

# ICLG

The International Comparative Legal Guide to:

## Telecoms, Media & Internet Laws & Regulations 2015

**8th Edition**

A practical cross-border insight into telecoms, media and internet laws and regulations

Published by Global Legal Group with contributions from:

Alain Bensoussan Avocats Selas

Attorneys at law Borenus Ltd

Camilleri Preziosi

Castillo y Castillo

Chajec, Don-Siemion & Zyto sp.k. – Legal Advisors (“CDZ”)

Colibri Kazakhstan

Cugia Cuomo & Associati

Davies Ward Phillips & Vineberg LLP

Dr. Norbert Wiesinger, Law Offices

Gjika & Associates Attorneys at Law

Heuking Kühn Lüer Wojtek

Hogan Lovells (CIS)

King & Wood Mallesons

Kromann Reumert

Langlet, Carpio y Asociados, S.C.

Lisa Thornton Inc

Mehmet Gün & Partners

Melchior, Micheletti & Amendoeira Advogados

Mori Hamada & Matsumoto

NautaDutilh N.V.

Olswang LLP

Pachiu and Associates

Sanchez Elia & Associates

Sébastien Fantì

Shay & Partners

Sociedade Rebelo de Sousa & Advogados Associados, RL

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**Group Publisher**  
Richard Firth

**Published by**  
Global Legal Group Ltd.  
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Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255  
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URL: www.glgroup.co.uk

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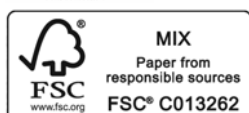
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## EDITORIAL

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Welcome to the eighth edition of *The International Comparative Legal Guide to: Telecoms, Media & Internet Laws & Regulations*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of telecoms, media and internet laws and regulations.

It is divided into two main sections:

Two general chapters. These chapters provide overviews of the EU regulatory framework and of the different approaches and attitudes towards mobile network consolidation in the United States and Europe.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 34 jurisdictions.

All chapters are written by leading telecoms, media and internet lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Rob Bratby of Olswang LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk).

Alan Falach LL.M.  
Group Consulting Editor  
Global Legal Group  
[Alan.Falach@glgroup.co.uk](mailto:Alan.Falach@glgroup.co.uk)

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# Portugal

Sociedade Rebelo de Sousa &  
Advogados Associados, RL

Octávio Castelo Paulo



Luís Neto Galvão



## 1 Overview

- 1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in Portugal, in particular by reference to each sector's: (i) importance (e.g. measured by annual revenue); (ii) 3-5 most important companies; (iii) whether they have been liberalised and are open to competition; and (iv) whether they are open to foreign investment.**

Portugal has a dynamic electronic communications sector (including telecoms and Internet infrastructure), which accounts for 4% of GDP.

The most important players in the communications market are the PT Group and NOS (resulting from the merger of ZON with Optimus in 2014), both leading companies in quadruple play, together with Vodafone (essentially a mobile voice and broadband player with fixed voice and pay TV offers).

The market leaders on the audio-visual media distribution sector are also the PT Group and NOS. Both PT and NOS have very strong pay TV offers. The PT Group also ensures the broadcasting of free-to-air Digital TV channels.

PT is undergoing a merger process with Brazilian fixed operator OI, which is expected to be completed in the first quarter of 2015.

With regard to audio-visual media production, the leaders are the three free-to-air operators, namely RTP, SIC and TVI.

The communications sector is fully liberalised and in line with the European Regulatory Framework for Electronic Communications. The Portuguese Government has abolished its golden share on the PT Group. With regard to the audio-visual media distribution/production, RTP is still a public company and is due to be privatised, although the Government did not define the calendar to this effect.

Both the communications and audio-visual sectors are open to foreign investment.

- 1.2 List the most important legislation which applies to the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in Portugal.**

### (a) Telecoms and (c) Internet sectors in Portugal

The communications (telecoms/Internet) and audio-visual sectors are governed by a very broad range of specific and general diplomas, which include legal and administrative provisions, regulations and decisions adopted by the sectoral regulator

ANACOM. We will only underline a small number of such diplomas.

The fundamental piece of legislation in the communications sector is Law 5/2004, of 10 February (with some amendments, including Law 51/2011, of 13 September and Law 42/2013, of 3 July, "Law 5/2004"), which governs the provision of electronic communications networks and services. It implemented the EU Regulatory Frameworks (2003 and 2009) in Portugal, comprising the set of directives known as the Framework, Authorization, Access, Universal Service, and Competition.

Decree-Law 151-A/2000, of 20 July (as amended, *inter alia*, by Decree-Law 264/2009, of 28 September), sets the legal framework applicable to the licensing of radio communications networks and stations.

With regard to the promotion of broadband roll-out, Decree-Law 123/2009, of 21 May, as amended by Decree-Law 258/2009, of 25 September, and Law 47/2013, of 10 July, establishes upon public and other entities with infrastructures in the public domain the obligation to provide access to companies that offer electronic communications networks and services and sets the framework for the installation of communications networks in developments (ITUR) and buildings (ITED).

In addition, Decree-Law 258/2009, of 25 September, establishes an obligation upon companies that offer electronic communications networks and services to provide third-party access to the infrastructures that they use.

Law 41/2004, of 18 August, as amended by Law 46/2012, of 29 August, governs the processing of data and protection of privacy in the electronic communications sector and Law 32/2008, of 17 July, governs data retention in electronic communications networks and services.

Law 12/2008, of 26 February as amended (amending Law 23/96, of 26 July), applies the legal framework of essential public services to electronic communications services and establishes a set of protective measures for users of those services.

The legal regime of electronic commerce is contained in Decree-Law 7/2004, of 7 January, which implemented Directive 2000/31/EC, of the European Parliament and the Council, amended by Decree-Law 62/2009, of 10 March, and Law 46/2012, of 29 August ("Decree-Law 7/2004").

### (b) Audio-visual media distribution

With regard specifically to audio-visual media distribution, it is important to mention the television law, Law 27/2007, of 30 July, as amended by Law 8/2011, of 11 April, and Law 5/2004, of 10

February, as amended, among others, by Law 51/2011, of 13 September (as previously mentioned).

Law 55/2012, of 6 September, as amended by Law 28/2014, of 19 May, regulates the intervention of the State in the promotion, development and protection of cinema, including its financing by pay-TV operators, among others.

Finally, Law 19/2012, of 8 May, contains the legal framework of competition, in line with EU best practices, and it applies to both the communications and audio-visual sectors.

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### 1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in Portugal.

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#### (a) Telecoms and (c) Internet

- Ministry of the Economy and Employment.
- ANACOM (sectoral regulator).
- FCT (Foundation for Science and Technology).

#### (b) Audio-visual media distribution

- Assistant Minister to the Prime Minister.
- ERC – Regulatory Entity for Media (sectoral regulator).
- Secretary of State for Culture.
- ICA (Cinema and Audiovisual Institute).

The *ex post* regulation for all the above referred sectors is undertaken by the Competition Authority.

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### 1.4 Are there any restrictions on foreign ownership or investment in the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in Portugal?

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There are no restrictions on foreign ownership or investment in the telecoms or Internet sectors in Portugal.

With regard to television and radio, no foreign ownership restrictions apply. However, there are some restrictions to investment.

In television, no legal or natural person can directly or indirectly own more than 50% of the licences issued for free-to-air television.

In relation to radio broadcasting, no natural or legal person can directly or indirectly hold more than 10% of the local radio licences issued in the Portuguese territory, or a number of radio licences equal to 50% or more of the radios with the same territorial coverage and using the same frequency band.

## 2 Telecoms

### General

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#### 2.1 Is Portugal a member of the World Trade Organisation? Has Portugal made commitments under the GATS regarding telecommunications and has Portugal adopted and implemented the telecoms reference paper?

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Portugal has been a member of the WTO since it was established in 1995, and before that was a party to the GATT Agreement. Together with the European Union, Portugal adopted the GATS (General Agreement on Trade in Services), its Fourth Protocol (telecommunications) and the telecoms reference paper.

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#### 2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?

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The National Regulatory Authority for electronic communications networks and services in Portugal is the *Autoridade Nacional de Comunicações* (ANACOM). ANACOM is competent for *ex ante* regulation in the communications sector and also ensures spectrum management.

ANACOM has a very broad scope of intervention in the communications market. It: (i) promotes competition in the communications sector, by undertaking market analysis and imposing obligations upon companies on access and interconnection in relevant markets (an *ex ante* regulation); (ii) interfaces with the European Commission and BEREC in order to promote competition and avoid distortions in the internal market; (iii) ensures the protection of consumers of electronic communications services, including the existence of universal service obligations; and (iv) ensures spectrum and numbering management, such as the allocation of radio frequencies and numbering resources. It is important to note that ANACOM does not supervise contents.

The Portuguese Competition Authority is competent to apply competition rules on antitrust and merger control in all sectors, including the communications sector, where it undergoes *ex post* regulation. It is intended that in time ANACOM, through its *ex ante* regulation, improves the competition environment in such a way that the regulation of the communications sector will be progressively undertaken by the Competition's Authority *ex post* intervention.

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#### 2.3 Who are the regulatory and competition law authorities in Portugal? How are their roles differentiated? Are they independent from the government?

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ANACOM is in charge of *ex ante* regulation in the communications sector and also ensures spectrum management.

The Portuguese Competition Authority is competent to apply competition rules on antitrust and merger control in all sectors, including the communications sector, where it undergoes *ex post* regulation.

Both authorities enjoy a status that allows for great independence from Government.

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#### 2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

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The decisions of ANACOM that apply fines can be appealed to a recently created Competition, Regulation and Supervision Court. Any other decisions can be appealed to the administrative courts.

### Licences and Authorisations

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#### 2.5 What types of general and individual authorisations are used in Portugal?

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In Portugal the market is liberalised, in line with European law, and the general authorisation regime is in force, which presupposes that any company can provide electronic communications networks and services, subject to a mere declaration to ANACOM.

The essential requirement is that the company in question complies with applicable laws and regulations. Only a reduced set of

conditions, established by law, can be associated to the provision of electronic communications networks and services and the company's operation is not subject to any prior checking or administrative decision by ANACOM.

The use of numbers is subject to the allocation of individual rights of use by ANACOM, which can only associate a much reduced set of legal conditions to such rights of use. In most cases, the same applies to the use of frequencies.

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## 2.6 Please summarise the main requirements of Portugal's general authorisation.

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Under the general authorisation regime, companies must send a prior notification to ANACOM using a specific notification form. Companies must comply with applicable laws and regulations.

With regard to the communications sector, ANACOM may specify conditions which apply to a company or group of companies in areas such as interoperability, interconnection, access, security, protection of the environment, data protection, consumer protection, contributions for financing the universal service, etc.

ANACOM also issues a statement with a summary of the rights of companies under the general authorisation regime regarding access and interconnection and installation of resources in order to facilitate the exercise of such rights by companies.

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## 2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded.

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ANACOM issues individual rights of use of frequencies and numbers.

The National Frequency Allocation Table (QNAF) identifies the frequencies which are subject to the issuance of rights of use. Rights of use of frequencies are issued for a period of 15 years, which can be extended for a maximum duration of 20 years in motivated cases. They can be renewed for identical periods.

Rights of use of some frequencies (identified in the National Frequency Table) can be transferred, subject to the prior authorisation of ANACOM and to a non-binding opinion from the Competition Authority. ANACOM must ensure, *inter alia*, that the transfer does not distort competition and the frequencies are used effectively and efficiently.

ANACOM announced its intention to launch a public consultation on spectrum trading in order to address the market players (manufacturers, operators, users and others) regarding the specific issues which might promote and facilitate the implementation of secondary spectrum trading.

## Public and Private Works

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## 2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

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Portuguese law establishes the right of access to infrastructures suitable for electronic communications networks. All companies that provide electronic communications networks and services are entitled: (i) to request the expropriation and the constitution of

public easements, essential to the installation, protection and maintenance of the respective systems, equipment and other resources; and (ii) to use the public domain, in equal conditions, for the necessary implanting, crossing or passing over to allow the installation of systems, equipment and other resources.

In addition, Portuguese law also establishes that the procedures and conditions regarding the allocation of rights of way, as well as the announcements for the construction or the extension of infrastructure suitable for the accommodation of electronic communications networks shall be disclosed in a centralised information system (SIC) provided by ANACOM. All entities that are in possession of infrastructure suitable for the accommodation of electronic communications networks mandatory disclose in the SIC: (i) procedures and conditions for the allocation of rights of way; (ii) announcements to the construction of infrastructure suitable for the accommodation of electronic communications networks; (iii) records, with geo-referenced, comprehensive and integrated information of all infrastructure suitable for the accommodation of electronic communications networks in their possession; and (iv) procedures and conditions that apply to the access and use of each infrastructure.

## Access and Interconnection

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## 2.9 How is network-to-network interconnection and access mandated?

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One of the most important regulatory objectives set to ANACOM by law is to foster and, when necessary, to guarantee adequate access and interconnection with a view to promoting efficiency and sustainable competition and to maximise benefits to end-users.

In this regard, ANACOM can mandate access and interconnection to companies: (i) at its own motion; (ii) at the request of one party in a dispute; or (iii) following a market analysis, when Significant Market Power (SMP) is found, specifically with regard to transparency, non-discrimination, account separation, price control and cost accounting, or the obligation to respond to reasonable access requests.

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## 2.10 How are interconnection or access disputes resolved?

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Interconnection or access disputes are resolved by ANACOM, at the request of any of the parties involved, under an administrative dispute settlement procedure provided by law.

The intervention of ANACOM must be requested within a maximum term of one year from the beginning of the dispute and the final decision must be issued by ANACOM up to four months after the request for a dispute settlement was submitted by the party in question.

The decision of ANACOM settling the dispute can be appealed to the administrative courts.

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## 2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

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*PT Comunicações* is required to publish a Reference Interconnection Offer (RIO), which includes in an appendix a standard interconnection agreement and the standard prices. The RIO is a regulated offer mandated by ANACOM.

**2.12 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?**

Charges for interconnection are subject to price regulation measures imposed by ANACOM to companies with Significant Market Power (SMP) following a market analysis.

**2.13 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?**

*PT Comunicações* is subject to accounting separation in Markets 4 and 5 (only at Non-Competitive “NC” Areas), and TMN, Vodafone and Optimus are subject to the same obligations in Market 7 (mobile termination).

No functional or legal separation has been imposed by ANACOM or by law.

**2.14 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?**

Yes. *PT Comunicações* is subject to the obligation to unbundle the local loop in a non-discriminatory and transparent manner. It maintains a regulated Local Loop Unbundling Reference Offer (LLU), subject to regular review and monitoring of ANACOM.

TV and Cable operators are not subject to any LLU obligations.

**2.15 How are existing interconnection and access regulatory conditions to be applied to next-generation (IP-based) networks? Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any ‘regulatory holidays’ or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?**

There are no regulatory holidays in Portugal, but ANACOM and the Portuguese legislator made a considerable effort to promote the roll-out of NGA.

In the latest market analysis (January 2009) on the wholesale broadband access market (M5 of EC Recommendation 2007/879/EC, of 17 December 2007), ANACOM foresaw the possibility to impose remedies encompassing all relevant FTTC/FTTH-based services/speeds, if applicable, and enable full use of their technological capabilities, through specific decisions supported on the market analysis. ANACOM launched another market analysis in early 2012 which is not yet concluded.

With regard to the promotion of broadband roll-out, public entities and other entities with infrastructures in the public domain must provide access to companies that offer electronic communications networks and services and telecommunications infrastructure must be installed in developments and buildings.

In addition, companies that offer electronic communications networks and services must provide third entities with access to the infrastructures that they use.

Finally, the concessionaire of the public telecommunications service (*PT Comunicações*) has published in 2006 a Reference Offer for Access to Ducts, approved by ANACOM. In 2011, *PT Comunicações* also published a Reference Offer for Access to Masts, ordered by ANACOM.

## Price and Consumer Regulation

**2.16 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?**

In the latest market review concerning the market of retail and wholesale terminal and transit segments of leased circuits, of October 2010, ANACOM suppressed the price control (cost orientation) obligations that had been previously imposed upon the companies in the PT Group. No price control obligation presently applies on such retail markets.

Following a review of the market for access to the public telephone network at a fixed location for residential and non-residential customers, ANACOM decided that such market is no longer relevant for *ex ante* regulation and decided to withdraw all obligations from the companies in the PT Group, including price control (cost orientation) obligations. The decision was notified to the European Commission in July 2014 and it is likely to come into force over the course of 2014.

**2.17 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?**

The Portuguese communications law provides for specific consumer protection rules (applied over and above general consumer protection law), in line with the European Framework for Electronic Communications (Directive 2002/22/EC, as amended by Directive 2009/136/EC). Portugal has also implemented the review to the European Framework of 2009, which includes new consumer rights provisions.

The main rights enjoyed by users of electronic telecommunications services include information rights, such as the right to transparent, up-to-date information on applicable prices and tariffs, and contractual rights, such as the right to have a contract for services providing connection to the telephone network which contains a minimum set of information, including the minimum quality service levels, the duration and renewal conditions, as well as procedures for settling disputes, etc.

Users are also entitled to: (i) 15 days’ prior notice in the event of termination of a service; and (ii) 30 days’ prior notice of any amendment to the contract, with the ability to terminate it, free of charge, if the amendment is not accepted.

ANACOM has an important role of supervising compliance of such contracts with the law.

Users are also granted a right to number portability, which is the ability to keep the same telephone number when they change operator (fixed or mobile). Pursuant to Law 51/2011, of 13 September, the right to portability was reinforced with the reduction of the porting deadline to one day.

## Numbering

**2.18 How are telephone numbers and network identifying codes allocated and by whom?**

ANACOM is responsible for overseeing the Portuguese National Numbering Plan (NNP), pursuant to the principles and criteria that it adopted in 1999. The use of numbers in the NNP is subject to the granting of individual rights of use.

ANACOM is the competent entity for allocating rights of use of numbers to operators (primary allocation). Operators then allocate such numbers to their clients (secondary allocation).

The primary allocation of numbers to operators by ANACOM takes place: (i) upon request, within a term of 15 days of receipt; or (ii) for numbers of exceptional economic value, ANACOM can decide (after a public consultation) to allocate them by public tender or auction. In such event, the term for allocation is extended up to another 15 days.

The secondary trading of rights of use of numbers is subject to requirements and conditions to be set by ANACOM.

### 2.19 Are there any special rules which govern the use of telephone numbers?

Yes, the PNN defines the rules on the use of numbers which operators and end-users must comply with. Numbers must be used in an efficient and effective way, they are allocated in blocks of 10,000 and their structure varies according to the type of use that they are aimed for. A request for the granting of individual rights of use of numbers may be refused if the operator has not used at least 60% of the numbers previously requested.

One of the main subdivisions in numbers is between geographic and non-geographic numbers. The geographic numbers include some digits with a geographic meaning, the function of which is to route the calls to the physical location of the point of termination. Geographic numbers cannot be used for mobile services and they have to comply with the geographic criteria set by ANACOM. For instance, a number with the prefix "21x xxx xxx" cannot be used in locations other than Lisbon.

### 2.20 Are there any obligations requiring number portability?

Number portability is an important subscriber right and an essential tool for the promotion of competition in the communications market. It is managed by a neutral entity (Portabil), which was given a mandate by ANACOM to implement the administrative procedures and message flows for the administration of number portability between the different network operators and service providers in Portugal.

All providers of publicly available telephony services in Portugal must offer number portability. To that effect, they enter into an agreement with Portabil and must cooperate with all other operators in order to facilitate portability and ensure minimum quality standards. The rules on portability are set by law and by a regulation adopted by ANACOM in 2005 and amended in 2009 and 2012.

The essential rule is that number portability must be requested by the subscriber to the new service provider, together with a notice of termination of the former subscription agreement. The new service provider will then send an electronic request to the former provider, indicating three portability windows in which portability can be effected.

The rule is that the former provider must accept the request, by indicating which portability window was chosen. Only in very restricted cases can the former provider refuse portability. The main concern will be to prevent any unwanted portability, which is why both the service providers involved have a particular responsibility in making sure that the person requesting portability is the legal subscriber of the contract associated to such number.

Under the new rules implementing the revised European Framework of Communications, the right to portability was reinforced with the reduction of the porting deadline to one working day.

## 3 Radio Spectrum

### 3.1 What authority regulates spectrum use?

ANACOM is the entity in charge of regulating spectrum use in Portugal. This involves *inter alia*: (i) planning the frequencies; (ii) defining its use; and (iii) ensuring its allocation in an objective, transparent, non-discriminatory and proportionate way. ANACOM must also ensure the availability of spectrum and guarantee conditions for effective competition in relevant markets, as well as an efficient and effective use of the spectrum, and prevent harmful interference.

### 3.2 How is the use of radio spectrum authorised in Portugal? What procedures are used to allocate spectrum between candidates - i.e. spectrum auctions, comparative 'beauty parades', etc.?

The use of frequencies is subject to the allocation of individual rights of use by ANACOM.

For certain frequencies where much demand is anticipated, ANACOM can limit the number of rights of use that can be granted in order to guarantee an efficient use of such frequencies. In such event, the frequencies in question must be granted through open, transparent and non-discriminatory and proportionate procedures.

ANACOM can freely opt between competitive (auction) or comparative (beauty parade) selection procedures. For instance, ANACOM adopted the beauty parade procedure for 2G (GSM) and 3G (UMTS) licensing and has more recently used the auction to allocate frequencies for Wimax and 4G (LTE).

The use of mobile networks and stations is subject to a specific radio-electric licensing by ANACOM (governed by Decree-Law 151-A/2000, mentioned above).

### 3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

ANACOM defines in the National Frequency Table (QNAF) which frequencies are subject to the granting of individual rights of use. The other frequencies not included in the QNAF for such effect are licence-exempt and can be freely used.

With regard to radio-electric licensing, the system is the inverse. In general, the radio-communications networks (or stations not integrated in a network) are subject to radio-electric licensing. ANACOM defines and publishes at the QNAF the cases which are exempt from licensing.

### 3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

Spectrum fees are calculated according to a methodology adopted by law, and vary in accordance with the quantity of spectrum held by the entity in question (for instance, the spectrum fee for mobile services is €82,000 per MHz). Such methodology is aimed at promoting a more effective and efficient use of spectrum.



### 3.5 What happens to spectrum licences if there is a change of control of the licensee?

The change of control of the licensee may require that an authorisation be requested to ANACOM, if the licence includes a change of control clause. In the event that the change of control occurs without ANACOM's authorisation, ANACOM may start a procedure for breach of conditions associated with individual rights of use of frequencies which can lead to the revocation/cancellation of the licence.

### 3.6 Are spectrum licences able to be assigned, traded or sub-licensed and if so on what conditions?

Rights of use of frequencies can be transferred or sub-licensed in accordance with the conditions associated with such rights of use, provided that the National Frequency Table does not prevent such operations and subject to the prior authorisation of ANACOM and to a non-binding opinion from the Competition Authority.

ANACOM must ensure, *inter alia*, that the transfer or sub-licence does not distort competition and that the frequencies are used effectively and efficiently. ANACOM can object to the operation by a motivated decision and can impose conditions.

## 4 Cyber-security, Interception, Encryption and Data Retention

### 4.1 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

Access to private communications is regulated by the Criminal Procedure Code and by the Cybercrime Law, Law 109/2009, of 15 September. Law 32/2008, of 17 July regulates, *inter alia*, the right of access to traffic and location data subject to retention obligations.

Access to call data and/or content (call interception) must be authorised by a judge, at the request of the public prosecutor. The police forces undertake the interception of calls, under the direction of the Public Prosecutor.

The main control over this process is exercised by a judge, who decides when to authorise the operation and how it will be executed and who should have access to the data.

In addition, access to retained call data is exercised through a special software tool that allows communications between the judge and the operator and the judge and the public prosecutor or the criminal police. Such tool is aimed at preventing illegal access to the information in question.

### 4.2 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

Law 5/2004 establishes that providers of electronic communications networks and services, including VoIP service providers, can be subject, among others, to the duty of installing systems of legal interception, at their own expense, and making them available to the competent national authorities.

In addition, such operators may be subject to the obligation to supply the means of de-encryption or deciphering (for example,

codecs and de-encryption keys) whenever such facilities are offered.

Such condition must be objectively justified, non-discriminatory, proportionate and transparent.

### 4.3 How does the state intercept communications for a particular individual?

The rules for interception of communications are described in question 4.1 above. The State cannot as such intercept the communications of an individual and any interception is subject to the authorisation of a judge.

### 4.4 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

Certain classified communications must be encrypted, by using cyphering keys. Fixed and mobile phones must have the cyphering equipment physically connected to them and such equipment is required to allow different encryption keys. The encryption keys are prepared by an entity under the sphere of the Ministry of Defence and changed according to specific rules.

### 4.5 What call data are telecoms or internet infrastructure operators obliged to retain and for how long?

Providers of publicly available electronic communications networks and services are under the obligation to retain, for a period of one year, certain traffic and location data regarding natural and legal persons and the related data necessary to identify the subscriber or registered user. Such obligation is in line with EU Directive 2006/24/EC, of the European Parliament and the Council, recently declared invalid by the Court of Justice of the EU.

## 5 Distribution of Audio-Visual Media

### 5.1 How is the distribution of audio-visual media regulated in Portugal?

The distribution of audio-visual media (Cable TV, IP TV and free-to-air Digital TV) is regulated by ANACOM. However, matters in connection with pluralism and content regulation are dealt with by ERC.

### 5.2 Is there a distinction between the linear and non-linear content and/or content distributed over different platforms?

Yes. Content provided through non-linear services, such as video-on-demand (VoD), is subject to a lighter regime than that of linear content, including basic rules on the protection of minors, the prevention of racial hatred and the prohibition of surreptitious advertising. The legal regime of linear and non-linear services is fully in line with Directive 2007/65/EC, of the Parliament and the Council, of 11 December.

### 5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

The distribution of terrestrial digital television is subject to rights

of use of frequencies. In 2008, ANACOM has granted to *PT Comunicações* a right of use of frequencies (Multiplexer A), for the distribution of the digital free-to-air channels (RTP1, 2, SIC and TVI), following a public tender. Key obligations are related to the effective and efficient use of spectrum, prevention of interference, coverage obligations, quality parameters, channels used, term, etc.

Wireline television distribution services (Cable TV and IP TV) are subject to a mere declaration to ANACOM under the general authorisation regime (for the main obligations, see question 2.6 above).

Finally, television distribution is also subject to the issuance of a licence or an authorisation by the ERC. The licence will be issued whenever the channels are broadcasted through the radio-electrical spectrum.

Licences or authorisations can include obligations on the criteria for selecting broadcasted channels (in Portuguese, scientific nature, etc.), transport obligations and adequate remuneration, pluralism and consumer rights, and rights to access channels in transparent, reasonable and non-discriminatory conditions, etc.

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#### 5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

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See question 3.6 above, with regard to the assignment of rights of use of frequencies issued by ANACOM.

Licences and authorisations for television broadcasting or distribution issued by ERC are non-assignable. However, the share capital of the legal entity that holds the licence or authorisation can be wholly or partly assigned under certain conditions. Operations subject to clearance of the Competition Authority must be submitted to a prior opinion of the ERC. Such opinion will be binding whenever ERC finds that the operation in question involves a real risk for freedom of expression and pluralism.

Change of control of operators that hold a TV licence can only take place three years after the initial issuance of the licence or one year after its renewal and is subject to the ERC's prior authorisation.

## 6 Internet Infrastructure

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#### 6.1 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

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In principle, telecommunications operators (including Internet service providers) are exempt of liability for content carried over their networks under the legal framework for electronic commerce (Decree-Law 7/2004, as amended).

In fact, when such operators act solely as intermediary information society service providers, transmitting in a communications network information provided by a recipient of the service, or providing access to a communications network, without initiating the transmission, and not selecting the receiver of the transmission or selecting or modifying the information contained in the transmission (e.g. filtering services, such as anti-spam), then the operators are not liable for the information transmitted (art. 14).

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#### 6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

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Under certain circumstances, the legal framework of electronic commerce (Decree-Law 7/2004, as amended), provides that telecommunications operators, including Internet service providers, can be under the obligation to remove or make inaccessible content which is clearly illegal.

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#### 6.3 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any 'net neutrality' requirements?

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Although the concept of "net neutrality" is under discussion, operators are not, as a general principle, entitled to differentiate between types of traffic over their networks.

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#### 6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content?

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Yes. Telecommunications operators, including Internet service providers, may be under the obligation to block access to certain sites or content as a result of a determination from the competent authorities, in order to terminate or prevent an infringement.

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#### 6.5 How are 'voice over IP' services regulated?

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VoIP services are subject to the same regulatory treatment as PTSN voice services. Nomadic VoIP services have been allocated a specific prefix "30x xxx xxx", and fixed VoIP services use the same number prefixes as PTSN voice services.

**Octávio Castelo Paulo**

Sociedade Rebelo de Sousa &  
Advogados Associados, RL  
Rua Dom Francisco Manuel de Melo 21  
1070-085 Lisbon  
Portugal

Tel: +351 21 313 2000  
Fax: +351 21 313 2001  
Email: [octavio.paulo@srslegal.pt](mailto:octavio.paulo@srslegal.pt)  
URL: [www.srslegal.pt](http://www.srslegal.pt)

With extensive experience in corporate and M&A issues, Octávio has coordinated privatisation operations of government-owned companies with listings in Lisbon, London and New York. With full knowledge of company law, he advises private equity houses and numerous listed and unlisted companies on corporate, joint ventures, corporate governance and corporate compliance issues.

Having worked in the telecommunications industry for over 20 years, Octávio is one of the leading lawyers in Portugal in the practice of telecommunications law and regulatory issues (*ex ante* and *ex post*). He advises Portuguese and international companies, network operators and service suppliers (fixed, nomadic or mobile) in all telecommunication and regulatory matters.

He also advises several companies on media issues, including licensing and registration with the regulator, radio and TV channels development and related rights, especially rights regarding sports content.

Information and technology law is another area where Octávio advises, particularly on e-commerce issues, data protection and privacy, copyright protection in the information society, internet portals, software licensing and hardware purchase agreements.

**Luís Neto Galvão**

Sociedade Rebelo de Sousa &  
Advogados Associados, RL  
Rua Dom Francisco Manuel de Melo 21  
1070-085 Lisbon  
Portugal

Tel: +351 21 313 2000  
Fax: +351 21 313 2001  
Email: [luis.galvao@srslegal.pt](mailto:luis.galvao@srslegal.pt)  
URL: [www.srslegal.pt](http://www.srslegal.pt)

Luís advises on the commercial contract and regulatory aspects of the technology, media and telecommunications (TMT) industry, with a particular focus on software licensing, outsourcing agreements, cloud computing, telecoms regulation, e-commerce and data protection and privacy compliance, including international data transfers.

Luís joined SRS Advogados in 2004 and became a Partner in 2013. In November 2013, Luís was appointed by the European Commission, a member of the Commission Expert Group on Cloud Computing Contracts, an advisory body composed of representatives of operators, groups of interest (e.g. consumers), lawyers and IT security experts which advises the Commission on contractual and data protection matters in connection with cloud computing.

He has spoken at various conferences in Portugal and abroad and published on telecommunications, data protection and IT matters. He has been recognised as an expert in his field by the Legal 500 Directory and has been noted as a leading individual in Chambers Europe.



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The lawyers are experienced in the negotiation and drafting of complex agreements in the TMT sector, as well as overseeing disputes between operators, with communication, media and competition regulators and with consumers.

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59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [sales@glgroup.co.uk](mailto:sales@glgroup.co.uk)

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