



CHAMBERS

Global Practice Guides

TMT

Portugal – Law & Practice

Contributed by
Vieira de Almeida & Associados

2016

PORTUGAL

LAW & PRACTICE:

p.3

Contributed by *Vieira de Almeida & Associados*

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law & Practice

Contributed by Vieira de Almeida & Associados

CONTENTS

1. General Structure of TMT Regulation and Ownership	p.6	3.7 Rules which Govern the Use of Telephone Numbers	p.14
1.1 Statutes, Laws and Legislation	p.6	3.8 Regulation of Retail Tariffs	p.14
1.2 Government Ministries, Regulatory Agencies and Privatised Entities	p.6	3.9 Rules to Promote Service in Underserved Areas	p.14
1.3 Developing Rules and Adopting Policies	p.7	3.10 Extent to which Local Government Regulation of Telecom Service is Pre-Empted	p.14
1.4 Ownership of Telecoms Media Technology Industries	p.7	4. Wireless	p.14
1.5 Limits on Participation	p.7	4.1 Important Companies	p.14
1.6 Restrictions on Foreign Ownership or Investment	p.8	4.2 General Requirements for Obtaining a Licence /Authorisation to Provide Wireless Services	p.14
1.7 World Trade Organization Membership	p.8	4.3 Transfer of Wireless Licences/Authorisations to Other Entities	p.14
1.8 Appellate Process	p.8	4.4 Spectrum Allocation	p.15
1.9 Annual or Recurring Fees	p.8	4.5 Procedures to Identify and Assign Spectrum Among Competitors	p.15
2. Broadcasting/Media	p.8	4.6 Unlicensed Spectrum Uses	p.15
2.1 Important Companies	p.8	4.7 Government Policy/Regulation to Promote Next Generation Mobile Services	p.15
2.2 Requirements for Obtaining a Licence /Authorisation to Provide Services	p.9	4.8 Price Regulation for Mobile Services	p.16
2.3 Typical Term for a Licence/Authorisation to Provide Services	p.10	4.9 Regulation of Government and Commercial Wireless Uses	p.16
2.4 Transfer of Licences/Authorisations to Other Entities	p.10	4.10 Extent to which Local Government Regulation of Wireless Service is Pre-Empted	p.16
2.5 Spectrum Allocation	p.10	5. Satellite	p.16
2.6 Restrictions on Common Ownership	p.10	5.1 Important Companies	p.16
2.7 Content Requirements and Regulations	p.10	5.2 General Requirements for Obtaining a Licence /Authorisation to Provide Satellite Service	p.16
2.8 The Difference in Regulations Applicable to Broadcasting Versus Cable	p.12	5.3 Transfer of Satellite Licences/Authorisations to other Entities	p.17
2.9 Transition from Analogue to Digital Broadcasting	p.12	5.4 Spectrum Allocation to Satellite Service	p.17
3. Telecoms	p.13	5.5 International Telecommunication Union Membership	p.17
3.1 Important Companies	p.13	5.6 Provision of Service by Foreign-Licensed Satellites	p.17
3.2 Requirements for Obtaining a Licence /Authorisation to Provide Services	p.13	5.7 Milestone and Due Diligence Deadlines	p.17
3.3 Transfer of Telecoms Licences/Authorisations to other Entities	p.13	6. Internet/Broadband	p.17
3.4 Regulations for Network-to-Network Interconnection and Access	p.13	6.1 Important Companies	p.17
3.5 Accounting, Functional and Legal Separation	p.13	6.2 Regulation of Voice Over IP Services	p.17
3.6 Provisions for Access to Public and Private Land	p.14		

PORTUGAL LAW & PRACTICE

Contributed by Vieira de Almeida & Associados **Authors:** Margarida Couto, Magda Cocco, Tiago Bessa, Helena Correia Mendonça

6.3 Interconnection and Access Regulatory Conditions to IP-Based Networks	p.17
6.4 Net Neutrality Requirements	p.18
6.5 Government Regulation of Internet/Broadband	p.18
6.6 Over-the-Top Internet-based Providers	p.18
6.7 Extent that Local Government Regulation of Internet/Broadband Service is Pre-Empted	p.18
7. Privacy	p.18
7.1 Government Access to Private Communications	p.18
7.2 Use of Encryption Technology	p.18
7.3 Liability of TMT Companies for Content Carried Over Their Networks	p.19
7.4 Obligation of TMT Companies to Block Access to Certain Sites or Content	p.19
7.5 Obligation of TMT Companies to Retain Customer Data	p.20
7.6 Prohibition of Unsolicited Communications	p.20
8. Future	p.21
8.1 Status and Process of Convergence	p.21
8.2 Changes to Statutes, Laws or Legislation	p.21
8.3 Changes to Government Ministries, Regulatory Agencies or Privatised Entities	p.21
8.4 Identification and Assignment of Additional Spectrum	p.21

Contributed by Vieira de Almeida & Associados **Authors:** Margarida Couto, Magda Cocco, Tiago Bessa, Helena Correia Mendonça

Vieira de Almeida & Associados is a Portuguese independent law firm with over 250 staff and 19 areas of practice, who has been involved in many ground breaking transactions in Portugal and abroad over the last 40 years. The firm is leader in the Telecoms industry in Portugal and advises both domestic and foreign operators and investors and have acted as counsels in major deals such as the negotiation of the Universal Service Concession Agreement. Lawyers pro-

vide regulatory advice to the leading Portuguese network operators and service providers, as well as cable and mobile operators in matters involving IT and telecommunications regulatory law. Other areas of expertise within the TMT practice include IT & outsourcing, privacy, data protection & cybersecurity, media and entertainment, emerging technologies and space law.

Authors



Margarida Couto is a partner in the TMT practice, where she has been providing regulatory advice to a wide variety of clients in matters involving media, data privacy and telecommunications law. She has also been involved in several infra-structural projects and public procurement transactions both in regulated and in non-regulated sectors. She is a member of the Portuguese Association for the Development of Communications (APDC).



Magda Cocco is a partner and head of the privacy, data protection and cybersecurity and space law practice. She has vast experience in the telecommunications sector in a variety of jurisdictions, with a special focus on Portugal and Portuguese speaking countries, namely Angola, Mozambique, Cape Verde and East Timor. She has advised governments and regulators in the definition of regulatory policies, in the drafting of legislation and several other specific projects within these areas. Cocco has been an adviser in various international public tenders for the attribution of new licenses as well as in cross border lease projects and project finance, namely undersea cable installation and negotiation of contracts such as concession contracts, satellite construction contracts and other contracts regarding electronic communications operators. She has also advised on the launch of new TV channels and media projects, and on several public projects relating to data protection and cybersecurity. She is a co-ordinating member of the Permanent Group for the Information Society Security of the Portuguese Association for the Development of an Information Society (Grupo Permanente de Segurança na Sociedade de Informação, da Associação Portuguesa para o Desenvolvimento da Sociedade da Informação - APDSI), a member of the Portuguese Association for the Development of Communications (APDC) and a representative of VdA as Member of the International Aeronautical Federation.



Tiago Bessa is a managing associate in the the TMT practice, where he is mainly focused on telecommunications, media, electronic commerce, copyright and consumer law matters. He is a member of the Portuguese Association for the Development of Communications (APDC) and of the Portuguese Association of Intellectual Property (APDI).



Helena Correia Mendonça is a managing associate in the TMT practice. Her practice covers on information and communication technology, copyright and neighbouring rights, media, electronic commerce and privacy, data protection and cyber security. She has specifically provided advice on matters relating to software licensing, escrow agreements, supply of equipment, support and maintenance services, distribution and technology transfer contracts, outsourcing, protection of intellectual property, know-how and trade secret, as well as on cloud computing and videogames. She also advises on copyright, content aggregation, streaming, social networks, blogs, digital signatures, mobile payments and new media. She has published a number of articles in industry publications.

1. General Structure of TMT Regulation and Ownership

1.1 Statutes, Laws and Legislation

The Telecoms Media Technology industries are regulated, with regard to networks and services – rather than content – by the EU Regulatory Framework for Electronic Communications and Services, which is the basis for all national telecommunications laws in the EU Member States. The referred Framework provides general and technology neutral rules applying to all electronic communications networks and services covering fixed and wireless telecoms, data transmission and broadcasting transmission.

In addition, the main provisions applicable to the Telecom Media Technology industries in Portugal are:

- Constitution of the Portuguese Republic, especially the following provisions:
 - (a) Article 35 – Use of information technology;
 - (b) Article 37 – Freedom of expression and information;
 - (c) Article 38 – Freedom of the press and the media;
 - (d) Article 39 – Regulation of the media;
 - (e) Article 40 – Right to broadcasting time, of reply and of political response;
 - (f) Article 60 – Consumer rights;
- Electronic Communications Law (Law No 5/2004 of February 10th, amended twelve times, the last by Law No 127/2015 of September 3rd), which transposes Directives 2002/19/CE, 2002/20/CE, 2002/21/CE and 2002/22/CE, all issued by the European Parliament and the Council, and Directive 2002/77/CE of the European Commission;
- Essential Public Services Law (Law No 23/96 of July 26th, amended five times, the last by Law No 10/2013 of January 28th);
- Television Law (Law No 27/2007 of July 30th, amended three times, the last by Law No 78/2015 of July 29th), which transposes Directive 89/552/CEE, of the Council, amended twice, the last by Directive 2007/65/CE of the European Parliament and Council;
- Radio Law (Law No 54/2010 of December 24th, amended twice, the last by Law No 78/2015 of July 29th);
- Electronic Commerce Law (Decree-Law No 7/2004 of January 7th, amended twice, the last by Law No 46/2012 of August 29th), which transposes Directive 2000/31/CE of the European Parliament and the Council;
- Data Privacy Law (Law No 67/98 of October 26th, amended twice, the last by Law No 103/2015 of August 24th), which transposes Directive 95/46/CE of the European Parliament and the Council;
- Privacy in Communication Law (Law No 41/2004 of August 18th, amended once by Law No 46/2012 of August 29th), which transposes Directive 2002/58/CE of the European Parliament and the Council;

- Data Retention Law (Law No 32/2008 of July 17th, which transposes Directive 2006/24/EC of the European Parliament and the Council (the Data Retention Directive);
- Advertising Code (Decree Law No 330/90 of October 23rd, amended 13 times, the last by Decree-Law No 66/2015 of April 29th), which transposes Directives 84/450/CEE and 89/552/CEE of the European Council;
- Press Law (Law No 2/99 of January 13th, amended thrice, the last by Law No 78/2015 of July 29th);
- Copyright and Related Rights Code (Decree-Law No 63/85 of May, amended twelve times, the last by Law No 49/2015 of June 5th);
- Competition Law (Law No 19/2012 of May 8th);
- Cybercrime Law (Law No 109/2009 of September 15th), which transposes the Council Framework Decision No 2005/222/JHA of February 24th into Portuguese law (note that this Framework Decision was replaced by Directive 2013/40/UE of the European Parliament and the Council);
- Framework governing the construction, access to and set-up of electronic communications networks and infrastructures in buildings, housing developments and urban settlements (Decree-Law No 123/2009 of May 21st, amended four times, the last by Law No 82-B/2014, December 31st);
- Transition to Digital Terrestrial Television (Council of Ministers Resolution No 26/2009 of March 17th).

In 2002, the Council of Ministers approved Resolution No 135/2002 of November 20th establishing the institutional framework of governmental activity regarding the information and knowledge society through the National Initiative for Broadband. In 2008, the Council approved Resolution No 120/2008 of July 30th determining the investment in New Generation Networks as a strategic national priority, as well as the government's guidelines for NGNs. In 2012, the Council of Ministers approved Resolution No 112/2012, establishing Portugal's National Digital Agenda, in line with Europe's Digital Agenda and Europe 2020 Strategy.

In addition to these regulations, the sector is also subject to administrative orders, rulings, guidelines and recommendations issued by the government and the regulatory bodies.

1.2 Government Ministries, Regulatory Agencies and Privatised Entities

The key regulatory agencies in the Telecoms Media Technology sectors are the Portuguese Authority for the Media (ERC) and the Portuguese National Telecommunications Authority (ANACOM).

ERC's main duties and responsibilities are the regulation and supervision of the media. In performing its functions, the responsibility of the ERC is to ensure respect for the rights and responsibilities constitutionally and legally enshrined (inter alia, freedom of the press, the right to information, independence from political and economic power), check-

ing compliance with the standards for media and broadcast content and promoting the effective functioning of the market in which they operate. ERC regulates media activity, granting new licences to television and radio operators and promoting competition.

ANACOM is the regulatory and supervisory entity for the communications sector, which includes electronic and postal communications. Without prejudice to its nature as an independent administrative body, it also provides assistance, upon request and upon its own initiative, to the Government through the provision of necessary technical support and the formulation of opinions, studies, information and draft legislation. This assistance extends to the Portuguese Government, upon request, in the area of communications. In addition to these duties, ANACOM performs the functions of a central supervision entity, with responsibilities and powers in all areas governed by the Electronic Commerce Law, which regulates certain legal aspects of the information society services, in particular electronic commerce, except in matters where special law assigns sector competence to other authorities. Due to the developments in EU law and the approval of the Electronic Communications and Electronic Commerce Laws in 2004, internet and IP-based services became subject to specific legal regimes and regulatory frameworks, supervised by ANACOM. This entity is also responsible for monitoring and controlling the radio spectrum in Portugal, being required to allocate and assign frequencies according to objective, transparent, non-discriminatory and proportionate criteria. ANACOM manages and awards frequencies and numbers regarding electronic communications.

ANACOM and ERC have their board of directors appointed by the Portuguese Government but both maintain independence as they are administratively and financially independent and free to exercise their powers without governmental intervention.

It is important to mention the role of the Portuguese Competition Authority (“AdC”) as a transversal regulatory entity, which has been particularly active in matters connected to pricing and mergers in the telecommunications sector.

1.3 Developing Rules and Adopting Policies

Media activity is based and exercised under extensive and well-developed levels of recognition and protection of fundamental rights and liberties within the Constitution and ordinary law. Regarding legislative initiative, the Portuguese Government can legislate on anything except matters that concern the Government’s organisation and *modus operandi*. There are subjects on which only the Parliament can legislate. These are the matters that fall within the Parliament’s exclusive legislative competence – for example, elections, political parties, the State Budget, referenda, and the

basic laws on the education system and national defence. There are other matters that fall within the Parliament’s partially exclusive legislative competence, and the Government can pass legislation on them if Parliament authorises it to do so. Examples include rights, freedoms and guarantees, the definition of crimes and security measures, taxes and the fiscal system, agricultural and monetary policies, rural and urban rentals, the jurisdiction of the courts, and information services. The Parliament and the Council of Ministers have enacted most of the rules regulating the Telecom Media Technology industries, yet it is fair to say that several of them have transposed EU legislation. As stated earlier, ANACOM provides assistance, upon request and upon its own initiative, to the Government through the provision of draft legislation. The ERC has as its mission a determination to co-operate in defining the public policies for the media sector.

1.4 Ownership of Telecoms Media Technology Industries

Rádio e Televisão de Portugal, SGPS, S.A. and LUSA Agency (Agência LUSA) are now the only state-owned companies within the media sector. RTP develops its public service mandate – the Constitution provides that the State will guarantee the existence and functioning of a public radio and television service – through the maintenance of several public radio and television channels. LUSA Agency is the only public service nationwide news agency.

1.5 Limits on Participation

Telecom Media Technology industries are open to competition.

Regarding limits to participation, the Television Law states that no person or entity may hold – directly or indirectly – a number of licences for the operation of free unrestricted nationwide television access equal to or above 50% of the total amount of licences available on the market for the same range of programmes.

The Radio Law also has some limitations, as follows: an individual or company cannot directly or indirectly hold

- more than 10% of the total number of local radio licences available nationwide; or
- control more than 50% of the national radio programming services in the same coverage area and for the same band frequency; or
- more than 50% of the local radio programming services in the same coverage area.

Generally, competition law regulates anti-competitive behaviour (cartels, ie agreements, decisions of associations and concerted practices of undertakings, and trusts, ie abuse of dominant position) and mergers (concentrations). As a Member State of the European Union, Portugal is bound to

the EU competition rules concerning competitive behaviour, trusts, and state aid.

1.6 Restrictions on Foreign Ownership or Investment

In Portugal there are, generally, no restrictions to foreign investment. The principle behind the Portuguese legal framework regarding this matter is the principle of non-discrimination of investment in matters of nationality/origin. A foreigner who invests in Portugal will not have to be subjected to different regulations from the ones applicable to national investment accomplished by a local entrepreneur.

There are limitations regarding the access and exercise of activities regarding defence goods and technology industries. They are regulated by Law No 49/2009 of August 5th which determines the specific conditions of entry into the mentioned defence industries' market and limit the entry to European Union accredited companies.

1.7 World Trade Organization Membership

Portugal has been a World Trade Organization member since 1 January 1995 and a member of GATT since 6 May 1962. Despite its early adhesion, all EU member states are WTO members, as is the EU in its own right. Portugal is a contracting party to the Fourth Protocol to the General Agreement on Trade in Services (GATS) (telecommunications). The Government of Portugal inserted several exemptions in the schedule of specific commitments. The list of exemptions derived from the existing Portuguese legal framework, which has been substantially altered, thus removing the existing limitations. In this respect, note that the Government of Portugal had stated in 1997 their intention of removing these constraints through the approval of new legislation in the Additional Comments made onto the "European Communities and Their Member States' Schedule of Specific Commitments".

1.8 Appellate Process

With regard to the Telecoms sector, ANACOM's acts are subject to an appeal procedure depending on the type and nature of the decision concerned. In accordance with the Electronic Communications Law of February 10th, decisions adopted by ANACOM regarding misdemeanour proceedings may be disputed before the Supervision, Regulation and Competition Court, created in 2011 and operational since 2012. Other decisions, including regulatory decisions on market analysis and imposition of regulatory remedies, may be challenged before the Courts of the Administrative Jurisdiction, usually within 90 days after the approval of the Act concerned.

Appeals of decisions applying fines or ancillary sanctions have a conditioned effect and thus will not be binding until

the court's final decision. Conversely, appeals on other decisions will not have such an effect and must be complied with.

As regards the Media sector, the ERC's decisions are also subject to an appeal procedure that depends on the type and nature of the decision concerned. According to Law No 53/2005, of November 8th, decisions on misdemeanour cases may be challenged before the Supervision, Regulation and Competition Court. Other decisions are subject to an appeal before the Administrative Jurisdiction, without a conditioned effect.

1.9 Annual or Recurring Fees

The fees due to ANACOM were approved by Ordinance No 1473-B/2008, of December 17th (as amended). In general terms, the fees correspond to:

- the exercise of activity;
- the attribution of rights of usage over frequencies and numbers; and
- the use of frequencies and numbers.

Concerning the exercise of the activity, the applicable fees will vary according to the dimension and revenues of the relevant operator. There are three different thresholds:

- revenues between EUR0 and EUR250,000 – no applicable fee;
- revenues between EUR250,001 and EUR1,500,000 – a standard fee of EUR2,500; and
- revenues above EUR1,500,001 – the applicable fee will depend on the application of a mathematical formula.

Fees applicable to scarce resources will vary substantially depending on the kind of resources used. There are several taxes which vary according to the numbers and/or frequencies used.

The fees are to be paid annually, during the month of September. In order to calculate the corresponding fees, each company has to submit to ANACOM, before the 30th of July, a statement with the relevant revenues obtained during the previous civil year.

2. Broadcasting/Media

2.1 Important Companies

In Portugal, the most important companies in the Broadcasting and Media industries are MEO – Serviços de Comunicação e Multimédia S.A, NOS Group and Impresa Group.

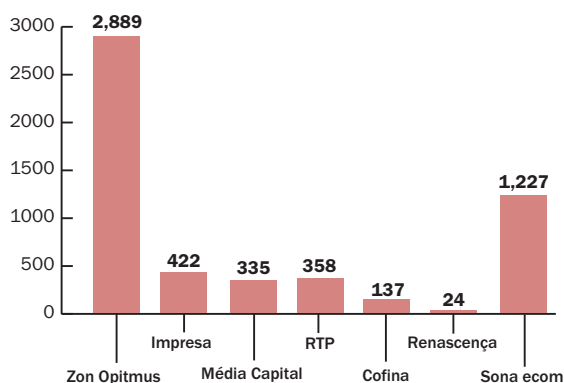
MEO is a telecommunication and multimedia operator that provides fixed and mobile phone services, television, broadband and wireless services, and its activities extend across all telecommunication segments.

NOS is a Portuguese media holding company that includes a satellite and cable operator, as well as an ISP, a mobile phone operator, a movie distributor and a virtual carrier of mobile phone services. NOS Audiovisuais (formerly ZON Lusomundo) is also the home-video distributor of Walt Disney Pictures, Warner Bros., DreamWorks and Paramount Pictures releases in the Portuguese market, in addition to launching several independent and European titles.

IMPRESA holds 100% of SIC's capital, one of the four free television channels in Portugal. The company's activity is divided into three business areas – SIC, IMPRESA Publishing and IMPRESA Digital, with interests that cover television, cable channels, the newspaper Expresso, an extensive portfolio of magazines and various Internet properties.

There are three radio broadcasters with national coverage: Rádio e Televisão de Portugal (RTP), Rádio Renascença Group and Media Capital Group.

Figure 1 – Net Assets in 2013*



2.2 Requirements for Obtaining a Licence/Authorisation to Provide Services

The Television Law distinguishes between three types of operators: the television operators, the distribution operators and the on-demand audio-visual services operators.

The television operators are the corporate bodies that are legally habilitated to organise television programme services (ie, channels). The distribution operators are the corporate bodies responsible for the selection and aggregation of channels and for making them available to the public through electronic communication networks. Finally, the on-demand audio-visual services operators are the individual or corporate bodies responsible for the selection and organisation of the contents of audio-visual services by means of a catalogue.

It is important to note that the “activity of television” covers the organisation, as well as the selection and aggregation, of channels, and hence the activity of both television operators and distribution operators.

The above definitions are relevant because the Television Law establishes different requirements and rules for access to the above activities.

In fact, the Television Law provides three types of access modalities in accordance with the type of operator and other aspects, as follows:

Licensing is required for television activity which uses the terrestrial broadcasting spectrum, provided such television activity consists in either the organisation of channels of free unrestricted access (which is carried out by the television operators) or the selection and aggregation of channels of conditional or per subscription access (which is carried out by the distribution operators).

Licensing is granted through public tender.

Public tenders for licensing free unrestricted channels are launched by the member of the Government responsible for the media area and supervised by ERC. Public tenders for licensing the distribution of subscription and conditional access channels are also launched by the member of the Government responsible for electronic communications and are supervised by ANACOM.

Authorisation is required for television activity which consists in the organisation of channels that do not use the terrestrial spectrum and that are intended to integrate the offer of a distribution operator.

Authorisations are granted at the request of the applicants and are instructed by ERC.

Registry is required for television activity that consists in the exclusive broadcast of channels through the internet and that are not retransmitted through other networks.

Note that free unrestricted channels are those that are made publicly available without any compensation, and conditional channels are those subject to compensation for access to the distribution network. However, subscription access channels are those that are made publicly available in exchange for a specific consideration other than the amount due for the access or use of the distribution infrastructure.

In addition, all television and distribution operators, as well as their television programmes, need to be registered with the ERC.

Access to the television activity is subject to several requirements, such as:

- The companies must have media activities as their main scope;
- Television and distribution operators are to have a minimum share capital, which differs according to the type and coverage at stake (there are exceptions where the requirement is not applicable, such as the provision of educational, cultural and scientific channels with no lucrative purpose);
- Television activity cannot be exercised or financed, eg by political parties and trade unions, unless that activity is exclusively exercised through the Internet or by conditional channels and consists in the organisation of teaching, institutional or scientific channels;
- Television activity cannot be performed, eg by the State or public companies, unless that activity is exclusively performed through the Internet and consists in the organisation of institutional or scientific channels.

In relation to timeframe and costs, applications for licensing or authorisation is to be decided in 90 or 60 days correspondingly. The timeframe is initiated when any insufficiencies are identified in the applications and subsequently corrected.

The costs for the emission and renewal of the abovementioned titles are established in Decree-Law No 70/2009 of March 31st, which altered Decree-Law No 103/2006 of June 7th. The costs vary according with the type of operator:

- EUR286,518 for national television operators;
- EUR45,798 for regional television operators;
- EUR11,424 for local television operators; and
- EUR28,662 for television operators whose activity does not require the use of the radio spectrum.

2.3 Typical Term for a Licence/Authorisation to Provide Services

The licences and authorisations are granted for a period of 15 years, renewable for equal periods of time, according to Article 22 of the Television Law. The request for renewal is to be submitted 240 to 180 days before the expiry of the term and is addressed and decided by the ERC. The regulatory authority's decision is given with at least 90 days remaining before the expiry of the term.

2.4 Transfer of Licences/Authorisations to Other Entities

Licences and authorisations are not assignable or transferable, according to Article 13, No 7 of the Television Law.

However, a merger or control change is not considered to be a transfer, provided that the licensed/authorised entity remains the same. As regards mergers between operators,

as a general rule such mergers must be cleared by the AdC in order to be valid.

Nevertheless, television and distribution operators are subject to specific competition and prevention of concentration provisions. Within this scope, it is important to note that control changes of licensed operators can only occur three years after the original granting of the licence, two years after the modification of the approved project, or one year after the last renewal. All of these are subject to authorisation by the ERC.

Also worth mentioning is the fact that mergers between television operators subject to the intervention of the AdC must also be submitted to the ERC so that the ERC may issue its opinion. Note that the ERC's opinion is binding only when the ERC considers that there is a justified risk for freedom of speech and media pluralism.

2.5 Spectrum Allocation

Given the transition from analogue to digital television, the spectrum currently used by the DTT (digital terrestrial television) provider is the following:

- Continent: channel 56 (750–758 MHz)
- Madeira Island: channel 54 (734–742 MHz)
- Azores Islands: channel 47 (678–686 MHz); channel 56 (750–758 MHz); channel 61 (790–798 MHz); channel 64 (814–822 MHz) and channel 67 (838–846 MHz).*

In this respect, please find annexed herein the link to the National Frequency Allocation Plan: www.anacom.pt/render.jsp?categoryId=291355

2.6 Restrictions on Common Ownership

The only specific restriction on common ownership amongst Broadcasting/Media companies arises from No 3 of Article 4-B of the Television Law, which determines that an individual or undertaking may not own, directly or indirectly, a number of licences to provide free television services, with national coverage, that is equal or above 50% of the total number of licences attributed to other licensees.

Apart from that, there are no specific restrictions or constraints on common ownership among Broadcasting/Media companies. In any case, it should be noted that Law No 78/2015, of July 29th, lays down the rules to ensure transparency of ownership in Media companies. Therefore, all participations above 5% should be declared before the ERC and any change thereto should also be communicated.

2.7 Content Requirements and Regulations

Firstly, it is important to note that the Television Law includes provisions establishing that the Public Administration and any state entity, with the exception of courts, cannot restrict, coerce or impose the broadcasting of any

programmes and on-demand content. However, the broadcasting of programmes and on-demand content must respect the principle of human dignity and the fundamental rights and freedoms of the Portuguese Constitution. This means that any contents that promote hate or discrimination based on race, ethnicity, gender, sexual orientation, religion, political orientation or disability are forbidden.

In addition, there are provisions applicable to each of the operators indicated above, such as the following:

Television operators

General broadcasting requirements and obligations are enumerated in Article 34 and include, amongst others: the obligation to ensure a varied and plural programming, including during time periods of major audiences; the obligation to guarantee information that observes pluralism, accuracy and independence; the obligation to guarantee programming and information that is independent from political and economic powers; the obligation to ensure the right to airtime during electoral periods; the obligation to broadcast creative European works, especially in the Portuguese language. There are also specific obligations for generic regional and local channels (such as to have regional and local contents) and for thematic channels.

Regarding news services, generic channels are to broadcast news services, prepared by journalists, on a regular basis.

There is also a mandatory obligation for the public television service to broadcast messages from the President of the Republic, Prime Minister and President of the Portuguese Parliament. In the event of a declaration of state of siege or state of emergency, the mandatory broadcast obligation extends to other television operators.

Programmes likely to cause obvious and serious harm to the development of children's personalities are not allowed to be broadcast, especially those which include pornography or gratuitous violence. Article 27, No 4, further mandates that any other programmes liable to affect adversely the development of children or teenagers are to be identified by the presence of a distinctive visual symbol, and can only be broadcast from 22.30 to 06.00.

The acquisition of exclusive rights to broadcast certain events is regulated by Article 32, and is deemed void for events of a political nature. The law further requires that television operators that broadcast on a conditional access basis or without national coverage and that have acquired exclusive rights for the full or partial transmission of other events deemed to be of general public interest, must provide access to this content, on non-discriminatory terms and according to common market conditions, to other operators interested in the transmission and which broadcast on an

unrestricted and national basis using the terrestrial spectrum. These events and the conditions for the respective transmission are included in a list published in the Official Gazette.

Article 33 regulates the right to informative extracts, stating that neither those responsible for conducting shows or other public events taking place on national territory, nor holders of exclusive rights to them, may oppose to the transmission of brief extracts of such events of an informative nature by any television operator.

Finally, regarding the broadcast of audio-visual works, there are obligations concerning the protection of the Portuguese language, especially that broadcasts are to be spoken or subtitled in Portuguese, and, in general, that channels with national coverage will commit at least 50% of their broadcasts (excluding the time reserved for advertising, teleshopping and teletext services) to the broadcast of original Portuguese language programmes. Television operators that operate channels with national coverage will also reserve a majority proportion of their transmission time for European works and at least 10% of their transmission time for European works created by independent producers.

Distribution operators

Article 25 of the Television Law states that distribution operators shall give preference, when organising and presenting their offer, and successively, to generic, general information and scientific, educational or cultural channels, of original Portuguese language.

In addition, operators of electronic communication networks used for television activity must carry the channels specified by the ERC.

It is also relevant to note that any alteration to the composition of the offer of the distributed channels or to the respective access conditions must take into account the diversification and pluralism obligations and the respect for consumer rights.

On-demand audio-visual services operators

Amongst other requirements, on-demand audio-visual services operators cannot make available programmes that may seriously harm the development of children's and teenagers personalities, such as those with pornographic content, unless technical means are provided that avoid access to these contents by that segment of the public.

In addition, on-demand operators are to contribute financially to the production of European audio-visual works or progressively include them in their catalogue, in which case the operators will adopt tools that allow the public to search for such content in accordance with its origin.

For all

There are provisions that apply to all operators or at least to both television and on-demand operators.

Firstly, political propaganda is not allowed for any of them other than as follows:

- Right to airtime: political parties, the Government, trade unions, professional organisations and those representing economic activities and environmental and consumer protection associations, have the right to airtime in the public television service, according to Article 59 of the Television Law.
- Right of political reply: parties represented in the Parliament that are not part of the Government are entitled to reply to political statements made by the Government in the public television service that are directly aimed at them, and in the same programme service.
- Right of reply and correction: any person and entity that has been referred to, even indirectly, in channels or on-demand services in such a way as to affect their reputation or good name, are entitled to reply therein, as well as to make corrections in the same channels and on-demand services where untrue or wrong references concerning them have been made.

Advertising

The Television Law has specific provisions regarding advertising, as well as teleshopping, sponsorship and product placement.

With relation to advertising and teleshopping, there are detailed restrictions and regulations regarding maximum times, insertions and breaks. For instance:

- The amount of spot advertising and teleshopping between two-hour periods cannot exceed a certain percentage that varies according to the type of channel (ie free unrestricted access, conditional access or subscription channels).
- Advertisements and teleshopping programmes are to be easily identifiable as such and clearly separated from the rest of the programmes.
- Insertions of advertising between programmes or in programme breaks are generally allowed but they are not to harm the integrity of programmes, and must take in account its “natural” breaks, as well as its nature.
- Teleshopping in partial screen, during children’s programmes, or advertising in partial screen during creative programmes, debates or interviews, is forbidden.
- There are, for several types of programmes, minimum time periods during which the programme is to be transmitted before advertising or teleshopping can be broadcast, and breaks during the transmission of religious services, for example, are forbidden.

- Tele-promotion is only admitted in light-entertainment programmes, such as contests.

There are also rules for sponsorship: for instance, Article 41 states that sponsored programmes must be clearly identified as such by name, logo or any other distinctive reference to the sponsor, at the beginning and end of the programme. News services and political programmes cannot be sponsored and, in any case, sponsoring entities cannot control or influence the content of the programmes themselves, nor can they directly encourage the consumer to buy or lease their products.

Product placement is only allowed in cinematographic works, series, sports and light entertainment programmes, and never in children’s programmes.

The Television Law also sets forth rules for virtual commercial advertising and interactivity.

Public Television Service

Finally, it is important to note that there are special provisions for the concessionaire of the public television service.

Amongst other things, the concessionaire is responsible for providing programmes that promote cultural diversity and take into account minority groups; for promoting public access to Portuguese cultural events; and for providing independent, accurate, pluralist and context-related information.

The concession includes a generic channel and a second channel aimed at different audiences and objectives, a channel for each of the two Portuguese autonomous regions, and one or more channels aimed at Portuguese-speaking viewers around the world. Each of them has specific obligations, taking into consideration their nature and geographic scope.

2.8 The Difference in Regulations Applicable to Broadcasting Versus Cable

See 2.7, which already distinguishes the applicable provisions in accordance with the type of operator (television, distribution and on-demand).

2.9 Transition from Analogue to Digital Broadcasting

The process envisaging the transition from analogue to digital broadcasting was launched in 2008 and the shutting-down of analogue television transmission occurred on April 2012. MEO – Serviços de Comunicações e Multimédia, S.A. is the entity responsible for managing the DTT platform and was endowed with a licence for a period of 15 years, ending in 2023.

3. Telecoms

3.1 Important Companies

The three most important companies in the Telecom industry are: MEO – Serviços de Comunicações e Multimédia, S.A. (Group Altice); NOS Group and Vodafone Portugal – Comunicações Pessoais, S.A. (Group Vodafone).

These operators have integrated activities and thus are able to offer bundled services, including fixed telephony, broadband connections, television contents and mobile voice and broadband services.

According to ANACOM, in the second quarter of 2015, the market share per service and per operator was as follows:

- Mobile Services: MEO (47.1%), Vodafone (31.1%) and NOS (20.0%);
- Broadband Access: MEO (46.0%), NOS (35.5%) and Vodafone (13.2%);
- Broadband Traffic: MEO (42.4%), NOS (43.1%) and Vodafone (8.1%);
- Subscription Television Service: MEO (41.4%), NOS (43.7%) and Vodafone (9.0%);
- Bundles of Services – Electronic Communications – at a fixed location: MEO (42.4%), NOS (38.8%) and Vodafone (12.4%).

3.2 Requirements for Obtaining a Licence/Authorisation to Provide Services

In order for an entity to provide electronic communication services in Portugal, it will need to have previously submitted a declaration before ANACOM under the general authorisation regime. In accordance with this regime, the offering of services does not rely on a previous decision from ANACOM. Undertakings are nonetheless under an obligation to notify ANACOM of the network and services to be provided, including its identification elements. After this communication, the notifying entity may immediately initiate its activity without any further constraints.

This regime will not apply if the entity requires rights of usage over frequencies or numbers. In this case, a previous decision from ANACOM will be necessary so as to allow the interested operator to start activity. The time-frame for the attribution of rights of usage over numbers or frequencies depends on the type of resources, but it should take between 15 to 30 days.

3.3 Transfer of Telecoms Licences/Authorisations to other Entities

The general authorisation regime does not grant a specific licence to operators and thus they are not transferrable *per se* to other entities. However, rights of usage over frequencies and numbers may be assigned or transferred to other

operators, except when such assignment is forbidden (which may be the case under specific contests or auctions). When permissible, the assignment must be cleared by ANACOM, which is the entity responsible for ensuring that the assignment will not distort competition.

The intention to assign the rights of usage must be communicated to ANACOM and this entity should adopt a decision within 45 days following the communication. During this period, ANACOM must request a preliminary opinion on the assignment from the AdC.

However, a merger or control change is not considered to be a transfer provided that the entity remains the same. In any case, the update of the registry before ANACOM may be required. As regards mergers between operators, as a general rule such mergers must be cleared by the AdC in order to be valid.

3.4 Regulations for Network-to-Network Interconnection and Access

The Electronic Communications Law contains general provision on interconnection and access. It states that operators may freely negotiate access and interconnection conditions and have the right to request interconnection from other operators.

ANACOM may impose specific obligations with regard to interconnection and access, particularly on dominant undertakings, and also require certain operators to publish standard interconnection conditions and regulate prices. MEO, for example, has to publish standard conditions and prices on interconnection.

Interconnection or access disputes may be submitted before ANACOM for an administrative decision. In general, ANACOM's decision should be issued within the four months following the request and will be binding, although it may be challenged before a court of law.

3.5 Accounting, Functional and Legal Separation

MEO is subject to accounting separation obligations in several markets where it has significant market power. This obligation was imposed by ANACOM according to *ex ante* regulation mechanisms.

The remedy of functional separation is included in the Electronic Communications Law, but it has never been applied. Moreover, the measure of legal separation is not provided for in the specific telecom legislation, although the AdC may apply this measure when analysing specific merger operations.

3.6 Provisions for Access to Public and Private Land

Provision has been made for access to public and private land for the purpose of installing telecommunications infrastructure. This matter is determined in Decree-Law No 123/2009 of May 21st. The use of public land for the installation of telecommunications infrastructure is subject to the granting of rights of way from the concerned entity. Operators of public electronic communications networks have the right to request expropriation of private land in order to install their networks, but this is not common.

In addition, the abovementioned Decree-Law also regulates access and sharing of passive telecoms infrastructure, namely ducts, poles and towers. Access is mandatory and may only be refused in certain objective circumstances. ANACOM has the power to intervene and impose access, and prices to be applied should be cost-oriented. These rules apply to public entities, public utilities, tower companies and to all operators that own or manage telecom infrastructures.

3.7 Rules which Govern the Use of Telephone Numbers

There are general rules approved by ANACOM as regards the use of telephone numbers and number portability rules are laid down by Regulation No 58/2005 of August 18th (as amended).

3.8 Regulation of Retail Tariffs

Currently, and in general, retail tariffs are not regulated. However, the provision of services under the universal service legal framework, namely fixed voice telephone services, are subject to a price control mechanism, under which a variation of prices above CPI (Consumer Price Index) of -2.75% is not allowed.

3.9 Rules to Promote Service in Underserved Areas

NOS is the current universal service provider and is under an obligation to provide a telephone connection and basic voice and data services throughout the national territory. The provision of the universal service is financed by the universal service fund created in 2012. All electronic communication operators are under the obligation to contribute to this fund according to their relevant total turnover in the preceding year.

Moreover, in 2009 the Portuguese Government launched five public procedures for the deployment of fibre optical NGN (Next Generation Networks) in remote or rural areas of the country, in the following areas:

- Centre of Portugal;
- Alentejo and Algarve;
- North;
- Azores; and
- Madeira.

These tenders covered a total of 139 municipalities and 1,223,617 inhabitants.

Most NGNs have been installed and are now in operation.

Note that Administrative Regulation No 829/2010 of August, as amended, recognised that broadband connectivity is essential for the development of next generation broadband and networks in rural areas.

3.10 Extent to which Local Government Regulation of Telecom Service is Pre-Empted

Since there is no local or regional legislation in this domain, nor is its regulation made at infra-national level, this section does not apply to Portugal.

4. Wireless

4.1 Important Companies

There are, as noted above, three major operators providing services that permit wireless use in Portugal: MEO (Group Altice), NOS Group and Vodafone (Group Vodafone).

For market share information, please refer to the data provided above, in 3.1.

4.2 General Requirements for Obtaining a Licence/Authorisation to Provide Wireless Services

ANACOM is in charge of the management of the spectrum and the award of frequencies and numbers, as well as the management of spectrum auctions.

As already mentioned, fees for the assignment of frequency usage rights through auction or public tender are payable to ANACOM in accordance with Ordinance No 1473-B/2008 of December 17th, as amended, which states that the value of reference associated with the fee due for the use of frequencies for the electronic communications terrestrial services is EUR82,000/MHz.

Note that the provision of services in Portugal is mainly subject to the general authorisation framework described above, which, as already seen, does not require an authorisation procedure but only a communication to ANACOM.

4.3 Transfer of Wireless Licences/Authorisations to Other Entities

As seen above, the general authorisation regime does not grant a specific licence to operators and thus they are not transferrable per se to other entities. However, rights of usage over frequencies and numbers may be assigned or transferred to other operators, except when such assignment is forbidden (which may be the case under specific contests or auctions). When permissible, the assignment must be

cleared by ANACOM, which is the entity responsible for ensuring that the assignment will not distort competition.

The intention to assign the rights of usage must be communicated to ANACOM and this entity should adopt a decision within the 45 days following the communication. During this period, ANACOM must request a preliminary opinion on the assignment from the AdC.

However, a merger or control change is not considered to be a transfer provided the entity remains the same. In any case, the updating of the registry before ANACOM may be required. As regards mergers between operators, as a general rule such mergers must be cleared by the AdC in order to be valid.

4.4 Spectrum Allocation

The spectrum is not specifically allocated to wireless services but to technology. ANACOM allows flexible modes in spectrum use (fixed, nomadic and mobile modes) based on the principle of technological neutrality, whereby operation will not be restricted to a specific electronic communications service or technology. As such, operators will have the freedom and flexibility to decide what types of services they wish to offer and which technology they prefer to use, devising business plans that best suit their objectives.

In this respect, please find annexed herein the link to the National Frequency Allocation Plan: www.anacom.pt/render.jsp?categoryId=291355

4.5 Procedures to Identify and Assign Spectrum Among Competitors

According to the Electronic Communications Law, both hypotheses – spectrum auctions and comparative contests – are possible. For example, the LTE spectrum has been allocated via spectrum auction.

By the determination of 17 March 2011, ANACOM approved a draft decision on the limitation of the number of rights of usage of frequencies granted in the 450 MHz, 800 MHz, 900 MHz, 1800 MHz, 2.1 GHz and 2.6 GHz bands and definition of the respective allocation procedure. In this scope, ANACOM has proposed auctions to be the selection procedure, as it is deemed to be the most appropriate procedure for granting the rights of usage under consideration, taking into account the implementation flexibility planned to be provided – namely, through the possibility to operate different services and to use different technologies (technological and service neutrality) and the flexible allocation of a spectrum according to the needs of each operator, as well as to the need to bring the value of the spectrum at stake closer to the market reality.

ANACOM is responsible for allocating the spectrum and is also charged with the approval of regulations on the allocation of rights of usage of frequencies where selection procedures, namely auctions, are involved, except where such allocations concern frequencies which are made available for the first time within the scope of electronic communications, or otherwise where such frequencies are intended to be used for new services, in which case that power is conferred on the Government. Selection procedures and criteria must be objective, transparent, non-discriminatory and proportionate and must take account the regulatory objectives set forth in Article 5 of the Electronic Communications Law.

4.6 Unlicensed Spectrum Uses

Only exceptional cases require a licence. There are, spectrum-wise, three possibilities of allocation:

- free allocation (no procedure needed);
- full accessibility spectrum (there is the need to communicate its use but there will be no imposed limitations); and
- comparative contests or auctions for the most valuable spectrum.

The aforementioned National Frequency Allocation Plan contains information on the use of frequencies, whether publicly available or not, and on the reserved frequency bands and their respective means of allocation.

4.7 Government Policy/Regulation to Promote Next Generation Mobile Services

The need for spectrum for broadband services and next-generation mobile services was addressed by the Council of Ministers Resolution No 120/2008 of July 30th. As a consequence, the promotion of the investment in NGNs was included as a national priority.

Decree-Law No 34/2009, of February 6th, in line with the European Council, essentially lays down exceptional public procurement measures that accelerate the procedures for concluding contracts in the fields of modernisation of school facilities, promotion of renewable energies, energy efficiency and energy transmission networks, modernisation of the technological structure – Next Generation Broadband Networks, and urban regeneration. The Regulation No 829/2010 of August 31st, as amended, recognised that broadband connectivity is essential for the development of next-generation broadband and networks in rural areas, as already referred to above; five tenders were launched in 2009 for the deployment of fibre optical NGN (Next Generation Networks) in remote or rural areas of the country.

Portugal's national broadband strategy was adopted on 31 December 2012 and will be implemented until 2020. The short-term goal of providing nationwide basic broadband access was met in October 2013. Download speeds of at least

Contributed by *Vieira de Almeida & Associados* **Authors:** Margarida Couto, Magda Cocco, Tiago Bessa, Helena Correia Mendonça

40 Mbps for 50% of the population in rural municipalities in 2014, except the autonomous region of Madeira, were ensured.

4.8 Price Regulation for Mobile Services

Generally, retail pricing is not regulated in Portugal.

The applicable principle is that the calling party pays, despite the fact that called-party paying is actually possible (but not regulated).

With regard to roaming, there is a set of specific rules governing the roaming service in the European Economic Area (EEA) – stipulated in Regulation (EU) No 531/2012 of the European Parliament and of the Council, of 13 June 2012. These rules limit the prices that operators can charge roaming customers and ensure that information provided about roaming tariffs is clearer and more transparent.

Although operators may have different tariffs for roaming for communications in the EEA, they are required, as a minimum, to provide the following tariffs, capped by the maximum limits established:

Figure 4 – Roaming Maximum Tariffs: ec.europa.eu/digital-agenda/en/roaming-tariffs

	1 July 2012	1 July 2013	1 July 2014
outgoing voice calls (per minute)	€0.29	€0.24	€0.19
incoming voice calls (per minute)	€0.08	€0.07	€0.05
outgoing texts (per SMS message)	€0.09	€0.08	€0.06
online (data download, per MB*)	€0.70	€0.45	€0.20

*The tariff is per Megabyte to download data or browse the internet whilst travelling abroad (charged per Kilobyte used).

At a wholesale level, termination rates have been regulated by ANACOM.

4.9 Regulation of Government and Commercial Wireless Uses

The frequencies used by the Portuguese Military Force and by the Police Force are not publicised.

4.10 Extent to which Local Government Regulation of Wireless Service is Pre-Empted

Since there is no local or regional legislation in this domain, and its regulation is not made at infra-national level, this section does not apply to Portugal.

5. Satellite

5.1 Important Companies

Portugal has a satellite industry, with companies that manufacture and sell parts and components or software for satellites. However, the country does not have its own satellite manufacturing companies, satellite operators or launching entities. There are companies which provide satellite television services and fixed and mobile satellite services through foreign companies' satellites, the most relevant of which are MEO (Group Altice), which is authorised for satellite communication services, satellite networks and TV distribution services via satellite; NOS Group, which is authorised for satellite internet access services; and AT&T – Serviços de Telecomunicações, Sociedade Unipessoal, Lda., which is authorised for satellite communications.

For general market share information, please see 3.1.

It should be noted that other companies are also authorised to provide services through satellites, such as Inmarsat Global Limited (satellite networks), Iridium Italia SRL (satellite networks and satellite mobile service), COMSAT – Serviços de Satélite, Lda (resale of satellite services) and Skylogic, SpA (owned by Eutelsat and authorised for satellite networks and satellite internet access services).

5.2 General Requirements for Obtaining a Licence/Authorisation to Provide Satellite Service

By default, all Earth stations – unlike the space-based segment, which is not subject to national licensing – and other types of networks or stations that use satellite radiocommunications located on national territory are subject to licensing. There are, however, some exemptions, as indicated in the National Frequency Allocation Plan.

Decree-Law No 151-A/2000 of July 20th, as amended, contains the legal provisions applicable to the licensing of radio-communication networks and stations, as well as the principles applicable to radio licensing fees. Radio licensing gives its holder the right to use a radiocommunications station or network under the terms and deadlines included therein, in the scope of a radiocommunications service.

It is important to mention that there are three different types of licences for satellite radiocommunication services:

An Earth Station licence, which covers any type of earth station not covered by the exemption regime and not classified

as a VSAT or SNG earth station. These earth stations may, amongst others, operate in the scope of the fixed-satellite service and of the mobile satellite service.

The VSAT Network licence allows the use of a network of VSAT (Very Small Aperture Terminal) earth stations for the fixed satellite service.

The SNG Earth Station licence – Satellite News Gathering earth stations are fixed-satellite service stations, usually installed on vehicles using parabolic antennas pointed at geostationary satellites for the transmission of audio and video signals, normally with the purpose of collecting worldwide news, allowing the coverage of sport, cultural and political events.

With a view to obtaining the aforementioned licences, interested entities must submit the corresponding application, and, where they provide telecommunication services, will further comply with all requirements for access to this activity, as indicated above.

The amount of the annual spectrum fees depend on the type of licence; in general, for Earth Stations both in the fixed and mobile satellite service, they depend on the bandwidth used by the station and may range from EUR3,002 to EUR58,608. For VSAT networks, the fee also depends on the bandwidth used, and on the number of stations in the network, according to a specific table published by ANACOM on its website. For the use of SNG Earth Stations for fixed-satellite services, the licensing fee is EUR2,542 per station.

Radio licences are valid for five years and are renewed automatically.

5.3 Transfer of Satellite Licences/Authorisations to other Entities

Network and station licences are assignable (except for temporary licences granted for a period of no more than 180 days).

Assignment is subject to previous notice given to ANACOM, which must authorise or refuse authorisation within 45 days.

5.4 Spectrum Allocation to Satellite Service

The spectrum allocated to satellite services, in Portugal, follows the provisions of the Radio Regulations of the International Telecommunication Union for Region 1.

In this respect, please find annexed herein the link to the National Frequency Allocation Plan: www.anacom.pt/render.jsp?categoryId=291355

5.5 International Telecommunication Union Membership

Portugal is a member of the International Telecommunication Union (ITU).

5.6 Provision of Service by Foreign-Licensed Satellites

It is important to distinguish between foreign-licensed space stations that provide a signal to the already licensed earth stations and operators, and foreign-licensed entities that wish to establish an earth station in national territory or provide radio communication services themselves. Both situations are allowed, but whereas the first is not subject to national authorisation or licensing, the latter needs to undergo the national licensing procedure established by ANACOM, already described above. Foreign-registered companies that are not licensed in one of the EU's Member States must in addition, for tax purposes, designate a representative residing in national territory.

5.7 Milestone and Due Diligence Deadlines

Portugal does not have a legal or regulatory framework related deadlines for satellite construction.

6. Internet/Broadband

6.1 Important Companies

The three most important companies in the Internet/Broadband industry are MEO (Group Altice), NOS Group and Vodafone (Group Vodafone).

For market share information, please refer to the data provided in 3.1.

6.2 Regulation of Voice Over IP Services

In accordance with a regulatory orientation from 2006, fixed and nomadic VoIP services are regulated in terms of numbering resources, portability, access to emergency services, quality of service and interconnection. In accordance with the principle of technological neutrality, from a regulatory perspective there are no substantial differences between VoIP and the traditional voice over the PSTN (Public Switched Telephone Network) and thus VoIP operators and PSTN operators should be treated equally.

6.3 Interconnection and Access Regulatory Conditions to IP-Based Networks

The Electronic Communications Law determines that the regulatory mechanisms are to be applied under a principle of technological neutrality. That being the case, interconnection and access regulatory conditions are applied to IP-based networks.

6.4 Net Neutrality Requirements

Currently, there is no such specific requirement in the Portuguese legal framework. The principle emerging from Directive 2002/22/EC (Article 1, No 3) on net neutrality is very broad and does not require or prohibit an internet service provider from managing traffic on their networks. In any case, ANACOM has the power to impose minimum quality requirements in order to prevent the blocking or the slow-down of traffic.

This matter is being discussed at EU level and substantial changes on the forthcoming package of regulation (the Connected Continent Telecoms Reform Package) are expected.

6.5 Government Regulation of Internet/Broadband

There is a government policy to promote internet and broadband penetration. Government Resolution No 112/2012 of December 31st (amended in 2015) approved the Digital Agenda. One of the key action areas is promoting fixed and mobile broadband penetration. Until 2020 the Government objective is, amongst other things, to: (i) improve access conditions for the general population to broadband Internet above 30 Mbps and (ii) improve mobile broadband coverage in 480 parishes.

Before the approval of the Digital Agenda, the Portuguese Government launched in 2009 five public procedures for the deployment of optical fibre NGN (Next Generation Networks) in remote or rural areas of the country, as previously mentioned.

6.6 Over-the-Top Internet-based Providers

Currently, OTT services are not regulated nor subject to the same conditions as providers of media or telecommunications services.

This matter is being discussed at EU level and it is expected that the forthcoming Connected Continent Telecoms Reform Package will bring some new rules as regards OTT services.

6.7 Extent that Local Government Regulation of Internet/Broadband Service is Pre-Empted

Since there is no local or regional legislation in this domain, and the regulation of internet/broadband services is not made at infra-national level, this question does not apply to Portugal.

7. Privacy

7.1 Government Access to Private Communications

The applicable legal framework in Portugal does not allow the government to obtain access to or intercept private communications. Only specific criminal and legal judicial au-

thorities may carry out this procedure, under very specific circumstances.

Access to private communications is approached, first and foremost, in Article 34, No 4 of the Constitution of the Portuguese Republic. The Constitution expressly states that interception of telephone communications is only allowed in the context of criminal investigations. Such investigations are not under the responsibility of the Government but of the Public Prosecutor, jointly with a criminal judge.

Specific rules and provisions are also set out in Law No 9/2007 of February 19th (amended in 2014), which sets out the legal framework for the Portuguese Information Security Intelligence ("SIS") and for the Portuguese Intelligence Services for Strategic Defence ("SIED"). This act does not grant powers of interception, encryption/decryption, direct access to communications or the possibility of requesting that telecom providers provide access to these communications, other than as set out in Articles 187 to 190 of the Portuguese Criminal Procedure Code; interception may only be authorised in the event of suspicion of the practice of a specific type of crime (depending on the nature of the offence and the duration of the criminal sentence).

Other than this, interception of communications may only be performed during a state of siege or emergency (in this case, the decision to intercept communications is to be taken by the Parliament).

Should interception of communications be carried out in any other context, this would be considered illegal, a breach of the Constitution of the Portuguese Republic and would be punishable as a crime.

7.2 Use of Encryption Technology

TMT providers are not currently required to use encryption technology. A formal exception to this rule can be made, taking into account Ordinance No 469/2009, of May 6th, which establishes the technical conditions and security in the processing of information for the transmission of data traffic and location data of individuals and legal persons. This act was established in the light of the Data Retention Law.

It is also worth noting that, according to Privacy in Communication Law, providers of publicly available electronic communications services are under an obligation to protect personal data transmitted, stored or otherwise processed, against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access. Furthermore, such providers may avoid having to notify service subscribers in case of a data breach (which can adversely affect the subscriber or user data) if they are able to demonstrate to the relevant authorities that they have implemented measures to render

the data unintelligible to any person who is not authorised to access it.

When electronic communications service providers have provided encryption features, they must ensure, at their expense, that they also have decryption or decoding means (Article 27, No 17, of the Electronic Communications Law), in order to ensure that access to information in the context of a criminal procedure, whenever applicable, is possible and may be carried out as ordered by the relevant authorities.

Note also that, in any event, encryption services must always comply with general privacy and data protection requirements, as set out in the Data Privacy Law and in the Privacy in Communication Law.

7.3 Liability of TMT Companies for Content Carried Over Their Networks

Depending on their degree of intervention in the creation and transmission of the contents, TMT companies, acting as providers of information society service, may be held accountable for that content, according to the Electronic Commerce Law.

Under Articles 11 to 19 of this Law, as a general rule, intermediary providers (ie the TMT companies which allow the content to be carried out over their network) are not obliged to monitor and supervise the information transmitted or stored over their network, or to investigate possible illicit acts practised in this scope.

The degree of liability varies, depending on whether they carry out access, hosting, caching or content aggregation services:

- General rules: all TMT providers are required, in particular, to inform authorities immediately when they become aware of illicit activities being carried out through their services and to carry out all decisions aimed at preventing or terminating an infraction, namely by removing or making it impossible to access certain information.
- Access (“mere conduit”): if a TMT provider only transmits, in a communication network, information provided by a recipient of the service, or provides access to a communication network, having no role in the origin of the transmission or any intervention in the content of the information or selection of its addresses, this TMT provider is exempt of all liability for the information transmitted (even if the TMT provider stores the information through the transmission process, on a merely technical level, for the purposes and during the time required for transmission).
- Hosting: if the TMT provider stores contents in its servers, it will be liable for the contents stored if:
 - (a) it is aware of a clearly illicit activity or information associated thereto;

- (b) the illicit nature is clear and manifest; and
- (c) the provider does not promptly eliminate or make it impossible to access the content.

Criteria (a) and (b) are considered to be fulfilled whenever, in the light of the circumstances, the provider should be aware of the illicit nature of the information.

- Caching: if the TMT provider carries out intermediate content transmission (with no intervention in the content itself, in its selection or in the selection of the addressees), it is not liable for temporary and automatic storage, except if the company does not act according to usual sector practice for information update or technology use, or if it does not withdraw or make it impossible to access information timely, when ordered to do so by a competent authority.
 - (a) On another level, a cache provider may also be liable if it:
 - (b) does not comply with conditions on access to content (eg allows free access to certain content when access is subject to registration/other limitations);
 - (c) does not comply with rules regarding content updating (eg the content is altered in the host server but the cache server keeps providing the “old” content);
 - (d) interferes with the lawful use of technology to obtain data on content use; or
 - (e) does not expeditiously remove or disable access to content stored, upon becoming aware that the information at the host server has been removed or that a court or an administrative authority has ordered its removal.

- Content aggregation: if TMT providers provide, amongst other things, search engines or links (please note that these providers are not addressed in the E-Commerce Directive) the liability regime for these providers is the same as for the hosting providers.

Analysis of the legal or illegal nature of the content aggregation does not necessarily rely on the illegal nature of the content at the site; if the illegal information is made available through a search engine or link as an exercise of the right to information and in an objective manner (as analysed on a case-by-case basis), the TMT provider will not be liable.

7.4 Obligation of TMT Companies to Block Access to Certain Sites or Content

TMT providers must block access to sites/content in the circumstances identified above, taking into account the nature of the information provided through the network and the associated circumstances.

As regards file-sharing, the law does not set out an express, specific rule on file-sharing, other than those related to the rules above on content access and blocking, as well as

Contributed by Vieira de Almeida & Associados **Authors:** Margarida Couto, Magda Cocco, Tiago Bessa, Helena Correia Mendonça

the legal rules applicable to private copying and copyright, meaning that uploading copyrighted materials without authorisation is considered a breach of copyright laws and may give rise to criminal liability. With relation to downloads, the most common approach is that downloading is allowed under the private copying regime.

However, two facts that impact the TMT provider's liability should be highlighted. The first is that courts have considered that contents that breach copyright are not, generally speaking, clearly and manifestly illicit and the illegal nature of the content requires a case-by-case basis of the circumstances surrounding the content.

Furthermore, reference should be made to the EU Court of Justice's Judgment on Case C-435/12 *ACI Adam BV and Others v Stichting de ThuisKopie, Stichting Onderhandeligen ThuisKopie vergoeding*. This judgment considered that downloading is to be considered illegal when the content is of an illegal origin, since "if Member States were free to adopt legislation permitting, inter alia, reproductions for private use to be made from an unlawful source, the result of that would clearly be detrimental to the proper functioning of the internal market".

7.5 Obligation of TMT Companies to Retain Customer Data

According to Data Retention Law (which governs the retention and transmission of traffic and location data on both natural persons and legal entities, and of the related data necessary to identify the subscriber or registered user, for the purpose of the investigation, detection and prosecution of serious crimes by competent authorities), electronic communications services providers are obliged to retain customer and traffic data for a one-year period from the time of completion of the communication.

On a broader level, the legal framework in Portugal in this respect, as in all other EU Member-States, has been unclear since, in 2014, the EU Court of Justice declared the invalidity* of Directive 2006/24/EC of the European Parliament and of the Council (the Data Retention Directive), as it was considered to entail "a wide-ranging and particularly serious interference with the fundamental rights to respect for private life and to the protection of personal data, without that interference being limited to what is strictly necessary".

Since this Law was set up as a consequence and for the transposition of a Directive which has now been declared invalid, whilst the Law is currently formally valid, the reasoning behind the law is now inexistent. This issue has already been addressed in other Member States, where operators have expressly stated that they would cease to retain data, considering that this obligation had been deemed too intrusive on an EU level.

Whilst in Portugal a formal decision to repeal the Law has not yet been made, the obligation to retain the data has now been questioned and operators may choose to take a stance in this respect.

Notwithstanding, concerning the confidentiality of client data, electronic communications providers should comply with the general privacy and data protection requirements set out in the Data Privacy Law (which sets out general privacy obligations, regardless of the sector of activity) and in the Privacy in Communication Law. Media and technology companies are also bound by the Data Privacy Law.

This includes ensuring that only necessary information is made known to the regulator or to other authorities and that access to client information is restricted to the provision of the services and to the necessary individuals within the TMT provider structure; breach of this privacy and data protection principle may give rise to significant fines and/or, in some cases, criminal liability.

Specifically, under Article 3 of the Privacy in Communication Law, providers of publicly available electronic communications services must take appropriate technical and organisational measures to ensure the security of their services as regards network security. These measures should include at least:

- measures that ensure that personal data can be accessed only by authorised personnel, and only for legally authorised purposes;
- the protection of personal data transmitted, stored or otherwise processed, against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to;
- measures that ensure a security policy with respect to the processing of personal data.

7.6 Prohibition of Unsolicited Communications

The Data Privacy Law and Privacy in Communication Law rule on the matter of direct marketing prohibits unsolicited communications. Unsolicited communications in Portugal are not completely forbidden, provided that they comply with the terms and conditions of these laws.

As a brief overview, the latter law states that, when addressed at individuals, direct marketing communications (namely, through automatic communication systems, such as email, SMS, EMS, MMS or similar tools) may only be issued with the data subject's prior, express authorisation (express opt-in).

This limitation does not apply in two instances: (a) when the addressees are companies (direct marketing may be carried out until addressees state that they do not wish to receive

such communications); or (b) to individual addresses, when the entity sending the direct marketing communication has previously provided a service or product to the data subject, when the communication refers to similar products or services. In any event, data subjects/addresses must always be provided with the right to refuse to receive any more such communications.

Entities carrying out direct marketing initiatives must keep an updated list of the addresses that exercised their opt-in or, when applicable and express opt-in is not required, those who did not exercise their right to receive these communications. Inclusion in these lists must be free of charge for the data subjects.

8. Future

8.1 Status and Process of Convergence

The effects of convergence in Portugal from an institutional perspective are relatively modest. There are different regulators for the communications sector (ANACOM) and for the Media sector (ERC) and from a legislative perspective, there is a clear separation between rules applicable to Media companies and rules applicable to Telecom operators.

There are, however, some convergences with respect to Telecom services and Information Society Service, given that, at least from an institutional perspective, ANACOM is the

entity in charge of ensuring compliance with legal rules on these sectors/services.

Changes are not expected in this framework in the near future.

8.2 Changes to Statutes, Laws or Legislation

For the moment, there are no major changes planned to the statutes, laws or legislation applicable to Telecom Media Technology industries. However, this will change dramatically in the coming years due to the forthcoming approval of the Connected Continent Telecoms Reform Package and the expected reforms in the Audiovisual Media Services Directive.

8.3 Changes to Government Ministries, Regulatory Agencies or Privatised Entities

For the moment, there are no major changes planned to government ministries, regulatory agencies or other entities. The expected amendment of ANACOM's statutes was approved in March 2015, aligning the powers and competences of this entity with the general law on independent regulatory authorities (approved by Law No 67/2013, of August 28th).

8.4 Identification and Assignment of Additional Spectrum

In accordance with the Portuguese Digital Agenda, until 2020 the spectrum band ranging from 694 to 790 MHz should be used to allow the promotion of wireless broadband applications, all in line with EU decisions.

Vieira de Almeida & Associados

Av. Duarte Pacheco 26
Lisbon
Portugal
1070-110

Tel: +351 21 311 3400
Fax: +351 21 311 3406
Email: lisboa@vda.pt
Web: www.vda.pt

