

# **Regulation: The challenge to govern better, learning from failures to prepare for the future**

**OECD Conference  
Regulatory Policy at the Crossroads**

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## **Introduction**

- Thank you very much for the generous and kind invitation of OECD to participate in this Conference and being part of the Final Plenary Session.
- OECD proposed several important questions, but before try to answer them I think it is important to explain some aspects of the Brazilian situation and perspectives

## **Brazil Wants to Accelerate Growth**

- 1985-1994 – Hyperinflation;
- 1994-2006 - Structural adjustments, tight fiscal and monetary policies;
- 2003-2006 – Inequality reduction;
- 2007 to present – A new development cycle.
  
- Today: macroeconomic stability and sound fiscal policy;
- Country's big issue: sustained economic growth.

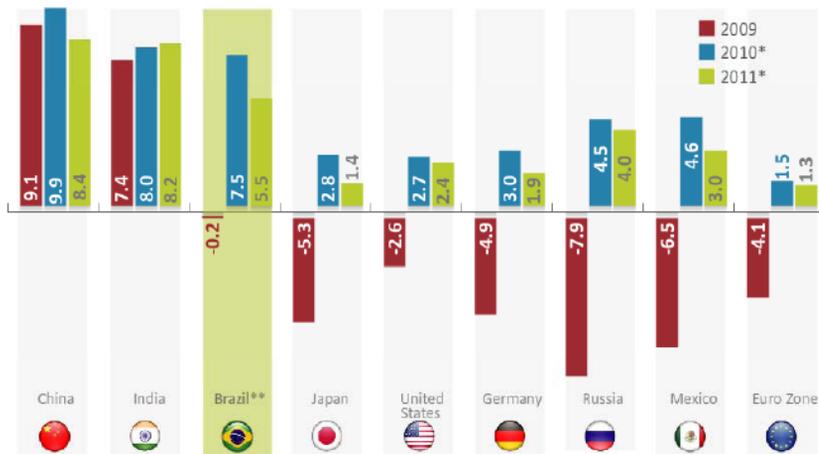
## **After 2008 crisis...**

### **Fast economic recovery**

- Excellent results from discretionary fiscal policy
- Economy has already returned to pre-crisis levels
- Heated economy
- Economic stimulus actions have already been almost all withdrawn

## Brazilian GDP growth: from the bottom to the top

In % YoY



\* The Economist forecasts (September 29<sup>th</sup>, 2010)

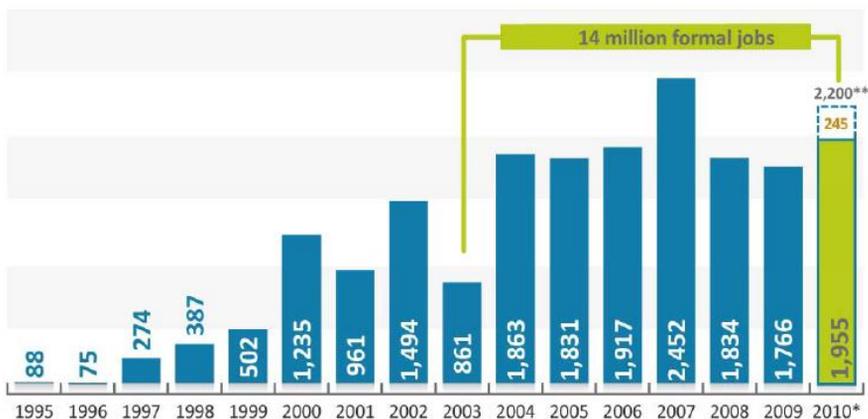
\*\* Ministry of Finance forecasts

Source: The Economist

Produced by: Ministry of Finance

## Robust growth and formal employment generation

In thousands of jobs



\* Results as of 2010 refer only to CAGED balance accumulated from the preceding year up to August, 2010

\*\* Ministry of Finance forecast

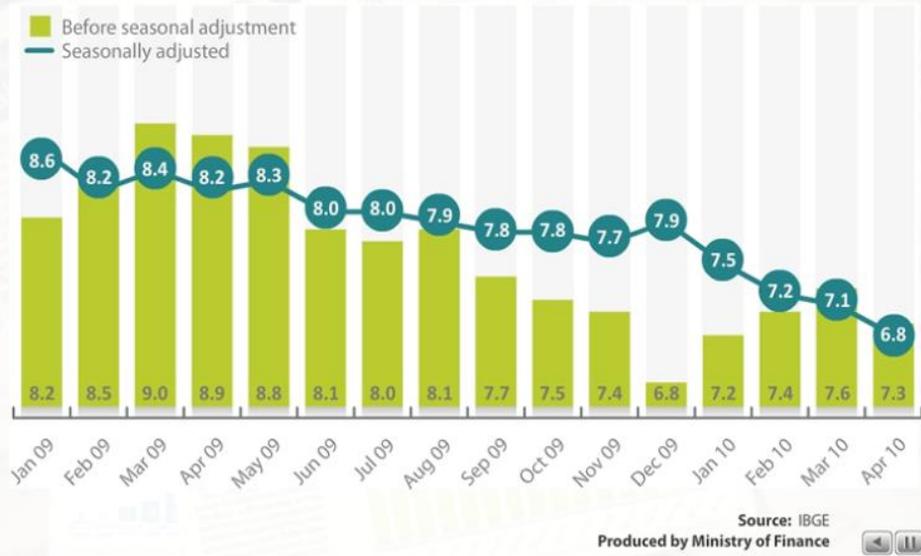
Source: Ministry of Labor & Employment

Produced by: Ministry of Finance

## 2010: the smallest unemployment rate in a time series

Unemployment rate

In % of economically active population



## Government infrastructure actions

- Since 2006 and under PAC – a strategic investment programa with management and boosting actions:
- Strong investment enhancement
- Strong infrastructure development
- Industrial sector policy
- BNDES PSI - Program for Sustain Investment

## More investments in the next 4 years PAC 2: initial estimated investment

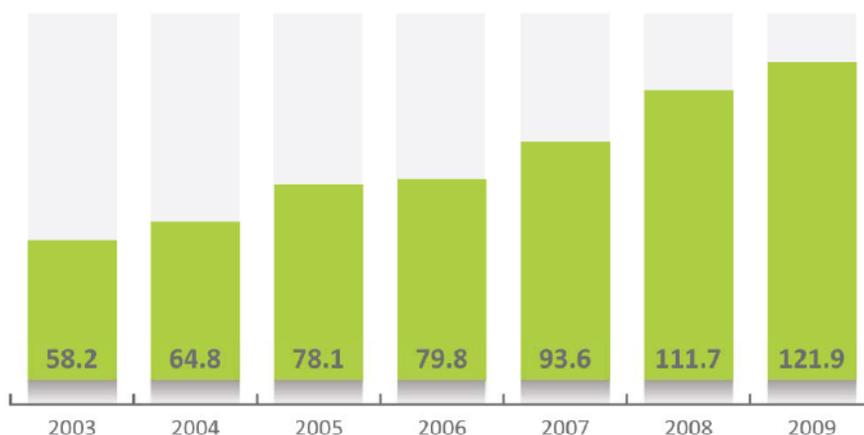
In R\$ million

PAC Projects	2011 - 2014	After 2014	TOTAL
PAC Better Town	57.1	-	57.1
PAC Citizen Community	23.0	-	23.0
PAC MCMV Housing Program	278.2	-	278.2
PAC Water and Light for All	30.6	-	30.6
PAC Transportation	104.5	4.5	109.0
PAC Energy	461.6	626.9	1,088.5
<b>TOTAL</b>	<b>955.0</b>	<b>631.4</b>	<b>1,586.4</b>

Source: State Department  
Produced by: Ministry of Finance

## Infrastructure investments Global investments shall increase more than 20% in 2010

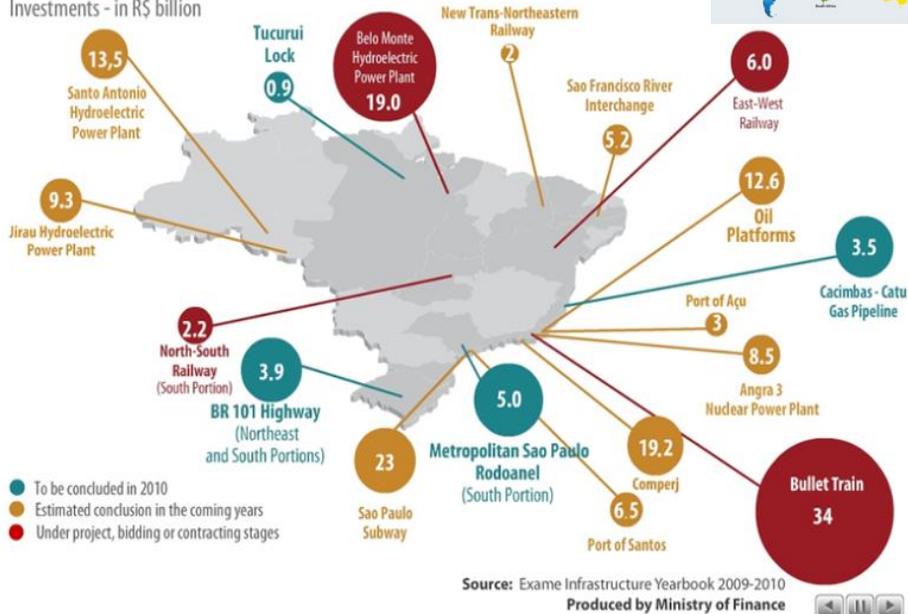
In R\$ billion, 2009 prices – 2003 to 2009



Source: ABDIB  
Produced by: Ministry of Finance

## Decade of infrastructure

Investments - in R\$ billion

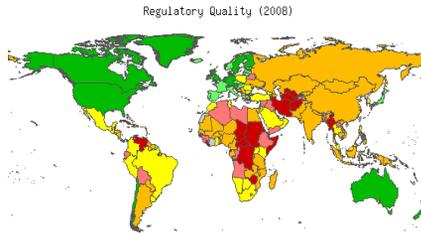


## In short:

- Brazil gathers the conditions to a long-term growth cycle and to become one of the most dynamic world economies
- Attraction of foreign investment and development of the internal market requires good regulation to assure economic efficiency and foster entrepreneurship and innovation

## Regulatory Challenges in Brazil

- The quality of regulation in Brazil is superior to the average in Latin America, but is inferior to what is seen in OECD countries;
- The quantity of regulation is huge and burdensome.
- Regulation is exercised by different kinds of institutions inside the Executive Branch, from ministries to regulatory agencies.
- Consensus: a better regulatory system is essential to grow.



## Regulatory Challenges in Brazil

- Capacities for regulatory quality are fragmented and the coordination mechanisms are still loose;
- The country lacks a systematic use of regulatory quality tools, being the regulatory impact assessment one of them.
- There are some “myths” and sensibilities about the role and operation of regulatory institutions as part of the Executive Branch
  - (e.g. Regulatory Oversight versus autonomy; Alignment and coherence between regulation and public policies)

## Regulatory Governance

Thematic evolution: regulation as public governance issue in the government agenda

Multiplicity of aspects

Access to information x culture of secrecy

Normative consolidation x fragmentation

Judicialization and quality of Justice

Transparency and citizen participation

Regulatory Institutional design

Regulatory frameworks

Quality of Regulation

## Regulatory Reform in Brazil Brazil's Strategy Towards Regulatory Reform and Policy Coherence

- Since 2007 Brazil is on the way to implement an **articulated** and comprehensive Regulatory Reform Program;
- Growing consensus on the need to regulate better and to improve the quality of the country's regulatory management system in terms of its policies, tools and institutions.
- The recent developments in this field are:
  - A Bill of Law on the administration, organization and social accountability of the federal Regulatory Agencies (Bill 3337/2004);
  - The Bill of Law on the Restructuring of the Competition Policy system
  - A Program for the Strengthening of the Institutional Capacity for Regulatory Management – PRO-REG (in association with IADB) to enhance the regulatory management system of the country;
  - A regulatory review before OECD in 2008;
  - Increased efforts to articulate and coordinate regulatory reform measures, under the leadership of the Civil House of the Presidency.

## **New Regulatory Frameworks in strategic sectors of infrastructure and economy**

- Electric energy sector (2004)
- Water/Sanitation (2008-2010)
- Natural gas (2009/2010)
- Biofuels (Ethanol and Biodiesel)
- Oil Sector – pre-salt layer / partition sharing (2010-2011)
  
- Trains and Raylways (to be sent to Congress)
- Minning sector (to be sent to Congress)
- Broadcasting and telecommunications (to be sent to Congress)

### ***The PRO-REG Programme*** **(Program for the Strengthening of the Institutional Capacity for Regulatory Management)**

- Developed with the support of IADB.
- Strengthening the regulatory system
- Consolidate capacities to formulate and analyse public policies in regulated sectors
- Improve co-ordination and strategic views
- Strengthen autonomy , transparency, accountability and performance of agencies
- Mechanisms for accountability and transparency
- Identify and to consider the adoption of a model of excellence in regulatory management.
- Management Committee (CGP) ad Consultative Committee (CCP).

## PEER REVIEW OCDE - 2008

- Very important document produced by OECD
- Evaluation of institutional, administrative and economic aspects of regulatory institutions in Brazil (transportation, health insurance, telecommunications, electricity)
- Recommendations and suggestions for improvement of regulatory institutions and regulatory process
- Best practices – benchmarking – international comparison
- Credibility – methodology – transparency of the process
- Not a “road map” or “cook’s recipe” but institutional learning
- Confidence in the alternatives and possible solutions for the problems and weaknesses of the Brazilian model
- Very good receptivity by Agencies, Academy, Business

### Peer Review - Policy recommendations

- Broaden efforts to integrate a “whole-of-government” approach for regulatory quality supported at the highest political level.
- Set up institutional capacities for regulatory quality.
- Improve co-ordination mechanisms and clarify responsibilities for regulatory quality.
- Implement Regulatory Impact Analysis as an effective tool for regulatory quality.
- Improve the quality of the regulatory stock to ensure the efficient attainment of economic and social objectives.
- Improve transparency and increase social participation in regulatory processes.

## Policy recommendations

- Consolidate the autonomy and statute of Brazilian regulatory authorities
- Strengthen the strategic framework for planning and decision making in regulated sectors
- Strengthen social accountability mechanisms without undermining the authorities' autonomy
- Systematise co-operation with competition authorities
- Improve co-ordination mechanisms in specific sectors

## Main Challenges

- Improve **legitimacy, capacity and transparency** of the regulatory bodies;
- Make **clear the role, limits and responsibilities** of Regulatory Agencies, in the framework of the Federal Constitution;
- **Define clearly the extent of the "autonomy"** of regulatory agencies and permit the exercise of the autonomy without ignoring the political authority and legitimacy of the Executive Power
- **Improve regulatory impact assessment, co-ordination and oversight tools** in the regulatory system;
- Improve **normative consolidation and codification** of the legal and regulatory framework;
- Increase **debureaucratisation** and **administrative simplification**.

## The way to go...

- Define and implement Oversight Regulatory Body
- Implement better processes for selection and nomination of regulatory board members
- Approve Law on Interest Conflict – better rules for revolving doors and cooling off
- Approve Law on Information Access
- Approve Law on Lobby Regulation

## Questions

- What are the key political challenges to integrate regulatory management and regulatory governance? What are the implications for sectoral policy making and for regulatory policy as a whole?
  - Political leadership, clear legal mandate, shared goals in terms of economic and social development
  - Shared vision about role of the State and how to deal with state owned enterprises in a competitive environment, specially in the utilities sector
  - Implications: need of more transparency, openness and of technical legitimacy. Much more needed capacity to negotiate and involve stakeholders. Professionalize technical bodies and boards of regulatory authorities.

## Questions

- How can governments co-operate on the regulatory policy agenda, both across jurisdictions and across levels of government within countries?
  - As Mr Gurria said, “countries need to pay attention to their neighbours”
  - Brazil and other developing countries are open to share experiences and receive inputs from OECD countries
  - But any relationship must consider the cultural, political, social, economical, historical, institutional and also environmental characteristics of every country
  - As no one size fits all and there are not “pre-cooked recipes”, institutional learning must be reciprocal and a two-way road, respectful and not impositive
  - International think tanks as OECD can be helpful in order to facilitate the experiences exchange, benchmarking, diffusion and institutional learning
  - OECD Conferences, peer reviews, studys and other forms of knowledge production must be incentivated iand made availabe including for non-members countries

## Questions

- How can the OECD assist efforts to foster the regulatory policy agenda from a global perspective ? What would be the thrust and focus of future OECD principles?
  - Brazil has benefitted from the relationship with OECD
  - Capacity building must be included in the OECD agenda
  - Openess, technical competence and political sensibility must guide the OECD activity
  - The 2005 principles must be enforced but also periodicaly reviewed to introduce new trends as, for example, ex-post impact assessment.

## Questions

- How can a focus on regulatory governance achieve policy coherence and help government better address the challenges of green growth, innovation and global trend? What are the implications in terms of institutional design and co-ordination?
  - Regulatory Oversight Bodies linked to the center of government can play an important role in the sense
  - Role of ROB can be affected by the potential conflict between policy analysts, government lawyers and legislators, so the objectives, mandate and limits must be clearly stated.
  - New regulatory frameworks must reduce burdens on economic activities and infrastructure investment but precaution principle can not be left behind.
  - The main challenge to developing countries as Brazil to foster sustainable growth is solve this dilemma but it is on the political aspects of the problem, not the technical aspects

## Questions

- What efforts should government undertake to strengthen communications and consensus to mobilise businesses and citizens around the regulatory agenda
  - Brazil: Economic and Social Development Council, a President's body of advisory, has been playing an important role in this "consensus" creation
  - Put regulatory reform in the agenda as a priority and communicate the gains for all the society in the medium and long run, and not permit suspicion about the real objectives of the reform (for example transfer of profits for private sector, reduction of rights)
  - Improve participation of civil society in the regulatory process by support and training to allow representatives to participate in public consultations
  - Open public dialogue with regulated sectors – consultative councils, users councils
  - Foster technically supported decision making and professionalize bodies;
  - introduce and implement RIA in order to provide evidence based regulation.

**Obrigado!**



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