

THE TECHNOLOGY,
MEDIA AND
TELECOMMUNICATIONS
REVIEW

EIGHTH EDITION

Editor
John P Janka

THE LAWREVIEWS

THE

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MEDIA AND
TELECOMMUNICATIONS
REVIEW

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
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Enquiries concerning editorial content should be directed
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ISBN 978-1-910813-90-4

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ABOU JAOUDE & ASSOCIATES LAW FIRM

ADVAITA LEGAL

BAKER & MCKENZIE.WONG & LEOW

CLEARY GOTTlieb STEEN & HAMILTON LLP

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COELHO RIBEIRO & ASSOCIADOS

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WOLF THEISS

ZHONG LUN LAW FIRM

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PREFACE

This fully updated eighth edition of *The Technology, Media and Telecommunications Review* provides an overview of evolving legal constructs in 26 jurisdictions around the world. It is intended as a business-focused framework for both start-ups and established companies, as well as an overview for those interested in examining evolving law and policy in the rapidly changing TMT sector.

Broadband connectivity and wireless services continue to drive law and policy in this sector. The disruptive effect of new technologies and new ways of communicating creates challenges around the world as regulators seek to facilitate the deployment of state-of-the-art communications infrastructure to all citizens and also to use the limited radio spectrum more efficiently than before. At the same time, technological innovation makes it commercially practical to use large segments of ‘higher’ parts of the radio spectrum for the first time. Moreover, the global nature of TMT companies compels them to address these issues in different ways than before.

A host of new demands, such as the developing internet of things, the need for broadband service to aeroplanes, vessels, motor vehicles and trains, and the general desire for faster and better mobile broadband service no matter where we go, create pressures on the existing spectrum environment. Regulators are being forced to both ‘reform’ existing spectrum bands, so that new services and technologies can access spectrum previously set aside for businesses that either never developed or no longer have the same spectrum needs; and facilitate spectrum sharing between different services in ways previously not contemplated. Many important issues are being studied as part of the preparation for the next World Radio-communication Conference to be held in 2019. No doubt, this Conference will lead to changes in long-standing radio spectrum allocations that have not kept up with advances in technology, and it should also address the flexible ways that new technologies allow many different services to co-exist in the same segment of spectrum.

Legacy terrestrial telecommunications networks designed primarily for voice are being upgraded to support the broadband applications of tomorrow that will extend economic benefits, educational opportunities and medical services throughout the world. As a result, many governments are investing in or subsidising broadband networks to ensure that their citizens can participate in the global economy, and have universal access to the vital information, entertainment and educational services now delivered over broadband. Many governments are re-evaluating how to regulate broadband providers, whose networks have become essential to almost every citizen. Convergence, vertical integration and consolidation also lead to increased focus on competition and, in some cases, to changes in the government bodies responsible for monitoring and managing competition in the TMT sector. Similarly,

many global companies now are able to focus their regulatory activities outside their traditional home, and in jurisdictions that provide the most accommodating terms and conditions.

Changes in the TMT ecosystem, including increased opportunities to distribute video content over broadband networks, have led to policy focuses on issues such as ‘network neutrality’ – the goal of providing some type of stability for the provision of the important communications services on which almost everyone relies, while also addressing the opportunities for mischief that can arise when market forces work unchecked. While the stated goals of that policy focus are laudable, the way in which resulting law and regulation are implemented has profound effects on the balance of power in the sector, and also raises important questions about who should bear the burden of expanding broadband networks to accommodate the capacity strains created by content providers and to facilitate their new businesses.

The following chapters describe these types of developments around the world, as well as the developing liberalisation of foreign ownership restrictions, efforts to ensure consumer privacy and data protection, and measures to ensure national security and facilitate law enforcement. Many tensions exist among the policy goals that underlie the resulting changes in the law. Moreover, cultural and political considerations often drive different responses at the national and the regional level, even though the global TMT marketplace creates a common set of issues.

I would like to take the opportunity to thank all of the contributors for their insightful contributions to this publication, and I hope you will find this global survey a useful starting point in your review and analysis of these fascinating developments in the TMT sector.

John P Janka
Latham & Watkins LLP
Washington, DC
October 2017

PORTUGAL

*Jaime Medeiros, Mónica Oliveira Costa and Ana Ramos Logrado*¹

I OVERVIEW

New legislative policies in the TMT industry were launched in 2016 and 2017.

Following the repeal of the legal regime governing the personal radio service – citizen's band (CB), as under the provisions of Decree-Law No. 1/2017 of 5 January, through a decision adopted on 9 March 2017, the National Telecommunications Authority (Anacom) has determined an exemption from licensing for CB stations and from the corresponding amendment of the National Table of Frequency Allocations.² The adopted decision defines the harmonised technical provisions that govern the functioning of CB stations. As a result of the SIMPLEX+ 2016 programme, CB stations are now under the general radiocommunications regime that exempts registration if certain requirements are met.

To date, the radio communications regime has been highly dynamic in 2017. Radio spectrum is a scarce resource whose use is repeatedly the target of regulatory and legislative measures at both the European and national level that aim to regulate and discipline its use. Decree-Law No. 57/2017, published on 9 June, establishes conditions governing the use of radio and other equipment that has a bearing on the spectrum's efficient use. Portugal's Testing and Calibration Laboratory checks that such equipment is compliant with the essential requirements to which it is subject when placed in the market, as well as the requirements that result from such equipment's entry into operation within the framework of the RED Directive³ (under Decree-Law No. 57/2017 of 9 June) and the EMC Directive (under Decree-Law No. 31/2017 of 22 March). Radio equipment conforming to Decree-Law No. 192/2000 that was placed on the market before 13 June 2017 may continue to be made available on the market or put into service.

On 15 June 2017, the 'roam like at home' initiative was launched following a decision of the European Parliament on 6 April 2017, with maximum wholesale roaming prices being approved following a political agreement reached at the beginning of the year. The agreement was the result of a long process dating back to 2013 with the first draft

1 Jaime Medeiros and Mónica Oliveira Costa are partners and Ana Ramos Logrado is a trainee lawyer at Coelho Ribeiro & Associados.

2 Available for consultation at https://www.anacom.pt/streaming/09032017Annex1InfoTecnicoCB.pdf?contntId=1412954&field=ATTACHED_FILE.

3 The Radio Equipment Directive (2014/53/EU) has been applicable since 13 June 2016. It was in a one-year transitional phase until 12 June 2017, and revises the Radio and Telecommunication Terminal Equipment Directive (1999/5/EC). The new RED was adopted on 16 April 2014, and EU countries had to transpose it into their national law before 13 June 2016.

proposal of the Telecom Single Market (TSM) Regulation.⁴ Alongside this decision is a set of detailed rules on the application of a fair use policy, the methodology for assessing the sustainability of abolishing retail roaming surcharges and the applications to be submitted by roaming providers for the purposes of such assessment.⁵ To avoid abusive or anomalous use of the system, the Portuguese national regulatory authorities (NRAs) also have powers to intervene if the ending of roaming charges leads to price increases for domestic customers. In this respect, on 28 March 2017 the Body of European Regulators for Electronic Communications (BEREC) published its BEREC Guidelines on Regulation (EU) No. 531/2012, as amended by Regulation (EU) 2015/2120 and Commission Implementing Regulation (EU) 2016/2286 at the retail level. These Guidelines are complementary to the provisions set out in the Roaming Regulation, and NRAs must to take them into account when supervising the Roaming Regulation in their Member States. To be in harmony with this informal political agreement of the Parliament, the Council and the Commission, and at the express request of Apritel (the Portuguese association of operators), by a decision of 20 February 2017,⁶ Anacom approved the opening of a procedure to amend the Regulation on pre-contractual and contractual information.⁷ On 20 March 2017, a new notice⁸ announced that the effects of that Regulation have been suspended, which suspension took effect from 23 February 2017 and will remain in place until the entry into force of the amendment to Regulation No. 829/2016 of 23 August. This decision aims to enable a different approach for the simplified information file form and system.

Recent developments in the TMT business environment have seen the clearance by the European Commission on 20 April 2015, under Article 6(1)(b) of the EU Merger Regulation, of the acquisition by Altice of the control of the Portuguese assets of PT Portugal SGPS (who is the holder of MEO - Serviço de Comunicações e Multimédia, SA (MEO)) subject to conditions and obligations.⁹ The Commission's decision was conditional upon the divestment by Altice of ONI, a provider of communication services to business customers, and Cabovisão, an operator that provides pay-TV, fixed internet and fixed telephony services to residential customers. Such conditions were met through the acquisition by Cabolink (held by the APAX France investment fundn October 2015 of the sole control of Cabovisão, Winreason and Oni SGPS, a concentration that the Portuguese Competition Authority (AdC) decided not to oppose in November 2015.

These developments in the business environment, together with the merger between ZON and Optimus, which was completed in May 2014, and a new brand, NOS, appearing, are having a significant impact on the convergence of fixed and mobile infrastructure and bundled services. Nevertheless, and despite the fact that customer numbers are continuously increasing, to date in 2017, the registered growth compared to previous years is lower.

Statistics show¹⁰ that by the end of the first quarter of 2017, 87 out of 100 families had bundled services. The number of subscribers to these deals reached 3.55 million (35,000 more,

4 Available for consultation at http://eur-lex.europa.eu/procedure/EN/2013_309.

5 Commission Implementing Regulation (EU) 2016/2286 of 15 December 2016.

6 The notice of 20 February 2017 is available for consultation at https://www.anacom.pt/streaming/inicioProcedimento20fev2017.pdf?contentId=1405000&field=ATTACHED_FILE.

7 Regulation No. 829/2016 of 23 August.

8 Notice No. 2477/2017 of 20 March 2017 is available for consultation at <https://dre.pt/application/file/a/106581250>.

9 European Commission press release, available at http://europa.eu/rapid/press-release_IP-15_4805_en.htm.

10 These statistics take into account 12 (one more than last year) providers of bundled services.

or an increase of 1 per cent, compared to the previous quarter, and 7.4 per cent more compared to the same quarter for the previous year).¹¹ However, this growth was the lowest recorded since this type of information began being collected (in 2011), and the growth in the number of bundled subscribers has been gradually slowing. The most popular bundled deals continued to be the quintuple play (5P) offering (FBB+FTS+STV+MTS+MBB) with 1.47 million subscribers (41.3 per cent), followed by the FTS+FBB+TVS offer with 1.46 million subscribers (41 per cent). The trend in the number of subscribers to bundled services resulted from the increase in triple play (3P) bundles (36,000 subscribers, or an increase of 2.5 per cent in the first quarter of 2017) and quintuple play (5P) bundles (25,000 more subscribers, or an increase of 1.8 per cent in the first quarter of 2017). Quintuple play bundles have grown significantly over the average of recent years (since 2014). In the first quarter of 2017, revenues from bundled services amounted to €440 million (6 per cent more compared to the same period last year). The average monthly revenue per subscriber was €41.57 (1.6 per cent less compared to the first quarter of 2016). The average monthly invoice for households with bundled deals was €52.85, including VAT (0.4 per cent less compared to the first quarter of 2016). In the quarter under review, NOS Group for the first time recorded the highest share of subscribers (39.4 per cent), followed by MEO (39.2 per cent) and Vodafone (16.4 per cent), with Vodafone being the provider that grew the most. In terms of revenues, MEO held a 41.8 per cent share, followed by NOS Group (39.9 per cent). NOS Group led the triple and quadruple play bundles, while MEO led the double play and quintuple bundles, both in terms of subscribers and in terms of revenues. According to Marktest's Telecommunications Barometer (TCB),¹² a slowdown in the number of changes of provider will be seen in the near future, since the percentage of bundled services customers who indicated that they had no intention of changing providers in the next three months was 69.3 per cent in the first quarter of 2017, an increase of 4.1 percentage points over the same period of 2016.

On 2 March 2017, Anacom issued a draft decision approving an agreement reached by MEO, NOS and Vodafone on the distribution between them of 588 parishes potentially lacking mobile broadband coverage for which obligations of coverage were imposed as part of the process of renewing the rights of use of frequencies in the 2100MHz band, as approved under the terms of an Anacom decision of 18 February 2016.¹³ With the approval of the agreement on the distribution of the parishes, the geographical scope of the established obligations has been accomplished, becoming an integral part of the corresponding titles. Anacom will consider future bilateral exchanges of parishes, provided it is informed of any change to the agreement for the purposes of approval and public disclosure.¹⁴

11 This section does not consider bundles that include only mobile services, available at https://www.anacom.pt/streaming/bundles1Q2017.pdf?contentId=1414539&field=ATTACHED_FILE.

12 The TCB is a regular study developed by Marktest for the telecommunications sector. The universe of the Telecommunications Barometer Fixed Network comprises homes located in mainland Portugal and in the autonomous regions of Madeira and the Azores. A sample is compiled on a monthly basis that is proportional to and representative of the universe, corresponding to 1,150 interviews per month. Analysis of the TCB data is undertaken for quarterly periods. The sample of households guarantees a maximum absolute margin of error of 1.7 percentage points (questions put to all households).

13 <https://www.anacom.pt/render.jsp?contentId=1380120>.

14 <https://www.anacom.pt/render.jsp?contentId=1406721>.

Postal traffic continues to decline annually as a result of the increasing substitution of postage by electronic communications.¹⁵ Compared to the first quarter of 2016, total traffic fell by 1.8 per cent in the same period in 2017. Despite the liberalisation of the sector, and the fact that there are 61 undertakings authorised to provide postal services outside the scope of the universal service and 11 undertakings providing services within the scope of the universal service, Grupo CTT has a 92.9 per cent share of total postal traffic (a decrease of 1.7 per cent compared with the previous quarter of 2016).¹⁶ Following an investigation, in August 2016 the AdC sent a statement of objections to CTT outlining its preliminary view that the company is abusing its dominant position has been refusing its competitors access to its standard mail delivery network since 2012, in breach of national and EU competition rules.¹⁷ On 2 February 2017, Anacom approved a draft decision on the disclosure of information on letter boxes by CTT. Following notification of the final decision, CTT had 45 working days to disclose information about letter boxes located on public roads and in public places where users can deposit items of correspondence in CTT's postal network, and the following information must be kept up to date: locations (including an indication of the locality, street name, postcode and other information to allow locations to be accurately identified); the time of the last collection on each day of the week; and the type of delivery or postal service (non-priority mail, priority mail, etc.) that can be deposited.¹⁸

Given its external impact, it is important to highlight the preparatory works for the launch of the centralised information system (SIC) carried out by Anacom in 2015, which started operating in January 2016. It consists of an IT platform for accessing updated information on infrastructure elements for hosting electronic communications networks, including several important elements regarding spatial planning and development. The SIC is a vital tool for reinforcing competition in the sector, since it will provide access to information about the capacity available for the installation of new networks. The management, maintenance and guarantee of the accessibility and availability of this platform is now an important challenge for Anacom.

Regarding the security and integrity of networks and services, Anacom launched a public consultation on a draft regulation that was approved on 29 December 2016 and published in the official gazette Series II, No. 7/2017 of 10 January.

On 2 February 2017, Anacom began drawing up a regulation concerning the registration of companies that offer electronic communication networks and services, and also companies that offer postal services. The objects of the regulation shall include the establishment of communication procedures with respect to the commencement, modification and discontinuation of an offer of electronic communications networks and services; the establishment of procedures for the maintenance and dissemination of the register of companies that offer electronic communications networks and services; and the determination of procedures for e-services that will be available to support the registration of companies that offer electronic communications networks and services.

15 https://www.anacom.pt/streaming/PostalServices1Q2017.pdf?contentId=1414868&field=ATTACHED_FILE.

16 Ibid.

17 www.concorrencia.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201617.aspx.

18 Available for consultation at <https://www.anacom.pt/render.jsp?contentId=1404529&languageId=1>.

We also highlight the following regulatory and legislative developments.

The Electronic Communications Law was amended by Law No. 15/2016 of 17 June, reinforcing the protection of consumers in contracts for the provision of electronic communications services with binding periods. Operators are now obligated to adhere to certain rules concerning, *inter alia*:

- a* the transparency of information about advantages that justify binding periods;
- b* providing a range of options for the duration of a contract (with and without binding periods, including binding periods of six and 12 months);
- c* any charges in the case of early termination of a contract with a binding period by a user of must be proportionate; and
- d* reinforcement of consumer rights in the case of termination of a contract by a user.

These new rules only apply to contracts signed after 16 August 2016 and those that are amended after that date. Anacom has released a series of guides for consumers on its consumer website with information on the use of electronic communications services (e.g., regarding suspension, billing and cancellation of services).¹⁹

Law No. 49/2015 of 5 June establishes private copying levies over digital devices such as mobile phones, smartphones, tablets, scanners, as well as support equipment (USBs, external drives, MP3 and MP4 players, memory cards, etc.). The approval of this law was highly controversial: the President vetoed it, but it was subsequently reapproved unchanged by a qualified majority in Parliament. To date, the law has not undergone any revision or amendment.

Law No. 78/2015 of 29 July establishes new rules with regard to the ownership, management and financial transparency of media undertakings. The Law entered into force on 30 October, and the first disclosures of ownership and management to the regulator occurred on 30 January 2016.

Online gambling is now a regulated legal activity in Portugal. Decree-Law No. 66/2015 of 29 April regulates online gambling, betting and gaming. It was expected that the first licence would be issued during Q4 2015 by the Gaming Commission of the SRIJ (Regulatory Service and Gaming Inspection). However, this only occurred in May 2016, in relation to Betclíc. Nineteen further applications for licences have already been submitted; however, to date only six have been issued.

The Online Dispute Resolution for consumer disputes (ODR)²⁰ is finally operational, and has been available in Portuguese since February 2016.²¹ The ODR platform is a simple, low-cost out-of-court system for the alternative settlement of disputes arising from online transactions. In addition, following Law 144/2015 of 8 September,²² since 24 March 2016 all electronic communications services providers must inform users (when consumers) through their websites and in their terms and conditions about all the dispute resolution entities to which they may refer in the event of a dispute.

19 Available for consultation at <http://www.anacom-consumidor.com/guias-do-consumidor>.

20 Implemented by Regulation (EU) No. 524/2013 of the European Parliament and the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC.

21 Available for consultation at <https://webgate.ec.europa.eu/odr/main/index.cfm?event=main.home.show&lng=PT>.

22 Implementing Directive 2013/11/EU.

On 30 August 2016, BEREC approved and disclosed the Guidelines on the Implementation by National Regulators of European Net Neutrality Rules. The Guidelines were drafted in accordance with Article 5(3) of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015.²³ We believe that Anacom shall closely follow these Guidelines to ensure compliance with the rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-user rights. The Guidelines constitute recommendations to NRAs, and NRAs should take utmost account of them. The Guidelines should contribute to the consistent application of the TSM Regulation, thereby contributing to regulatory certainty for stakeholders. The annual report on the application of Articles 3 and 4 Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November (TSM Regulation) covering the period from 30 April 2016 to 30 April 2017 has been published and was approved by Anacom on 29 June. In this context, Anacom has been promoting internal workshops, as well as workshops open to the public, focused on information about the main issues associated with network neutrality.²⁴

II REGULATION

i The regulators

Portugal has two independent sectoral regulators: Anacom in the scope of communications, and the Regulatory Authority for Media (ERC) with regulatory competence in the media sector. Although both regulators have responsibility for the promotion of competition and pluralism in their respective sectors, this does not preclude the powers vested with the AdC. In fact, regarding matters related to the application of the legal framework for competition in these respective sectors, Anacom, ERC and the AdC must cooperate and collaborate with each other, and pay due regard to their respective powers.

The statutes of Anacom (formerly ICP-Anacom) were approved by Decree-Law No. 39/2015 of 16 March, under which Anacom is endowed with regulatory, supervisory, monitoring and sanctioning powers. It is also incumbent upon Anacom to promote out-of-court dispute settlement mechanisms between providers subject to its regulation as well as consumers and other end-users of electronic and postal communications.

Anacom is a legal person governed by public law and statutes, and is independent from the government at the organisational, functional, technical and financial levels. Anacom is not subject to government oversight or authority in connection with its functions, and members of the government are not allowed to make recommendations or directives with regard to Anacom's regulatory actions or the priorities it will adopt.

Anacom's main areas of intervention are in the following areas:

- a* electronic communications networks;
- b* electronic communications services;
- c* spectrum management;
- d* radio communications services;
- e* the postal area;

23 BEREC guidelines on the implementation by national regulators of European net neutrality rules, available at berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guideline/s/6160-berec-guidelines-on-the-implementation-by-national-regulators-of-european-net-neutrality-rules.

24 Available for consultation at <https://www.anacom.pt/render.jsp?contentId=1414205>.

- f* radio and telecommunications terminal equipment;
- g* the installation of infrastructure for telecommunications in buildings; and
- h* some aspects of information society services, namely e-commerce.

Regarding radio and television, the broadcasting and management of the spectrum are subject to Anacom regulation and supervision.

The following is a brief outline of the main sources of law regarding communications:

- a* Law No. 5/2004 of 10 February (as subsequently amended and republished by Law No. 51/2011 of 13 September) is the main act regarding electronic communications (Electronic Communications Law). It establishes the legal regime applicable to electronic communications networks and services and to associated services, and defines the assignment of Anacom in this field. The Electronic Communications Law adopted Directives No. 2002/19/EC, No. 2002/20/EC and No. 2002/21/EC of the European Parliament and of the Council of 7 March, amended by Directive No. 2009/140/EC of the European Parliament and of the Council of 25 November, and Directive No. 2002/22/EC of the European Parliament and of the Council of 7 March, amended by Directive No. 2009/136/EC of the European Parliament and of the Council of 25 November, and 2002/77/EC of the Commission of 16 September.
- b* In the field of e-commerce, the main act is Decree-Law No. 7/2004 of 7 January (as subsequently amended), which transposed into the Portuguese legal system Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market.
- c* With regard to data protection, the main sources of law are Law No. 67/98 of 26 October, which transposed into the Portuguese legal system Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and Law No. 41/2004 of 18 August (as subsequently amended) concerning the processing of personal data and the protection of privacy in the electronic communications sector, which transposed Directive 2002/58/EC of the European Parliament and of the Council of 12 July and Directive 2009/136/EC.

In the postal area, the main source of law is Law No. 17/2012 of 26 April (as subsequently amended), which lays down the legal regime that governs the provision of postal services under a full competition regime in the national territory, as well as international services to or from the national territory, and transposes into the Portuguese legal system Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008. The media sector is regulated by ERC. ERC is an independent regulator that is not subject to recommendations or directives from the government or any other political body. The exclusive competence of ERC is restricted to the activity of media companies from the perspective of freedom of speech and the content of media, and this competence should not collide with the competence of other regulators. In this respect, it is important to note that radio and television broadcasting and the management of the spectrum is under Anacom regulation and supervision.

In the media sector, the main sources of law are as follows:

- a* The Radio Act (Law No. 54/2010 of 24 December, as subsequently amended) concerning access to and pursuit of radio broadcasting activity in the national territory.

- b* The Television Act (Law No. 27/2007 of 30 July, as subsequently amended), which regulates access to and performance of television activities. This Law transposes into national law a part of the provisions of Council Directive No. 89/552/EEC of 3 October, as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June, and Directive No. 2007/65/EC of the Parliament and of the Council of 11 December.
- c* Law No. 78/2015 of 29 July governs the promotion of transparency with regards to the ownership, management and means of financing of media undertakings. The Law entered into force on 30 October 2015. The annual corporate governance report shall be delivered by 30 April each year to ERC and shall include a 'truthful, complete, objective and current report on corporate governance structures and practices adopted by media companies'. In short, this regulation establishes that media companies are required to provide information on equity, liabilities, ownership and holding of corporate bodies, and related business activities.
- d* The Press Act (Law No. 2/99 of 13 January) governs the basic principles of media content and freedom of speech.

ii Regulated activities

TMT activities are fully liberalised, and the general rule is that the provision of electronic communications networks and services, whether publicly available or not, is only subject to a communication duty and to a general authorisation regime; such provision of networks or services is not dependent on any prior decision or act of Anacom. However, there are exceptions, namely:

- a* the allocation of spectrum;
- b* the use of numbering;
- c* the use of radio communications networks and stations;
- d* television broadcasting using the terrestrial spectrum; and
- e* radio broadcasting.

The space where radio waves may propagate constitutes a public domain of the state, and Anacom is responsible for the management of the spectrum in coordination with the European Commission and the regulatory authorities of other Member States with regard to strategic planning, coordination and harmonisation of the use of radio spectrum in the European Union, namely in the scope of multiannual radio spectrum.

The allocation of spectrum and the assignment of frequencies should be based on objective, transparent, non-discriminatory and proportionate criteria. The management of spectrum is subject to the principles of technology neutrality, in accordance with which all types of technology used for electronic communications services may be used in frequency bands declared to be available for electronic communications services, and are published in the National Frequency Allocation Plan as such; and service neutrality, in accordance with which all types of electronic communications services may be provided in frequency bands declared to be available for electronic communications services, and are published in the National Frequency Allocation Plan as such.

Licences for the use of frequencies are granted for 15 years and are renewable.

The use of numbers depends on the allocation of rights of such use. Such rights may be allocated both to providers and users, and the law warrants that the allocation procedure must be open, objective, transparent, non-discriminatory and proportional.

The use of radio communications networks and stations is also subject to licensing. Anacom is responsible for granting licences, and the licensing procedure is ruled by Decree-Law No. 151-A/2000 of 20 July, as further amended. Anacom has announced that use of the 1850-2000kHz band has been authorised, under conditions set in the National Table of Frequency Allocations for the 1830-1850kHz band, for the purpose of taking part in a number of specific contests in 2017. This authorisation for temporary use of the 1850–2000kHz band does not allow it to be used for any other purpose in the scope of amateur service or for any other radiocommunication services.

With regard to television broadcasting, the licensing regulation differs according to whether there is an allocation of the terrestrial spectrum. Licences to broadcast using the terrestrial spectrum are subject to public tenders. These can be public tenders for unrestricted free-to-air television programme services, and for conditional access television programme services or free-to-air television programme services subject to a subscription. If the proposed broadcasting activity does not use the terrestrial spectrum, authorisation is given upon the request of interested undertakings. A simple registration is needed where the television activity consists of the broadcast of television programme services exclusively through the internet that are not retransmitted by other networks.

Access to radio broadcasting activity is also regulated. Radio broadcasting is conditional upon the issue of a licence by means of public tender, or of an authorisation, according to whether programme services to be provided will use the terrestrial broadcast spectrum. Radio broadcasting through the internet is only subject to registration.

Illegal television activity and illegal radio activity are both considered criminal activities that are subject to a term of imprisonment of up to three years or to a daily pecuniary sanction for up to 320 days.

iii Ownership and market access restrictions

The TMT market is fully liberalised, and there are no foreign ownership restrictions with regard to telecom services or networks, without prejudice to the application of the legal regime of competition in the electronic communications sector. However, there are several ownership and market restrictions in the media sector that have to be taken into consideration.

Television and radio cannot be controlled or financed by political parties or associations, local authorities or their associations, trade unions, or employer or professional associations; furthermore, radio broadcasting activities cannot be pursued directly or indirectly by the state, autonomous regions, local authorities or public institutions unless such activity is exclusively performed through the internet and consists of the organisation of institutional or scientific programme services.

Additional specific concentration and cross-ownership restrictions apply to television and radio activities. Concentration operations between media operators that fall under the intervention of the AdC are subject to a prior opinion of ERC that will be binding where there is deemed to be a risk to free expression and pluralism. Changes of control are prohibited during the first three years of the licence, and thereafter are subject to the prior consent of ERC. An undertaking also cannot hold more the 50 per cent of the licences for national unrestricted free-to-air television programme services, and there are cross-ownership restrictions with regard to radio both at the national and local level.

New rules on ownership, management and means of financing transparency are also in force for the media sector, including regarding television, radio, press and internet media content.²⁵

According to the transparency principle:

- a* the shares of media entities must be registered shares;
- b* certain information, including direct, indirect and ultimate beneficiary ownership, and the identity of the board members, the chief editor and the auditor, must be notified to ERC;
- c* public disclosure is mandatory whenever there is a variation in the capital stock that meets 5, 10, 20, 30, 40 or 50 per cent of the share capital or of the votes, or if there is a change of control; and
- d* shareholders' agreements, special financial movements and corporate governance rules have to be disclosed to ERC, and certain specific information about the shareholders must be published on the operator's website.

iv Transfers of control and assignments

Regarding the right of use of frequencies and numbers, the general rule is that such rights are transferable upon prior notification to Anacom, which may oppose the transfer or impose conditions to avoid distortion of competition. In this case, the AdC shall give a prior opinion.

Licences and authorisations for television activity are non-transferable. Radio licences and authorisations at the local level are transferable, subject to the prior authorisation of ERC, without prejudice to the assignments granted by Anacom as the national communications regulatory authority and by the AdC.

III TELECOMMUNICATIONS AND INTERNET ACCESS

i Internet and internet protocol regulation

Internet services are regulated by the Electronic Communications Law²⁶ and by the E-Commerce Law,²⁷ and such activity is not subject to prior authorisation but only to prior notification to Anacom.

Online intermediary service providers do not have an obligation to monitor the information that they transmit or store, or to investigate possible offences practised within their scope. However, in relation to the competent authorities, they shall, when requested:

- a* inform the authorities if they become aware of illegal activities undertaken via the services they render;
- b* comply with requests for identification of recipients of their services with whom they have entered into storage agreements;
- c* comply promptly with instructions aimed at terminating or preventing an offence, namely by removing or disabling access to given information; and
- d* supply lists of owners of hosted websites.

25 Law No. 78/2015 of 29 July entered into force on 30 October; see Section 1.

26 Law No. 5/2004 of 10 February (as subsequently amended).

27 Decree-Law No. 7/2004 of 7 January (as subsequently amended).

The guidelines issued by Anacom on VoIP date back to 2006, at which time a new 30 number range was created in the national numbering plan to accommodate nomadic VoIP numbers. Providers of VoIP services provided at a fixed location are subject to number portability obligations, but only within the 30 non-geographic numbering range. However, by a decision of 14 July 2016, Anacom approved a report on the public consultation report on the implementation of the common position of the European Regulators Group on VoIP, and the conditions governing the use of geographic, nomadic and mobile numbers. Anacom will now prepare a new regulation to govern the use of geographic and mobile numbers in nomadic situations.²⁸

ii Universal service

Currently, the following activities are covered by USOs: fixed telephone services, public pay telephones, and telephone directory and directory enquiries services; the postal area; and radio and television.

The latest regulatory measures and financing lines for the development of the NGA networks date from late 2010. However, it is important to note that by December 2014, Portugal showed 100 per cent fixed broadband coverage and 89 per cent NGA coverage.²⁹

iii Restrictions on the provision of service

As a general rule, prices are not regulated, but operators are subject to the obligation of the cost-orientation of prices. Anacom may intervene in cases of dominant position, and may require prices to be adjusted. For instance, by decisions adopted on 13 July 2017, and after a prior hearing of the interested parties, Anacom has ordered MEO, NOS, NOWO and Vodafone to adopt corrective measures that entail sending written communications to subscribers affected by contractual changes made upon the initiative of these operators. This requirement applies in situations where such contractual changes (made subsequent to the entry into force of Law No. 15/2016 of June 17) were not communicated to the customer in tandem with the information that, in cases where customers do not accept the changes in question, the customer has the right to terminate the contract without any charge (even if the customer was subject to contract lock-in periods or other commitments to stay).

Through this decision, Anacom announced that it had noticed the existence of some constraints in the termination of contracts for customers who received communications sent by operators in compliance with the previously mentioned corrective measures. In view of this, on 23 August 2017 Anacom alerted customers wishing to exercise their right of withdrawal that they may do so not only in person in any store or by telephone, but also in writing through any of the contact methods indicated in their respective contracts or those disclosed to the public (address, fax, email address, etc.), or through the customer area of an operator's website. A request for termination does not depend on the submission of any documents other than those that are strictly necessary for the confirmation of a subscriber's identification.³⁰ If customers wish to keep their telephone numbers, they have three months to request the use of such numbers with the same operator or to ask for their portability.

28 www.anacom.pt/render.jsp?contentId=1391066#.V9guIE_fm3E.

29 Implementation of the EU regulatory framework for electronic communication – 2015, available at <http://ec.europa.eu/transparency/regdoc/rep/10102/2015/EN/10102-2015-126-EN-F1-1.PDF>.

30 Available for consultation at <https://www.anacom.pt/render.jsp?contentId=1416152>

A recent intervention regarding customer retention and retail prices for portability operations so as to avoid market distortion also recently took place. The Portability Regulation,³¹ which establishes the principles and rules governing portability on public communications networks, was subject to some amendments (the last one had occurred four years ago) to simplify some procedures, namely:

- a* the use of the portability window has been made more flexible;
- b* response times have been cut to one working day for the effective transfer of numbers; and
- c* a new mechanism to validate subscribers in electronic portability requests has been introduced: this validation is designed to reduce the number of electronic requests refused due to a lack of subscriber identification data at the originating provider or holder.

As regards procedures between companies with portability obligations, the sending of contract-terminating documentation has been limited to situations of portability not requested by subscribers, at the same time entailing a requirement that the recipient provider keeps this documentation. In terms of tariff transparency, the announcement that a call is being made to a ported mobile number will only be made available where expressly requested by the end-user.

Anacom also regularly issues guidelines regarding terms and conditions for end-users, and operators must submit for approval all standard contracts with customers.

Unsolicited communications (e.g., automated calling machines, facsimile machines (i.e., faxes), email, SMS, EMS, MMS and other similar applications) are subject to prior and explicit consent from the user (opt-in), except if the user is a legal person, in which case the opt-out rule applies.

Nevertheless, even in the event the user is a natural person, unsolicited communications may not be subject to a user's prior and explicit consent provided that:

- a* they are or have been in a business relationship with the user;
- b* the commercial communications are about the same or similar products or services previously supplied to the user;
- c* users were explicitly given the opportunity to opt out from receiving unsolicited communications at the time their data were collected as well as by the time of each communication; and
- d* opting out is simple and free of charge.

In addition, providers shall keep, themselves or through representative bodies, an up-to-date list of the natural users who opted in to receive unsolicited communications as well as of users who did not object to receiving these, and of the legal users that opted out.

iv Security

Freedom of access to information and self-expression are constitutional rights. Nevertheless, such rights can be limited under legally foreseen terms (e.g., judicial secrecy, state secrets). In addition, the electronic communications sector is ruled by the protection of privacy principle

31 Regulation No. 58/2005 of 18 August, amended, republished and renumbered by Regulation No. 87/2009 of 18 February, as amended by Regulation No. 302/2009 of 16 July, and amended and republished by Regulation No. 114/2012 of 13 March.

(Law 41/2004 of 18 August, subsequently amended by Law 46/2012 of 29 August on the processing of personal data and the protection of privacy in the electronic communications sector that transposed Directives 2002/58/EC and 2009/136/EC). However, this protection of privacy rule has some exceptions, such as those that are strictly necessary for the protection of activities concerning public security, defence, state security, and the prevention, investigation and prosecution of criminal offences, under the terms established in special legislation.

With regard to the processing of personal data and the protection of privacy in the electronic communications sector, providers of publicly available electronic communications services shall:

- a* Take appropriate technical and organisational measures to ensure the security of their services and at least the following: measures that ensure that personal data can be accessed only by authorised personnel, and only for legally authorised purposes; the protection of personal data transmitted, stored or otherwise processed against accidental or unlawful destruction, loss, alteration, and unauthorised disclosure of or access to such personal data; and measures that ensure a security policy with respect to the processing of personal data.
- b* In order to allow them to take the necessary precautions, without undue delay notify the personal data breach to the Data Protection Authority (CNPD) and, where the personal data breach is likely to adversely affect the personal data of a subscriber or user (i.e., where the breach could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation in connection with the provision and use of publicly available communications service), the subscriber or user.
- c* Ensure the inviolability of communications and related traffic data by means of public communications networks and publicly available electronic communications services, which means that any interception or surveillance of communications and related traffic data by persons other than users is prohibited without the prior and explicit consent of the users concerned, except for cases provided for in the law (criminal procedures); and any legally authorised (by the CNPD) recording of communications and related traffic data when carried out in the course of lawful business practices for the purpose of providing evidence of a commercial transaction, provided that the data holder has been informed thereof and given his or her consent thereto.
- d* Not store information or gain access to information stored in the terminal equipment of a subscriber or user (e.g., cookies, web beacons) unless with his or her prior and informed consent, or if required for carrying out the transmission of a communication over an electronic communications network, or the provision of a service explicitly requested by the subscriber or user.
- e* Erase or make traffic data relating to subscribers and users that have been processed and stored anonymously where they are no longer needed for the purpose of the transmission of a communication, except the data strictly needed for billing purposes and only up to the end of the period during which the bill may lawfully be challenged or the payment be pursued, unless with a subscriber or user's prior, explicit and informed consent, which can be withdrawn at any time, and to the extent and for the duration necessary for the purpose of marketing electronic communications services or for the provision of value added services.
- f* Process location data provided that they are made anonymous or, to the extent and for the duration necessary for the provision of value added services, with a subscriber or user's prior, explicit and informed consent, which can be withdrawn at any time.

- g* Reconcile the rights of subscribers receiving (those who want) itemised bills with the right to privacy of calling users and called subscribers.
- h* Provide transparent and up-to-date information on the several possibilities regarding identification of calling line and connected line.
- i* Cancel (with a prior opinion of the CNPD), where compatible with the principles of necessity, appropriateness and proportionality, for a period of time not exceeding 30 days, the elimination of the presentation of the calling line identification on a written and duly substantiated request from subscribers who wish to determine the origin of non-identified calls that upset the peace of their family or the intimacy of their private life.
- j* Ensure that any subscriber has the possibility, using a simple means and free of charge, of stopping automatic call forwarding by a third party to the subscriber's terminal equipment.
- k* Inform subscribers or users, free of charge and before the respective data are included in printed or electronic directories available to the public or obtainable through directory enquiry services, and collect their consent for such purposes, being the subscribers or users entitled to choose the personal data they want to be displayed in such directories.

The retention of data revealing the content of electronic communications is prohibited, without prejudice to those cases laid down in the law and mentioned above, as well as in criminal procedure law on the recording and interception of communications. Furthermore, under Law 32/2008 of 17 July (implementing Directive 2006/24/EC), providers of publicly available electronic communications services or of public communications networks shall retain and transmit traffic and location data on both natural persons and legal entities, and the related data necessary to identify a subscriber or registered user, for the purpose of the investigation, detection and prosecution of serious crimes by the competent authorities. Under this law, operators shall retain, for one year, the following categories of data:

- a* the source of a communication;
- b* the destination of a communication;
- c* the date, time and duration of a communication;
- d* the type of communication;
- e* the users' communication equipment; and
- f* the location of mobile communication equipment.

The retention and transmission of data is exclusively intended for the investigation, detection and prosecution of serious crimes by the competent authorities, and the transmission of data may only be ordered or authorised by a reasoned court order. In addition, files intended for data retention within this Law must be stored separately from other files with different purposes, and (except for data on subscribers' names and addresses) must be blocked as from the moment they are retained, only being unblocked in the event of transmission to the competent authorities. Despite the fact that this data retention law has not been declared invalid by the Portuguese courts, the CNPD, in line with the arguments of the Court of Justice of the European Union in the *Digital Rights Ireland, Ltd* and *Tele2* judgments,³²

32 Proc C-293/12 and C-594/12; C-203/15 and C-698/15.

has already recommended that the Portuguese legislator review Law 32/2008 to make it compliant with the Charter of Fundamental Rights of the European Union and with the Portuguese Constitution.

There are no specific provisions as far as children are concerned within the data protection laws, or regarding their protection online. However, the CNPD through Project Dadus (which is currently on hold), as well as the Ministry of Education in conjunction with other public and private entities through Project SeguraNet, aware of the need to educate children (at all ages), teachers and parents on privacy issues, particularly online, have been developing several initiatives and making available resources to create awareness, train and test all the educational community on how to protect children's privacy and their personal data as well as to allow them to have a safer experience online.

Cybersecurity concerns are growing, as indicated by the approval of the National Cyber Security Strategy on 12 June of 2015.³³ In addition, at the end of 2014, the National Cybersecurity Centre was established (by Decree-Law No. 69/2014 of 9 May) and became operational in October 2014. Its aims are:

- a* to implement measures and instruments for the anticipation and detection of, response to and recovery from situations that, given the imminence or occurrence of incidents or cyberattacks, undermine the functioning of state agencies, critical infrastructure and national interests; and
- b* to pursue a strategy of prevention, raising awareness and educating organisations in particular, and civil society in general, on issues of cybersecurity, thus contributing to creating a community of knowledge and a national culture of cybersecurity.

More recently, on 24 August 2017, the High Council for Cyber Security was created to coordinate the political and strategic landscape for cybersecurity as well as to monitor the implementation of the National Cyber Security Strategy and its revision.

It is also worth mentioning the Cybercrime Law (Law 109/2009 of 15 September), which implemented Council Framework Decision 2005/222/JHA and establishes the substantive and procedural criminal provisions as well as the provisions on international cooperation in criminal matters related to cybercrime and the collection of evidence in electronic form.

IV SPECTRUM POLICY

A new national strategic plan for radio spectrum (PEE) was approved by Anacom on 10 August 2016. PEE establishes strategic guidelines for the provision of frequencies used by civil radio services and applications, satisfying spectrum requirements and the specifications of each service or application.³⁴ However, the entry into force of PEE does not result in any immediate change to the National Table of Frequency Allocations. According to Anacom, the intention of PEE is to examine key themes common to all radio spectrum bands in order to explore a strategic approach to spectrum planning.

Particular attention has been focused on DTTV, with the government approving a new policy regarding the reservation of capacity required to expand the provision of programme

³³ Council of Ministers Resolution 36/2015.

³⁴ Approval given to national strategic plan for the radio spectrum, available at www.anacom.pt/render.jsp?contentId=1393464#.V9g3nU_fm3E.

services in the DTTV platform (Resolution of the Council of Ministers No. 37-C/2016, of 8 July). Following such new policy, the Parliament approved, on 24 August, Law No. 33/2016, which supports the expansion of the provision of DTTV programme services, and establishes technical conditions and price control over the DTTV signal transmission and broadcasting service.

Anacom has approved the methodology for setting and reviewing the reference speeds associated with coverage obligations in the 800MHz band for companies participating in the (4G) multiband auction, which, in May 2015, was subject to public consultation and prior hearing proceedings.

Apart from the above, the last major initiatives regarding spectrum management were the refarming of the 900MHz band in 2010 and the multiband auction of 2011. The multiband auction allocated the rights of use for frequencies in the 450MHz, 800MHz, 900MHz, 1800MHz, 2.1GHz and 2.6GHz bands. The auction was launched following a memorandum of understanding concluded on 17 May 2011 between the government and the International Monetary Fund, the European Central Bank and the European Commission, after possible distortions in the mobile electronic communications market were identified.

In August 2014, the first assessment of the mobile electronic communications market under the multiband auction regulation was published.³⁵ The main conclusions resulting from the assessment were that the spectrum combinations of mobile network operators are very similar and do not lead to competitive distortions; the refarming process did not confer an advantage to mobile network operators, because they all held rights of use for frequencies in equivalent amounts of spectrum in the 900MHz and 1800MHz bands; and the allocation of rights of use in the scope of the multiband auction did not contribute to creating distortions.

According to these conclusions, Anacom holds that there are currently no grounds for any regulatory intervention with regard to the allocation of spectrum, and spectrum is still available to allocate according to market needs.

V THE YEAR IN REVIEW

The great milestone of 2017 was Altice entering into an agreement to acquire Media Capital on 14 July. The concentration consists of MEO gaining exclusive control of Grupo Media Capital, SGPS, SA (GMC) through the acquisition of the entire share capital of Vertix, SGPS, SA, a company that holds shares representing 94.69 per cent of the capital stock of GMC; and the launching of a public acquisition transaction covering the representative shares of the remaining 5.31 per cent of the share capital of GMC. The acquisition, notified to the Portuguese Securities Market Commission on 18 August, arrived two years after the acquisition of PT Portugal by Altice, which raised a series of concerns regarding the concentration of several media companies into a single group and its competitive implications in the sector. For this operation to be possible, not only the opinions of the regulators, ERC and Anacom, had to be heard, but also the opinions of those with an interest in the purchase's operation, namely related companies, and those with an indirect interest.

The decision to clear the acquisition, for a turnover of €440 million, falls to the AdC, which has to consider whether this concentration operation undermines the principles laid

35 Available for consultation at www.anacom.pt/render.jsp?contentId=1324432&languageId=1#.VemveU9REuR.

down in the competition law, and opens the way for Altice to exercise a dominant position in the telecommunication, media and advertising sectors. Regardless of not being able to reach a consensus on the matter, the ERC Council has warned that ‘the present operation does not allow the anticipation of the benefits of pluralism in the Portuguese media system’. Anacom is also of the opinion that the merger is liable to create significant barriers to effective competition in the various electronic communication markets ultimately affecting the final consumer, and that it should therefore not take place in the manner in which it was proposed. Common to the two regulators is a concern about the ability of a single company to have the capacity and incentives to completely or partially shut down their competitors’ access to their content and television and radio channels as well as their advertising space, and their access to other channels on their platforms.

Media Capital is a group active in Portugal in the television, radio, internet services, audiovisual production, and music and film distribution sectors, while MEO is active in the management of infrastructure for the provision of electronic communications services, the transportation and broadcasting of signals, the provision of voice, video, data and internet services, both fixed and mobile, as well as in the distribution of television channels through a subscription television platform. The potential effects of this controversial operation in the telecommunication and media sector raise concerns about, among many other things, the following points, which would definitely be a game-changer between competitors:

- a* price increases;
- b* confidentiality issues;
- c* the implementation of abusive and discriminatory conditions on other players;
- d* deterioration of the general nature of the programme service of the TVI channel; and
- e* market distortion.

At this point, the AdC’s position regarding whether divesting measures will be imposed in clearing the concentration or whether the operation will not happen at all is unknown. The final decision, which may be postponed to next year, is upon the AdC, which has to deliberate against the background of a negative opinion from Anacom and a non-consensual opinion from ERC. We anxiously await developments in this matter, since this operation raises a number of questions in the telecommunication and media sector that have never been raised before.

The government has updated its digital agenda through Resolution No. 25/2015 of 16 April in order to align it with the Digital Single Market Strategy for Europe and the Partnership Agreement for Portugal 2014–2020.

Key measures, all of which are to be implemented by 2020, are as follows:

- a* the development of broadband infrastructure to achieve 100 per cent national broadband coverage with speeds of not less than 30Mbps;
- b* the development of broadband infrastructure to allow 50 per cent of households to access broadband internet speeds equal to or greater than 100Mbps;
- c* the creation of conditions that allow an increase of 55 per cent in the number of companies using e-commerce in Portugal (compared with figures for 2011);
- d* the promotion among the Portuguese population of greater use of online public services to reach the European average level;

- e* the creation of conditions that allow a 25 per cent increase in ICT exports in accumulated values (compared with figures for 2011); and
- f* the promotion of innovation in ICT and the enhancement of R&D potential through a 10 per cent increase in direct public funding for ICT R&D (compared with figures for 2012).

Recently, the Portuguese Association for Consumer Defence (DECO) made a formal complaint to Anacom regarding MEO's summer campaign in which clients are offered, through an SMS, 2Gb of internet until 31 August. After 31 August of the year of the offer, clients may continue the internet service for an extra €3.98 per month. DECO's complaint relates to the requirement for customers to cancel a service that they did not request. To date, Anacom has considered that the practice followed by MEO in this campaign, whereby subscriber inaction is taken as an expression of consent, is detrimental to the interests of subscribers, and is incompatible with a range of legal provisions, and in particular those under the Electronic Communications Law. Under these terms, ANACOM has approved a draft decision ordering MEO to comply with the following conditions:

- a* the immediate cessation of the campaign;
- b* communication to subscribers who have already been contacted informing them that the proposals for contractual amendments will only be effective where they explicitly give their consent in writing; and
- c* prohibition of the collection of any amounts associated with the additional traffic without the express consent of the subscribers.

2017 also saw the bases of new reforms and policies being implemented regarding:

- a* new guidelines for net neutrality;
- b* a new national strategic plan for radio spectrum (CB);
- c* new transparency rules in the media sector; and
- d* those initiatives regarding the review of the electronic communications regulatory framework that were already known about.

Due to numerous and still-pending legal questions that unmanned aerial vehicles, commonly referred to as drones, still raise, the government has launched a public consultation on a Decree-Law that aims to establish a system of mandatory registration and an obligation to contract liability insurance to cover any damages caused to third parties by these devices. The consultation ended on 10 October.

VI CONCLUSIONS AND OUTLOOK

As a consequence of the possible acquisition of Medial Capital (media content) by Altice (telecommunications operator and infrastructures), the trend of convergence between telecommunications and media, and between digital vehicles and content, will influence the market in 2018.

It is predicted that the government will continue to focus on network neutrality, data security and cybersecurity, privacy and data protection (particularly following the implementation of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016) in the next few years.

The security of the network and information systems will be a key issue in the future following the adoption of Directive (EU) 2016/1148 of the European Parliament and the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union, and all Member States must implement the Directive in their jurisdiction no later than 9 May 2018.

The proposal for an ePrivacy Regulation will also be on the agenda during the next year: because it has come under fire since its publication, and because both the European Data Protection Supervisor and the Article 29 Working Party have expressed their concerns and made recommendations, the final approved version of this Regulation is hotly anticipated. Data protection, network and information security, and cybersecurity will be the key words for the rest of 2017 and into 2018.

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ISBN 978-1-910813-90-4