

COMPETITION IN TELECOMMUNICATIONS

GLOBAL TREND AND BASIC DEFINITION

WORKSHOP ON COMPETITION AND TARIFF REGULATION
Hà Nội, Việt Nam, 30/10/2017



AGENDA

- **Telecommunications competition**
- **Practice: Brazilian High Speed Leased Lines market**
- **Sector specific regulation and competition law: different and/or complementary**
- **Trend in telecommunications competition**
 - How this affect legal framework and regulatory mechanism
 - Competent authorities for anti-competitive dispute settlement



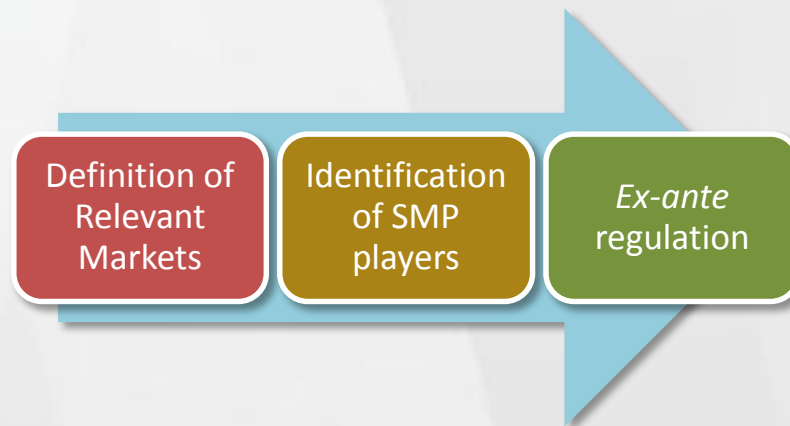
TELECOMMUNICATIONS COMPETITION

TELECOMMUNICATIONS COMPETITION

(...) principle of free, ample and fair competition among all providers (...)

Brazilian General Telecommunications Law (Law No. 9.472, of 16 July 1997)

- National Regulatory Authority looks to identify **markets** in which the competition is limited and probably wouldn't developed without public intervention.
- In principle, just companies that have **market power** are capable to **prejudice the competitive process**, creating inefficiencies as result.



TELECOMMUNICATIONS COMPETITION

- National Regulatory Authority looks to identify **markets** in which the competition is limited and probably wouldn't developed without public intervention.

Markets shall be identified with reference to their product and geographical dimensions (but may also consider other dimensions):



TELECOMMUNICATIONS COMPETITION

- In principle, just companies that have **market power** are capable to **prejudice the competitive process**, creating inefficiencies as result.

The existence of **Significant Market Power – SMP** is found by reference to a number of criteria and its assessment is based on a forward-looking market analysis based on existing market conditions. Administrations should consider a combination of the following criteria, *inter alia*, as determinative of SMP:

- market share; ←
- control of essential facilities; ←
- barriers to entry;
- potential competition;
- easy access to financial resources;
- strength of the countervailing power of consumers;
- economies of scale; ←
- economies of scope; ←
- vertical integration. ←

 **Brazil**

Principles for market definition and identification of operators with significant market power (ITU-T D.261)



TELECOMMUNICATIONS COMPETITION

- In principle, just companies that have **market power** are capable to **prejudice the competitive process**, creating inefficiencies as result.

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 102 of the Treaty on the Functioning of the EU (formerly Article 82 TEC)

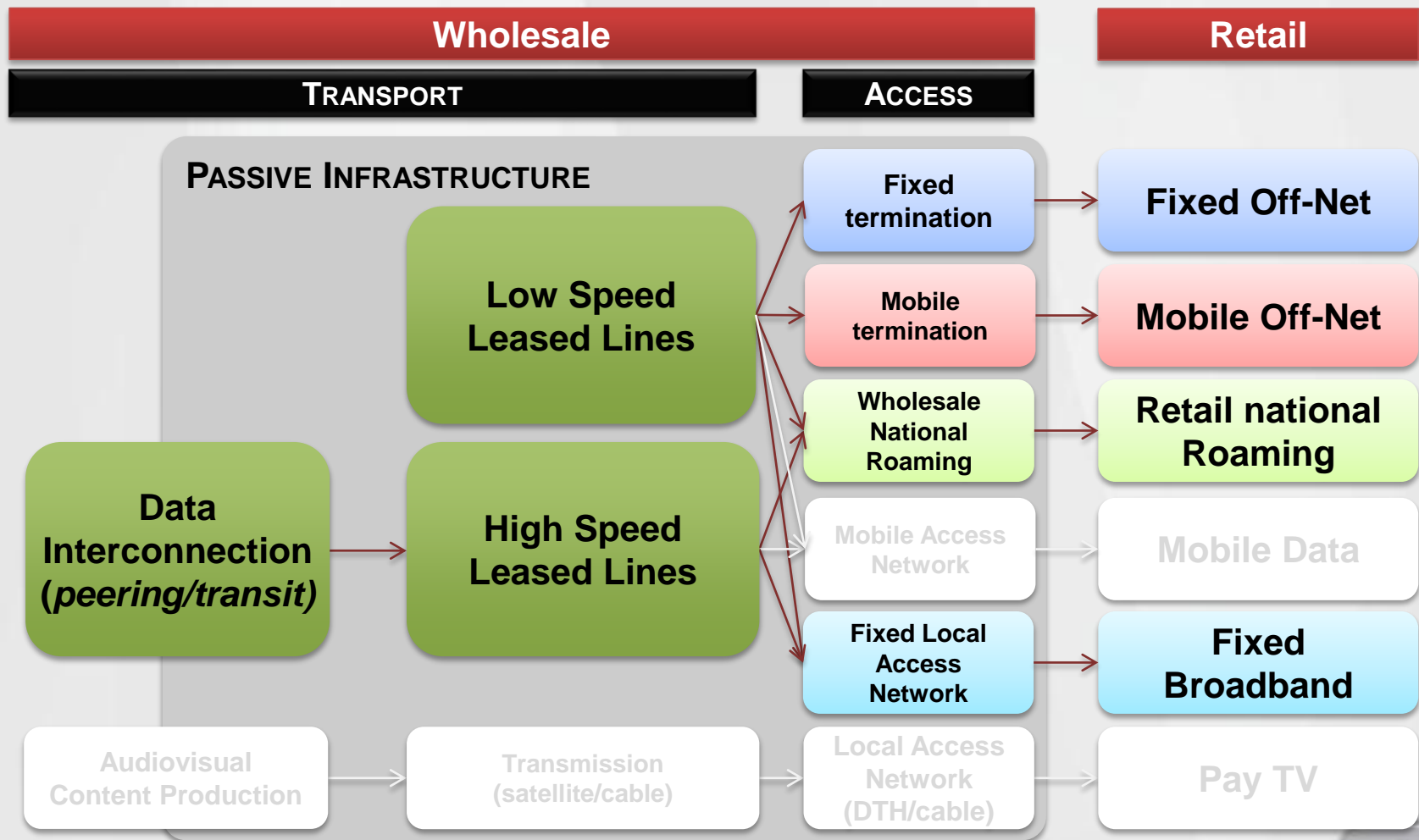


PRACTICE

WHOLESALE MARKET OF *HIGH SPEED LEASED LINES* IN BRAZIL

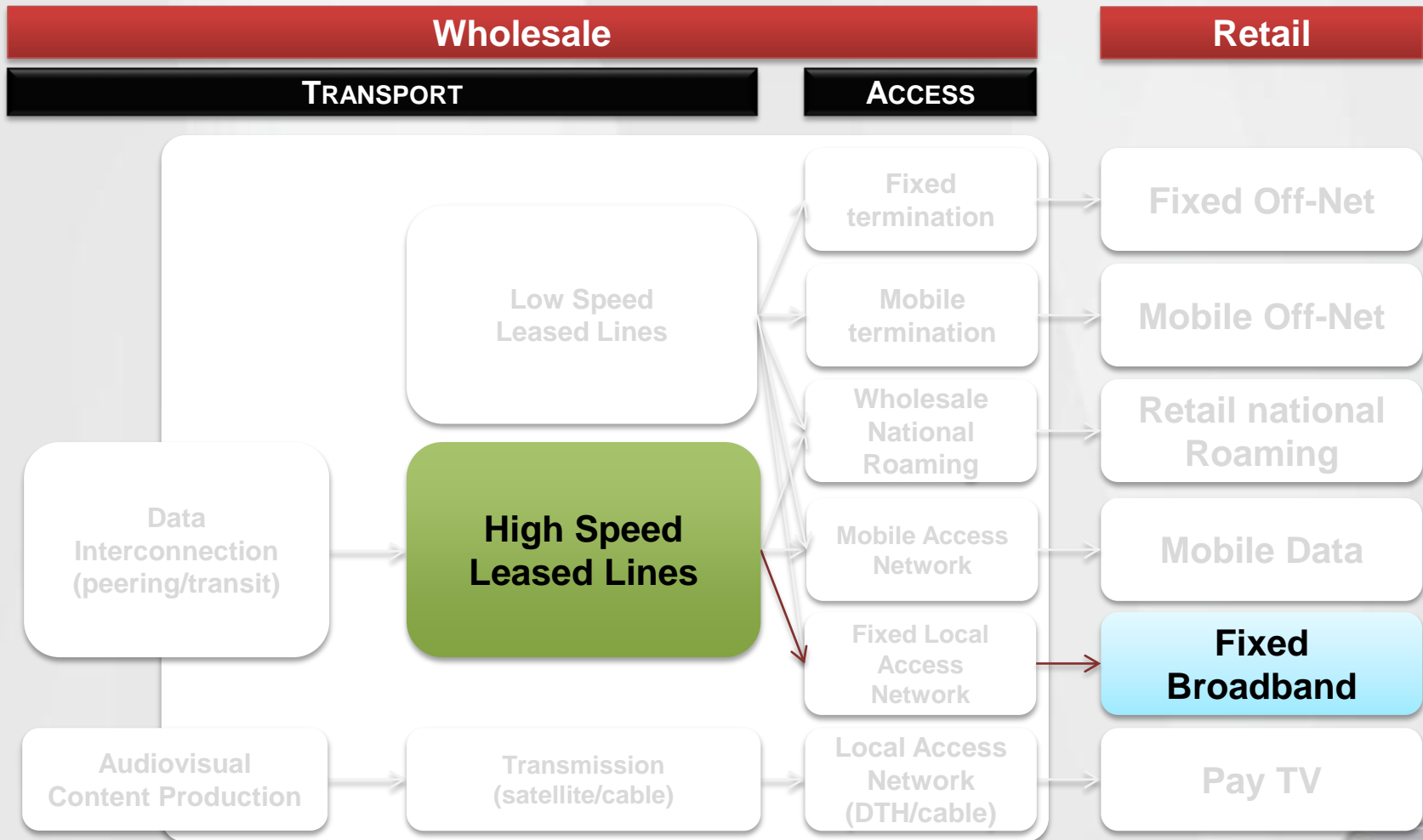
EVALUATED VALUE CHAIN

After 3 criteria test evaluation



EVALUATED VALUE CHAIN

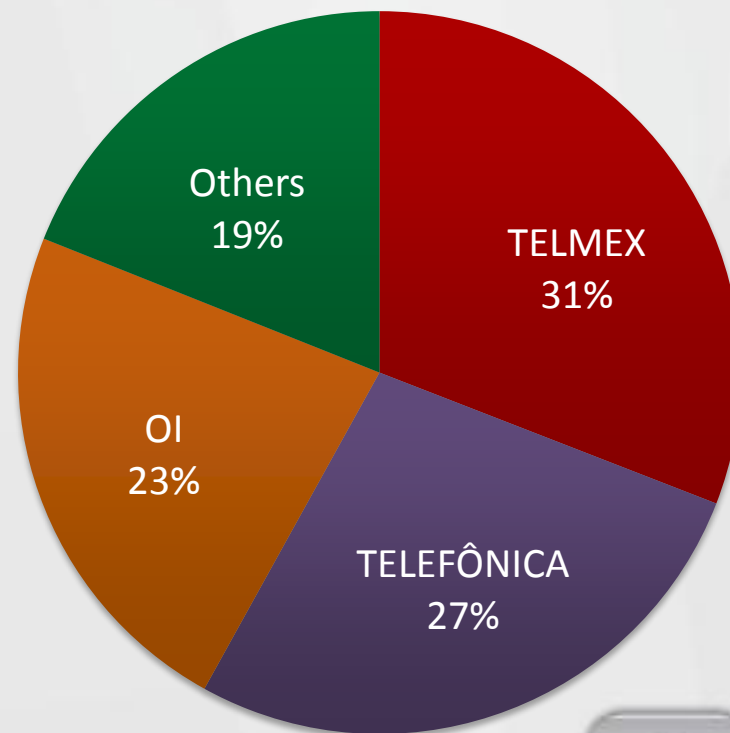
After 3 criteria test evaluation



RETAIL MARKET

Fixed Broadband market

- More than 8 thousands companies licensed to provide fixed broadband
- Gross Revenue: 2016 – USD 10.4 b
2Q17 – USD 5.4 b
- Herfindahl-Hirschman index (HHI) = 0.241
- Density: \approx 13 access / 100 inhabitants
 \approx 41% domiciles



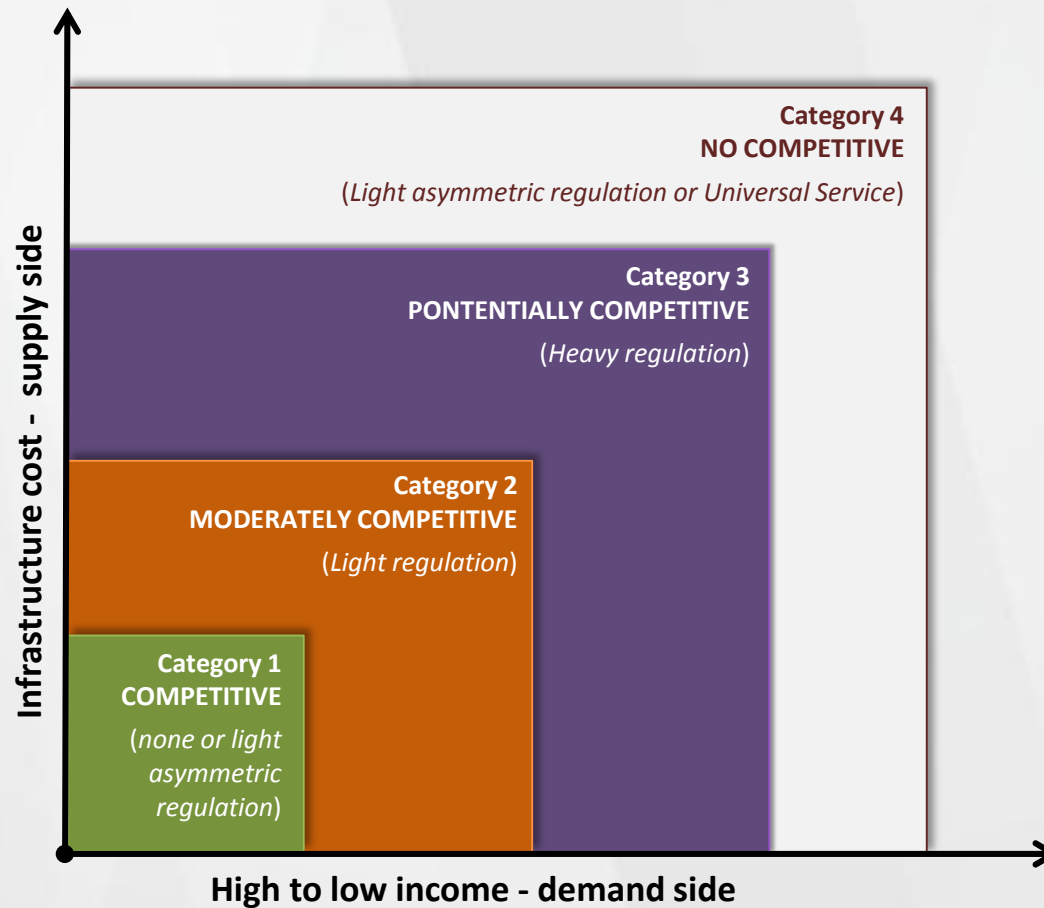
Source (aug./17): <http://www.anatel.gov.br/dados/>
<http://www.telebrasil.org.br>

1 USD = BRL 3,1997 (23/10/2017)



NEW COMPETITION FRAMEWORK PROPOSAL

- Cities classified according to the competitiveness level in each market.

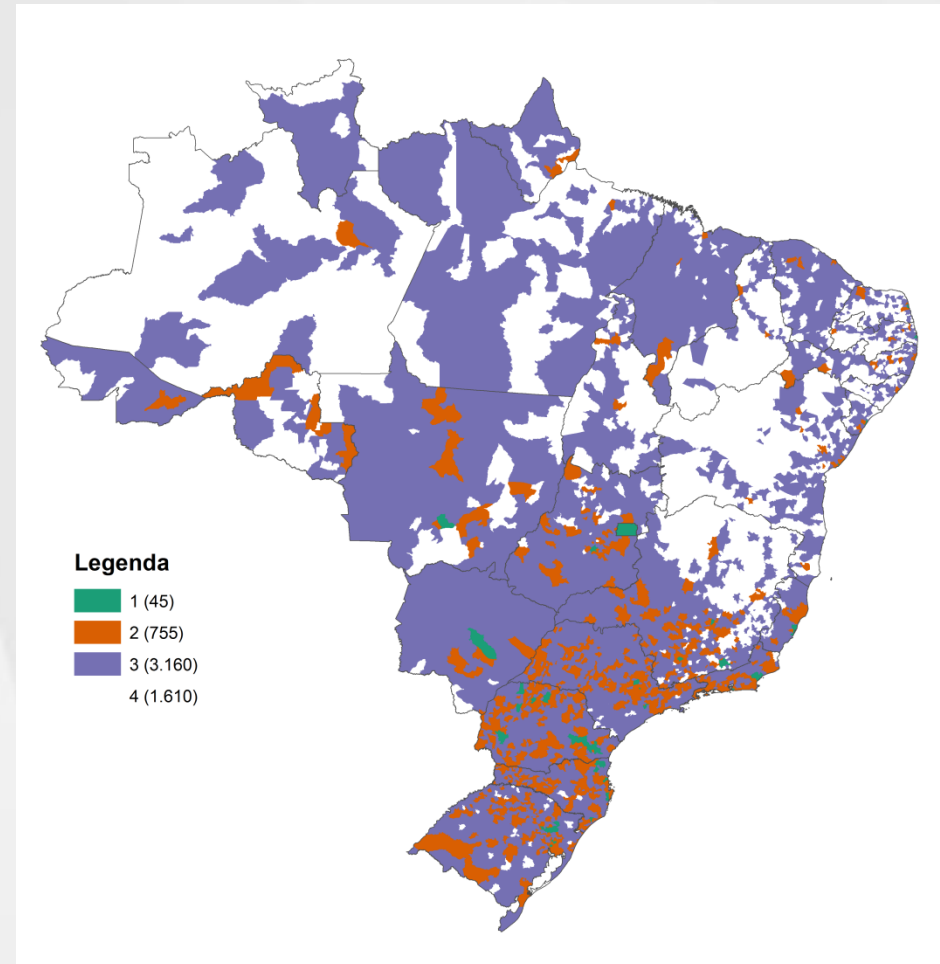


RETAIL MARKETS

Fixed Broadband market

CLASSIFICATION PARAMETERS

- Herfindahl-Hirschman index (HHI);
- Number of fiber transport network available at the city;
- Service density;
- Potential demand.



Three-criteria test for markets susceptible to *ex-ante* regulation



01

High and non-transitory structural, legal or regulatory barriers to entry are present

Complicate construction of the network to route the traffic from access network

- - -

Vertical integration and economy of scale hold by infrastructure owner.



02

Market structure does not tend towards effective competition within the relevant time horizon

Duplication of the existing infrastructure is impossible or extremely difficult

- - -

High cost to build new infrastructure

- - -

No alternative technology to reduce the cost



03

Competition law alone is insufficient to adequately address market failure(s)

Structural problem

- - -

Sectorial regulation more efficient than the competition regulation



Identification of operators with SMP

Market share

01

Presence of fiber on the county that have 5 or more suppliers of fiber

Economies of scale

02

Presence at counties that together have the population $\geq 1/3$ of *mesoregion*.

Economies of scope

03

Presence of fiber on the county

Control of essential facilities

04

Presence of fiber on the county

Vertical integration

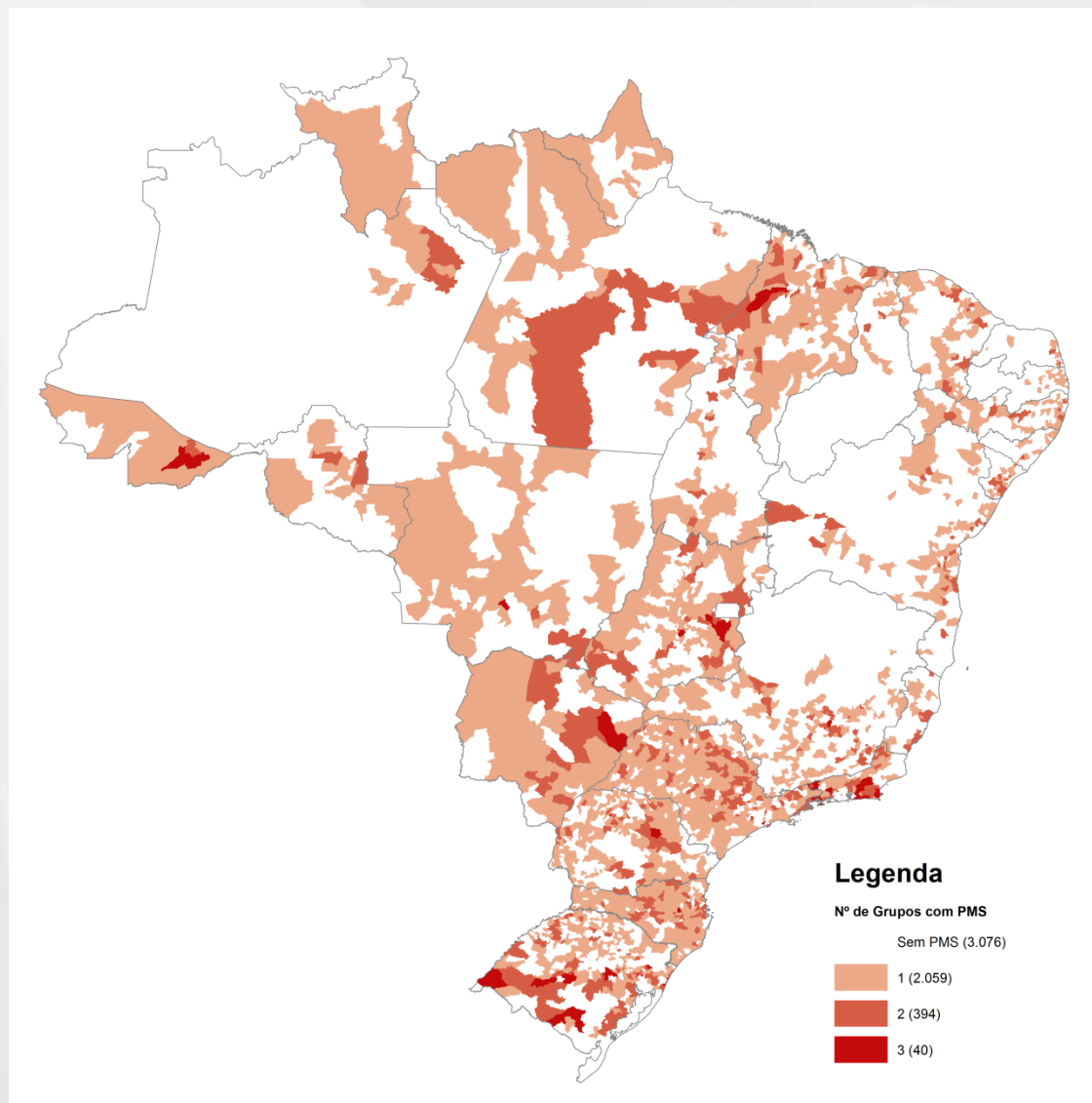
05

Presence of fiber on the county and more than 20% of market share at Fixed Broadband or Mobile services (*data only*) .

Geographical dimension: MUNICIPAL

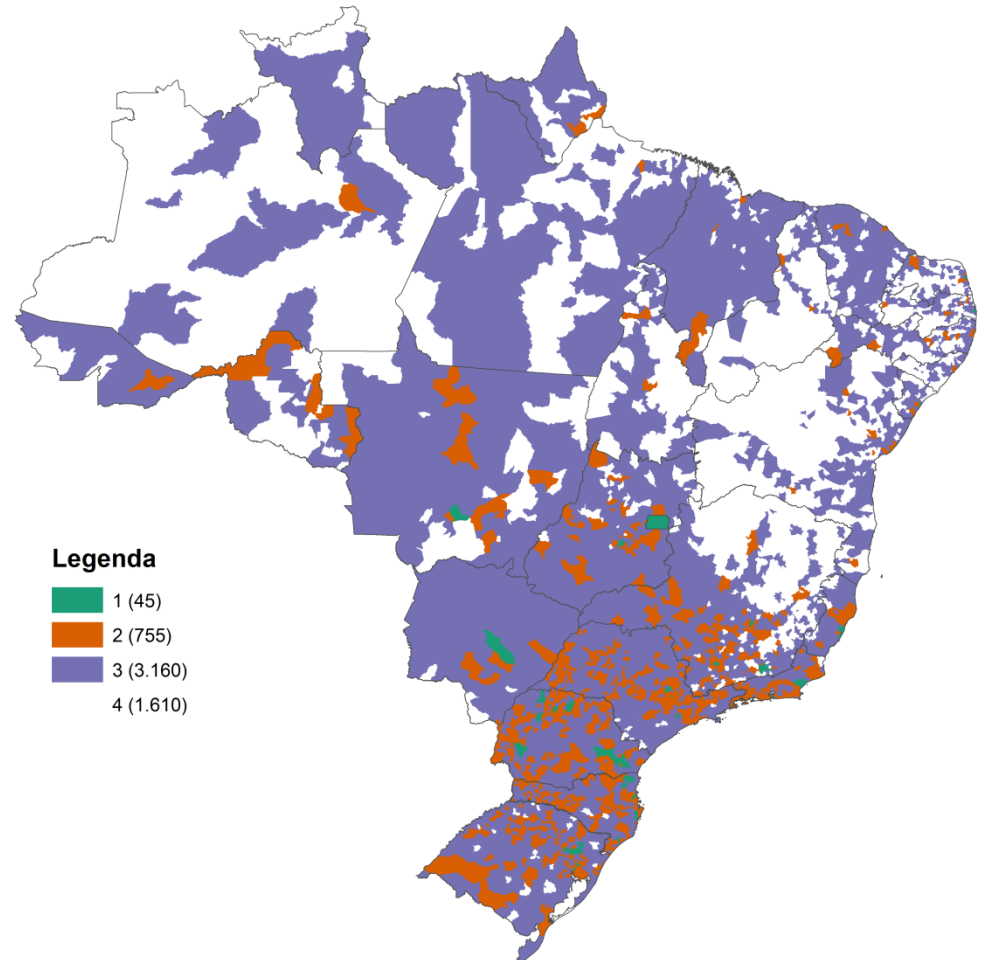


Identification of operators with SMP



ASYMMETRIC MEASURES IN WHOLESALE MARKETS

Category	High Speed Leased Lines
1	None
2	Transparency
3	Transparency with Price Control (FAC-HCA)
4	None
Relevant Market	Municipal



FAC-HCA = Fully Allocated Costs - Historical Cost Accounting

SECTOR SPECIFIC REGULATION AND COMPETITION LAW: DIFFERENT AND/OR COMPLEMENTARY

TRADITIONAL ANTITRUST METHODOLOGY

- Most of traditional antitrust methodology applies to Telecommunications sector
- Some adjustments are required considering structural aspects of the telecommunications sector:



Network externality



High economies of scope



Sunk costs



TRADITIONAL ANTITRUST METHODOLOGY

- **Additionally, the “*timing*” of the measures are very important:**
 - Usually the Competition Law have an *ex post* approach, while the Specific Regulation have an *ex ante*
- **The competition authority usually wait the misconduct of the agents to act, in other hand, the sector authority (National Regulator, Ministry, etc.) attempt to identified the market failures to provide an *ex ante* measures in view to fix or attenuate the impacts of these failures.**
- **The sector authority it’s not restricted to the *ex ante* approach, the dispute settlement are a way to conduct a *ex post* investigation.**
- **The authorities not compete, usually they work together.**



TREND IN TELECOMMUNICATIONS COMPETITION

HOW THIS AFFECT LEGAL FRAMEWORK AND
REGULATORY MECHANISM

ORIGINAL LEVEL PLAYING FIELD

High sunk costs.
Network externalities.
Economies of scale and scope.
Termination Monopoly.



Mandatory network opening.
Conditions approved in economic terms.
Administrative Arbitration.
Price control



NEW LEVEL PLAYING FIELD

**New
stakeholders**

**New essential
facilities**



Performance

**New
Business**

**Digital
Transformation**



TREND IN TELECOMMUNICATIONS COMPETITION

COMPETENT AUTHORITIES FOR ANTI-COMPETITIVE
DISPUTE SETTLEMENT

NEW RELATIONSHIPS...



Big Data



Digital
Financial
Services



IoT



Content



DISPUTE SETTLEMENT

- **New business models requires new approaches on conflict solutions.**

“Regulatory agencies should use a complaint resolution process to resolve disputes with emphasis on expediting a solution rather than applying service definitions that trigger different regulatory status and burdens.”

Rob Frieden. Conflict in the Network of Networks: How Internet Service Providers Have Shifted From Partners to Adversaries



THANK YOU.

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