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Global Practice Guides

TMT

Law and Practice – Portugal

Contributed by

Morais Leitão, Galvão Teles,
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PORTUGAL

LAW AND PRACTICE:

p.3

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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 and Practice

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CONTENTS

1. General Structure of TMT Regulation and Ownership	p.5	3.5 Accounting, Functional and Legal Separation	p.12
1.1 Statutes, Laws and Legislation	p.5	3.6 Provisions for Access to Public and Private Land	p.12
1.2 Government Ministries, Regulatory Agencies and Privatised Entities	p.6	3.7 Rules which Govern the Use of Telephone Numbers	p.12
1.3 Developing Rules and Adopting Policies	p.7	3.8 Regulation of Retail Tariff	p.12
1.4 Ownership of Telecoms Media Technology Industries	p.7	3.9 Rules to Promote Service in Underserved Areas	p.12
1.5 Limits on Participation	p.8	3.10 Extent to Which Local Government Regulations of Telecom Service is Pre-Empted	p.13
1.6 Restrictions on Foreign Ownership or Investment	p.8	4. Wireless	p.13
1.7 World Trade Organisation Membership	p.8	4.1 Important Companies	p.13
1.8 Appellate Process	p.8	4.2 General Requirements for Obtaining a Licence/ Authorisation to Provide Wireless Services	p.13
1.9 Annual or Recurring Fees	p.8	4.3 Transfer of Wireless Licences/Authorisations to Provide Wireless Services	p.13
2. Broadcasting/Media	p.9	4.4 Spectrum Allocation	p.13
2.1 Important Companies	p.9	4.5 Procedures to Identify and Assign Spectrum Among Competitors	p.13
2.2 Requirementments for Obtaining a Licence/ Authorisation to Provide Services	p.9	4.6 Unlicensed Spectrum Uses	p.13
2.3 Typical Term for a Licence/Authorisation to Provide Services	p.9	4.7 Government Policy/Regulation to Promote Next Generation Mobile Services	p.13
2.4 Transfer of Licences/Authorisations to Other Entities	p.9	4.8 Price Regulation for Mobile Services	p.14
2.5 Spectrum Allocated	p.9	4.9 Regulation of Government and Commercial Wireless Uses	p.14
2.6 Restrictions on Common Ownership	p.10	4.10 Extent to Which Local Government Regulation of Wireless Service is Pre-Empted	p.14
2.7 Content Requirements and Regulations	p.10	5. Satellite	p.14
2.8 Difference in Regulations Applicable to Broadcasting Versus Cable	p.10	5.1 Important Changes	p.14
2.9 Transition from Analogue to Digital Broadcasting	p.10	5.2 General Requirements for Obtaining a Licence/ Authorisation to Provide Satellite Service	p.14
2.10 Extent to Which Local Government Regulation is Pre-Empted	p.11	5.3 Transfer of Satellite Licences/Authorisations to Other Entities	p.14
3. Telecoms	p.11	5.4 Spectrum Allocation to Satellite Service	p.14
3.1 Important Companies	p.11	5.5 International Telecommunication Union Membership	p.14
3.2 Requirements for Obtaining a Licence/ Authorisation to Provide Services	p.11	5.6 Provision of Service by Foreign-Licensed Satellites	p.15
3.3 Transfer of Telecoms Licences/Authorisations to Other Entities	p.11	5.7 Milestone and Due Diligence Deadlines	p.15
3.4 Regulations for Network-to-Network Interconnection and Access	p.11		

PORTUGAL LAW AND PRACTICE

Contributed by Morais Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL.

Authors: Gonçalo Machado Borges, Nuno Peres Alves

6. Internet/Broadband	p.15
6.1 Important Companies	p.15
6.2 Regulation of Voice-Over-IP Services	p.15
6.3 Interconnection and Access Regulatory Conditions to IP-Based Networks	p.15
6.4 Net Neutrality Requirements	p.15
6.5 Government Regulation of Internet/Broadband	p.15
6.6 Over-the-Top Internet-Based Providers	p.15
6.7 Extent that Local Government Regulation of Internet/Broadband Service is Pre-Empted	p.15
7. Privacy	p.15
7.1 Government Access to Private Communications	p.15
7.2 Use of Encryption Technology	p.17
7.3 Liability of TMT Companies for Content Carried Over Their Networks	p.17
7.4 Obligation of TMT Companies to Block Access to Certain Sites or Content	p.17
7.5 Obligation of the TMT Companies to Retain Customer Data	p.18
7.6 Prohibited of Unsolicited Communications	p.18
8. Future	p.18
8.1 Status and Process of Convergence	p.18
8.2 Changes to Statutes, Laws or Legislation	p.18
8.3 Changes to Government Ministries, Regulatory Agencies or Privatised Entities	p.19
8.4 Identification of Assignment of Additional Spectrum	p.19

Morais Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL. is based in Lisbon, with offices in Porto and Funchal (Madeira); it also has a network of associations with local firms in Angola, Mozambique and Macau. Its TMT team is divided into three different practice groups: telecommunications and media; data protection; the Legal Circle gaming practice – this last having been created with-

in the context of the MLGTS Legal Circle to advise gaming sector clients throughout the Portuguese-speaking world. A member of the Lex Mundi global network, with over 80 years of experience and a total roster of 200 multilingual lawyers, the firm's key areas of expertise are public law, European and competition law, litigation and corporate law.

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1. General Structure of TMT Regulation and Ownership

1.1 Statutes, Laws and Legislation

The Telecoms Media Technology (TMT) industries in Portugal are subject to quite extensive regulation, ranging from constitutional provisions (notably in what concerns certain fundamental rights and freedoms – such as freedom of expression and information and freedom of the press and other media – and the general framework for economic regulation) to sector-specific legislation essentially based on the EU framework for electronic communications and services, regulatory instruments and administrative decisions.

The main legislative acts that apply to the electronic communications sector are the following:

- Electronic Communications Act: Law no. 5/2004, of 10 February, amended 13 times since its publication in the Official Gazette (amended and restated by Law no. 51/2011, of 13 September, and last amended by Decree-Law no. 92/2017, which implemented Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks). The Electronic Communications Law reflects the EU regulatory framework for electronic communications and services and implemented Directives

2002/19/EC, 2002/20/EC, 2002/21/EC and 2002/22/EC, of the European Parliament and of the Council, and Directive 2002/77/EC, of the Commission, which constitute the 2002 EU regulatory package for electronic communications networks and services. In its updated version currently in force, the Electronic Communications Package also reflects the implementation of Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009.

- Framework regime on administrative offences and infringements in the communications sector: Law no. 99/2009, of 4 September (last amended by Law no. 46/2011, of 24 June, which instituted the Competition, Regulation and Supervision Court, a specialised jurisdiction court).
- Legal regime on the construction of infrastructure suitable for the accommodation of electronic communications networks and the installation of electronic communications networks and infrastructure in housing developments, urban settlements and concentrations of buildings: Decree-Law no. 123/2009, of 21 May (last amended and restated by Decree-Law no. 92/2017, of 31 July, which implemented Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks).

PORTUGAL LAW AND PRACTICE

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- Legal regime applicable to radio communications networks and stations: Decree-Law no. 151-A/2000, of 20 July (as amended).
- Legal regime governing the making available on the market, setting into service and use of radio equipment: Decree-Law no. 57/2017, of 9 June, which implemented Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014.
- Administrative Order no. 1473-B/2008, of 17 December, which governs fees and charges due to the National Regulatory Authority for the issuance of declarations on operators' rights; the allocation of individual rights of the use to radio spectrum frequencies and numbering resources; the ongoing use of these frequencies and resources; the activity of electronic communications network and service providers; and the activity of audio-text and value-added services (last amended by Administrative Order no. 157/2017, of 10 May).
- Legal regime on Essential Public Services, approved by Law no. 23/96, of 26 July (last amended by Law no. 10/2013, of 28 January).
- Statutes of the National Regulatory Authority for the electronic communications and postal sectors (ANACOM): Decree-Law no. 39/2015, of 16 March.

The main legislative acts applying to the media sector are the following:

- Television Act: Law no. 27/2007, of 30 July (amended and restated by Law no. 8/2011, of 11 April, and last amended by Law no. 78/2015, of 29 July), which implemented Directive 89/552/EC of the Council of 3 October, as amended by Directive 97/36/EC, of the European Parliament and of the Council of 30 June, and Directive 2007/65/EC, of the European Parliament and of the Council of 11 December.
- Radio Act: Law no. 54/2010, of 24 December (last amended by Law no. 78/2015, of 29 July).
- Press Act: Law no. 2/99, of 13 January (last amended by Law no. 78/2015, of 29 July).
- Legal regime on ownership, management and financing transparency of media entities: Law no. 78/2015, of 29 July.
- Statutes of the National Regulatory Authority for the media sector (the ERC): Law no. 53/2005, of 8 November.
- Decree-Law no. 103/2006, of 7 June, which governs fees and charges due to ERC by entities in the media sector (amended and restated by Decree-Law no. 70/2009, of 31 March).
- Digital Terrestrial Television: i) Council of Ministers Resolution no. 26/2009, of 17 March (switch off from analogue to digital terrestrial broadcast); ii) Council of Ministers Resolution no. 37-C/2016, of 8 July (reserved capacity for two additional standard definition free-to-air television channels); iii) Law no. 33/2016, of 24 August (increased scope for the offer of television channels on the digital terrestrial television platform).

The Competition Act, approved by Law no. 19/2012, of 8 May, is also relevant and applies to undertakings in all economic sectors, including media and electronic communications. Furthermore, the postal sector also falls under the regulatory purview of ANACOM, and the main statute in this respect is Law no. 17/2012, of 26 April.

In addition to the above legislation, the TMT sector is subject to several administrative orders, recommendations and regulations adopted by the regulatory authorities. In the case of ANACOM, the following are examples of relevant regulations: i) Regulation no. 829/2016, of 23 August, on contractual and pre-contractual information in the electronic communications sector; ii) Regulation no. 58/2005 (as amended), of 18 August, on number portability; and iii) Regulation no. 38/2004, of 29 September, on municipal charges for rights of way.

1.2 Government Ministries, Regulatory Agencies and Privatised Entities

The government ministries more directly involved in the adoption of policies and regulations relevant to TMT industries are: the Ministry of Planning and Infrastructure (mainly in what concerns electronic communications); the Ministry of Culture (mainly in what concerns media); and, in general, the Ministry of the Economy which, according to Article 25 of the Organic Law of the XXI Constitutional Government currently in office (Decree-Law no. 251-A/2015, of 17 December), is entrusted with “formulating, conducting, executing and evaluating development policies directed at economic growth, competitiveness, innovation, internationalisation of companies and promotion of trade, industry and investment, as well as consumer protection, tourism, energy and geology policies.”

The TMT sector is supervised by two entities: the Portuguese regulatory authority for ANACOM; and the Portuguese regulatory authority for the ERC. ANACOM is an independent administrative entity, as defined by Law no. 67/2013, of 28 August (framework law on independent administrative entities with regulatory powers over economic activities), which has administrative, financial and management autonomy. ANACOM is ensured full independence by law when exercising its powers and is therefore not subject to government supervision or instructions. The ERC is also an independent administrative entity and the core of its goals is established in Article 39 of the Constitution of the Portuguese Republic (Portuguese Constitution). It also has administrative and financial autonomy and is independent in the exercise of its powers.

According to its statutes (approved by Decree-Law no. 39/2015, of 16 March) ANACOM has a wide range of goals and powers. It monitors market entry under the general authorisation regime, promotes competition in the offer of

networks and services, and regulates access to networks, infrastructure and services. ANACOM also manages radio spectrum (ensuring service and technology neutrality) and numbering resources, awards the respective individual rights of use and is empowered to solve disputes between operators and service providers in accordance with an administrative dispute resolution mechanism.

ANACOM continues to review several wholesale markets for the purpose of ex ante regulation and to impose obligations on operators designated as having significant market power. Furthermore, this authority oversees and monitors compliance by network operators and service providers with their legal and regulatory obligations under the Electronic Communications Act and other relevant sector legislation, regulations and administrative decisions adopted by the regulator. It may initiate infringement proceedings, apply fines and enforce other penalties (which may include an order to cease operations and suspend activities; the prohibition from taking part in tender procedures or auctions; or the suspension of authorisations, licences or other titles – in each case, for a maximum period of two years).

ANACOM collects fees and charges, including fees for the exercise of activities as electronic communications network or service providers, and fees due for the award of rights to radio spectrum or numbering resources and for their ongoing use. It assists the government in matters pertaining to communications by providing technical support and issuing opinions, studies and information, as well as assisting in draft legislation projects. ANACOM must also issue opinions, at the request of the Portuguese Competition Authority (the AdC), in the context of merger control and antitrust infringement procedures concerning product or service markets which fall under its regulatory scope.

The board of ANACOM consists of either three or five members (one of whom is appointed to preside over the board) who are appointed by the government following a hearing by the relevant parliamentary commission.

The ERC is entrusted with the regulation and supervision of all media entities, notably: news agencies; written press publishers; radio and television operators; entities that make available to the public, through electronic communications networks, radio and television program services the selection and aggregation of which is decided by them; entities that make available to the public, through electronic communications networks, contents which is coherently organised and submitted to editorial treatment.

The ERC's goals and functions are guided by constitutional principles and provisions related to ensuring the free exercise of the right to information and freedom of the press and guaranteeing plurality of the media and the manifestation

of diverse opinions (Articles 37 and 38 of the Portuguese Constitution). Instrumental to these goals is the ERC's responsibility to monitor and prevent undue concentration of ownership of media entities and that of ensuring their independence from political and economic power. This regulator must also ensure the right to airtime, right of response in the context of media publications and the right to reply in a political context.

The ERC awards licences to television and radio operators and monitors compliance with any legal obligations and conditions attached to those licences. It promotes competition in the media sector and issues opinions to the AdC in the context of merger control and antitrust infringement procedures in the media sector (according to Article 4-B of the Television Act and to Article 4 of the Radio Act, this opinion is binding in the event the ERC concludes that a given merger transaction raises a justified risk of being detrimental to freedom of expression or media plurality).

The ERC is managed by a regulatory council of five members, four of which are appointed by Parliament (the fifth member being appointed by the previous four).

As the competition authority, the AdC has general powers to supervise and monitor the behaviour of economic agents in all sectors of activity and has been particularly active in TMT sectors, notably in its enforcement against perceived abusive practices by dominant undertakings, and in the assessment of several important merger transactions.

1.3 Developing Rules and Adopting Policies

The enactment of rules for TMT sectors follows the general legislative procedure, according to the constitutional organisation of legislative competence between Parliament and government (since, in accordance with the Portuguese Constitution, the government is entitled to approve legislative acts). A significant proportion of telecoms rules results from the implementation of EU directives into the Portuguese legal order. Administrative orders (approved by the government) and regulations (approved by the regulatory authorities) specify legal frameworks in greater detail. ANACOM and the ERC assist the government in the definition of sector-specific policies.

1.4 Ownership of Telecoms Media Technology Industries

Article 82 of the Portuguese Constitution explicitly provides for the coexistence of three sectors regarding ownership of means of production (and development of the corresponding economic activities): public, private and co-operative/social. Freedom of enterprise was introduced in 1988 for radio operators and in 1989 for television activities and some telecommunications services. Full liberalisation of telecommunications occurred in 1997.

Currently, practically all TMT industries are privatised. The only two exceptions are in the media sector: i) the public service operator Rádio e Televisão de Portugal, S.A. is the state-owned company entrusted with providing radio and television services under a public service concession contract (the current concession contract was entered into with the Portuguese state in March 2015 and the concession has a term of 16 years) and in accordance with Article 38(5) of the Constitution, which mandates that the state must ensure the provision of a public radio and television service. Rádio e Televisão de Portugal, S.A. currently broadcasts the RTP1 and RTP2 national free-to-air service programs (channels); and ii) the news agency Lusa (Agência Lusa) is also state-owned.

1.5 Limits on Participation

TMT industries are open to competition in Portugal. Access to some activities, notably those requiring the use of radio frequency spectrum (including broadcasting), is subject to licensing requirements and to the allocation of individual rights of use to certain frequency ranges. In the case of television broadcasting, several types of entities are entirely barred from performing or financing television activity: including political parties or associations, trade unions, employers' and professional associations and local authorities or their associations.

1.6 Restrictions on Foreign Ownership or Investment

Currently, in Portugal, there is no restrictions on foreign ownership or investment in the TMT industries, with the exception of the limits to cross-ownership (which are not exclusive to foreign investors) which apply to television and radio activities, as described in **2.6 Restrictions on Common Ownership**.

1.7 World Trade Organisation Membership

The EU and its Member States (Portugal included) are members of the World Trade Organisation and parties to the Fourth Protocol to the General Agreement on Trade in Services (GATS). Several commitments specific to Portugal were included in the schedule of commitments related to basic telecommunications services (GATS/SC/31). However, the Portuguese legislation on which they were based has been subsequently overhauled by the EU regulatory framework on electronic communications and its implementation into Portuguese law, removing previous limitations.

1.8 Appellate Process

ANACOM decisions in the context of its regulatory activities (such as those related to market analysis, imposing ex ante obligations on operators with SMP or deciding a dispute under the administrative resolution mechanism) may be challenged before the administrative courts. The same applies to the judicial challenge of administrative acts adopted by the

ERC in the context of its regulatory and supervision powers. Appeals from administrative acts of this kind do not have a suspensive effect and, as a rule, must be brought within 90 days from the act's adoption.

Decisions adopted by ANACOM or the ERC in infringement proceedings for administrative offences, namely those involving the imposition of fines or other penalties, may be challenged before the Competition, Regulation and Supervision Court. In this case, the appeal has a suspensive effect and the fines or penalties imposed are not enforceable until the court has reached a definitive decision. Fines or penalties imposed must be challenged within 20 business days from notice of the decision to the defendants.

The basis for appeals varies according to the nature of the decision being challenged. In the case of appeals to the administrative courts, only grounds related to law and procedure may be argued by appellants. As a rule, the merits of these administrative decisions, when they involve the exercise of so-called discretionary powers (eg related to the evaluation of markets and specification of the public interest in particular cases), cannot be discussed before the courts. In the case of infringement decisions imposing fines or other penalties, the courts may carry out a full assessment of the grounds and merits of a decision (fact and law).

1.9 Annual or Recurring Fees

Spectrum fees are covered by Article 105(1) of the Electronic Communications Act and regulated by Administrative Order no. 1473-B/2008 (as amended). These include the following:

- A one-shot fee for the award of individual rights of use to specific frequency bands which, in the case of frequency rights allocated by means of a public tender or auction procedure, will be set on a case-by-case basis in accordance with that procedure;
- A recurring fee for the use of radio spectrum frequencies. This is an annual fee due for payment every year in September. Pursuant to the amendments introduced by Administrative Order no. 157/2017 the reference fee per megahertz (MHz) has been increased to EUR90,800 for the use of frequencies assigned to terrestrial electronic communications services, mobile services with shared resources and terrestrial mobile services. This is an additional increase from the previous spectrum fees which, as of October and December 2013, respectively, were successively raised to EUR60,000 and EUR82,000 per MHz.
- Operators entitled to use spectrum must also pay a general annual fee relating to their activities as electronic communications network and service providers. This fee is set according to three different thresholds, the highest of which applies to operators with revenues exceeding EUR1,500,001.00, based on a formula set in Annex II of

Administrative Order no. 1473-B/2008. For the purpose of enabling ANACOM to calculate the fee due, operators must submit an annual statement, prior to 30 June each year, confirming relevant revenues obtained in the previous year.

2. Broadcasting/Media

2.1 Important Companies

The most important companies in broadcasting/media in Portugal include television broadcasters and the main telecommunications operators with pay-TV retail offers based on multiple distribution platforms (cable, FTTH and satellite).

Media Capital controls TVI, a free-to-air television operator with has had the highest viewing shares for a number of years, as well as several national radio stations. Impresa controls SIC, the second private free-to-air television operator. Both also produce conditional access channels for pay-TV distribution.

MEO, currently part of the Altice group, and NOS are the two main telecommunications and multimedia operators, active in fixed and mobile communications, broadband and pay-TV. Vodafone Portugal is also a very relevant player in these markets.

2.2 Requirements for Obtaining a Licence/Authorisation to Provide Services

Under both the Television and the Radio Acts, television and radio broadcasting may only be performed by corporate persons or co-operatives that pursue these activities as their main corporate object.

Both television and radio broadcasting activities are subject to a licence provided they require the use of a terrestrial broadcasting spectrum. Licences are awarded by the ERC pursuant to a public tender launched by a government decision. In the case of television, the licensing requirement applies to the organisation of free unrestricted access (free-to-air) channels and to the selection and aggregation of conditional access or per subscription channels. If the broadcasting services do not involve the use of radio spectrum, they are only subject to an authorisation by the ERC.

Applications to the ERC for television or radio broadcasting licences must be decided within 90 days from the date they are accepted as complete. Applications for an authorisation must be decided by the ERC within 30 days (15 days in the case of radio broadcasting).

The fees for obtaining a licence/authorisation for broadcasting activities are set out in Annex IV to Decree-Law no.

70/2009, of 31 March. The award or renewal of a national licence to television and radio operators who require the use of spectrum costs are, respectively, EUR286,518.00 and EUR28,662.00 (fees are lower for licences with a regional or local geographic scope). The award or renewal of authorisations to television and radio operators costs are, respectively, EUR28,662.00 and EUR3,774.00.

2.3 Typical Term for a Licence/Authorisation to Provide Services

Licences or authorisations for television activities are awarded for a term of 15 years, renewable for successive identical periods of time. A renewal request must be submitted to the ERC by the television operator between 240 and 180 days prior to expiry of the term. The same applies to radio broadcasting.

2.4 Transfer of Licences/Authorisations to Other Entities

Licences or authorisations for television operators may not be assigned or transferred. In the case of radio broadcasting, local program services and their respective licences or authorisations may be assigned, if such a transfer is manifestly useful to preserve the local radio station project.

Changes of control, via merger or acquisition, do not constitute a transfer of the relevant licences or authorisations, provided the licence remains with the same legal entity. Changes of control over licensed television or radio broadcasting operators may only take place three years after the licence is originally awarded; two years after the approved project is modified; and one year after the licence has last been renewed. In any event, changes of control are subject to authorisation by the ERC.

If the turnover or market share thresholds in the Competition Act are satisfied, any transaction involving a change of control over a licensed operator is also subject to clearance by the AdC under its merger control procedure. In these cases, an opinion has to be sought from the ERC which, in the event of a merger between television or radio operators, may be binding on the AdC if the media regulator considers there to be a risk to freedom of expression or plurality of the media.

2.5 Spectrum Allocated

Spectrum allocation for television and radio broadcasting is defined by ANACOM pursuant to an opinion by the ERC.

Following the switch off from analogue to digital television in 2012, the spectrum currently used by MEO (the digital terrestrial television network operator) for the broadcast of existing free-to-air television channels covers the following ranges: i) mainland Portuguese territory – channel 56 (750-758 MHz); ii) Madeira – channel 54 (734-742 MHz); and

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iii) Azores – channel 47 (678-686 MHz); channel 48 (686-692 MHz); channel 49 (694-702 MHz); channel 55 (742-750 MHz); and channel 56 (750-758 MHz).

As for radio broadcasting, the national, regional and local stations mainly use the 87.5-108 MHz range.

More complete details on spectrum allocation for television and radio broadcasting are provided in the National Table of Frequency Allocations (QNAF), available at www.anacom.pt/render.jsp?categoryId=291355.

2.6 Restrictions on Common Ownership

In the case of television, no person or entity may, directly or indirectly, hold more than 50% of the total number of licences awarded for nationwide free-to-air television services for the same range of programs with identical national coverage. In radio broadcasting, similar limitations apply. No person or entity may, directly or indirectly, hold: i) more than 10% of the local radio licences awarded in Portuguese territory; ii) more than 50% of the national radio programming services authorised for the same coverage area and using the same frequency band; and iii) within the same district, metropolitan area, municipality or island (in the case of the autonomous regions), more than 50% of the local radio licences awarded for the same territorial area.

No similar limitations on overlapping ownership apply under the Press Act and, therefore, press activities are subject in this respect only to general competition law rules. Ownership or control of broadcasting/media companies, including television, radio and newspapers, may be indirectly limited, for competition law reasons (in case of a significant impediment to effective competition), in the context of merger control procedures related to concentrations of undertakings in the media sector.

2.7 Content Requirements and Regulations

Television program services, on-demand audio-visual content and radio program broadcasts are prevented from inciting hate or discrimination related to race, religion, political orientation, ethnicity or nationality, gender, sexual orientation or disability.

Specific restrictions applying to television operators (broadcast) under the Television Act include the following:

- Television programs that are liable to cause manifest and grievous harm to the free development of the personalities of children and adolescents, notably those including pornography or gratuitous violence are prohibited. Any other content which may negatively influence the development of children's and adolescents' personalities may only be broadcast between 10.30pm and 6am;

- The public service television operator (which broadcasts the free-to-air generic channels RTP1 and RTP2) has a duty to broadcast messages requested by the President of the Republic, the Prime Minister or the President of Parliament;
- Generic television program services (channels) must broadcast news services on a regular basis;
- Advertising and TV sales must be clearly identified and separated from other television programming;
- Advertising spots and TV sales cannot, within a two-hour period, exceed either 10% or 20% of the overall contents broadcast on conditional access (per subscription) channels or on unrestricted access (free-to-air) channels, respectively;
- As a rule, television broadcasts must be spoken or subtitled in Portuguese and national television channels must reserve at least 50% of their broadcast time (excluding advertising) to original programs in Portuguese (including at least 20% devoted to originally produced creative works in Portuguese language);
- Television program services with national coverage must include a majority percentage of European content in their broadcasts.

2.8 Difference in Regulations Applicable to Broadcasting Versus Cable

Cable (distribution operators) must give preference, when organising and presenting their pay-TV offers on the market, to original Portuguese language generic, general information, scientific, educational or cultural channels. In addition, they are potentially subject to must-carry obligations although, currently, no such obligations apply as no channels have been specified by the ERC and ANACOM for this purpose.

As for on-demand audiovisual service operators, they may only make available content that is liable to cause manifest and grievous harm to the free development of the personalities of children and adolescents, notably pornography, if technical means are provided to prevent access to these contents by that segment of the public. They must also confer special visibility in their catalogue to European works, technically enabling content searches in accordance with origin, and must also contribute financially to their production and promotion.

2.9 Transition from Analogue to Digital Broadcasting

The transition from analogue to digital terrestrial broadcasting was completed in April 2012. The radio frequencies freed up by the analogue switch off were primarily allocated to 4G (LTE) mobile networks.

2.10 Extent to Which Local Government Regulation is Pre-Empted

Broadcasting and media activities are governed by legislation that applies on a national level and overseen by the ERC. No relevant local government regulations apply.

3. Telecoms

3.1 Important Companies

The most important telecom companies in Portugal are NOS, MEO (Altice group), Vodafone Portugal and Nowo.

According to ANACOM statistics, as of the second quarter of 2017, these operators had the following market shares: i) mobile – MEO 43.9%; Vodafone 30.5%; NOS 23.6%; ii) pay-TV – NOS 43.3%; MEO 38.3%; Vodafone 13.5%; Nowo 4.7%; iii) fixed broadband – MEO 39.8%; NOS 37.7%; Vodafone 18.0%; Nowo 4.2%; iv) fixed telephony – MEO 45.3%; NOS 35.4%; Vodafone 15.2%; Nowo 3.7%; and v) multiple-play service bundles – MEO 39.5%; NOS 39.0%; Vodafone 16.4%; Nowo 4.9%.

3.2 Requirements for Obtaining a Licence/Authorisation to Provide Services

Under the general authorisation regime, no licence or authorisation is required for the provision of electronic communications networks or services. This applies to fixed, mobile, wireless and satellite services, whether these are publicly available or not. The offer of telecom services only requires prior notification to ANACOM after which the network/service provider may commence activities. ANACOM maintains a register of all undertakings that offer electronic communications services.

Despite the above, any activity requiring the use of radio spectrum frequencies or numbering resources depends on the award, by ANACOM, of the respective individual rights of use.

Spectrum frequencies may be attributed through direct acquisition, public tender or auction and the individual rights of use are granted for a 15-year term, renewable for an identical period of time. For mobile networks, 2G (GSM) and 3G (UMTS) frequencies were allocated by means of a tender whereas 4G (LTE) frequencies were allocated by auction in 2011. Rights of use to frequencies should be awarded within 30 days or, when a competitive or comparative procedure is required (tender or auction), within the deadline set for that procedure, not exceeding eight months. Fees range from EUR500-1,000 or, if a tender/auction is involved, they will be specifically set for that procedure.

Rights of use to numbering resources are awarded on a direct basis although ANACOM may conduct a competitive

or comparative allocation procedure if certain numbers have been deemed of exceptional economic value. Rights to numbers are attributed within 15 days in the first case and 30 days in the second and incur a EUR200 fee per award.

3.3 Transfer of Telecoms Licences/Authorisations to Other Entities

Individual rights of use to spectrum frequencies may be transferred (assigned or leased) to other operators, provided ANACOM has not prohibited transferability in respect of specific rights. Rights holders must give ANACOM prior notification of their intention to assign/lease (and the respective conditions) and the regulator has 45 days to clear the projected transfer, which may be prohibited if the following conditions are not met:

- The transfer does not distort competition, notably due to accumulation of rights of use;
- Frequencies continue to be efficiently and effectively used;
- Intended use for the frequencies complies with the harmonisation measures resulting from Decision No. 676/2002 of the European Parliament and of the Council of 7 March (the Radio Spectrum Decision) or other EU measures; and
- Restrictions set forth in the Television and Radio Acts are safeguarded.

Numbering resources may also be transferred, provided their efficient and effective use is ensured.

Transfers resulting from a change of control or merger transaction may be subject to competition clearance by the AdC.

3.4 Regulations for Network-to-Network Interconnection and Access

The Electronic Communications Act contains general provisions on interconnection and access. Telecom operators are free to negotiate interconnection and access conditions but interconnection and interoperability must be ensured for the provision of publicly available electronic communications services.

Access and (wholesale) pricing control obligations may only be imposed by ANACOM on operators with significant market power. Currently, only MEO has to publish a standard interconnection reference offer, although wholesale termination rates for both fixed and mobile networks are capped for all operators.

Interconnection disputes may be submitted to ANACOM's administrative dispute resolution mechanism. ANACOM adjudicates on a dispute within four months and its decision may be challenged in the administrative courts. However, disputes arising from contractual conditions in interconnection agreements that were not imposed by ANACOM are settled by civil courts.

3.5 Accounting, Functional and Legal Separation

MEO is subject to accounting separation in several markets where it has been identified as possessing significant market power (SMP), including: wholesale local access provided at a fixed location; wholesale central access provided at a fixed location for mass-market products; wholesale high-quality access provided at a fixed location (respectively, markets 3 a), 3 b) and 4 under European Commission Recommendation 2014/710/EU of 9 October 2014).

Functional separation is covered by Articles 76-A and 76-B of the Electronic Communications Act as an exceptional measure but has not been imposed on any SMP operator. Legal separation, including divestment or demerger of subsidiaries or assets, as an obligation, is not provided for in the sector-specific legislation but may be imposed by the AdC as a remedy in the context of merger control procedures.

3.6 Provisions for Access to Public and Private Land

Decree-Law no. 123/2009, of 21 May (amended several times and last amended and restated by Decree-Law no. 92/2017, which implemented Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks) contains the general regime on the construction of infrastructure and installation of electronic communications networks and it provides for access to public and private land for this purpose. Electronic communications operators are entitled to use the public domain (of the state, autonomous regions and municipalities) to install network infrastructure and systems, subject to the award of the respective rights of way by means of a licence. They may also request expropriation of private land for the same purposes, under Article 24(1) a) of the Electronic Communications Act.

Furthermore, any entity that owns or manages suitable passive infrastructure (eg underground ducts, poles, manholes, cabinets, towers etc) is under a legal duty to provide access to any electronic communications operator that requires that infrastructure to roll out its network. This duty applies, for instance, to any entities that own or manage infrastructure installed in the public domain, other electronic communications operators and certain utilities (gas, electricity, water) and railway operators. In addition, telecom operators are encouraged to enter into co-investment or network sharing agreements.

3.7 Rules which Govern the Use of Telephone Numbers

Numbering resources are allocated to electronic communications network operators and service providers by means of open, objective, transparent, non-discriminatory and pro-

portionate procedures and in accordance with the National Numbering Plan (PNN).

All providers of publicly available telephony services (fixed and mobile) must offer number portability, currently within a porting deadline of one business day. Number portability is overseen by an independent entity and must be requested by the subscriber to the new service provider, together with confirmation that the previous service contract has been terminated. The receiving service provider then communicates three possible porting windows to the former service provider. Number portability is governed by ANACOM Regulation no. 58/2005, of 18 August, last amended and restated by Regulation no. 114/2012, of 13 March, (a public consultation to amend this regulation is ongoing).

3.8 Regulation of Retail Tariff

With the exception of certain value-added services, retail tariffs are not regulated in Portugal. Certain value-added services provided through non-geographic numbers are subject to retail price regulation imposed by ANACOM resolutions. One example is the “760” numbering block which is used for calls to television contests and televoting and is subject to a single retail tariff of EUR0.60 per call (VAT not included).

In addition, the offer of fixed telephony services by the universal service provider (currently NOS) is also subject to retail price regulation. Mandatory tariff plans are made available to certain pensioners and retired subscribers who are eligible for provision of publicly available telephone services at a fixed location under universal service conditions. According to the relevant contracts with the Portuguese state (which were entered into in 2014 and have a five-year duration), the telecommunications universal service provider is subject to a retail price cap mechanism and cannot vary tariffs by more than 2.75% annually, in accordance with expected inflation.

3.9 Rules to Promote Service in Underserved Areas

As the telecommunications universal service provider, NOS has a duty to provide connection at a fixed location to the public telephone network; access to publicly available telephone services; and basic internet access in the entire Portuguese territory, regardless of subscriber location. There are no universal service rules for broadband services. Up until 2014, the universal service provider was not selected by a competitive tender procedure which resulted in a judgment by the ECJ, dated 7.10.2010, condemning the Portuguese state for non-compliance with Directive 2002/22/EC (Case C-154/09).

The net costs of providing the services currently included in the telecommunications universal service scope (telephone connection, basic voice and internet access) is financed by

the universal service fund, which was created in 2012 by Law no. 35/2012, of 23 August, subsequently amended and restated by Law no. 149/2015, of 10 September. The fund receives annual contributions from all electronic communications operators provided their turnover in the previous year exceeds 1% of the sector's overall turnover.

Rural areas are also covered by NGA (next-generation access) fibre-optic networks pursuant to five public tender procedures carried out in 2009; three covering the continental territory of Portugal; and one for each of the Azores and Madeira autonomous regions. Roll-out of these NGA networks was awarded to two wholesale private operators and they are currently in operation in the mainland, covering 139 municipalities, a population of 1.2 million and 823 thousand homes.

3.10 Extent to Which Local Government Regulations of Telecom Service is Pre-Empted

Telecoms activities are governed by legislation that applies on a national level and overseen by ANACOM. No relevant local government regulations apply.

4. Wireless

4.1 Important Companies

There are three mobile network operators in Portugal: MEO (Altice group), Vodafone Portugal and NOS. According to ANACOM statistics, as of the second quarter of 2017 these operators had the following market shares: MEO 43.9%; Vodafone 30.5%; and NOS 23.6%.

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

See 3.2 **Requirements for Obtaining a Licence/Authorisation to Provide Services**. No licence or authorisation is required for the offer of fixed or mobile electronic communications services. In order to use radio spectrum for mobile communication services, a mobile network operator must obtain, from ANACOM, individual rights of use to the required frequencies. Mobile virtual network operators do not require frequency rights.

4.3 Transfer of Wireless Licences/Authorisations to Provide Wireless Services

See 3.3 **Transfer of Telecoms Licences/Authorisations to Other Entities**. Rights of use to frequencies may be transferred or assigned subject to the conditions set out in Article 34 of the Electronic Communications Act and provided ANACOM does not oppose such a transfer/assignment within 45 days from receiving notice of it.

4.4 Spectrum Allocation

2G GSM networks were allocated frequencies in the 900 (885-890, 890-914, 930-935 and 935-959 MHz) and 1800 (1710-1785 and 1805-1880 MHz) MHz frequency bands. 3G UMTS networks were allocated frequencies in the 1900 (1900-1920 and 1920-1980 MHz) and 2100 (2110-2170 MHz) MHz frequency bands. 4G LTE networks were allocated frequencies in the 450, 800, 900 and 1800 MHz and 2.1 and 2.6 GHz frequency bands. Notwithstanding the above, spectrum management must ensure technological and service neutrality (Article 16-A of the Electronic Communications Act) and it is against this backdrop that ANACOM may determine certain proportionate limitations on the number and use of these rights. In general, radio frequencies are not specifically, or exclusively, allocated to wireless services or to a given technology.

4.5 Procedures to Identify and Assign Spectrum Among Competitors

See 3.2 **Requirements for Obtaining a Licence/Authorisation to Provide Services**.

ANACOM manages radio spectrum resources and allocates (or reserves) frequency ranges to specific purposes in the National Table of Frequency Allocations (QNAF), in line with International Telecommunications Union (ITU) regulations. When necessary, outside the scope of full accessibility spectrum, ANACOM may limit the number of rights of use to frequencies in order to ensure their efficient use. In these cases, awarding may take place by public tender or auction and the individual rights of use are granted for a 15-year term, renewable for an identical period of time. For mobile networks, 2G (GSM) and 3G (UMTS) frequencies were allocated by means of a tender whereas 4G (LTE) frequencies were allocated by auction in 2011.

4.6 Unlicensed Spectrum Uses

Annex 4 to the National Table of Frequency Allocations (QNAF) sets out several permitted unlicensed spectrum uses, covering both network and radio station licence exemptions. Examples of spectrum use for which no licence or individual rights of use are required include, for instance, public WiFi services and certain short-range devices.

4.7 Government Policy/Regulation to Promote Next Generation Mobile Services

The extensive roll-out of next-generation networks has been a strategic policy concern in Portugal since 2008 when Council of Ministers Resolution no. 120/2008, of 30 July, defined investment in these networks as a national priority. Although focusing mainly on wireline (fibre-optic) networks, this public policy goal extends to mobile networks and services.

Council of Ministers Resolution no. 112/2012, of 31 December, approved the Portugal Digital Agenda which set several goals for the widespread uptake of broadband services. These were upgraded by Council of Ministers Resolution no. 22/2015, of 16 April. One of the main goals is to ensure that, by 2020, 100% of the population has access to broadband speeds of at least 30 Mbps and 50% of homes have access to broadband speeds of at least 100 Mbps.

Mobile broadband services play a key role in these objectives and, following the award to MEO (Altice group), NOS and Vodafone in 2012 of new unified titles covering the individual rights of use to all the frequencies allocated to these operators, an ANACOM determination dated 18 February 2016 amended the conditions associated with the use of certain frequencies (in the 1920-1980 MHz and 2110-2170 MHz bands) and reinforced mobile broadband coverage obligations. Currently, each mobile network operator must ensure, within one year from mid-2018, that in 196 municipalities (1/3 of a total of 588 municipalities identified as potentially without mobile broadband services) at least 75% of the population has mobile broadband access with download speeds of 30 Mbits.

4.8 Price Regulation for Mobile Services

With the exception of mobile roaming charges, retail mobile tariffs are not regulated in Portugal. Retail mobile offers are designed on the basis of calling-party pays.

According to EU roaming rules, as of 15 June 2017, all roaming surcharges for temporary roaming within the EU have been abolished. Subject to fair use policy criteria, as developed in the Commission's Implementing Regulation (EU) 2016/2286, of 15 December 2016, domestic retail prices apply to roaming voice calls, SMS and data usage.

On the wholesale level, mobile termination rates continue to be regulated by ANACOM.

4.9 Regulation of Government and Commercial Wireless Uses

Radio spectrum frequencies used by the Portuguese armed forces or police are not publicised in the National Table of Frequency Allocations (QNAF).

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

No relevant local government regulations apply.

5. Satellite

5.1 Important Changes

There are no satellite operators based in Portugal. Some electronic communications operators (such as NOS and MEO) resort to international satellite capacity to offer direct-to-home satellite pay-TV services and satellite fixed and mobile voice services.

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

The legal regime on licensing of radio-communications networks and stations is contained in Decree-Law no. 151-A/2000, of 20 July, as amended, and developed in ANACOM Regulation no. 144/2015, of 25 March.

Provision of satellite services does not require a licence. However, earth stations, and other networks or stations located in Portuguese territory which use satellite radio-communications, are subject to licensing requirements. This applies to: i) earth stations which do not qualify as VSAT or SNG stations; ii) VSAT (Very Small Aperture Terminal) earth station networks; and iii) SNG (Satellite News Gathering) earth stations.

ANACOM must decide on licensing requests within 45 days. Licences are issued for a term of five years which is automatically renewed unless ANACOM decides otherwise and gives notice at least 60 days prior to the term of the licence. Spectrum fees depend on the type of licence and vary according to bandwidth. For fixed and mobile satellite services, annual fees range from EUR3,002 to EUR58,608 per earth station. In the case of VSAT networks, fees vary according to the frequencies used and to the number of stations. In the case of SNG, the annual fee is EUR2,542 per station.

5.3 Transfer of Satellite Licences/Authorisations to Other Entities

With the exception of temporary licences, awarded for less than 180 days, station or network licences may be transferred to other entities. ANACOM must clear or reject the requested transfer within 45 days.

5.4 Spectrum Allocation to Satellite Service

Spectrum is allocated to satellite services in accordance with the Radio Regulations of the International Telecommunication Union. Amateur use of satellite frequencies is covered by Annex 6 of the QNAF.

5.5 International Telecommunication Union Membership

Portugal is a member of the International Telecommunication Union (since 1886) and it has no ITU satellite network filings.

5.6 Provision of Service by Foreign-Licensed Satellites

Foreign-licensed satellites are permitted to provide services in Portugal. In the event local earth stations are installed inside Portuguese territory, the licensing procedure described above (see 5.2 **General Requirements for Obtaining a Licence/Authorisation to Provide Satellite Service**) applies. Foreign operators from outside the EU (or not licensed with respect to an EU Member State) must also, for tax purposes, appoint a fiscal representative with a Portuguese residence.

5.7 Milestone and Due Diligence Deadlines

No legal or regulatory requirements apply in Portugal with regard to the construction and launch of satellites.

6. Internet/Broadband

6.1 Important Companies

The most important companies in the internet/broadband industry in Portugal include NOS, MEO (Altice group), Vodafone Portugal and Nowo. According to ANACOM statistics, as of the second quarter of 2017, these operators had the following market shares: i) fixed broadband – MEO 39.8%; NOS 37.7%; Vodafone 18.0%; Nowo 4.2%; and ii) mobile broadband – MEO 38.6%; NOS 32.1%; Vodafone 28.2%; Nowo 0.9%.

6.2 Regulation of Voice-Over-IP Services

In 2006, ANACOM adopted a summary regulatory framework for VoIP services, including the creation of a specific numbering range (“30”) for nomadic use. According to this framework, VoIP services are regulated, in equivalent terms to the provision of fixed telephony services over the PSTN, with regard to numbering resources (geographic numbering is available for fixed access VoIP services); number portability; interconnection; quality of service; and access to emergency services. In July 2016, ANACOM launched a consultation on the adoption of new rules for the use of geographic and mobile numbers in situations of nomadic use.

6.3 Interconnection and Access Regulatory Conditions to IP-Based Networks

Interconnection and access regulatory conditions apply to IP-based networks in Portugal, in accordance with the principle of technological neutrality.

6.4 Net Neutrality Requirements

Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 introduced common rules to ensure open internet access, safeguarding equal and non-discriminatory treatment of data traffic in the provision of internet access services. In 2016, the Body of European Regulators for Electronic Communications (BEREC) pub-

lished guidelines on the implementation of European net neutrality rules by national regulators.

In accordance with reasonable traffic management policies, internet access providers must ensure equal priority is given to all data, content, applications or services, on a best-efforts basis. In addition to this open internet layer, and provided the quality of general internet access services is not undermined, operators may dedicate bandwidth to specialised services, such as IPTV, VoIP, video streaming etc.

Zero-rating is not prohibited but must observe certain limits; eg once a data cap in the internet access offer is reached, a provider may not block or delay access to general content or applications while favouring zero-rated services. Enhanced traffic management measures are only permitted, on an exceptional and temporary basis, to comply with EU or national legislation or court orders (eg regarding unlawful content or applications), to protect network integrity and security and to prevent impending network congestion.

6.5 Government Regulation of Internet/Broadband

The Portugal Digital Agenda, approved in 2012, contains several goals to promote internet access and broadband penetration. Following a Council of Ministers Resolution no. 22/2015, these goals include ensuring that, by 2020, 100% of the population has access to broadband speeds of at least 30 Mbps and 50% of homes have access to broadband speeds of at least 100 Mbps.

6.6 Over-the-Top Internet-Based Providers

Currently, over-the-top (OTT) service providers are not subject to licensing requirements or regulation in similar terms to electronic communications operators, notwithstanding proposals to reform the e-Privacy Directive and extend the scope of data protection and privacy obligations to OTT players. According to a recent report by ANACOM, as of December 2016 39% of internet users in Portugal were making online voice and video calls and 47% of mobile handset users were using instant messaging services. On-demand video streaming, however, remained well below EU averages with only 1-2% of users subscribed to this type of service.

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

No relevant local government regulations apply.

7. Privacy

7.1 Government Access to Private Communications

As a matter of constitutional law, any interference by public authorities into correspondence, telecommunications and other means of communication is prohibited, with the ex-

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ception of specific situations in the context of criminal investigation procedures (Article 34(4) of the Constitution).

Lawful interception of communications data and content is governed by a number of different laws, statutes and regulations. The following may be listed as the most relevant:

- Portuguese Criminal Procedure Code (CPP), approved by Decree-Law no. 78/87, of 17 February, as amended;
- Law no. 41/2004, of 18 August (on the processing of personal data and the protection of privacy in the electronic communications sector), as amended by Law no. 46/2012, of 29 August, which implemented Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002;
- Law no. 32/2008, of 17 July (on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks), which implemented Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006;
- Law no. 109/2009, of 15 September (the Cybercrime Act, which implemented the provisions of Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems and adapted Portuguese internal law to the Council of Europe Convention on Cybercrime); and
- Administrative Order no. 469/2009, of 6 May, as amended by Administrative Order no. 694/2010, of 16 August (laying down the technical and security conditions under which electronic communications for the transmission of traffic and location data on natural persons and legal entities, as well as of related data necessary to identify the subscriber or registered user, must operate).

Interception of private communications (which may include the actual content of communications, such as telephone conversations or the content of e-mail exchanges, or merely on traffic or location data generated or processed in connection with voice or data communications) is designed as an exception to the general system of data protection rules and is reserved for purposes of criminal investigation related to certain types of criminal offences. It is subject to a prior and duly grounded court order by a criminal judge which may be issued only when there is reason to believe such a measure is crucial to the fact-finding process, or that otherwise it would be impossible or very difficult to secure evidence in the context of an investigation, detection and prosecution of the relevant criminal offences.

Regarding the content of communications, according to the CPP, interception or recording of voice calls can only take place during the criminal investigation stage, on the basis of a duly grounded court order issued pursuant to a request from a public prosecutor. The listening, tapping or recording

of voice calls is only allowed for the investigation of certain (more serious) types of criminal offence, such as, for instance: crimes punishable with a maximum prison term of more than three years; offences related to drug dealing or arms trafficking; terrorism and violent or highly organised crime; kidnapping; and crimes against the security of the state (Article 187(1) and (2) of the CPP).

Regardless of the ownership over the means of communication used, the interception or recording of voice calls can only be authorised against: i) a suspect or defendant; ii) an intermediary in relation to whom there are strong grounds to believe that he/she is receiving/transmitting messages from or to a suspect or defendant; and iii) a victim of the offence being investigated, subject to his/her consent.

According to Article 189(1) of the CPP, the rules summarised above regarding the interception or recording of voice calls also apply to conversations or communications transmitted by any means other than a telephone, notably e-mail or other forms of telematics data transmission, even if they are stored in digital format.

In addition to the access to traffic or location data for criminal investigation purposes under data retention rules (see **7.5 Obligation of the TMT Companies to Retain Customer Data**), interception of communications is also provided for by Law no. 109/2009, of 15 September (the Cybercrime Act) in the context of the investigation of: i) any of the criminal offences defined in the Cybercrime Act (such as electronic fraud, damage to software or electronic data, electronic sabotage, unauthorised access or interception); and ii) offences set out in Article 187 of the CPP when committed through the use of an information technology system or in relation to which it proves necessary to collect evidence in electronic format. Interception in the context of cybercrime investigations may be limited to the collection and recording of traffic data or extend to the recording of data relating to the content of communications.

Outside the strict scope of criminal investigations and criminal procedure rules, Law no. 41/2004 provides for some additional exceptions:

- Subject to the users' being duly informed and giving their consent, certain communications and related traffic data may be legally recorded in the context of commercial transactions for evidentiary purposes relating to a transaction and to contractual relations (eg distance contracts);
- Communications to and from public services may be recorded in emergency situations;
- Courts and other competent authorities may obtain information relating to traffic data with the object of settling disputes, notably interconnection or billing disputes;

- Location data may be recorded, processed and transmitted to bodies legally entrusted with the handling of emergency calls, for the purpose of responding to such calls;
- A subscriber wishing to determine the origin of unidentified calls that disturb the peace of a family or the intimacy of his/her private life may, upon a written and duly substantiated request and subject to a prior mandatory opinion by the National Commission for Data Protection, be informed of the telephone number of calling subscribers who have prevented their calling line identification.

7.2 Use of Encryption Technology

According to Article 27 (1), heading o), of the Electronic Communications Act, network operators and service providers may be required to implement technical requirements, including making means available for the appropriate decryption or decipher (for example, codecs and decryption keys) when such operators or service providers also offer encryption services. This is relevant in particular to enable access to decrypted information by public authorities in the context of criminal investigations.

Under the rights of use to mobile spectrum frequencies more recently issued by ANACOM, the three mobile network operators in Portugal (MEO, NOS and Vodafone) have been required to install and make available to the competent national authorities, interception systems and, to the extent they also offer encryption services, to make means available for the appropriate decryption or decipher (see titles to frequencies no. 1/2012, 2/2012 and 3/2012, for NOS, MEO and Vodafone, respectively, at www.anacom.pt/render.jsp?categoryId=375275&tab=&a=287162&b=345109&c=).

Also, in the context of access to traffic and location data for criminal investigation purposes, Administrative Order no. 469/2009, of 6 May (as amended), establishes technical procedures – including the use of encrypted files and decryption keys – for the provision of relevant data by electronic communications operators to judicial authorities.

7.3 Liability of TMT Companies for Content Carried Over Their Networks

In certain circumstances, electronic communications operators providing access to content over their networks may be held liable for infringements associated to that content, although they normally act as mere intermediaries.

Intermediary access providers have no legal duty to monitor content that is conveyed, or stored, over their networks or to investigate possible unlawful acts in this context. However, under the e-Commerce Act (Decree-Law no. 7/2004, of 7 January, as amended, which implemented Directive 2000/31/EC of the European Parliament and of the Council of 8 June), they may be liable in the event of non-compliance with certain duties.

All operators are under a duty to inform the competent authorities of any unlawful activity being carried out in connection to their services and must promptly comply with any determinations issued to put an end to an infringement, eg by taking down, or preventing access to, certain online contents or websites.

If an operator acts as a mere conduit, with no intervention as to the origin of the transmission or to its contents or addressees, it may not be held liable for the information conveyed, even if this information is technically stored during the transmission process. Specific rules apply to caching and hosting. In the first case, providers are not liable for temporary and automatic storage, unless they disregard usual market practices (on information updates or technology use) or do not prevent access to specific content when instructed to do so by a court or administrative authority. In the case of web hosting, providers may be liable for content stored on their servers if they are aware of manifestly unlawful activities or information and do not immediately remove access to the infringing content.

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

According to the e-Commerce Act, network operators (access providers) are under a duty to block access to sites or content in certain circumstances involving unlawful content or information.

In order to improve the copyright infringement problem in Portugal, some of the major copyright protection stakeholders got together and drew up a plan on how to more effectively enforce copyright. This led to a memorandum being signed (directly and indirectly) on 30 July 2015 by and amongst 18 entities, with the patronage of the Secretary of State for Culture. This self-regulatory solution has been hailed as revolutionary in terms of copyright enforcement and as an international case study.

The result of this multi-lateral co-operation effort is a platform called MAPiNET that is managed by a civic movement with the same name (MAPiNET – Movimento Cívico Anti Pirataria na Internet). Upon becoming aware of copyright infringing content (eg, a motion picture or a song that is made available online without the necessary authorisation), the copyright owner denounces the situation to MAPiNET which then attempts to contact the site informing that they have the opportunity to reply and justify the use of the copyright protected content. MAPiNET does its own research to see if a site merits enforcement. The criteria used are whether the site contains at least 500 illegal works or if two-thirds of its content is pirated.

If there is no response, or the users of the content are unable to show that they have the necessary authorisation, a com-

plaint is then made to the public entity entrusted with overseeing cultural activities and copyright in Portugal (IGAC) (MAPiNET expects to send IGAC two blocks of 50 piracy sites per month). IGAC then notifies the internet service providers (ISPs) and DNS (the entity in Portugal that manages the .pt domain names) and orders them to block the websites that have been denounced. ISPs and DNS have assumed a commitment to comply with IGAC's orders within 15 days and places the notices "site unavailable" or "site not found" when a site is blocked.

The MAPiNET solution is seen by copyright owners as a welcome development in Portugal as it is quite fast, inexpensive and does not rely on any judicial intervention.

7.5 Obligation of the TMT Companies to Retain Customer Data

The Data Retention Act, approved by Law no. 32/2008, of 17 July (which implemented Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks) regulates the retention and transmission of customer traffic or location data, as well as related data necessary to identify a subscriber or registered user, exclusively for the purposes of detecting, investigating and prosecuting serious criminal offences. These include, without limitation, terrorism, violent or highly organised crime, kidnapping and crimes against the security of the state.

Providers of publicly available electronic communications services must retain, for a period of one year from the date of the communication, several categories of data which may be necessary to identify: i) the source or destination of a communication; ii) the date, time and duration of a communication; iii) the type of communication; iv) the users' equipment; and v) the location of mobile communication equipment. Storage, by operators or service providers, of data revealing the content of communications is prohibited.

It is worth recalling, in this context, that the European Court of Justice declared Directive 2006/24/EC of the European Parliament and of the Council as being invalid, in its Digital Rights Ireland judgment of 2014 (case C-293/12), for entailing a wide-ranging interference with the fundamental rights enshrined in Articles 7 and 8 of the EU Charter of Fundamental Rights (rights to respect for private life and to protection of personal data). Although this might raise doubts as to the extent to which national legislation implementing said directive remains applicable, a recent judgment by the Portuguese Constitutional Court has clarified this issue regarding the Portuguese legal order. In a July 2017 judgment (420/2017), the Constitutional Court explicitly stated that "the validity of Law no. 32/2008, of 17 July, can-

not be questioned simply due to the fact that this act of EU law [the Directive] has been declared invalid." As a result, it found that the legal provisions stating a duty for electronic communications providers to retain, for a one-year period, data pertaining to the name and address of a subscriber or registered user is not unconstitutional.

7.6 Prohibited of Unsolicited Communications

Article 12 of the legal regime on unfair commercial practices, approved by Decree-Law no. 57/2008, of 26 March (as amended), prohibits persistent unsolicited communications to consumers, whether by telephone, fax, e-mail or any other means of distance communications, except to the extent it may be required for the performance of a contractual obligation. This type of behaviour is qualified as an aggressive commercial practice and, as it constitutes an administrative offence, is punishable with a fine.

Under Law no. 41/2004, of 18 August (establishing the legal regime on privacy in the electronic communications sector, as amended), which implemented Directive 2002/58/EC of the European Parliament and of the Council of 12 July, any unsolicited communications to physical persons or end-users for direct marketing purposes which use automated communication systems, fax, e-mail, SMS, EMS, MMS or similar means, are strictly subject to the prior and explicit consent by an addressee. This limitation does not apply if the addressee is a corporate person or, in the case of individual addressees, if the supplier making the communication has lawfully obtained their electronic contact details in the context of a previous transaction and intends to promote similar goods or services (provided addressees are always given the possibility to refuse).

8. Future

8.1 Status and Process of Convergence

Fixed-mobile convergence has progressed extensively in Portugal, with the rapid take-up of convergent retail offers, especially in the residential segment. Integration of media operations and telecommunications platforms is a topical issue, particularly in light of the possible consolidation between the largest platform operator (MEO, of the Altice Group) and the leading television broadcaster (TVI, of the Media Capital Group). This unprecedented transaction remains the subject of ongoing regulatory scrutiny to date.

8.2 Changes to Statutes, Laws or Legislation

Future approval of the European Electronic Communications Code, and the ensuing revision of the European regulatory framework for electronic communications, will require the corresponding adaptations to the Electronic Communications Act.

8.3 Changes to Government Ministries, Regulatory Agencies or Privatised Entities

There are no planned changes in regard to any entities that have a role in making policies and regulating the TMT sector in Portugal.

GHz and 24 GHz bands for this purpose, although details are scarce at this stage.

8.4 Identification of Assignment of Additional Spectrum

There are plans to assign frequencies in the 700 MHz band to mobile operators by 2020, facilitating the introduction of 5G, in accordance with Decision (EU) 2017/899 of the European Parliament and of the Council of 17 May 2017. Also related to the future introduction of 5G, ANACOM's Activity Plan for 2018-2020 (its final version is awaiting publication) mentions plans for making available frequencies in the 3.4-3.8

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