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Global Legal Group

## The International Comparative Legal Guide to: Telecommunication Laws and Regulations 2012

A practical cross-border insight into  
telecommunication laws and regulations

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# Portugal

Octávio Castelo Paulo



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## 1 Framework

### 1.1 Has Portugal implemented the revised EU regulatory framework? Summarise the key changes.

Portugal has not yet implemented the revised EU regulatory framework of 2009, but it will do so in the coming weeks.

The key changes concern, very broadly: (i) consumer rights, with new rules aimed at facilitating the change of operator (including a maximum deadline of 1 day for number portability), and improving the information available to consumers, together with a reinforcement of data protection rights; (ii) better regulation, with a strengthening of the regulator's independence and transparency, and new powers aimed at ensuring "net neutrality" by setting minimum quality levels for network transmission services; (iii) improving *ex ante* regulation; and (iv) promoting better spectrum management and service neutrality, thus facilitating wireless broadband in areas where fibre based broadband is too costly.

### 1.2 Has Portugal fully implemented the original EU 2003 regulatory framework? Have any proceedings been brought against Portugal by the European Commission and if so, for which contraventions?

Portugal has fully implemented the original EU Regulatory Framework of 2003, with two exceptions, on the universal service and directory enquiries.

The European Court of Justice (ECJ) ruled that Portugal had failed to fulfil its obligations under the Universal Service Directive (2002/22/EC) regarding: (i) the availability of a comprehensive directory; and (ii) because the incumbent operator was granted a renewal of its concession agreement for universal service until 2025, unduly excluding other operators from being designated as a universal service provider.

The ECJ rulings confirmed identical findings by the European Commission. Portugal has already implemented a number of measures in order to comply with the ECJ's rulings, namely with regard to directory enquiries.

### 1.3 Please give an overview of the different laws and regulations governing the operation of electronic communications networks and the provision of electronic communication services.

The communications sector is governed by a very broad range of specific and general diplomas, which include legal and

administrative provisions, regulations and decisions adopted by 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 amendments), which governs the provision of electronic communications networks and services. It implemented the EU Regulatory Framework (2003) in Portugal, comprising the set of directives known as the Framework, Authorisation, Access, Universal Service, and Competition.

The implementation of the revised EU regulatory framework (2009) will imply the amendment of Law 5/2004, of 10 February.

Decree-Law 151-A/2000, of 20 July (with several amendments), 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, 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 the 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, 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 (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.

### 1.4 Please describe the regulatory framework, in terms of regulatory authorities and associated agencies, e.g. national regulatory authority, premium rate regulator, spectrum allocation body, privacy regulator and national competition authority.

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.

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.

The *Comissão Nacional de Protecção de Dados* (CNPD), the Data Protection Authority, supervises and monitors the compliance of individuals and companies, including communications companies, with privacy and data protection rules.

### 1.5 Which principal aspects of electronic communications regulation fall under the supervision of the national regulatory authority for electronic communications?

The National Regulatory Authority (ANACOM) has a very broad scope of intervention in the communications market. The Authority: (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.

### 1.6 In order to be properly authorised to provide electronic communications networks and services, is a registration, declaration or notification required and if so to whom and for which purposes? What rules or conditions, if any, may be attached to a registration, declaration or notification?

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.

### 1.7 Are any network operators or service providers subject to rules governing their operations over and above rules and conditions governing authorisations and imposing SMP obligations, for example under competition law?

No there are not.

### 1.8 Which (SMP) markets have been notified to the European Commission under Article 7 of the Framework Directive?

Under the EC Recommendation 2007/879/EC, of 17 December 2007, ANACOM notified the European Commission of decisions regarding the following SMP markets:

- 4 wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location;
- 5 wholesale broadband access;

- 6 wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity; and
- 7 voice call termination on individual mobile networks.

Under the former EC Recommendation, Portugal notified decisions in 16 of the 18 existing markets (with the exception of markets 15 and 17).

## 2 Authorisation

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

The communications market in Portugal is liberalised and companies are not subject to any prior administrative authorisations in order to enter into the market.

Companies can provide electronic communications networks and services, subject to a mere notification to ANACOM, under the general authorisation regime.

As previously mentioned the use of numbers and, in most cases, the use of frequencies, 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.

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

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.

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

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. A specific procedure applies where ANACOM must ensure *inter alia* that the transfer does not distort competition and the frequencies are used effectively and efficiently.

ANACOM is envisaging 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.

### 3 Public and Private Works

#### 3.1 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?

Portuguese law establishes the right to access to the infrastructure 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 who 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.

#### 3.2 Is there a specific planning or zoning regime that applies to the installation of telecommunications infrastructure?

Yes, under the ITUR system, developers are under the obligation to build telecommunications infrastructures in housing developments, urban settlements and concentrations of building. Under the ITED system, telecommunications infrastructure must be installed in buildings, including the connection of infrastructure to the public networks.

#### 3.3 Are there any rules requiring established operators to share their infrastructure, e.g. masts, sites, ducts or cables (i.e. dark fibre)? Are there any proposals to mandate 'passive access' to such basic infrastructure?

All entities that possess infrastructure suitable for the accommodation of electronic communications networks are required to allow other companies that provide electronic communications networks and services the access to ducts, masts, other installations and property which they own or manage, for the installation and maintenance of the respective systems, equipment and other facilities.

In addition, the concessionaire of the telecommunications public service (*PT Comunicações*), is legally bound to provide access to all ducts and masts that it owns or manages. If *PT Comunicações* fails to agree on the terms of such access with other operators, it will have to provide a reference offer approved by ANACOM. *PT Comunicações* keeps a Reference Offer for Access to Ducts (ORAC), which also covers access to masts.

All other entities, including electronic communications companies,

are required to disclose and permanently update in the SIC: (i) a record with descriptive and geo-referenced information of infrastructure suitable for the accommodation of electronic communications networks, namely ducts, inspection chambers, manholes and associated infrastructure; and (ii) the rules regarding the procedures and conditions related to the access and use of the infrastructure.

Moreover, Portuguese law also establishes that all electronic communication's companies must promote the entering into agreements with each other related to the sharing of ducts, masts, manholes, locations and resources, which, if executed, must be communicated to ANACOM within 10 days.

Moreover, Portuguese law also establishes that all electronic communication's companies must promote the entering into agreements with each other related to the sharing of ducts, masts, manholes, locations.

### 4 Access and Interconnection

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

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.

#### 4.2 How are interconnection or access disputes resolved?

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

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

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

#### 4.4 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.

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

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*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.

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#### 4.6 How are existing interconnection and access regulatory conditions to be applied to next generation (IP-based) networks?

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In January 2009, ANACOM adopted final measures on markets for physical network infrastructure access and wholesale broadband access (Markets 4 and 5), the two fundamental markets for the deployment of (IP-based) next generation networks. ANACOM introduced geographic market segmentation and deregulation in some areas, which account approximately for 61% of all retail broadband accesses.

With regard to Market 5 (wholesale broadband access), ANACOM divided the territory in Competitive (C) areas, with at least one cable offer and one unbundled offer and the percentage of households cabled by the leading operator is below 60%, and Non-Competitive (NC) areas - all other areas. No PMS was found for (C) areas and the obligations that formerly applied to *PT Comunicações* were removed.

Moreover, new national legislation was adopted in 2009 (Decree-Law 123/2009, above referred to), in order to promote NGA investments, regarding in-building infrastructure, access to public utilities' infrastructure, tax aid measures and public tenders in underserved areas, thus fostering investment in NGA.

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#### 4.7 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?

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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.

Cable operators are not subject to any LLU obligations.

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#### 4.8 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?

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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), ICP-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.

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 since 2006 a Reference Offer for Access to Ducts, approved by ANACOM. This was subject to a profound amendment in 2010, which *inter alia* extended ORAC's scope in order to include the offer of masts.

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## 5 Price and Consumer Regulation

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

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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 imposed in 2005 upon the companies in the PT Group price control (cost orientation) obligations, which are still in force.

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

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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). Portugal is also in the process of implementing 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) a 15-day prior notice in the event of termination of a service; and (ii) a 30-day 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 and has up to now enjoyed the right of prior approval of such contracts.

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). Under the new rules to be implemented in the near future, the right to portability will be reinforced with the reduction of the porting deadline to one day.

## 6 Numbering

### 6.1 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.

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

Yes, the NNP 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 other locations than Lisbon.

### 6.3 How are telephone numbers made available for network use and how are such numbers activated for use by customers?

Telephone numbers are made available for network use by ANACOM, which allocates them in blocks of 1,000 numbers. The activation of numbers for use by customers is effected following the subscription of services, generally by an agreement between the customer and the operator. Pre-paid mobile phones are acquired by users with pre-activated mobile numbers.

### 6.4 What are the basic rules applicable to the 'porting' (i.e. transfer) of telephone numbers (fixed and mobile)?

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.

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 will be reinforced with the reduction of the porting deadline to one working day.

## 7 Submarine Cables

### 7.1 What are the main rules governing the bringing into Portugal's territorial waters, and the landing, of submarine cables? Are there any special authorisations required or fees to be paid with respect to submarine cables?

The United Nations Convention on the Law of the Sea, of 10 December 1982, is the main instrument governing the bringing into territorial waters and landing of submarine cables. Under Portuguese law, the concrete implementation of such operations over submarine cables is subject to an authorisation and to the payment of fees.

## 8 Radio Frequency Spectrum

### 8.1 Is the use of radio frequency spectrum specifically regulated and if so, by which authority?

ANACOM is the entity in charge of spectrum management 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.

### 8.2 How is the use of radio frequency 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. It has indicated that the procedure to be implemented for 4G spectrum allocation (including LTE), will be an auction.

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

### 8.3 Are distinctions made between mobile, fixed and satellite usage in the grant of spectrum rights?

Depending on the intended usage and the associated demand for the frequencies in question, the procedure for the grant of spectrum rights can vary. For instance, mobile usage is usually subject to competitive procedures such as the auction or beauty parade.

### 8.4 How is the installation of satellite earth stations and their use for up-linking and down-linking regulated?

The installation of satellite earth stations is subject to radio-electric licensing. The licence is issued by ANACOM for a term of 5 years, it is renewable, and it can adopt three forms, namely: (i) a terrestrial station; a (ii) a VSAT Network Licence; and (iii) a Terrestrial SNG Licence (for satellite news gathering). ANACOM monitors compliance of satellite operators with the obligations set by law and by the radio station or network licences.

### 8.5 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 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 exempted of licensing.

### 8.6 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. Such methodology is aimed at promoting a more effective and efficient use of spectrum.

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

Yes. Only rights of use of frequencies specified in the National Frequency Table (QNAF) as tradable can be transferred to third

parties, subject to the prior authorisation of ANACOM and to a prior non-binding opinion of the Competition Authority.

ANACOM will have to ensure *inter alia* that: (i) the intended transmission does not distort competition; (ii) the frequencies in question will be used effectively and efficiently; and (iii) the intended use will be respected (if the use of the frequencies has been harmonised at European level). ANACOM can also impose conditions attached to the authorisation.

## 9 Data Retention and Interception

### 9.1 Are operators obliged to retain any call data? If so who is obliged to retain what and for how long? How are data protection (privacy rules) applicable specifically to telecommunications implemented in Portugal?

Providers of publicly available electronic communications networks and services are under the obligation to retain, for a period of one year, traffic and location data generated or processed by them. Such obligation is in line with EU Directive 2006/24/EC, of the European Parliament and the Council.

### 9.2 Are operators obliged to maintain call interception (wire-tap) capabilities?

Yes. Companies that provide electronic communications networks and services may be subject to the obligation of installing (and bearing the associated cost), the systems that enable legal interceptions. ANACOM defines the companies or universe of companies subject to such an obligation.

### 9.3 What is the process for authorities obtaining access to retained call data and/or intercepting calls? Who can obtain access and what controls are in place?

Access to retained call data and/or intercepting calls must be authorised by a judge. The public prosecutor can request access to both call data and the contents of calls to the judge, whereas the competent criminal police can only request access to call data.

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 will be exercised through a special software tool that will allow communication 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.

## 10 The Internet

### 10.1 Are conveyance services over the internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the internet at a wholesale (i.e. peering or transit) and/or retail (i.e. broadband access) level? Are internet service providers subject to telecommunications regulation?

Internet service providers (ISPs) are providers of publicly available electronic communications services and are subject to telecommunications regulation. In this regard, broadband access to the Internet, at a wholesale level, has been regulated by ANACOM's decision of January 2009, following the market review

on markets for physical network infrastructure access and wholesale broadband access (Markets 4 and 5), the two fundamental markets for the deployment of (IP-based) next generation networks.

**10.2 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?**

In principle, telecommunications operators and/or Internet service providers are exempt from liability for content carried over their networks under the legal framework for electronic commerce (Decree-Law 7/2004, of 7 January, which implemented Directive 2000/31/EC, of the European Parliament and the Council).

**10.3 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?**

Under the legal framework of electronic commerce (Decree-Law 7/2004, of 7 January, above-referred to), telecommunications operators and/or Internet service providers are under the obligation to remove or make inaccessible content which is clearly illegal.

**10.4 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?**

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

**10.5 How are 'voice over IP' services regulated?**

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

**10.6 Are there any rules to prevent, restrict or otherwise govern internet or email communications, in particular, marketing and advertising communications?**

Yes. The rules on electronic commerce require the prior acceptance of the user to receiving unsolicited commercial e-mails (spam), with a few very restrictive exceptions (the opt-in system).

**11 USO**

**11.1 Is there a concept of universal service obligation; if so how is this defined, regulated and funded?**

Yes. Universal Service (US) including its scope, financing and provision is regulated by law and US provider(s) are chosen by the Government, though a public tender. US is funded primarily by its provider(s) and, in the event that it entails net costs that are considered excessive by ANACOM, the Government can decide to apply one or both the following compensation mechanisms, namely: (i) using public funds; and/or (ii) setting up a fund with contributions from other operators.

**12 Foreign Ownership Rules**

**12.1 Are there any rules restricting direct or indirect foreign ownership interests in electronic communications companies whether in fixed, mobile, satellite or other wireless operations?**

No there are no rules of this kind in Portugal.

**13 Future Plans**

**13.1 Are there any imminent and significant changes to the legal and regulatory regime for electronic communications?**

Yes. The revised European Regulatory Framework of 2009 will be implemented in Portugal in the coming weeks.



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Having worked the telecommunications industry for over twenty years, Octávio is one of the leading lawyers in Portugal in the practice of telecommunication 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.

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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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