



**CHAMBERS**  
Global Practice Guides

**TMT**

**Brazil – Law & Practice**

Contributed by  
Barretto Ferreira e Brancher  
(BKBG)

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# BRAZIL

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## **LAW & PRACTICE:**

p.3

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

# Law & Practice

*Contributed by Barretto Ferreira e Brancher (BKBG)*

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## **BRAZIL LAW & PRACTICE**

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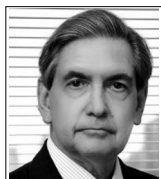
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**Barretto Ferreira e Brancher BKBG** provides legal advice in the areas of electronic commerce, internet and new technologies (contractual, tax and consumer law and fundamental individual rights issues). Expertise includes the definition of strategies, risk management and legal reviews for the adaptation of products, services and tools to applicable standards, the preparation of legal opinions on data

protection issues and the production of service terms of use, privacy policies and content removal policy. The team also advises on complete IT legal services, the structuring of transactions, the negotiation of contracts, procurement, litigation, software licensing, outsourcing, supply contracts and service level issues.

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## 1. General Structure of TMT Regulation and Ownership

### 1.1 Statutes, Laws and Legislation

The telecommunications sector is governed overall by Law 9,472/1997, known as the Telecommunications Act, which sets out that the Executive Branch is responsible for establishing telecommunications policy, whereas the National Telecommunications Agency (Anatel) is in charge of implementing such policy by regulating and supervising the sector having in view two main objectives: competition and the universalisation of public telecommunications services.

Anatel's regulations establish specific rules for each telecommunications service.

Fixed-switched telephone service (FSTS) is defined in Decree 6,654/2008, known as the General Grants Plan, as a

telecommunications service designed for communication between fixed determinate points using telephony processes. FSTS is provided under the public regime by incumbent providers (ie concessionaires whose controlling stake was previously held by the government) and by new entrants through authorisation. Anatel regulates FSTS under Resolution 426/2005.

Mobile telephony is regulated under Resolution 477/2007 and defined by Anatel as a Personal Mobile Service (PMS, or Serviço Móvel Pessoal), which consists of a terrestrial mobile telecommunications service of community interest that enables communication between mobile stations and between mobile stations and other stations. PMS is rendered under private regime, but requires the prior authorisation of Anatel.

Anatel also regulates the Exploitation of Personal Mobile Services via Virtual Networks (Resolution 550/2010), thus making possible the supply and resale of mobile telecommunications services through Mobile Virtual Network Operators (MVNOs). Under Anatel's Resolution 550/2010, an MVNO can operate either as an Accredited Virtual Network Operator through a representation agreement or as an Authorised PMS Operator by means of a Virtual Network under a virtual network licence granted by Anatel. As regards the media sector, Brazilian law distinguishes free-to-air television (broadcasting services) from pay-television services, which are considered telecommunications services but submitted to a different set of rules. Broadcasting services are regulated under Law 4,117/1962, known as the Telecommunications Code, but the policy guidelines for the broadcasting sector are established by the Brazilian Constitution as regards providing for the promotion of national and regional culture and the fostering of independent production, respect for ethical, social and family values, and preference for educational, cultural and informative content.

A pay-television service is defined by Law 12,485/2011 as a Conditional Access Service (*Serviço de Acesso Condicionado, SeAC*), which is a telecommunications service of collective interest rendered under private regime, but regulated by Anatel under Resolution 581/2012.

Wireless (or fixed broadband) is defined by Anatel as a Multimedia Communication Service (*MCS, or Serviço de Comunicação Multimídia*) and defined as a telecommunications service of collective interest rendered at the domestic and international level under private regime, which enables the supply, transmission, emission and receipt of multimedia information, also enabling the provision of internet connection, using any media, to the subscribers of a service provision area. Its regulation is set out under Anatel's Resolution 614/2013.

The right to make use of satellites for the transmission of telecommunications signals is regulated by Anatel's Resolution 220/2000. This regulation determines the conditions for conferring Brazilian and foreign satellite exploitation rights, and for their use in order to transmit telecommunications signals.

Internet connection providers and internet application providers are regulated by Law 12,965/2014, known as *Marco Civil da Internet*, or the Civil Rights Framework for the Internet, which establishes principles, guarantees, rights and obligations concerning the use of the internet in Brazil, in addition to providing guidelines for the Public Administration on the matter.

### 1.2 Government Ministries, Regulatory Agencies and Privatised Entities

The Ministry of Communications is charged with establishing public policy regarding the telecommunications sector, but the authority to regulate and supervise telecommunications services is granted under the Telecommunications Act to Anatel, which is responsible for implementing the national public telecoms policy and for carrying out most administrative activities relating to telecoms service providers. Anatel does not limit itself to setting prices and ensuring quality and universality goals are met, but also has the objective of promoting and guaranteeing free competition, which is done in close collaboration with the Brazilian antitrust agency, the Administrative Council for Economic Defence (CADE).

Broadcasting services are subject to control, supervision and monitoring by the Ministry of Communications jointly with the Brazilian National Congress.

Audio-visual content is regulated by the National Cinema Agency (*Ancine*), which is responsible for the registration of audio-visual works and implementation of government policies for development of the national cinematographic sector.

The use and development of internet service initiatives is co-ordinated by the Brazilian Internet Steering Committee (*CGI.br*), which was created under Presidential Decree 4,829 of 3 September 2003 with the purpose of promoting technical improvements, innovation and the spreading of the internet services available.

The Ministry of Science, Technology and Innovation is charged with establishing policies in technological development, including informatics and automation, through the Secretariats of Informatics and of Technology and Innovation.

The transfer of technology, and the intellectual property rights related to industrial applications and uses are co-ordinated by the National Institute of Industrial Property (*INPI*), which is subordinated to the Ministry of Development, Industry and International Trade.

Furthermore, all companies that deliver any telecommunications services, including radio and television broadcasting, are subject to the general legislation regarding the prevention and repression of violations of the economic order, especially Law 12,529/2011 (the Antitrust Act). Thus, all acts of concentration or acts that might entail violation of such laws must be submitted to the CADE.

### 1.3 Developing Rules and Adopting Policies

The development of policies and of the regulatory framework in the telecommunications and media sector is carried

out by Brazilian ministries and regulatory agencies through public consultations, under the constitutional principles of efficiency, transparency and public participation, with the purpose of collecting input on matters that may affect civil society, industry and the government.

In 2015, the Brazilian government created the Participa.br platform ([www.participa.br](http://www.participa.br)), which encompasses all public consultation in progress, including those involving communications and technology matters.

#### **1.4 Ownership of Telecoms Media Technology Industries**

From the 1970s until the late 1990s, telecommunications services were operated directly by the federal government, under a monopoly regime. Law 5,792/1972 created Telebrás with the purpose of controlling all telephony operators in Brazil as a ‘general concessionaire’. Telebrás was created in the form of a private and public joint-stock company, with the majority of its voting capital held by the government. Telecommunications were managed in this way for over 20 years.

However, the lack of investment capacity on the part of the state and administrative difficulties resulting from state control became barriers to the development of telecommunications in Brazil. There was a need to restructure the sector, and change began mainly under Law 9,472/1997, known as the Telecommunications Act, which implemented a new regulatory framework and denationalised state-owned telecommunications companies.

The denationalisation process was completed in 1998, when the federal state-owned telecommunications companies were sold to private entities. The Act also established Anatel, the independent regulatory and supervisory agency for telecommunications services. Anatel has authority to regulate and supervise telecommunications services.

Technology industries in general are managed and controlled by the private sector. The government is charged with implementing policies pertaining to technological development and innovation.

#### **1.5 Limits on Participation**

After the Telecommunications Act ended the state monopoly, it was necessary to develop a regulatory environment to facilitate the entry of new players into the telecommunications market. It was with the purpose of introducing competition that Anatel issued many regulations, including regulations on interconnection and infrastructure sharing, and limitations on cross-ownership.

In addition, the Telecommunications Act granted Anatel authority to monitor and supervise the economic aspects of

the telecommunications market. Lately, the Brazilian government has been encouraging the entry of new players into the telecommunications market as a means of fostering competition in the sector. An example is the National Broadband Plan, which will be addressed below.

More recently, the new Law 12,529/2011, known as the Antitrust Act, submitted all telecommunications companies to general laws regarding the prevention and repression of violations against the economic order. The Antitrust Act defines the conduct and acts that constitute violation of the economic order, to the extent that they aim to or may limit, falsify or in any manner adversely affect free competition or free enterprise, dominate a relevant market of goods and services, arbitrarily increase profits, or abuse a dominant position, and the acts or transactions (ie mergers and acquisitions) that may limit or in any way harm free competition, or result in the domination of relevant markets of goods and services, which acts will be subject to examination by the Administrative Council for Economic Defence (CADE).

In 2012, Anatel issued a General Competition Plan, which aims to identify groups with Significant Market Power (SMP) and create solutions through regulatory asymmetries, ie measures regarding transparency, equal treatment, price control and obligatory access, among others. For an initial period, SMP groups have to run public offers for infrastructure sharing, but at the same time they have a “regulatory holiday” of nine years from fibre-optical infrastructure sharing, with the purpose of increasing their investment.

As regards broadcasting, the Brazilian Constitution expressly provides that communications media may not be subject to monopoly or oligopoly. However, there is no specific regulation regarding media plurality in Brazil. Broadcasting ownership has for decades been concentrated in the hands of a few, including Congress representatives, who are not allowed to hold free-to-air broadcasting television and radio licences. The licences for open broadcasting television are awarded for 15 years and those for radio are awarded for ten years, but non-renewal thereof depends on two-fifths of National Congress votes. So there is a strong political influence favouring the perpetuation of media conglomerates.

The formulation of a democratic media regulatory framework to regulate the power of media conglomerates has been under discussion by civil society participants, politicians and some media entrepreneurs over the past few years.

#### **1.6 Restrictions on Foreign Ownership or Investment**

In general, there are no restrictions on foreign capital in the telecommunications sector. However, Decree 2,617/1998 requires that companies licensed to deliver telecommunications services must be organised under Brazilian laws and



have their headquarters in Brazil. This Decree also requires that a majority of the capital of the company be owned by a person (individual or entity) domiciled and headquartered in Brazil.

The rules are different for broadcasting. At least 70% of the ownership of radio and free-to-air broadcasting companies is restricted to native Brazilians or persons who have been naturalised Brazilians for more than ten years, and they must be responsible for the company management and programming policy. In addition, foreign ownership in broadcasting companies' stocks may not exceed 30% of the total voting stock of these companies, and can only occur indirectly by means of a legal entity organised under Brazilian laws and based in Brazil.

### 1.7 World Trade Organization Membership

Brazil is a member of the World Trade Organization. At present Brazil has not undertaken any specific commitments under the General Agreement on Trade in Services regarding telecommunications.

### 1.8 Appellate Process

The Telecommunications Act provides that no sanction shall be applied without prior opportunity for full defence. Thus, the decisions rendered at various administrative levels of Anatel can be subject to appeal before Anatel's board of directors. Should a final administrative decision be issued against the interested party, the defendant company has the right to appeal to a federal judicial court, as provided in the Brazilian Constitution, by filing a writ of mandamus, or any other more suitable type of judicial lawsuit, on grounds of illegality or unquestionable right. Appeals are regulated in a very detailed manner in Anatel's regulations on administrative proceedings. The grounds may be based on law and/or case law, as well as on the procedural defects of administrative decisions.

### 1.9 Annual or Recurring Fees

The Telecommunications Act establishes that concessions, permits and authorisations to exploit telecommunications services and radio frequencies, for any services, as well as satellite exploitation, are always granted on an onerous basis.

The concessions, permits and authorisation for use of radio frequencies and satellites are granted against payment of a public price which must be calculated in accordance with the applicable regulations, and is subject to a bidding process.

Authorisation to provide a telecommunications service is granted against payment of a public price in the amount of BRL9,000 (approximately USD2,500) for most services, such as mobile services and FSTS, while for data services, such as multimedia communications services, the fee is BRL400 (approximately USD100). Broadcasting concessions are granted

against payment of the amount established by the Ministry of Communication in the bidding invitation.

In addition, all telecommunications companies are subject to several fees levied on their income from the service rendered, which are collected by Anatel.

Law 5,070/1966 created the Funds for the Inspection of Telecommunications (FISTEL) imposing two inspection fees: (i) the Installation Inspection Fee (TFI), which is the fee for the inspection of the installation of stations; and (ii) the Operating Inspection Fee (TFF), which is the fee for the inspection of the functioning of stations. The TFI is charged when a licence certificate is issued for the telecommunications station. At present, the TFI varies from BRL26.83 (approximately USD7) to BRL1,340.80 (approximately USD350), depending on the service provided. The TFF, however, is paid annually on 31 March of each year and corresponds to 33% of the amount due by way of TFI.

In addition, Law 9,998/2000 instituted the contribution to the Telecommunications Services Universalisation Fund (FUST), in the amount of 1% of gross operating income derived from telecommunications services in the public and private regimes.

Law 10,052/2000 instituted the contribution to the Fund for the Technological Development of Telecommunications (FUNTTEL), imposing a fee due from all telecommunications service providers at the rate of 0.5% of the monthly gross operating income derived from the provision of services.

Provisional Measure 2,228-1/2001 created a special contribution entitled the Contribution for the Development of the Domestic Film Industry (CONDECINE) aimed at stimulating audio-visual production. CONDECINE is payable to the National Cinema Agency (Ancine) and levied on the marketing and promotion, production and distribution of commercial motion picture and audio-visual works. The due amount is calculated based on the information provided by the companies to Anatel, that information being thereafter conveyed to Ancine.

Also, CONDECINE is assessed at the rate of 11% on the amounts paid to foreign producers, distributors or intermediaries, in consideration for the commercial use of motion picture or audio-visual works, or their purchase or import. An exemption of CONDECINE is granted if the entity invests an amount equal to 3% of the income paid, credited, used, remitted or delivered on Brazilian audio-visual productions approved by Ancine.



## **2. Broadcasting/Media**

### **2.1 Important Companies**

Brazilian audio and image broadcasting services are characterised by the predominance of private television networks, with the presence of some public broadcasting stations, albeit in a marginal position. There are five private national television networks in Brazil, namely Globo, SBT, Bandeirantes, Record, and Rede TV. The most important public broadcasting stations include TV Brasil (EBC) and TV Cultura (mainly in the State of São Paulo).

As regards pay television, there are four major companies: NET Serviços de Comunicação S/A (Embratel/Claro/America Móvil Group), Sky Brasil Serviços Ltda. (Sky), Vivo S.A. (Telefónica Group), and Oi (Brazilian Group).

### **2.2 Requirements for Obtaining a Licence/Authorisation to Provide Services**

Broadcasting services are classified, according to the type of content, into audio broadcasting (radio) and audio and image broadcasting (free-to-air television).

The Brazilian Constitution determines that it is incumbent on the Federal Executive Department to grant and renew concessions, permits and authorisations for radio and television broadcasting services, and that the National Congress will examine the act within a term of 90 days from receiving the notification. A public competitive bidding process ensuring equal conditions for participants will precede the grant for the operation of broadcasting services. Also, a broadcasting company may not own more than two channels in the same state.

In 2002, the Brazilian Congress promulgated a Constitutional Amendment which altered Article 222 of the Constitution, whose original text limited the control of broadcasting companies to native Brazilians or naturalised Brazilian individuals for more than ten years. The Constitution allows that up to 30% of the ownership of the broadcasters may be held by foreign companies.

Decree 52,975/1963, known as the Broadcasting Services Regulation, requires that a company interested in obtaining a broadcasting concession must prove the capability to perform – both technically and financially – the broadcasting activity it is applying for. In this regard, the company is required to submit its balance sheet and financial statements, as well as documents to prove the good standing of the company and its partners.

The fees to be paid for the concession or permit are established by the bidding invitation. Broadcasting companies are also subject to the payment of the TFI.

Although broadcasting services do not fall under the authority of Anatel, the Telecommunications Act assigned to this agency the responsibility for drawing up and maintaining the radio frequency spectrum allocation plan, and controlling the technical aspects of the radio and television broadcasting stations.

A pay-television service is defined by Law 12,485/2011 as a Conditional Access Service (SeAC) and the granting process takes place at the level of Anatel, at the request of parties interested in providing such a service. There are no restrictions on the number of authorisations that may be granted. In addition, no exclusivity is granted to service licensees to provide SeAC. The fee for the SeAC authorisation is BRL9,000 (approximately USD2,500), but the SeAC provider is also subject to the public price to be paid for the frequency spectrum plus regulatory taxes.

### **2.3 Typical Term for a Licence/Authorisation to Provide Services**

The Brazilian Constitution establishes that a concession or permit term is ten years for a radio broadcasting service and 15 years for a television broadcasting service.

The renewal of the concession or permit can be granted for an equal term, but depends on compliance with the following requirements during the period in which the concession was granted:

- Granting preference to education and information as well as national and regional culture in its programming.
- Not forming monopolies or oligopolies.
- Compliance with financial and fiscal obligations.

The non-renewal thereof depends on two-fifths of National Congress votes.

As regards pay-television (SeAC) authorisation, Anatel's Resolution 581/2012 establishes that it is valid nationwide for an indefinite term.

### **2.4 Transfer of Licences/Authorisations to Other Entities**

The Brazilian Constitution establishes that any changes in the corporate control of broadcasting companies must be communicated to the National Congress. In addition, Decree 52,795/1993, which regulates the transfer of concessions and permits, requires the prior authorisation of the Brazilian president in the case of direct transfer (ie when the concession is transferred to another company) or by the Ministry of Communication in the case of indirect transfer (ie when the corporate control is transferred).

The SeAC authorisation can be transferred only with Anatel's approval, and upon meeting the following requirements: the

service has been rendered for at least three years, the licence conditions have been fulfilled, and market competition is guaranteed.

### 2.5 Spectrum Allocation

Broadcasting services are allocated at several spectrums of the VHF (very high frequency) band, which is designated as being between 30MHz and 300MHz, and the UHF (ultra high frequency) band, which is designated as being between 300MHz and 3GHz.

### 2.6 Restrictions on Common Ownership

Decree Law 236/1967, which complements the Telecommunications Code (Law 4,117/1962), establishes certain restrictions on the ownership of radio and television broadcasting stations. In accordance with Decree Law 236, each entity may only hold a concession or permit to perform broadcasting services, throughout the country, within the following limits:

- Radio stations:
  - (a) local – medium wave: four, and FM: six;
  - (b) regional – medium wave: three, and the tropical bands: three (a maximum of two per state); and
  - (c) national – medium wave: two, and shortwave: two.
- Television stations: ten throughout Brazil, with a maximum of five in VHF and two per state.

However, repeater and retransmitting television stations belonging to generator stations are not included in the calculation for purposes of the relevant restrictions. Law 10,610/2002 established that the ownership limits of radio and television stations set forth in Decree Law 236 do not apply to share portfolio investments, provided that their owners do not nominate an administrator in more than one broadcasting service provider company, or in its respective parent companies, or hold more than one ownership interest constituting control or association in such companies.

Investments in portfolios are defined as funds invested in shares of publicly held companies, by individuals or institutional investors, the latter construed as investors based or domiciled in Brazil or abroad investing funds in the securities market, in a diversified manner, by force of a legal or regulatory provision or the provisions of their acts of incorporation, in which case each share will be identified by name.

The same entity or the persons integrating its list of shareholders, quota holders or management may not be contemplated with more than one grant for the same type of broadcasting service in the same locality. However, Law 12,485 determines that broadcasters and audio-visual producers and programmers can hold up to 50% of the total voting capital of telecommunications service providers. On the

other hand, telecommunications service providers can hold up to 30% of the total voting capital of broadcasters and audio-visual producers and programmers.

### 2.7 Content Requirements and Regulations

Free-to-air broadcasting companies are subject to several requirements with respect to content, namely:

- Setting aside at least 5% of their daily programming time for the transmission of a news service;
- Limiting commercial advertising to a maximum of 25% of their daily programming time;
- Reserving five hours per week for the transmission of educational programming, which shall be aired between 7am and 5pm;
- Broadcasting weather bulletins and daily news programmes;
- Broadcasting, with absolute priority, and on a gratuitous basis, the notices issued by the competent authority in cases of disturbance of the peace, fire or flooding, as well as those related to unforeseen events; and
- Integrating broadcasting networks free of charge, when requested by the competent authority.

Also, free-to-air broadcasting companies are obliged to abide by the legal rules and instructions enacted by the Electoral Court relating to election publicity.

Conversely, the providers of pay-television services (SeAC) are obliged by law to make channels available for the following purposes:

- Channels for the integral and simultaneous distribution, without any insertion of information, of unencoded signals transmitted through analogue technology by the local generator stations of free-to-air television, in any range of radio frequency, within the limits of the concession area;
- A municipal/state legislative channel, reserved for shared use by the legislative bodies located in the municipalities of the service provision area and the House of Representatives of the relevant state, for documenting their proceedings, especially the live transmission of their sessions;
- A channel reserved for the Chamber of Deputies and the Senate, for documenting their proceedings, especially the live transmission of their sessions;
- A university channel, reserved for shared use by universities located in the municipality or municipalities of the service provision area;
- A citizenship channel, organised by the Federal Government to be used for the broadcasting of the programming of local communities and the public acts of the municipal, state and federal powers;
- An open community channel for free use by non-governmental and non-profit entities;

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- A channel reserved for the Supreme Court of Brazil, to be used for the disclosure of acts of the judiciary and essential services of the courts;
- An educational and cultural channel, organised by the Federal Government to be used for the development of distance education for students and teachers, as well as the transmission of cultural productions and regional content;
- A channel reserved for the Executive Branch to be used for public broadcasting services, as a means of promoting the universalisation of communication, information, education and culture rights, as well as other social and human rights; and
- A channel reserved for the official Executive Branch broadcaster.

The SeAC provider can freely programme the remaining channels, provided that it complies with the content quotas set forth in Law 12,485/2011 in order to promote national and regional culture, and artistic and journalistic production, as well as stimulate independent production, namely:

- At least three and a half hours per week in prime time must be reserved for Brazilian content, and in addition, half of this content must be produced by independent Brazilian producers.
- For every three channels, at least one must be a Brazilian channel. In addition, one-third of the Brazilian channels must be programmed by independent Brazilian programmers. This rule will apply up to the limit of 12 Brazilian channels.
- In addition, for the Brazilian channels mentioned above, at least two channels must transmit a minimum of 12 hours of Brazilian audio-visual content produced by independent Brazilian programmers, of which three hours should be during prime time.

Furthermore, in order to guarantee effective protection to children and adolescents, the Brazilian Constitution requires that prior information be given on the age bracket recommended for each audio-visual work (ie films, entertainment shows and electronic games). Under Ordinance 368/2014 of the Ministry of Justice, the criteria that guide the public policy for content rating are based on three broad themes: sex, drugs and violence, which is the content considered inappropriate to the upbringing of children and adolescents. The analysis is made by assessing against each other the frequency, relevance, context, intensity and importance to the plot of scenes, dialogues and images containing violence, drug use and sex/nudity. This margin of subjectivity ensures flexibilities that are critical to the process and to the resulting rating.

## 2.8 The Difference in Regulations Applicable to Broadcasting Versus Cable

Brazilian law distinguishes free-to-air broadcasting from pay-television services, which are considered telecommunications services and submitted to a different set of rules. Free-to-air broadcasting is regulated by the provisions of the Telecommunications Code and Decree 52,795/1963 and is submitted to the control of the Ministry of Communication, a branch of the direct federal administration, subordinated to the President of the Republic.

Pay-television services are regulated by Law 12,485/2011 and submitted to the control of Anatel, the telecommunications regulatory agency in Brazil, which operates under the authority of the Ministry, the competent authority for defining public policy.

It bears mentioning that Internet Protocol television is not regulated in Brazil. There is no need for any authorisation or permit. Law 12,965/2014, which establishes the rules for the internet, provides that one of the principles of the use and provision of services is the freedom of business models promoted on the internet, provided that they do not conflict with other provisions established in the Law.

## 2.9 Transition from Analogue to Digital Broadcasting

Decree 5,820/2006, issued by the government to regulate the deployment of digital television, sets forth that the Brazilian Terrestrial Digital Television System (*Sistema Brasileiro de Televisão Digital Terrestre*, SBTVD-T) is based on the Japanese ISBD-T (Integrated Services Digital Broadcasting – Terrestrial) signal standard, with the possibility of incorporating technological innovations created in Brazil.

SBTVD-T is expected to enable television broadcasting stations to provide high-definition digital transmission (HDTV) and standard-definition transmission (SDTV), simultaneous transmission for fixed, mobile and portable receipt, and interactivity.

Decree 8,061/2013 stipulates the switch-off term of analogue transmission starting in January 2015 and ending in December 2018. During the transition period, the television broadcasting stations are to simultaneously broadcast the programming in analogue and digital technology. To enable transition to digital technology without interruption of transmission of analogue signals, a new radio frequency channel with a 6MHz bandwidth will be assigned to the broadcasting concessionaires for each channel granted. After the transition term, the channels used for analogue transmission should be returned to the Federal Union.

In July 2015, the Ministry of Communication enacted Rule 2,765 setting out the switch-off schedule by date and region.



The switch-off was scheduled to start on 29 November 2015 by the city of Rio Verde, Goiás State. The São Paulo State is scheduled for 15 May 2016.

The new allocation and use conditions of the 698MHz to 806 MHz spectrum bands – where the analogue broadcasting is currently allocated – are provided by Anatel's Resolution 625/2013. These bands will be used for the offer of FSTS, PMS, MCS and SeAC broadcasting, among other specific telecommunications services. The authorisation licences have been granted under bidding processes launched by Anatel.

### **2.10 Extent to which Local Government Regulation is Pre-Empted**

There is no local government regulation of broadcasting and media. The Brazilian Constitution establishes that the Union, through the National Congress, has the exclusive power to legislate on broadcasting.

## **3. Telecoms**

### **3.1 Important Companies**

The Brazilian telecommunications sector is made up of large conglomerates of multiple scopes, ie local incumbent operators that currently provide fixed-switched telephony, mobile telephony, broadband and pay-television services, thus resulting in a high level of market verticalisation/concentration. An illustrative company is the América Móvil Group, which owns Claro (mobile telephony), NET (pay television), Embratel (fixed-switched telephony) and Star One (satellite exploitation). These companies have been recently merged into one company, operating under the trade name/trademark Claro. The América Móvil Group owns 31% of the Brazilian broadband market and 51% of the pay-television market.

Other important companies are Telefónica Group (Vivo) and Oi, which operate in mobile telephony, broadband, pay-television and fixed-switched telephony markets, and TIM (Italia Mobile Telecom), which provides mobile telephony.

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

A telecommunications service licence can only be granted to companies organised and existing under Brazilian law that have their principal place of business and administration in Brazil and have been created to exploit such services. Licensees that do not satisfy these requirements will be subject to the commitment to adapt themselves or set up a new company that complies with such requirements prior to the execution of the concession, authorisation or permission contract.

The Telecommunications Act determines that any company granted a concession that already renders, in the same geographical area, the same type of service subject to a bidding

procedure will be obliged, within 18 months from the execution date of the concession agreement, to transfer the service previously rendered to a third party. The non-observance of this provision may result in the forfeiture of the licence, as well as other sanctions set forth in the grant procedure.

In addition, telecommunications companies must comply with the general conditions established by Anatel as regards each licensed service, such as accessibility and quality goals. As regards mobile telephony (Personal Mobile Service – PMS), its general regulation is provided by Resolution 477/2007 and its quality regulation is provided by Resolution 575/2011. The general regulation of fixed-switched telephone services (FSTS) is provided by Resolution 426/2005 and their quality regulation is provided by Resolution 605/2012. Multimedia Communication Services (fixed broadband) are regulated by Resolution 614/2013 and their quality goals are provided by Resolution 574/2011. Finally, Law 12,485/2011 establishes general rules on pay-television (SeAC) services, and Anatel regulates them through Resolution 581/2012. Their quality regulation is provided by Resolution 411/2005.

### **3.3 Transfer of Telecoms Licences/Authorisations to other Entities**

Under the Telecommunications Act, concessions and authorisations can be transferred only with Anatel's prior approval, and by meeting the following requirements: the service has been rendered for at least three years, the concession conditions have been fulfilled (tax, technical and financial regularity, for example), and market competition is guaranteed. Furthermore, the Telecommunications Act expressly determines that the licensed frequency spectrum can only be transferred along with the corresponding telecoms service licence.

It is worth mentioning that changes of corporate control and mergers are also subject to analysis by Anatel and the Administrative Council for Economic Defence (CADE), the Brazilian antitrust agency, when appropriate.

### **3.4 Regulations for Network-to-Network Interconnection and Access**

Interconnection agreement negotiations must take place from the moment the interconnection is requested by one of the parties. As previously mentioned, the conditions for network interconnection will be the subject of free negotiation between interested parties, by means of the execution of an agreement, up to 60 days from the date the interconnection request was made.

The enforceability of the agreement executed depends on homologation by Anatel, which may deny homologation if the agreement is prejudicial to broad, free and fair competition, or further order its amendment, in which case the parties will have 30 days to make the necessary amendments,

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forwarding the new version for examination. Following homologation, a copy of the interconnection agreement and its later amendments will be made available to the general public for reference purposes at Anatel's library.

However, if the term for negotiation between the parties expires and there is an impasse, Anatel will arbitrate the interconnection conditions, at the initiative of one of the parties. Following homologation of the interconnection agreement by Anatel, the implementations provided will be operational for the full interconnection between the networks within up to 90 days.

The interconnection agreement must as a minimum specify:

- The method, manner and conditions under which the interconnection will be provided;
- The rights, warranties and obligations of the parties;
- The prices to be charged, when not established by Anatel;
- The methods of settling accounts between the parties;
- The infrastructure-sharing conditions;
- The technical conditions related to the implementation and quality of the interconnection;
- The applicable penalties and other sanctions; and
- The venue, jurisdiction and methods for the extrajudicial solution of contractual controversies.

In the event of non-compliance with the stipulated terms, the responsible party will be required to indemnify the aggrieved party, pursuant to the conditions and amounts provided in the interconnection agreement, unless otherwise agreed by the parties.

The maximum amounts to be charged by way of network remuneration are currently controlled by Anatel, which is responsible for the price-level restatement of these amounts, from time to time. Anatel ceases to establish the interconnection rates to be paid by the providers and the public fees, to the extent that competition is implemented and secured in the sector. It is important to remember that Anatel controls the public fees charged by the FSTS concessionaires with the users, adjusting them annually.

As provided in the General Interconnection Regulation, arbitration before Anatel may be at the initiative of either of the parties, to settle any conflicts that may arise in the course of the application and interpretation of the regulations, during the development of negotiations for the interconnection agreement.

The arbitration is not to be confused with possible administrative claims or mediation provided for in Anatel's Internal Statutes. Arbitration is a specific administrative procedure aimed at Anatel's homologation of the interconnection conditions, owing to the impossibility of an agreement between

the parties. However, if during the course of the arbitration the parties reach an agreement in respect of the controversy, Anatel will, following analysis of the terms of the agreement, homologate it.

The submission of any issue to arbitration does not exempt the providers and Anatel from the obligation to perform fully the interconnection agreements in force, or permit the interruption of activities associated with such agreements. Annex III of the General Interconnection Regulation establishes the basic rules and procedures to be followed by the parties and Anatel itself.

The decisions of the Arbitration Commission may be the subject of appeal. Appeals are received under a merely reviewing effect (not a *supersedeas* bond), except when the performance of the act under appeal may result in the invalidity of the final decision, as in the case of a denying of a request for confidentiality. The General Interconnection Regulation further delegates to the parties the possibility of developing their own arbitration process, the result of which will be forwarded to Anatel for evaluation and homologation.

### 3.5 Accounting, Functional and Legal Separation

Anatel's Resolution 73/1998, which approves the Telecommunications Services Regulation, establishes that telecommunications companies must keep accounting records separated per service, as well as provide to Anatel all information concerning their operations, corporate changes, supply contracts and agreements entered into with other operators.

### 3.6 Provisions for Access to Public and Private Land

Law 13,116/2015, recently enacted and known as the General Antenna Law, requires the licensing for placement of infrastructure and telecommunications networks in urban areas to be based on certain principles, such as

- Reasonableness and proportionality;
- Efficiency and celerity;
- Integration and complementarity between the activities of supporting infrastructure deployment and urbanisation;
- Reducing the impact on the landscape of the telecommunications infrastructure, wherever technically feasible and economically viable; and
- Safeguarding against the effects of non-ionising radiation emission, according to the parameters set by law.

Also, the Law establishes that whenever the licence required for the installation of telecommunications infrastructure in urban areas involves an environmental licence, the applicant may combine these two licence requests into one single application, respecting the rules stipulated by the Brazilian National Environmental Council (CONAMA).

The General Antenna Law prohibits charging for the right of way in respect of public roads, waysides and other public properties of common use. However, if the equipment is installed in a public property, the parties shall freely set an amount for the right of way. A telecoms services licensed operator may agree with another one a co-location of equipment/network at a public property under a contract which may or may not provide for a fee. Also, towers may be shared under special agreements among telecoms service providers.

### 3.7 Rules which Govern the Use of Telephone Numbers

Brazil adopted a numbering plan based on the Recommendation E.164 of the International Telecommunication Union (ITU), and regulated by Anatel through Resolution 83/1998. Fixed-switched telephone service (FSTS) and personal mobile service (PMS) numbers follow the standard: a two-digit area code plus an eight-digit subscriber number. The format for a subscriber number is (aa)nnnn-nnnn, where the first digit identifies the service associated with the telephone number: 2 to 5 for fixed phones and 6 to 9 for mobile phones. As from 2014 until the end of 2016, Anatel is implementing a nine-digit standard for PMS lines in area codes from all states. For long-distance dialling within Brazil or abroad, a carrier selection code is needed and varies according to the area code, depending on the operator licensed for the region.

As regards number portability, Anatel's Resolution 460/2007 sets forth that it is permitted only between providers of the same class of telecommunications services, limited to FSTS and PMS. For example, a user may request number portability provided that they remain in the same area, and this request relates to the same telecommunications service (FSTS or PMS). According to the regulations, applying for number portability from FSTS to PMS or vice versa is not permitted.

### 3.8 Regulation of Retail Tariffs

Retail tariffs are regulated by Anatel, but are only applied to telecommunications services provided under the public regime, ie fixed-switched telephone services. According to Anatel's Resolutions 73/1998 and 522/2010, the maximum charges for subscription are set out in advance by Anatel in the concession contract.

On the other hand, as regards telecoms services provided under private regime, charges may be freely established, but must be fair, equitable and non-discriminatory, and may vary depending on the technical characteristics and the facilities offered to users.

### 3.9 Rules to Promote Service in Underserved Areas

The Telecommunications Act establishes that it is incumbent on Anatel to guarantee access to telecommunications services to the entire population at reasonable rates and prices under adequate conditions; to strengthen the regulatory and

supervisory role in sectors in which the state has ceased to operate as an entrepreneur; and to promote universal access and foster competition.

Universalisation of telecommunications services means the possibility for any person or public interest institution to access public telecommunications services, regardless of location or socio-economic condition. Fixed-switched telephone services (FSTS) are the only telecommunications services rendered under the public regime. This means that only FSTS concessionaires are required to comply with the universalisation and continuity obligations, which are periodically reviewed by Anatel.

If the obligations are breached, the concessionaire will be subject to the imposition of a fine, forfeiture or intervention decree, as applicable. All other services are rendered under private regime, and they are not required to achieve the universalisation goals.

However, all telecommunications companies whether under public or private regime are subject to Law 9,998/2000, which instituted the contribution to the Telecommunications Services Universalisation Fund (FUST) in the amount of 1% of gross operating income derived from telecommunications services.

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

There is no local government regulation of telecommunications services. The Brazilian Constitution establishes that the Union, through the National Congress, has the exclusive power to legislate on telecommunications.

## 4. Wireless

### 4.1 Important Companies

The wireless industry is composed of companies licensed by Anatel to render Multimedia Communication Services. The most important companies are: Oi, América Móvil (controller of Claro, Embratel and NET), Vivo, and Algar Telecom.

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

Under Brazilian law, wireless service corresponds to fixed and mobile broadband. Fixed broadband is defined by Anatel as a Multimedia Communication Service (MCS, or *Serviço de Comunicação Multimídia*) and mobile broadband is provided jointly with mobile telephony, which is defined as a Personal Mobile Service (PMS, or *Serviço Móvel Pessoal*). Both services depend on previous authorisation by Anatel and may be associated with the right of use of a radio frequency.



The rendering of the MCS does not include the transmission, emission and reception of information of any nature that can amount to the rendering of fixed-switched telephone services (FSTS), broadcasting services, and pay television (SeAC), as well as the supply of audio and image signals in an unrestricted and simultaneous manner to subscribers.

Anatel Resolution 614/2013 establishes that to obtain the authorisation to provide an MCS, interested companies must:

- Be organised according to Brazilian laws with their head offices and administration in Brazil;
- Not be forbidden to bid or to contract with the Public Power; not have been declared incompetent or not have been punished, in the two previous years, with the cancellation of a grant, permission or authorisation to provide telecommunications services, or the cancellation of the right to use radio frequencies;
- Have legal and technical qualification to provide the service, as well as economic and financial capacity and tax compliance, and to be compliant with the Social Security; and
- Not be, in the same service area, or a part thereof, in charge of providing the same kind of service.

Anatel determines whether these conditions are satisfied and must decide on an application within 90 days of its submission date. The number of authorisations for the exploitation of the MCS is unlimited.

The authorisation of an MCS is granted for an indeterminate period of time and requires the payment of a public price in the amount of BRL9,000 (approximately USD2,500) plus annual fees, such as TFI and TFF and the Contribution for the Development of the Domestic Film Industry (CONDECINE), as described in 1.9.

However, PMS authorisation enables communication between mobile stations and between mobile stations and other stations. According to Anatel's Resolution 321/2001, which provides the Regulation on the General Plan for PMS Authorisations, the PMS provider must be organised under Brazilian law and have its head offices and administration in Brazil. A provider, or its parent, subsidiary or associated company, is prohibited from rendering PMS by means of more than one authorisation, in the same geographical service provision area, or a part thereof. In addition, a PMS provider is subject to several duties and obligations before Anatel, which are established in the PMS Regulation (Anatel's Resolution 447/2007).

The authorisation of a PMS is granted for an indeterminate period of time, but the right of use of the radio frequency associated with a PMS is granted for 15 years, which can be renewed once for an equal period. It requires the payment

of a public price in the amount of BRL9,000 (approximately USD2,500) plus the annual fees mentioned above.

#### **4.3 Transfer of Wireless Licences/Authorisations to Other Entities**

As provided by the Telecommunications Act, authorisation for telecommunications services, such as MCS and PMS, can be transferred only with Anatel's approval, and upon meeting the following requirements: the service has been rendered for at least three years; the licence conditions have been fulfilled; and market competition is guaranteed.

In addition, changes of corporate control and mergers are also subject to prior analysis by Anatel and the Administrative Council for Economic Defence (CADE), the Brazilian antitrust agency, when appropriate.

#### **4.4 Spectrum Allocation**

Multimedia Communication Service (MCS, or *Serviço de Comunicação Multimídia*) and Personal Mobile Service (PMS, or *Serviço Móvel Pessoal*), which correspond to fixed and mobile broadband respectively, are allocated mainly in 700MHz, 2.5GHz and 3.5GHz bands.

#### **4.5 Procedures to Identify and Assign Spectrum Among Competitors**

The Telecommunications Act sets forth that radio frequency bands are designated for certain telecommunications services and, because of that, spectrum licences can only be granted to companies that exploit the same telecommunications services assigned on the bands.

In addition, under the Regulation on Use of Radio Frequency Spectrum (Anatel's Resolution 259/2001), the allocation of radio frequency bands consists of the inclusion of such bands in Anatel's radio frequency band allocation charts for use of one or more communications services convened by the International Telecommunication Union (ITU). Thus, only spectrums duly allocated and regulated by Anatel are subject to concession, permit or authorisation, which may be granted under a bidding process in order to guarantee fair competition between the participants.

The current chart of radio frequency band allocation is provided by Anatel's Rule 1,583 of 6 March 2015.

#### **4.6 Unlicensed Spectrum Uses**

The Telecommunications Act provides that the spectrum is owned by the public authorities and companies can use it only as previously granted by Anatel under concession, permit or authorisation. However, as an exception, Article 131 establishes that Anatel shall define the cases that will not depend upon authorisation.

At present, exemption from an installation and operation licence is applicable to:

- The use of radio frequencies by the Brazilian army; and
- Communication stations that use Radiation Restricted Equipment, except if the operation of these stations is associated with the exploitation of a telecommunications service of collective interest.

It bears mentioning that in September 2015, Anatel launched a public consultation in order to review the Regulations of Multimedia Communication Service (MCS, or *Serviço de Comunicação Multimídia*) and Private Limited Services (PLS, or *Serviços Limitados Privados*) and exempt small-sized providers with up to 50,000 operational accesses from having to obtain an authorisation before Anatel. Amendments to such Regulations are expected for 2016.

As regards Personal Mobile Service (PMS, or *Serviço Móvel Pessoal*), Anatel's Resolution 550/2010, which regulates the supply and resale of mobile telecommunication services through Mobile Virtual Network Operators (MVNOs), established the activity of a so-called Accredited Virtual Network Operator, which operates as an agent of the PMS provider by a representation agreement. The agent's activity is not defined as 'telecommunications service' and is of significant interest to companies that operate in other sectors, such as banks, football teams and large retailers. A licence is not required, but it has to apply for the homologation of the representation agreement by Anatel.

#### 4.7 Government Policy/Regulation to Promote Next Generation Mobile Services

With the purpose of increasing wireless coverage and implementing the National Broadband Plan (explained below), since 2010 the Brazilian government has been year by year launching invitations to bid for the granting of the right to use spectrum bands allocated for 3G and 4G technologies.

As regards the market of new generation networks, in which the service is provided through the use of internet platforms (ie VOD, OTTs and IoT), it is still exempt from strict regulatory control.

However, the Brazilian government has enacted Law 12,715/2012 and Decree 8,234/2014 in order to encourage the use of M2M technology by telecommunications services providers through reduction of the amount of the Installation Inspection Fee (TFI) from BRL26.80 (approximately USD6.70) to BRL5.68 (approximately USD1.40).

The Operating Inspection Fee (TFF) – which is charged to carriers annually for each active telecommunications chip – was reduced to BRL1.89 (approximately USD0.47) from BRL8.94 (approximately USD2.2).

It is worth mentioning that in November 2015 the Ministry of Communication launched a public consultation in order to debate on the review of Brazilian telecommunications model. Based on this public consultation, the Ministry of Communication will be able to redesign public policies and the current regulatory framework, which was enacted in the 1990s, in order to allow an expansion of access to land and mobile wide-band services, which currently constitute the sector's main social demand to the detriment of fixed telephony services.

#### 4.8 Price Regulation for Mobile Services

Anatel establishes that charges for telecommunications services provided under private regime (ie wireless and mobile telephony) can be freely established, but must be fair, equitable and non-discriminatory, and may vary depending on the technical characteristics and the facilities offered to users.

Interconnection charges (roaming, long-distance and local calls) are regulated by Anatel under Resolution 639/2014, which establishes reference amounts of mobile network use. At present the interconnection charge for Personal Mobile Service (PMS) network use is on average BRL0.23 per minute (approximately USD0.06 per minute). But through Acts 6,210 and 6,211 of 2014, Anatel sets out the charges intended for each telecommunications company, reducing them by 90% until 2019.

As regards international interconnection, charges are freely established by each carrier and may vary according to the service provided (ie voice and data) and the country of the terminating carrier. The conditions for network interconnection can also be freely negotiated in the interconnection agreement, but must be homologated by Anatel, provided that it is compliant with broad, free and fair competition.

#### 4.9 Regulation of Government and Commercial Wireless Uses

As a general rule, government bodies use wireless services provided by the traditional licensee companies, which are contracted through a bidding process and will be subject to the public contract rules.

An exemption is the São Paulo State Government network called INTRAGOV, which was created under State Decree 42,907/1998 based on the MPLS (Multiprotocol Label Switching) technology, its objective being to optimise integrated data networks, voice and video of public entities at state and municipal levels. The São Paulo State Government requires that interested public entities sign a co-operation agreement, comply with standards of information security, and pay certain fees established by the government. At present the INTRAGOV network has 166 signatory public entities.

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

There is no local government regulation of wireless service. The Brazilian Constitution establishes that the Union, through the National Congress, has the exclusive power to legislate on telecommunications.

## 5. Satellite

### 5.1 Important Companies

The most important Brazilian satellite operators are:

- Star One S.A., which operates 12 satellites in C, X, Ka and Ku bands at the orbital positions 63°W, 92°W, 84°W, 65°W, 70°W, 75°W, 92°W and 84°W;
- Echostar 45 Telecomunicações Ltda., which operates three satellites in C, Ka and Ku bands at the orbital position 45°W;
- Eutelsat do Brasil Ltda., which operates two satellites in C, Ka and Ku bands at the orbital positions 65.0°W and 69.45°W; and
- Hispamar Satélites S.A., which operates two satellites in C, Ku and Ka bands at the orbital position 61°W.

As regards foreign satellite operators, Brazil has:

- Intelsat Licence LLC, which operates six satellites in C and Ku bands at the orbital positions 95°W, 55.6°W, 89°W, and Ku 50.0°W, 1°W, 43.1°W, 45°W, 58°W, 53°W, 55.5°W, 18°W, 34.5°W, 24.5°W, 27.5°W and 55.5°W;
- Hispasat S.A., which operates four satellites in C and Ku bands at the orbital positions 30°W, 61°W and 55.5°W; and
- Inmarsat Solutions (Canada) Inc., which operates four satellites in L band at the orbital positions 54°W, 15.5°W and 98°W.

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

The right to exploit satellites for the transmission of telecommunications signals is regulated by Anatel's Resolution 220/2000. This regulation sets out the conditions for conferring Brazilian and foreign satellite exploitation rights, and for their use to transmit telecommunications signals.

The right to exploit Brazilian satellites for the transmission of telecommunications services assures orbit occupation and the use of radio frequencies for controlling and monitoring telecommunications via satellite. The right to exploit foreign satellites for the transmission of telecommunications signals, in turn, permits the provision of foreign satellite capacity in Brazil and the use of radio frequencies via satellite (as well as the control and monitoring of the satellite, if necessary). It does not, however, constitute a telecommunications service per se.

The regulation also defines the 'provision of space capacity' as the supply of radioelectrically visible orbits and spectrum resources to entity holders of concessions, permits or authorisations for the exploitation of telecommunications services.

The holder of the authorisation to operate the space segment must satisfy certain requirements to be granted the foreign satellite exploitation right. These requirements include:

- Notifying Anatel of its legal representative in Brazil, its commitment to maintaining up-to-date information, and its intention to provide space segment capacity only through the indicated representative;
- Presenting a document, issued by the competent authority, demonstrating the user conditions of the space segment authorised in the country of origin;
- Presenting the technical information related to the satellite system;
- Paying the amount established by Anatel for the right to exploit the foreign satellite and use the associated frequency; and
- Obtaining acknowledgement by Anatel of the performance of a prior technical co-ordination agreement with the Brazilian administration, detailing the orbital parameters and associated radio frequencies, pursuant to the provision contained in the International Telecommunication Union (ITU) Radio Communications Regulation.

As for Brazilian satellite exploitation rights, interested entities must file a standard requirement form, duly filled in, and brief, technical information about the satellite system that indicates possible usage, orbital parameters, expected frequency bands, geographic coverage and any other information as may be deemed relevant. The general rule is that granting Brazilian satellite exploitation rights should be preceded by public tender as regulated by Anatel Resolution 65/1998, unless Anatel finds it to be unviable or unnecessary.

The exploitation right will be conferred for a 15-year term, starting from the publication date of the term in the Official Gazette. This term may be extended once for a further 15 years, provided that the exploiter declares its interest up to three years prior to the expiration date of the original term and that the same technical characteristics of the satellite are maintained.

### 5.3 Transfer of Satellite Licences/Authorisations to other Entities

Anatel's Resolution 220/2000 allows the transfer of the satellite exploitation rights or the operator's corporate control, provided that it will not harm competition, and the prospective licensee will meet all requirements for space segment exploitation. The transfer can only be effected after the entry of the space segment into operation, and is subject to the



payment of a public price in the amount of BRL9,000 (approximately USD2,500).

### 5.4 Spectrum Allocation to Satellite Service

Communication satellite services are allocated in several spectrums, including C, Ka, Ku, L and S bands.

### 5.5 International Telecommunication Union Membership

Brazil has been a member of International Telecommunication Union (ITU) since 2010. Brazil has 19 satellite network filings before ITU, which allows the allocation of the Brazilian satellites.

### 5.6 Provision of Service by Foreign-Licensed Satellites

As specifically regards foreign satellite exploitation, Resolution 220/2002 sets forth that the outer space segment's owner or its operating rights' owner interested in obtaining foreign satellite exploitation rights should meet the following requirements:

- Filing with Anatel:
  - (a) its registered agent's appointment in Brazil; and
  - (b) its commitment to keep the registered agent appointment's information current and to perform the full capacity of the outer space segment exclusively through its registered agent;
- Obtaining Anatel's sanction on the previously arranged technical co-ordination of orbital parameters and associated radio frequencies with the Brazilian administration, in accordance with ITU guidelines;
- Providing brief, technical information about the satellite's system that indicates possible usage, orbital parameters, expected frequency bands, geographic coverage, and any other information as may be deemed relevant;
- Providing documents verifying that the outer space segment's term of use was duly authorised by the origin country's regulator;
- Fulfilling all legal and regulatory obligations applicable under satellite exploitation regulation; and
- Payment of foreign satellite and associated radio frequency exploitation rights fees.

### 5.7 Milestone and Due Diligence Deadlines

Brazilian law does not provide rules on the milestone or other due diligence deadlines for the construction and launching of satellites. However, Anatel can establish terms and conditions to be complied with in the bidding invitation letter or in the licence agreement. As an example, in the recent biddings for the licence of Brazilian satellite exploitation rights, Anatel established a timeline for construction and a deadline of four years for the launching of satellites in a space segment, starting from the publication date of the licence in the Official Gazette. The commitment with such a deadline

occurs through an execution guarantee term and, in the case of infringement, the space segment owner is subject to a penalty of 10% of the winning bid.

## 6. Internet/Broadband

### 6.1 Important Companies

The main internet connection (broadband) providers are Oi, América Móvil (controller of Claro, Embratel and NET) and Vivo S.A. (Telefónica Group), and the main internet application providers are Google, Facebook, Twitter and Netflix.

### 6.2 Regulation of Voice Over IP Services

The provision of VoIP is not regulated in Brazil, but there are no restrictions on its use. Anatel regulates only telecommunications services and does not regulate the technologies used to implement them. Thus, Anatel considers that VoIP technology is merely used for implementing telephony services, but is not the service itself.

### 6.3 Interconnection and Access Regulatory Conditions to IP-Based Networks

Interconnection rules are not applied to Internet Protocol-based networks but only to providers of telecommunications services defined as such by Anatel.

However, the Brazilian Network Information Centre (NIC.br) is the entity that has implemented, since December 2005, the decisions and projects designed under the Brazilian Internet Steering Committee directives on web accessibility, by creating standards for easy comprehension and access by any person (ie with disabilities and reduced mobility) in relation to websites located in Brazil (with ".br").

### 6.4 Net Neutrality Requirements

Net neutrality is regulated by Law 12,965/2014 (known as *Marco Civil da Internet* or the Civil Rights Framework for the Internet), which establishes a general rule ensuring that entities responsible for transmission, switching or routing have the obligation to process, on an isonomic basis, any data packages, regardless of content, origin and destination, service, terminal or application. In other words, in the internet connectivity provision, either free or at a cost, as well as in the transmission, switching or routing, it is prohibited to block, monitor, filter or analyse the content of data packets.

The cases in which discrimination or degradation of traffic will be allowed are still pending specific regulation to be introduced after public consultations promoted by the Ministry of Justice, Anatel and the Brazilian Internet Management Committee (CGI.br).

### 6.5 Government Regulation of Internet/Broadband

Under Decree 7,175/2010, the Brazilian government has been implementing the Programa Nacional de Banda Larga

(National Broadband Plan) with the objective of expanding broadband internet access across the country using the optical fibre infrastructure owned by electric power transmission concessionaires and public companies (such as Petrobras).

Broadband is considered by the government to be an essential service and necessary for the country's economic and social development. It is also a prerequisite for the entry of new technologies and services that use the internet as a platform (ie Web TV). In this context, it is essential that broadband access be expanded on a universal basis, especially in rural and remote areas.

Decree 7,175/2010 also approved the revival of Telebrás, which was the government-owned holding company that used to control the state companies that were privatised in the 1990s. At present and following a great deal of discussion on the matter, Telebrás intends to provide broadband access to the wholesale market only. The intention of the Brazilian government is to ensure that a 1 Mbps-speed broadband internet service is available for sale by Telebrás to internet service providers at a maximum price of BRL35 per month.

Mention should be made of the Cidades Digitais (Digital Cities) programme, which aims at increasing the modernisation of municipal management through the construction of optical fibre linking public entities, development of e-government applications, and implementation of free Wi-Fi zones in public spaces of large circulation, such as squares, parks and roads.

Governmental policies for digital inclusion have been well succeeded. A good example is the bidding for the 450MHz band aimed at expansion of high-speed internet and telephony in rural areas and the Cidades Digitais (Digital Cities) Project, in which local governments are to offer free Wi-Fi in busy public spaces, such as squares, parks and roads.

### **6.6 Over-the-Top Internet-based Providers**

Over-the-top (OTT) internet-based providers are still separate from regulatory control and, consequently, not subject to licensing requirements.

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

There is no local government regulation of internet or broadband. The Brazilian Constitution establishes that the Union, through the National Congress, has the exclusive power to legislate on informatics, telecommunications and broadcasting. However, states and municipalities can implement digital inclusion policies by creating centres of internet access and offering free Wi-Fi in public spaces.

## **7. Privacy**

### **7.1 Government Access to Private Communications**

The Brazilian Constitution assures the right to secrecy of correspondence and of telegraphic, data and telephone communications, except, in the latter case, by court order, in the cases and in the manner prescribed by law for the purposes of criminal investigation or criminal procedural discovery of facts.

The interception of telephone and telematic communications is regulated by Law 9,296/1996 and may be authorised only by court order, in the case of several offences and when evidence cannot be produced by any other means. This measure may be authorised for a period of 15 days and renewed for a similar period, provided its indispensability for purposes of evidence is proven.

Law 9,296 classifies as a crime the practice of interception of telephone communications, information technology or telematics without judicial authorisation or with objectives not provided for in the law. In addition, it does not permit interception when there are no reasonable indications of the perpetration of or participation in a criminal offence, when proof can be obtained by other available means, or when an investigated fact constitutes a criminal offence punishable, at the most, with the penalty of a fine.

### **7.2 Use of Encryption Technology**

The Brazilian Department of Information and Communication Security establishes parameters and minimum standards for cryptographic resources to be implemented by governmental bodies in the encryption of classified information.

There are no rules requiring the use of encryption to private companies. However, there is a bill of law in progress in the National Congress which establishes that the controller of personal data shall report security incidents which might damage the data subjects to the competent body, providing specification of the security measures used for protection of the data, including any encryption procedures.

### **7.3 Liability of TMT Companies for Content Carried Over Their Networks**

In order to ensure freedom of expression and of speech and prevent censorship, Law 12,965/2014 (The Civil Rights Framework for the Internet) sets forth that internet application providers are not subject to civil liability for damages resulting from content generated by third parties (ie videos or publications inserted into the platform by its users) unless, upon a specific court order, it shall have failed to take any action within the framework of their service and within the time specified in the court order, to make unavailable the content that was identified as being unlawful.

It bears to mention that the content containing nudity or sexual activities of private nature, which was posted without the authorisation of the participants (ie the so called “revenge pornography”), shall be removed upon a mere notice by the participant or his/hers legal representative. If after receipt of the notice the internet application provider refrains from removing in a diligent manner, it can be held liable for the breach of privacy arising from the disclosure of the images, videos and other materials.

In view of the recent enactment of this Law, there are not as yet many court precedents on the matter, but Brazilian State Courts have been applying the Law in order to force internet application providers to disclose the Internet Protocol of the infringer and also to remove content (in any media, ie videos, websites, posts or profiles) that infringes constitutional rights, produces or induces behaviour specified as a felony, or violates copyright law.

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

In view of the principle of net neutrality, Law 12,965/2014, provides that internet connection providers are prohibited to block, monitor, filter or analyse the content of data packets in the transmission, switching or routing.

On the other hand, internet application providers are obliged to block access to websites or remove third parties-generated content upon a court decision which recognises that such websites or content infringe against constitutional, civil and/or criminal law.

#### **7.5 Obligation of TMT Companies to Retain Customer Data**

Law 12,965/2014 establishes that connection providers and internet application providers must keep the application access logs under confidentiality in a controlled and safe environment for at least six months; this period can be extended upon requirement of the police authority, the administrative authority or the Public Prosecutor, as a precautionary measure.

Connection logs and access to internet applications logs, as well as personal data and contents of private communications may only be disclosed upon court order for the purpose of creating evidence in civil or criminal legal proceedings. The interested party may petition to the judge to order the entity responsible for the keeping of records to provide the connection or access logs to internet applications. Such petition shall contain justified evidence of the occurrence of the unlawful act (ie infringement against constitutional, civil and/or criminal law), a motivated justification of the usefulness of the requested records for investigation or finding of facts, and the period of time to which the records correspond.

In any operation of collection, storage, retention, and treating of personal data or communications data by connection providers and internet applications providers where at least one of these acts takes place in the country of Brazil, the Brazilian law must be mandatorily observed, including in regard to the rights to privacy, protection of personal data, and secrecy of private communications and of logs.

The infringement of this rule can result in the following sanctions, applied separately or cumulatively:

- A warning, which shall establish a deadline for adoption of corrective measures;
- Fine of up to 10% of the gross income of the economic group in Brazil in the last fiscal year, taxes excluded, considering the economic condition of the infringer, the principle of proportionality between the gravity of the breach and the size of the penalty;
- Temporary suspension of activities; or
- Prohibition on performing activities.

In addition, the Brazilian Consumer Protection Code determines a penalty of imprisonment or fine, or both, to those who block or hinder access by the consumer to information about them contained in files, databases or records, or those who are expected to know that information relating to the consumer contained in any file, database, record or registration is incorrect and who, nevertheless, fail to rectify it immediately. The same statute sets forth administrative penalties imposed by the authorities in charge of protecting consumer rights, and such penalties include fines, intervention and counter-advertising.

#### **7.6 Prohibition of Unsolicited Communications**

There are no laws and policies that prohibit unsolicited communications.

## **8. Future**

### **8.1 Status and Process of Convergence**

The Brazilian government has been attempting to keep pace with the global trend of conversion of traditional telecommunications services into technology services using internet platforms, and creating a regulatory framework on internet platform services.

In November 2015, the Ministry of Communication launched a public consultation to debate the review of the current telecommunications services framework and process of convergence. Based on this public consultation, the Ministry of Communication will be able to redesign public policies and the current regulatory framework so as to allow an expansion of access to land and mobile wide-band services, which currently constitutes the sector’s main social demand to the detriment of fixed telephony services.

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Mention should be made of public policies for expansion of access to the internet, such as the *Programa Nacional de Banda Larga* (National Broadband Plan), on the basis of which Telebrás (a Brazilian public company) is to contract with small and medium-sized internet access providers as well as with fixed-switched telephone concessionaires (currently Oi, Telefónica/Vivo, Algar Telecom and Sercomtel), and the *Cidades Digitais* (Digital Cities) programme, which aims at increasing the modernisation of municipal management through construction of optical fibre linking public entities, development of e-government applications, and implementation of free Wi-Fi zones.

### 8.2 Changes to Statutes, Laws or Legislation

Several changes in telecoms and media regulation are expected for the coming years, and such changes reveal the Brazilian government's attempt to keep pace with the trend of conversion of traditional telecommunications services into technology services using internet platforms, and creating a regulatory framework on internet platform services.

In June 2015, the Ministry of Communication announced the possible creation of a National Plan for M2M and IoT, seeking to promote standardisation of IoT systems; the creation of regulation to deal with issues such as privacy, security and consumers' rights on IoT services, the release of funding programmes for IoT, and incentives for adoption of IoT solutions for the public sector. The public consultation launched in November 2015 is also intended to discuss such matters.

Another expectation concerns the regulation of Law 12,965/2014 (the Civil Rights Framework for the Internet) as regards net neutrality, which may define the behaviour of telecoms companies on zero-rating and sponsored packages, in addition to encouraging the adoption of new business models.

### 8.3 Changes to Government Ministries, Regulatory Agencies or Privatised Entities

There are no changes expected to be made to the government ministries, regulatory agencies or other governmental or privatised entities that have a role in making policy and regulating TMT industries.

### 8.4 Identification and Assignment of Additional Spectrum

In 2013, the Ministry of Communication published Rule 14/2013 for the purpose of setting guidelines to accelerate the process of transition from analogue TV to digital TV, and determined that Anatel was to be in charge of the reallocation of the bands from 698MHz to 806MHz (previously assigned for use by analogue TV channels) for the offering of mobile broadband through 4G technology. A bidding process was held by Anatel in September 2014. At the bidding, four of six lots offered in the 700MHz band were, respectively, purchased by Vivo S.A. (Telefónica Group), TIM Celular S.A. (Telecom Italia Group), Claro S.A. (América Móvil Group) and Algar Celular S.A., for a total of approximately BRL5 billion.

In November 2015, Anatel published an invitation to bid for authorisations to use radio frequencies in the 1,800 MHz, 1,900MHz and 2,500MHz bands, with the possibility of granting the Personal Mobile Service (mobile telephony) and Multimedia Communication Service (wireless/broadband).

This bidding aims at complying with Administrative Ruling 275/2013 of the Ministry of Communication, which lays down policies for offering radio frequency bands to provide access to broadband internet by small-sized providers of telecommunications services and by new competitors. Accordingly, in order to motivate such providers to participate, there will be a possibility to acquire lots at local level in the 1,800MHz, 1,900MHz and 2,500MHz bands, and the majority of the almost 9,000 municipal lots will have average prices lower than BRL10,000, and for which there will be special payment terms offering the possibility of up to ten instalments at low rates, in addition to a grace period of 36 months.

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