

# Supreme Audit Institutions in search of accountability and performance improvement in regulatory utility agencies

**A comparative analysis of oversight practices in the telecommunication sector regulators in Brazil and the United States in the last decade**

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## 1. INTRODUCTION

This paper is the resume of a research carried out during the International Fellowship Program of the US Government Accountability Office, attended by the Brazilian SAI *Tribunal de Contas da União* between May and August of 2004 among other eighteen SAI's. It is an attempt to provide an argumentation about recent public management policies of audit and evaluation conducted by Supreme Audit Institutions (SAI) in utility regulatory agencies. Such policies seem to be reflecting two doctrines. A first one is that a public organization of external control of the bureaucracy should balance and integrate the pursuit of two types of accountability of such agencies, namely, compliance accountability and performance accountability. This paper relies on the performance accountability stream of SAI practices. A second doctrine is that - on the one hand - a good design of the regulatory system should guarantee that agencies have degrees of independence as a way to fulfill their mandates, but should - on the other hand - be reviewed not only by compliance with norms and regulation, but also be assessed on their performance, including those related to the agencies regulatory goals.

The study provided here aims to fulfill three outcomes. A first outcome is to provide a review of some practices conducted by the Brazilian Court of Audit (*TCU*) and US Government Accountability Office – GAO in the utilities regulatory agencies. The issue here is to inform to whom and to what extent are those agencies accountable for in both National Public Administrations.

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## 2. THE US PUBLIC ADMINISTRATION AND THE ROLE OF THE GOVERNMENT ACCOUNTABILITY OFFICE (GAO)

Secondly, the paper identifies that a choice of Supreme Audit Institutions to conduct performance audit in regulatory agencies is a political phenomenon. As such, the paper should explain facts and events (Elster, 1989). An example of an event related to regulatory reform is the creation of many regulatory agencies in Brazil after privatization during the 1990's.

Another event relates to the Telecommunications Act of 1996 as a first major overhaul of telecommunications law in almost 62 years in the United States. A fact is that SAI's are increasingly shifting their type of control over the bureaucracy - including regulatory agencies - from compliance audit to performance audit.

This fact is a relevant policy issue for this strategy paper. Since it involves many countries and as a political phenomenon, analysis of this fact should engage discussion in a comparative perspective (Sartori, 1994:15). In this sense, a comparative analysis between the Brazilian SAI and the US SAI should help built explanations and evaluation of good regulatory systems designs and their control environment. The issue here is to elicit the proper role of Supreme Audit Institutions as a main actor in the regulatory arena.

Finally, practices in this paper are narrated as a way to bring lessons about performance auditing as conducted by both SAI – in a policy learning transfer context - from one country to another in the area of oversight of regulatory agencies. The issue here is to assess the extent and the ways accountability of regulatory agencies as conducted by Supreme Audit Institutions might be learned from one country to another.

Public Administration in the United States is fragmented in both governmental and bureaucratic levels. Arguably, power on policy-making process is divided between the executive and the legislature in an unclear design. The complexity of the policy-making geometry of Washington is metaphorically characterised as the 'iron triangle'. In this geometry, interest groups, congressional committees and subcommittees, and executive agencies are tied symbiotically together, 'controlling specific segments of public policy to effective exclusion of other groups or government authorities' (Salisbury et al., 1992).

The executive is highly fragmented inside. Departments and sub-departments may have traditions and policy stances that the president should respect if policy objectives are to be achieved (Peters, 1995:18). These stances, however, are a compound of career civil servants 'think tankers' and 'outsiders' appointed by the president. This fragmented structure within the executive level is mirrored in the many Congressional committees and sub-committees. Institutional politics in the United States is 'government against sub governments' (Rose, 1980).

In such fragmented environment operates the Government Accountability Office – GAO. Its main function is to assist the Congress in its legislative oversight of the executive branch. The vast majority of GAO's work is audit and evaluation but it also has other responsibilities, including prescribing accounting standards for the entire federal government in conjunction with the Office of Management and Budget and the treasury. GAO is formally independent of the Congress. The Comptroller-General is appointed for a fixed term of 15 years.

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The work of GAO is unconstrained because the executive policy-rulers are not coordinated enough to oppose consistently to external evaluation of their programs. Moreover, the Government Accountability Office has built a strong client relationship with Congress that has permitted less questioning about performance audit and evaluation it might conduct. GAO has evolved into an effective policy analytical and advice organisation for Congress (Rist, 1990). In fact, almost every GAO engagement is initiated by a congressional request<sup>1</sup>.

GAO exists to support the congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the benefit of the American people. The core values of GAO are accountability, reliability and integrity. GAO produces high quality reports, testimonies, legal opinions, and other product and services that aim to be timely, accurate, useful, and clear. The Us Government Accountability Office is the government's accountability watchdog. Its highly trained evaluators examine everything from missiles to medicine, from aviation safety to food safety, from national security to social security. GAO is an independent legislative branch agency. GAO investigates on behalf of Congress. GAO serves the public interest by providing Members of Congress and others who make policy with accurate information, unbiased analysis, and contractive recommendations on the use of public resources and the operations of government programs. GAO also aims to serve as a model of organizational efficiency, effectiveness and accountability in the federal government. GAO examines the use of public funds, evaluates federal programs and activities, and provides recommendations and other assistance to help the congress make effective decisions. GAO helps the congress decide how to allocate federal funds and oversee the effectiveness and efficiency of government operations.

Since GAO was established in 1921, its approach to government accountability has four phases:

1. Checking vouchers (1920-1940).
2. Audit of Federal spending (1950-1960).
3. Program audits (1970-1980s).
4. Improving government performance and accountability (after the 1990s).

In fact, a recent law has changed the name of the General Accounting Office to Government Accountability Office, as a way to make easier to the general public understand the proper GAO function in Government.

### **3. THE BRAZILIAN PUBLIC ADMINISTRATION AND THE ROLE OF *TRIBUNAL DE CONTAS DA UNIÃO* IN THE REGULATORY OVERSIGHT PROCESS**

Like the US, the Brazilian National Public Administration is extremely fragmented, in both the political and the bureaucratic levels. Although there is a strong emphasis in the executive branch in the policy making process, the powers are divided in an unclear way in the two branches. The executive itself is extremely fragmented. Moreover, the ministries have not yet created a strong community of policy advice, including the ministries of infrastructure.

In this fragmented environment operates the *Tribunal de Contas da União*. Its main function is to assist the National Congress in controlling the federal public administration and watching over the sound and regular use of public funds. It is responsible for the external audit of the country and its agencies in the three branches of government. There is a high level of independency of *TCU* from any other public administration entities, because it has a mandate to carry on his audits by its own initiative. After the new constitution in 1988, *TCU* has spread its control practices and included operational audits in his review portfolio. Since then, a lot of efforts have been put into practices to increase the institution capacity to perform works on program evaluation, operational audits in many areas.

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1. It is claimed by many GAO experts that those requests are highly influenced by GAO perspective, since the organ has more technical policy expertise to address proper questions to policy problems. This claim is very plausible, but the level of this influence, however, is not a matter investigated for this paper.

Nowadays, TCU is known as a distinguished body of excellence of sound policy advice and has spread good practices in regulation and performance accountability, including in the control of regulatory agencies, as it is going to be exposed in this paper. The next section will try to clarify the concept of performance auditing as practiced by SAI.

#### 4. THE ROLE OF SAI IN REGULATORY MANAGEMENT POLICY ISSUES

Regulation activity is rooted in the power consigned to states to intervene in the relationship between suppliers and consumers. Regulation of the utility industry activities can be characterized as a form of control exercised by government “over prices, safety, and quality of services” (Baldwin and Cave, 1999:03). Systemic privatisation (Feigenbaum & Henig, 1994:200) and attempts to liberalisation in different times brought to the scenario of the utility sectors a new regulatory regime broadly similar in both cases.

In Brazil regulatory agencies were created for each key utility industry. The Telecommunication sector is a remarkable example of such transformation. The facts of the reform in this sector happened as follows: In August 1995, the constitutional amendments took place. In July 1997, Congress approved the general telecommunications law proposed by the executive branch. In November 1997, the regulatory entity – *Anatel* was created. In April 1998, the cellular telephone licenses – B Band was approved. Finally, In July 1998 *Telebras* and its subsidiaries were privatised and in November 98 the *Telebras* “mirror” licenses (duopoly) were operating. Other regulatory agencies were created in the same period in each key infra structure sector: *Agência Nacional de Energia Elétrica (ANEEL)*, for electricity and *Agência Nacional do Petróleo (ANP)* for oil and gas. After 2000 other agencies were created for transport, namely, *Agência Nacional de Transporte Terrestre (ANTT)* and *Agência Nacional de Transporte Aquaviário (ANTAQ)*.

The rationale behind the decision of privatising public enterprises made Brazil a similar model of organisation of the US System with private companies delivering public services and regulation (through independent regulatory bodies) rooted in responses to similar problems these governments have faced. The claim that arises here is that governments have reformulated regulation in response to a common set of pressures (Vogel, 1996:12).

The regulatory authority in Brazil has spread its responsibilities not only in technical issues regarding licenses and interconnections, but also in monitoring anticompetitive behaviors and unwelcome take-over. It shares powers at the same level of authority with the Ministerial Council of Fair Trading regarding to the latter concern. In the US, the Federal Communications Commission (FCC) is an independent United States government agency, directly responsible to Congress. The FCC is directed by five Commissioners appointed by the President and confirmed by the Senate for 5-year terms, except when filling an unexpired term. The President designates one of the Commissioners to serve as Chairperson. Only three Commissioners may be members of the same political party. None of them can have a financial interest in any commission-related business. The FCC was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, television, wire, satellite and cable. The FCC’s jurisdiction covers the 50 states, the District of Columbia, and U.S. possessions. The long history of the FCC is also a positive aspect that could be studied by Brazil to bring lessons for *Anatel* and regulation of *Telecom* as a whole.

The Commission staff is organized by function. There are six operating bureaus and ten Staff Offices. The bureaus' responsibilities include: processing applications for licenses and other filings; analyzing complaints; conducting investigations; developing and implementing regulatory programs and taking part in hearings. Even though the bureaus and offices have their individual functions, they regularly join forces and share expertise in addressing Commission issues.

Contrasting patterns of style are likely in regulatory regimes of different countries. Arguably, regulatory activity is a public policy choice. Therefore, historical and cultural biases in which they are embedded suggest, "that beyond a certain point convergence on a single management model is not simply implausible but likely to be impossible" (Hood, 1998:20). This claim implies that a country should look to other models as way to enhance their capacity to develop good practices but should not make mindless copies of policies from one country to another.

Empirical evidence shows that regulatory reform took place in both countries and it may lead to a claim that these States have responded to similar pressures (Vogel, 1995: 260). Divergence can be explained by other factors, such as institutional and ideological legacies particular to each country. The remainder of this paper will try to built an argument on how should, then, policies be transferred from one country to another without jeopardizing the own countries public administration legacy.

Literature about regulation, as well as doctrines about the best institutional design of regulatory agencies sustain that an stable regulatory regime should guarantee degrees of autonomy for the regulatory body from the Executive Government (Moraes, 1997; Stern, 1997; Salgado, 2003). This is essential for the agencies as they can implement in a credible manner the regulatory policies. The regulatory objectives are multifaceted and often deals with conflictions – for example the regulator should guarantee equity and efficiency in the delivery of the service. Mainly the regulatory mandate includes economic regulation, social regulation and technical or quality regulation.

One condition for the success and stability of the regulatory regime depends on the autonomy and independence of the regulator. This condition, however, may insulate the regulatory body from the pulse of the elected officials and decrease their capacity to formulate public policy for the sector. As a way to avoid this bureaucratic pathology, the regulatory agency should have a good system of accountability and transparency of their decisions. It is argued here that Supreme Audit Institutions play a key role to improve accountability and best practices in the regulation of utilities as much it has in other government policies and program.

#### THE ADVENT OF THE 1996 TELECOMMUNICATION ACT

For more than fifty years the U.S. telecommunication sector was a regulated private monopoly, dominated by AT&T. During most of that period the Federal Communication Commission (FCC) and a variety of state authorities controlled the relative prices of telephone service and restrict entry. In the 1970s the first breath of liberalization swept over the sector as the FCC began to allow limited competition in the market for interstate dedicated business connection and won a battle with state regulators to open the market for terminal equipment, such as telephone handsets, answering machines, and modems, to competition. Competition in long-distance markets opened wider when MCI launched long-distance service for businesses without FCC permission.

AT&T's use of its local facilities to frustrate the burgeoning competition in long-distance services and terminal equipment led to a lengthy antitrust case, which resulted in a consent decree that broke up the company in 1984 and imposed a quarantine that prevented the divorced regional Bell operating companies from offering long-distance services. For twelve years the AT&T trial court wrestled with several difficult issues in implementing the consent decree. At the same time the regional Bell companies chafed at their continued exclusion from long-distance services, while long-distance carriers were equally concerned about the slow progress toward competition in local markets, a problem beyond the reach of the AT&T decree. As a result, Congress was finally prodded to reform the entire telecommunications regulatory structure through passage of the 1996 Telecommunication Act.

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This legislation:

1. Opens local telecommunication markets to competition.
2. Seeks to complete the earlier market-opening in long-distance services (including freeing the Bell operating companies from their quarantine).
3. Creates an economic environment intended to lead to the “deployment of advanced telecommunications and information technologies and services to all Americans”.

The effectiveness of the 1996 Act is highly debatable. The more deregulation oriented authors argue that the law was a drawback in the US experience with deregulation in numerous other sectors, some experts argue that from the outset, the 1996 law represents a major step backward from the recent tendency of state regulators and the FCC to abandon cost-based regulation in favor of price caps<sup>2</sup>. Wholesale rates and universal-service subsidies are to be determined by cost models, according to the act. Moreover, although the 1996 law opens all telecommunications markets to competition, even the once-protected local markets, it requires incumbents to cooperate in facilitating entry of potential competitors to a degree that has not been prescribed for any other recently regulated sector of the economy.

In fact, the 1996 Act provides much more than a prescription for regulated competition in telecommunication. It makes major changes in universal service policy; mandates new subsidies for schools, libraries, and rural health facilities; substantially deregulates cable television rates; liberalizes broadcast-ownership rules; and even regulates entry into the provision of alarm services. The universal service policies are to be supported by fees levied on all telecommunications services and are to be portable so that new entrants can receive the same payments as incumbents for offering services in areas where rates are below cost.

The 1996 law requires local carriers to unbundle their network elements and, moreover, allow entrants to resell their service. Such resale simply transfers the marketing and billing function from existing local carrier to the new (reselling) entrant. The 1996 law is silent on retail telecommunication prices, except for mandating that explicit rural subsidies be sufficient to keep local rates in high-cost rural areas at levels comparable with urban rates. State commissions still regulate incumbent carriers' intrastate services and most of these commissions continue to administer a distorted rate structure (Crandall, 2000:84). Although the 1996 law prescribes cost-based wholesale rates, it does not require the state commissions to move retail rates toward cost. Indeed, the FCC has increased the distortions between retail rates and costs by assessing charges to fund the Internet subsidies to school and libraries (ibid.).

2. The FCC shifted from cost-based regulation to price caps in 1989 (for AT&T) and 1990 for the local carriers' interstate rates).

*universalisation*

The main critique of the 1996 legislation is that detailed cost-based regulation of wholesale rates proved not to be a satisfactory approach for stimulating competition in the telecommunication network industry. Rather, it would be preferred an attempt by regulator to undo the regulatory created barriers to entry built into the retail rate structure

#### THE ROLE OF THE GOVERNMENT ACCOUNTABILITY OFFICE IN THE OVERSIGHT OF UTILITIES REGULATION

The Government Accountability Office approach to utility regulatory policies is sharp and often deep. It has a specialized team that deals with infrastructure themes. Specialization and expertise in this area are also found in the Natural Resources and Environment Team, Applied Research Methods Team, Strategic Issue Team and International Affairs and Trade Team.

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Performance audit carried out by the GAO out in the area of utility regulation is extensive. It include mergers of local telephone companies, promoting competition within the utilities markets, financial information audit in telecom companies, telecommunications technologies in rural area, the changing status of competition to cable television, many reports on critical infrastructure protection, development of information superhighway, benchmarks with other countries on DTV, wire base competition analysis, universal service, gas deregulation, competition and concentration of markets and other analysis, electricity restructuring, role of the Federal Energy Regulatory Commission, California electricity crisis in 2000-2001, experiences of states in deregulating electricity, availability of service, assessment and cost-benefit analyses of public private partnership projects, and a lot of work on all modes of transport (de)regulation among much others works.

Specifically, GAO Audits in the Telecommunications are many, some of these audits include:

1. Before the 1996 Act, in 1994 GAO disclosed financial information on 16 telephone and cable companies – in fact, GAO provided Congress with information on total operating revenues, cash flow from operations, and profitability, In addition, it provided more detailed financial information on the uses of cash flow from operations, including the extent to which capital expenditures are made inside and outside of the companies primarily line of business. This study certainly helped Congress to develop in depth analysis on the US Telecom Market.

2. Also in 1994 GAO made a report about information superhighway – addressing the key issues affecting its development.

3. GAO also made studies on Rural Development in 1996 – the report identified the steps towards realizing the potential of telecommunications technologies in rural area. This is a key regulatory issue addressed by the 1996 law

4. The GAO in 1998 studied about 27 federal programs that can be used to fund technology for schools and libraries.

THE ROLE OF THE *TRIBUNAL DE CONTAS DA UNIÃO* IN THE OVERSIGHT OF UTILITIES REGULATION

In Brazil a specialized unit staffing 28 auditors was established in 1998 to oversee regulation with a performance perspective. The control practices of this unit encompasses among others concomitant control of new concessions (since 1995); performance audit in the agencies (since 1999); audit, evaluation and review of regulatory processes (since 2000); concomitant control of the periodic tariff review in electricity distribution sector (since 2002).

Some results from *TCU* work include the review of calculation method for telephone, cable TV and hydroelectric power station concessions; operational audits were conducted in each key sector, including telecommunication. Roads toll reduction as result of undue taxes inclusion, investments overestimated and additional revenue not taken under consideration by the regulator; better treatment of environment issues in the oil and gas sector; identification of unclear definition of the duties of ministries and regulatory agencies and ineffective social tariff policy in electricity, assessment of universal service effectiveness in telecom and transport. *TCU* has been playing a key role in the implementation of the new regulatory arrangement in Brazil and became a very respected policy analyst of the regulatory regime in Brazil. *TCU* has in many important respects helped to the stabilization of the system as well as the improvement of the performance of regulatory agencies in terms of good regulation. Much work has to be developed to reach a good regulatory system, but in the initial path of the reforms *TCU* works were essential to the regime continuity.

**T** 5. The process by which mergers of local telephone companies are reviewed was studied by GAO in 1999 – This audit aimed to assess one of the primary purposes of the Telecommunications Act of 1996. GAO answered whether the application of the 1996 by FCC was promoting competition within the telecommunications markets.

6. Regarding to competition, GAO studied issued a report in 1999 about the changing status of competition to cable television such as that provided by cable and satellite.

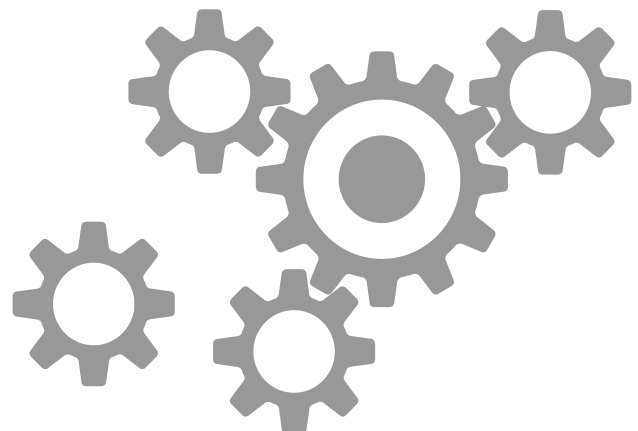
7. GAO has produced many other reports on critical infrastructure protection, especially after the September 11<sup>th</sup> event.

8. Comprehensive review of U.S. spectrum management with broad stakeholder involvement is needed according to a GAO study.

9. GAO reported about federal and state universal service programmes and challenges to funding (February 2002)

10. Another GAO report concluded that wire base competition benefited consumer in selected markets. This study was issued in February 2004.

11. Recently, GAO made a comparative study on German DTV and concluded that it differs from U.S. transition in many respects, but certain key challenges are similar. This report was issued in July 2004.





## 5. ISSUES FACED BY THE BRAZILIAN SUPREME AUDITING INSTITUTION IN THE OVERSIGHT OF THE UTILITY REGULATION SECTOR AND POINTS OF POSSIBLE CONTRIBUTIONS FROM GAO EXPERIENCE ON THE OVERSIGHT OF UTILITIES REGULATION

This section shows the main problems faced by the Brazilian Supreme Audit Institutions that might be imperiling the institution to achieve better results in the oversight of the utilities industries and the actions to overcome them are settled. The areas of major concerns are the acquisition of knowledge in regulation and control; the development of novel methods and techniques of control that could be applied in the performance auditing of regulation; the best organization, administration, and planning process to achieve better results; and finally the increase of Public dialogue (communication) of the SAI. In those five areas it is critical that *TCU* can find benchmarks of good practices to implement in the future.

In the area of acquisition of knowledge *TCU* can see how GAO recruits, trains and manages its capital knowledge inside the institution. *TCU* could also benefit from the “stock” of knowledge already accumulated by the GAO to try to build relationships with key skillful staff within GAO. There should be also more exchange of contacts between *TCU* teams and GAO teams in common areas of expertise. Some staff were already identified and contacted during the program and certainly more information will be exchanged soon.

In the area of methods and techniques of audit *TCU* can find the best contribution from GAO. The Brazilian SAI in two ways can learn GAO practices. A first one is related to the own methods of work. The other way is to learn for the own issues that GAO analyses in its reports in the many areas of the regulation of utilities. Regarding the organization, administration, and planning there are also lessons from one institution to another. GAO has a more comprehensive strategic planning than *TCU* and has found the key performance indicators.

*TCU* has too many performance indicators that might be imperiling a better utilization of such system. *TCU* is also relying his work too strongly in the attestation and judgments of the accounts of public agents that might lead the institution to a less relevant role in the policy cycle in crucial area of improvements needed in the public sector in Brazil. GAO has not, however, developed a more balanced score card approach to his performance indicators. And it is also difficult to say if the strategic vision of GAO can be accomplish fully because it depends very much in the Congress request to initiate engagements.

Lastly in the public dialogue side both GAO and *TCU* are given a very strong attention on the effectiveness and efficiency of their communication with the recipients of their information. This is the critical area of an SAI that has a strategic intention of increasing accountability, transparency and improvement of the public sector. *TCU* has implemented some good improvements in the way it formats the reports. *TCU* has provided important stakeholders with very well designed reports and included graphics and more visual analysis to catch the audience’s interest. GAO has developed a more scientific approach to writing. GAO writing principles is one of the keys learning process that could be transferred to the Brazilian SAI, specially the highlight issued in each GAO report. One of the key points this strategy paper intend to stress is that *TCU*, albeit having made much progress in the design of its report, should learn from the writing process of GAO when conducting performance auditing. GAO reports are mainly addressed to Congress. *TCU* project will try to build products to different stakeholders as well, including media, citizens, consumers, scholars and public managers.

## 6. THE ROLE OF SUPREME AUDIT INSTITUTIONS IN PERSPECTIVE

The argumentation provided by this paper may lead to a claim that regulatory reform has challenged institutionalized oversight practices in many ways:

1. Revamping performance auditing techniques and methods inside the external control environment in general, and in Supreme Audit Institutions, specifically.

2. Creating new arrangements among government actors, especially the relationship between the executive and regulatory agencies, with reflexes in the Supreme Audit Institutions practices. The General Accountability Office is facing less problems to oversee regulatory agencies than its Brazilian counterpart because the independence of regulatory agencies from the executive branch is a more acceptable cultural arrangement in the US public administration and because the organ has created a stronger relationship with Congress, that in its turn, is more prepared to affect the policy making process in the US, especially regarding to utility regulation issues. In fact, the 1996 Act is mainly the result of Congressional discussion with strong participation of interest groups. The new reform in the regulatory system in Brazil is mainly an executive proposition that is unlikely to be affected substantially by Congress discussion.

3. Creating more specialization in the Supreme Audit Institution as a way to attend the oversight of regulatory agencies.

4. Demonstrating that SAIs are main stakeholders in the good design of a regulatory system. The US GAO reports are the main input to Congress to address transformation in the policy making process of regulatory matters. The *TCU* reports depend less on Congress for the implementation of their recommendation. It has addressed more detailed oversight regulation issues than their US counterpart. However, the US regulatory regime style has been exposed to in-depth works conducted by the GAO that has helped the

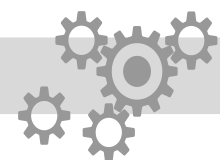
system to evolve to more competition, without jeopardizing the social obligations of the regulator.

In short, the GAO does not address detailed control over the regulatory system, but more broad themes of sustainability and effectiveness of the system as a whole. *TCU* has played a key role in the construction of a new regulatory system in Brazil. Nonetheless, it is very likely that a future role of the Brazilian SAI might evolve to kinds of works developed by the GAO. In fact, some audits on universal services and regulation effectiveness are examples of this tendency.

5. Rapidly changing the vision of an oversight institution. Arguably, regulation of telecom is an evolving concept. Mainly because it is a rapidly changing technological area. In such vein, the SAI should be constantly addressing the issue of effectiveness of regulation. On the one hand, SAI's should verify if the regulatory environment is permissible for development of competition and investment on new technologies and, on the other hand, if there is a fair distribution and access to the services by the population.

6. Setting the proper role of an oversight of the regulatory system, which should be seen as a key success factor for good governance on regulatory matters. Arguably, the credibility of such system is achieved if regulatory agencies are able to conduct independently their mandate, on the one hand, and if they are accountable to their external constituencies, especially the Congress; with support of a technical body like Supreme Audit Institutions, on the other hand.

7. Being a learning organization is a key success factor for supreme audit institutions. Vicarious learning is also desirable if public sector specificities, culture values and dependent paths of reforms are taken into consideration. The case of comparing the US oversight practices with Brazil in the utilities of regulation is an exemplar way on how such comparison may lead to conclusion about smart practices.



## 7. FINAL REMARKS

It was argued that there are two critical success factors for a stable regulatory regime. On one hand, the agency should have autonomy to implement regulatory policies, without direct interventions of other government institutions. On the other hand, stability also means transparency and accountability. In this vein, Supreme Audit Institutions are key to the success of a well-designed regulatory regime style.

Supreme Audit Institutions increased in importance in many countries as organs of distinctive constitutional position endowed with the necessary independence, expertise, and professionalism to conduct performance audit. Surveyed practices among OECD countries have led to a claim that SAI's seem to be following the doctrine that a SAI embedded in a democratic and market-oriented economy should balance and integrate the pursuit of two types of accountability: compliance accountability and performance accountability. The first type is of high priority because it secures the proper conduct of those who deal with public money. However, this proper conduct does not seem to be enough to reach good and responsible government (Aucoin, 1995). In such vein, performance accountability seeks to fulfill an expectation gap (Power, 1997). The gap between what societies expects as good public service and what is practiced. Performance auditors seek to aid government and agents that work for it to create public value (Moore, 1995) when discharging their duties.

In this paper, performance audit was placed as a strand of public management policy and this latter as a main strand of the New Public Management. Such location has permitted to approach performance audit as a field of

academic research and argumentation, and professional discussion about management policy interventions within executive government. So defined, the argumentation about performance audit provided here has focused on the political and organisational processes through which policy change takes place. Further, the kernel issue of this paper was to propose that this subject matter should focus on substantive analysis of public management policy.

It is argued that Supreme Audit Institutions have a key role for the sustainability and improvement of a sound regulatory regime. The US and Brazilian cases are exemplars in this area of oversight. The latter is trying to build a more systematic approach to the regulatory oversight; the former has created the conditions to advice Congress on sound policies in the regulatory arena.

It has been argued in this paper that performance audit applied to the utility regulation is an area of increasing interest for SAI. The discussion provided in this paper intended to confirmed that institutional collaboration capacity building among SAI's is not only a feasible task to be reached but also desirable. However, contrasting patterns of style are likely in regulatory regimes of different countries. Arguably, regulatory activity is a public policy choice.

This paper has provided an initial framework where a collaboration capacity building project might be advanced from the Brazilian *Tribunal de Contas da União* and the US Government Accountability Office in the area of utilities regulation. If the present analysis can be expanded to other areas of expertise or even to other SAI's is an interesting issue to be developed in the future. ■

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