di Pietro, 2023, p. 99).

In regulating the aforementioned legislation, Federal Decree No. 9,830, dated June 10, 2019, clarified that “abstract legal values,” as mentioned in the caput of Article 21 of the LINDB, refer to values “provided in legal norms with a high degree of indeterminacy and abstraction” (Article 2, § 1). When making a decision, the public agent must present “only those practical consequences that, in the diligent exercise of their duties, they are able to foresee based on the facts and the substantive and legal grounds” (Article 2, § 2). Regarding the principle of legal certainty, the regulatory decree is explicit in

¹² Sharing the same line of thought, see: Rodrigues; Ferreira Filho, 2021, p. 251.; Cardoso; Soares, 2022, p. 150.

establishing that “public authorities shall act with the aim of increasing legal certainty in the application of norms, including through complementary norms, normative guidelines, summaries, statements, and responses to consultations” (Article 19).

Although the legislator’s intention to foster a more predictable decision-making environment in the country – one that takes into account practical and consequentialist aspects in decisions – seems evident, it is understood that the norm guiding the interpretation of Brazilian law is, by itself, vague. By defining “abstract legal values” as values provided in norms characterized by a high degree of indeterminacy and abstraction, the norm itself becomes a regulatory act marred by indeterminacies and a lack of clarity. By limiting the analysis of the practical consequences of a decision to those foreseeable by the public manager, space is also opened for unpredictability, relying on the hope that the public agent can conjecture probable future scenarios. Marçal Justen Filho understands that the provision in Article 20 of the LINDB does not establish an understanding grounded in “a consequentialist conception of law”. It merely requires “that the state authority take into account the practical consequences of the decision to be adopted, including for the purpose of evaluating the proportionality of the decision to be made” (2018, p. 38).

From another perspective, which shows greater concern with the enacted text and with which there is agreement, Emerson Gabardo and Pablo Ademir de Souza argue that the norm, contrary to its stated purpose, leads to the weakening of positive law, insofar as the traditional method of legal analysis gives way to a supposed predominance of pragmatism (a framework composed of consequentialism, antifoundationalism, and contextualism) as the primary guiding principle (Gabardo; Souza, 2020, p. 118-119).¹³ Furthermore, they contend

¹³ The authors’ doctrine is utilized to differentiate pragmatism (a framework that encompasses the practical consequences of an action or decision) from consequentialism

that beyond issues related to the possible lack of scientific grounding in the methodology employed during the descriptive phase of consequentialism (i.e., the mere forecasting of consequences), practical difficulties tend to hinder a properly substantiated consequentialist decision, given that studies and technical opinions commissioned by competent bodies and the judiciary can be costly and subject to time delays. According to the authors, the applicability of Article 20 of the LINDB tends toward the following scenario: (i) the duty to provide justification does not resolve problems related to justification “neither when faced with principled arguments nor when faced with consequentialist arguments”; (ii) even if justification problems were solved, consequentialist analyses would be impeded by the “lack of isonomy inherent in casuistic outcomes”; (iii) the absence of a scientific basis to support consequentialist arguments reduces the identification of effects to “the intuitive sense of judges who, on average, lack technical knowledge for this purpose”; (iv) the ideal scenario, “in which all decisions based on consequentialist arguments are supported by scientific studies and expert opinions, encounters obstacles in temporal and financial terms, given the time and cost that commissioning studies for each case would demand”; and (v) even if the envisioned scenario were realized, it would still be tied to judgments of probability, which, by itself, does not guarantee legal certainty or the justice of the decision (Gabardo; Souza, 2020, p. 119–120).

In a similar vein, Maurício Zockun and Carolina Zancaner Zockun clarify, when discussing the balance between legal consequentialism and economic consequentialism, that “the economic consequences of judicial decisions cannot be merely rhetorical arguments.” Because of this, the legal practitioner, using the tools provided by the normative system, must ensure that “qualified interpreters” provide opinions on the concrete case (Zockun; Zockun, 2024). The

(a characteristic of pragmatism whose focus lies on the consequences of the act).

legislative amendment's intention is valid, as it is concerned with the practical effects of judicial, administrative, and oversight decisions. However, the criticisms are crucial to ensure that the application of the LINDB is conducted appropriately. Reflection on consequences requires knowledge and a thorough analysis of potential scenarios (not to mention that risk and the "unexpected" are intrinsic to life). On the other hand, regarding the concrete establishment of the principle of legal certainty within the Brazilian legal system, the legislator "hit the mark." Especially in the telecommunications sector, permeated by continuous technological advancement, the existence of norms that guarantee a certain degree of predictability for operators to act proves to be important for market development.

On one hand, the presence of regulatory risks leads to private disinvestment in regulated sectors, "since the constant threat of abrupt legislative changes constitutes an unacceptable level of unpredictability in a competitive environment" (Cardoso; Soares, 2022, p. 167). On the other hand, the existence of clear normative instructions, ordinances, and resolutions – characterized by a low degree of abstraction and a high degree of concreteness –

enables private agents to understand the limits of their actions more predictably. Consequently, this allows regulators themselves to better comprehend market behavior. In an environment of continuous technical development, where technological processes are also marked by uncertainty, it can be concluded that the establishment of predictable regulatory public policies is a factor with a positive impact on the progress of the telecommunications sector (Rauen, 2011, p. 100).

In this regard, Article 23 of the LINDB asserts that an administrative decision imposing a new obligation or condition must foresee a transition regime to ensure its compliance in a manner that is proportional, equitable, efficient, and without prejudice to general interests. Floriano Azevedo Marques Neto's example on this matter is precise: if Anatel issues a decision, fully within its regulatory competencies, that redefines the concept of the efficient and proper use

of the radiofrequency spectrum and alters the allocation of frequency bands, it must establish a reasonable timeframe with clear transition rules that distribute the burden of this frequency band reallocation among the different telecommunications service providers (2018). Although a regulatory administrative decision may bring changes to the sector, it is not exempt from indicating ways to mitigate its negative externalities and ultimately guarantee greater efficiency to the act that proposed the alteration. Thus, there is a clear need for “a balance in the imposition of new requirements” (Nohara, 2024, p. 86). Similarly, although a norm that mandates or encourages the use of new technologies brings security for companies to undertake proactive changes in the telecommunications sector (Zockun; Cabral; Sarai; Zockun, 2024), it must also consider the differing scales of companies operating in the market.

Although the principle of legal certainty has conservative characteristics, technological advancements demand a harmonious approach between law and factual reality. In this sense, Celso Antônio Bandeira de Mello argues that legal certainty assists by allowing changes imposed by the legal system (in pursuit of the public interest) to occur “causing the least possible trauma, the least disturbance, to past legal relationships that have persisted over time or depend on the occurrence of future anticipated events” (Mello, 2023, p. 108).

Therefore, the provisions of the LINDB must be observed within the scope of Anatel’s and Ancine’s activities, especially regarding decisions that consider the possible consequences of administrative acts impacting the telecommunications sector. This does not imply that the reasoning and motivation behind the decision should rely solely on the regulator’s “crystal ball”. On the contrary, within the framework of their technical and independent analysis, it is incumbent upon these agencies to ensure the production of technical studies, sectoral documents, the use of mechanisms for public participation, and dialogic engagement with the regulated sector to guarantee “legal certainty and predictability for the actions of market agents” (Saikali; Schier, 2020, p. 111).

4 FINAL REMARKS: DEVELOPMENT AND PREDICTABILITY

Administrative-economic regulation is essential to ensure the attainment of constitutional objectives for economic sectors and for the adequate provision of public services and economic activities in the strict sense. That is, the object of regulation may be governed by either a public law or a private law regime. This does not alter, however, the diligence and care that must be employed in the regulator's actions to maintain the proper functioning of the market and to realize the public interest.

In this sense, the use of promotion as an instrument to bolster the telecommunications sector – especially through CIDEs – assists in state participation in projects within the field and in the sector's development itself, under the logic of an administrative action that also invests in technological environments present in civil society.

In turn, the effective observance of the principle of legal certainty strengthens not only proper administrative action as the organizer and regulator of economic activities but also provides the regulated economic agent with the predictability of public action. This allows for a more solid relationship between the regulator and the regulated entity, which enables the mitigation of the information asymmetry usually characteristic of regulation.

REFERENCES

ANDRADE, Giulia de Rossi. O papel do fomento no desenvolvimento sustentável de cidades participativas. **Revista Eurolatinoamericana de Derecho Administrativo**, Santa Fe, vol. 9, n. 2, p. 373-396, jul. /dic. 2022. p. 385-386.

ANTIQU, Analía. Organización administrativa para la innovación. **Revista de Direito Econômico e Socioambiental**, Curitiba, v. 14, n. 3, e242, set./dez. 2023. p. 32-36.

BELLOCCHIO, Lucía; SANTIAGO, Alfonso. Estado digital de Derecho. **A&C – Revista de Direito Administrativo & Constitucional**, Belo Horizonte, ano 20, n. 80, p. 87-102, abr./jun. 2020. p. 98.

BERCOVICI, Gilberto. Segurança jurídica, direito público, relações econômicas e o princípio nemo potest venire contra factum proprium. **R. Fórum Dir. Fin. e Econômico – RFDPE**, Belo Horizonte, ano 13, n. 23, p. 161-170, mar./ago. 2023.

BUKHT, Rumana; HEEKS, Richard. **Digital Economy Policy in Developing Countries**. 2018. DOI: 10.13140/RG.2.2.24272.15364. Disponível em: https://www.researchgate.net/publication/327872098_Digital_Economy_Policy_in_Developing_Countries. Acesso em: 24 set. 2021.

CARDOSO, Henrique Ribeiro; SOARES, Alexandre Augusto Rocha. Direito subjetivo à regulação eficiente: a natureza dúplice da Análise de Impacto Regulatório. **Revista de Direito Administrativo**, Rio de Janeiro, v. 281, n. 2, p. 139-174, maio/ago. 2022.

CARRAZZA, Roque Antonio. **Curso de Direito Constitucional Tributário**. 34. ed. rev., atual. e ampl. São Paulo: Editora JusPodivm, 2023.

COUTINHO, Diogo Rosenthal. **Direito e Economia Política na Regulação de Serviços Públicos**. Rio de Janeiro: Saraiva Jur, 2014. E-book. p. 48. Disponível em: <https://integrada.minhabiblioteca.com.br/reader/books/9788502221727/>. Acesso em: 23 nov. 2024.

DI PIETRO, Maria Sylvia Zanella. **Direito administrativo**. 36. ed. Rio de Janeiro: Forense, 2023.

FARIA, Luiz Alberto Gurgel de; SANTOS, Lucilene Rodrigues; CARDOZO, Marcela Holanda Ribeiro. Segurança jurídica, coisa julgada e os precedentes vinculantes em matéria tributária na jurisprudência do Supremo Tribunal Federal. **Revista de Investigações Constitucionais**, Curitiba, vol. 10, n. 3, e248, set./dez. 2023.

GABARDO, Emerson; VIANA, Ana Cristina Aguilar; FREITAS, Olga Lúcia Castreghini de. The digital divide in Brazil and the accessibility as a fundamental right. **Revista Chilena de Derecho y Tecnología**, v. 11, n. 2, p. 1-26, 2022.

GABARDO, Emerson; SOUZA, Pablo Ademir de. O consequencialismo e a LINDB: a cientificidade das previsões quanto às consequências práticas das

decisões. **A&C – Revista de Direito Administrativo & Constitucional**, Belo Horizonte, ano 20, n. 81, p. 97-124, jul./set. 2020.

GUERRA, Sérgio. **Discrecionalidade, regulação e reflexividade**: uma nova teoria sobre as escolhas administrativas. 4. ed. revista e atualizada. Belo Horizonte: Fórum, 2017.

JUSTEN FILHO, Marçal. Art. 20 da LINDB: Dever de transparência, concretude e proporcionalidade nas decisões públicas. **Revista de Direito Administrativo**, Rio de Janeiro, Edição Especial: Direito Público na Lei de Introdução às Normas de Direito Brasileiro – LINDB (Lei nº 13.655/2018), p. 13-41, nov. 2018.

JUSTEN FILHO, Marçal. **Curso de Direito Administrativo**. 15. ed. Rio de Janeiro: Forense, 2024. *E-book*. Disponível em: <https://integrada.minhabiblioteca.com.br/reader/books/9786559649822/>. Acesso em: 23 nov. 2024.

MARTINS, Vinícius Alves Portela. **Agência Nacional de Cinema – ANCINE**: Medida Provisória nº 2.228-1 de 6 de setembro de 2001 e Lei nº 12.485 de 12 de setembro de 2011. 2. ed. São Paulo: Thomson Reuters Brasil, 2020. Coleção Soluções de Direito Administrativo: Leis Comentadas. Série II: Regulação Econômica; V.7. NOHARA, Irene Patrícia Diom; MOTTA, Fabrício; PRAXEDES, Marco (Coord.).

MAZZUCATO, Mariana. **O Estado empreendedor**: desmascarando o mito do setor público vs setor privado. Tradução de Elvira Serapicos. São Paulo: Portfolio Penguin, 2014.

MELLO, Celso Antônio Bandeira de. **Curso de Direito Administrativo**. 36. ed. Belo Horizonte: Fórum, 2023.

MELO, Jussara Costa. Proposta do Serviço de Comunicações Digitais – SCD. **Revista de Direito, Estado e Telecomunicações**, v. 5, n. 1, p. 227-272, 2013.

MELO, Lígia Maria Silva de. Segurança jurídica: fundamento do Estado de Direito. **A&C – Revista de Direito Administrativo & Constitucional**, Belo Horizonte, ano 6, n. 25, p. 133-144, jul./set. 2006.

MUNÓZ, Jaime Rodriguez Arana. Nuevas tecnologías, Derecho administrativo y dignidad de las personas. **International Journal of Digital Law – IJDL**, Belo Horizonte, ano 4, n. 3, p. 93-109, set./dez. 2023.

NASCIMENTO, Juarez Quadros do. A Política Pública para Telecomunicações a ser feita. **Revista de Direito, Estado e Telecomunicações**, Brasília, v. 8, n. 1, p. 13-18, maio 2016.

NOHARA, Irene Patrícia. **Direito administrativo**. 13. ed., rev., atual. e ampl. Barueri [SP]: Atlas, 2024.

NOHARA, Irene Patrícia; COLOMBO, Bruna Armonas. Tecnologias cívicas na interface entre direito e inteligência artificial: Operação Serenata de Amor para gostosuras ou travessuras? **A&C – Revista de Direito Administrativo & Constitucional**, Belo Horizonte, ano 19, n. 76, p. 83-103, abr./jun. 2019.

RAUEN, Cristiane Vianna. Mudança tecnológica e definição da agenda de políticas públicas: regulação para universalização da banda larga no Brasil. **Revista de Direito, Estado e Telecomunicações**, v. 3, n. 1, p. 89-110, 2011.

RIBEIRO, Leonardo Coelho. A instrumentalidade do direito administrativo e a regulação de novas tecnologias disruptivas. **Revista de Direito Público da Economia – RDPE**, Belo Horizonte, ano 14, n. 56, p. 181-204, out./dez. 2016.

RODRIGUES, Marco Antonio; FERREIRA FILHO, Marcílio da Silva. Políticas públicas consensuais em momento de crise: como arranjos normativos viabilizam soluções criativas? **A&C – Revista de Direito Administrativo & Constitucional**, Belo Horizonte, ano 21, n. 85, p. 231-255, jul./set. 2021.

SAIKALI, Lucas Bossoni; SCHIER, Adriana da Costa Ricardo. Regulação como segurança jurídica para o desenvolvimento tecnológico audiovisual dos serviços via streaming. **Revista do Direito**, Santa Cruz do Sul, v. 2, n. 61, p. 99-114, maio/ago. 2020.

SAHEL, Jean-Jacques. Le rôle du régulateur à l'ère de la convergence numérique: nouveaux pouvoirs ou nouvelles approches? Vers une collaboration distribuée dans la politique et la réglementation des TIC. In.: GAFFAR, Dalila Rahmouni-Syed. **Les défis du numérique: penser et pratiquer la transition numérique**. Bruxelas: Éditions Bruylant, 2019. p. 115-121.

SANMIGUEL, Nancy Nelly González. La construcción de los derechos digitales bajo el régimen de la soberanía del Estado digital. **International Journal of Digital Law**, ano 3, n. 3, p. 85-99, set./dez. 2022.

SANTOS, Welder Queiroz de; MAIA, Grhegory Paiva Pires Moreira. Segurança jurídica, transformações no direito administrativo e deveres da administração pública implementados pela Lei nº 13.655/2018. **Revista de Direito Administrativo**, Rio de Janeiro, v. 280, n. 3, p. 93-120, set./dez. 2021.

SCHIER, Adriana da Costa Ricardo. **Fomento: administração pública, direitos fundamentais e desenvolvimento**. Curitiba: Íthala, 2019.

SCHOUERI, Luis Eduardo. **Direito Tributário**. 13. ed. Rio de Janeiro: Saraiva Jur, 2024. E-book.. Disponível em: <https://integrada.minhabiblioteca.com.br/reader/books/9788553620586/>. Acesso em: 25 nov. 2024.

SENA, Lucas. Regulação de novos mercados e inovação: uma abordagem a partir do Estado empreendedor e do interesse público. **Revista de Direito Setorial e Regulatório**, Brasília, v. 6, n. 1, p. 99-116, mai. 2020.

SILVA, Almiro do Couto e. O princípio da segurança jurídica (proteção à confiança) no Direito público brasileiro e o Direito da Administração Pública de anular seus próprios atos administrativos: o prazo decadencial do art. 54 da Lei do Processo Administrativo da União (Lei nº 9.784/99). **Revista de Direito Administrativo**, Rio de Janeiro, v. 237, p. 271-315, jul./set. 2004.

TELETIME. AGU define que radiodifusão não deve contribuir para o Fust. 20 set. 2019. Disponível em: <https://teletime.com.br/20/09/2019/agu-define-que-radiodifusao-nao-deve-contribuir-para-o-fust/>. Acesso em: 20 out. 2024.

VALIATI, Thiago Priess. **Segurança jurídica e infraestrutura: a segurança como dever dos poderes públicos e como direito dos agentes econômicos**. Rio de Janeiro: Lumen Juris, 2018.

VALLE, Vivian Cristina Lima López; FELISBERTO, Jéssica Heinzen. Administração Pública digital: limites e possibilidades em atenção à desigualdade social e ao custo dos direitos. **Revista Eurolatinoamericana de Derecho Administrativo**, Santa Fe, vol. 9, n. 1, p. 151-179, ene./jun. 2022.

VIANA, Ana Cristina Aguilar. Transformação digital na administração pública: do governo eletrônico ao governo digital. **Revista Eurolatinoamericana de Derecho Administrativo**, Santa Fe, vol. 8, n. 1, p. 115-136, ene./jun. 2021.

ZOCKUN, Carolina Zancaner; CABRAL, Flávio Garcia; SARAI, Leandro; ZOCKUN, Maurício. **Manual de Direito Administrativo digital**.

São Paulo: Almedina, 2024. E-book. Disponível em: <https://integrada.minhabiblioteca.com.br/reader/books/9788584937165/>. Acesso em: 23 nov. 2024.

ZOCKUN, Maurício; ZOCKUN, Carolina Zancaner. **Law and Economics à brasileira**: o consequencialismo inconsequente. Consultor Jurídico – Con-Jur. 13 out. 2023. Disponível em: <https://www.conjur.com.br/2023-out-13/zockune-zockun-law-and-economics-brasileira/>. Acesso em: 10 out. 2024.

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