

How regulatory agencies are governed

Professional directors make a difference in how agencies operate.

Solange Monteiro

THE EROSION OF THE EFFECTIVENESS of federal regulatory agencies in recent years has contributed to the poor Brazilian business environment. Victims of both political interests and government regulatory activism—such as the misguided interventions in the electricity sector since 2012—serious governance problems in regulators can be a disincentive to both investment and economic activity.

In 2015 the Center for Studies in Regulation and Infrastructure of Getulio Vargas Foundation (Ceri-FGV) initiated a study of what the data of nine federal regulatory agencies reveal. According to Sebastian Azumendi, Ceri researcher, "Unlike other studies supported by personal interviews and perceptions, we have set up a broad data base to bring empirical evidence to the debate."

For one aspect of the study, Ceri researchers drew up an index to measure the professionalism of agency directors since each agency opened for business. The professionalization index (ratings are between 0 and 1) has three items: the academic background of directors; their political ties—party affiliation and whether they ever held political office; and whether they were appointed after a hearing in the Senate or were directly appointed by the president.

The results indicate wide variation in the professionalization of agencies over time, with ups and downs that show discontinuities in

the evolution of most of them. Joisa Dutra, Ceri director, points out that decline in professionalism in many cases cannot be attributed only to a single government; agencies perform differently in each political cycle. In the second Cardoso administration the more professional agencies were the National Water Agency (ANA), National Waterway Transportation Agency (ANTAQ), and National Land Transportation Agency (ANTT). In the two Lula administrations, the Brazilian Electricity Regulatory Agency (ANEEL), National Heath Agency (ANS), and National Civil Aviation Agency (ANAC) stood out. In the first Rousseff administration the National Petroleum Agency (ANP) and the National Telecommunications Agency (ANATEL) performed best.

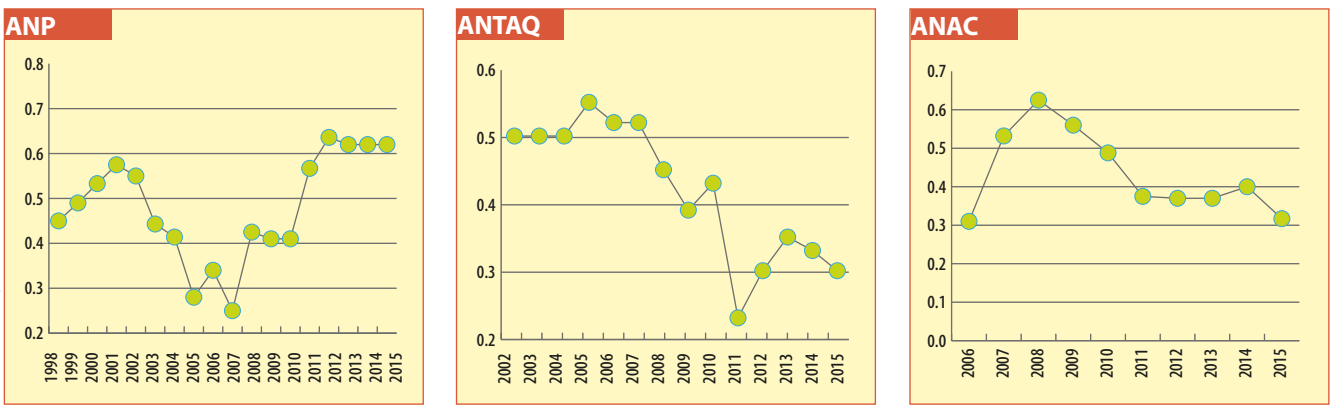
The agency that has recorded the highest level of professionalism since its establishment —and the highest of all agencies in 2015—is ANP, which scored 0.62. Azumendi points out that among the factors that contribute to the good ANP performance is its well-trained executives,

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adding, "In general, agencies whose industry is more technically complex require more training." Among the 100 directors who have passed through or are in the ANP, 36 have PhDs, 24 have master's degrees, and 40 bachelor degrees. Next is ANAC (25 PhDs, 25 master's and 50 bachelor's) and ANEEL (24, 16, and 60). However, although ANAC has highly trained directors, it scored lowest on the index in 2015, mainly because, among other factors, one of five board members was a political appointment.

Dutra points out that one factor that makes it difficult to attract directors with high academic degrees is remuneration: "A director in a federal

Index of professionalism (0 to 1) of the directors of the regulatory agencies



Source: Ceri-FGV, 2015.

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regulatory agency earns less than the starting salary of an employee with a college degree in the same agency. This is a perverse incentive." she says. Directors' salaries are also limited because of budget restrictions, according to CERI researchers, in some agencies, among them ANP, ANEEL, the National Health Surveillance Agency (ANVISA) and ANTT.

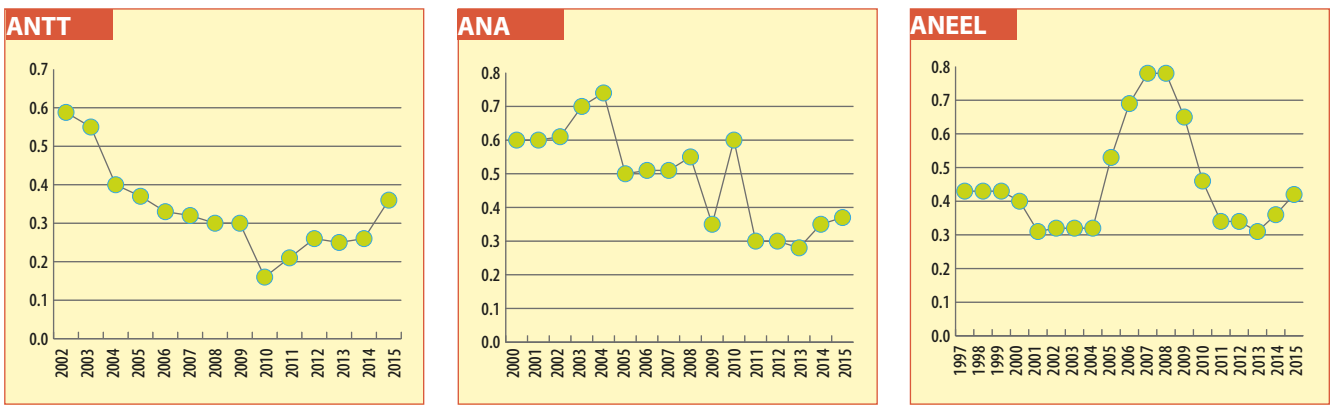
Temporary director, permanent problem

Many agencies scored low on the professionalism index because they were headed by acting directors for long periods. In this regard, ANTT scored lowest: since its inception in 2002 it has been governed by acting directors for almost 10 years. "This is dramatic because ANTT is responsible for regulation of sectors involved in the government's Logistics Investment Plan (PIL)," Dutra says. She notes, however, that the process was reversed last year with the appointment of the current general director. Just above ANTT are ANTAQ and ANATEL, which has had the largest number of acting directors: 21.

The Ceri researchers looked into whether the extended temporary administrations had to do with government difficulty in getting nominations confirmed by the Senate. However, Azumendi says, "The vast majority of government nominees were approved by the Senate, so one cannot attribute [extended temporary administrations] to the Senate. In our view, the difficulty in appointing managers is related more to the political apparatus," says Azumendi.

Dutra points out that the analysis of the

Index of professionalism (0 to 1) of the directors of the regulatory agencies



Source: Ceri-FGV, 2015.

professionalism of agency directors helps to illuminate factors that contribute to the decision-making process. She points out that the consolidation of the workforce in each agency is strengthening agencies' technical culture and decision-making process. "But deterioration in these agencies is always possible, so we looked into factors that can contribute to deterioration: budget restrictions, lack of adequate remuneration of directors, political appointees, and absence of a thorough selection process, with examination by a Senate panel," Dutra said. She emphasizes that the selection of an executive board that has highly trained directors from different specialties is essential to the proper functioning of a regulator.

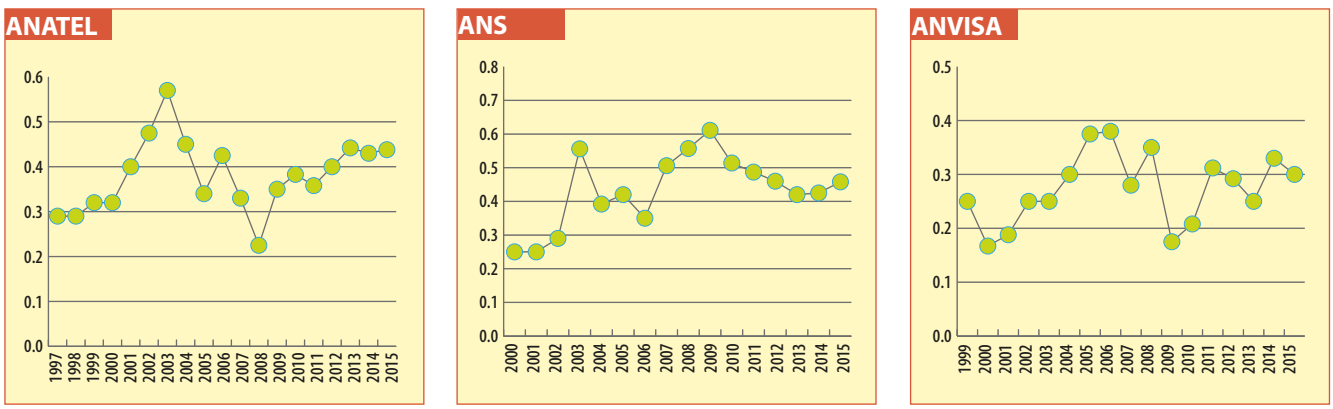
More participation

How to improve the performance of regulatory agencies is not a just a question in Brazil. In the latest issue of its *Regulatory Policy Outlook*, released in October, the Organisation for Economic Co-operation and Development (OECD) pointed out that the issue has been on the working agenda of member countries since 2011. According to the OECD, after the global crisis, in most countries fiscal constraints and increased unemployment caused pressure for improvements in the regulatory framework to mitigate risks and stimulate the economy.

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The OECD *Outlook* emphasizes the need for greater engagement of all parties—not just regulators and experts, but also businesses, citizens, and groups representing them. According to the *Outlook*, the economic crisis

Index of professionalism (0 to 1) of the directors of the regulatory agencies



Source: Ceri-FGV, 2015.

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that began in 2008 has undermined public trust in government, so that greater transparency and openness in decision-making have become crucial to ensure the legitimacy of regulatory decisions. That is why there has been an explosion of government initiatives involving social media, such as Linkedin, Facebook, and Twitter, as well as websites and discussion forums.

The CERI study is also looking into transparency and openness. According to Dutra, ANEEL is a pioneer in openness and transparency initiatives: it has been broadcasting weekly public meetings on the Internet for over 10 years. The study analyzed over 1,000 public consultations and hearings ANEEL has held since 1998. The result repeats the findings in other countries: low participation, especially of users. Dutra explains: "Of course there are asymmetries. [Electricity] companies have more ability to understand and influence the decision process because it involves costs to them and technical knowledge; users will participate more the more they understand." Another point that influences participation is the topics discussed. For ANEEL there is more activism around auctions and tariff decisions, "especially because hearings in the case of tariffs are mandatory," Dutra says.

Azumendi points out that agencies should promote greater participation by encouraging and educating user organizations and other NGOs, among others. "This is a challenge that must be seen as a regulator responsibility, not a burden on consumers. Regulators should be facilitators," he says. Dutra suggests the promotion of audiovisual content—in models similar to TED talks (www.ted.com)—in order to help more people to understand the content and encourage more contributions to the regulatory debate. "Greater inclusion of consumers is on the government agenda," she says.

After analyzing the professionalism of the boards of regulatory agencies, transparency, and participation in the regulatory process, Ceri researchers are now studying the decision-making process by analyzing board minutes and the effectiveness of comments contributed in consultations and hearings. "We know that regulation has two dimensions: content and form. Content is price, quantity, quality; but the economic literature shows that the governance of regulatory agencies has a positive effect on how a regulated sector performs," Dutra concludes.