Dissemination of Consumer Law and Policy in Brazil: The Impact of EU Law

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Abstract

This paper analyses the influence of European Law on Brazilian Consumer Law. It starts by describing the general features of Brazilian Consumer Protection law, including the constitutional dimension of consumer protection, and the introduction of the Brazilian Consumer Protection and Defence Code (CDC). It also highlights product liability, product safety, and product warranties. Some of these topics are illustrated by the case of the telecommunications sector.

Keywords Brazilian Consumer Law · Constitution · European Law · Product liability · Advertising · International contracts

This paper analyses the influence of European consumer law in the development of Brazilian consumer protection rules. It starts by highlighting that the Brazilian Constitution establishes consumer protection as a fundamental right and a principle of the economic order. Article 5 XXXII in the Chapter of the Brazilian Constitution entitled “fundamental rights and guarantees” affirms that the State will promote consumer protection as provided by law. And Article 170, V, of the Constitution also establishes that consumer protection is a principle of the economic order, right next to national sovereignty, private property, and other important precepts.

The constitutional dimension helps to understand the relationship between the institutionalization of consumer protection and Brazilian democratization. The constitutional status granted to consumer protection is the basis for the validity of legislation that concretizes that protection. The Brazilian Supreme Court ruled out allegations of the unconstitutionality of the consumer protection law, accentuating that the Constitution authorizes legislative measures. The most important precedent was a judgment that declared the Brazilian Consumer Protection and Defence Code (CDC), Act No. 8078/1990, to be applicable to banking and financial services (Supreme Court of Justice, Ação Direta de Inconstitucionalidade n° 2591–1/DF. J, 07.06.2006).

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This paper outlines an overview of the main federal law on the matter: the Brazilian Consumer Protection and Defence Code (CDC), approved by Act No. 8078/1990. The main objective is to demonstrate the broad and comprehensive nature of this law, emphasizing that it regulates all aspects of the consumer relationship with a consistent view to the future, due to its several principles and guidelines. It is possible to assert the CDC as a mixture of the first and second generations of consumer law. The CDC contains general rules that apply to all sorts of business activities. It also contains typical first generation rules, such as the rights to safety, to be informed, to choose, and to be heard, as well as control of unfair terms and practices, product liability rules, and prohibition of misleading advertising. At the same time, the CDC has elements of second generation consumer law, as its rules apply to sectors such as telecommunications, energy, transport, banking, and financial services.

Finally, the paper highlights the process of updating the CDC through Law No 14 181/2021 which in July 2021 introduced new and important specific consumer protection standards to prevent and remedy over-indebtedness. A bill concerning electronic commerce was approved by the Senate and is still under consideration in the Chamber of Deputies and is also mentioned in this paper due to its useful perspective to be approved in the near future. Along with a presidential decree that stipulates important rules on e-commerce, several jurisprudential decisions have applied the rules of the CDC to electronic transactions between consumers and suppliers. Thus, the third generation of consumer law is *on the way*, notably in the field of e-commerce.

The enormous impact of the CDC on the development of legal doctrine on consumer law cannot be overstated. Most universities have instituted specific courses for undergraduate and graduate studies at their law schools. This in turn has stimulated production of books and articles. The references in the text and the bibliography demonstrate broad doctrinal support for the arguments here presented.

General Features of Brazilian Consumer Protection Law

Setting the Economic, Social, and Political Frame

First of all, it is important to highlight some characteristics of consumption, the way of life, and education in Brazil. With a population of more than 213 million people and a territory of 8 547 403 km², the country is the largest in South America and the Latin American region and the fifth largest in the world by land area. As a result of intense immigration from various parts of the world, it is a multicultural and ethnically diverse nation.

The illiteracy rate affects 6.6% of the population according to 2019 data, a percentage that increases among the elderly. In 2019, 10.2% of the resident population in Brazil lived in households in which, even if supplied mainly by the general water network, the frequency of supply was less than daily. At that point, 15.3% of the population lived in households lacking the general network as their main form of supply, and part of this population, 3.4%, did not have access to piped water in their home (BRAZIL, Instituto Brasileiro de Geografia e Estatística (IBGE), Indicadores Sociais de Moradia no Contexto da Pré-Pandemia de COVID-19, 2019).¹ In 2020, the nominal monthly household income *per capita*

¹ <https://biblioteca.ibge.gov.br/visualizacao/livros/liv101830.pdf> (accessed 29 August 2021).

of the population oscillated between R\$ 676.00 (State of Maranhão) and R\$ 2475.00 (Distrito Federal) depending on the region (the amount indicated is in Brazilian currency, the real) (BRAZIL, Instituto Brasileiro de Geografia e Estatística (IBGE), Rendimento nominal mensal domiciliar per capita da população).²

Brazil is a Presidentialist Federative Republic, formed by the Union, states, municipalities and one Federal District (where Brasília, the State and Federal Government Capital, is located). The exercise of power is vested in distinct and independent bodies. The head of State is elected by the people for a four-year term. The functions of head of State and head of government are accumulated by the president of the republic. The Brazilian political system is multi-party, that is, it allows the legal formation of several political parties. The states enjoy political autonomy (PNUD. Sobre o Brasil).³

Brazilian law is open to inspiration from other legal systems. Although stating “the need for caution in importing legal models from developed countries into less developed ones”, the authors of the draft bill of the 1990s Brazilian Consumer Protection and Defence Code (CDC) affirm the great influence of comparative law (GRINOVER et al., 2017) especially from the French “*Projet de Code de la Consommation*” (commission chaired by Professor Jean Callais–Auloy) as well as the laws of Spain (26/1984), Portugal (29/81 and 446/85), Mexico (1976), Quebec (1979) and Germany (1976). Two EU directives (84/450 on misleading advertising and 85/374 on liability for defective products) were used directly, together with input from the USA; and three further EU Directives (out of the then seven) were channelled indirectly into the CPS through the report of Jean Callais–Auloy (Directive 85/577/EEC on contracts negotiated away from business premises, Directive 87/102/EEC on consumer credit and Directive 89/552/EEC on television broadcasting).

The Brazilian Senate report on the current Reform of the CDC affirms the influence of EU models (Senate Bill 281/2012 or Chamber of Deputies is now Bill 3514/2015 on national and international e-commerce, still in discussion in Congress, and Senate Bill 283/2012 or Chamber of Deputies was Bill 3515/2015 on consumer credit and over-indebtedness and in 1 July 2021 was promulgated as Act No. 14 181/2021). We will analyse these influences as well as the role EU consumer law played in inspiring the MERCOSUR rules on conflicts of law.

Constitutional Dimension of Consumer Protection

General Features of Law

The Brazilian Federal Constitution of 1988 establishes that consumer protection is a fundamental right (Article 5, XXXII)⁴ and a principle of the economic order (Article 170, V). The inclusion of consumer protection in the constitution is a feature of younger constitutions promulgated after dictatorships towards the end of the twentieth century, such as the Spanish and Portuguese Constitutions. In Brazil, Article 48 of the Transitional Constitutional Provisions Act determined the National Congress should, within 120 days of the Constitution’s promulgation, establish a “Consumer Protection and Defence Code”. The

² https://biblioteca.ibge.gov.br/visualizacao/periodicos/3100/rdpc_2020.pdf (accessed 29 August 2021).

³ <https://www.br.undp.org/content/brazil/pt/home/countryinfo.html> (accessed 30 August 2021).

⁴ Article 5, XXXII, establishes that this is so, affirming that: “The State must provide consumer defence through the Law”.

deadline was not met, though in 1990 Act No. 8078 was fully adopted as the Consumer Protection and Defence Code (CDC, 1990) which is still in force today. This created a National System of Consumer Protection and in structuring consumer protection created rules of administrative, civil, and criminal law.

The Brazilian Supreme Federal Court recognized the constitutional status of consumer protection in two landmark decisions. The first case was a decision in which Law n° 8,039, of 30 May 1990 that establishes rules for the monetary adjustment of school fees was considered constitutional. The Brazilian Supreme Court held that the Federal Constitution enables the government to impose limitations on these readjustments, dismissing the argument that such intervention violates economic freedom. The Supreme Court pointed out that one of the fundamental objectives of the Brazilian Constitution is reduction of social inequalities and one of the principles that govern the economic order is consumer protection. Therefore, the Court considered Federal Act No 8,039 to be in harmony with the Constitution as Congress adopted it to protect consumers (ADIQO 319, 30 April 1993).

The second judgment again concerns a direct action of unconstitutionality n. 2591, launched by the National Confederation of Financial Systems against Article 3, paragraph 2 of the CDC. The action was filed to exclude banking, financial, credit, and insurance services from the scope of application of the CDC. The Supreme Court dismissed the action. The Court found that subjecting the national financial system to the provisions of Act n. 8078/90 is completely in line with the Federal Constitution. The Brazilian Supreme Court emphasized that all economic activities are subject to consumer protection law and policy and to supervision and standards issued by the government as the State has a duty to prevent abusive practices. Therefore, in the view of the Supreme Court, the application of the CDC covers all economic activities in order to protect the vulnerable party (the consumer). No immunity is granted to any economic activity against application of the CDC. Both judgments have been playing a particularly important role in enforcement of consumer protection law and policy.

Brazilian Consumer Protection and Defence Code (CDC)

According to the Brazilian Constitution (Article 24), both the Federal Union and the states have the power to legislate concurrently on consumer protection. Brazil has adopted the German model: the Federal Union issues general standards and states enact additional rules.

In 1990, Brazil's National Congress enacted Federal Law 8078 (the Brazilian Consumer Protection and Defence Code, CDC) to accomplish a constitutional determination: the Brazilian Constitution (Article 48 of Transitory Constitutional Disposition Act—ADCT) determines that “The National Congress, within one hundred and twenty days of the promulgation of this Constitution, shall draw up a consumer protection code”. The main principle of the code is “recognition of the consumer's vulnerability in the consumer market” (Article 4, I, CDC, 1990), a rule that guides almost all Latin American and European Union laws for protection of the weaker party.

Article 2 CDC defines a consumer as “any physical person or corporate entity who acquires or uses a product or service as a final user”. The concept and status of consumer is extended to a “collective of individuals, that may even be indeterminate, which have participated in consumer relations (Article 2, sole paragraph), are exposed to a commercial practice (Article 29) and to all victims of a defective product or service (Article 17)”.

The concept of consumer aroused considerable discussion due to use of the expression “end user” and the fact that a legal entity—and not just an individual—can be considered a consumer.

After years of discussion, the Brazilian Superior Court of Justice established in 2005 that a consumer would only be one who did not use a service or product for economic purposes, thus ruling out, as a rule, the possibility of extending consumer protection legislation to entrepreneurs. There is one exception, however: small business owners who demonstrate that their relationship with a supplier is so unequal that it makes them vulnerable can be equated to consumers. The CDC regulates all aspects of the consumer relationship comprehensively. Article 6 CDC establishes consumers’ basic rights as follows:

I – protection of consumer’s life, health, and safety against any risks arising from any practices when buying products and services supplied that are considered harmful or dangerous;

II – education and information about the adequate level of consumption for products and services, ensuring freedom of choice and equality in hiring processes;

III – adequate and clear information about different products and services, with correct specification of quantity, characteristics, composition, quality, price and taxes, as well as risks;

IV – protection against misleading and abusive publicity, commercial methods based on coercion or in any other way unlawful, as well as against practices and causes that are abusive or imposed as part of products and services being supplied;

V – changing contract clauses that impose disproportionate instalments or revising them based on supervening facts that make them excessively expensive;

VI – effective prevention and compensation against pecuniary, moral, individual, collective, and diffused damage;

VII – access to judicial and administrative entities so as to prevent or provide compensation for pecuniary, moral, individual, collective, and diffused damage, thus ensuring judicial, administrative, and technical protection given to those in need;

VIII – easy defense of consumer rights, including reversal of the burden of proof in their favour in civil proceedings when, in the judge’s finding, the claim is probable or the consumer is at a disadvantage according to the ordinary rules of experience.

It is possible to classify the CDC as a mix of first and second generation consumer law (Micklitz, 2012).

The CDC contains general rules that apply to all sorts of business activities, including typical first generation rules such as control of unfair terms in standard contracts (boilerplate contracts); product liability rules concerning producers, importers, distributors and retailers; prohibition of unfair and misleading commercial practices (including misleading advertising); high standards in terms of quality of services and goods; as well as individual and collective injunctions to protect consumers. The CDC contains the four basic consumer rights as set out in the declaration of US President John Kennedy in 1962: the rights to safety, to be informed, to choose, and to be heard. In addition, the CDC contains elements of second generation consumer law because its rules apply to sectors such as telecommunications, energy, transport, and financial services. Its applicability is subject to controversy, because each of the sectors has particularities requiring a balance between specific sector rules and more general rules of consumer law. Technical standards play an important role as well.

Many economic sectors are subject to regulators in Brazil. As a result, consumer protection authorities face a hard task to enforce consumer law in these fields. The theory of

pluralism of sources (Jayme, 1995) has been taken over by legal doctrine and jurisprudence. This may solve the applicability of consumer law to regulated sectors. The CDC is based on principles and general and flexible rules. These characteristics facilitate the dialogue of sources in regulated sectors. Notwithstanding, this article will focus on case law involving product liability, consumer products and telecommunication services.

Latest Update and Prospects of Updating the Brazilian CDC

The CDC is undergoing updating. The Brazilian Senate has approved two law bills, one of which is now Act No. 14,181, to prevent and remedy over-indebtedness. The second is currently being evaluated by the Chamber of Deputies (PLS 281/12 or PL 3514 2015). These bills were based on two projects prepared by a special committee of lawyers, headed by Minister Antonio Herman Benjamin. The projects show typical characteristics of the second generation of consumer law, as will be shown.

Law n. 14 181 of 1 July 2021: Treatment and Prevention of over-indebtedness

Law No. 14 181 of 1 July 2021 amends Law No. 8078/1990 (CDC, 1990) and Law No. 10 741/2003 (Statute of the Elderly), to improve the discipline of consumer credit and provide for prevention and treatment of over-indebtedness.

The law originated from a Bill presented to the Senate in 2012 and was originally registered as PLS 283/2012 focusing on regulation of consumer protection against over-indebtedness and abusive commercial practices in offering credit. The law was approved by the Senate in 2015 and stayed under discussion in the Chamber of Deputies until 2021 (registered as Bill 3515/2015). The main sources of comparative law that inspired the Bill's content are the following:

1. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC
2. Loi Royer of France, enacted in 1978 and 1979
3. Consumer Credit Protection Act of 1968 (CCPA), of the USA
4. National Credit Act 34 of 2005, South Africa

Law n. 14 181/2021 provides for preventing over-indebtedness of natural persons and establishes rules to impose responsible credit and financial education of the consumer. It also prohibits harassing or pressuring the consumer to contract supply of a product, service or credit, especially if the consumer is elderly, illiterate, ill or in a state of aggravated vulnerability, or if the contract involves a premium.

The notion of aggravated vulnerability, as taught by doctrine, consists in a special condition that increases consumer vulnerability (as recognized by the CDC in Article 4, I), such as access to education, age, gender, over-indebtedness, health conditions, and the like. Recognition of the special vulnerability of these consumer groups is an important step and, as we have seen, coincides with the 2003 United Nations Guidelines for Consumer Protection (UNGCP). The UNGCP still mentions consumer vulnerability in financial services and in international relations, especially in e-commerce and tourism, consolidating the principle that consumer law in the virtual world or online must be at least the same as provided to consumers in the offline world. Equal rights are of paramount importance.

Law No. 14 181 introduced to Brazilian legislation the institutionalization of combating harassment of consumers, identifying harassing and overly aggressive marketing strategies focused on certain groups, such as the elderly and illiterate. The standard used was the Unfair Commercial Practices Directive, 2005/29/CE, whose Article 8 presents a definition of aggressive practices, which include harassment, coercion, physical force, and undue influence. The option of the Brazilian legislator was to consider consumer harassment (“*assédio de consumo*”) to categorise all aggressive commercial practices that limit freedom of consumer choice.

Consumer protection agencies and entities were fully mobilized in favour of securing approval of Bill 3515/2015 by the Chamber of Deputies. The COVID-19 pandemic increased the already high level of unemployment in Brazil and sharply decreased the income of the middle and lower classes at a time of increasing household indebtedness. Thus, an effective increase in over-indebtedness is estimated, with 14.4% unemployment, plus 19.7 million people receiving less during the pandemic outbreak,⁵ making it vital to update the Brazilian Consumer Protection Code so that the necessary legal tools are available to prevent and adequately treat over-indebtedness.

Law No. 14 181/2021 is inspired by the French model, but establishes a global conciliation between the consumer and all their creditors to achieve a payment plan (maximum five years, but preserving the existential minimum or *rester à vivre* [FR]). It is interesting to note that the Senate has not accepted any debt relief and the consumer can participate in conciliation only if in good faith. Conciliation is extra-judicial and can be done by the Judicial Conciliation Sector (CEJUSC), at public defenders’ offices (pro bono lawyers organized by the states) or by the Consumer Protection Executive Group (*Grupo Executivo de Proteção ao Consumidor* (PROCON)). If conciliation is not approved by all creditors, the consumer can apply for a compulsory payment plan issued by a judge, but here also the Senate guaranteed the creditor the full amount given to the consumer as credit (the amount of the principal due, monetarily corrected by official price indexes).

Bill 3514/2015 and Presidential Decree No. 7962/2013: Consumer Protection in e-Commerce

The Brazilian e-commerce Law Bill (originally registered as PLS 281/2012) prohibits any kind of discrimination and consumer harassment, strengthening freedom of choice. The project updates the CDC to protect users of electronic commerce. It was approved by the Senate in 2015 and is under analysis in the Chamber of Deputies since 2015 (now registered as Bill No. 3514/2015).

The main sources of comparative law that inspired the Bill’s content are the following:

1. Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market
2. Directive 97/7/EC on the protection of consumers in respect of distance contracts
3. Directive 2002/58/EC on the processing of personal data and the protection of privacy in the sector of electronic communications (directive on privacy and electronic communications)

⁵ See <https://covid19.ibge.gov.br/pnad-covid/> (accessed 20 November 2020).

The Bill focuses on the contractual duties of providers and professionals in the case of distance and e-commerce consumer contracts and the right of withdrawal (current Article 49 CDC).

The main objective of Bill 281, 2012, is to reinforce consumer trust in electronic commerce. The Bill guarantees effective consumer protection in electronic commerce, preserving security in transactions, protection for self-determination and privacy of personal data. The rules apply to activities developed by suppliers of products and services by electronic means, or similar. The Bill also contains a set of rules establishing a duty of adequate information concerning price, quantity, and main characteristics in terms of goods or services bought or sold via electronic commerce.

Bill 281, 2012, has not yet been approved by the Brazilian Congress, but a very important concrete effect has been achieved since most of the content of the bill was transformed into Presidential Decree 7962/2013, regulating the Brazilian Consumer Protection Code to provide for contracting in e-commerce, covering the following aspects: (I) clear information about the product, service, and supplier; (II) facilitated customer service; and (III) respect for the right of withdrawal. The Presidential Decree does not update or modify the CDC, but it implements new complementary rules.

It is important to mention that Bill 281, 2012, also introduces a new rule on conflict of laws to protect consumers in international consumer distance contracts and to challenge choice of court and arbitration clauses (new Paragraphs in Article 101 CDC 1990). For international contracts of e-commerce or distance contracting, a special article drafted by the Lawyers Committee allowing freedom of choice (party autonomy in Private international Law) is present in Article 101 CDC, as follows:

Article 101 ...

para. 2. In conflicts arising from international distance supply, the law of the consumer's domicile applies, or, if more favourable than this, the state standard chosen by the parties, provided, in any event, the consumer's access to justice.

The law applicable to international consumer distance contracts and e-commerce should be the most favourable to consumers, as proposed by the Brazilian government at the Organization of American States (Brazilian–Argentine–Paraguayan CIDIP VII Proposal, Inter–American Specialized Conferences on Private International Law (known by the Spanish acronym “CIDIP”). Here is the clear influence of the 1980 Rome Convention (Article 5) and the current European Rome I Regulation (EC) 593/2008 on the law applicable to contracts (Article 7). Although the Brazilian rule does not compare the mandatory rules of the consumer residence with the chosen law, the idea is that the choice of law should not “have the result of depriving the consumer of the protection afforded to him” by the law of their domicile and the most favourable law applies.

Bill 3514, 2015, also presents two new articles on Private International Law for consumer contracts, changing the Introductory Act to the Norms of Brazilian Law. On December 20, 2017, Mercosur (the Trade Union between Brazil, Argentina, Uruguay, Paraguay, Venezuela, and Bolivia) approved the first Convention on International Protection of Consumers, the “Acuerdo Mercosur sobre la ley aplicable a los contratos de consumo,” adopting a new connecting factor: the law most favourable to the consumer. Inspired by the Brazilian–Argentine–Paraguayan CIDIP VII Proposal, the 1980 Rome Convention and the Rome I Regulation on the law applicable to contracts, the new Mercosur Convention follows the Brazilian proposal and should also have some impact on updating the CDC.

Product Liability

We are living in a mass consumption society. People are stimulated to consume a large and diverse number of products and services. Improving productivity plays a central role in bringing lower prices and more products. Modern industries have quality control systems, but mass production also delivers defective products, which is a constant threat to consumer safety.

Strict Liability for Defective Products

The CDC introduces a strict liability rule, for which the main inspiration was European Directive 85/374 on liability for defective products. Article 12 CDC states:

§. 1. A product is defective when it does not offer the safety that would generally be expected from it, taking into consideration the relevant circumstances, amongst which are:

I – product presentation;

II – the use and risks that are reasonably expected from the product;

III – the date when it was released.

Strict and joint liability adopted by the CDC has a great similarity with Directive 85/374/EEC on the approximation of the laws, regulations, and administrative provisions of the Member States of liability for damage caused by defective products (exceptions are limits of liability and the burden of proof of the link between damage and defect). Manufacturers are responsible for damage and all material and moral losses (Article 6, VI CDC) caused by defective products regardless of negligence. In the case of accidents caused by defective products, Article 12, CDC, establishes that:

The manufacturer, producer, builder (whether domestic or foreign), and the importer are liable, regardless of negligence, for reparation of harm caused to consumers due to defects linked to product design, manufacture, construction, assembly, formulas, manipulation, presentation or acclimatizing conditions, as well as lack of information or providing inadequate information about public use and risks.

One example of application of strict liability is damage caused to a passenger in a car crash because the car's air bag failed to deploy in a collision. The Superior Court of Justice held that: "The strict liability of the manufacturer arises from breach of the duty to not bring a defective product on to the consumer market, and any safety failure or suitability of the product in relation to the intended use will involve responsibility for the damage that the product causes" (REsp 1,306,167, j. 12 March 2013).

The CDC also establishes solidary (joint and several) liability: anyone involved in the production chain is jointly liable for damage caused by a defective product. Therefore, the manufacturer, producer, assembler, and importer are responsible for damage caused by defective products. Article 13 CDC determines that a merchant (trader) is also liable for damage caused by defective products when:

I – the manufacturer, builder, producer or importer cannot be identified;

II – the product is supplied without clearly identifying its manufacturer, producer, builder, or importer;

III – it does not adequately conserve perishable products.

The Brazilian Superior Court of Justice decided that a merchant (trader)'s liability is exceptional, only appearing when the manufacturer cannot be identified:

In accordance with the jurisprudence of this Court, the liability of the merchant as joint liability would occur only if the producer cannot be identified, which did not occur in the present case.(AREsp 1016278, j. 28 March 2017)

According to Article 13 of the CDC, a trader or vendor is equally liable only when the manufacturer, builder, producer or importer cannot be identified, the product is supplied without clear identification of its manufacturer, producer, builder or importer or perishable products are not properly preserved. Recently, however, the Superior Court of Justice recognized that because the merchant is included in the product supply chain, whoever sells the product, even if not its manufacturer, is responsible to the consumer, for receiving an item that is defective and forward it to technical assistance (REsp 1,634,851/RJ, j. September 12, 2017).

In cases where damage was caused by ingestion of rotten food, however, the Superior Court of Justice found joint liability between the seller and manufacturer:

According to the case-law, the fact that a good/product is not eatable (because it is rotten) does not give the right to the consumer to propose a remedial action against the manufacturer (of the good/product) for damages resulting from eating this good/product. (AREsp 265586, j. 18 September 2014)

In many cases, food contamination is caused because perishable products are not properly preserved, which attracts merchant's liability. Other than the specific case of the merchant, the consumer can claim compensation against anybody involved in the production chain. Indeed, consumers do not know which supplier is effectively liable for a product defect. Therefore, buyers of goods can sue anybody or one specific actor in the production chain. One example is injury arising from a car crash caused by a tyre with production defects. The consumer may claim damages from the car manufacturer or the tyre manufacturer. Even if the consumer chooses to sue only the car manufacturer and the court recognizes that the accident was caused by a tyre defect, the car manufacturer will have to compensate all damages. However, the car manufacturer may seek recourse against the tyre manufacturer. CDC (Article 13) establishes that: "The person or entity responsible for paying the injured party will then be entitled to claim indemnity from the other parties responsible, due to their participation in causing the damaging event."

The duty to compensate losses arises only if damage is caused by a product defect. The CDC determines that a product is defective when it does not offer the safety that would generally be expected from it, taking into consideration the relevant circumstances, among which are the following: (I) product presentation; (II) the use and risks reasonably expected from the product; (III) the date when it was released (Article 12, paragraph 1 CDC 1990). Brazilian law clarifies that a product cannot be considered defective because another product of superior quality has been placed on the market (Article 12, para. 2 CDC 1990).

There are exceptions to strict liability though. Article 12 CDC establishes that a manufacturer, builder, producer or importer will not be held liable if it can prove that (I) he did not put the product on the market; or (II) even though the product was placed on the market, the said defect does not exist; or (III) the defect was exclusively the consumer's or a third party's.

According to the Brazilian Superior Court of Justice, the wrongdoer bears the burden of establishing the presence of one or more of the conditions and circumstances required to exclude product liability. In other words, to offset their liability, the wrongdoer has to prove that (1) the defect does not exist; or (2) the defect was caused exclusively by consumer or third party fault; or (3) it did not put the product on the market (Resp 1,715,505, j. 23 March 2018).

If the victim contributed to the accident, compensation is mitigated. The Brazilian Superior Court of Justice has held that: “Contributory negligence on the part of the victim allows a reduction in the amount of compensation for losses imposed on the manufacturer”(REsp 287,849, j. 17 April 2001).

It is important to highlight that the CDC extends protection to bystanders. Article 17 clarifies that for the right to claim damages to be effective, “all the victims of the event are equivalent to consumers”. The Superior Court of Justice holds that “even if they have not participated directly in the consumer relationship, victims of an accident are subject to protection of the consumer protection code” (STJ, AREsp 479,632, j. 12 March 2014).

Following the path of EU Law, the Brazilian Consumer Protection Code imposes strict liability for defective products. However, it is worth noting since 1990 the CDC has expanded strict liability to defective services (Article 14). The Brazilian Consumer Protection Code and its application through the courts have made it possible to build a strict liability regime for damage caused by products and services, which incentivizes manufacturers and all other parties in the supply chain to adopt the most advanced safety standards in business activities.

Product Safety: the Role of Recall

The CDC determines that “products and services made available in the consumer market shall not bring risks to consumers’ health or safety, except those considered normal and predictable as a result of the nature of the product or service” (Article 8). With this rule, Brazil provides a specific recall policy as a corrective measure for businesses to remove unsafe products from the market, also informing consumers. Businesses are then bound to recall a product once the minimum risk of harm is detected.

There is special concern regarding information. The Brazilian Consumer Code has very strict rules on the veracity of information given to consumers (as well as environmental information) and considers advertising a contractual offer. Thus, Article 9 CDC imposes a duty on suppliers to clearly and extensively inform consumers of potential risks of a product. Article 10 CDC prohibits suppliers from introducing to the market any product or service that presents a high level of harm or danger to health or safety. This prohibition includes products which are potentially dangerous to consumer safety. Therefore, the CDC includes rules about recall of defective products in Article 10, paragraphs 1 to 3:

§. 1. A supplier of products or services, who, subsequent to the introduction of his products or services into the market, realizes the existence of unforeseen risks involved, shall immediately communicate the fact to the competent authorities and warn consumers through advertising notices.

§. 2. The advertisements mentioned in the previous paragraph will be shown in the media, radio, and television, and will be at the expense of the product or service supplier or provider.

§. 3. Whenever suppliers learn that services or products may present a health or security risk to consumers, the federal government, the states, the Federal District and municipalities, must inform the appropriate parties about it.

According to Article 3 CDC, a supplier is any individual or legal entity, public or private, national or foreign, as well as unidentified entities that engage in the production, assembly, creation, construction, transformation, import, export, distribution or marketing of products or services. Therefore, as we stated earlier, whenever the legislation mentions the supplier figure, especially regarding civil liability (CDC, 1990, Article 12) and consumer basic rights (CDC, 1990, Article 6), it also affects the manufacturer, producer, builder, national or foreign, importer, and so on.

The Brazilian Superior Court of Justice reasons, for example, that “The fact that the buyer has not repaired the vehicle in question does not exempt the manufacturer from the obligation to indemnify” (REsp 1,010,392, j. 5 June 2002).

The Brazilian Ministry of Justice adopted a specific rule on recall procedures (Rule 789/2001, revised by Rule 487/2012) which details how suppliers are to inform consumers. The rule imposes, for example, a requirement that suppliers must carry out an advertising campaign in the press and on radio and television, inform consumers about the danger or harmfulness of a defective product, as well as the preventive and corrective measures that the consumer must take and all other information to protect the safety of consumers.

Suppliers must report to the consumer protection authorities on the effectiveness of a recall within sixty days, stating, at least, the quantity of products or services effectively repaired or exchanged until that moment and their distribution by the states of the Federation. However, Brazil still has much to improve in terms of effectiveness, with scope for an increase in the number of recalls. According to OECD data, while EU countries made an average of 2,120 recalls from 2015 to 2017, the USA performed 310, but Brazil only 135 recalls.

Product Guarantee and Warranty

There are two types of quality guarantee in Brazil—legal and contractual. First, the legally mandatory warranty protects consumers during a minimum period against defective products or poor-quality items that do not function satisfactorily, on the basis that the supplier is liable for damages caused by a defect in its product. Thus, during a legally stated period of time, the supplier is presumed responsible for defects, facilitating compensation for damage. Second, an additional contractual guarantee may be provided by suppliers covering additional time and, when offered, becomes binding.

The warranty plays an important role in mass consumption societies: it assures that the supplier will repair, replace or compensate for a defective product during a limited period. The warranty also works as a perception of quality and is an important factor in influencing consumer choice: if the product fails after the warranty period, the consumer will normally have to pay repair costs. Inspired by the European RAPEX (*Rapid Alert System for dangerous non-food products*), Mercosur has recently developed a System of Alert to Defective Products (SIAC).

Statutory and Contractual Warranty

Article 26 CDC establishes a statutory warranty against apparent defects:

I – thirty days, in the case of provision of services and **non-durable** products; II – ninety days, in the case of provision of services and **durable** products.

The legal warranty of adequacy of a product or service is independent of an express term, and contractual exoneration of the supplier is prohibited (CDC, 1990, Article 24). A contractual guarantee is complementary to the legal warranty and will be conferred by means of a written term (CDC, 1990, Article 50).

In Brazil, the statutory (legal) warranty against apparent (easily identifiable) defects of durable products is 90 days. However, it is quite common for manufacturers to offer a contractual (or commercial) guarantee longer than the statutory. According to the Brazilian Superior Court of Justice, even if manufacturers offer a commercial guarantee, consumers keep the right to statutory warranty. The legal warranty period starts after expiry of the contractual guarantee. For example, if a manufacturer offers a one-year commercial warranty, the statutory guarantee period of ninety days will only start after twelve months (REsp 1,021,261, j. 5 June. 2010).

In Article 18, paragraph 1, CDC states that during the warranty period, the supplier has a duty to fix defects. The Superior Court of Justice has held that the manufacturer and the dealer are jointly liable. This is true in the case of defective new vehicles (REsp 547,794, j. 22 February 2011). Therefore, the consumer can require either the manufacturer or the car dealer to resolve defects during the warranty period. If the defect is not resolved within 30 days, the consumer may demand one of the following alternatives, according to their preference:

- I – replacement of the product for another product of the same nature, in perfect condition;
- II – immediate restitution of money paid, with any monetary adjustments, with no loss due to potential losses or damages;
- III – a discount proportional to the defect.

One remarkable precedent of the Superior Court of Justice found that the holder of a brand is also responsible for repairing products under the brand purchased in another country. Below, we transcribe a summary of the judgment:

Consumer law. Video camera acquired abroad. Defective goods. Responsibility of the national company of the same brand ("Panasonic"). The globalized economy. Advertising. If companies benefit from world famous brands, they must respond by accepting liability for defects in products advertised in the market. It is not reasonable that the consumer suffered the negative consequences of a business involving defective objects. (REsp 63981, 20 November 2000)

After expiry of the warranty period, the supplier will no longer be responsible for the costs of repair. Customers have to pay repair costs along with the life cycle of the product.

Warranty Against Latent Defects

However, the above reasoning only applies to apparent defects, which are easily identifiable by the consumer. Hidden defects undergo different legal treatments. Indeed, some

defects are not apparent, not allowing immediate identification by the consumer. Latent or hidden defects are commonly related to structural design or poor-quality materials used in the composition of products. If malfunction of a product is caused by a hidden defect, it would be unfair to make the consumer pay for repair of the good.

The CDC determines that in the case of a latent defect, a consumer should complain to the supplier to cover repair costs. The period of 90 days to claim product repair will only start after the hidden defect becomes manifest (Article 26, paragraph 3 CDC, 1990) even after the expiry of a contractual guarantee or statutory warranty against apparent defects.

This provision has enormous importance for consumer protection against planned obsolescence. Put this way, it adds product lifespan as a central element in assessing the liability of the producer for repair of product components. On the one hand, if product inadequacy was caused by a hidden defect that appears before exhaustion of the product's lifespan, the supplier has a duty to repair it. On the other hand, if the malfunction was caused by natural wear of the product and is compatible with its lifespan, the consumer pays repair costs.

Under Article 26 paragraph 3 CDC, consumer complaints to the supplier to repair hidden defects start from detection of the defect, not from the date of purchase. Thus, the supplier remains obliged to repair hidden product defects that appear in a period shorter than the expected product lifespan. The consumer must claim product repair within 90 days after detecting a hidden defect.

The Brazilian Superior Court of Justice concluded that the supplier has a legal obligation to repair hidden defects that appear before the end of the lifespan of the product. The consumer's statute of limitations to claim repair or replacement due to latent or concealed defects starts within 90 days of its appearance, even after or despite expiry of the contractual warranty. Therefore, a demand to repair or replace products or services due to hidden defects (caused by any problem that occurred during its production) may be presented during the reasonable expected useful life of the product or service. We highlight the following excerpts from the judgment:

4. The period for a complaint of latent product defects shall not be confused with the warranty period for the quality of the product – which can be conventional or, in some situations, legal. (...).

5. Obviously, the supplier is not, *ad aeternum*, responsible for products put on the market, but its responsibility is not limited simply to the contractual guarantee period that is laid down unilaterally by itself. Measurement of supplier's liability should consider the nature of a product defect, even if it has manifested only after the end of the warranty.

6. Warranty periods, legal or contractual, intended to safeguard the buyer against defects of products related to natural wear of the thing, are a minimum interval of time in which deterioration of the object is not expected. After this time, under ordinary use of the product, some normal wear can be expected to arise. A different matter is an intrinsic product defect, which has always existed, but that only comes to light after the warranty has expired. This category of intrinsic defect surely includes defects concerning design, structure, quality of materials, among others, which often only become known after a while of use, but that, however, do not arise directly from enjoyment of the right, but from a hidden characteristic that was latent until then.

7. In the case of an apparent defect in durable products, it is true that the consumer should require repair within 90 days, in the case of durable products, counting from the effective delivery of the good and not appearing during the contractual guarantee. However, the consumerist doctrine has understood that Article 26 paragraph 3 CDC,

concerning hidden defects, adopted the criterion of a product's useful life, not limitation of warranty, and the supplier is responsible for defects for a longer space of time, even after expiry of the warranty.

8. Indeed, if there is a hidden defect not arising from normal wear caused by regular use of the product, but of its own manufacture, related to the design, structure, quality of materials, among others, the deadline for claiming repair starts at the moment that defect is evident, even if the contractual period of guarantee has expired. The focus should be on product useful life criteria.

9. Furthermore, regardless of the contractual guarantee period, the sale of a durable good with a useful life shorter than legitimately expected, in addition to being a defect (Article 18 CDC, 1990), is also a breach of objective good faith, which should guide contractual relations. In other words, it is a breach of the duty of information and frustration of the contract object, which was the purchase of an asset whose life cycle is, legitimately and reasonably, expected to be longer. (REsp 984106, j. 4 October 2012)

In this precedent, the Brazilian Superior Court of Justice also pointed out that it is essential to enforce consumer protection against hidden defects, because the systematic use of latent defective components in durable goods is a deliberate strategy by firms, namely planned obsolescence. This is a strategy to shorten the useful life of durable goods, forcing consumers to anticipate the purchase of new products. The Brazilian Superior Court of Justice reiterated its reasoning about the extended period to claim repair of hidden defects. The Court interpreted that the ninety-day period to claim repair of a latent defect in a car starts from the consumer's awareness of the defect, even after expiry of a potential additional contractual guarantee (AREsp 127,736, j. 19 March 2013).

Misleading and Abusive Advertising

Brazilian doctrine is unanimous in mentioning the impact of EU Law, especially Council Directive 84/450/EEC of 10 September 1984 on misleading advertising. Some authors also point to the impact on the CDC of Council Directive 89/552/EEC on TV broadcasting. The CDC states (Article 37) that any "misleading or abusive advertising campaigns are prohibited", which is similar in many respects to Directive 84/450/EEC:

para. 1. Any information or public communication that is entirely or partially false or is in any way, even by omission, capable of inducing the consumer to make a mistake regarding the nature, characteristics, quality, quantity, properties, origin, price, and any other information about products and services will be considered misleading.

para. 2. An advertisement of any discriminatory nature, or that incites violence, explores fear or superstition or takes advantage of a child's lack of judgment or experience, disrespects environmental values or may cause the consumer to behave in a way that will bring harm to his health or safety would be considered abusive.

One other similarity with Directive 84/450/EEC can be noted, as the CDC regime of misleading advertising also excludes comparative advertising from its scope of application. However, its successor Directive 2006/114/EC deals with both misleading and comparative advertising.

Both norms, Directive 84/450/EEC and the CDC, prohibit omitting material information or partially fraudulent advertising. The Brazilian text reads:

Article 37.[...]

para. 3. In this Code, misleading information includes failure to mention essential information about a product or service.

The CDC considers as misleading any type of information or communication of an advertising nature, entirely or partially false, or by any other means, even by omission, capable of misleading the consumer as to the nature, characteristics, quality, quantity, properties, origin, price, and any other data on products and services that are deceptive. It also prohibits abusive publicity which includes, for example, discriminatory advertising of any nature, or that incites violence, exploits fear or superstition, takes advantage of the deficient judgment and experience of a child, disrespects environmental values, or that is able to induce the consumer to behave in a way that is harmful or dangerous to health or safety.

Antônio Herman Benjamin, one of the authors of the then draft bill for the CDC, confirms that the source of Article 38 of the CDC about the burden of proof was Article 6 of draft Directive 84/450/EEC. The Brazilian text reads as follows:

Article 38. The burden of proof regarding the truthfulness and correctness of information or public communication will be the liability of its sponsor.

This shift of the burden of proof, which was present in the Commission Proposal for the Directive but triggered protests in Europe, remains one of the most powerful instruments to combat misleading and abusive advertising in Brazil, rendering the consumer right effective (Article 6, IV). The article is also used by the Superior Courts to limit comparative advertising.

The draft bill 281/2012 to reform the CDC refers to Directive 2005/29/EC on commercial practices. The debate whether children should be better protected against advertising beyond Article 37 paragraph 2° includes Recommendation 98/560/EC and Directive (89/552) 97/36/EC. “Unfairness” is generally measured against the benchmark of the “average consumer”, but Articles 39, IV and 37 paragraph 2° CDC mention children expressly as particularly vulnerable consumers. The Superior Court of Justice classified children’s advertising as abusive (REsp 1.558.086/SP, j. 10 May 2016). Justice Antonio Herman Benjamin calls children “hyper-vulnerable” consumers (REsp 1.264.116, j. 18 October 2011).

The Brazilian Consumer Law Enforcement System: the Telecommunications Example

Individual redress is notoriously not enough to put many profitable and illegal strategies to rest. Apart from criminal prosecution, another possible response to these actions is collective redress. In 1965, Brazil legalized a lawsuit “in the public interest” (*ação popular*, Act 4.717/1965) though rather for political and environmental issues. In 1985, at the end of the Brazilian Military Dictatorship, Act n. 7347 established the Collective Action in order to protect “diffuse and collective interests” and created a federal fund to compensate collective damages (*Fundo de Reconstituição dos Bens Lesados*). The CDC, in 1990, completed the “system” of collective redress, allowing injunction and compensation.

The system of collective enforcement operates in two degrees or stages: recognition of redress and individual or collective redress through a fund. Compensation can be deposited in a federal (or state) fund. Consumer associations may obtain financial aid from the State, but normally they are exempt from litigation costs. The CDC introduced several simplifications to consumer law procedure, such as shifting the burden of proof

ordered by the judge (Article 6, VIII) and distribution of the burden of proof established by law in the case of defective products (Article 12, paragraph 2). The public prosecutor and the public defender are granted the right to sue with no litigation costs and no risk of being found guilty and legal aid is granted to a consumer who proves to be financially incapable. Here, the Civil Procedure Code offers a favourable rule to consumers that may be used *ex vi* Article 7 CDC: para. 1 Article 373 of the Civil Procedure Code/2015 gives the judge the power to shift the burden of proof:

In cases provided for by law or in view of the specifics of the case related to the impossibility or excessive difficulty to comply with the burden of proof under the head of the Article or to the greater ease of obtaining proof of a contrary fact, the judge may assign the burden of proof in a different manner, provided that this is done by a motivated decision, in which case he shall give the party the opportunity to discharge the burden assigned to him.

Brazil also recognizes the strong role of the public prosecutor (“*Ministério Público*”) or the Attorney General’s Office, due to their investigative prerogative (termed “civil inquiry”/*inquérito civil público*). They can make “recommendations” and “settlements” (through collective bargaining and conduct adjustment terms), imposing changes of conduct to eliminate the consequences of damage (Arenhart, 2018, p. 233), as well as agreements and standards for practical collective redress. Finally, they can impose fines (directed to a collective fund). Alternatively, they can also—at the end of the inquiry—choose to file a class action against the company concerned to protect all classes of collective interests. A civil inquiry means that the public prosecutor (and nowadays agencies such as the Secretaria Nacional do Consumidor (SENACON) and Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis (IBAMA)) can request information from professionals and from any alleged injured party. The inquiry can be initiated *ex officio*. The Attorney General’s Office as *custos legis* is always notified. There is a new National Register of collective redress. More than 2000 wins in consumer collective actions/agreements have been brought by public prosecutors in Brazil (Carpena, 2013, pp. 75–100).

Unlike the USA, public law enforcement is more efficient than private enforcement by skimming off profits and imposing fines to eliminate consumer damage. “Public Civil Inquiry” by the public prosecutor (*Ministério Público*) and class actions (normally proposed by public prosecutors) can be more effective than private enforcement as far as compensation of individual and collective damages is concerned. The key element is the strong system of “monitoring” and law enforcement by public authorities and agencies, such as environmental agencies (IBAMA) and consumer agencies SENACON (federal) and PRO-CONs (state and municipal).

Article 83 CDC states that “in order to defend the rights and interests protected by this Code, all sorts of actions capable of enforcing it are permissible”. This is supplemented by the following article (Article 84, CDC, 1990) that authorizes a judge to grant “measures that will ensure practical resolution for damage caused”. The intention of the legislator in drafting these provisions was to establish the principle of effective and proper legal protection of all rights enshrined in the Code (Watanabe, 2007, p. 854.)

Apart from the Judiciary, the Department of Protection and Consumer Protection (DPDC) is the public office responsible for coordinating the National Consumer Protection System at the administrative level. It aims to ensure the effectiveness of interventions on behalf of consumers. The DPDC is the only department of the National Consumer Office (*Secretaria Nacional do Consumidor*), a division of the Federal Ministry of Justice.

SENACON and the DPDC Department offices are located in the federal capital of Brasília and its functions are enumerated in Article 106 CDC and Decree 2.181/97.

The Department has managed to instigate discussions on various consumer topics towards consensual and harmonious solutions by bringing together players from across the country. The online negotiation platform “www.consumidor.gov.br” is a public service (free of charge) that allows direct dialogue between consumers and companies to resolve consumer disputes over the internet. Administrated by SENACON, DPDC, and the PROCONs, it is currently one of the first channels that consumers are using to complain about their telecommunication services. In 2018, the DPDC ordered telecom companies Oi, Claro, and Vivo to pay a fine of R\$ 9.3 million for violation of the CDC (circa 1.5 million Euro). This was, at that point, the largest fine ever imposed in the history of the Department. The Legal Department of the Agency found that these companies violated the rights of consumers in so-called value-added services. According to its report, there was an irregularity in the offer and marketing of added services, in addition to offering services and products different from what was delivered. It was also found that companies charged for services and products that were never requested by the consumer. According to the Department, the companies misled consumers with advertisements that did not highlight essential aspects of the service and thus failed to provide sufficient elements for the consumer to ensure an adequate understanding about what was actually being delivered and for what reason they would be charged. The Director of the DPDC considered that the conduct of the companies lacked informed prior consent, which is essential for characterization of a legitimate expression of the willingness to pay.

Concluding Remarks

The political and practical relevance of consumer law in Brazil cannot be overstated. Brazilian society is highly unequal, although social equality is in some respects achieved through the consumption market. Access to consumption is especially important in Brazilian society. Brazilian consumer law benefits from EU law, but puts more emphasis on fairness, transparency, safety, non-discrimination, and non-abusive markets.

The Brazilian Consumer Protection Code has a strong enforcement strategy (Articles 4, 5, and 6 CDC, 1990). The procedural rules in Articles 81 to 104 include individual and collective actions (*ações civis públicas*). Public prosecutors have recorded more than 2,000 wins in class actions and settlements on consumer issues.⁶ According to the 2020 Report “CNJ—Justiça em Números”, about 10% of 77.1 million judicial claims in Brazil concern consumer issues (4.4% in state courts and 14.19% of small claims courts).⁷

The federal system also processes some consumer cases. However, its jurisdiction is limited by—and the majority of consumer cases are heard by—small claims courts or state justice. The federal courts are specifically responsible for judging cases in which the federal government, autarchic entities, or federal public companies are interested as plaintiffs, defendants, assistants, or opponents; cases involving foreign states or international treaties; political crimes or those committed against the Union’s assets, services, or interests of the

⁶ <https://consumidorvencedor.mp.br/> (accessed 1.12.2021).

⁷ <https://www.cnj.jus.br/pesquisas-judiciarias/justica-em-numeros/> (accessed 25 November 2021).

federal government; crimes against the organization of labour; and disputes over indigenous rights, among others.

The Superior Court of Justice is the competent court to judge appeals (from state and federal court cases) based on infra-constitutional causes (that are not directly related to the Federal Constitution). Its main function is to standardize interpretation of Brazilian federal legislation, except for matters under the jurisdiction of specialized courts (electoral and labour). Its competencies are foreseen in Article 105 of the Federal Constitution.

A National Consumer Protection Information System—SINDEC—was created (Articles 105 and 106 CDC) with municipal and state consumer agencies called PROCONs (909 in the whole country), coordinated by the National Secretary of Consumers—SENACON in the Ministry of Justice. SINDEC is a computerized system that integrates the service provided by 26 State Procons, the Federal District, and 598 Municipal Procons. As several of these Procons have more than one unit, the system comprises 981 units spread over 737 Brazilian cities. These Procons serve a monthly average of 216 thousand consumers. The complete list of integrated Procons and their respective date of formation can be consulted on the website.⁸ The system has a database⁹ showing that there were 2 274 191 consumer administrative complaints in 2018 and 2 598 042 in 2019.¹⁰

Since the SINDEC database was created in 2004, the PROCONS consumer agencies have resolved more than 25 million consumer complaints in Brazil. These data show the importance of consumer protection for Brazilian citizens. SENACON reported in SINDEC that in 2019, a total of 2 598 042 complaints were registered by Procons. Compared to 2018, this represents an increase of 14.2%, reaching a monthly average of 216 000 consumers (SINDEC, Boletim, 2019, p. 06).

SENACON has instituted a public platform for auto-negotiations between consumers and providers called “consumidor.gov.br”. Since its creation, a total of 3 417 983 cases have been resolved.¹¹ In 2019, the platform “consumidor.gov.br” managed 780.179 cases, in comparison to 2018, where a total of 609 644 consumer complaints were registered. The average resolution rate was 81% with a response time of 6.5 days.

The telecommunications sector generated the highest percentage of consumer complaints, with 40.3% in Consumidor.gov.br and 29.2% in SINDEC. At the same time, companies in this segment had the highest resolution rates of claims with 89.9% in Consumidor.gov.br and 85.8% in Procons.¹² This enforcement system is *sui generis* and helps ensure that consumer protection in Brazil is not merely a law in the books but also law in action. A complaint is indicated on the resolution rates when the consumer comments on and evaluates the final response posted by the supplier, within 20 days, indicating whether or not the problem was solved and the level of satisfaction with the service by the supplier.

Hence, an effective system is in place for resolving consumer disputes, both administrative, based mainly on conciliation and imposition of sanctions, especially pecuniary fines, and judicial, which involves both conciliation and judicial decisions in individual and collective actions.

⁸ <https://sindecnacional.mj.gov.br/report/Mapa> (accessed 25 November 2021).

⁹ <http://dados.mj.gov.br/dataset/atendimentos-de-consumidores-nos-procons-sindec> (accessed 26 November 2021).

¹⁰ https://www.justica.gov.br/news/collective-nitf-content-1552676889.94/arquivos/consumidor-em-numeros-2018_portal.pdf/view (accessed 26 November 2021).

¹¹ <https://consumidor.gov.br/pages/indicador/infografico/abrir> (accessed 26 November 2021).

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Declarations

Conflict of Interest The authors declare no competing interests.

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