

# Infrastructure Reform and Regulation: Lessons from Brazil

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# Electricity: Problems

- ▶ Incomplete privatization
- ▶ Competition in generation never materialized
- ▶ Wholesale market never worked
- ▶ Lack of adequate planning and coordination
- ▶ Bad timing
  - Privatizations started in 1995; ANEEL was not fully established before 12/1997; MAE was established in 05/98 (not functional before 2000)
- ▶ Consequences:
  - Energy shortage (06/2001 – 02/2002)
  - GDP growth only 1% in 2001 (projected 4%)

# Telecom: Problems

- ▶ Competition in local service never took off
- ▶ ANATEL too powerful, being the regulator, the policy maker and the antitrust authority at the same time
- ▶ Conflicts in interconnection
- ▶ In some states, 63% of the telephone bill consist of taxes
- ▶ Little attention paid to low-income consumers' ability to pay their bills

# Developments under Lula: Electricity

## ► New Model

- Energy auctions: Winner is the one who offers least revenue instead of higher price
- MAE extinct, energy pool created
  - Price will be a mix of “old” and “new” energy
- Contracting can happen in the pool or in a complementary “free market”

# Developments under Lula: Telecom

- ▶ Tariff rebalancing during the first semester of 2003
  - Dispute about index to be used: Despite very vocal opposition from Minister of Communications and many other authorities, ANATEL decided to use the original index in the contract, IGP-DI, whose increase in 2002 was much higher than the increase of the official inflation index (IPCA)
  - Average tariff increase of 24.5%
  - Minister of Communications immediately went to the media and encouraged consumers to challenge the regulatory agency's decision in the courts

# Developments under Lula: Telecom

- ▶ Tariff rebalancing during the first semester of 2003
  - Wave of contradictory judicial decisions, from courts all over the country, followed, prompting one of Brazil's higher courts (STJ) to step in. Final decision to use IPCA.
- ▶ Tug of war between Executive and Anatel
  - President of Anatel resigns

# Developments under Lula: Regulating the Regulators

- ▶ Criticism of regulatory agencies
  - Independent from Executive and Legislative, almost a separate power
  - Subject to capture by regulated companies
  - Not concerned with social goals
- ▶ New project
  - Transfer of powers (formulation of public policies and concession granting) from regulator to supervising ministry
  - Duration of directors' terms reduced, reappointment introduced

# Developments under Lula: Regulating the Regulators

- ▶ New project
  - Regulators to sign new “management contracts”
    - What will be the criteria?
  - Regulatory agencies weaker, but project less intrusive than before
- ▶ Projects subject to public scrutiny and discussed in Congress.
- ▶ Government realized it needed to maintain credibility in order to attract investors.



# Future of privatization and regulation

## ► What needs to be done

- Better designed sector models
- Ministries need to be equipped with staff and tools to carry out policy and planning
- Move ahead with partial reforms
- Strengthen regulatory agencies
- Reduce cost of capital
- Develop finance and risk management instruments
- Judiciary should be concerned only with enforcing due process, avoiding politization

# Lessons

- ▶ Mistakes by regulators will always happen.
- ▶ Private participation likely as long as governments have severe budget constraints.
- ▶ Reforms will only succeed in the long run if institutions are mature enough to keep the Executive from abruptly changing the rules of the game due to macroeconomic crisis, ideology or populism.