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Practical cross-border insights into telecoms, media and internet law

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1 Overview

1.1 Please describe the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction, in particular by reference to each sector's: (i) annual revenue; and (ii) 3–5 most significant market participants.

According to data provided by the Association of Telecoms Operators (APRITEL), the sector generates an annual revenue of €5.3 billion, representing 2.3% of Portugal's GDP and 17,265 direct jobs.

1.2 List the most important legislation which applies to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction and any significant legislation on the horizon such as the regulation of online harms, regulation of social media or artificial intelligence (please list the draft legislation and policy papers).

(a) Telecoms

- Decree-Law 7/2004 of 7 January, as amended (E-commerce Law).
- Law 16/2022 of 16 August, as amended (Electronic Communications Law).
- Law 41/2004 of 18 August, as amended (E-privacy Law).
- Decree-Law 123/2009 of 21 May, as amended (Communications Infrastructures Law).
- Law 46/2018 of 13 August (Portuguese Cybersecurity Law).

(b) Audio-visual

- Law 53/2005 of 8 November (Media Regulation Authority Act).
- Law 27/2007 of 30 July, as amended by Law 74/2020 of 19 November (AVMS Law).
- Law 78/2015 of 29 July (Media Transparency Law).

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, including internet; (b) audio-visual media distribution sectors; (c) social media platforms; and (d) artificial intelligence in your jurisdiction.

(a) Telecoms

- The National Authority for Communications (ANACOM).
- The National Cybersecurity Centre (CNCS).
- The Portuguese Association for Communications (APDC).
- The APRITEL.

(b) Audio-visual and social media

- The ERC.
- The Platform for the Private Media (PMP).

1.4 In relation to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors: (i) have they been liberalised?; and (ii) are they open to foreign investment including in relation to the supply of telecoms equipment? Are there any upper limits?

Both sectors have been liberalised and are open to foreign investment. However, under Decree-Law 138/2014 of 15 September (FDI Law), the Portuguese Government may exceptionally oppose investment by entities from outside the European Union (EU), in certain regulated and sensitive sectors. These sectors are defence, national security, energy, transport and communications.

The assessment under the FDI Law is whether a transaction resulting directly or indirectly in the acquisition of (sole or joint) control, by an investor from a country outside the EU and the European Economic Area (EEA), puts at risk, in a real and sufficiently serious way, defence and national security and/or the security of supply of services that are fundamental to the national interest.

2 Telecoms

2.1 Is your jurisdiction a member of the World Trade Organization? Has your jurisdiction made commitments under the GATS regarding telecommunications and has your jurisdiction adopted and implemented the telecoms reference paper?

Like all EU Member States, Portugal is a member of the World Trade Organization. Further to the Uruguay Round Commitments that took place between 1994 and 1995, Portugal adopted and implemented the regulatory framework for the basic telecommunications services under the GATS.

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

The provision of electronic communications networks and services is regulated by several legislative acts and regulations, most of which incorporate directives approved at EU level into Portuguese law. The main legislation is:

- Law 24/1996 of 31 July, as amended.
- The Electronic Communications Law.
- The Communications Infrastructures Law.
- Decree-Law 134/2009 of 2 June.
- Law 7/2020, as amended.
- Decree-Law 56-B/2021 of 7 July.

2.3 Who are the regulatory and competition law authorities in your jurisdiction? How are their roles differentiated? Are they independent from the government? Which regulator is responsible for social media platforms? What statutory basis do they have?

As established in the Electronic Communications Law, ANACOM is the sector-specific regulatory authority, as provided for in its Statutes (Decree-Law 39/2015, of 16 March), and the Portuguese Competition Authority supervises *ex post* market conditions in the electronic communications market. The regulation of social media platforms may fall under the supervision of the Portuguese Regulatory Authority for the Media (ERC – *Entidade Reguladora para a Comunicação Social*), as provided by the Media Regulation Authority Act, whenever the platforms host or are used as broadcast media outlets or supervised by ANACOM regarding the provision of information society services. Regarding privacy issues, social media platforms are supervised by the Data Protection Authority (CNPD), as set out in Law 58/2019 of 8 August.

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

Decisions of the national regulatory authority may be appealed to the Antitrust, Regulation and Supervision Court.

2.5 What types of general and individual authorisations are used in your jurisdiction? Please highlight those telecom-based authorisations needed for the installation and/or maintenance of infrastructure?

Regulations enacted under Portuguese law establish the general authorisation rules. Under these rules, individuals or companies intending to provide publicly available or private electronic communications networks and services must, prior to the launch of the services, notify ANACOM. The offer of electronic communications services on a self-provision basis is considered a service that is not publicly available.

The notification to ANACOM must contain a brief written description of the network or service and the estimated start date for the launch of the offer on the market. More detail on the notification to ANACOM is indicated in Regulation 6/2018 of 5 January regarding the registration of entities offering electronic communications networks and services, which specifies information duties that fall upon entities subject to the Regulation and approves the forms to be completed to notify ANACOM of the start of operations.

Under the general authorisation rules, any entity offering electronic communications networks and/or services may install telecoms infrastructure, although other specific licences may be required, such as administrative authorisations required by municipalities or specific professional requirements at the human resources level.

Individual licences are issued for the use of numbering and frequency resources.

A change introduced by the Electronic Communications Law relates to the use of harmonised spectrum for access to public electronic communications networks provided via radio using local networks (Wi-Fi networks provided via radio using LANs installed in end-users' premises), which is only subject to the general authorisation framework.

The Electronic Communications Law stipulates that the offering of (i) number-independent interpersonal communications services, and (ii) local networks via radio, when not part of an economic activity or performed as ancillary to an economic activity or public service not dependent of the conveyance of signals over that network, by any company, public authority or end-user, is not subject to the general authorisation framework.

2.6 Please summarise the main requirements of your jurisdiction's general authorisation.

Under the general authorisation rules, companies must provide ANACOM with the following information: (i) the full identification of the company, including the company's website associated with the offer of publicly available electronic communications networks and services; (ii) the contacts for communications and notifications, including an email address (mandatory); (iii) a brief description of the network or service they intend to provide, indicating the type of network or service, target market (wholesale or retail), support network of the service, information on the network's properties and purpose, need for numbering or frequency resources and specification of those resources, and a general description of the service offer; and (iv) the date planned for the start of operations.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded. Are there restrictions on the change of control of the licensee?

Individual authorisations correspond to individual rights of use, which are issued for the use of numbering and frequency resources.

Individual rights of use of numbering resources have no specific duration and they can be transferred under the terms and conditions to be defined by ANACOM, which must establish mechanisms to safeguard the effective and efficient use of the numbers and users' rights.

The law has no specific rules on change of control of the licensee. Nonetheless, in the past, on occasions where operators notified ANACOM of any change of control or company restructuring that involved the transfer of numbering resources from one company to another, ANACOM launched public consultations and, in some instances, determined that certain numbering resources of exceptional economic value (800, 808 and 707 numbers) be freed and returned to ANACOM to avoid the hoarding of these "golden numbers".

Individual rights of use of frequency are granted for a limited time. ANACOM determines the duration of the rights considering competition needs and/or the validity of the individual licences.

Harmonised spectrum use of rights for broadband wireless services are granted for a minimum of 15 years. However, to ensure regulatory predictability to holders of those rights of use for at least 20 years regarding the conditions for investing in the infrastructure depending on said spectrum, whenever those rights of use are granted for a shorter period, ANACOM must, prior to granting said rights, establish and publish the criteria applicable to the extension of the right of use.

ANACOM assesses the need to renew frequency rights at its own initiative or upon request of the rights holder. This request must be submitted within a specific timeframe (not less than 18 months' and no more than five years before the term of the right of use), and ANACOM must issue a decision within six months of receiving the request.

Companies may transfer or lease to other companies the right of use of spectrum for the offer of electronic communications networks and services; however, there are some instances where transfer is not possible. For the transfer or lease to occur, the rights holder must submit a request to ANACOM describing the conditions and terms of the transfer or lease.

ANACOM authorises the intended operations if the transfer does not constitute a risk in terms of the new holder not being able to ensure the fulfilment of the conditions associated with the right of use, or the lessee undertakes to remain liable for fulfilling the conditions associated with the right of use.

When deciding on the transfer or lease, ANACOM must ensure that certain conditions are met.

ANACOM must decide on the request within 45 days. Failure to issue a decision within these 45 days is considered a non-opposition to the transfer or lease; however, this does not release the rights holders from the obligation to notify ANACOM of the execution of the transfer or lease. Moreover, the transfer or lease of rights of use does not suspend or interrupt the term for which the rights were issued.

When granting, amending or renewing rights of use of frequencies, ANACOM and other regulatory authorities must promote effective competition and prevent distortions to competition. For that purpose, ANACOM can adopt or propose the adoption of adequate measures, such as: (i) limiting the amount of frequency bands in respect of which rights of use may be granted, or, when justifiable, determining conditions associated with those rights. These include providing wholesale access for national or regional roaming in certain bands or groups of bands with similar characteristics; (ii) reserving part of a band or group of bands for the granting of rights of use to new market entrants, when a specific circumstance of the national market so requires; or (iii) refusing to grant or authorise new rights of use or new uses of spectrum in certain frequency bands, including transmission or lease of rights of use, in order to prevent distortions to competition caused by such grant, transmission or hoarding of spectrum.

2.8 Are there any particular licences or other requirements (for example, in relation to emergency services) in relation to VoIP services?

There are no specific licences for VoIP services. In 2006, ANACOM issued a decision on the regulatory framework applicable to VoIP services. Under this decision, VoIP service providers using National Numbering Plan (NNP) numbers must comply with the same obligations as a traditional telephone services provider.

In line with the European Electronic Communications Code, the Electronic Communications Law contains the concept of "number-based interpersonal communications service", which includes voice services, such as VoIP number-based services, which connect with publicly assigned number or numbers in national or international numbering plans. This means that numbering resources may be assigned to VoIP services; however, the Portuguese framework precludes the possibility of the NNP containing a specific numbering range for the offering of VoIP services (even nomadic VoIP services) outside of Portugal, similarly to the case of fixed and mobile telephone services to which numbering resources of the NNP are assigned (in the case of mobile services, the exceptions of roaming apply).

As for access to emergency services, ANACOM considers that all VoIP service providers holding rights of use of numbers of the NNP, including numbers for the provision of nomadic VoIP services, must ensure the forwarding of calls to the national emergency number, as well as information on the Calling Line Identification (CLI). If VoIP service providers have restrictions in this respect, they must inform their customers about this prior to the execution of the services contract.

2.9 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?

According to the Electronic Communications Law, companies providing publicly available electronic communications networks and services have the right to: (i) request, under the applicable law, the expropriation and establishment of public easements; and (ii) use the public domain to implant, cross or roll out the necessary installation of systems, equipment and other facilities. These rights must be exercised under conditions that must take into consideration the principles of transparency and non-discrimination. Companies providing electronic communications networks and services not publicly available are also entitled to use the public domain to implant, cross or roll out the necessary installation of systems, equipment and other facilities.

The Communications Infrastructures Law extends these rights to the private domain held by public entities. It also clarifies that, in both cases, rights of way are granted under procedures defined by the bodies that manage the public and private domains held by entities from the public sector. It also provides that municipalities which have previously approved, by the end of December, rights of way to be in effect for the following financial year, can charge operators municipal fees. These fees may not be higher than 0.25%. Bodies of the central public administration and Autonomous Regions are not permitted to charge any fees for granting rights of way.

With regard to access to private land, the Communications Infrastructures Law determines that, in order to install

telecommunications infrastructure on plots of land, developments and sets of buildings (ITURs) and connect them to public electronic communications networks, landowners and any parties that hold property rights over the properties that are subject to planning procedures (plots of land and developments) must freely assign the ITURs to the municipalities. This is to allow electronic communications undertakings to access the infrastructure through a transparent, expedited, non-discriminatory and adequately publicised process.

ITURs in condominiums are jointly held by all owners and they can only oppose the installation of a telecommunications infrastructure for individual use by any owner, tenant, or legal occupier if (i) they install telecommunications infrastructure for collective use that ensures the same services may be used with the same technology within 60 days of being notified by the owner, tenant or legal occupier that intended to install the infrastructure, or (ii) the condominium already has telecommunications infrastructure for collective use that ensures the same services may be used with the same technology.

2.10 How is wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?

Wholesale interconnection may be imposed upon any undertaking (regardless of it having significant market power (SMP)): (i) that controls access to end-users, to the extent necessary to ensure end-to-end communications including, when justifiable, the obligation to interconnect their networks; (ii) whenever the undertaking controls access to end-users and it is justified and to the extent necessary to ensure service interoperability; (iii) to determine access to application programme interfaces (APIs) and electronic programme guides (EPGs) under fair, reasonable and non-discriminatory conditions, to the extent necessary to ensure end-users have access to digital television and radio broadcast services that are specified by the authorities; and (iv) in justified cases where end-to-end connectivity between end-users is endangered due to a lack of interoperability between interpersonal communications services, to undertakings providing number-independent interpersonal communications services that reach a specific level of coverage and user uptake, and to the extent necessary to ensure end-to-end connectivity between end-users.

In the scenario referred to in (iv) of the preceding paragraph, ANACOM can only impose interconnection obligations if, further to the requirements stated above:

- it determines proportionate obligations on providers of those services to publish and permit the use, modification and redistribution of relevant information by the authorities and other providers, or to use and implement standards or specifications as foreseen in the Communications Infrastructures Law; and
- the European Commission – following a consultation with BEREC and having taken, to the extent possible, the latter's opinion – finds there is a considerable threat to end-to-end connectivity between end-users throughout the EU or in at least three Member States, and has adopted implementing measures specifying the nature and scope of any obligations that may be imposed.

ANACOM may also impose an obligation on companies to provide a response to reasonable requests for access to and use of infrastructures that are used in the context of the support or hosting of electronic communications networks, such as conduits, cabling, manholes and cabinets. This may happen whenever, in the context of a market analysis, ANACOM concludes that refusal of access, or determination of non-reasonable conditions with effects equivalent to those of a refusal, would (i) hinder the emergence of a sustainable competitive market, and (ii) not be in the best interest of the end-user. This obligation can be imposed even if the infrastructures subject to the request do not form part of the market being analysed, provided that this imposition is necessary and proportionate to comply with the general regulatory objectives set out in the Communications Infrastructures Law. This option should also precede the assessment of imposing other specific obligations regarding access to infrastructures and does not exclude the application of the Law.

Regardless of the provisions of the Communications Infrastructures Law, ANACOM also has the power, further to a reasonable request, to impose upon operators or owners of cabling and related associated resources within buildings or up to the first distribution point (if located outside of a building), the obligation to provide access to those elements. This obligation may only be imposed whenever justified on the ground that replication of these network elements is economically inefficient or physically unviable.

These access conditions must refer to specific rules concerning access to those network elements and resources, related services, and the sharing of costs for access, which, whenever considered adequate, must be adjusted to consider risk factors.

If, in light of access obligations resulting from market analysis, the NRA concludes that the obligations described above are not sufficient to eliminate significant and non-transitory economic or physical barriers to the replication of network elements, it may broaden the scope of the obligations beyond the first distribution point up to the point it believes is the closest to the end-users and makes it possible to accommodate a sufficient number of end-users so that the service is commercially viable to access seekers. In this case, ANACOM may order operators to provide access to active or virtual network elements or related associated resources if justified by technical and economic reasons, taking into consideration the guidelines issued by BEREC in this regard.

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

Operators declared as having SMP are required to publish information concerning their access and interconnection offers.

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?

In September 2018, ANACOM decided that all operators providing call termination services on individual public telephone networks provided at a fixed location (Market 1) have SMP. Further to this finding, ANACOM issued a decision regarding calls originating from the EEA or calls terminated by operators that terminate national traffic charging termination tariffs equal to or lower than regulated prices charged by operators present in the Portuguese market for traffic originating in the EEA. As per this decision, SMP operators are subject to establishing cost-oriented prices according to an efficient operator criterion and based on a pure long run incremental cost (LRIC) model. In addition, interconnection prices and conditions must be established according to certain criteria. ANACOM has also determined price caps for 2019 and 2020, to be updated according to inflation data and based on a pure LRIC model.

In 2016, ANACOM determined that mobile operators with SMP in the market of wholesale voice call termination on individual mobile networks (former Market 2) should all establish identical mobile termination rates regardless of: (i) where the

call originates; (ii) the operator delivering the call to the SMP operator; and (iii) the purchasers of the service. ANACOM has also imposed a price control obligation based on cost-oriented prices determined on a pure bottom-up (BU) LRIC model.

ANACOM also determined that MEO (a Portuguese telecoms company) should be subject to a price control obligation regarding activities carried out in the market for wholesale local access at a fixed location. MEO was required to charge cost-oriented prices within its reference offers for access to ducts, poles, local loop unbundling, access to dark fibre (only within its reference offer for access to ducts and in the absence of space in ducts), and in the market for wholesale central access provided at a fixed location for mass-market products (Markets 3a and 3b). Regarding these two markets, MEO must also ensure that products and services used internally use internal cost-oriented transfer prices.

Regarding Market 4 (wholesale high-quality access provided at a fixed location), ANACOM determined that, as SMP operator, MEO must establish cost-oriented prices in respect of (i) high-quality access in non-competitive areas (within the Reference Offer for Ethernet Circuits (ORCE)), (ii) transit segments in non-competitive routes, and (iii) circuits connecting the mainland to the Azores and Madeira islands – CAM circuits – by amending the ORCE, establishing new prices for Ethernet CAM circuits and non-secured inter-islands circuits for access to international undersea cables and reducing prices of traditional CAM circuits up to 2 Mbps by at least 66%. MEO must also provide ANACOM, on a yearly basis, with data on the capacity contracted by operators and capacity used and reserved by MEO, and on the total costs, including O&M and CAPEX made in the previous year and planned for the following year, for the purposes of the annual revision of CAM and inter-islands circuits.

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

SMP operators in wholesale access and interconnection markets are subject to accounting separation, and the operator currently subject to this obligation is MEO (Markets 3a – wholesale local access provided at a fixed location and Market 3b – wholesale central access provided at a fixed location for mass-market products). In Market 4, MEO must implement a costing system and accounting separation.

To date, ANACOM has not imposed functional separation and the Electronic Communications Law does not provide for the possibility of legal separation.

2.14 Describe the regulation applicable to high-speed broadband networks. On what terms are passive infrastructure (ducts and poles), copper networks, cable TV and/or fibre networks required to be made available? Are there any incentives or 'regulatory holidays'?

The regulations on high-speed broadband networks are mainly contained in the Communications Infrastructures Law, which sets out the rules on the installation of infrastructure suitable for the accommodation and roll-out of electronic communications networks, and the installation of telecommunications infrastructures in housing developments, urban settlements and sets of buildings.

This Law sets out rules on passive infrastructure, such as ducts, poles, manholes, street cabinets, and telecommunications inbuilding wiring, etc., and it applies to:

- The State, Autonomous Regions and local authorities.
- Entities under the authority or supervision of bodies of the State, Autonomous Regions and local authorities, performing administrative tasks, regardless of their entrepreneurial nature, and to public companies and concessionaries, particularly those relating to infrastructures for roads, railways, ports, airports, water supply, sewerage, and transport and distribution of gas and electricity.
- Other bodies that own or operate infrastructures that are part of the public domain of the State, Autonomous Regions, and local authorities.
- Electronic communications companies and entities in possession of infrastructure suitable for accommodating electronic communications networks for use by those companies when carrying out their activities.

Under the Communications Infrastructures Law, electronic communications networks operators are given incentives to permit access to their infrastructure (cost-sharing of the investments made) and to seek access from entities that own or manage infrastructure capable of accommodating electronic communications networks.

Fees for access and use of the infrastructure must be cost oriented, considering the costs arising from the construction, maintenance, repair and improvement of the infrastructure.

Under the new Electronic Communications Law, an SMP Operator in one or more relevant markets may propose commitments to the NRA, with a view to opening up for co-investment by other companies the deployment of a new very-high-capacity network composed of fibre-optic elements up to end-users' premises or to the base station. This is to be achieved by proposing, in particular, co-ownership or long-term risk-sharing through co-financing or purchasing agreements that give rise to specific rights of structural character in favour of other companies providing electronic communications networks or services.

When evaluating the proposed commitments, ANACOM verifies specifically whether the proposal in question meets all the following requirements:

- Is open to any company that offers electronic communications networks or services, at any time during the entire lifetime of the network.
- Allows other co-investors (companies offering electronic communications networks or services) to compete in an effective and sustainable manner on a long-term basis in downstream markets where the SMP operator is active, under conditions including: (i) fair, reasonable, transparent and non-discriminatory circumstances permitting access to full network capacity to the extent it is subject to co-investment; (ii) flexibility in terms of the amount and timing of each co-investor's participation; (iii) the possibility to reinforce this participation in the future; and (iv) the granting of reciprocal rights by the co-investors after the implementation of the infrastructure subject to co-investment.
- Is made public at least six months prior to the start of the implementation of the new network, and this period can be extended on the basis of national circumstances, or in a timely manner under specific circumstances.
- Ensures that access seekers not participating in the co-investment can benefit from the outset from the same conditions, quality, speed and end-user coverage that were available prior to the deployment of the new network elements, accompanied by an adaptation mechanism, confirmed by ANACOM, that adjusts to developments in the relevant retail markets over time and maintains the incentives to participate in the co-investment.
- Guarantees that access seekers may access very-high-capacity network elements at the time and on the basis of transparent and non-discriminatory conditions that adequately reflect the degrees of risk assumed by the

corresponding co-investors in the different phases of deployment and take into account the competitive situation in the retail markets and which is carried out in good faith.

Under the new Electronic Communications Law, it is also incumbent upon ANACOM to conduct geographical surveys of the coverage of publicly available electronic communications networks capable of providing broadband, which includes forecasts, for a certain period of the geographical coverage of new broadband networks, including very-high-capacity networks. ANACOM may use this information, among others, to (i) award public funds for the roll-out of electronic communications networks, or (ii) designate delimited geographical areas where no company providing publicly available electronic communications networks has deployed or intends to deploy a very-high-capacity network.

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

Retail price controls are imposed on mobile operators under the EU Roaming Regulation.

ANACOM has also imposed price caps on retail prices for calls terminated in numbers of the 707 and 708 (universal access services), 760 (value-added services) and 808 and 809 (call services with shared costs) numbering ranges.

2.16 Is the provision of electronic communications services to consumers subject to any special rules (such as universal service) and if so, in what principal respects?

The Electronic Communications Law defines universal service as the provision of a minimum set of services available to all end-users in the country, depending on their geographical location, and at an affordable/accessible price and with a specified quality. These services should be available whenever there is a risk of social exclusion as a consequence from the lack of access to such service, which precludes citizens from participating freely in society's social and economic life. The universal service includes: (i) adequate broadband internet access at a fixed location; (ii) voice communication services at a fixed location, including their underlying connection; (iii) specific measures for end-users with disabilities, with the goal of ensuring equivalent access to the features that, within the universal service, are available to the remaining end-users.

Regarding broadband access to the internet, the Electric Communications Law provides that it is incumbent upon the Government to determine the minimum bandwidth to be considered for purposes of universal service, considering the specific circumstances of the national market, the minimum bandwidth used by most consumers in the country and BEREC's report on best practices. Regardless of this, mandated bandwidth must be adequate to support the use of a minimum set of services (e.g., electronic mail, web browsers, online training and educational tools, online media outlets, e-commerce, tools for searching employment, online banking services, e-government, social media and instant messaging, calls and videoconferencing with standard quality).

Moreover, universal service may include the accessibility to some or all of the previous features referred to above provided from a non-fixed location whenever such is deemed necessary to assure the social and economic participation of consumers in society.

The Electronic Communications Law also provides for the possibility of the Government mandating the provision of universal service to end-users that are micro, small and medium enterprises and not-for-profit organisations, provided that these entities meet the relevant requirements.

If it is confirmed, according to certain criteria, that the availability of adequate broadband internet access and voice communication services at a fixed location cannot be ensured under normal commercial circumstances or by any potential public policy instruments in Portugal or parts of it, the Government can impose universal service obligations needed to satisfy all end-users' reasonable requests for access to said services in the relevant areas of the territory, upon one or more undertakings, to cover the entire territory or different areas of the same.

Regarding internet access, in 2021, the Government enacted Decree-Law 66/2021, which implements a social tariff for broadband internet access (over fixed or mobile networks). The goal of this legislative act is to benefit consumers with lower incomes or special social needs. Under this Decree-Law, ANACOM approved decisions on the social tariff to provide broadband internet access services.

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

Telephone numbers and network identifying codes are allocated by ANACOM upon request of interested parties. The use of numbering resources is subject to the granting of rights of use and such resources are allocated by means of open, objective, transparent, proportionate and non-discriminatory procedures.

In some instances, including the use of numbering resources of exceptional economic value – 800, 808, 707 ranges – the grant of rights of use is subject to a prior public consultation procedure.

The specific rules for allocation of numbering resources are contained in the legislative acts, regulations and determinations listed further below.

Nevertheless, numbering resources may, in certain circumstances, be allocated for a limited period, depending on the specific service they are allocated to, the objective to be pursued and the need to allow an adequate period for investment amortisation.

The decision on the granting of rights of use of numbering resources must be issued by ANACOM within 15 business days if numbering resources for specific purposes of the NNP are at stake. The decision must be issued within 30 business days when the request concerns numbering resources of exceptional economic value to be awarded by means of competitive (tender) or comparative selection procedures.

A limitation on the number of rights of use of numbering resources can only occur whenever this is necessary to ensure its efficient use.

Rights of use of numbering resources can be granted to companies offering publicly available electronic communications networks and services and for the provision of specific services to undertakings other than providers of electronic communications networks or services, provided, in the latter case, that (i) adequate numbering resources are made available to satisfy current and foreseeable future demand, and (ii) these companies demonstrate their ability to manage the numbering resources and comply with any applicable requirements set out in the law. However, if there is a risk of exhaustion of numbering resources, ANACOM may suspend the granting of these resources to undertakings other than providers of electronic communications networks or services.

When granting rights of use of numbering resources, ANACOM may determine conditions regarding:

- Specification of the service for which the number will be used and requirements linked to the provision of that

service, including pricing principles and applicable price caps, to ensure consumer protection.
- Effective and efficient use of numbering resources.
- Number portability.
- Providing to end-users information regarding directory enquiry services and publicly available directories.
- Validity of the rights of use, subject to any modifications introduced in the NNP.
- Transfer of rights of use at the initiative of their holder, and the applicable conditions, including conditions binding upon the assigning party.
- Payment of fees.
- Commitments undertaken by the rights holder within the selection procedure.
- Extraterritorial use of numbers within the EU to ensure compliance with consumer protection rules and other rules applicable to numbers in Member States other than the Member State that granted the right of use for numbering resources.

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

The use of telephone numbers is governed by the Electronic Communications Law, the NNP, ANACOM's decision of 2 June 1999 on the criteria and principles for the management and assignment of numbering resources and ANACOM's Regulation 1028/2021 of 29 December 2021, establishing the conditions for the sub-allocation of numbers from the E.164 of the NNP, for use in the context of offers of retail electronic communications services, for assignment to end-users.

ANACOM's decision of 2 June 1999 establishes the procedures applicable to companies providing electronic communications networks and services, services suppliers and end-users regarding administration and use of numbering resources. Under this decision, ANACOM can grant primary assignment of numbering resources. It can also recover the resources whenever they are not used in accordance with the conditions set out in the document setting out the conditions for the right of use if there is a low level of usage of the resources or they are not used in an efficient or effective manner, if the NNP is amended, or for reasons of national security.

The assignees may, in turn, assign (secondary assignment) numbering resources, provided they do so in accordance with the NNP and comply with the principles of equity and transparency. A secondary assignment does not imply transfer of ownership, but only a mere right of use.

With the entry into force of Regulation 1028/2021, companies intending to offer electronic communications services without requesting the primary allocation of numbering resources are to do so through wholesale offers made available by companies offering electronic communications networks and services that hold rights of use of numbering ranges.

Under this Regulation, any sub-allocation must meet the conditions set therein, regarding the ranges that may be sub-allocated and minimum occupation of the numbers within the said numbering ranges, notification obligations, formalisation of the sub-allocation and beneficiaries of the sub-allocated numbers.

The companies sub-allocating the numbers retain ownership of the rights to use them. Therefore, they remain liable to ANACOM for payment of the fees due for the use of the numbers in question. The beneficiary, on the other hand, is responsible for using the numbering in the context of the service for which it was designated, for the efficient and effective use of the numbers, and for complying with obligations regarding directory services. As for number portability, the number holder and the beneficiary share responsibilities.

As the competent body for the management of numbering resources, ANACOM has the statutory power to approve regulations and determinations regarding the opening and the conditions regarding the use of said resources. The electronic communications regulator has done so in the past, namely concerning the use of 18xy, 703 (provision of electronic communications services in private networks), 166 (provision of harmonised services of social value), 92 (provision of mobile terrestrial services by MVNOs), 761 and 762 (provision of value-added services), 30 (nomadic VoIP services) and 71 (provision of utility services at an increased tariff rate) numbering codes or ranges. In 2019, ANACOM initiated a public consultation procedure to collect contributions regarding the creation of a specific range for machine-to-machine (M2M) services and envisaged adopting a draft regulation on this matter. The procedure was resumed in October 2022, and a draft Regulation is expected to be adopted shortly.

2.19 Are there any special rules relating to dynamic calling line identification presentation?

In 2008, ANACOM issued a clarification stating that Calling Line Identification Presentation should unequivocally identify the access of the call's originator (network termination point or applicational instance – e.g., VoIP). It also made clear that the operator/service provider must validate this information when provided by the user. This information is used to establish calls to emergency services and to identify and locate the origin of the call, so it should be trustworthy and allow for a call back to the location, terminal or origin.

According to ANACOM, access information must be consistent in any information relating to other supplementary services and manipulation of the parameters of identification of the call's origin should conform to the international recommendations and standards.

2.20 Are there any obligations requiring number portability?

Under the existing framework, all subscribers assigned with numbers on the NNP (fixed, mobile or nomadic numbers) have the right to request number portability and operators must implement number portability within the shortest period possible (one business day following execution of the agreement for transfer of the number).

Operators must also provide adequate and transparent information to subscribers on prices applicable to portability and calls to ported numbers.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

Spectrum use is managed and regulated by ANACOM.

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

Individual rights of use of frequency are granted for a limited

time. ANACOM determines the duration of the rights, considering competition needs and the validity of the individual licences.

Harmonised spectrum use of rights for broadband wireless services are granted for a minimum of 15 years. To assure regulatory predictability to holders of these rights of use for at least 20 years regarding the investment conditions in the infrastructure depending on the spectrum, whenever said rights of use are granted for a shorter period, ANACOM must, prior to granting said rights, establish and publish the criteria applicable to the extension of the right of use, in order to ensure: (i) effective and efficient use of the relevant frequencies, and to ensure coverage of the whole country and population with wireless broadband, with high quality and transmission speeds, and support the fast development of new wireless communications technologies and applications; (ii) fulfilment of objectives of general interest relating to guaranteeing safety of human life, public order, public security or defence; and (iii) the inexistence of distortions to competition.

ANACOM defines the conditions associated with rights of use of radio spectrum to provide electronic communications networks and services, prior to their allocation, and the criteria for assessing compliance in the case of transfer or lease of rights.

The conditions defined by ANACOM must be proportionate, transparent, non-discriminatory, and designed to ensure optimum, effective and efficient use of spectrum.

Regardless of any other obligations resulting from the law, rights of use of spectrum may only be subject to specific conditions set out in the law, such as:

- Allocation to provide a service or use of a type of technology within the limits provided for in the law, including, where appropriate, coverage and quality of service requirements.
- Determination of efficient use of the radio frequency spectrum, under the terms the law.
- Definition of maximum duration, without prejudice to modifications set out in the law.
- Restrictions on transfer or lease of the rights, under the terms of the law.
- Obligation to pay fees for allocation of rights of use.
- Obligation to comply with any commitments that the company obtaining the rights of use has undertaken prior to the allocation or renewal of such rights or, where applicable, prior to a call for applications for the allocation of usage rights.
- Imposition of obligations to pool or share radio spectrum or to grant access to spectrum to other users in specific areas or at national level.

When specifying the conditions attached to rights of use of radio frequencies, ANACOM must also describe the required level of use and specify the applicable parameters, including the deadline to exercise the rights of use by their holder, where appropriate, to avoid situations of spectrum hoarding.

ANACOM may also, in particular to ensure the effective and efficient use of the radio spectrum, or to promote coverage, determine:

- the sharing of passive or active infrastructure using radio spectrum or the sharing of radio spectrum;
- the execution of commercial agreements or imposition of roaming obligations; and
- the obligation of joint deployment of support or hosting infrastructures for electronic communications networks using radio spectrum.

The allocation of rights of use may take place under a full access framework, or be subject to comparative or competitive beauty contests (auctions or tenders). Spectrum rights of use may be granted to companies providing electronic communications networks or services, or to companies using those networks, by means of open, objective, transparent, proportional, non-discriminatory procedures, and provided that technological and services' neutrality in the management of spectrum is ensured, save when there is the need to establish restrictions provided for in Articles 22 and 34 of the Electronic Communications Law, under the terms of Article 4 of the Radio Spectrum Decision, the ITU's Radiocommunications Regulations and published in the QNAF. Whenever restrictions are imposed, they must be periodically reassessed. When granting rights of use of spectrum, ANACOM must specify cases where the rights cannot be transferred or leased by the respective holder.

Regulations regarding comparative or competitive selection procedures for the allocation of rights of use of spectrum are made according to objective, transparent, proportionate and non-discriminatory eligibility criteria. Moreover, they must contain the conditions associated with those rights, the values of the reserve prices, including minimum bidding amounts and intervals between biddings.

Without prejudice to any international agreements applicable to the use of frequencies or orbital positions, ANACOM's decisions concerning the allocation of rights of use of frequencies must be issued, notified and made public:

- within 30 business days when under the full access framework; and
- at the latest, within eight months when further to comparative or competitive selection procedures without prejudice to specific timeframes for the allocation of harmonised spectrum.

Under the revised Electronic Communications Law, ANACOM may define the framework for the use of harmonised spectrum, where it should seek to minimise problems regarding harmful interference, including when shared use takes place, based on the combination of the usage models.

Specific legislation can also establish specific criteria and processes to grant rights of use of frequencies to television and radio broadcast operators, and to television distribution operators, to achieve goals of public interest. In this case, ANACOM can determine exceptions to the requirement of open proceedings.

ANACOM assesses the need to renew frequency rights at its own initiative or upon request of the rights holder. This request must be submitted within a specific timeframe (not less than 18 months' and no more than five years before the term of the right of use), and ANACOM must issue a decision within six months of receiving the request.

When deciding on the renewal, ANACOM reassesses and establishes the conditions associated with the rights of use, and the latter must be proportionate, transparent and non-discriminatory.

The renewal of rights of use of frequencies for which the quantity of rights of use is limited must be duly substantiated by ANACOM and subject to an open, transparent and non-discriminatory procedure, typically a public consultation. In order to decide either on a renewal or on the launch of a new procedure to grant the rights of use of spectrum, ANACOM must consider contributions received during the public consultation which demonstrate existing demand in the market by companies that do not hold rights of use regarding the frequencies subject to public consultation.

If approved, the renewal is also subject to the payment of specific administrative charges as set out in the applicable legislation.

3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions? Are there penalties for the unauthorised use of spectrum? If so, what are they?

Use of harmonised spectrum for the provision of access to

publicly available electronic communications radio local networks located at the premises of an end-user is licence exempt and only subject to the general authorisation framework.

The unauthorised use of spectrum either subject to the granting of rights of use or to the general authorisation framework constitutes a very serious violation and is punishable with an administrative penalty of between €750 and €5 million, depending on the nature of the transgressor (natural person, dual, micro, small, medium, or large enterprise). In addition, accessory penalties may apply, such as interdiction to carry out the relevant activity during a period up to two years and/or prohibition of taking part in comparative or competitive selection procedures.

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

Administrative Rule 1473-B/2008 of 17 December sets the fees for the allocation of rights of use and the use of radio frequency spectrum.

The calculation of fees concerning the use of radio frequency spectrum is based on the taxation of the allocated spectrum to discourage behaviours that go against proper market operation.

Regarding the allocation of frequencies subject to the granting of rights of use under the QNAF, when the requesting party does not yet hold any spectrum, it will benefit from a 50% reduction in the amount of the fees due for the use of spectrum during the first three years as of the issuance of the rights of use. Entities which, at the time of allocation, already hold an amount of spectrum exceeding 60 MHz, will not benefit from this reduction.

There is a fee of €700 to issue the declaration of rights of use, and if endorsements are necessary, there is an additional fee of €70.

When rights of use are granted under a competitive or comparative selection process, in a full access framework launched by a third party, the following fees are due:

- Allocation by auction or competition – to be determined before the tender or auction.
- Allocation under the full access framework – €1,000.
- Allocation following selection procedures launched by a third party – €500.

The fees due for the use of frequencies are the following:

- Mobile services (shared resources and terrestrial mobile services) – €120,000/1 MHz.
- Terrestrial mobile service – Railway communications system (GSM-R) T = A/S * Fr.
  Where A is the service area, in square kilometres, calculated according to the following formula:
  - A = L*10.
  - L is the length, in kilometres, of the national railway network, currently 2,600 km.
  - 10 stands for the reference value, in kilometres, assumed to be the width of the corridor of the railway.

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

If a change of control of the licensee leads to hoarding of frequency rights of use, ANACOM can ensure: the conditions associated with the rights of use remain unchanged and the change does not cause distortions to competition; and the spectrum is used effectively and efficiently. To achieve this, ANACOM can: (i) impose conditions associated with the right of use, including a time limit for the effective use of the rights of use; (ii) require the holder in a specific case to transfer or lease the rights of use; and (iii) limit the amount of spectrum to award to the same holder within the procedure to allocate the rights of use.

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

Companies may transfer or lease to other companies the right of use of spectrum for the offer of electronic communications networks and services. However, this is not possible if those rights have been granted for free or for the offer of radio broadcasting services and distribution of television and radio broadcasting services, within specific procedures, to fulfil purposes of general interest and if, based on such circumstances, ANACOM established its non-transferability. For the transfer or lease to occur, the rights holder must submit a request to ANACOM, describing the conditions and terms of the transfer or lease.

ANACOM authorises either of the intended operations if the transfer does not constitute a risk in terms of the new holder not being able to meet the conditions associated with the right of use, or the lessee undertakes to remain liable for fulfilling the conditions associated with the right of use.

When deciding on the transfer or lease, ANACOM must ensure that (i) the conditions associated with the rights of use remain the same, (ii) the operation will not cause distortions to competition, (iii) the spectrum is used in an effective and efficient manner, (iv) the assignment of rights of use of harmonised spectrum observes the harmonised use, and (v) the restrictions set out in the applicable legislation regarding television and radio are safeguarded. However, this does not preclude the possibility of ANACOM authorising, at either parties' request, the adaptation of the conditions regarding the rights of use, by ensuring that the rights of even the relevant spectrum can be split or even disaggregated, to the extent possible.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework for cybersecurity. Are there any specific requirements in relation to telecoms operators?

The main cybersecurity legislation is the result of the implementation of the NIS Directive (2016/1148). These are the Portuguese Cybersecurity Law and Decree-Law 65/2021 of 30 July. The authority that oversees compliance with the NIS framework in Portugal is the CNCS. At the EU level, there is also Regulation (EU) 881/2019 on ENISA and on information and communications technology cybersecurity certification. Finally, Law 62/2011 of 9 May establishes the national critical infrastructures framework.

The data protection legislation, particularly the GDPR, is also important. Article 32 of the GDPR sets out the security requirements that data controllers must comply with, where applicable. Nonetheless, Resolution of the Council of Ministers 41/2018 of 28 March establishes the minimum technical requirements of networks and information systems that are required or recommended for all services and entities of the public administration.

Furthermore, the law establishes specific requirements for telecom operators, which are described in the Electronic Communications Law, the E-Privacy Law, Regulation (EU) 611/2013, and ANACOM's Regulation 303/2019.

4.2 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.

The Portuguese Criminal Procedure Code establishes the rules under which law enforcement authorities can lawfully access private communications. Lawful interception of communications (i.e., wiretapping) can only take place under specific circumstances, and only if a person is suspected of having committed certain types of crimes. Interceptions must be proportional (if they are key to the investigation – i.e., if it would otherwise be very difficult to gather the evidence) and issued by a reasonable and grounded order of the court following a request from the Public Prosecutor. Interception of communications is authorised for a three-month period, renewable for periods subject to the same limit, provided they meet the applicable legal requirements.

4.3 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?

Telecom operators are required to permit the judicial authorities to intercept communications that originated or are serviced in their networks. Furthermore, Article 27(1)(v)(vi) of the Electronic Communications Law provides for the installation and the provision of lawful interception systems to national authorities at the undertakings' own expense, and the provision of means of decryption (where they offer such facilities) in accordance with applicable legislation on the protection of personal data. The interception requirements may apply to any possible way of communications (e.g., traditional telephone calls, VoIP, SIP Trunking, etc.). Interception must be ordered by a reasoned order issued by a court in accordance with the requirements of the Portuguese Criminal Procedure Code.

4.4 How does the state intercept communications for a particular individual?

Telecom operators are required to ensure the confidentiality of communications and the related traffic data. In particular, persons other than users are prohibited from listening to, tapping, storing or intercepting communications and the related traffic data, without the consent of the users concerned, except when legally authorised to do so (Article 4 of the E-Privacy Law and Article 35 of the Portuguese Constitution). Communications can only be intercepted under the rules of the Portuguese Criminal Procedure Code (Article 187).

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

There are no specific rules regarding the use of encryption other than the general technical measures in Article 32 of the GDPR. There is also no specific requirement regarding the need to provide encryption keys to the state.

4.6 Are there any specific cybersecurity requirements on telecoms, cloud providers or social media platforms? (If so, please list the relevant legislation.)

Telecom operators must take appropriate technical and organisational measures to safeguard the security of their services with respect to network security.

ANACOM's Regulation 303/2019 on electronic communication networks and services security and integrity establishes that the technical and organisational measures should be based on several standards such as the ISO 2700X family requirements, ISO 22301, as well as the applicable ENISA and European Commission guidance.

Furthermore, several notification obligations are imposed on telecom operators based on different legal frameworks, such as: (i) the telecommunications framework; and (ii) the e-Privacy framework (Article 3-A(1) of the E-Privacy Law sets out a general obligation to notify the CNPD in case of a data breach). Under Article 2(2) of Regulation (EU) 611/2013, telecom operators must notify the CNPD within 24 hours. Moreover, Article 3-A(2) of the E-Privacy Law imposes a general obligation on telecom operators to notify, without undue delay, the subscribers or users concerned when the data breach may negatively affect them. The same obligation is imposed by Article 3 of Regulation (EU) 611/2013.

Finally, there is also the cybersecurity NIS framework. Under the NIS Directive implementing acts, the public authorities, critical infrastructure operators, operators of essential services and digital service providers must notify the CNCS of the occurrence of incidents with a relevant or substantial impact under the Portuguese Cybersecurity Law and Decree-Law 65/2021 of 30 July.

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

Law 32/2008 of 17 July, which implemented the Data Retention Directive (2006/24/EC), established the legal framework for the retention of communications data for the investigation, detection and prosecution of certain criminal offences. Later, the Court of Justice of the European Union (CJEU) invalidated the Data Retention Directive (C-293/12, *Digital Rights Ireland*) and held that the legal arguments that apply to the national acts that implemented the Data Retention Directive were invalid (C-203/15, *Tele2 Sverige*). Despite the CJEU case law, Law 32/2008 has remained formally in effect in Portugal for several years. The CNPD then decided not to enforce Law 32/2008 (Resolution 1008/2017). More recently, the Ombudsman has submitted Law 32/2008 to the judicial review of the Constitutional Court. This Court held that the law is unconstitutional.

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in your jurisdiction?

In line with the European media law framework, audio-visual services may be provided by: (i) television services broadcasters; (ii) providers of on-demand audio-visual services; and (iii) video-sharing platform services made available by video-sharing platform providers. Operators may be subject to the jurisdiction of the Portuguese state or operate according to the country-of-origin principle.

When subject to the jurisdiction of the Portuguese State, the operators are regulated by the ERC.

5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

All audio-visual media services are subject to common content

regulation rules, including the obligation to respect human dignity, the rights of children and young people and the fundamental rights of citizens.

Television broadcasters are subject to specific time and manner restrictions regarding any programmes likely to have a negative influence on the formation of the personality of children and adolescents. The broadcasting of such content must be accompanied by an appropriate visual identifier and may only take place between 10pm and 6am.

On-demand audio-visual services that may have a negative influence on the formation of the personality of children and young people may only be made available with the permanent presentation of a visual identifier. These services must also adopt technical functionalities that enable those who are responsible for exercising parental responsibilities, if they so wish, to block the access of children and young people to this content.

In terms of advertising, television advertising and teleshopping broadcast during the period between 6am and 6pm, and during the period between 6pm and midnight, may not exceed 10% or 20%, depending on whether it relates to, respectively, conditional access television programme services or free or conditional access television programme services with subscription.

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

Under Article 13 of the AVMS Law, television activity is subject to licensing, through public tender, opened by decision of the Government, when it uses the terrestrial radio spectrum intended for broadcasting, under the terms established in the National Frequency Allocation Framework and consists of: (i) the organisation of unconditional access television programme services; and (ii) the selection and aggregation of television programme services of conditional access or non-conditional access with subscription.

When the television activity consists in the organisation of television programme services that: (i) do not use the terrestrial radio spectrum intended for broadcasting, under the terms set out in the National Frequency Allocation Framework; and (ii) are intended to be included in the offer of a distribution operator previously licensed for the television activity, it is subject to authorisation, at the request of interested parties.

The ERC is responsible for granting, renewing, amending or revoking licences and authorisations for television activities.

On-demand audio-visual service providers must notify the ERC electronically of the start and end of the activity of each of their services.

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

Licences are not assignable. They are considered non-transferable under the AVMS Law. Changes of control of the licensee are subject to transparency and notification requirements under the Media Transparency Law.

6 Internet Infrastructure

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?

General rules laid down in the E-Commerce Directive, as implemented by the Electronic Commerce Law, apply to the liability of intermediary service providers.

Only just recently have the Portuguese courts expressed their views on the concept of intermediary service provider and liability exemptions. In the Supreme Court of Justice's judgment of 10 December 2020, where the liability exemptions of caching and hosting operators were examined in detail, the Court did not hold a Spanish web hosting company liable for the use, on a website it owns, of the distinctive signs owned by the claimant without the necessary legal authorisations. The Court added that the web hosting company would only be liable if it had in some way participated or interfered with the content of the information transmitted or stored which, in the court's opinion, was not proven.

This decision has, however, been criticised for not having taken into account the CJEU's case law in which the concept of awareness was previously analysed (Judgment of the Court (Grand Chamber), 12 July 2011, Case C-324/09).

6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. to 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 current e-commerce legal framework, although telecom operators and/or intermediaries are not subject to monitoring obligations, they must, immediately upon becoming aware of it, inform the public authorities of the detection of content made available through the services they provide whenever the availability of, or access to, such content may constitute a crime of child pornography or a crime of discrimination and incitement to hatred and violence.

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

Portuguese law does not provide for any dedicated net neutrality requirements.

The principles of limited net neutrality set out in Regulation (EU) 2120/2015 of 25 November 2015, laying down measures concerning open internet access (Connected Continent Regulation) apply.

Under the Connected Continent Regulation, Internet Service Providers (ISPs) must treat all traffic equally, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.

However, net neutrality suffers limitations. ISPs may block, decelerate, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services, or specific categories thereof: (i) where it is necessary to ensure compliance with national or EU legislation on the legality of content under criminal law, or with measures to enforce such legislation; (ii) in cases of preservation of network security and integrity; or (iii) in situations where it proves necessary to minimise network congestion, which must be temporary or exceptional.

On 6 June 2016, BEREC published its draft Guidelines on the Implementation of European Net Neutrality Rules by National

Regulators (including the Portuguese regulator ANACOM). Interpreting Article 3 of the Connected Continent Regulation, the BEREC Guidelines point out that operators are permitted to offer free access to applications (e.g., a streaming service) provided this is not subject to preferential traffic. The BEREC Guidelines point out that specialised services can only be offered if regular services are in no way affected and not as a higher-price alternative to otherwise degraded basic services.

As with zero-rating offers, BEREC points out that, while they are not generally prohibited, any blocking or decelerating of all applications, except the zero-rated ones once the data cap is reached, would be illegal.

On the matter of zero-rating offers, ANACOM further assessed the BEREC Guidelines, ruling in July 2018 that a number of zero-rating and similar offers made available by ISPs were in breach of the applicable European standards. At the basis of ANACOM's decision were the following irregular practices: (i) differentiated traffic management practices for general caps and specific caps or for applications without data consumption limits; and (ii) impossibility of some specific data caps being used in the EEA under the same conditions as in Portugal (non-compliant with the "roam like at home" principle).

6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content? Are consumer VPN services regulated or blocked?

The basic framework for all categories of platforms and types of content is provided by the E-Commerce Directive and Electronic Commerce Law. For the time being, consumer VPN services are not subject to dedicated requirements under Portuguese law.

Telecommunications operators and/or ISPs (network operators) must block access to certain websites or content under specific circumstances that involve unlawful content or information. Where network operators are clearly aware of illegal activity or information associated, or where the illegal nature is clear and manifest, they are required to inform the authorities immediately and to remove or make it impossible to access that information.

At the EU level, rules for two specific types of content strengthen the above rules. These relate to: (i) the Child Sexual Abuse and Exploitation Directive, which requires Member States to take removing and blocking measures against websites that contain or disseminate child sexual abuse material; and (ii) the Counter-Terrorism Directive, requiring the removal and/or blocking of websites containing or disseminating terrorist content.

6.5 Is there any regulation applicable to companies that act as 'intermediaries' or 'platforms' in their role of connecting consumers with goods, services, content, or are there any proposals for such regulation? Include any proposals or legislation regulating social media platforms in relation to online content or safety.

Besides the ordinary duties under the Electronic Commerce Law, the Portuguese legislature has recently enacted landmark rules applicable to online marketplace providers, setting out their joint and several liability for lack of conformity of goods, content or digital services made available through professional users under certain circumstances.

The new rules on online marketplace providers appear in the recently enacted Decree-Law 84/2021 of 18 October, which implements Directives 2019/771 and 2019/770.

Since 1 January 2022, the liability of the online marketplace provider depends on the role and level of influence they play in contracts concluded between professional users and consumers. Online marketplace providers will be jointly and severally liable with professional users whenever the following circumstances are met:

(i) the contract is executed, or payment is made exclusively through means made available by them;
(ii) the terms of the contract with the consumer are essentially determined by them; or
(iii) advertising is focused on them, and not on professional users.

Whenever online marketplace providers do not meet the requirements outlined above, special duties to inform consumers via the platform are nonetheless established by this Decree-Law.

In December 2020, the European Commission proposed a package for the amendment of Directive 2000/31/EC, the Digital Services Act Package. This Package includes two legislative initiatives: the Digital Services Act (DSA); and the Digital Market Act (DMA). Both the DMA and the DSA seek to contribute to online safety and the protection of fundamental rights, and to foster innovation and growth in the European Single Market.

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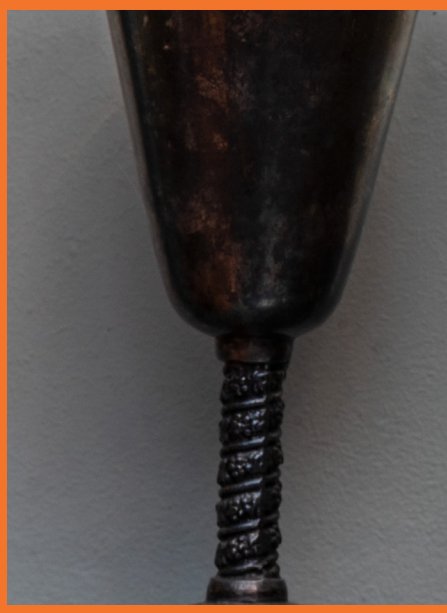

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