

# TELECOMMUNICATIONS LAWS OF THE WORLD

Brazil vs United Kingdom



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# BRAZIL



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## 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 before the Brazilian Telecommunications Agency (*Agência Nacional de Telecomunicações - ANATEL*), which is linked to the Brazilian Ministry of Communications. The type of authorisation and the related requirements vary according to the intended telecom activity.

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 violations to the provisions of the telecom regulation.

## KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

### Primary Telecom Legislation

The primary legislation governing telecom activities 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 telecom activities and establishes the basis for the organisation of telecom sector.

# UNITED KINGDOM



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## OVERVIEW OF LEGAL LANDSCAPE

Subject to a handful of discrete exceptions (i.e concerning the use of spectrum and operation of radio apparatus which requires a licence, and the allocation of numbering resources which requires formal allocation), communication providers have general authorisation to operate in the UK and do not require a licence, permit, consent etc.

This concept of general authorisation was originally derived from the European Authorisation Directive (now replaced by the Electronic Communications Code) and was implemented in EU Member States, and the UK. Unlike EU Member States, the UK does not require any prior notification to, or registration with, the telecommunications sector regulator, the Office of Communications ('Ofcom') of an operator's intention to provide communications networks or communications services.

The roles and responsibilities of Ofcom are codified in the key telecommunications legislation in the UK, the Communications Act 2003. Ofcom regulates the TV and radio sectors, fixed line telecommunications, mobiles, postal services, plus the airwaves over which wireless devices operate. Ofcom also has functions related to furthering the interests of consumers in relevant markets.

## KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing the telecommunications sector in the UK is the Communications Act 2003 which came into force on 25 July 2003 (largely replacing the Telecommunications Act 1984). The Communications Act 2003 implemented the following European Directives:

- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services.



## ANATEL's Regulatory Framework

ANATEL's regulatory framework involves a high number of regulatory acts (including regulations, instructions and opinions) which apply to several aspects of telecom activities. Such regulation has been going through amendments to reflect technology developments and streamline the telecom regulatory environment.

ANATEL regulates the following aspects relating to the telecom sector, among others:

- 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);

- Directive 2002/20/EC on the authorisation of electronic communications networks and services.
- Directive 2002/19/EC on access to and interconnection of electronic networks and associated facilities.
- Directive 2002/22/EC on universal service and user rights.

These directives form the framework on which the Communications Act 2003 is based.

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In 2018, the European Electronic Communications Code (EECC) was established by Directive 2018/1972/EC. The EECC includes new consumer protections, among other updates to the EU communications regulatory framework. The majority of the reforms under the EECC have been implemented in the UK through amendments to the Communications Act, and amendments to Ofcom's General Conditions of Entitlement.

In addition to the Communications Act, the following legislation (and subordinate legislation sitting underneath) may also impact the provision of communication services and the operation of communication networks:

- The Wireless Telegraphy Act 2006, which sets out the regulatory framework for radio spectrum and operation of radio apparatus. Under the Wireless Telegraphy Act 2006, the use of spectrum and operation of radio apparatus requires a licence, unless a relevant exemption applies.
- The Competition Act 1998.
- The Data Protection Act 1998 which governs the processing of personal data, and the Privacy and Electronic Communications Regulations which sets out privacy rights in relation to electronic communications.
- The Regulation of Investigatory Powers Act 2000, and the Investigatory Powers Act 2016, which govern the interception of the communications. For example, the Investigatory Powers Act 2016 permits certain public bodies to require telecommunications operators to establish technical means to intercept communications made over their networks (and related data) and

- Radiofrequency (related to, among other things, procedures and authorisations for the uses of radiofrequency); and
- Rights and obligations of telecom market players (providers, users, equipment manufacturers, etc).

to provide such intercepted communications and data to such public bodies.

- The National Security and Investment Act 2021, which establishes a regime for the government to scrutinise and intervene in acquisitions made in several sensitive sectors (including the communications sector) which could negatively affect the UK's national security. Under this regime, a mandatory and voluntary notification requirement is established.

The key features of the Communication Act are:

- Although communication providers are generally authorised, this authorisation is subject to compliance with the General Conditions of Entitlement published by Ofcom [here](#). The primary purpose of this is to protect recipients of communication services and they include conditions regulating the contents of bills, accessibility of information etc. The General Conditions of Entitlement also set out network functioning conditions applicable to providers of communications networks. It is the responsibility of each communications provider to consider which of the current General Conditions of Entitlement are applicable to the services and networks they provide.
- In addition to the published General Conditions of Entitlement, Ofcom has the power to set specific conditions relating to universal services, access, privileged suppliers and - most notably - 'significant market power' (SMP). Ofcom has a duty to periodically review the telecommunications markets, and where it finds that one (or more) operators have SMP it must impose such a condition on the SMP operator(s).
- The regulation and allocation of telephone numbers and controls and restrictions relating to premium rate telephone services.
- The principle of universal service; that affordable basic telephony, and affordable broadband services of a minimum service quality, should be available to everyone.
- Ofcom is empowered to hear disputes between communications providers (although referral to Ofcom does not preclude the bringing of court proceedings).

## REGULATORY BODIES OR AUTHORITIES

### Agência Nacional de Telecomunicações

Address: SAUS Quadra 6 Bloco H, Ala Norte, Brasília, Brazil, Zip Code 70070-940

Website: [Anatel](http://Anatel.gov.br)

## 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*” (“**Telecom Services**”).

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 the activities that do not consist in Telecom Services, which includes:

- The provision of satellite capacity;
- Activities related to the registration and qualification of users and equipment for the access to Telecom Services; and
- 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”.

The Electronic Communications Code, as set out in Schedule 3A of the Communications Act 2003, sets out the powers that can be given to providers of electronic communications networks (ECNs) and providers of conduit systems available for use by providers of ECNs to enable them to install and maintain electronic communications apparatus on land, including land owned by third parties.

## REGULATORY BODIES OR AUTHORITIES

### Ofcom

Address: Ofcom Riverside House, 2a Southwark Bridge Road, London, SE1 9HA

Website: [www.ofcom.org.uk](http://www.ofcom.org.uk)

## TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

Broadly speaking there are two types of communication providers for the purposes of the Communications Act; providers of electronic communication networks (ECNs) and providers of electronic communication services (ECS). The categories are then further sub-divided into public and private providers.

A electronic communication network is defined in the Communications Act as:

- A transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description.
- Such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals
  - Apparatus comprised in the system.
  - Apparatus used for the switching or routing of the signals.
  - Software and stored data.
  - Other resources, including network elements which are not active.

## Classification of Telecom Services

Telecom services/activities may be classified by several aspects, including:

- Broadness (collective or restricted interest);
- Legal regime (public or private); and
- Authorisation modality (concession, permission or *stricto sensu* authorisation). Similarly, there are several types of telecom services/activities modalities. Each one of such modalities is regulated by ANATEL.

## Telecom Activities Regulated by ANATEL

ANATEL regulation applies to the activities described in ANATEL's Regulatory Framework above.

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

The provision of Telecom Services in Brazil requires prior authorisation from ANATEL.

The type of authorisation (i.e., 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; and
- Telecom equipment certification.

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

An 'electronic communications service' means a service of any of the following types, provided by means of an electronic communications network (except in so far as it is a content service):

- An internet access service.
- A number-based interpersonal communications service.
- A service consisting in, or having as its principal feature, the conveyance of signals, such as a transmission service used for machine-to-machine services or for broadcasting.

As the above hopefully illustrates, there is a breadth of regulated activities. Even if a service is provided over the use of another's network (or through an agreement with a communications provider), the entity providing that service is subject to the same regulations and so is considered a communications provider. Such regulations principally are the General Conditions of Entitlement described above.

Ofcom also regulates the allocation of telephone numbers in the UK. The provision of certain premium rate services may require prior permission from another regulator, the Phone-paid Services Authority and there are also various codes of practice which premium rate service providers must adhere to.

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

Communication providers have general authorisation to operate in the UK and do not require a licence, permit, consent etc. This concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States, and was implemented by the UK while it was part of the EU. Unlike some EU Member States, the UK does not require any notification to the telecommunications regulator, Ofcom.

Mobile operators (and other users of spectrum and operators of radio apparatus) do require a licence from Ofcom under the Wireless Telegraphy Act 2006 in order to use spectrum and/or install and operate radiocommunications apparatus forming part of their networks unless an exemption to licensing applies.

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

As a rule, in order to provide Telecom Services in Brazil the entity must be incorporated, organised and domiciled in the country. Foreign participation in or control of those entities is allowed.

In fact, telecommunications sector counts with foreign capital presence since the privatization of the Telebras system back in 1998. However, before 2021, it was necessary for non-domiciled persons to incorporate a local holding in the country to directly hold the Brazilian telecommunications company shareholding control.

## **EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

Interconnection is regulated by the LGT and by ANATEL.

Interconnection regulation includes:

- Requirements for the execution of interconnection agreements among the telecom providers (which must be approved by ANATEL); and
- Definition of related interconnection compensation/tariff.

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

From a telecommunications regulatory perspective, there are no requirements for a communications provider to be domiciled in the UK prior to or during the provision of services. Advice should however be sought from a tax perspective.

The UK government is able to scrutinise and intervene in acquisitions made in UK entities under the National Security and Investment Act 2021 where such an acquisition could affect the UK's national security. The National Security and Investment Act 2021 applies to both UK and non-UK investors.

## **EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

The General Conditions of Entitlement require all providers of public electronic communications networks (irrespective of ownership) to 'negotiate' interconnection with other providers of public electronic communication networks with a view to reaching agreement within a reasonable time.

In addition, where Ofcom has found an operator to have SMP following a market review it typically imposes an access-condition obliging the operator to offer interconnection or related services on regulated terms.

Moreover, Ofcom has the power to impose access conditions in the absence of SMP. Since 2011 there has been an increased use of access-related conditions to encourage sustainability, efficient investment in infrastructure, to promote innovation and to ensure 'end-to-end connectivity' within the UK network. Access related conditions may, for example, be imposed by Ofcom on:

- Providers of a subscription service or service accessed using an authorisation card (known as conditional access system).
- Code operators under the Electronic Communications Code.

Ofcom (via an SMP designation) regulates the wholesale rates charged by providers of wholesale call termination, and rates charged for mobile call termination, for termination of phone calls from other networks or their customers. All operators are currently required to provide call termination on regulated terms.

## TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Telecom Services users' rights and contracting requirements are subject to Anatel regulation. For such purposes, Telecom Services user (or consumer) is considered 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 Services 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 (eg 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 Services provider;

## TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The General Conditions of Entitlement contain a number of consumer protection specific provisions. A 'consumer' is defined as someone who uses or requests a service for non-business use, which would include someone not contractually bound to the supplier. Certain such provisions are extended to cover services provided to microenterprise or small enterprise customers and not-for-profit customers (unless such customers have expressly agreed otherwise).

Specific obligations relating to consumers include, but are not limited to:

- The requirement to include certain minimum terms in consumer contracts.
- Conditions relating to term and termination of customer contracts.
- The requirement to make certain information available to the customer, such as a description of the services offered and the standard tariffs.
- Availability of number portability.
- Restrictions on sales and marketing activities.

In addition to specific telecommunications laws, regulations and codes, provisions of general consumer law also apply, such as rules concerning unfair consumer terms.



- A right to present claims against the Telecom Services provider before ANATEL and the consumer defence authorities; and
- A right to be indemnified for any damages caused by virtue of its users' rights violation.

## REGULATORY TAXES AND FEES

### 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 – CSLL*); and
- Tax on Social Integration Program (*Programa de Integração Social - PIS*) and Tax for Social Security Financing (*Contribuição para o Financiamento da Seguridade Social - COFINS*).

### 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 (*Fundo para o Desenvolvimento Tecnológico das Telecomunicações - FUNTTEL*); and
- 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 by ANATEL to telecom authorisations requests.

## REGULATORY TAXES AND FEES

Licensees issued with a licence pursuant to the Wireless Telegraphy Act 2006 must pay any applicable licence fees as set by Ofcom under the Wireless Telegraphy Act 2006.

All operators providing of communications networks and communications services under the General Authorisation and with relevant turnover from relevant activities in excess of a set threshold (currently GBP 5,000,000) must pay an 'administrative charge' to Ofcom. The administrative charge applicable to relevant turnover generated in the calendar year ending 31 December 2020 is set at 0.0872% of relevant turnover.

Under the Communications Act 2003, Ofcom has the statutory power to set up a "universal service" fund. The fund would be contributed to by telecommunications operators and used to compensate BT (the Ofcom designated universal service provider) for its costs of delivering universal services. So far, Ofcom has chosen not to do so on the basis that BT gets sufficient benefit from being known as the universal service provider to cover its additional costs; this position may change in the future.

## 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; and
- 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 SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

Where Ofcom (acting reasonably) identifies a breach, it will notify the relevant provider and require it to take necessary steps to rectify the breach. Failure to comply with the initial notice may lead to Ofcom issuing an enforcement notice and where the terms of the enforcement notice are not complied with, Ofcom may instigate civil proceedings and levy a fine. In addition, in the most serious of cases, Ofcom may suspend or restrict the providers entitlement to provide a regulated communications service and require that compensation is paid to the providers' customers. Breach of a direction is a criminal offence although providers in receipt of a notice or direction must be given the opportunity to make representations in their defence.

Ofcom has the power to issue enforcement notices to cease persistent misuse of a network or service. Ofcom may also require entities to provide certain information relating to Ofcom's regulation or networks and services.

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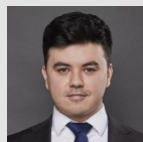
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