OVERVIEW OF LEGAL LANDSCAPE

Telecommunications is a regulated activity in Brazil. The practice of telecom activities in the country requires the prior attainment of specific authorisations by the competent regulatory agency (please see below). The type of authorisation and the related requirements vary according to the type of telecom activity that is being performed.

The governmental agency responsible for regulating the telecommunications sector is the Brazilian Telecommunications Agency (Agência Nacional de Telecomunicações - ANATEL), which is linked to the Brazilian Ministry of Communications.

As a regulatory agency, ANATEL is responsible for the regulation, inspection and granting of authorisations required for the performance of telecom activities in Brazil. ANATEL also has the power to apply administrative sanctions in the case of contraventions of telecom laws and regulations.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Primary Telecom Legislation

The primary legislation governing telecoms in Brazil is the General Telecommunications Law (Federal Law No. 9,472 of 1997, as amended - LGT).

The LGT was enacted in 1997 as a consequence of the denationalisation of telecom activities in Brazil. It provides the key definitions relating to telecoms and establishes the basis for the organisation of telecom activities, as well as creating ANATEL, the regulatory agency.

ANATEL’s Regulatory Framework

ANATEL’s regulatory framework is complex and involves a high number of regulatory acts (including regulations, instructions and opinions) which may apply to several...
aspects of telecom activities. Free translations of the key laws and regulations relating to the telecom sector can be found here. Please note that ANATEL regulations are constantly being amended and updated by the agency.

ANATEL provides regulation regarding the following main topics:

- ANATEL’s organisation, objectives and functioning
- Telecom strategic planning, the general telecom regulation plan and inspection/administrative proceedings
- Fixed telecom service (or STFC) (related to the communication between two fixed points/either local or long distance)
- Mobile telecom service (or SMP) (related to mobile communications services)
- Multimedia communications service (or SCM) (related to the provision of capacity to transmit, emit and receive multimedia information to subscribers within a determined private area)
- Limited use telecom services (private telecom services utilised by the user itself or by private groups, and related to certain activities such as aerospace research, meteorology services, etc)
- Radio communications (related to communications via radio)
- Satellite (related to satellite exploration)
- TV subscription (related to paid TV services)
- Radio diffusion (related to open TV and radio)
- Inter-connection (related to telecom network interconnection)
- Telecom product certification (related to requirements and procedures for the certification of telecom equipment)
- Radiofrequency (related to, among other things, procedures and authorisations for the uses of radiofrequency)
- Rights and obligations of telecom market players (providers, users, equipment manufacturers, etc)
Types of Telecommunications Activities and/or Persons Which Are Subject to Legal and Regulatory Requirements

Telecom Services Legal Definition

The LGT defines telecom services as the 'set of activities that enables the telecommunications offering'.

The term telecommunications is defined as ‘the transmittal, production or reception, by wire, radio electricity, optical means or any other electromagnetic process, of symbols, characters, signals, writings, images, sounds or information of any nature’.

The LGT also establishes what does not come within the definition of telecom services. Among the activities that do not constitute telecom services (and, therefore, are not subject to ANATEL intervention) are:

- The provision of satellite capacity
- Activities related to the registration and qualification of users and equipment for the access to telecom services
- The value added service, defined as 'the activity that adds to its corresponding telecommunications service (and to which it holds no similarity), new utilities related to access, storage, presentation, handling and retrieving of information'

Classification of Telecom Services

There are several types of legal classifications relating to telecom services/activities, including:

- Broadness (collective or restricted interest)
- Legal regime (public or private)
- Authorisation modality (concession, permission or stricto sensu authorisation). Similarly there are
EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Interconnection is regulated by the LGT and by ANATEL.

Interconnection regulation includes:

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

As a general rule, in order to provide telecom services in Brazil the entity must be incorporated, organised and domiciled in the country.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Interconnection is regulated by the LGT and by ANATEL.

Interconnection regulation includes:

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

Generally speaking, the provision of telecom services in Brazil (as defined in Regulated activities) requires prior authorisation from ANATEL.

The type of authorisation (ie concession, permission or stricto sensu authorisation) and the related requirements vary according to each telecom service modality.

ANATEL’s prior authorisation is also required for:

- Use of radiofrequency
- Telecom equipment certification

In addition to the above, ANATEL is also responsible for granting satellite exploitation rights (landing rights) to entities, as well as for regulating the satellite use for transportation of telecom signals.

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Telecom Activities Regulated by ANATEL

ANATEL regulates, amongst other things, those activities specified in Laws and Regulations above. Regulation applies to telecom services providers, telecom services users, telecom equipment suppliers and manufacturers, among others.

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Telecom service users’ rights and contracting requirements are subject to regulation. Such regulation also defines the telecom service user (or consumer) as ‘any legal entity or individual which uses telecom services’.

Telecom service users’ basic rights include the following:

- Access to telecom services in the Brazilian territory that satisfy a certain standard in terms of quality and consistency
- Freedom of choice regarding the telecom service provider
- Non-discrimination regarding conditions for telecom services access and fruition
- Access to adequate information regarding the telecom services rendering conditions, tariffs/prices and services suspension
- The inviolability and secrecy of communication (subject to an exception for specific cases, as provided for by law)
- A right to request the non-disclosure of its user access code
- Non-suspension of services rendered under the public regime (as the STFC), except in specific cases (e.g. debt directly derived from the services utilisation and breach of contractual obligations)
- Personal data privacy
- A right to have complaints duly answered by the telecom service provider
- A right to present claims against the telecom service provider before ANATEL and the consumer defence authorities
- A right to be indemnified for any damages caused by virtue of its users rights violation

Requirements for the execution of interconnection agreements among the telecom providers (which must be approved by ANATEL)

Definition of related interconnection compensation/tariff
REGULATORY TAXES AND FEES

Taxes and fees include the following:

Main Taxes Levied Over Telecom Companies (applicable rates vary depending on the chosen tax regime)

- Corporate Income Tax - (Imposto de Renda da Pessoa Jurídica - IRPJ)
- Social Contribution on Net Profits (Contribuição Social Sobre o Lucro Líquido)
- Tax on Social Integration Program (Programa de Integração Social - PIS) and Tax for Social Security Financing (Contribuição para o Financiamento da Seguridade Social - COFINS o - CSLL)

Main Taxes and Fees Levied Over Telecom Activities

- Value Added Tax on Sales and Services (Imposto sobre a Circulação de Mercadorias e Serviços de Transporte Interestadual e Intermunicipal e de Comunicação - ICMS), which is a State Tax
- Fund for Universal Access to Telecommunications Services (Fundo de Universalização dos Serviços de Telecomunicações - FUST)
- Fund for Telecommunications Technological Development (Fundamental para o Desenvolvimento Tecnológico das Telecomunicações - FUNTTEL)
- Telecommunications Inspection Fund (Fundo de Fiscalização das Telecomunicações - FISTEL) - The main FISTEL revenue sources are: Installation Inspection Fee (Taxa de Fiscalização de Instalação - TFI) and Functioning Inspection Fee (Taxa de Fiscalização de Funcionamento - TFF)

Also, administrative fees are applied to ANATEL telecom authorisations requests.

KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

Administrative sanctions in the case of breaches/contraventions of telecom laws and regulations include the following:
• Warnings

• Fines

• Temporary suspension of the authorisation granted by ANATEL regarding the telecom activity

• Extinction of the authorisation granted by ANATEL regarding the telecom activity

• Temporary banning from participating in public bids

ANATEL is responsible for the investigation of the breaches/contraventions and imposition of sanctions. The imposition of sanctions depends on a prior administrative proceeding in which the infracting party has a right of defence. Administrative sanctions are applied in addition to any civil and criminal sanctions.

The LGT defines the unlawful development of telecom activities as a crime.

KEY CONTACTS

Fabiano Gallo
Senior Partner
Campos Mello Advogados
T + 55 11 3077 3574
fabiano.gallo@cmalaw.com

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Fabiano Gallo
Senior Partner
Campos Mello Advogados
T + 55 11 3077 3574
fabiano.gallo@cmalaw.com
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