TELECOMMUNICATIONS LAWS OF THE WORLD

Full Handbook

DLA PIPER

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ABOUT

Welcome to DLA Piper's Global Telecoms Law handbook.

Our team offers a global full-service business legal capability focusing on the telecommunications sector, founded on deep commercial, transactional and regulatory knowledge. We have telecoms regulatory advisers located in key jurisdictions around the world and have experience advising on business-critical regulatory matters globally.

Telecommunications infrastructure is at the heart of any global business in the modern age. From data security and data resilience requirements, through cloud connectivity issues, to low latency and time-based stamping in trading transactions, robust, reliable and resilient networks are critical.

Today, telecommunications operators are increasingly seeking to expand customer-specific and value-added services (such as combining connectivity with application services) to retain relevancy and protect against margin erosion. At the same time, the growth of OTT (over the top) applications raises novel regulatory questions because service providers, many of whom have no infrastructure and often no physical presence at all in a country, can nevertheless use licensed operators' infrastructure in that country to provide services.

We hope that the Global Telecoms Law handbook provides a useful resource for companies wherever they do business.

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ARGENTINA

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OVERVIEW OF LEGAL LANDSCAPE

Argentina is the third-largest economy in Latin America. Although it benefits from a wealth of natural resources, a diversified industrial base and a highly skilled labor force, statist and interventionist policies expose the economy to persistent boom-bust cycles. It is the fourth more populated country in Latin America and one of the countries with the highest penetration of mobile services.

The Government Body in charge of the control of the telecom and media industry is the National Entity of Communications ("**ENACOM**"), an autonomous and decentralized entity. It is in charge of the application of the Digital Argentina Law 27,078, Audio-visual Services Law 26,522, and related regulations.

Also, the Undersecretary of Telecommunications and Connectivity is in charge of the dictation of regulation about telecommunications.

Both entities are on the Federal Government. States and localities have no authority for regulation of the services, they only request a permit for the installation of telecommunications infrastructure.

The main regulations applicable to the ICT sector are:

- Digital Argentina Law 27,078,
- Audio-visual Services Law 26,522,
- Decree 764/2000 (Spectrum),
- Decree 690/2020 (Price Regulation),
- Decree 588/2008 (Universal Service),
- Resolution 286/2018 (Interconnection),
- Resolution 697/2018 (Licenses),
- Consumer Protection Law 24,240.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The Licensing Regulation rules licenses, resale services, serving areas, obligations of the licensee to other licensees, to customers, and to the Regulator. The regulations set a Single License System that allows the licensee to provide any kind of

telecommunication services (fixed or mobile, wired or wireless, national or international). Licenses are granted without a term limit, on demand, with a national scope, and with freedom of choice on technology and investments.

Spectrum regulation establishes that the spectrum is a public domain property, and it is granted on a precarious basis. The bandwidth to be granted must be related with the services to be provided. The bands are granted on demand or by a public auction.

The pricing regulation of telecommunications services had established "fair and reasonable" prices, which meant unregulated prices, until the Decree 690/20 was enacted. This Decree states that the prices will be reasonable, fair, must cover the operation expenses, assure a reasonable profit margin, and that they will be "regulated" by the Authority.

This Decree, enacted in August 2020, prohibited raising prices until December 2020, and subsequent resolutions of the Authority allowed higher prices since that date. But these resolutions and the Decree were challenged in the courts, and a lot of companies (Telecom, Telefónica, Directv, Telecentro, TV Cable Color, etc.) received precautionary measures in their favor, halting the price regulation and consequently allowing price freedom again.

REGULATORY BODIES OR AUTHORITIES

ENACOM

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+5411 4349-9145

www.enacom.gob.ar

Undersecretary of Telecommunications and Connectivity

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

Any natural or legal person providing any ICT service (such as Fixed or Mobile Telephone, Internet Access - fixed, mobile, satellite etc.) or media services (cable or wireless TV, radio), is subject to ENACOM regulations.

On the other hand, services provided through Internet only (WhatsApp, Skype, Zoom, Netflix, etc.) are not subject to these regulations.

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

Single Licenses are granted by the ENACOM. ENACOM does not have the authority to deny a license if the application meets all the requirements. One the License is acquired, the licensee can request a Registration of Services, by which they are able to provide the registered services. To register services, no technical, legal, or economic support documents must be filed, only a simple petition.

Once the license and registration are granted by ENACOM, the licensee is required to provide the registered services within 24 months from the date of registration, permit the interconnection of its networks to any provider that requests the interconnection as established by the National Interconnection Rule; and provide information about traffic, total revenues and other information related to the geographical coverage area, to ENACOM.

Single Licenses are granted to both domestic and foreign companies (branches of foreign companies that are registered to conduct business in Argentina). There are no restrictions on foreign participation in the capital of the licensee. A completely foreign-owned company, if locally registered or a branch of a foreign company, can qualify for a license and a spectrum permit.

The Single License can be obtained upon filing the following information with ENACOM:

- Full legal name, Articles of Incorporation, Bylaws, Minutes of designation of valid authorities duly registered with the corresponding registries;
- Principal place of business and address in which legal notices shall be deemed duly given by ENACOM;
- An affidavit indicating that the applicant and its shareholders are not subject to any incompatibility;
- An affidavit assuring the compliance with the standards and technical specifications regarding telecommunications equipment and devices.

To hold a spectrum permit, the process depends on whether the spectrum authorization is granted by auction or by direct award. Radio spectrum can be assigned to service providers through public auctions, bidding processes (when there is a shortage of band frequencies), or upon demand. When a request to use a frequency band is filed with the ENACOM, it shall publish the frequency band requested in the Official Gazette, establishing a period of 15 days for third parties to have the opportunity to give evidence of their interest of said frequency band. If there are more interested parties registered than bands of frequencies available for authorization or if a shortage of frequencies is foreseen, the authorization for the use of a frequency band will be made through public auctions. If there are no third parties interested in a particular frequency band other than the one that has filed a request or if there is no shortage of frequencies foreseen, authorizations will be granted on demand.

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

A licensee must be incorporated in Argentina or have a registered branch office in Argentina.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Interconnection Rules provides licensees with a right to interconnect. Licensees must seek to negotiate, in good faith, requests for interconnection at any technically feasible point. Any party may refer a dispute regarding interconnection or access to ENACOM for resolution if no agreement is reached. Licensees with Significant Market Power must publish a Reference Offer.

There are many mandatory matters to be addressed in the interconnection agreement such as: tariffs and invoicing systems, technical and operational matters, etc.

Domestic inter-carrier roaming is not mandatory and is regulated through commercial agreements reached between the relevant carriers.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Consumer regulations states that licensees must provide to the consumer all the information related to the service, in Spanish, in a clear, detailed, free of cost manner. On the website and in the stores, it must be informed:

- The consumer's rights recognized by this Rule,
- The standard contract filed to the ENACOM,
- The address and free phone number of Customer Service of both the company and the Regulator, and the procedure to file claims,
- Details and prices of the services,
- Covered areas,
- Terms for the reception of messages with ads,
- Procedure to unsubscribe from content services (must be the same as the procedure to subscribe),

- Policies about recycling and final disposition of electronic waste, of electronics used for the service.

Besides, the licensee must publish information about the speed, quality of the link, type of services, on a site that must be linked to the main site of the company. For each type of service, the licensee must inform commercial characteristics of the service, speed, downloads limits, oversubscription rate, technical standards of quality service, resetting operation time, quality and availability of links, and network management measures.

REGULATORY TAXES AND FEES

The cost of the License is USD 100. There is no cost for the registration of specific services.

Telecom services providers must pay:

- the Control, Inspection, and Verification fee: 0.50% of the total income accrued for the provision of services, net of taxes, and charges.
- the contribution to the Universal Service Trust Fund: 1% of the total income accrued for the provision of services, net of the taxes and charges.
- payment for the use of the radio spectrum.

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

ENACOM can impose fines for breaking the federal regulations and consumer regulations.

Both federal and local Consumer Protection offices can impose fines for breaking Consumer Protection laws.

Fines, closure, confiscation of the products, can be imposed by Consumer Protection Offices.

ENACOM can impose fines, closure, administrative precautionary measures about ceasing to operate, and in the most serious cases, the penalty could be the termination of the Register.

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AUSTRALIA

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OVERVIEW OF LEGAL LANDSCAPE

The Australian telecommunications regulatory landscape and regulatory perimeter is broad and complex.

The primary telecommunications legislation, the 1997 Telecommunications Act, removed barriers to participation and added to earlier legislation which was intended to permit facilities-based competition. The 1997 Telecommunications Act implemented an access regime applicable only to the telecommunications industry and also provided prohibitions against anti-competitive conduct.

The telecoms industry is heavily-regulated and has seen additional complexity arising through a governmental decision to support the construction of a National Broadband Network (NBN) and the incorporation of a wholesale only company to supply broadband services (NBN Co). This has resulted in significant regulatory changes (in particular, to shield NBN Co from certain types of competition). The current government has announced changes to the NBN, in particular potentially removing cross-subsidies between urban and rural areas which were intended to provide for a single, Australia-wide access price, as well as adjustments to its facility-based competition principle (which saw other operators connect fiber-to-the-building (FTTB) infrastructure to high-density, higher use buildings such as apartment blocks).

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

As noted above, the Telecommunications Act 1997 is the key legislation which regulates, amongst other things, telecommunications carriers in Australia.

It is supported by a range of other legislation, instruments and codes including the Telecommunications (Consumer Protection and Service Standards) Act 1999, which provides for the establishment of the universal service obligation with respect to standard telephone services in Australia, the ability of the Australian Communications and Media Authority (ACMA) to set performance standards and obligations on carriers, and the requirement for carriage service providers to enter the Telecommunications Industry Ombudsman scheme. ACMA has also recently published codes regarding:

- **emergencies:** The C536:2020 Emergency Call Services Requirements Industry Code (Updated 17 December 2020) requires carriers and carriage service providers to ensure access to emergency call services. Carriers are also required under the Telecommunications Act 1997 to provide help as is reasonably necessary, in the event of a National Emergency Declaration or state of disaster or emergency; and

- **scams**: Industry Code C661:2022 Reducing Scam Calls and Scam SMS (Updated 12 July 2022) provides for processes for carriers and carriage service providers to disrupt scam calls and SMS. This includes provision for processes that enable carriers to exchange information in relation to spam materials, to facilitate the reduction of spam in telecommunications.

Specific NBN Co Laws, Regulations and Policies

The regulatory framework for the NBN was established through the National Broadband Network Companies Act 2011 and the Telecommunications Legislation Amendment (National Broadband Network Measures - Access Arrangements) Act 2011 which added to the existing generic telecommunications regulatory framework. In addition:

- **Nondiscrimination obligations:** The Australian Competition and Consumer Commission (ACCC) must publish guidance on NBN Co's non-discrimination obligations.

- **ACCC explanatory material on the Part XIC nondiscrimination provisions:** Under the legislation, NBN Co can choose to publish a standard form of access agreement and/or give a special access undertaking to the ACCC in relation to its terms and conditions for the supply of wholesale services. Where an access agreement differs from the standard form of access agreement, NBN Co must provide a statement of the differences to the ACCC.

- **Special Access Undertaking (SAU):** In December 2013, the ACCC accepted an SAU lodged by NBN Co, in accordance with section 152CBA of Part XIC of the Competition and Consumer Act. The SAU specifies basic terms and conditions under which NBN Co will provide its wholesale services.

- **Authorised conduct:** The NBN Access Act introduced Division 16 into Part XIB of the Competition and Consumer Act, which authorises, for the purposes of the Act, certain conduct by NBN Co that is reasonably necessary for it to achieve uniform national wholesale pricing. This conduct relates to refusal to interconnect other than at listed points of interconnection, the bundling of services and cross-subsidising in charging for services. However, current Government policy on the issue of uniform pricing may result in differential charging between urban, rural and remote locations.

- **Telecommunications Act:** The NBN Access Act applies to fixed-line local access networks, or parts of such networks, that are built, upgraded, altered or extended after 1 January 2011 so that they are capable of providing a carriage service where the download transmission speed is normally more than 25 megabits per second to residential or small business owners.

REGULATORY BODIES OR AUTHORITIES

The Australian Competition and Consumer Commission's main responsibilities include:

- The promotion of competition within the Australian telecommunications industry and to ensure that consumers' interests are protected

- Overseeing the telecommunications access regime provisions for controlling anti-competitive conduct and price control arrangements

- Focussing on access determinations to bottleneck services

The Australian Communications and Media Authority's main responsibilities include:

- Forming part of the Department of Infrastructure, Transport, Regional Development and Communications

- As a converged telecommunications regulator, overseeing the broadcasting, internet, radio communications and telecommunications industries

- Regulating technical and non-competition aspects of the industry, licensing telecommunications carriers, regulating fixed-line and mobile telecommunications, developing codes of practice for the industry and monitoring compliance, monitoring the performance of carriage service providers, setting and enforcing industry and technical standards and monitoring industry performance numbering, advising consumers on their rights and safeguards and managing the delivery of services to people with communication impairment

The Telecommunications Industry Ombudsman's main responsibilities include:

- The provision of a fast, free and fair dispute resolution service for small businesses and residential consumers who have a complaint about their telephone or internet service

- Being an independent body that complies with the Commonwealth's Benchmarks for Industry-Based Customer Dispute Resolution Services here

The Communications Alliance's main responsibilities include:

- Being an industry body for the communications industry

- Promoting the growth of the communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance that uses practical, self-imposed solutions that are developed co-operative processes

The Communications Compliance's main responsibilities include being an independent monitoring body that oversees conduct of the Telecommunications Consumer Protections Code Compliance Framework, providing guidance on how to comply with the code and providing an overview of industry compliance. It should be noted that the Communications Compliance does not actually enforce compliance (ACMA is, in most cases, the key enforcement body).

The Attorney General's Department's main responsibilities include administering the Telecommunications (Interception and Access) Act 1979 and the Surveillances Devices Act 2004. However, the department does not investigate crimes (relevant police enforcement agencies investigate and potentially prosecute).

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

Installing Facilities

The Telecommunications Act 1997 restricts carriers in their installation of telecommunications facilities. Primarily only low-impact facilities, which are designed to be unobtrusive and to be installed in line with the legislation, are permitted. Superfast network obligations also arise under the same legislation which limit the installation of superfast networks (in connection with the rollout of the NBN).

Approval of telecommunications facilities is the responsibility of the local government authority in the area.

Service Providers

Service providers including Carriage Service Providers (CSP), that use, but do not own, a telecommunications network unit to provide carriage services to the public (including Internet Service Providers and Internet Access Providers, as they fall within the category of a CSP), and content service providers that supply content services to the public must comply with obligations imposed by the telecommunications access regime, in addition to the following regulations:

- The Telecommunications Act 1997

- The Telecommunications (Consumer Protection and Service Standards) Act 1999

- The Competition and Consumer Act 2010

- The Telecommunications Consumer Protections Code

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

In addition to the registration of a business name with the Australian Securities and Investments Commission, the following registration and licensing requirements must be adhered to:

- **Telecommunications licence**: Except in limited circumstances, the owner of a network unit (cable, wireless, or satellite) used to supply carriage services to the public must hold a Carrier Licence. Carriage Service Providers do not need a licence but must comply with the codes set out in the "Carriers and Carriage Service Providers" section.

- **Content Service Providers**: If a company uses, or proposes to use, any point-to-point carriage service to supply an online service to any other person that is not an officer of the company or a related body corporate then the company is a Content Service Provider under the Telecommunications Act 1997. A Content Service Provider is a general classification of industry participants supplying content services to the public. There is no licence required, however the company will need to comply with the content rules determined by ACMA.

- **Installation Services:** If a company provides installation services for customers that involve customer cabling then they must register with ACMA and comply with the Telecommunications Cabling Provider Rules 2000 issued by ACMA.

- **Radiocommunications Equipment**: A CSP that operates radiocommunications equipment for the purpose of supplying carriage or content services may need to be licensed under the Radio Communications Act 1992. If a radio transmitter or receiver is required to provide services, the company will require a Spectrum, Class or Apparatus Licence.

There may also be local council planning regulations relating to the location of certain infrastructure (base stations, transmitters etc). The nature of these regulations differ between different council areas.

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

No domicile requirements apply for carrier licences, provided that the applicant is a 'constitutional corporation', an 'eligible partnership' or a public body.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Domestic inter-carrier roaming

Domestic inter-carrier roaming is not a declared service (although it has been the subject of a regulatory enquiry to determine whether it should be) and is regulated through commercial agreements reached between the relevant carriers.

International roaming

This is governed by the Telecommunications Service Provider (International Mobile Roaming) Determination 2019.

The Standard focused on four key consumer protection measures:

- A notification via a nominated method of communication to be sent to all consumers on arrival overseas, warning them that significantly higher charges for using roaming services may apply

- Enabling customers to stop international roaming at any time and at the maximum cost of AUD 1, including from an overseas location

- A notification to be sent via a nominated method of communication to customers of service providers giving them pricing information for using a range of roaming services. These services include any that would normally be free in the domestic market, such as receiving a call on a mobile device

- Spend management tools, including notifications in AUD 100 increments for data usage and notifications at 50, 85 and 100% of included value, if a customer has purchased an included value travel package from their International Roaming Mobile (IMR) service provider

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Differences between provision of services to businesses and provision of services to consumers

Subject to contractual commitments agreed between the service provider and the end customer, and as set out below, there are no significant differences in terms of the regulatory treatment of end users of telecommunications services from a general level.

Requirements for provision of services to consumers

- This is principally governed by the Telecommunications Consumer Protections Code, and complaints handling is governed by the Telecommunications (Consumer Complaints Handling) Industry Standard 2018
- Consumers and small businesses can complain to the Telecommunications Industry Ombudsman. Resolutions by the ombudsman are legally binding to the value of AUD 50,000
- If a service is 'declared' by the ACCC, standard access obligations then apply updated consumer protections have been implemented by industry code C628:2019 Incorporating Variation No.1/2022 Telecommunications Consumer Protections (Updated 16 June 2022), which provides further consumer protection safeguards relating to sales, service and contracts, billing, credit and debt management and changing suppliers. It also sets out a framework of code compliance and monitoring

Prohibition on unfair contract terms in the Australian Consumer Law will likely apply to any standard form contract agreed between a service provider and an individual end user or corporate customer (where certain conditions are met).

REGULATORY TAXES AND FEES

Telecommunications carriers who earn AUD 25 million or more in any eligible revenue period are required to pay annual levies and charges including the telecommunications industry levy, and the annual Carrier Licence charge. These are calculated based on their eligible revenue for the previous financial year.

The current fee for an application for a Carrier Licence is AUD2122. This fee covers the cost of processing the application.

Installation services

All individuals performing cabling work, except 'plug and play' cabling of customer equipment (which is not in a wall or ceiling cavity) must be a registered cabler for open cabling work.

Importation of goods for the provision of telecommunication services

Goods imported into Australia with a value above AUD 1000, including commercial quantities, must be cleared by submitting a completed import declaration form and paying duty, GST, and other taxes and charges that apply. The duty rates payable will depend on the tariff classification, the value of the goods in the exporting country and where the goods were manufactured. The Customs Tariff Act 1995 provides the tariff classifications, duty rates, interpretive rates and information on preference schemes, and other concessions and exemptions that may apply.

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

Infringement Notices

Under the Telecommunications Act 1997, ACMA can, instead of instituting court proceedings, give infringement notices for alleged contraventions of certain civil penalty provisions relating to telecommunications. If the penalty under the infringement notice is paid within the specified time frame (or other period agreed to by ACMA) then civil penalty proceedings cannot be initiated and the matter is disposed of without admission of guilt or a conviction. If the penalty is not paid then court action may be taken for civil penalties in relation to the alleged contravention.

Civil Penalties

The penalty specified in an infringement notice given to a body corporate must be a pecuniary penalty equal to 60 penalty units or, for breaches of the service provider rules or carrier licence conditions, the Minister for the Department of Infrastructure, Transport, Regional Development, Communications and The Arts may set a pecuniary penalty amount in a Determination up to 1,800 penalty units.

Privacy Laws

The Office of the Australian Information Commissioner is responsible for breaches of the Privacy Act 1988 (Cth).

Breach of Telecommunications Consumer Protections Code

ACMA enforces the code and it can take the following steps:

- Agree with the telecommunications provider on steps it will take to remedy the breach or improve compliance
- Give a formal warning
- Give a Direction to Comply with code provisions

Telecommunications Industry Ombudsman

- Is authorised to investigate complaints by residential and small business users of telecommunications and internet services
- Can enforce resolution of complaints of up to AUD 50,000, and make recommendations for complaints of up to AUD 100,000

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AUSTRIA

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OVERVIEW OF LEGAL LANDSCAPE

In Austria, the field of telecommunications is strongly influenced by European requirements. The European legal framework was implemented through the Telecommunications Act (*Telekommunikationsgesetz* - TKG 2021). With this Act, regulation has developed from sector-specific regulation towards a more general competition law approach. In the TKG 2021, the regulatory authorities have been assigned new tasks, such as, for example, a number of authorisations to issue ordinances. Regulation and monitoring of the Austrian telecommunications market is undertaken by the Telekom-Control-Commission (TKK) and the Regulatory Authority for Broadcasting and Telecommunications (RTR).

The purpose of the TKG 2021 is to promote competition in the field of electronic communications in order to provide reliable, low-cost, high-quality and innovative communications services and to protect consumers.

The key features of the TKG 2021 are:

- According to the principle of general authorisation any person is entitled to provide communications networks and services. The intended provision, its modifications and its termination have to be notified to the regulatory authority.
- Due to universal service obligations, a minimum set of public services has to be provided to all users at an affordable price regardless of their place of residence or work.
- The regulatory authority is obligated to enforce all the objectives of the TKG 2021 as they are laid out in Sec 1 TKG 2021, especially in respect of the regulation of competition.
- The Federal Ministry of Agriculture, Regions and Tourism administers the frequency spectrum as well as the Austrian rights of use and orbital positions of satellites. The Ministry must take appropriate measures to ensure efficient and interference-free use.
- Minimum contract duration regarding radio frequencies: The regulatory authority awards frequencies for the duration of 15 or 20 years (or more). In case of 15 years, the possibility to extend for another 10 years is provided.
- Cooperation agreements and co- investments: Cooperation (between operators) and co- investments shall be facilitated concerning the competition law in order to promote innovation, in particular for smaller companies, and to facilitate the broadband network expansion in undersupplied regions.
- Universal service: Adaption of the effective regulations to technological development: the universal service will incorporate the access to an internet access service with appropriate broadband and to voice communication services, irrespective of the service provided is wireless or grid- bounded.

- Emergency calls: The operator of the emergency number 112 has to conduct a central infrastructure pursuant to European standards for text based emergency calls and to enable other operators of emergency services the usage of those services via a standardised interface for the purpose for emergency call handling.

- Public warning system: Operators may be obliged to warn their customers in case of danger.

- Protective regulations for consumers.

The regulatory authority is responsible for providing efficient structuring and administration of the communications parameters in their entirety.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

All laws and ordinances mentioned below can be found here.

Laws

- Telecommunications Act (*Telekommunikationsgesetz 2021* – TKG 2021)

- E-Commerce Act (E-Commerce-Gesetz - ECG)

- The Act on Market Supervision for Radio Equipment (*Funkanlagen-Marktüberwachungsgesetz* – FMaG 2016)

- KommAustria Act (*KommAustria-Gesetz* - KOG)

- Telephone Rates Act (*Fernmeldegebührengesetz*)

- Digital Signature and Trust Service Act (*Signatur- und Vertrauensdienstegesetz* - SVG)

- Data Protection Act (*Datenschutzgesetz* - DSG)

- Unfair Competition Act (*Bundesgesetz gegen den unlauteren Wettbewerb* - UWG)

- Law on Alternative Dispute Resolution in Consumer Affairs (*Alternative-Streitbeilegung-Gesetz* – AStG)

Ordinances of RTR

- Ordinance on Notification on Data to the Central Information Point for Infrastructure Data (*ZIS Einmeldung von Daten an die Zentrale Informationsstelle für Infrastrukturdaten* - ZIS-V 2019)

- Ordinance on Notification on Data to the RTR-GmbH as Central Information Point for Broadband Coverage (*Verordnung der Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH) über die Übermittlung von Informationen an die RTR-GmbH als Zentrale Informationsstelle für Breitbandversorgung* – ZIB-V)

- The Communication Parameters, Fees and Value-Added Services Ordinance 2009 (*Kommunikationsparameter-, Entgelt- und Mehrwertdiensteverordnung 2009* - KEM-V 2009)

- Itemised Billing Ordinance (*Einzelentgeltnachweisverordnung*- EEN-V)

- Ordinance on Special Communications Parameters (*Spezielle Kommunikationsparameter-Verordnung 2012* – SKP-V 2012)

- Cost Control Ordinance (*Kostenbeschränkungsverordnung - KostbeV*)

- Information Requirement Ordinance (*Mitteilungsverordnung* - MitV)
- Number Porting Ordinance 2022 (*Nummernübertragungsverordnung 2022* - NÜV 2022)
- Telecommunications Markets Ordinance (*Telekomunikationsmärkteverordung*- TKMVO)
- Telecommunications Reference Rate Ordinance (*Telekom-Richtsatzverordnung*- TRV)
- Special Communication Parameters Ordinance 2012 (*Spezielle Kommunikationsparameter Verordnung 2012* – SKP-V 2012)
- Ordinance on Telecom Network Safety 2020 (Telekom- Netzsicherheitsverordnung – TK-NSiV 2020)
- Ordinance on Telecommunication Basis Reference Amount 2019 (*Telekom-Richtsatzverordnung* – TRV 2019)
- Impairment Guideline Rates Ordinance (*Wertminderungs- Richtsätze Verordnung 2019* – WR-V 2019)
- Ordinance on Central Number Database (*Zentrale Rufnummern-Datenbank Verordnung* – ZR-DBV)

Federal Ministry Ordinances

- Ordinance on use of frequencies (*Frequenznutzungsverordnung 2013* - FNV 2013)
- Ordinances on Radio and Telephone Systems and Telecom Terminal Equipment (*Betriebsfunkverordnung* - BFV, Erteilung genereller Bewilligungen, *Funkanlagen und Endgeräte - Verordnung* – FEV,)
- Telecommunications Fee Ordinance (*Telekommunikationsgebührenverordnung* - TKGV)
- Ordinance on Statistical Enquiries 2022 (*Kommunikations-Erhebungs-Verordnung 2022* - KEV 2022)
- Ordinance on Surveillance of Telecommunications (*Überwachungsverordnung*– ÜVO)
- Identification Ordinance (*Identifikationsverordnung - IVO*)
- Ordinance of the Federal Ministry of Transport, Innovation and Technology regarding general authorisations (*Verordnung der Bundesministerin für Verkehr, Innovation und Technologie, mit der generelle Bewilligungen erteilt werden*)

REGULATORY BODIES OR AUTHORITIES

Austrian Regulatory Authority for Broadcasting and Telecommunications

The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) carries out government duties as a legal entity owned and controlled by the Austrian federal government. It also provides telecommunications-related operational support for the Telekom-Control Commission.

In providing operational support for the Telekom-Control-Commission, RTR is mainly responsible for the fields of site sharing, approvals of general terms and conditions of business, electronic signatures, frequency assignment procedures, competition regulation and statistical surveys.

Additional activities at RTR include alternative dispute resolution, the administration of the Austrian Digitisation Fund and Television Fund, dispute settlement for retail customers, and the administration of communications parameters (e.g. numbering).

RTR's objectives and duties are defined in Sec 194 TKG 2021, which stipulates that RTR must perform all duties conferred upon the regulatory authority by the TKG 2021 and by any ordinances issued under that act, unless the Telekom-Control-Commission is responsible for such duties pursuant to Sec 195 TKG 2021.

As for its government duties, RTR mainly performs tasks related to the administration of communications parameters (allocation of telephone numbers by official decision) under Sec 114 of the TKG 2021. Moreover, RTR was also granted the power to issue various types of ordinances in the TKG 2021 (see list of ordinances Laws and regulations).

RTR additionally has the power to issue:

- Ordinances with regard to service quality
- Subscriber notifications
- Information obligations regarding contracts
- Communication network procedures
- Objections to providers' T&Cs

Telekom-Control-Commission (TKK)

The Telekom-Control-Commission (TKK) is a panel authority with the powers of a court which is managed by the RTR (Sec 195 TKG 2021). In their activities on behalf of the TKK, RTR's staff members are bound by the instructions of the TKK's chairperson or the TKK member designated in the authority's rules of procedure.

Members of the TKK are not bound by any instructions in the performance of their official duties (Sec 20 Par 2 of the Federal Constitutional Act). Appeals against TKK decisions can be submitted to the Federal Administrative Court. Further appeals against decisions by the Federal Administrative Court may be submitted to the Austrian Administrative Court and the Austrian Constitutional Court.

TKK's responsibilities include:

- Competition regulation
- Frequency allocation procedures
- Network cooperation
- Monitoring network neutrality
- Supervisory body for electronic signatures

RTR-GmbH and TKK operate from the same address (Mariahilfer Straße 77-79, 1060 Wien) and share a website.

Telecommunications Office

The Telecommunications Office ("Fernmeldebüro") supervises all communication services.

This includes:

- issuing and monitoring radio licenses,
- frequency coordination and frequency planning,
- market surveillance of radio equipment,
- administrative criminal proceedings regarding unsolicited messages,

- examinations in the amateur radio, aeronautical radio, marine radio service and inland waterway service.

It has seven local branches, each acting for the Telecommunications Office in their designated local area.

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

The provision of a public communications network or service, as well as its modifications and its termination, is regulated and shall be notified to the regulatory authority prior to the start of operation, modification or termination.

Under Austrian law, a 'public communications network' means a communications network used wholly or mainly for the provision of publicly available communications services that enable transmission of information between network termination, whereas a 'telecommunications service' means a communications service with the exception of radio and television broadcasting.

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

Communication providers have general authorisation to operate in Austria 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. However, providers must notify the RTR prior to start of operations, for any modification or for termination of the services.

The notification must be in writing and provide details of the provider, the legal structure of the undertaking, a short description of the network or service and the anticipated date of the start of operation, modification or termination of the service (Sec 6 TKG 2021). This does not apply to number-independent interpersonal communication services.

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

From a telecoms regulatory perspective, there are no requirements for a communications provider to be domiciled in Austria prior to or during the provision of services.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Every operator of a public communications network shall be under the obligation to make an offer for interconnection to other operators on request. All parties involved shall strive to achieve the objective of enabling and improving communication of the users of different public communications networks, the access to services offered by another entity offered and the interoperability of services.

The regulatory authority may require an undertaking with significant market power to publish a reference offer. The undertaking shall provide in the reference offer sufficiently unbundled subservices, with a breakdown of the relevant offerings into components according to market needs, and state the associated terms and conditions (including prices). Such reference offers shall be submitted to the regulatory authority. Agreements on network access are to be submitted to the regulatory authority upon its request.

If no agreement is reached between an operator of a public communications network or service specifically with significant market power and another operator of a public communications network or service, or an undertaking which specifically benefits from access obligations within six weeks of receipt of the application (despite negotiations), either party involved may have recourse to the regulatory authority. The regulatory authority may fix tariffs.

Roaming is based on the EU Roaming Directive.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The TKG 2021 contains a number of consumer specific provisions. In this regard, consumers are persons who use or request a publicly available communication service for other than commercial purposes.

Contracts for communications services between operators and consumers may not exceed an initial minimum contract duration of 24 months. Additionally, every subscriber must have the option of concluding a contract of no more than 12 months minimum duration for each communications service (Sec 135 Par 1 TKG 2021). Furthermore, operators must provide certain information to consumers, such as operator name, contract terms and statutory warranty rights (Sec 129 TKG 2021).

Where, in case of consumers, a bundle product contains at least an internet access service or a number-based interpersonal communication service and also includes further services or terminals, certain user rights apply to all elements of the package, including those elements that otherwise would not be covered by those provisions (Sec 136 TKG 2021).

In case a consumer changes their residence, the internet access service provider must provide their services at the consumer's residence without changing the agreed contract term and the other contents of the contract (Sec 135 Par 11 TKG 2021).

Apart from that, general Austrian consumer protection provisions apply.

REGULATORY TAXES AND FEES

Radio operators must pay a notification fee for the commencement of operating a radio system (Sec 36 TKG 2021). There are also fees for other notifications, authorisations and approvals.

For notifications, the assignment of frequency usage rights and other administrative activities, there are one-off fees. For the use of frequencies, periodic fees must be paid which are defined in the Telecommunications Fee Ordinance.

All operators/providers of public communications services are generally subject to financing contribution requirements (Sec 34 of the KommAustria Act). The annual fee is imposed for the financing of the regulatory authority, which is financed partially from the federal budget and partially from the contributions of the communication services and networks operators.

The operators' contributions are calculated on the basis of the net turnover for all services provided in Austria. A turnover threshold is set at EUR 300 (calculated fee, not turnover) as adapted for inflation; contributions which are below this threshold are not payable.

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

If a person who is or was involved in operators' activities, discloses, without authorisation, the fact or the contents of the telecommunications traffic of specific persons to an unauthorised person or gives such person the opportunity to perceive facts himself that are subject to the obligation to maintain secrecy, or if a person falsifies, incorrectly relates, modifies, suppresses or incorrectly conveys a communication or withholds it from the intended recipient without authorisation, this constitutes a violation of user rights.

These persons are sanctioned by the court with a prison sentence of up to three months or a fine up to 180 times the daily rate (Sec 187 TKG 2021).

Further to the above-mentioned criminal penalty, there are administrative fines for various breaches (Sec 188 TKG 2021). The fines are divided into several degrees, and can amount to up to EUR 1,000, EUR 5,000, EUR 10,000, EUR 50,000 or a prison sentence up to six weeks, EUR 75,000 or a prison sentence up to six weeks or EUR 100,000 or a prison sentence up to six weeks, depending on how severe the offense is.

Furthermore, Cartel law sanctions, Unfair Competition law sanctions as well as Data Protection infringement sanctions may be imposed.

KEY CONTACTS

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BELGIUM

Last modified 6 October 2022

OVERVIEW OF LEGAL LANDSCAPE

The Belgian Institute for Postal Services and Telecommunications (BIPT) is the regulator of the electronic communications market.

Subject to some exceptions (e.g. concerning the use of spectrum, depending on the frequency used), communication providers are generally authorised to operate in Belgium and do not require a licence, permit, consent, etc. However, providers of public electronic communications networks or of publicly available communications services (operators) need to inform the BIPT of their activities, as well as of changes to their activities (including the transfer and/or termination thereof).

This concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing telecommunications in Belgium is the Act of 13 June 2005 on electronic communications (the 'Telecommunications Act') which implements (amongst others, such as Directives 2006/24 and 2009/136) the following European Directives:

- Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities
- Directive 2002/20/EC on the authorisation of electronic communications networks and services
- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services
- Directive 2002/22/EC on universal service and user rights
- Directive 2002/58 on privacy and electronic communications
- Directive 2002/77/EC on competition in the markets for electronic communications networks and services
- Directive 2018/1972 establishing the European Electronic Communications Code

Several other laws may also be relevant with respect to the provision of communication services and the operation of communication networks:

- The Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- The Code of Criminal Procedure, which governs the interception of communications.

REGULATORY BODIES OR AUTHORITIES

The BIPT is a federal institution which performs several tasks. As the regulator of the electronic communications market it, *inter alia*, has the task of promoting competition, contributing to the development of the internal market and protecting the users' interests.

Belgian Institute for Postal Services and Telecommunications

Address: Ellipse Building, Bd. Du Roi Albert II, 35, 1030 Brussels

Telephone: 02 226 88 88

Website: www.bipt.be

Community Regulators with regard to broadcasting

For the sake of completeness, the following regulators are of importance for the broadcasting in the three Belgian communities (Flemish, French and German-speaking):

- The Flemish council for the media
- The French (Walloon) High Council for Broadcasting
- The Medienrat from the German-speaking Community

Other important regulatory bodies

- The Belgian Competition Authority, which has been charged with (1) the duty of settling certain types of lawsuits between operators and (2) giving opinions (binding or not depending on the case) to the BIPT with regard to decisions that demand a market analysis imposed by the European regulatory framework.
- Mediation services, such as the ombudsman.

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

The Electronic Communications Act regulates both the activities of electronic communications networks ("ECN") and providers of electronic communication services.

A further subdivision is made between public and private providers. This is of importance, because providers of public ECN or services will qualify as operators and will thus have to fulfil the obligations corresponding to the role of an operator in Belgium.

To assess the public character of an ECN, it is necessary to consider whether there is an open or closed group of users. For example, a public ECN has an open user group as its target audience, whereas a non-public ECN only has a closed user group as its target audience. This closed user group is a specific group of individual users, with a certain stability and common interest, that predates the provision of the ECN or services.

Another possible way to qualify as a public ECN or service is to consider the service or network as 'publicly available'. For this, it is necessary to consider whether everyone in the targeted audience can generally choose to use the services offered or if the access to the services is partially restricted to a specific group of users.

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

No licence, permit, consent, etc. is required for communication providers to operate in Belgium, therefore communication operators have a general authorisation to operate in Belgium as required by the European Authorisation Directive. However, the Act on electronic communication sets forth an obligation for operators to notify the BIPT before starting to operate in Belgium.

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

From a telecoms regulatory perspective, a telecommunications provider is not required to be domiciled in Belgium prior to or during the provision of services. Generally, only the notification to the BIPT should be complied with, which can also be done by an operator established abroad.

However, it should be noted that a contact person is required. This contact person can be located elsewhere, but should remain available at all times.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Telecommunications Act requires all providers of public electronic communications networks to negotiate in good faith, interconnection with other operators with a view to providing electronic communications services to the public.

Interconnection agreements have to be submitted to the BIPT.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

With regard to the provision of services (e.g. rules on information obligations) the Telecommunications Act does not make a clear distinction between business-to-business and business-to-consumer relations.

Most of these rules apply to 'subscribers' i.e. individuals and legal persons who use electronic communications services after having concluded a contract with an operator. Sometimes a specific provision is included in order to protect consumers (e.g. relating to the maximum initial duration of the contract).

Some specific consumer/end-user information obligations are imposed on operators concerning the access to their network and services, the use thereof, prices and potential costs in case of contract termination. A standard information file also need to be made for the consumers/end-users and should be sent to the BIPT. Consumers also have the right to change their subscription formula with their current operator at least once a year without any charge.

In addition to specific telecom rules, provisions of general consumer law also apply, such as rules concerning unfair terms or the rules concerning the tacit extension of services contracts.

REGULATORY TAXES AND FEES

Operators have to pay a registration fee and annual administrative fees. Amounts can be found here.

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

In case of a breach of the Telecommunications Act, criminal fines of up to EUR 100,000 and imprisonment up to 4 years can be imposed.

Administrative fines of up to 1% of the turnover for the telecommunication activities of the last accounting year.

However, it is to be noted that higher fines are possible in some specific cases.

KEY CONTACTS

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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.

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);
- 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).

REGULATORY BODIES OR AUTHORITIES

Agência Nacional de Telecomunicações

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

Website: Anatel

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".

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.

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.

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;
- 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 cause 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.

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.

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CANADA

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OVERVIEW OF LEGAL LANDSCAPE

With the exception of telecommunications services providers ("TSPs") that engage in certain activities (including the use of radio spectrum, as well as the provision of international telecommunications services), TSPs do not require a licence to provide telecommunications services in Canada. However, TSPs must register with the Canadian Radio-television and Telecommunications Commission (the "CRTC").

Additionally, TSPs are subject to rules restricting foreign ownership and control, as outlined below. These restrictions are derived from the telecommunications policy objective to promote Canadian ownership and control of Canadian TSPs.

The majority of legislative authority for modern telecommunications activities in Canada lies with the federal government. A mix of federal legislation, notably the *Telecommunications Act* and the *Radiocommunication Act*, govern telecommunications activities under federal jurisdiction. The CRTC serves as the main telecommunications regulator, while the Minister of Innovation, Science and Industry (formerly the Minister of Industry) plays a regulatory role with respect to radio spectrum.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The federal *Telecommunications Act* is the primary legislation governing telecommunications in Canada. Coming into force on October 25, 1993, this legislation repealed and replaced the telecommunications-related provisions of the *Railway Act*, as well as federal acts such as the *National Telecommunications Power and Procedures Act*, and the *Telegraphs Act*.

The *Telecommunications Act* outlines the regulatory framework for TSPs and sets out the powers of the CRTC with respect to the administration of the *Telecommunications Act*. The CRTC itself is established under the *Canadian Radio-television and Telecommunications Commission Act*.

Below are key features of the *Telecommunications Act*:

- **The Canadian telecommunications policy:** The *Telecommunications Act* sets out the objectives of this policy, which includes enhancing the efficiency and competitiveness of Canadian telecommunications, public accessibility to high quality services, the promotion of Canadian ownership and control, innovation, privacy protection, and the social requirements of users. In exercising its powers under the *Telecommunications Act*, the CRTC must act with a view to implementing these objectives.

- **Regulatory requirements:** Although TSPs have general authority to operate without licences, (except with respect to certain activities, including the use of spectrum and the carrying of international telecommunications traffic), most are generally subject to basic regulatory requirements relating to rates, resale, roaming and interconnection between carriers. Additionally, the CRTC may impose conditions on TSPs offering telecommunications services.

- **CRTC powers:** The CRTC's mandate includes the power to enquire and make determinations with respect to permitted or prohibited telecommunications activities. Moreover the CRTC may issue orders, guidelines or make regulations for carrying out the purposes and provisions of the *Telecommunications Act*. Decisions of the CRTC may be appealed to the Federal Court of Appeal with leave of that court.

In addition to the *Telecommunications Act*, the following federal legislation and the regulations made thereunder may also impact the provision of communication services and the operation of communication networks in Canada:

- The *Radiocommunication Act*, which sets out the regulatory framework for radiocommunications, equipment and spectrum management in Canada. The Minister of Innovation, Science and Industry, together with the department of the Government of Canada known as Innovation, Science and Economic Development Canada ("**ISED**"), is responsible for regulation under the *Radiocommunication Act*. ISED's policies on spectrum management can be found here.

- The *Broadcasting Act* sets out the regulatory framework for broadcasting in Canada, including the transmission of programs received by the public. The CRTC is responsible for broadcasting regulation in Canada. In 2022, the Minister of Canadian Heritage introduced a bill to amend the *Broadcasting Act* and to make related and consequential amendments to other Acts. Notably, Bill C-11 creates a new class of broadcast undertakings called "online undertakings", which aims to capture online, digital media broadcasting undertakings (including streaming platforms such as Netflix or Apple TV+) and requires them to comply with certain obligations such as contributing to the creation of Canadian video and audio content. Bill C-11 is expected to be passed in 2022.

- The *Personal Information Protection and Electronic Documents Act*, which governs the rules for collection, use and disclosure of personal information by TSPs within federal jurisdiction.

At the provincial level, legislation exists relating to local matters that fall outside of federal jurisdiction. Examples include legislation concerning matters related to telephone rates and services as applied locally, as well as TSP access to public utility structures. In addition, many Canadian provinces have consumer protection legislation that is applicable to telecommunications contracts.

REGULATORY BODIES OR AUTHORITIES

Canadian Radio-television and Telecommunications Commission

Les Terrasses de la Chaudière Central Building

1 Promenade du Portage

Gatineau, Quebec J8X 4B1

http://www.crtc.gc.ca/

Innovation, Science and Economic Development Canada

C.D. Howe Building

235 Queen Street

Ottawa, Ontario K1A 0H5

https://www.ic.gc.ca/eic/site/icgc.nsf/eng/home

Commission for Complaints for Telecom-television Services

P.O. Box 56067 - Minto Place RO

Ottawa, ON

K1R 7Z1

https://www.ccts-cprst.ca/

- An independent consumer agency that resolves complaints from individuals and small business retail customers concerning telecommunications and television services. All Canadian telecommunications providers are required to join the Commission for Complaints for Telecom-television Services.

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

All TSPs that own or operate transmission facilities used to provide telecommunications services are subject to regulation under the *Telecommunications Act*.

A transmission facility is defined as: "any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, for the transmission of intelligence (signs, signals, writing, images, sounds, or intelligence of any nature) between network termination points".

Telecommunications services include those provided by means of a transmission facility, or any other facility or apparatus that is used or capable of being used for similar purposes.

TSPs that do not own or operate facilities may not be subject to the same regulatory requirements as those that own or operate facilities. For example, resellers that merely use the facilities of other TSPs to resell services to the public (i.e. resellers) are exempt from a significant part of the *Telecommunications Act*.

However, all non-facilities-based TSPs (including resellers) must register with the CRTC and must meet certain regulatory obligations set out in various CRTC regulatory policies and decisions.

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

TSPs generally do not require a licence to provide telecommunications services, however, certain activities do require special licences from the CRTC. TSPs carrying international telecommunications traffic, must hold a Basic International Telecommunications ("BITS") License, issued by the CRTC. Additionally, the construction and operation of international submarine cables requires a licence.

TSPs that use radio equipment and spectrum to offer telecommunications services require separate authorizations from the Minister of Innovation, Science and Industry(formerly the Minister of Industry) under the *Radiocommunication Act*. Radio-based activities include, but are not limited to, the use of microwave facilities, cellular telephone systems, and the operation of satellites and satellite earth stations.

TSPs must register on one of the CRTC's registration lists as a BITS Licensee, a Facilities-Based Provider (where the TSP owns or operates a transmission facility used by that provider or another provider to offer telecommunications services to the public for compensation) or a Non-Facilities-Based Provider (where the TSP offers basic telecommunications services to the public including services provided by exempt transmission apparatus). An entity may register on more than one list, provided it meets the obligations associated with each list.

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

Subject to exceptions, TSPs that own or operate their own facilities must be Canadian-owned and controlled entities that are incorporated, organised or continued under the laws of Canada or a province of Canada.

Under the *Telecommunications Act*, an entity is Canadian-owned and controlled if:

- in the case of a corporation, not less than 80% of the members of the board of directors are individual Canadians;
- Canadians beneficially own, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 80% of the entity's voting interests; and
- the entity is not otherwise controlled by persons that are not Canadians.

The term "Canadian" is defined in the regulations made under *the Telecommunications* Act, and includes corporations of which Canadian shareholders (either individuals or other entities meeting prescribed criteria) beneficially own and control not less than 66.66% of the issued and outstanding voting shares, and which are not otherwise controlled by non-Canadians. In effect, non-Canadians may own up to 33.33% of the voting shares of the parent of the TSP as well as 20% of the voting shares of the TSP itself.

Entities that hold less than 10% of the Canadian market for telecom services (based on revenue) however, are specifically exempt from Canadian ownership and control requirements under the *Telecommunications Act*.

Canada's right to impose the above foreign ownership restrictions is consistent with Canada's Schedule of Specific Commitments to the WTO Agreement on trade in basic telecommunications services.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Agreements and arrangements relating to the interworking of systems between TSPs that own and operate facilities, and the apportionment of rates or revenues between such TSPs are subject to the approval of the CRTC. Pursuant to the *Telecommunications Act,* the CRTC is authorized to approve arrangements, withhold the approval of arrangements, and amend agreements or arrangements.

Where interconnection cannot be achieved by the mutual consent of the TSP, the CRTC has the power to order a TSP to connect its telecommunications facilities to any other telecommunications facility, and to establish terms and conditions that it deems just and expedient.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The CRTC plays a prominent consumer protection role in the telecommunications space. Key undertakings by the CRTC include the promotion and enforcement of:

- Unsolicited Telecommunications Rules, which aim to regulate telemarketing activities. The CRTC is also responsible for maintaining the National Do Not Call List, through which individuals can register their telephone numbers;
- Canada's anti-spam legislation ("CASL"), which aims to reduce the effects of spam from commercial electronic messages, and mitigate related online threats. The Competition Bureau and Office of the Privacy Commissioner are also responsible for enforcing certain provisions of CASL;
- The Wireless Code, published by the CRTC here, which outlines the rights and responsibilities of consumers of wireless services (including wireless voice and data services). All wireless service providers must comply with the Wireless code.
- The Internet Code, which applies to large facilities-based providers of retail fixed internet. Similar to the Wireless Code, the Internet Code outlines consumers' rights and responsibilities contained in contracts with Internet service providers. Although only applicable to certain TSPs, all TSPs are expected to follow the Internet Code.

In addition, the CRTC has set a "Universal Service Objective", in order to address gaps in access to broadband internet services. Rural and remote areas in Canada historically lag behind urban areas with respect to access to high quality and affordable telecommunications services. To this end, the CRTC has set broadband internet target speeds of 50 megabits per second ("Mbps") download and 10 Mbps upload. To assist in meeting this goal, the CRTC established the "Broadband Fund" to fund projects that will build or upgrade broadband internet infrastructure. TSPs may apply to receive funding under this program.

REGULATORY TAXES AND FEES

Under the *Telecommunications Act*, carriers are subject to annual fees if the carrier meets the following conditions:

- the carrier was in operation on April 1 of that year, and
- the carrier had at least 10 million Canadian dollars in revenue from Canadian telecommunications services for its fiscal year ending in the preceding calendar year.

If the carrier is part of a group of related telecommunications services providers, the conditions apply to the group on aggregate.

The carriers mentioned above are subject to three applicable fees: the "annual fee", the "supplementary fee", and the "annual adjustment". Fee amounts are based on the particular carrier's revenue in relation to the revenues of the Canadian industry as a whole and are calculated as a proportion of the yearly cost of the regulatory scheme.

Fees for spectrum and radio licences issued under the *Radiocommunication Act* are outlined in the *Radiocommunication Regulations*. Fees are based on the type of station licensed, the type of service used, and in certain cases, the amount of radio frequency spectrum required or assigned, and the location of the operations.

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

The CRTC has authority to inspect and investigate compliance or non-compliance of the regulatory scheme. Violations of the *Telecommunications Act*, by an act or omission contrary to a provision or a decision made pursuant to the *Telecommunications Act*, may trigger civil liability or administrative monetary penalties. In addition, certain contraventions of the *Telecommunications Act* are considered "offences" and are punishable on summary conviction. The applicable enforcement measure will depend on the nature of the activity. Prosecution of offences punishable on summary conviction may only be commenced with the consent of the CRTC.

The limitation periods for the enforcement of violations vary between two years from the day on which the act or omission occurred, to three years from the day on which the subject-matter of the proceedings became known to the CRTC.

The CRTC and the Minister of Innovation, Science and Industry may also suspend or revoke a licence if they are satisfied that the licence holder has contravened the applicable legislation, regulations or terms of authorisation. Prior to suspension or revocation, the licence holder must first be given written notice and a reasonable opportunity to make representations to the relevant party.

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CHILE

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OVERVIEW OF LEGAL LANDSCAPE

Telecommunication services are primarily regulated under the General Telecommunication Law (Law N° 18,168 of 1982, "LGT") and other decrees that establish specific provisions regarding several matters.

To provide telecom activities in Chile, companies must seek government concessions and permits. Authorization varies with the telecom activity that will be performed.

The Undersecretariat of Telecommunications, under the authority of the Ministry of Transport and Telecommunications, is the government agency in charge of overseeing the telecom market.

From a regulatory standpoint, the Ministry of Transport and Telecommunication proposes and implements national policies that promote the development of the telecom sector in Chile.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Primary Telecom Legislation

The primary legislation governing telecoms in Chile is the General Telecommunication Law (hereinafter, **"LGT").**

Regulatory Framework

The regulatory framework includes different telecom activities, including:

- Telecommunication services
- Public voice services
- Broadcasting services
- Radio communication
- Price regulations
- Requirements for obtaining, installing, operating and exploiting the concession of telecommunications services
- Conditions for installing antennas, radiating systems and towers

- Network operations in emergency situations
- Funds for developing telecom services
- Requirements for marketing short-range equipment

REGULATORY BODIES OR AUTHORITIES

The main regulatory bodies:

- The Ministry of Transport and Telecommunication is in charge of elaborating and coordinating different plans, policies, and regulations that further develop the country´s telecom sector, and ensure broad access to telecom services.

  Address: Amunategui #139, Santiago.

  Telephone number: +56224213000.

  Website: www.mtt.gob.cl

- The Undersecretariat of Telecommunications is a technical body in charge of overseeing the proper functioning of the telecom market.

  Address: Amunategui #139, Santiago.

  Telephone number: +56225888000.

  Website: www.subtel.gob.cl

- The National Television Council is a public organism that ensures the proper functioning of television services operating within the national territory. This entity is allowed to inspect the content of TV channel broadcasts.

  Address: Mar del Plata # 2147, Providencia, Santiago.

  Telephone number: +56225922700

  Website: www.cntv.cl

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

Telecom Services Legal Definition

The Decree N° 18 of 2014 (Telecommunication Services Regulation) defines telecom services as those services provided by telecommunication providers according to Law N° 18,168 of 1982, regardless of the technology used in their provision, and in compliance with applicable legal authorizations.

The Telecommunication Services Regulation also defines the following telecom services:

- **Public Voice Services.** These public services regulate voice exchanges, including local telephone or mobile public services and other similar public services.
- **Long-Distance Telephone Service**. This telecommunication service involves long-distance communications that providers offer to users based on an intermediate concession services.

- **Internet Access Service**. This telecommunication service allows users to access content, information, applications and other services on the Internet.

- **Pay Television Service**. This telecommunication service allows users to access channel packages and additional television services, through a payment varies according to the type of agreement.

- **Public Services of the Same Type**. These technically compatible public services interoperate to allow subscribers and /or users of different public services to communicate which each other, inside and outside of the national territory, according to the regulations issued by the Undersecretariat of Telecommunications; and Complementary Services, which are provided by concessionaries of public telecommunication services or third parties, through the connection of equipment to public networks.

Classification of Telecom Services

Article 3° of the LGT classifies telecommunication services as follows:

- **Telecommunication Services of Free Reception or Broadcasting**, whose transmissions are free and directed to the general public. These services involve sound, television and other types of emissions.

- **Public Telecommunication Services**, designed to satisfy the telecommunication needs of the community in general. These services must be designed to enable interconnection with other public telecommunication services.

- **Limited Telecommunication Services**, which aim to satisfy through prior agreement the specific telecommunication needs of companies, entities and persons.

- **Radio Amateur Service**, whose purpose is to promote radio communications and technical and scientific experimentation, undertaken in a personal capacity and for non-lucrative purposes.

- **Intermediated Telecommunication Services**, provided by third parties through facilities and networks, are designed to satisfy the need of telecommunication concessionaires and permit holders, as well as provide international long-distance telephone services to the community at large.

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

- The LGT establishes that the use of radio frequencies, conveyed through telecom concessions, permits and temporary licenses by the State, is free and equal.

- A concession granted by Supreme Decree is necessary for the installation, operation and exploitation of the following telecom services: (a) public services; (b) intermediate services supplying telecom services through installations and networks, and (c) sound broadcasting.

- On the other hand, for the installation, operation and exploitation of limited telecom services, it is necessary to obtain a permit from the Undersecretariat of Telecommunication.

- In addition, a concession granted by the National Television Council is required for the supply of free television broadcasting services. Limited television services also require a permit from this same Council.

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

Only legal persons legally registered and residing in Chile can hold the aforementioned telecom service concessions.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The LGT establishes the general provisions relating to the interconnection of telecom service networks.

Roaming Service is expressly regulated by Decree N° 18 of 2014, which establishes the information obligations that roaming service providers must comply with in order to avoid violating service user rights.

In addition, Law N° 21,245 of 2020, establishes the regulation for the Automatic National Roaming. The purpose of this regulation is to facilitate access to telecommunications services in different areas of the national territory, both for voice communication and for data messaging and Internet. In particular, in benefit of rural or isolated areas. Companies that have concessions for public telecommunications services (such as telephony and internet) will have to allow access and use of their infrastructure to other concessionaires. The purpose of the law is to allow new mobile virtual operation and automatic roaming companies to operate and, thus, facilitate access to infrastructure and services for the operation offered by larger companies to smaller ones.

A bill is currently being reviewed by Congress to confer Internet access the status of a public telecommunications service aimed at satisfying the telecommunications needs of the community in general. The purpose of this bill is to encourage and facilitate digital access to the entire population.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Decree N° 18 of 2014 (Telecommunication Services Regulation) promotes transparency in the telecommunication market and protects consumer rights by establishing the obligations with which services providers must comply.

The aforementioned Decree also establishes the following:

- Internet Service. The providers must inform consumers about the speed of the service, its quality, and other traffic management measures, among others.
- Pay Television. The providers must compensate consumers if channels in their packages are eliminated after user contracts have been finalized.
- Mobile Communication:
  - Pre-paid users can recover their unspent mobile phone balance during a given period of validity. Providers can only disable a pre-paid number if more than 180 days have passed since the balance was last charged.
  - Post-paid users can retain their telephone number for up to 2 years after they interrupt their contract with their provider.
- Roaming Service must be disabled by default, and enabled solely at the express request of the user. Any time that roaming is turned on the user must be notified via message. In addition, roaming service providers must activate a cost control mechanism to avoid indebting its users.

Finally, regarding the package services, providers must specify the price for each separate service. The sale of bundle services is forbidden.

REGULATORY TAXES AND FEES

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

The main tax is a Corporate Tax of 25% (attributed regime) or 27% (distributed regime).

Main Taxes and Fees Levied Over Telecom Activities

VAT 19% rate.

A municipal tax in municipalities where the company or any of its branches are located (rate 0.25% to 0.5% calculated the Tax Net Worth of the company)

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

General Telecommunication Law establishes key sanctions and penalties in the event of contravention, including:

- Fines of 5 UTM to 1000 UTM (approximately USD 945 to USD 62900);
- The suspension of service transmissions for up to 20 days; and/or
- The expiration of concessions and permits.

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CHINA

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OVERVIEW OF LEGAL LANDSCAPE

The telecoms sector in the People's Republic of China (PRC or China) is heavily regulated.

The provision of telecommunications services in the PRC is subject to a complex licensing regime depending on the type(s) of telecoms services offered. Any entity or individual who has not obtained the relevant telecoms operating licence is prohibited from providing such telecoms services in-country.

Importantly, the categorisation of services which fall within the scope of the licensing regime is particularly wide and covers traditional telecommunication service offerings, as well as extending to other types of technologies and services provided via the Internet.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The PRC Telecommunications Regulations (the "Telecoms Regulations"), first issued by the State Council on 25 September 2000 (and subsequently revised on 29 July 2014 and 6 February 2016), covers licensing, fee collection, interconnectivity, operation and regulation of telecoms services in the PRC.

The Classified Catalogue of Telecommunications Services (the "Telecoms Catalogue") (effective from 1 March 2016, and revised on 6 June 2019) sets out the specifics and sub-categories of services that are regulated under the telecoms licensing regime. The licensing requirements and application process differ depending on the type(s) of licences required.

The Administrative Measures for the Licensing of Telecommunication Business (effective from 1 September 2017) further sets out the eligibility criteria for applying a telecoms licence.

The Administrative Provisions on Foreign-Invested Telecommunications Enterprises (the "Administrative Provisions"), first issued by the State Council on 11 December 2001 (and subsequently revised on 10 September 2008, 6 February 2016 and 29 March 2022) specify the scope and requirements for a foreign-invested telecom enterprise.

REGULATORY BODIES OR AUTHORITIES

The Ministry of Industry and Information Technology (MIIT) is the primary telecoms regulatory body in China. The main responsibilities of MIIT in respect of the telecoms industry include:

- Formulating plans, policies, laws, regulations, and technical criteria for the information and telecoms industry
- Managing public information and the telecoms network, in addition to the Internet
- Supervising the telecoms and information services market

- Coordinating with other government departments to formulate policies and standards for telecoms service fees
- Allocating and managing radio frequency spectrum resources
- Overseeing the security of the telecoms network

The Ministry of Industry and Information Technology

Address: No. 113 West of Chang An Street, Beijing, 100804, China

Website: www.miit.gov.cn

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

Telecoms business activities in China are divided into Basic Telecom Services ("BTS") and Value-added Telecom Services ("VATS"). The Telecoms Catalogue sets out the relevant regulated services that fall within the different categories of BTS and VATS.

BTS refers to the business of providing public network infrastructure, public data transmission and basic voice communications services. VATS refers to the telecoms and information services provided through public network infrastructure.

Each of BTS and VATS is further divided into a Category 1 and a Category 2 under the Telecoms Catalogue. Category 1 services

(whether BTS or VATS) are more heavily regulated than Category 2 services, the reason being Category 1 services generally have more national economic or social impacts.

It is worth noting that where a reseller purchases cellular mobile communications services from a BTS provider (who owns a mobile network), and repackages such services under its own brand and sells such services to end users, such activity will be captured by the VATS licensing regime. In other words, such reseller will require a VATS licence.

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

In general, an entity must obtain a telecoms operation licence in order to engage in telecoms business activities. The holder of a telecoms licence is only permitted to carry out the activities specified in the licence.

VATS licences are further subdivided into single province licences and cross-provincial licences. Single province licences are issued by the relevant local authorities to service providers that are only providing regulated services within a single province, municipality or autonomous region. Cross-provincial licences, on the other hand, cover the provision of nationwide regulated services, and are issued by the MIIT.

A BTS licence is valid for either five or ten years (depending on the type of telecom service involved) and a VATS licence is valid for five years.

Telecoms operators must also meet the minimum registered capital requirements in order to be granted licences. For BTS operators, the minimum registered capital is RMB 100 million for single province providers and RMB 1 billion for nationwide providers. For VATS operators, the minimum registered capital is RMB 1 million for single province providers and RMB 10 million for nationwide providers.

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

An entity is required to have a permanent establishment in China prior to commencing the provision of telecoms services. Foreign investors may only operate limited types of telecoms services in China.

Generally speaking, foreign investment is subject to shareholding restrictions. Foreign ownership limits for BTS is 49% for BTS and 50% for VATS for most of the service categories. Certain categories of VATS allow foreign ownership of more than 50%, e.g., E-commerce service under the online data processing and transaction processing services (B21). However, in practice, this is much more restrictive than the rules would suggest.

It is also noteworthy that the revised Administrative Provisions have lifted certain requirements for foreign investors in terms of prior telecoms experience. For example, it no longer requires foreign investors to have "a record of good performance and operating experience in basic telecommunications business". Moreover, the revised Administrative Provisions also simplify the administrative procedures to set up a foreign-invested telecoms operator. That being said, we anticipate that it may take some time for these changes to be rolled out in practice.

Nevertheless, some Hong Kong and Macau investors, although technically treated as foreign investors by Chinese authorities, have been granted a VATS licence due to their special eligibility granted under the Closer Economic Partnership Agreements entered into between China and Hong Kong / Macau.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Under the Telecoms Regulations, interconnection of telecoms networks should be effected on the basis of the principles of technical feasibility, economic sense, fairness, impartiality and mutual complementation.

Leading telecoms service operators, which refer to operators that control vital telecoms infrastructure, have a relatively large share of the telecoms market and can materially influence the market entry of other telecoms business operators, may not refuse interconnection requests from other telecoms business operators and operators of dedicated networks.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The Telecoms Regulations do not differentiate between the provision of services to businesses and consumers.

Where the services are provided to consumers, providers should be mindful that the PRC Law on the Protection of Consumer Rights and Interests will also apply. For example, business operators are required to disclose all information related to the services to consumers, and consumers have the right to privacy and to have their personal information protected when receiving a service.

REGULATORY TAXES AND FEES

Application for a BTS or VATS licence is free of charge.

The telecommunications industry is subject to Value Added Tax. The tax rate for BTS is 9% and 6% for VATS. The telecommunications industry, like most other industries, is also subject to administrative charges, namely an education fee of 3% and a local education surcharge of 2%.

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

In the first quarter of each year, telecoms licence holders must submit their annual operation information to the MIIT and/or the relevant local authorities through an online platform. The telecom authorities will then perform a random inspection on selected telecoms operators.

The telecom authorities maintain a list "poorly performed" and "dishonest" companies and such list is made available to the public. Telecom operators with less serious violations will go on the "poorly performed" list, and might attract administrative penalties.

Telecom operators with more serious violations will be listed as "dishonest'. By way of an example, operating regulated telecoms services without licences or providing regulated services beyond the permitted scope will be considered as serious violations. Sanctions include revocation of telecoms licences, shutdown of business and blacklisted by the authorities for (at least) three years. The biggest risk of all is shutdown of services, which may also bring significant contractual liabilities to such telecom operator.

Other forms of sanctions include rectification orders, warnings, fines, confiscation of illegal gains or criminal liabilities. While the authorities have the ability to levy fines against organisations who are operating without a licence, this method is not commonly used by the China authorities (or if any fines are levied these are seldom disclosed publicly).

KEY CONTACTS

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COLOMBIA

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OVERVIEW OF LEGAL LANDSCAPE

The telecommunications industry in Colombia is highly regulated, as it is considered a public service under State ownership. However, public or private corporations legally incorporated in Colombia could be entitled to provide telecommunications services after registering as telecommunication network operators and service providers. Other prerequisites, permits or authorizations may be required to provide specific services or to install certain infrastructure, as the case may be.

Law 1341 of 2009 establishes the general policies and regulations that every telecommunications company must comply with, regarding user protection, competition principles and the quality and coverage of telecommunications services. Further regulation is included in Decree 1078 of 2015 and Resolution 5050 of 2016 of the Communications Regulation Commission.

The Communications Regulation Commission, also known as Comisión de Regulación de Comunicaciones (CRC), regulates communications by promoting fair competition, issuing regulations and permits to operators, determining standards for equipment and monitoring services, and resolving conflicts among consumers and operators.

The Ministry of Information Technologies and Communications (MinITC) regulates network and service provider markets.

On the other hand, both MinITC and the Superintendency of Industry and Commerce are the entities entitled to supervise compliance with the applicable regulations.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Primary Telecom Legislation

The primary telecommunications law in Colombia is Law 1341 of 2009, which defines the main principles, concepts and legal guidance for providing telecommunication services in Colombia.

On the other hand, Law 1978 of 2019, issued on July 28 of 2019, modified some provisions of Law 1341 of 2009 with the primary objective to modernize and adequate the telecommunications regulation towards the global and national industry challenges.

Regulatory Framework

The regulatory framework for telecommunications in Colombia has a wide scope and includes different sectors and topics:

- **Decree 1078 of 2015 - Sole Regulatory Decree of the ICT sector**: This decree compiles the core regulations governing the ICT sector in Colombia, and includes legally binding dispositions regarding (i) information technology policies and guidelines, (ii) the compensation system applicable for service providers, (iii) the registration procedure before MinITC, and (iv) the structure of the telecommunication sector.

- **Resolution CRC 5050 of 2016**: This resolution compiles CRC regulations, concerning the protection of final users, technical aspects regarding access and interconnection of telecommunications networks, and efficiency criteria of telecommunications services, among others.

- **Law 1680 of 2013**: By which people with visual disabilities or impairment are guaranteed access to information and communications technologies.
- **Law 1507 of 2012**: This law regulates television services.
- **Resolution MinICT 415 of 2010**: It regulates the provision of broadcasting services.
- **Law 1369 of 2009**: This law includes the general regime for the provision of postal services.
- **Law 527 of 1999**: Regulation of access and use of data messages, e-commerce and digital signatures.
- **Law 335 of 1996**: Private television regulation.
- **Law 182 of 1995**: It regulates the public television service.
- **Law 142 of 1994**: This law includes the general regulation for utilities.
- **Law 80 of 1993**: Colombian public procurement regulation.

REGULATORY BODIES OR AUTHORITIES

The main regulatory bodies:

MinITC is the National Entity responsible for designing, adopting, and promoting the policies, plans, programs and projects of the Information Technologies and Communications sector. It also has some supervision powers, so it can impose penalties for the infringement of the law.

Address: Edificio Murillo Toro Carrera 8a entre calles 12 y 13, Bogotá D.C.

Phone: + 57-01-344 34 60

Website: www.MinTIC.gov.co

Communications Regulation Commission: This body is responsible for issuing technical regulations to ensure the appropriate provision of telecommunications services, including commercial public television. Such regulations shall facilitate access to the equipment, facilities, and other resources needed for the provision of telecommunications services, as well as foster competition in this sector.

Address: Calle 59 A bis No. 5-53, Piso 9. Bogotá D.C.

Phone: + 57-01-8000-919278

Website: www.crcom.gov.co

Superintendency of Industry and Commerce: This authority supervises compliance with competition-related matters and consumer protection matters in the telecom sector.

Address: Carrera 13 # 27-00

Phone: + 57-5870000

Website: www.sic.gov.co

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

Telecom Services Legal Definition

Law 1978 of 2019 defines telecommunications services as the resources, tools, equipment, software, applications, networks, and media that allow for the compilation, processing, storage, and transmission of information such as voice, data, text, video, and images. In accordance with article 2.2.6.2.1.2 of Decree 1078 of 2015, the provision of a telecommunication service encompasses the "emission, transmission and reception of information of any nature through telecommunication networks".

These services are to be provided by legal persons which are duly constituted in Colombia.

Classification of Telecom Services

Law 1341 of 2009 classifies telecommunication services and networks into a single group. This group includes landline, mobile, data transmission, internet, mail and postal services, radio and television services.

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

- All persons or entities who provide or attempt to provide telecommunication networks or services shall register before MinICT. This registry is an online public instrument. Once registered, any telecommunication company is authorized to provide services in Colombia, which is the general authorization rule. This general authorization allows for the installation, modification, operation, and use of networks to provide telecommunications services.[1] Except for certain services such as the satellite service and the use of the spectrum, a company is authorized to provide a telecommunication service in Colombia as long as it is registered in the ICT Registry.
- Decree 867 of 2010 and Law 1369 of 2009 regulate the Registry of Postal Operators. Registration and updating of information in this registry allow postal operators to operate legally.
- Resolution 376 of 2022 foresees the requirements and process for obtaining the permit for the use of the radio electric spectrum, associated with satellite radio communication services.
- Spectrum licenses allow their holders to use the electromagnetic spectrum in Colombia. A certain frequency will also be assigned for its use. These licenses are granted by the National Spectrum Agency ("**ANE**"). Spectrum Licenses are granted on a public procurement basis. The authorization will be valid for a period of 20 years.

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

Law 80 of 1993 establishes that the companies that provide telecommunication services must be duly incorporated in Colombia. However, the legal system does not provide for any type of explicit restriction for companies that are not domiciled in the national territory.

Nonetheless, if a service is permanently offered in Colombia, for tax purposes it is important to have a company that is incorporated and domiciled in Colombia.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

There is a general obligation for telecommunications service providers in Colombia to allow other operators that request so to interconnect to their networks and access and use their essential facilities. This general requirement seeks to ensure the general principles of non-discriminatory treatment, transparency, cost-based prices plus a reasonable profit and the promotion of free and fair competition in the ICT sector. In particular, Resolution 6522 of 2022 foresees that network operators shall provide VoLTE (voice over 4G networks) access to other undertakings.

Resolution CRC 4424 of 2014 regulates roaming services in Colombia. This Resolution increases transparency, as operators should provide certain information to their users concerning International Roaming.

Colombia is an active participant and member of the Pacific Alliance along with Mexico, Chile, and Ecuador. According to the commitments of the Alliance, member states shall endeavor to cooperate in promoting transparent and reasonable rates for international mobile roaming services. Moreover, each Party shall adopt or maintain measures to (a) ensure that information on retail rates for international mobile roaming services is easily accessible to the public, and (b) minimize the impediments or barriers to the use of technological alternatives to roaming, which allow citizens of other member states to access telecommunications services using the devices of their choice.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Resolutions CRC 2066 of 2011 and 5111 of 2017 encompass the ICT user protection regime, including specific rights and obligations of communications service users and providers.

The following are the most relevant issues any provider or operator must consider in order to comply with the current regulation:

1. **Consumer Information**: Service providers shall provide all the information associated with the conditions of the provision of the services, including the rates at which the services are provided.

   This information must be provided in a clear, transparent, truthful, sufficient, true, complete, timely, and not misleading manner, so that users make informed decisions regarding the service or services they require.

2. **Minimum Term Clauses**: The minimum term clauses are those contractual stipulations that are agreed upon only once, at the beginning of the contract, in accordance to which the user undertakes not to terminate in advance and without just cause his contract for the provision of communications services. Such clauses shall not be included in the contracts for the provision of mobile communications services, or in the contracts for the sale of mobile terminal equipment.

3. **Number Portability**: Number portability is the possibility that a user has of switching from one service provider to another, while retaining their telephone number. All users of mobile services have the right to carry their number, when switching to another service provider, whether in prepaid or postpaid mode. The change can be made at any time and does not require authorization by the current provider.

REGULATORY TAXES AND FEES

Main Taxes Levied Over Telecom Companies

Corporate Income Tax

Colombian companies are subject to corporate income tax of 33% on their worldwide income. Taxable basis will correspond to the gross income (ordinary and extraordinary) less costs and expenses authorized for tax purposes incurred in the income producing activity.

Corporate income tax rate will be gradually reduced as follows: (i) 2020: 32%; (ii) 2021: 31%; and (iii) as of 2022 to 30%.

Notwithstanding the above, the Colombian Tax Code sets a presumptive income system as an alternative method to determine corporate income tax, which is calculated annually at a 3.5% rate over taxpayer's net worth in the immediately preceding year. For 2019 and 2020, presumptive income must correspond to 1,5% of the net assets determined as of December 31st of the previous year. As of 2021, presumptive income system will no longer apply.

Tax incentives

Special corporate income tax rates:

- 27% for taxpayers that performs new investments (i.e. telecommunication sector) in fixed assets equal or exceeding 30,000,000 tax value unit (COP $ 1,028,100,000,000 - US $ 326,460,097 approx.) over 5 years and creates more than 250 direct employments;

- 20% corporate income tax rate for telecommunication services providers that qualifies as Free Trade Zone Industrial Users.

- Under certain conditions, income from: (i) Television programming and transmission services; and (ii) Radio broadcasting programming and transmission activities, could be exempted from corporate income tax for seven (7) years. obtained by companies carrying out. Entities carrying out these activities should be eligible by the Ministry of Culture.

Turnover tax / Industry and Commerce Tax (ICA)

The Industry and Commerce tax (ICA) is a local tax imposed on the gross revenue generated from industrial, commercial or service activities carried out in every corresponding municipality in which such services are provided.

Tax rates vary from 0.2% to 1.4% of the gross income depending on the tax code of the municipality where the activity is rendered. 100% of the Industry and Commerce tax paid during the relevant taxable year can be credited against corporate income tax liability.

Telecommunication activities are subject to industry, in order to determine the territoriality of the local tax the general rule is that income is understood to be perceived in the place where the provision of the service is executed, except for:

- TV and internet by subscription and fixed telephony is deemed to performed in the subscriber's municipality according to the place informed in the services agreement.

- Mobile telephony, mobile navigation and data service: As of January 1, 2018: the services are deemed to be rendered in the municipality where the main domicile of the user that registers at the time of the subscription of the agreement or in the update document. The income that cannot be assigned to a municipality should be distributed proportionally in the total of municipalities, according to their participation in the income.

Special contribution over telecommunications networks and services provision

Entities subject to surveillance and regulation of the CRC must pay an annual contribution of 0,1% (For 2019 according to Resolution 5582 of 2018) on the gross income obtained in the year prior to that to which the contribution corresponds, for the provision of telecommunications networks and services (excluding terminals).

Main Taxes and Fees Levied Over Telecom Activities

VAT – Services

Unless it is an exempted VAT activity, telecom activities are subject to a general VAT rate of 19%. The following telecommunication activities are exempted VAT operations:

Internet access and connection services for residential users of strata 3.

- Internet access and connection services for residential users of strata 3.

- Internet access and connection services rendered from fixed networks to residential subscribers of strata 1 and 2 are VAT exempted operations. These services allow the paid VAT to be bimonthly reimbursed to the services provider. First 325 minutes of local telephone services rendered to users of 1, 2 and 3 strata, and the telephone services rendered from public telephones.

- Supply of web pages, servers (hosting) and cloud computing.

- Advertising services rendered by:

1. Newspapers that had registered total sales for less than 180,000 tax value units (2019: COP $$6,168,600,000) as of December 31 of the immediately preceding year.

2. Radio stations that had registered total sales for less than 30,000 tax value units (2019: COP $$1,028,100,000 as of December 31 of the immediately preceding year)

3. Programmers of Regional television channels that had registered total sales for less than 60,000 tax value units (2019: COP $$2,056,200,000 as of December 31 of the immediately preceding year).

4. The advertisement on radio stations whose sales are less than 30,000 tax value units (2019: COP $ 1,028,100,000) as of December 31 of the immediately preceding year and programmers of regional television channels whose sales are less than 60,000 tax value unit (2019: COP $2,056,200,000) as of December 31 of the year immediately previous.

VAT – Sales and imports of goods

Regarding Telecom activities, the following are goods excluded from VAT: (i) Personal computers: desktops and laptops whose value does not exceed 50 tax value unit (2019: COP $1,714,000); and (ii) Smart mobile devices (tablets and cell phones) whose value does not exceed 22 tax value unit (2019: COP $754,000).

National consumption tax

- Mobile phone, data, internet and mobile navigation services are subject to a 4% national consumption tax. The taxable basis will be applied on the entire service value, without including VAT.

- For data, internet and mobile navigation services, the national consumption tax is applicable on the portion of the services the exceeds 1.5 tax value units (2019: COP $ 51,000).

- Unless exempted or excluded, additionally 19% VAT will apply on these services.

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

Law 1341 in article 64 establishes a series of behaviors that lead to sanctions. Some of these behaviors are:

- Not enrolling in the ICT registry.

- Using the radio spectrum without the corresponding permission.

- Failing to pay the consideration provided in the law.

- Refraining from presenting the required information to authorities or presenting it inaccurately or incompletely.

- Failing to comply with the quality and efficiency parameters issued by the CRC.

Additionally, article 65 of Law 1341, establishes that non-compliance with these obligations leads to penalties including reprimands, fines, suspension of the operation, expiration of the contract or cancellation of the license, authorization or permit.

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CROATIA

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OVERVIEW OF LEGAL LANDSCAPE

The mainstay of the provisions regulating provision of telecommunication services in Croatia is the most recently adopted Croatian Electronic Communications Act (*Zakon o elektronikim komunikacijama* – the "CECA") which transposes, among others, Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 (European Electronic Communications Code, the "**Code**").

The CECA regulates the field of electronic communications, in particular the provision of electronic communications networks and services, the provision of universal services as well as the protection of user rights. In addition, the CECA also regulates the construction, installation, maintenance and use of electronic communications infrastructure, related equipment and related services and certain features of terminal equipment.

CECA also sets out basic framework in respect of conditions of market competition and the rights and obligations of participants in the market of electronic communication networks and services, effective management of the radio frequency spectrum and address and number space, digital radio and television, data protection, security of electronic communication networks and services, as well as the performance of inspection supervision and control in electronic communications, the decision-making process and resolving disputes in electronic communications.

Apart from the CECA as the key and central legal act regulating telecommunications in Croatia, several implementing regulation providing more detailed regulation shall also be taken into account.

According to the CECA, the regulatory body competent for telecommunications' realm in Croatia is the Croatian Regulatory Authority for Network Industries (*Hrvatska regulatorna agencija za mrežne djelatnosti* – "**HAKOM**").

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Apart from the CECA, legal provisions pertaining to the regulation of telecommunications can be found in several acts of implementing regulation, among others:

- Croatian Ordinance on the manner and conditions of performing the activities of electronic communication networks and services (*Pravilnik o nainu i uvjetima obavljanja djelatnosti elektronikih komunikacijskih mreža i usluga*);
- Croatian Ordinance on the allocation of addresses and numbers (*Pravilnik o dodjeli adresa i brojeva)*;
- Various Croatian radio frequency spectrum allocation plans (*Planovi dodjele*);
- Croatian Ordinance on Electromagnetic Compatibility (*Pravilnik o elektromagnetskoj kompatibilnosti)*;

- Croatian Ordinance on a single European number for emergency services (*Pravilnik o jedinstvenom europskom broju za hitne službe*);
- Croatian Ordinance on the method and deadlines for the implementation of measures to protect the security and integrity of networks and services (*Pravilnik o nainu i rokovima provedbe mjera zaštite sigurnosti i cjelovitosti mreža i usluga*);
- Croatian Ordinance on the manner and conditions of access and joint use of electronic communication infrastructure and other related equipment (*Pravilnik o nainu i uvjetima pristupa i zajednikog korištenja elektronike komunikacijske infrastrukture i druge povezane opreme*);
- Croatian Ordinance on the use of the radio frequency spectrum (*Pravilnik o namjeni radiofrekvencijskog spektra*);
- Croatian Ordinance on the payment of fees for performing the duties of the Croatian Regulatory Agency for Network Activities (*Pravilnik o plaanju naknada za obavljanje poslova Hrvatske regulatorne agencije za mrežne djelatnosti*);
- Croatian Ordinance on payment of fees for the right to use addresses, numbers and radio frequency spectrum (*Pravilnik o plaanju naknada za pravo uporabe adresa, brojeva i radiofrekvencijskog spektra*); and
- Croatian Ordinance on radio equipment (*Pravilnik o radijskoj opremi*).

Although the CECA has been enacted recently, the implementing regulation based on the previous laws is still in force and applicable. However, amendments to the implementing regulation (in view of aligning them with CECA) may be expected in the near future.

Key features of the CECA are:

- Establishing legal framework in respect of HAKOM and its powers and organisational matters.
- Regulating general authorisation which enables telecommunication services providers to provide such services as long as they meet the relevant criteria and notify HAKOM thereof.
- Providing consumer / end-user protection framework.
- Setting out basic requirements in respect of granting of frequencies, numbers and rights of way.
- Regulation of universal services.
- Stipulating legal rules pertaining to public security, telecommunications secrecy and data protection.

REGULATORY BODIES OR AUTHORITIES

The competent authority for telecommunications in Croatian is the Croatian Regulatory Authority for Network Industries.

Contact information:

Hrvatska regulatorna agencija za mrežne djelatnosti – HAKOM
Ulica Roberta Frangeša-Mihanovia 9
10110 Zagreb
Croatia
Telephone: + 385 (0)1 700 70 07
Website: www.hakom.hr

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

In general, the CECA regulates provision of activity of electronic communication networks and services (*djelatnost elektronikih komunikacijskih mreža i usluga*) which is defined as installation, operation, management and commissioning of electronic communication networks and electronic communication infrastructure and related equipment as well as the provision of electronic communication services, according to Article 5 (1) No. 7 of the CECA.

In this respect, the CECA differentiates between (i) providers of telecommunications networks and (ii) providers of telecommunications services and lays down several requitements in respect of both types of entities.

The CECA also differentiates between public and private providers of the above activities (ie, telecommunications networks and services).

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

Generally speaking, the Croatian telecommunications legal system is based on the so-called general authorization for electronic communications networks and services (*ope ovlaštenje za elektronike komunikacijske mreže i usluge*) which means that in principle, no license is required for provision of such services. Nonetheless, entities that wish to carry on licensable activities in the context of telecommunications should notify HAKOM thereof in advance. An entity may start carrying on such activities only upon notifying HAKOM in line with the applicable legal requirements (see Article 24 of the CECA).

Nonetheless, it shall be borne in mind that licensing requirements may apply on the basis of other regulation, for instance, frequency allocation etc. In addition, several requirements may apply from the perspective of companies law.

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

From the perspective of telecommunications legislation, entities providing telecommunication activities (ie, networks and services) are in principle not required to be domiciled in Croatia.

This notwithstanding, advice should always be sought from a tax and companies law perspective (which may in certain instances require establishment of local presence).

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

There are several rules under Croatian pertaining to interconnection/roaming.

Article 59 (1) of the CECA stipulates that the installation and use of electronic communication networks as well as the provision of electronic communication services must meet the conditions of security of network use, network integrity and interoperability of electronic communication services.

According to Article 92 (3) of the CECA, operators of public communications networks have the right and – at the request of other authorized operators of public communications networks – the obligation to negotiate with each other on interconnection for the purpose of providing publicly available electronic communications services with the purpose of ensuring the provision and the interoperability of these services.

Furthermore, the CECA lays down several rules pertaining to HAKOM's powers in respect of interconnection, for instance, requiring public telecommunications network operators with significant market power to establish interoperability in different respects.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Apart from general consumer protection legislation that applies in Croatia (regulated by, among others, the Croatian Consumer Protection Act (*Zakon o zaštiti potrošaa*)), the CECA also provides for a legal framework that protects consumers. In this respect kindly note that similar protection is granted also to other categories which are similar to consumers (for example, "end-users") which to some extent overlaps with the consumer protection framework under the CECA.

This includes in particular the following:

- information requirements towards the consumers;
- duration and termination of agreements entered into between consumers and telecommunications operators;
- number portability obligations; and
- several requirements with respect to disabled people end-users.

As per Article 5 (1) No. 54 of the CECA, a consumer is defined as any natural person who uses a publicly available electronic communication service or requires this service for purposes that are not intended for their business activity, trade or self-employed activity.

An "end-user" is defined as an user (ie, a legal or natural person who uses a publicly available electronic communication service or requests this service) who does not provide public electronic communication networks or publicly available electronic communication services, according to Article 5 (1) No. 33 and 34 of the CECA.

REGULATORY TAXES AND FEES

On the basis of the CECA (and the respective implementing regulation relating thereto), the following regulatory taxes and fees may apply (please note that the below list is not of exhaustive nature):

- general fees that need to be paid to HAKOM on the basis of operators' total annual gross income;
- fees pertaining to spectrum assignment;
- fees in relation to allocation of numbers; and
- fees in respect of use of public good and rights of way (*naknada za korištenje opeg dobra i nekretnina na temelju prava puta*).

Additionally, advice should always be sought from a tax perspective.

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

The CECA contains several provisions outlining powers that HAKOM has in order to ensure compliance of the telecommunications market players with the applicable regulatory framework.

Articles 169 et seq. of the CECA contain provisions relating to administrative misdemeanours. In case of breach of such provisions, fines may be imposed. In the most serious cases of breaches, such fines can range from 1% to a maximum of 10% of the value of the total annual gross income of the operator at hand. In other, less serious cases, fines of up to EUR 132.720,00 or EUR 66.360,00 may be imposed.

The CECA also foresees fines that can be imposed representatives of the corporate entities in question (ie, operators).

In addition, certain actions may under certain circumstances also constitute different types of criminal acts as defined in the Croatian Criminal Act (*Kazneni zakon*) and may result in criminal fines, including imprisonment.

KEY CONTACTS

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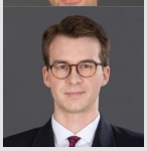

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CZECH REPUBLIC

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OVERVIEW OF LEGAL LANDSCAPE

Regulation of electronic communications regulates the conditions of doing business, the conditions of performing communication activities and the exercise of state administration, including market regulation, in the field of electronic communications.

To perform state administration, particularly in matters of market regulation and setting conditions for business in the field of electronic communications and postal services, the Czech Telecommunications Office was established, with given competence mainly by the Act No. 127/2005 Coll., the Electronic Communications Act.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Key regulatory provisions

- The main act regulating the field of telecommunications is the Act No. 127/2005 Coll., the Electronic Communications Act
- Full lists of related acts, government regulations, and decrees are available here (in English):
  - https://www.ctu.eu/acts
  - https://www.ctu.eu/government-orders
  - https://www.ctu.eu/decrees

Key features of the laws, regulations and policies

Regulation is implemented to compensate for the lack of competitive effects, to create the conditions for the proper functioning of competition and to protect users and other market participants until a fully competitive environment is achieved.

The Ministry of Industry and Trade ("**Ministry**") and the Czech Telecommunication Office ("**CTO**") promote competition in the provision of electronic communications networks and services and associated facilities to undertakings, in particular by taking decisions within their competence.

- ensuring that users, including disabled users and persons who, having regard to their age or social needs, may be considered to require special treatment, obtain maximum benefits in terms of choice of service, price and quality;
- ensuring that competition in the electronic communications sector, including content transmission services, is not distorted or restricted; and
- ensuring the efficient management and effective use of radio frequencies and numbers.

In pursuing its objectives, the Ministry and the CTO are guided in particular by the principles of non-discrimination, objectivity, technological neutrality, transparency and proportionality.

REGULATORY BODIES OR AUTHORITIES

Czech Telecommunication Office (CTO) (in Czech *eský telekomunikaní úad (TÚ)*)

Place of residence: Sokolovská 58/219, 190 00 Prague 9, Czech Republic

Postal adress: poštovní pihrádka 02, 225 02 Prague 025, Czech Republic

Phone: +420 224 004 111

Website: www.ctu.eu

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

Who is subject to the regulations?

The subject of the regulation are persons carrying out communication activities, which are the provision of electronic communications networks, the provision of electronic communications services, and the operation of devices.

Who is not subject to regulations?

Subject not falling under the scope of communication activities.

What activities are regulated?

Regulated communications activities are: (i) provision of electronic communications networks, (ii) provision of electronic communications services, and (iii) operation of devices. Of these, the subject of business in electronic communications is the provision of public communications networks and providing electronic communication services.

Further information is available here (in English).

What activities are not regulated?

Electronic communications regulation does not apply to the content of services provided over electronic communications networks, such as the content of radio and television broadcasting, financial services and certain information society services, unless otherwise specified below. The separation of the regulation of transmission from the regulation of content shall be without prejudice to the links that exist between them, in particular to guarantee media pluralism, cultural diversity and consumer protection.

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

Do telecom providers need special licensing or authorization from a regulatory body?

The Electronic Communications Act stipulates that both natural and legal persons who intend to carry out a communication activity that constitutes an electronic communications business must notify the Czech Telecommunications Office in advance in writing pursuant to Section 13 of the Electronic Communications Act. The authorisation to carry on business shall commence on the date of delivery of a notice of business which complies with the requirements of Section 13.

Further information about the notification is available here (in English).

The CTO also issues General authorisations, which is a measure of a general nature of the CTO that lays down the conditions for the exercise of communication activities relating to all or certain types of electronic communications networks and services, the operation of equipment and the use of radio frequencies and the use of numbers, and which is binding on natural and legal persons carrying out communication activities.

Further information about the General authorisation is available here (in English).

What is needed to be granted a consent, license, and authorization?

A person who meets the general conditions, which for a natural person means his or her majority, full legal capacity and integrity and for a legal person his or her integrity, may conduct business in electronic communications in the Czech Republic. An integrity has the meaning of not being convicted of a deliberate criminal offence related to the performance of communication activities. In the case of a legal person, the condition of integrity must also be fulfilled by each member of the statutory body.

What is the scope of consents, licences and authorizations?

Within one week of receipt of the notification, the CTO shall issue a certificate confirming that the person has submitted a complete notification of business pursuant to Section 13 of the Electronic Communications Act and has complied with the general conditions referred to in Section 8(3) of the Electronic Communications Act.

In the certificate, the CTO will specify: (i) identification data, (ii) the definition of the type of electronic communications network or electronic communications service the provision or provision of which has been notified, and whether the notifier has been authorised under Sections 79 and 104 of the Electronic Communications Act, and (iii) the conditions under which an undertaking which provides electronic communications networks or electronic communications services pursuant to a general authorisation may apply for rights to install facilities, arrange interconnection and obtain access or interconnection in order to facilitate the exercise of those rights, for example, at other levels of government or in relation to other entrepreneur.

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

From a telecommunications law perspective, there is no requirement for a provider of telecommunications services to be domiciled in the Czech Republic prior to, or during, the provision of services.

Also, a provider requesting access or interconnection on the territory of the Czech Republic is not obliged to notify the CTO of the performance of communication activities if he does not provide an electronic communications service on the territory of the Czech Republic or if he does not provide an electronic communications network.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The field of international roaming is regulated in the Czech Republic by directly applicable EU legislation, the Regulation (EU) No 531/2012 of the European Parliament and of the Council on roaming on public mobile communications networks within the Union.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Are there specific consumer protections?

Contracts concluded in the field of electronic communications are governed mainly by the Act No. 89/2012 Coll., the Civil Code, which contains general regulations applicable to all types of contracts. General consumer protection is provided by the Act No. 634/1992 Coll., the Consumer Protection Act.

Telecommunications services are covered, for example, by the rules on withdrawal within 14 days in the case of off-premises and distance contracts, general information obligations or adhesion contracts.

Who is considered a consumer?

Pursuant to Section 419 of the Civil Code, a consumer is any human being who, outside the scope of his or her business activity or outside the scope of the independent exercise of his or her profession, enters into a contract with an entrepreneur or otherwise deals with him or her.

What are telecom providers obligations to consumers?

A provider of a publicly available electronic communications service is generally obliged to provide that service 24 hours a day, every day of the year.

A provider of Internet access services or publicly available interpersonal communications services which controls at least some elements of the network, either directly or through an appropriate service level agreement, shall publish complete, comparable, reliable, user-friendly and up-to-date information for end-users on the quality of its services and on the measures taken to ensure equivalent access for disabled users. It shall publish this information in a manner that allows remote access and shall provide it to the CTO upon request before publication.

Where a provider of a publicly available electronic communications service or a provider of a connection to a public communications network enters into a contract with a consumer for a fixed period of time, that period may not exceed 24 months for the electronic communications service in question, otherwise the contract shall be deemed to be for an indefinite period of time.

REGULATORY TAXES AND FEES

What is the cost of licensing?

The issuance of a certificate of notification of a new business is subject to an administrative fee of CZK 1,000 (i.e. approx. EUR 41).

Is there a tax for providing telecom services?

There is no special tax for providing telecom services.

How are fees determined?

Administrative fees are always paid depending on the specific application submitted to the CTO into a special account of the CTO.

Full Tariff of Administrative Fees is available here (in Czech).

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

Telecom regulations are enforced by the CTO.

Depending on the specific violation, a fine of between CZK 5,000,000 (i.e. approx. EUR 204,082) and CZK 50,000,000 (i.e. approx. EUR 2,040,820) may be imposed for an administrative offence committed by a legal person or entrepreneur.

According to Section 182 of the Act No. 40/2009 Coll., the Criminal Code, a violation of the secrecy of messages transmitted by electronic communications may also be punishable by a fine, prohibition of action or imprisonment of up to 10 years, depending on the specific qualifying facts.

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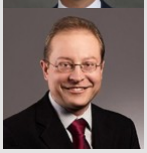

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DENMARK

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OVERVIEW OF LEGAL LANDSCAPE

The Danish telecommunications regulation is to a great extent based on European Union (EU) law, including the European Electronic Communications Code Directive (the EECC Directive). The Danish legislation therefore generally pursues the same objectives as the EU legislation, including the EECC Directive.

The main Danish legislation is the consolidated act no. 955 of 17 June 2022 on electronic communications networks and services with subsequent amendments. It is called the Tele Act. The Tele Act comprises the overall regulation in relation to end-user aspects, universal services obligations, numbering aspects and interconnection.

Under the Tele Act, a private entity may provide telecommunications services to users (customers) without the granting of a licence, approval or similar authorisation to do so. However, a provider must register as a provider and register general information on its activities as a provider with the Section of Tele Data in the Special Crime Unit under the Danish National Police.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The Danish telecommunications regulation is to a great extent based on EU law, including Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the EECC Directive).

The Danish telecommunications regulation which implements the EU legislation in Danish law and other regulation in relation thereto are based on several acts and executive orders set under these acts. The main Danish acts and executive orders are listed below:

- The Tele Act (consolidated act no. 128 of 7 February 2014 on electronic communications networks and services as amended)
- The Radio Frequency Act (consolidated act no. 1100 of 10 August 2016 on radio frequencies)
- Executive Order on end-user rights in the telecommunications area (executive order no. 1887 of 8 December 2020)
- Executive order on information requirements etc. in the provision of electronic communications networks and services (executive order no. 1886 of 8 December 2020)
- Executive order on access to emergency services through alarm communication (executive order no. 1885 of 8 December 2020)

- Executive order on the collective Danish numbering plan (executive order no. 1883 of 8 December 2020)
- Executive order on requirements for information and consent in relation to storage of or access to information in end-user's terminal equipment (executive order no. 1148 of 9 December 2011)
- Executive order on a service providers assistance to the police in connection with intervention in the secrecy of communications (executive order no. 1144 of 20 November 2006)
- Executive order on providers' of electronic communications networks and electronic communications services registration and storage of information on telecommunications traffic (executive order no. 988 of 28 September 2006 with subsequent amendments)

The main features of the Danish telecommunications regulation are the following:

- A provider of telecommunications services under the Tele Act may be a Danish entity. A provider may also be an entity from another member state of the European Union (EU) or the associated European Free Trade Association (EFTA) (comprising the EU and Iceland, Liechtenstein and Norway) or an entity from the United Kingdom. Apart from the United Kingdom, all these states are member states of the European Economic Area (EEA).
- Under the Tele Act, a private entity may provide telecommunications services to users (customers) without the granting of a licence, approval or similar authorisation to do so. However, a provider must register as a provider and register general information on its activities as a provider with the Section of Tele Data in the Special Crime Unit under the Danish National Police. This follows from section 12 of the Tele Act and its implementation in the organisation of the Danish National Police.
- Providers of telecommunications services shall generally ensure secrecy regarding communication.
- Providers of public telecommunications services have an obligation to negotiate agreements with each other on interconnection, for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of such services throughout the EU and the European Economic Area (EEA). This follows from sections 33-35 of the Tele Act.
- Providers of telecommunications services may apply for and may be assigned Danish telephone numbers.
- The Tele Act contains provisions on a telecommunications provider's obligation to make data available to the police, both by providing access to retained data and by providing interception capabilities.

The Danish telecommunications regulation is also supplemented by the general consumer regulation, including the following acts:

- The Danish Marketing Practices Act (act no. 426 of 4 May 2017 on marketing practices with subsequent amendments)
- The Danish Consumer Agreement Act (act no. 1457 of 17 December 2013 on consumer agreements with subsequent amendments)
- The Danish E-Commerce Act (act no. 227 of 22 April 2002 on services in information society, including some aspects of electronic commerce with subsequent amendments)
- The Danish Data Protection Act (act no. 502 of 23 May 2018 on supplementary provisions to the regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data)
- The Danish Payment Services Act (act no. 652 of 8 June 2017 on payment services with subsequent amendments)

REGULATORY BODIES OR AUTHORITIES

The Ministry of Climate, Energy and Utilities

Address: Holmens Kanal 20, 1060 Copenhagen K, Denmark
Telephone: +45 33922800
Website: www.kefm.dk

The Danish Energy Agency

Address: Carsten Niebuhrs Gade 43, 1577 Copenhagen V, Denmark
Telephone: +45 33926700
Website: www.ens.dk

The Section of Tele Data in the Special Crime Unit under the Danish National Police (in Danish: Teledata sektionen i National enhed for Særlig Kriminalitet (NSK))

Address: Ejby Industrivej 125-135, 2600 Glostrup, Denmark
Telephone: +45 45156450
Email address: servicemail-pac@politi.dk
Website: politi.dk

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

The Danish Tele Act, among others, applies to (1) providers of electronic communications networks and (2) providers of electronic communications services.

Under the Danish Tele Act the term "electronic communications networks" means transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active. The term "electronic communications networks" comprises such systems, pieces of equipment and other resources if they permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks and electricity cable systems. The term "electronic communications networks" comprises such systems, pieces of equipment and other resources which permit such conveyance of signals to the extent that they are used for the purpose of transmitting signals. The term "electronic communications networks" also comprises networks used for radio and television broadcasting and cable television networks. The term "electronic communications networks" comprises such systems, pieces of equipment, other resources and networks irrespective of the type of information conveyed. See section 2, subsection 4.

The term "electronic communications services" means service consisting wholly or mainly in electronic conveyance of communications in the form of sound, images, text or combinations thereof, by means of radio or telecommunications techniques, between network termination points, including two-way and one-way communications. See section 2, subsection 9.

Traditional telecommunications companies which provide internet access and/or voice telephony are the general providers comprised by the act. However, the definitions above also entail that businesses, organizations and authorities etc. which are not telecommunications companies in the traditional sense also may be comprised by the act. This also applies even if the provision of electronic communications networks or services are secondary to the company's main activity.

Furthermore, owners of electronic communications networks are also to a certain extent comprised by the Danish Tele Act. Such owners must generally ensure secrecy regarding communication. This follows from section 7 of the Tele Act.

The Danish Energy Agency has the power to assign telephone numbers to any party who commercially provides electronic communication services.

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

Under the Tele Act, a private entity may provide electronic communications networks and electronic communications services to users (customers) without the granting of a licence, approval or similar authorisation to do so. Accordingly, a provider does not need a licence, an approval or any similar authorisation under the act to provide electronic communication networks and electronic communication services, including satellite networks and satellite network services.

However, a provider must register as a provider and register general information on its activities as a provider with the Section of Tele Data in the Special Crime Unit under the Danish National Police. This follows from section 12 of the Tele Act and its implementation in the organisation of the Danish National Police.

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

A provider of electronic communications networks and/or electronic communications services under the Tele Act may be a Danish entity. A provider may also be an entity from another member state of the EU or the associated European Free Trade Association (EFTA) (the EU and Iceland, Liechtenstein and Norway) or an entity from the United Kingdom. Apart from the United Kingdom, all these states are member states of the European Economic Area (EEA).

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Providers of public electronic communications networks or services have an obligation to negotiate agreements with each other on interconnection, for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of such services throughout the EU and the European Economic Area (EEA). This follows from sections 33-35 of the Tele Act.

The Danish authorities may also impose obligations on such providers, to the extent it is necessary to ensure connection between end-users in the individual networks or to create interoperability with providers of electronic communications networks or services which control access to one or more end-users, including the obligation to interconnecting their networks.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The Danish Tele Act and Executive Order on end-user rights in the telecommunications area (executive order no. 1887 of 8 December 2020) ("**Executive Order on End-User Rights**") set several provisions in relation to consumer protection.

These provisions, among others, include the protection of consumer information. In relation to agreements between consumers and providers, it also follows from the Tele Act and the Executive Order on End-User Rights that the authorities may require that a summary of any such agreement shall be made by the provider and provided to the consumers prior to entering into an agreement. The summary of the agreement shall enable the consumer to easily review the agreement and compare across providers and services.

The Tele Act also ensure that end-users (customers) have the right to retain their subscriber numbers when changing between providers (number portability).

In addition to the Danish Tele Act and the Executive Order on End-User Rights, several other acts also ensure a certain level of consumer protection for consumers comprised by the Tele Act, including among others, the following acts:

- The Danish Marketing Practices Act (act no. 426 of 4 May 2017 on marketing practices with subsequent amendments)
- The Danish Consumer Agreement Act (act no. 1457 of 17 December 2013 on consumer agreements with subsequent amendments)
- The Danish E-Commerce Act (act no. 227 of 22 April 2002 on services in information society, including some aspects of electronic commerce with subsequent amendments)

- The Danish Data Protection Act (act no. 502 of 23 May 2018 on supplementary provisions to the regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data)

REGULATORY TAXES AND FEES

On the basis of the Tele Act and the Radio Frequency Act and the executive orders set under the acts, the relevant authorities will charge various fees in relation to the following activities:

- The allocation of telephone numbers
- The use of frequencies under licences to do so

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

A violation of the Danish telecommunications legislation will generally entail periodic penalty payments and/or fines. A fine is generally fixed in accordance with the general rules of part 10 of the Danish Criminal Code (consolidated act no. 976 of 17 September 2019 with subsequent amendments).

However, with respect to some more specific violations of the telecommunications legislation, a fine shall also be calculated based on the legal person's turnover during the last year before a judgment is obtained or a fine is imposed.

A provider under the Tele Act may also be sanctioned for violations of competition law as well as data protection infringement etc.

KEY CONTACTS

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FINLAND

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OVERVIEW OF LEGAL LANDSCAPE

The regulatory body for telecommunication related matters in Finland is the Finnish Transport and Communications Agency "Traficom" (*Liikenne - ja viestintävirasto*). The relevant Finnish legislation has been under a reformation process as Finland has been implementing the European Electronic Communications Code Directive (the EECC Directive) and the objective of the said process has been reaching full compliance with the legislation of the European Union. In general, the Finnish telecommunications regulation is strongly based on European Union law.

The most important part of the Finnish telecommunication legislation is the Act on Electronic Communications Services 7.11.2014 /917 (*Laki sähköisen viestinnän palveluista*) that entered into force on 1 January 2021. The aim of the act is to promote the provision and use of electronic communication services and to ensure that communication networks and communication services are available to everyone throughout the country on reasonable terms. Another aim of the act is to secure the efficient and undisturbed use of radio frequencies and to promote competition and ensure that communication networks and services are technically advanced, of good quality, reliable and safe, and affordable. In addition, the aim of the act is also to secure the realization of the confidentiality and privacy of electronic communications.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Provisions relating to the regulation of telecommunications are found also in various other regulations, as well as in the Act on Electronic Communications Services. These include:

- Act on Broadband Construction Aid in Sparsely Populated Areas
- Act on Background Checks
- Act on Citizens' Initiative
- Act on Information Security Inspection Bodies
- Act on the Assessment of the Information Security of Public Authorities' Information Systems and Telecommunications Arrangements
- Act on International Information Security Obligations
- Act on Strong Electronic Identification and Electronic Trust Services
- Act on Cross-Border Injunction Proceedings

- Act on Yleisradio Oy
- Act on Strong Electronic Identification and Electronic Trust Services
- Rate of a Functional Internet Access Service as a Universal Service (Decree)
- Government Decree on the Minimum Requirements for the Provision of Universal Telephone Services for the Hearing, Speech and Visually Impaired
- Government Decree on Radio Frequency Usage and the Frequency Plan
- Government Decree on Television and Radio Operations
- Government Decree on Radio Frequency Usage and the Frequency Plan for the Region of Åland
- Government Decree on the Trust Network for Providers of Strong Electronic Identification Services
- Government Decree on Radio Frequency Usage and the Frequency Plan
- Government Decree on Radio Frequency Usage and the Frequency Plan for the Region of Åland
- Government Decree on Radio Frequency Usage and the Frequency Plan
- Government Decree on Television and Radio Operations
- Government Decree on Radio Frequency Usage and the Frequency Plan for the Region of Åland

The key features of the Act on Electronic Communications Services are:

- **Part 2**: Includes the provisions governing fields that are subject to operators' notification for the authorities or require a licence.

According to Chapter 2 section 4, an operator must submit an electronic notification to the Finnish Transport and Communications Agency:

1. on general telecommunications (telecommunications notification);

2. non-licensed television operations, if the service provider is established in Finland (software activity notification);

3. about offering a subscription program service, if the service provider is established in Finland (subscription program service notification);

4. if the operator offers a linear pay-television service in the terrestrial digital mass communication network using the protection removal system (pay-television service announcement);

5. on providing a video sharing platform service, if the service provider is established in Finland (video sharing platform service notification).

Chapter 3 section 6: Providing a network service that requires radio frequencies in a digital terrestrial mass communication network or a mobile communication network where general telecommunications activities are carried out requires a network licence

Chapter 4 section 22: Exercising out television and radio activities in a digital terrestrial mass communication network requires a programming licence apart from certain exceptions.

Chapter 5 section 34: Exercising radio activities in an analog terrestrial mass communication network requires a programming licence. A programming licence is applied for from the Finnish Transport and Communications Agency.

Chapter 6 section 39: Possession and use of radio transmitters require a radio licence issued by the Finnish Transport and Communications Agency, unless otherwise stipulated in section 39.

- **Part 3**: Includes the provisions governing obligations imposed on different operators.

Chapter 7 section 51: The Finnish Transport and Communications Agency must at regular intervals define relevant communications markets, of which it performs a market analysis in accordance with Section 52. The Finnish Transport and Communications Agency must take into account the Commission's guidelines for market analysis and assessment of significant market power as well as the Commission's recommendation on relevant product and service markets as closely as possible. In addition, the Finnish Transport and Communications Agency must, if necessary, take into account the result of the geographical mapping referred to in section 51a.

- **Part 4**: Includes the provisions governing frequencies and numbers.

- **Part 6**: Includes the provisions governing confidentiality of communications and protection of privacy.

- **Part 12**: Includes the provisions governing the actions taken by the authorities, including the Finnish Transport and Communications Agency.

- **Part 13, chapter 44**: Includes the penal provisions relating to electronic communications.

REGULATORY BODIES OR AUTHORITIES

Traficom – Liikenne- ja viestintävirasto (Finnish Transport and Communications Agency)

Address: Liikenne- ja viestintävirasto Traficom, PL 320, 00059 TRAFICOM

Telephone: +358 (0) 29 534 5000

Website: www.traficom.fi

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

The National Cyber Security Centre Finland ("**NCSC-FI**") operating under the Finnish Transport and Communications Agency supervises compliance with information security and functionality requirements in telecommunications operations, preparedness for interference and exceptional circumstances, the obligations to provide assistance to emergency services and police authorities as well as the confidentiality of electronic communications and traffic data.

NCSC-FI has provided instructions and guidelines regarding telecommunication legislation and the scope of regulation in Finland on their website. According to NCSC-FI, Telecommunications regulation is applied to operations and services if they fulfil the characteristics of the definitions concerning telecommunications given in the Act on Electronic Communications Services. For telecommunications, key terms defined in legislation include 'telecommunications operator', 'communications service' and 'network service':

Telecommunications operator means a network operator or a communications service operator offering services to a set of users that is not subject to any prior restriction, i.e. provides public telecommunications services.

Communications service means:

- a service consisting either wholly or mainly of the conveyance of communications in a communications network (e.g. internet access service);

- a transmission and broadcasting service in a mass communications network; and
- an interpersonal communications service.

Network service means a service where a telecommunications operator (network operator) provides a communications network in its ownership or for other reasons in its possession for the purposes of transmitting or distributing communications.

Communications network means a system comprising interconnected wires and devices for the purpose of transmitting or distributing communications by wire, radio, optical or other electromagnetic means.

Public communications network means a communications network used to provide communications services to a set of users that is not subject to any prior restriction.

Practical examples of operators in the field of telecommunication include:

- traditional telecommunications operators, such as providers of telephone and broadband services
- television and radio network providers
- several commercial and non-commercial providers of communications networks and communications services which have not traditionally been perceived as telecommunications operators, for example services provided over the internet (over-the-top or OTT services) and WLAN networks that are provided to a set of users not subject to any prior restriction
- digital infrastructure providers under the NIS Directive, i.e. exchange point providers and DNS service providers when domain name service is provided as part of internet access service

Telecommunications does **not** cover, for example, the following:

- in interpersonal communications, minor ancillary features to other services, such as communication channels in online games (see recital 17 of Directive (EU) 2018/1972)
- content services, such as websites, blogs, discussion forums or streaming and video-on-demand services (VoD)
- provision of hardware or software, online recording services of programmes, pay-TV packages or pay-TV cards
- surveillance or alarm services provided via telecommunications connections (e.g. in nursing and security services).

In general, **the NCSC-FI does not supervise** the content or marketing of communications or, as a rule, the provision of public authority networks or public authority communications services.

The regulation of telecommunications is technology neutral. It applies to targeted communications such as telephone, text message, broadband and email services and to mass communications such as cable television, IPTV, terrestrial television and radio services.

In mass communications networks, telecommunications means, for example, the maintenance and provision of terrestrial, cable and IPTV networks and the provision of cable or IPTV subscriptions. The technical transmission of programme stream and telecommunications include, for example, the synchronisation of sound and picture, as well as the transmission of the information on teletext television and in the electronic programme guide (EPG).

Public telecommunications can be subject to charge or free of charge. Operators other than commercial operators can also be telecommunications operators within the meaning of the Act on Electronic Communications Services because the law does not require public telecommunications to be provided against payment. This means that regulation concerning telecommunications operators may also apply to cities, other non-commercial operators and services provided free of charge on the internet, for example.

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

According to the Act on Electronic Communications Services, telecommunication operators either need a licence or to give a notification to the Finnish Transport and Communications Agency, depending on the transmission technology used. Operators need either a network licence or a programming licence.

Providing a network service in a digital terrestrial mass communications network, that is, in practice, transmitter network operation, requires a licence granted the government. In addition, each transmitter must have a radio licence issued by the Finnish Transport and Communications Agency.

Broadcasting in a terrestrial TV network requires a programming licence, which authorises the holder to broadcast programming or have programming available. Programming licences are granted by Traficom. Licences can be applied for at any time. Before granting a licence, Traficom publishes an invitation for applications to allow all interested parties to apply for a corresponding licence. If there is no sufficient capacity in the network to grant licences for all applicants, the decisions on programming licences are transferred to the Government.

Radio broadcasting lasting more than three months requires a programming licence. Traficom invites applications for licences either when a licence period changes, when frequencies become available, or when new frequencies can be introduced.

Issuance of a network licence is carried out either using a comparative procedure or through auction organised by Traficom. With respect to the comparative procedure, a network licence must be granted if:

1. the applicant has sufficient financial resources to take care of the obligations of the network company;
2. the licensing authority has no justified reason to suspect that the applicant is violating the provisions of this law; and
3. the licensing authority does not have particularly strong grounds to suspect that the granting of the licence will obviously endanger national security.

To obtain a programming licence granted by Traficom, the applicant has to meet certain criteria (e.g. pay a application fee, the applicant must be solvent and has an obvious ability to regularly operate in accordance with the network licence and has not breached certain laws). Same applies for radio broadcasting (e.g. the applicant has not breached certain laws and technically suitable radio frequencies can be assigned from the frequency range for the applicant to use or reserve).

Granted licences can be restricted in different ways, e.g. geographically or in time or additional conditions can be imposed on the licence.

Relevant sections are found in the Act on Electronic Communications Services (Part 2, chapters 2-6).

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

From a telecommunications law perspective, there is no requirement for a provider of telecommunications services to be domiciled in Finland prior to, or during, the provision of services. However, legislation relating to national security matters can restrict operators' freedom of action. The authorities have the opportunity to monitor the ownership base of companies that are central to security of supply and the country's security and, if necessary, to limit foreign ownership in such companies.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Act on Electronic Communications Services part 3 chapter 9 contains provisions regarding operators' obligation to engage in certain interconnection/roaming activities with other operators. For example, according to section 61, Traficom may impose an obligation on an operator with significant market power to connect a communications network to the communications network

of another telecommunications operator (interconnection obligation). An operator shall thus negotiate on interconnection with the other network operator under terms and conditions consistent with interconnection obligations imposed on it by virtue of said decision.

In addition to the interconnection obligation referred to in subsection 1, Traficom may impose an obligation to make their services interoperable with services of another telecommunications operator to the extent necessary.

According to section 64, international calls shall be routed to an international telecommunications service via a long-distance telecommunications service selected by the telecommunications operator providing the international service. All providers of public international telephone services shall provide access to all local telephone services.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Act on Electronic Communications Services part 5 contains provisions relating to consumers which cannot be deviated from to the detriment of the consumer. Provisions in the said act might refer to consumers also by using different terms, such as "a subscriber".

According to part 1 section 3:

- "**user**" means a natural person who as a subscriber or otherwise uses a communications service or an added value service
- "**subscriber**" means a legal or natural person who is party to an agreement concerning the provision of a communications service or an added value service for a purpose other than telecommunications operations

The main obligations of telecom providers to consumers (chapter 15) are the following:

- **Section 106b**: Before entering into a communications service agreement, the telecommunications company must provide the consumer with the information referred to in chapter 2, section 8a or chapter 6, section 9 of the Consumer Protection Act (38/1978). The information must be provided in a clear and comprehensible manner and in a permanent manner. If providing the information in a permanent way is not possible, the telecommunications company must provide the information in an easily downloadable document made available to the consumer, about which the telecommunications company informs the consumer. In this case, the telecommunications company must draw the consumer's attention to the importance of downloading the document in order to preserve the information, for later use, and to reproduce the information unchanged.
- **Section 107**: Communication service agreements must not contain conditions or restrictions that are unreasonable for consumers.

The telecommunications company may not apply different conditions to subscribers based on citizenship, place of residence or place of establishment, unless the different conditions are objectively justified.

The telecommunications company must publish:

1. the standard contract terms they use;
2. price lists for communication services;
3. with regard to the number-based interpersonal communication services they offer, information on the availability of emergency service and the availability of the subscription holder's location information and its limitations;
4. with regard to the number-independent communication services between persons, information on whether the use of emergency services is possible;
5. information on the details of products and services intended for the disabled.

The information referred to in subsection 3 above must be published in such a way that it is easily accessible without compensation. The information must also be published in a format suitable for use by disabled persons.

- **Section 108**: The communication service agreement between the telecommunications company and the subscriber must be made in writing.

- **Section 109**: The communication service agreement is valid until further notice, unless otherwise agreed separately.

The telecommunications company may conclude a fixed-term contract with the consumer for a maximum of 24 months. However, the fixed-term telephone subscription contract of the mobile communications network with the consumer may not be valid for a maximum of 12 months.

The consumer is obliged to pay the fees based on the communication service agreement only from the moment the connection is available.

If the fixed-term contract continues automatically after the end of the contract period, the contract can then be terminated by the customer to end two weeks after the termination. The telecommunications company must inform the subscriber about the automatic continuation of the contract, the means of terminating the contract, and provide advice on cheaper prices well in advance of the end of the fixed-term contract. The information must be reported in a permanent way.

The telecommunications company must offer the consumer a free and easy-to-use option to immediately check the expiration date of his fixed-term telephone subscription contract with the mobile communications network. The possibility must be offered via text message or another similar easy-to-use and immediate inspection method. The Finnish Transport and Communications Agency can issue more detailed regulations on the technical implementation of the service.

REGULATORY TAXES AND FEES

The regulatory fees related to telecommunications licences are governed by the Act on Electronic Communications Services part 11 chapter 36. The fees for different licences vary between 300 and 5000 euros.

There are no taxes that would apply specifically only to telecom service providers.

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

The governmental entity that enforces telecom regulations in Finland is the National Cyber Security Centre Finland (NCSC-FI) that operates under the Finnish Transport and Communications Agency (Traficom).

Traficom may utilize various measures through which supervision of the legislation is conducted. These include giving a warning, ceasing the operator's actions, restricting the usage of frequencies, conditional fines, threat of termination, threat of completion, penalty payment by a telecommunications operator, penalty payment by a television or radio broadcaster, prohibiting an unfair term of agreement in telecommunication services, closing a number or service, suspension of television broadcasting, suspension of retransmission, prohibiting telecommunication operations and house or bodily search. Relevant provisions are included in sections of chapter 42 of part 12 of the Act on Electronic Communications Services.

Chapter 44 of part 13 of the Act on Electronic Communications Services contains provisions relating to penalties for violating the act. Penalties vary from none/a fine to imprisonment of up to three years. The act includes also references to the Criminal Code of Finland which has some provisions of its own with respect to violations of telecommunications legislation.

KEY CONTACTS

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FRANCE

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OVERVIEW OF LEGAL LANDSCAPE

Subject to a handful of discrete exemptions (notably concerning the use of spectrum or numbering resources), electronic communications operators do not require an authorization, licence, permit, consent, etc.

Since 28 May 2021, France does not longer require electronic communications operators to file a prior declaration with the telecoms regulator – the *Autorité de Régulation des Communications Electroniques et des Postes* or Authority of Electronic communications and Posts (ARCEP).

The roles and responsibilities of ARCEP are codified in the Code on Posts and Electronic Communications (CPEC). ARCEP regulates all electronic communications services including fixed line telecoms, mobiles, plus the airwaves over which wireless devices operate, and postal services.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

All primary legislation governing the telecommunications sector in France is codified into the CPEC.

European Directive 2018/1972 establishing the European Electronic Communications Code, which repealed several directives adopted in 2002, was transposed into French law by Ordinance n° 2021-650 of May 26, 2021.

ARCEP regularly enacts decisions or recommendations on more specific regulatory matters, such as frequency planning, value added services regulations, tariffs regulation, etc.

In addition, the following legislation (as well as the subordinate legislation and regulations sitting underneath) may also impact the provision of electronic communications services and the operation of electronic communications networks:

- Law No. 2021-1755 of December 23, 2021 for the reinforcement of the environmental regulation of the digital sector by ARCEP
- Law No. 2019-486 of May 22, 2019 on the growth and transformation of business
- Law No. 2016-1321 of October 7, 2016 for a Digital Republic
- Law No. 2015-990 of August 6, 2015 for growth, activity and equal economic opportunities
- Law No. 2008-776 of August 4, 2008, on the modernisation of the economy
- Law No. 2008-3 of January 3, 2008, on the development of competition in favour of consumers

- Law No. 2004-575 of June 21, 2004, on the confidence in digital economy
- Law No. 78-17 of January 6, 1978, on data processing, data files and individual liberties

The key targets and features of the primary legislation applicable to telecommunications, as codified in the CPEC, are the following:

- Measures aimed at ensuring fair competition between operators and an efficient regulation of the electronic communications sector, notably via the specific missions and rights granted to ARCEP and warranties to ensure its independence
- Regulating the management and allocation of radio frequencies and telephone numbers (including premium rate telephone services) to operators
- Protecting consumers and personal data, including for example, requirements to provide specific information to consumers, to provide notice in case of security breach, and to protect the content of their communications from unauthorised disclosure
- Empowering ARCEP to hear disputes between operators (although referral to ARCEP does not preclude the bringing of court proceedings)

REGULATORY BODIES OR AUTHORITIES

Autorité de Régulation des Communications Electroniques et des Postes - ARCEP

Address: 14 rue Gerty Archimède, 75012 Paris

www.arcep.fr

ARCEP is an independent authority that has jurisdiction over all electronic communications services and all electronic communications operators as defined under the CPEC.

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

The CPEC notably regulates the operation of electronic communications networks and of electronic communication services.

An 'electronic communication network' is defined under the CPEC as any installation or any set of transmission or broadcasting installations as well as, where applicable, the other means ensuring the routing of electronic communications, in particular switching or routing means. The following are considered as electronic communications networks in particular: satellite networks, terrestrial networks, systems using the electrical network insofar as they are used for the routing of electronic communications and networks used for broadcasting or used for the distribution of audiovisual communication services.

An 'electronic communications service' means a service provided via electronic communications networks, which encompasses at least one of the following types of services: internet access service, interpersonal communications service and services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting. Services providing, or exercising editorial control over, content transmitted using electronic communications networks and services do not fall within the scope of this definition.

ARCEP also regulates the allocation of radio frequency blocks and telephone numbers in France.

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

Operators, defined as undertakings operating an electronic communications network or providing public electronic communications service, do not require an authorization, licence, permit, consent, etc.

While until 28 May 2021, France required operators to file a prior declaration with the ARCEP before the effective launch of their activities in France, such obligation does not longer currently apply.

Any operator wishing to operate a mobile communications network and/or to provide mobile communications services using scarce resources (i.e. radio frequencies or numbering) shall be granted with an authorisation from the ARCEP.

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

From a telecoms regulatory perspective, there are no requirements for an electronic communications operator to be domiciled in France. Advice should however be sought from a tax perspective.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

A specific agreement providing for the technical and financial conditions applicable to the interconnection or the national roaming services, must be entered into between the two operators at issue and disclosed to ARCEP upon request.

In certain circumstances, and notably to foster competition between operators, ARCEP may impose on its own initiative or upon the request of one of the parties, technical and/or financial conditions for the interconnection or roaming, in an objective, transparent and non-discriminatory way.

With regards to interconnection:

- The CPEC requires all public electronic communications network operators to provide interconnection services to other public electronic communication network operators (including operators established in another EU Member State or a state party to the Agreement on the European Economic Area). A request for interconnection cannot be rejected if it is justified considering the needs of the requesting operator and the capacities of the hosting operators to satisfy such needs.

- Where ARCEP has found that one operator has a 'significant influence' on a relevant market, such operator will be bound by additional obligations with respect to interconnection, including notably the obligation to publish an interconnection offer, in compliance with ARCEP's specific regulations and guidance.

- Interconnection agreements must include several mandatory provisions and notably details on the measures taken by both operators to ensure the security and integrity of the networks, services interoperability and data protection.

- Since 1 July 2021, the EU Commission Regulation 2021/654 sets maximum termination rates that operators are allowed to charge each other for mobile and fixed termination services respectively, directly applicable to Union operators. Such rates supersede the maximum termination rates as previously defined by ARCEP.

ARCEP also has jurisdiction over any disputes between operators in relation to interconnection or roaming.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The CPEC contains a number of consumer specific provisions. A 'consumer' is defined as someone who uses or requests a service for non-business use.

Specific obligations relating to consumers include:

- The requirement to include certain mandatory terms in consumer contracts

- Conditions relating to term and termination

- The requirement to make certain information available to the customer, including a description of the services offered and the standard tariffs
- Availability of number portability
- Restrictions on sales and marketing activities

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

REGULATORY TAXES AND FEES

The following basic taxes and fees are payable by electronic communications operators:

Tax on services

Electronic communications operators must pay to the tax authorities an annual tax set at 1.3% of all turnover earned from their electronic communications activities in France which is over EUR 5 million (taxes, interconnection and access fees excluded).

Tax for the funding of the universal service

Electronic communications operators must pay an annual tax for the funding of the universal service, which will be calculated pro-rata to their annual turnover (taxes, interconnection and access fees, and radio/TV broadcasting services fees excluded, and roaming-out fees included).

Tax on the use of scarce resources

Any operator which has been granted with scarce resources, whether spectrum or numbering, shall pay a specific annual fee.

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

ARCEP is notably in charge of ensuring that operators fully comply with their obligations pursuant to the CPEC and other applicable regulations.

Where ARCEP identifies a breach, it may, upon its discretion or following a claim, send a prior notice to a non-compliant operator and require it to take the necessary steps to rectify the breach. If the operator does not remedy the breach within the specified time, ARCEP may notably, after an inter partes procedure:

- Suspend the rights of the operator in relation to its activities (for a maximum duration of three years), or
- Levy a fine which will be proportionate to the seriousness of the breach and to the benefits drawn from such breach by the operator (within the limits of 3% of its net annual turnover increased to 5% in the event of a new breach of the same obligation, or EUR 150,000 in the event its previous annual turnover cannot be assessed, increased to €375,000 in the event of a new breach of the same obligation)

ARCEP may also require entities to provide certain information relating to ARCEP's regulations or to their networks and/or services.

KEY CONTACTS

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GERMANY

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OVERVIEW OF LEGAL LANDSCAPE

In Germany, the telecommunications sector is regulated mainly at the federal level in the German Telecommunications Act (*Telekommunikationsgesetz – TKG*). The regulator is the Federal Network Agency (*Bundesnetzagentur – BNetzA*).

This German telecommunications regulation is based on the European Electronic Communications Code (Directive (EU) 2018 /1972 – EEEC) that entered into force on 21 December 2020. The updated TKG transposing the EEEC entered into force on 1 December 2021.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The telecommunications sector is mainly regulated by the following laws in Germany:

- TKG: Telecommunications Act (*Telekommunikationsgesetz*)
- TTDSG: Act on Data Protection and the Protection of Privacy in Telecommunications and Telemedia (*Gesetz zur Regelung des Datenschutzes und des Schutzes der Privatsphäre in der Telekommunikation und bei Telemedien – Telekommunikations-Telemedien-Datenschutz-Gesetz)*
- FuAG: Radio Equipment Act (*Funkanlagengesetz*)
- BSIG: Act on the Federal Office for Information Security (*Gesetz über das Bundesamt für Sicherheit in der Informationstechnik = BSI-Gesetz*) as amended by the Second Act increasing the security of information technology Systems, also called IT Security Act 2.0 (*IT-Sicherheitsgesetz 2.0 = IT-SiG 2.0*).

A number of regulations have been issued to regulate more details. These include (among others):

- TKÜV: Telecommunications Surveillance Regulation (*Telekommunikations-Überwachungsverordnung*)
- TNV: Telecommunications Numbering Regulation (*Telekommunikationsnummerierungsverordnung*)
- FSBeitrV: Frequency Protection Contribution Regulation *(Frequenzschutzbeitragsverordnung)*
- TKTransparenzV: Telecommunications Transparency Regulation (*Telekommunikations-Transparenzverordnung*)
- NotrufV: Emergency Call Regulation (*Notrufverordnung*)

- 26. BImSchV: 26. Ordinance on the Implementation of the Federal Immission Control Act (*Ordinance on Electromagnetic Fields*)

- BEMFV: Ordinance on the Verification Procedure for the Limitation of Electromagnetic Fields (*Verordnung über das Nachweisverfahren zur Begrenzung elektromagnetischer Felder*)

REGULATORY BODIES OR AUTHORITIES

The German regulator for the telecommunications sector is the Federal Network Agency (Bundesnetzagentur – BNetzA).

Official full name: Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway)

Address: Tulpenfeld 4, 53113 Bonn, Germany

Telephone: +49 228 14-0

Website: www.bundesnetzagentur.de/EN

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

The regulation mainly applies to telecommunications networks, telecommunications services as well as to telecommunications equipment and associated facilities.

The main requirements of the TKG are directed at operators of telecommunications networks and providers of telecommunications services. But there are also additional requirements for persons participating in the provision of telecommunications services.

The main requirements of the FuAG are directed at manufacturers of radio equipment and authorized representatives but also to importers and distributors.

Generally, the regulation applies to networks/equipment operated in Germany and services provided in Germany. It does generally not matter where the operator/provider is established or is located.

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

The operation of telecommunications networks and/or the provision of telecommunications services does generally not require a licence in Germany.

There is a notification requirement for anyone who commercially operates public telecommunications networks or commercially provides publicly available telecommunications services that are not number-independent interpersonal telecommunications services (Sec. 5 TKG). The notification needs to be filed by completing BNetzA's official notification form without undue delay.

In addition, the use of German frequencies requires a frequency allocation (Sec. 91 TKG). Depending on the frequencies to be used, this can be a general allocation (for everyone) or an individual allocation (just for the specific person/entity that applied for the specific frequency use).

Radio equipment generally needs a European conformity assessment (Sec. 18 FuAG). And high-frequency installations with an equivalent isotropic radiated power (EIRP) of 10 watts or more may only be operated if the installation has received a site certification (*Standortbescheinigung*, Sec. 4 BEMFV).

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

The German telecommunications regulation does not require operators of telecommunications networks or providers of telecommunications services to be domiciled in Germany or even in the EU.

However, some provisions require a contact person based in the EU (Sec. 166 (1) No. 2 TKG) or a general receiving agent in Germany (e.g., Sec. 62 (1) No. 3, (2) No. 3 c), Sec. 118 (1) No. 2 and Sec. 170 (1) No. 3 b) TKG). And there are provisions that require some of the regulatory duties to be carried out in Germany (e.g., to store traffic data in Germany, Sec. 176 (1) TKG, or to operate the technical facilities for controlling lawful interception functionalities in Germany, Sec. 14 (1) TKÜV).

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Operators of public telecommunications networks are required, upon request, to negotiate with other companies an offer of access and interconnection to ensure users' communication, the provision of telecommunications services and their interoperability throughout the European Union (Sec. 20 (1) TKG).

BNetzA is authorized to impose obligations on companies that control access to end-users to the extent necessary to ensure end-to-end connectivity or to ensure interoperability. In particular, it may require them to interconnect their telecommunications networks with those of other companies (Sec. 21 (1) TKG).

Under certain conditions, BNetzA may also require providers of number-independent interpersonal telecommunications services to make their services interoperable (Sec. 21 (2) TKG).

Furthermore, BNetzA is authorized to require telecommunications network operators with significant market power to create certain necessary prerequisites for the interoperability of end-user services or for roaming in mobile networks, to enable the interconnection of public telecommunications networks or to provide open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or for services for virtual telecommunications networks (Sec. 26 (3) No. 4, No. 7 and No. 8 TKG).

The EU roaming regulation (Regulation (EU) 2022/612) directly applies in Germany.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The TKG contains numerous provisions related to end-user protection that are implemented from the European Electronic Communications Code. Most of these requirements may not be excluded, at least not for companies that are neither classified as microenterprises nor as non-profit enterprises or organizations (Sec. 71 TKG). The relevant provisions do not exclusively refer to the term "end-user" but also to "consumers", "customers" or "end-customers" or "subscribers".

"User" means any natural or legal person using or requesting a publicly available telecommunication service for private or business purposes (Sec. 3 No. 41 TKG).

"End-user" is defined as a user that does not operate a public telecommunications network or provide publicly available telecommunications services (Sec. 3 No. 13 TKG).

"Consumer" is defined as any natural person who enters into a legal transaction for purposes that can predominantly be attributed neither to his commercial nor to his independent professional activity (Sec. 13 of the German Civil Code).

Specific obligations relating to end-user protection include (among other requirements):

- Non-discrimination (Sec. 51 TKG),
- Transparency requirements regarding the terms and conditions (Sec. 52 (1) TKG),
- Detailed requirements for contracts (Sec. 54 to 57 TKG),
- Requirements for the timely elimination of and compensation for disruptions (Sec. 58 TKG),

- Number portability (Sec. 59 TKG),
- Billing requirements (Sec. 63 to 65 TKG).

REGULATORY TAXES AND FEES

The TKG regulates various fees (Part 12 of the TKG). Generally speaking, measures taken by BNetzA are associated with costs, including (but not limited to) the following:

- Frequency allocations and frequency usage (Sec. 223, 224 TKG),
- Number allocations (Sec. 223 (3) TKG),
- Preliminary proceedings at BNetzA (Sec. 226 TKG).

There might also be a fee for providers of universal services (voice communications, broadband internet access) to compensate the designated universal service provider if BNetzA appoints one (Sec. 163 TKG).

The TKG does not include telecommunications-specific tax requirements, but the general tax regulation also applies to telecommunications services (e.g., related to VAT).

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

BNetzA may issue orders to comply with the regulatory requirements. In cases of serious or repeated violations, BNetzA may even issue orders to prohibit the activity as an operator of telecommunications networks or provider of telecommunications services in Germany (Sec. 202 (3) TKG).

Non-compliance with the telecommunications regulatory requirements are administrative offences that can lead to administrative fines of up to 2 % of the yearly turnover of the company in some of the cases (Sec. 228 TKG). Some violations are even criminal offences that can lead to criminal fines or even imprisonment (e.g., Sec. 27 TTDSG).

KEY CONTACTS

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HONG KONG, SAR

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OVERVIEW OF LEGAL LANDSCAPE

The telecommunications industry in Hong Kong is regulated by the Communications Authority (CA). The CA was established in 2012 as the unified regulator of the telecommunications and broadcasting sectors. The Office of the Communications Authority (OFCA) is the executive arm and secretariat of the CA and it supports the CA in administering and enforcing the relevant laws in relation to the provision of telecommunications services.

In general, there are no foreign ownership restrictions or limits on the number of operators, but telecommunications operators should be aware of the different licensing requirements for the provision of services in Hong Kong.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The duties and powers of the CA and the OFCA are stated in the Communications Authority Ordinance (Cap. 616) and the Telecommunications Ordinance (Cap. 106) respectively.

The primary legislation governing telecommunications in Hong Kong is the Telecommunications Ordinance (Cap. 106) (and its subordinate regulations and orders).

In addition to the Telecommunications Ordinance, the following legislation may also impact the provision of communication services and the operation of communication networks:

- The Broadcasting Ordinance (Cap. 562)
- The Personal Data (Privacy) Ordinance (Cap. 486)
- The Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391)
- The Unsolicited Electronic Messages Ordinance (Cap. 593)

The key features of the Telecommunications Ordinance are:

- Licensing requirements for telecommunications services providers
- Competition provisions that aim to prevent anti-competitive conduct
- Regulation of mergers and acquisitions that may restrict competition in the telecommunications market

REGULATORY BODIES OR AUTHORITIES

Communications Authority (CA)

Address: 29/F, Wu Chung House, 213 Queen's Road East, Wan Chai, Hong Kong

Website: http://www.coms-auth.hk/en/home/index.html

Office of the Communications Authority (OFCA)

Address: 29/F, Wu Chung House, 213 Queen's Road East, Wan Chai, Hong Kong

Website: http://www.ofca.gov.hk/

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

The CA regulates the provision of various telecommunications services, including but not limited to local fixed carrier services, fixed broadband services, IP telephony services, external telecommunications services, various international value-added network services, external telecommunications facilities and mobile network services. All related operators and service operators are subject to the relevant legal and regulatory requirements.

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

Depending on the scope of services, telecommunications operators may require the following licence(s) from the CA:

- Carrier Licences (CL) for the provision and maintenance of facility-based public telecommunications services or infrastructure, including establishing telecommunications networks, circuits, and equipment, fixed external services, fixed internal services, and/or mobile services

- Service-based Operator (SBO) Licences for the provision of ancillary services related to telecoms services over networks owned by CL holders. These are divided into 4 main categories depending on the types of services delivered, and the terms and obligations which apply vary per category:
    - Class 1 services – local voice telephony services (that have all the attributes of the conventional telephone services and are subject to the similar licence obligations applicable to carrier licence holders)
    - Class 2 services – local voice telephony services (that do not have all the attributes of the conventional telephone services and are subject to minimal licensing conditions)
    - Class 3 services – including but not limited to external telecommunications services, international value-added network services (including internet access services), mobile virtual network operator services, public radio communications relay services, teleconferencing services and private payphone services
    - Services other than Class 1, Class 2 or Class 3 Services

- Class Licences (CLOTS) are generally applicable to services provided by resellers of telecoms services operated by CL, SBO Licences or other CLOTS holders. Typically, these resellers purchase wholesale services then rebrand and/or repackage such services for resale under the resellers' own brands
    - Resellers (with a customer base of 10,000 subscriptions or more) must register with the CA regardless of the types of services offered. As part of the registration requirement, organizations need to provide details to the CA including, but not limited to, contact details, description of the services being offered, as well as provide the names of all licensed telecoms operator(s) with whom such organization has entered into an agreement for the provision of telecoms services under the CLOTS. Resellers with a customer base of fewer than 10,000 subscriptions may register with the CA on a voluntary basis.

- Public Radiocommunications Service Licences

- Localised Wireless Broadband Service Licences

- Wireless Internet of Things Licences

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

A licence may be granted to or held only by a company formed and registered in Hong Kong. For companies incorporated outside of Hong Kong, the CA may consider their applications, provided that they have registered under the Companies Ordinance (Cap. 622) as a non-Hong Kong company.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The CA may make a determination on the request of a party to the terms and conditions of interconnection or, in the absence of a request, if it considers it is in the interest of the public to do so.

CL and SBO licence holders that provide local voice telephony services are required to provide any customer in any one network access to any other customer in any interconnecting network.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Telecommunication laws and regulations generally do not distinguish between the provision of services to businesses and to consumers. However, general consumer law also applies, including the Trade Descriptions Ordinance concerning unfair trade practices. Telecommunications service providers regulated as licensees under the Telecommunications Ordinance may be subject to the enforcement of the fair trading sections by the CA.

CLOTS licensing conditions and the registration regime have been specifically implemented for the protection of consumer interests, in particular resellers are required to provide the following specific information to facilitate consumers to make an informed purchasing decision:

- name of the CLOTS licensee;
- customer service hotline number(s);
- access code(s) or number(s) (including any access password) used for obtaining the services, where applicable;
- instructions on how to access the services;
- price(s) of the services; and
- duration(s) and/or validity period(s) of the services.

REGULATORY TAXES AND FEES

Different licence fees are payable on the issue and on renewal of licences. Occasionally, the CA will determine and publish the licence fee for a particular licence.

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

There are a number of sanctions and penalties stipulated under the Telecommunications Ordinance. Some of the key offences are listed as follows:

A person who, without the appropriate licence, is found to have committed any of the following, will be liable to fines of up to HKD 100,000 and imprisonment for up to 5 years:

- Establishes or maintains any means of telecommunications

- Offers in the course of business a telecommunications service
- Possesses or uses any apparatus for radiocommunications or any apparatus of any kind that generates and emits radio waves notwithstanding that the apparatus is not intended for radiocommunications
- Deals in the course of trade or business in apparatus or material for radiocommunications or in any component part of any such apparatus or in apparatus of any kind that generates and emits radio waves whether or not the apparatus is intended, or capable of being used, for radiocommunications
- Demonstrates, with a view to sell in the course of trade or business, any apparatus or material for radiocommunications

It is an offence punishable by a fine of HKD 25,000 and imprisonment for 12 months if a person, without the appropriate permit granted by the CA, imports into or exports from Hong Kong any radiocommunications transmitting apparatus, unless he is the holder of a licence authorising him to deal in the course of trade or business in such apparatus.

If a licence holder breaches any licence condition issued by the CA or the Telecommunications Ordinance, they can be subject to a fine of up to HKD 200,000 upon first breach, HKD 500,000 upon second breach and HKD 1,000,000 upon any subsequent breach.

KEY CONTACTS

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ITALY

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OVERVIEW OF LEGAL LANDSCAPE

Pursuant to art. 3 of the Italian Code of Electronic Communications (D.lgs. No. 259/2033), the provision of electronic communications networks and services - which is of primary general interest - is free. Communication providers need a general authorisation to operate in Italy, although they do not require an explicit measure in the form of an administrative decision.

This concept of general authorisation, formerly derived from the European Authorisation Directive (Directive 2002/20/EC), has been confirmed by the Directive (EU) 2018/1972, establishing the European Electronic Communications Code, which repealed Directive 2002/20/EC. Directive (EU) 2018/1972 has been implemented in Italy by means of the D.Lgs. No. 207/2021 which amended D.Lgs. No. 259/2003.

The provision of electronic communications networks and services in Italy is subject to a general authorisation whose effects are produced on the basis of a simple communication in the form of a notification to the Ministry of the Economic Development (hereinafter also the "**Ministry**"), rather than to the NRA.

The granting of specific rights is only limited in cases related to the use of insufficient resources (radio frequencies and numbers).

AGCom (*Autorità per le garanzie nelle comunicazioni)* is the Italian Communications Authority. It is an independent authority established under Law 249/1997. AGCOM retains both regulatory and supervisory functions (alongside the Ministry of the Economic Development) in the areas of telecommunications, media, publishing and postal services.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing the telecoms sector in Italy is D.lgs. No. 259/2003, the Electronic Communications Code ('*Codice delle Comunicazioni Elettroniche*', 'CCE'), as recently reshaped by the D.Lgs. No. 207/2021, which implemented Directive EU 2018/1972 establishing the European Electronic Communications Code.

In addition to the CCE, the following legislation regulates specific areas related to the provision of communication services and the operation of communication networks:

- Law No. 249/1997, establishing the Italian Communication Authority (AGCom)
- D.lgs. No. 206/2005 (the Consumer Code)
- Detailed rules contained in AGCom Resolutions, including:
    - Annex A to Resolution 179/03/CSP, general directive on telecommunications services quality and charters and subsequent integrations

- Annex A to Resolution 203/18/CONS, rules for the settlement of disputes between electronic communications operators and final users, as amended by Resolutions 353/19/CONS and Resolution 390/21/CONS and integrated by Resolution 193/22/CONS and Resolution 339/18/CONS

- Annex A to Resolution 226/15/CONS, rules for the settlement of disputes between operators, as integrated by Resolution 449/16/CONS

- Annex A to Resolution 410/14/CONS, rules on enforcement (sanctions) procedures, as amended by Resolution 581/15/CONS, Resolution 529/14/CONS and Resolution 451/20/CONS and integrated by Resolution 256/15 /CONS and by AGCom Communication dated 25 September 2014

- Annex A to Resolution 8/15/CIR, national Numbering Plan and implementation rules and subsequent integration and amendments

REGULATORY BODIES OR AUTHORITIES

Ministero dello Sviluppo Economico

Via Molise 2, 00187 Roma

Tel. (+39) 06.4705.1

www.mise.gov.it

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

Electronic communication providers may be classified as providers of electronic communication networks and providers of electronic communication services. There is an additional distinction between public and private use providers. Pursuant to the definitions included in the Directive (EU) 2018/1972 (and fully transposed in the CCE):

- 'Electronic communications network' means transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks

used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.

- 'Electronic communications service' means a service normally provided for remuneration via electronic communications networks, which encompasses, with the exception of services providing, or exercising editorial control over, content transmitted using electronic communications networks and services, the following types of services: (i) internet access service; (ii) interpersonal communications service; (iii) services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting.

The broadening of the definition of "electronic communications service" – provided by the D.Lgs. No. 207/2021, implementing Directive (EU) 2018/1972 – with the explicit inclusion of interpersonal communications services, makes it possible to bring within the scope of the CCE communications services provided by over-the-top operators (OTT).

It is also worth noting that the CCE, as amended by D.Lgs. No. 207/2021, provides for a definition of "machine-to-machine communication service" which is relevant because "machine-to-machine" services are now subject to a partially differentiated regime, in particular regarding the "justice purpose obligations" and the end users' rights.

Art. 1 CCE specifies that the following areas fall under the scope of CCE provisions:

- Electronic communication networks and services for public use, including radio and television broadcasting networks and cable television networks
- Closed groups of users
- Electronic communication networks and services for private use
- Protection of electronic communications subsea installations
- Radio spectrum service

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

Pursuant to art. 11 CCE, the provision of electronic communications networks or services is subject to a general authorisation, whose effects are produced by means of a simple communication to the Ministry of Economic Development. Such communication shall include the statement that the company will begin to provide electronic communications networks and/or services, as well as other additional information, such as: (a) the name of the provider; (b) the provider's legal status, form and registration number, where the provider is registered in a trade or other similar public register in the European Union; (c) the geographical address of the provider's main establishment in the European Union, if any, and, where applicable, any secondary branch in a Member State; (d) the provider's website address, where applicable, associated with the provision of electronic communications networks or services; (e) a contact person and contact details; (f) a short description of the networks or services intended to be provided; (g) an estimated date for starting the activity.

The communication represents a 'declaration of start of the activities'. Nevertheless, it is herein important to point out that - since the transmission of the communication – the company is immediately allowed to start its activity, without having to wait for any formal consent on part of the competent authority.

The notification suffices for exercising the rights derived from the general authorization. Within 60 days from the declaration, in case of non-existence of the conditions and requirements necessary for the general authorization, the Ministry of Economic Development will prohibit the continuation of activity with a reasoned decision.

The general authorisation is required for the provision of all electronic communications networks and services in Italy. Such authorisation shall be obtained both for public and for private networks and services. However, a series of derogations (including the exceptions related to the use of spectrum) are prescribed for private networks and services, which might involve a differentiated authorisation system.

According to the amendments due to the implementation of the Directive (EU) 2018/1972, the Ministry of Economic Development shall send to the BEREC (Body of European Regulators for Electronic Communications) any requests for general authorization made by interested operators, to enable the BEREC to keep an EU register of the providers of electronic communications services and networks.

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

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

Art. 11 CCE clarifies that the provision of electronic communications networks or services is free (under art. 3 CCE), except for those specific restrictions introduced by regulations and administrative provisions prescribing a particular regime for non-EU or non-EEA companies, or which are justified by general interest objectives.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The operators may negotiate, among themselves, agreements on technical and commercial conditions for the access and the interconnection. AGCom has the duty to ensure that there are no restrictions that may prevent interconnection and access agreements.

The operators authorised to provide electronic communications networks and services have the right and – when requested by other operators holding an authorisation – an obligation to negotiate among each other the interconnection for the provision of electronic communications services, in order to ensure the interoperability of services throughout the European Union. The operators shall offer the access and interconnection to other operators in compliance with the terms and conditions consistent with the obligations imposed by AGCom.

In exceptional circumstances, the Authority may impose on operators holding significant market power obligations to offer access and interconnection.

An operator established in another EU Member State requesting for access or interconnection in Italy does not need to be authorised to operate in Italy where it does not provide services or networks there.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

A set of specific provisions aimed at safeguarding consumers' rights has been included both in the Consumer Code, laying down the general discipline, and in the CCE.

Art. 98-quater decies of the CCE and Annex 8 to the CCE provides for a list of compulsory information that should be included in contracts concluded with consumers or other final users, in particular:

- Name, address and contact information of the provider and, if different, the contact information for any complaint
- Information on the respective prices for activating the electronic communications service and for any recurring or consumption-related charges, where the service is provided for direct monetary payment
- With respect to internet access services, a summary of the information required pursuant to Regulation EU 2015/2120
- Any restriction on the provision of emergency services
- Information on the main characteristics of each service provided (including any conditions limiting access to or use of services and applications)
- The minimum levels of quality of the service offered

- The assurance services offered and the customer assistance provided, as well as the way to contact such services
- The inclusion of personal data in a directory and the categories of data stored
- Details on prices and tariffs, as well as the way according to which up-to-date information on all applicable tariffs, maintenance costs and payment systems may be obtained
- The duration of the contract, the conditions for renewal and termination of the single services and of the contract (including benefits from promotional terms and the charges due on termination of the contract, such as any cost recovery with respect to the equipment furnished)
- Any compensation which applies in case the level of quality of the service provided by the contract is not reached
- Information on dispute resolution

Furthermore, the CCE, as amended by the D.Lgs. No 207/2021, provides for an obligation on providers of publicly available electronic communications services, other than transmission services used for the provision of machine-to-machine services, to provide consumers with a concise, easily readable and free-of-charge contract summary – drawn up in a standard format – which includes the main elements of the information requirements. The contract summary plays a key role, since the contract will become effective when the consumer has confirmed their agreement after receiving it.

As for the duration of the contracts with consumers, the CCE, as amended by the D.Lgs. No 207/2021, provides that the contracts between consumers and providers of publicly available electronic communications services, other than number-independent interpersonal communications services and other than transmission services used for the provision of machine-to-machine services, shall not exceed a commitment period longer than 24 months. In addition the CCE sets forth the obligation to offer to consumers at least one tariff option with a maximum initial duration equivalent to 12 months.

REGULATORY TAXES AND FEES

According to Annex 12 to the CCE, companies holding a general authorisation for the installation and provision of public communications networks - including those based on the use of radio frequencies - and companies holding a general authorisation for offering telephone services to the public (subject to some exception) are required to pay an annual contribution, also in the first year.

The effective amount of the contribution varies depending on the geographic area covered by the network or service. The different amounts are listed in Annex 12 to the CCE.

According to Annex 25 to the CCE, in order to gain a general authorisation for private use electronic communications networks and services, contributions shall be paid:

1. For the preliminary activities of the procedure, and
2. For the subsequent supervision, including checks and controls on the effective provision of the services and their related conditions

The contributions under point 2. are in the form of annual contributions and may not be divided.

The effective amount of such contributions varies depending on the different network or service provided. The different amounts are listed in Annex 25 to the CCE.

Additional fees may be charged with respect to specific categories of networks or services provided.

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

If the Ministry and/or AGCom, within their respective powers, ascertain the failure by a company to comply with one or more conditions prescribed in order to gain the general authorisation – or relating to the granting of rights to use radio frequencies and numbers – it may file an injunction to cease the breach and restore the previous situation to the company. If within the prescribed period the company does not remedy the infringement, the Ministry may levy a fine or impose other strict measures.

Pursuant to article 30 CCE, in case of installation and provision of electronic communications networks or services in the absence of a general authorisation, the Ministry may impose a fine from EUR 30,000 to EUR 2,500,000 for public use networks or services and from EUR 300 to EUR 3,000 for private use ones, to be determined in reasonable relation to the gravity of the offence.

Additional charges may be levied in case of breach of provisions on spectrum allocation.

KEY CONTACTS

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JAPAN

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OVERVIEW OF LEGAL LANDSCAPE

The telecommunications industry is heavily regulated in Japan and the regulatory landscape is broad and complex. There are several laws and regulations governing telecommunications which overlap. Generally speaking, a business operator intending to operate a telecommunications business in Japan must obtain a licence or submit a notification/registration to operate such a business.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Japan currently does not have a unified law or an overarching regulation governing telecommunications activities.

The primary legislation governing telecommunications in Japan is the Telecommunications Business Act (Act No. 86 of December 25, 1984) (the **"Act").** Other key laws and regulations that apply to telecommunications include:

Telecommunications Business

- The Act;
- Cabinet Order for Enforcement of the Telecommunications Business Act (Cabinet Order No. 75 of 1985);
- Regulations for Enforcement of the Telecommunications Business Act (Ministerial Ordinance of MPT No. 25 of 1985); and
- Rules for Telecommunications Business Accounting (Ministerial Ordinance of MPT No. 26 of 1985).

Wire Telecommunications

- Wire Telecommunications Act (Act No. 96 of 1953);
- Act for Enforcement of the Wire Telecommunications Act and the Telecommunications Business Act (Act No. 98 of 1953);
- Cabinet Order for Enforcement of the Wire Telecommunications Act (Cabinet Order No. 130 of 1953); and
- Rules for Enforcement of the Wire Telecommunications Act (Ministerial Ordinance of MPT No. 36 of 1953).

Radio

- Radio Act (Act No. 131 of 1950);
- Cabinet Order for Enforcement of the Radio Act (Cabinet Order No. 245 of 2001); and

- Regulations for Enforcement of the Radio Act (Radio Regulatory Commission Rules No. 14 of November 30, 1950).

Broadcast

- The Broadcast Act (Act No.132 of May 2, 1950);
- Cabinet Order for Enforcement of the Broadcast Act (Cabinet Order No. 163 of May 25, 1950); and
- Regulations for Enforcement of the Broadcast Act (Radio Regulatory Commission Rules No. 10 of June 30, 1950).

REGULATORY BODIES OR AUTHORITIES

Ministry of Internal Affairs and Communications ("**MIC**")

Address: 1-2 Kasumigaseki 2-chome, Chiyoda-ku, Tokyo, Japan

Website (English): www.soumu.go.jp

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

Telecommunications Business

The Act regulates individuals and entities undertaking "Telecommunications Business". The Act defines "Telecommunications Business" as follows:

"Telecommunications Business" means the business of providing "Telecommunications Services" (intermediating communications of others through the use of telecommunications facilities, or any other acts of providing telecommunications facilities for the use of communications by others) in order to meet the demands of others.

This definition does not require the individual or entity providing the services to establish their own telecommunications facilities (network). Therefore, even if a service is provided over another provider's network, the individual or entity providing that service is subject to the same regulations.

Wire Telecommunications

The Wire Telecommunications Act regulates individuals or entities that install and own wire telecommunications facilities in Japan.

Radio

The Radio Act regulates individuals and entities that install and own radiation-emitting facilities in Japan.

Broadcast

The Broadcast Act regulates individuals and entities undertaking a broadcast-related business in Japan.

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

Telecommunications Business

Under the Act, individuals or entities operating a Telecommunications Business in Japan must either apply for registration with the MIC, or, in other cases, provide a notification to MIC of their operation of a Telecommunications Business. Whether a registration or notification is necessary depends on the scope and scale of the Telecommunications Business to be undertaken. Only entities owning (or in certain cases obtaining usage rights almost synonymous with ownership) large-scale telecommunications circuit facilities must register with the MIC.

Wire Telecommunications

Under the Wire Telecommunications Act, an individual or entity must send a notification to the MIC two weeks prior to the installation of wire telecommunications facilities.

Radio

It is a primary requirement under the Radio Act that an individual or entity installing radiation-emitting facilities in Japan must obtain a licence from the MIC (with some exceptions).

Broadcast

It is the primary requirement of the Broadcast Act that an individual or entity operating a Broadcasting business in Japan must either obtain a licence from MIC if operating a basic broadcasting business (broadcasting using radio waves of frequencies allocated either exclusively or preferentially to radio stations broadcasting pursuant to the Radio Act), or in certain situations, register with the MIC.

As a restriction on foreign investment, investment in a Japanese broadcast operator by a foreign individual or entity may require notification to the Ministry of Finance through the Bank of Japan within six months prior to the investment. The Ministry of Finance may recommend or order a termination or modification of the investment.

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

General requirements

In order to undertake continuous business activities in Japan, an entity must either appoint and register a representative residing in Japan or alternatively maintain a legal presence in Japan. This presence often takes the form of either a branch office of a foreign entity (with a representative holding a Japanese address) or a subsidiary entity in the form of a *godo kaisha* or *kabushiki kaisha*. This applies in all industries and is not dependent on whether telecommunications authorisation is required.

Generally speaking, a foreign telecommunications business operator is required to establish a branch office which operates telecommunications business in Japan, at a minimum. If legally required (as discussed below), a foreign telecommunications business operator is required to establish a subsidiary to operate specific telecommunications businesses in Japan.

The specific requirements for each telecommunications activity are as follows.

Telecommunications Business

The Act was amended in May 2020. After the amendment, telecommunication business operators locating outside Japan must appoint a local representative or agent in Japan to conduct telecommunication businesses in Japan. Though the Act does not have explicit rules as to extraterritorial application, this local appointment rule is strengthening enforcement to offshore telecommunication business operators.

Wire Telecommunications

The Wire Telecommunications Act does not expressly require the business operator to have a permanent establishment in Japan in order to install wire telecommunications facilities in Japan.

Radio

The Wire Radio Act does not expressly require the business operator to have a permanent establishment in Japan in order to install radiation-emitting facilities in Japan.

Broadcast

The Broadcast Act requires basic broadcasting business operators to establish a business entity in Japan in order to obtain a licence (this would not apply if the business operator is only subject to registration). Additionally, the operation of basic broadcasting businesses in Japan is subject to certain restrictions on foreign investment under the Broadcast Act.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Under the Act, Telecommunications Business operators are required to agree to network interconnection with other operators when requested, unless the operator has a legitimate reason to refuse this, for pre-defined reasons specified under the Act.

Those Telecommunications Business operators that possess a large market share of the Telecommunication Business market are subject to detailed regulations (including the obligation to obtain approval from MIC or agreement to interconnection). However, in principle, roaming and interconnection services are not regulated under the Act, and are typically determined by agreement amongst operators.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Some special regulations apply to the provision of Telecommunications Services in relation to consumer protection. The key regulations provide that:

- a Telecommunications Business operator must explain the terms of the services (including the associated service fees) to customers before agreeing to the contract;
- a Telecommunication Business operator must without delay prepare and deliver agreements to customers after agreeing to the contract; and
- customers may terminate the agreement within eight days of receiving the contract for any reason.

REGULATORY TAXES AND FEES

In Japan, fees for registry, registration, patents, licenses, permits, licenses, approvals, certifications, designations and certifications of competence are regulated by the Registration and License Tax Act. Fees related to telecommunications businesses are specified as follows:

Telecommunication Business

Operators must pay a registration fee of JPY 150,000.

Wire Telecommunications

N/A

Radio

Business Operators must pay a registration fee ranging between JPY 30,000 to JPY 150,000.

Broadcast

Broadcast Operators must pay a registration fee of JPY 90,000.

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

The following fines (with equivalent limitations) applicable to a natural person will also apply to the legal entity if its representative /employee violates any of the relevant requirements under Japanese law.

Telecommunications Business

Operating a Telecommunications Business without the required registration will result in a fine of up to JPY 2,000,000 and/or imprisonment of up to three years. Operating a Telecommunications Business without submitting the required notification will result in a fine of up to JPY 500,000 or imprisonment of up to six months. After the amendment in May 2020, the MIC can announce the name and other necessary information of business operators violating the Act.

Wire Telecommunications

Installing a wire telecommunications facility without prior notification to the MIC will result in a fine of up to JPY 100,000.

Radio

Installing radiation-emitting facilities without obtaining the required licence will result in a fine of up to JPY 1,000,000 or imprisonment of up to one year.

Broadcast

The MIC may order a business operator to cease their broadcasting business upon breach of the Broadcast Act. Non-compliance with the cessation order or operation of a broadcasting business without the necessary licence will result in a fine of up to JPY 500,000 or imprisonment of up to six months.

KEY CONTACTS

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KUWAIT

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OVERVIEW OF LEGAL LANDSCAPE

The regulation of the telecommunications and information technology sector in Kuwait is currently in a state of transition.

The Ministry of Communications (MOC), which currently regulates the sector, also runs the fixed line network in Kuwait. Despite until recently there being no clear framework for liberalisation in Kuwait, the MOC has allowed the establishment of three mobile operators and a number of ISPs.

However, after many years of speculation, on 8 May 2014 the Kuwaiti Government issued Law No. 37 of 2014 on Telecommunications and Information Technology Regulatory Commission ('Telecoms Law').

The Telecoms Law will establish an independent Telecommunications and Information Technology Commission ('Commission') with broad powers to 'regulate, supervise and oversee' the telecommunications and information technology sector. At the time of writing this handbook the Commission is being formed, and is expected to be operational during the course of 2015.

Although the Telecoms Law is now in force, article 14 of the Telecoms Law stipulates that 'the Commission shall take the place of the Ministry of Communication and any other organization… [to the extent mandated by the Telecom Law] six months after the Commission's Executive Regulations having been issued.'

Article 89(b) of the Telecoms Laws notes that until such time as Executive Regulations have been issued, any existing regulations issued according to applicable law, or any laws that have been repealed pursuant to the Telecoms Law, will continue to apply to the extent they are not inconsistent with the Telecoms Law.

On 13 July 2015 the Council of Ministers issued the Executive Regulations ('Executive Regulation'), however the Commission is not yet formally operational. A board of directors has been established pursuant to Decree No. 259 of 2014 on Forming the Board of Directors of the Telecommunications and Information Technology Commission. To date, the Kuwait Ministry of Communications continues to undertake work that would otherwise fall within the purview of the Commission pursuant to the new Telecom Law and its Executive Regulations.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Apart from the Telecoms Law and Executive Regulations, other major Kuwaiti laws and Ministerial Resolutions which appear to still currently affect the telecommunications sector include:

- Royal Decree No. 8 of 1959 concerning the Use of Telecommunications Devices
- Law No. 2 of 1961 issuing the Commercial Code
- Royal Decree No. 77 of 1986 on the Powers of the Ministry of Communications

- Law No. 18 of 1986 on the Approval of the Arab Telecommunications Union Convention
- Royal Decree No. 108 of 1990 Appointing Additional Powers to the Ministry of Communication
- Law No. 14 of 1996 on the Approval of the Constitution and Convention of the Arab Telecommunications Union and the Associated Protocols
- Law No. 26 of 1996 on the Establishment of Companies for Telecommunications Services, and its amendments
- Ministerial Resolution No. 273 of 1996 Establishing a Committee to Oversee the Implementation and Enforcement of Law No. 26 of 1996
- Decree No. 266 of 2006 on the Establishment of the Central Agency for Information Technology
- Decree No. 136 of 2008 Affiliating the Central Agency for Information Technology with the Ministry of Communications
- Law No. 37 of 2014 on Telecommunications and Information Technology Regulatory Commission

English language translations of the above laws are generally not publically available, however these can be obtained by DLA Piper upon request.

Key features of the new Telecoms Law include:

- A licence must be issued by the Commission before a public telecommunication network may be established or a public telecommunication service may be provided
- The Commission's board will establish the terms and conditions and controls of granting licences, with a form of class licence and licences for international telecommunications being contemplated by the Telecoms Law
- Exact fees required to obtain a licence to establish and operate a public telecommunications services will be set out by directives to be issued by the Commission
- The Commission has the power to set quality standards as well as take appropriate action to ensure compliance with these standards. No such standards have yet been issued by the Commission
- The Commission may require a licensee, at the licensee's own expense, to provide and install equipment, devices and programs to prevent the transmission of 'breaching material', links, and websites and which may collect data and information passing through these devices
- All licensees are required to provide the Commission with an annual report setting out the technical, administrative and financial aspects of their business

REGULATORY BODIES OR AUTHORITIES

Before the enactment of the Telecoms Law, the Ministry of Communication was the primary regulator of the telecommunications sector.

Under the Telecoms Law this responsibility will be passed to the newly-formed Commission six months after the Commission's Executive Regulations have been issued. Though a collection of Commission officials have since been announced, and the Executive Regulation was issued in July 2015, at the time of publication of this handbook the Commission does not yet appear to be operational.

Telecommunications and Information Technology Commission

Yet to be confirmed - please refer to the Overview section for further information.

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

The Telecoms Law broadly divides telecommunication activities into:

- Public telecommunication service
- Public telecommunication networks
- Private telecommunication services
- Private telecommunication networks

Telecommunication services are defined as: 'The service, totally or partially, comprising sending or receiving and transmitting of information onto the Telecommunication Networks using any of the national or international networks including the Internet'.

Public telecommunication services (ie such services that are provided to 'users in general or a certain category of users in return for a certain fee'), and public telecommunication networks require a licence granted by the Commission.

Private telecommunication networks (ie 'telecommunications system operating for one person or a group of persons connected together with a link of common ownership for serving their own needs') can be established, managed or operated without the need for authorisation or a licence except for licences required for radio frequencies. However, private networks may only be interconnected with each other via public networks (which require licences).

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

Under the Telecoms Law no public telecommunication networks or services, including international services or internet services, may be provided in Kuwait unless authorisation is obtained from the Commission.

It is not known whether the Commission has issued directives setting out the exact types of authorisations or licences needed for various activities and the requirements for such licences.

The Telecoms Law does allow for Private Telecommunications Networks, which are defined as telecom systems operating for one person or a group of persons connected together with a link of common ownership for serving their own needs. Private Telecommunications Networks can be established, managed or operated without the need for authorisation/license except for licences required for radio frequencies. However, private networks may only be interconnected with each other via public networks (which require licences). The Telecoms Law goes on to provide that no person who owns, operates or manages a private network may provide public services through that network.

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

The Telecoms Law is silent on domicile restrictions or requirements for licensing.

A foreign entity seeking to establish a business in Kuwait (within the telecommunications sector or otherwise) would have to either appoint a local Kuwaiti agent or participate as a minority shareholder in a Kuwaiti company. Accordingly, in order for the foreign entity to base non-Kuwaiti employees in Kuwaiti the foreign entity will need to either use the local Kuwaiti agent to 'sponsor' these employees or alternatively set up a Kuwaiti entity (majority-owned by a Kuwaiti national - corporate or individual) to provide such local services.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Telecoms Law gives the Commission power to regulate Interconnection between Public Telecommunications Networks or the MOC or any other government organisation (except for security agencies). The Commission shall facilitate and encourage the

providers to interconnect, but may intermediate and arbitrate where parties fail to come to a solution in a reasonable period of time.

Chapter IV of the Executive Regulations specify interconnection rules and principles.

All interconnection agreements must be approved by the Commission in order to be valid.

The Telecoms Law and Executive Regulations contain provisions regarding a Dominant Provider's obligations to provide 'accessibility' to its network on fair, equitable and reasonable conditions to be specified by the Commission. The Commission has powers to define prices and conditions it considers acceptable and justifiable.

There are no specific provisions in the Telecoms Law and Executive Regulations regarding Roaming.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The Telecoms Law and Executive Regulations do not differentiate between business and private customers. It merely refers to Users defined as: 'The 'person benefiting from the Private Telecommunications Service or the service which is intended to be used in purposes relating to the use of telecommunication operations.'

Neither the MOC nor the Commission have yet issued any guidance on legal/regulatory requirements or obligations that apply to consumer contracts, retail tariffs regulations, etc.

In terms of general Kuwaiti law, Law No. 39 of 2014 on Consumers Protection requires service providers to 'clearly define the details, charges, characterises and attributes of the Service it provides'. This law further provides for the establishment of a National Committee on Consumers Protection (NCCP). As the content of customer contracts and Terms and Conditions regarding products and services falls within the NCCP's mandate of 'drafting general policies of Consumers protection', it is possible that such policies may be issued in the future. However, as at the date of publication of this handbook, no applicable NCCP policies have been published.

REGULATORY TAXES AND FEES

At the date of the publication of this handbook, neither the MOC nor the Commission have published any details on licence fees or taxes that are or may be in the future applicable.

Although it is often considered a 'tax free' jurisdiction, Kuwait has a number of taxes that apply to corporations. With respect to taxes generally, foreign companies which carry on business or trade in Kuwait are taxable.

Further fees are payable to government ministries depending upon the activities being performed by a company.

Foreign companies which carry out business in Kuwait either through an agent or joint venture or as a minority shareholder in a locally registered shareholding company are taxed on their share of the profit plus any amounts received with regard to interest, royalties, commissions, technical services, management fees etc.

Detailed advice can be provided upon request, taking into account your individual circumstances.

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

According to the Telecoms Law any person who establishes, operates, or runs a Public Telecommunication Network with the aim of providing Public Telecommunication Services in violation of the provisions of the Telecoms Law (for example, without a licence), is liable to a punishment of imprisonment of up to three years or a monetary fine ranging from KWD 50,000 to KWD 500,000, or both.

Similarly, any person who establishes, operates, or runs a Private Telecommunication Network in violation of the provisions of the Telecoms Law (for example, without an appropriate frequency licence, if that is required for the private network), is liable to a punishment of imprisonment of up to 1 year or a monetary fine ranging from KWD 5,000 to KWD 500,000, or both.

There are a range of other offences outlined in the Telecoms Law.

The Commission is given discretion by the Telecoms Law to take any of the following actions 'inasmuch as matches with the size of the violation':

- Warning the violator to eliminate the violation within thirty days of the warning
- Suspension of the associated licence for a period of three months
- Ordering the violation to be remedied at the expense of the violator
- Reducing the authorised services (at a maximum rate of one service per one violation)
- Reducing the licence term granted (to half the term at most)
- Collection of monetary fines (not exceeding KWD 1,000,000 per violation)
- Taking equipment, devices and tools into custody until the dispute is settled
- Cancellation of associated licences

The Telecoms Law also provides that: 'The fine shall be doubled in case of repetition of the offence, or the violator pays double the amount of damage incurred, whichever is greater'. However, any interested party may request the Commission revisit any decision within one month of the decision being handed down if any new information becomes available. A decision on such a request must be made within 30 working days of the request being submitted and the party in question is entitled to be informed of that decision one week after it has been made.

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LUXEMBOURG

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OVERVIEW OF LEGAL LANDSCAPE

The Grand Duchy of Luxembourg is heavily invested in providing a nation-wide infrastructure for telecommunications and ensuring competition in the market.

Facilitating access to the market has been one of the key factors that Luxembourg has taken into account by supressing, in general terms, the requirement of prior licensing to provide electronic communication services and setting up a regime of prior notification.

As part of the European Union and the European Conference of Postal and Telecommunications Administrations, Luxembourg has striven to keep in line with the Europe-wide harmonising efforts in the sector of telecommunications.

In order to do so, Luxembourg has enacted a number of rules to ensure legal certainty and market efficiency, mainly through the Act on Electronic Communication Networks and Services, which serves as a pillar of the legal framework on the issue, and has entrusted the Luxembourgish Institute for Regulation (*Institute Luxembourgeois de Régulation* - ILR) with ample powers of regulation and surveillance to ensure fair competition in the market and efficient use of the telecommunications-linked resources.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The main piece of legislation which governs the provision of telecommunication services in Luxembourg is the Act of 17 December 2021 on electronic communications networks and services ("**AECS**"), which implements Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.

Among the key features of the AECS are the following:

- Regulates access to the telecommunications market by imposing that any natural or legal person wishing to provide electronic communications networks or services must notify the Institute of this intention. This person is deemed to be the holder of a general authorization (Art. 15 of the AECS).

- Imposes obligations upon the telecommunication services providers, including, *inter alia*, payment of administrative fees, respect for data protection regulations, facilitation of lawful interception, transparency and must carry obligations (Art. 19 of the AECS).

- Grants sufficient powers of the ILR to request information to the service providers (Arts. 24 and 25 of the AECS), to determine the needs of deployment of telecommunications network to cover certain geographic zones (Art. 26 of the AECS), to impose sanctions (Arts. 33-34 of the AECS) and to solve disputes between operators (Arts. 29-31 of the AECS).

- Regulates the procedures to harmonise the use of radioelectric spectrum (Arts. 32 and 37-41 of the AECS) and its strategic planning and coordination (Arts. 51 and 52 of the AECS).

- Establishes the conditions of passage rights in public and private property (Arts. 45-51 of the AECS).

- Governs the regime of granting of individual rights to use the radioelectric spectrum (Arts. 57-66 of the AECS) and of numbering resources (Arts. 105-109 of the AECS), upon certain conditions and individual request.

- Determines specific restrictions and obligations for those companies that enjoy market power in order to ensure fair competition (Arts. 79-92 of the AECS).

- Enshrines the rights of end-users, including, without limitation, non-discrimination, safeguard of fundamental rights, right to information, portability rights, data protection and rights concerning bundled services (Ars. 110-134 of the AECS).

- Sets the rules for the provision of the universal telecommunications service to ensure the provision of affordable access to broadband and voice telecommunications services, of a specified quality, to every end-user irrespective of the geographic location (Arts. 95-104 AECS).

This Act is complemented by a plethora of other regulations that need to be taken into account. The most important are, without limitation:

- The Act of 30 May 2005, on the organization of the management of radio waves, as amended by Act of 27 February 2011, which establishes requirements under which the use of radio waves can be granted by the State to telecom operators.

- The Act of 17 June 2016, on the making available on the market of radio equipment, which sets the minimum requirements to commercialize, in broad terms, radio equipment in Luxembourg, the obligations of manufacturers, importers and distributors, the procedures to be followed to ensure compliance of radio equipment and the surveillance of the market.

- The Act of 30 May 2005, on the organization of the Luxembourg Institute of Regulation, regulating the organisation and functioning of the ILR, as modified by different ulterior regulations, that establishes the functioning and competencies of the ILR.

- The amended Act of 30 May 2005, on the protection of privacy in the electronic communications sector, establishing specific rules regarding privacy in the domain of telecommunications.

- The Grand-Ducal Regulation of 5 December 2018, amending the Grand-Ducal Regulation of 21 February 2013, fixing the amount and the methods of payment of the fees for the provision of radio frequencies, which establishes the fees to be paid by the operators and the methods of payment thereof for the making available of radio frequencies.

- The Luxembourg Institute of Regulation - Regulation ILR/T17/11 of 14 December 2017, on technical specifications for the interception of electronic communications in Luxembourg - Electronic Communications Sector.

- The Regulation ILR/F20/3 of 10 September 2020, determining the allotment and allocation plan for radio waves (Frequency Plan)

- The Regulation F13/01/ILR of 15 March 2013, determining the terms of payment of fees for the provision of radio frequencies and the terms of renewal of licenses, which determines the terms of payment of fees for the provision of radio frequencies and the terms of renewal of licenses It also covers the terms of payment of the fees in accordance with Article 4 of the Grand-Ducal Regulation of 21 February 2013, laying down the amount and terms of payment of the fees for making radio frequencies available;

- The Regulation ILR/F22/1 of 18 May 2022, on procedures and modalities for obtaining and recognizing operator's certificates for maritime and inland waterway navigation.

- The Regulation F16/02/ILR of 18 March 2016, on the assignment of call signs of the amateur service in Luxembourg, limited to country codes' assignment of the amateur service provided for in section 7bis of the Act of 30 May 2005, on the organization of the management of radio waves, modified by Act of 27 February 2011, that corresponds to the institute's missions in relation with radio wave management.

- The Regulation 14/174/ILR of 14 July 2014, on numbering rules, the national numbering plan and fees for numbering resources, modified by Regulation 16/201/ILR of 19 February 2016.

REGULATORY BODIES OR AUTHORITIES

Luxembourg Institute of Regulation (Institut Luxembourgeois de Régulation)

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

The AECS applies to telecommunication networks and services providers. However, according to Article of the 4 of the AECS, the AECS does not apply to electronic communications networks and services installed and operated by the State for its own purposes.

The AECS distinguishes, as in other European countries, between providers of electronic communications networks and those of telecommunication services.

A "electronic communications network" is defined by the AECS as transmission systems, whether or not based on a permanent infrastructure or centralized administration capability, and, where applicable, switching or routing equipment and other resources, including network elements that are not active, that permit the conveyance of signals by cable, wireless, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including the Internet) and mobile networks, electrical power systems, insofar as they are used for the transmission of signals, networks used for radio and television broadcasting, and cable television networks, regardless of the type of information transmitted (Cf. Art. 2, point 1 of AECS).

The AECS also covers the scope of "very high-capacity network", which is defined as being either an electronic communications network that is composed entirely of fibre optic elements at least up to the point of distribution at the serving location, or an electronic communications network that is capable of providing, under typical peak hour conditions, comparable network performance in terms of downstream and upstream throughput, resiliency, error-related parameters, latency, and jitter. Network performance can be considered comparable regardless of variations in end-user experience that are due to the inherently different characteristics of the medium over which the network's ultimate connection is made at the network termination point (Cf. Art. 2, point 2 of the AECS).

As for the definition of "electronic communication services", it is provided by the article 2 point 4 of the previously cited Act, and means that the service normally provided for remuneration via electronic communications networks which, except for services consisting of the provision of content transmitted by means of electronic communications networks and services or the exercise of editorial responsibility over such content, includes the following types of services:

- an "internet access service" as defined in Article 2(2)(2) of Regulation (EU) 2015/2120;

- an interpersonal communications service; and
- services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting.

Article 2 of the AECS provides for other specific definitions of services and networks, such as associated services or interpersonal communications services based on numbering.

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

Article 14 of the AECS establishes that in order to provide telecommunication services and networks a general authorization for usage and/or establishment of the electronic communications networks and services is required.

In order to be granted the general authorization, the operators must notify the ILR of their intention to provide an electronic communications network or service (Art. 15 of the AECS). Once the ILR has been notified, it is possible for the operator to commence the provision of the services and will be subject to the obligations included in Article 19 of the AECS.

Notification can be made by postal delivery to the ILR using their standardised form.

In certain cases, it is possible to be granted individual rights of use of the radioelectric spectrum (Art. 57 of the AECS). According to article 59 of the AECS, in the matter of **individual rights of use of radio spectrum** for electronic communications networks and services, a prior public consultation conducted by the Luxembourg Institute of Regulation is required to guarantee an efficient use of these resources in accordance with the Act. Although, this provision is rarely applicable, certain frequency bands may be subject to this requirement in order to ensure the maximization of the efficiency of the use (Art. 57 of the AECS). Individual rights of use of radio spectrum shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures (Art. 56 of the AECS), can be transferred (Art. 62 of the AECS).

As for the numbering or dialling resources, Article 105 of the AECS provides that the ILR is in charge of granting the rights to the national numbering resources. The ILR may also grant companies other than providers of electronic communications networks or services rights of use of numbering resources from the national numbering plan for the provision of specific services, on condition that adequate numbering resources are made available to meet current and near future demand.

As for the procedures regarding the **numbering resources**, they are determined by Article 106 of the AECS: the Luxembourg Institute of Regulation decides to grant an authorisation on objective and non-discriminatory basis after the receipt of the complete application and within three weeks in the case of numbering resources that have been allocated for specific purposes under the national numbering plan.

It is advisable to review the National plan of Numbering proposed by the Luxembourg Institute of Regulation, as it covers not only telephone numbers but also other numbering and addressing resources necessary for the proper functioning of telecommunications networks and services.

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

Under Article 15 of the AECS, it is required that service providers inform the ILR about their legal status and form as well as their registration number, the place where they are registered in a trade register or similar public register in the European Union, the geographical address of the provider's principal place of business, if any, in the European Union and, if applicable, of any other branch in a Member State.

Therefore, providers should be established within the EU to comply with the previously mentioned regulation, but they do not need to be established in Luxembourg.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Under Article 70 and following of the previously mentioned AECS, companies are free to negotiate among themselves agreements establishing the technical and commercial terms and conditions for access or interconnection, in accordance with European Union law.

A company that does not provide services and does not operate a network in Luxembourg, and that requests access or interconnection, shall not be subject to authorization to operate.

Moreover, Article 18 of the AECS sets some provisions pertaining to the application of the general authorization in terms of interconnection and roaming regulations, where such companies offer public electronic communications networks or services, the general authorisation shall entitle them:

1. To negotiate interconnection with other providers of public electronic communications networks or publicly available electronic communications services holding a general authorisation in the European Union and, where appropriate, to obtain access to or interconnection of such providers in accordance with the AECS;

2. To obtain the possibility of being designated to provide different components of the universal service or to cover various parts of the national territory, in accordance with Article 97 of the AECS.

In addition, Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union is applicable in Luxembourg, establishing the "roam like at home" principle, so there will be no additional charges for the use of telecommunication services for end-user when travelling within EU borders.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

There are several regulations on consumer protection in the telecommunication sector, namely:

- Articles 110-134 of the AECS

- The amended Act of 30 May 2005, on specific provisions for the protection of the individual with regard to the processing of personal data in the electronic communications sector and amending Articles 88-2 and 88-4 of the Code of Criminal Procedure

- The Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation –"GDPR")

- The Consumer Code

Consumers are defined article L. 010-1 of the Luxembourg Consumer Code as *"any natural person who acts for purposes that do not fall within the scope of his commercial, industrial, artisanal or liberal activity"*.

Legal persons in general and natural persons acting in a professional or commercial capacity are therefore excluded from the definition of consumer.

The AECS guarantees certain rights to end-users, as a legal entity or a natural person that is not operating a public telecommunications network or providing a publicly available telecommunications service, and thus also covers consumers.

Among the provisions of the AECS related to the rights of consumers the following could be highlighted:

- The right to non-discrimination (Art. 111 of the AECS)

- The right to safeguard of fundamental rights included in the European Charter of Fundamental Rights (Art. 112 of the AECS)

- The right to receive information regarding contracts (Art. 113 of the AECS, in relation to Articles L. 111-3, L. 113.1 and L. 213-5 of the Luxembourg Consumer Code, and Article 115 of the AECS).
- The right to transparency and offer comparison (Art. 117 and 118 of the AECS).
- The right to change providers and to the portability of the number (Art. 121 of the AECS)
- The right to service availability (Art. 123 of the AECS)

Additionally, in accordance with the amended Act of 30 May 2005, cited above, providers shall be subject to the following obligations:

- Guarantee to consumers the security of their services (Art. 3)
- Guarantee to consumers confidentiality of their communication services and related traffic data (Art. 4)
- Store consumers' traffic data during a defined period of six months. After the storage period, providers shall delete the said data or anonymise it. Data processing shall be limited to necessary activities (Art. 5)
- Providers processing location data other than traffic data shall retain such data for a period of six months. Providers shall look for consumers' consent to process the said data or anonymise the latter. Besides, providers shall inform consumers on data process, its purpose, duration, and transmission to third parties. Finally, it shall inform consumers of their right to withdraw their consent. Data processing shall be limited to necessary activities (Art. 9)
- Providers shall not send unsolicited communications for direct marketing purposes without subscriber's or user's prior consent, except if the latter gave its consent for analogous goods or services (Art 11).

Finally, it should be borne in mind that the GDPR applies to Luxembourg and that the Grand Duchy has implemented it via the Act of 1 August 2018. Therefore, telecommunications operators are subject to these rules in relation to the processing of personal data of their end-users.

REGULATORY TAXES AND FEES

Regulation ILR/T21/11 of 16 November 2021 sets the administrative charges to cover the overall administrative costs of the Regulator for the year 2022. Every year the ILR publishes a new regulation on the fees, so the information hereunder is subject to such changes.

Every registered company is subject to the payment of an annual tax of a variable amount depending on its turnover. For the financial year 2022, the rate of 0.65% of turnover is applicable.

Fees are paid on an annual basis following the scheme hereunder:

- 25% is invoiced in March 2022 and paid as an advance at the latest on 30 April 2022
- 25% is invoiced in July 2022 and paid as an advance at the latest on 31 Aug. 2022
- 25% is invoiced in October 2022 paid as an advance at the latest on 30 Nov. 2022
- For the remaining balance of 2022, it should be paid at the latest in the beginning of the 1st semester of the 2023

Notified undertakings with a total annual turnover in electronic communications services of less than EUR 600,000 communications services of less than EUR 600,000 shall be exempt from payment of the administrative fee defined in the paragraphs above.

Every first notification shall be subject to the payment of a one-time fee of EUR 2,500. The ILR shall proceed to confirm the registration of the operator only when payment has been verified.

Certain specific activities, such as specific uses of the radioelectric spectrum or the installation of certain radio equipment, may be subject to additional fees, which must be analysed on a case-by-case basis.

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

According to Article 34 of the AECS, the ILR shall monitor and supervise compliance with the conditions of the general authorisation or rights of use for radio spectrum and numbering resources, the specific obligations referred to in Article 16(2) of the AECS, and the obligation to use radio spectrum in accordance with Articles 55, 56(1) and 58 of the AECS.

The ILR has the power to request companies that are subject to the general authorisation or benefiting from rights of use for radio spectrum or numbering resources to provide all information necessary to verify their compliance with the requirements of the general authorisation or rights of use for radio spectrum and numbering resources, or with the specific obligations referred to in Article 16(2) of the AECS [i.e., obligations related to, without limitation, interconnexion; conditional access to digital television and radio services; transparency, non-discrimination and other obligations that may be imposed to undertakings with significant market power (Arts. 79-92 of the AECS); as wells as regulatory measures imposed by the ILR to retailers, including those affecting their retail tariffs (Art. 94 of the AECS)] or Article 58 of the AECS (i.e., conditions that may be imposed by the Administration when granting individual rights to use the radio spectrum, relating to, without limitation, efficient use of the spectrum, and coverage and quality obligations), in accordance with Article 25 of the AECS.

Pursuant to Article 33 of the AECS, companies benefitting from the general authorization may be fined by the ILR with a disciplinary fine of up to EUR 1,000,000 for any breach of their obligations under the AECS, any ILR regulations and decisions issued pursuant to the AECS, any binding decisions of the European Commission adopted pursuant to the provisions of Directive (EU) 2018/1972.

The maximum fine may be doubled in the event of recidivism.

In addition, the ILR may impose, either instead of or in addition to the monetary fine, one or more of the following disciplinary sanctions:

1. a warning;
2. a reprimand;
3. a ban on carrying out certain operations or providing certain services;
4. the temporary suspension of one or more managers of the undertaking.

Where it is established that a fact is likely to constitute an infringement under paragraphs 1 and 4, the ILR shall initiate an *inter partes* procedure in which the company concerned shall be given the opportunity to consult the file and to submit its written or oral observations. The company concerned may be assisted or represented by a person of its choice. At the end of the adversarial procedure, the ILR may impose one or more of the penalties referred to in paragraphs 1 to 3 on the undertaking concerned.

The decisions taken by the ILR following the adversarial procedure shall be reasoned and notified to the undertaking concerned.

The ILR may impose a penalty payment on its decisions, the daily amount of which is between two hundred and two thousand euros. The amount of the penalty payment shall consider, inter alia, the economic capacity of the undertaking concerned, and the seriousness of the infringement found.

The penalties imposed by the ILR may be published.

An appeal for review shall be lodged with the administrative court against decisions taken by the ILR under Article 33 of the AECS.

In addition, in case a company has been granted individual rights to use the radioelectric spectrum, in case of a violation of their obligations under Articles 19.4 and 56-62 of the AECS it is for the Minister for Telecommunications to impose the sanctions which may include the withdrawal or suspension of said rights, in addition to a fine of up to one million euros.

The payment of fines and penalties imposed by the ILR or the Minister for Telecommunications shall be entrusted to the Administration of Registration, Domains, and VAT (*Administration de l'Enregistrement, des Domaines et de la TVA*).

KEY CONTACTS

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MEXICO

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OVERVIEW OF LEGAL LANDSCAPE

Telecommunications is a regulated practice in Mexico.

In 2013, several provisions of the Mexican Constitution were amended in connection with a major telecommunications reform, which spirit was to enhance competition in the telecommunications and broadcasting sectors, since both markets had been historically highly concentrated and therefore the main amendments to the Constitution and subsequently, to the secondary legislation, were aimed to achieve said spirit.

The abovementioned reform created the Federal Institute of Telecommunications (*Instituto Federal de Telecomunicaciones*) ("IFT" by its acronym in Spanish), as a governmental agency with constitutional autonomy, responsible for regulating the telecommunications and broadcasting sectors.

The authority of the IFT was significantly increased compared to that of its predecessor (the Federal Telecommunications Commission (*Comisión Federal de Telecomunicaciones*)), and it was invested not only with all the required faculties as regulator of the sector, but also with authority to be the competition agency in the telecommunication and broadcasting sectors and hence, to enforce the provisions of the Mexican Antitrust Law in such sectors and to regulate in an asymmetrical manner the dominant firms in the relevant markets.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Primary Telecom Legislation

The primary legislation governing telecommunications is the Federal Telecommunications and Broadcasting Law (*Ley Federal de Telecomunicaciones y Radiodifusión*) (the "Law").

Regulatory Framework

In order to fully implement the constitutional reform, significant amendments to the secondary legislation were required.

The legal framework applicable covers all activities related to telecommunication services offered and/or commercialized in the country.

The following link provides a complete list of all regulatory framework applicable:
https://www.ift.org.mx/sites/default/files/marco_juridico_10_enero_2022.pdf

REGULATORY BODIES OR AUTHORITIES

The IFT Plenary is formed by seven Commissioners, including its President. It is the governing body of the Institute.

Its main functions are to plan, formulate and conduct policies and programs and regulate the development of telecommunications and broadcasting activities in Mexico.

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

Telecom Legal Definition

Any emission, transmission or reception of signs, signals, data, writings, images, voice, sounds or information of any nature made by wire, radio, optical, physical or other electromagnetic means, excluding broadcasting.

Classification of Telecom Services

Telecom services are considered to be of public interest and provided by concessionaires to the public in general. They are classified based on their purpose, which may be commercial, public or social.

Telecom Activities Regulated by IFT

Additional activities derived from the above services may be agreed between concessionaires. These activities include, among other:

- Wholesale: access to individual elements, to network or services capacity, including interconnection services, used by concessionaires or resellers to provide telecom services to final users.
- Interconnection: provided among concessionaires of telecom services to carry out interconnection between their networks.
- Restricted Audio and TV (Cable TV): provided to subscribers through public telecom networks, upon entering certain agreement and the periodic payment of a prefixed amount.
- Visitor User (Roaming): users from a pubic telecom network may generate or receive voice or data communications through the access of another concessionaire's (of a public network for local mobile service) infrastructure without the need of any additional procedure.

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

IFT grants the right to provide all kind of public telecom services (or broadcasting), as well as to develop the telecom activities listed in article 170 of the Law.

Concessions to provide public telecom services

- Unique concession for commercial use [1]: confers to its holder the right to provide in a convergent manner, all kind of public telecommunication and broadcasting services.
- Concession for radio spectrum or orbital resources: to use and exploit frequency bands. All concessions to use and exploit frequency bands are granted through an auctioning process.

IFT also grants authorizations [2] to companies that are not concessionaires in order to:

- Establish and operate or exploit telecom services as a reseller; and
- Develop and exploit certain telecom activities such as internet services or reception of foreign satellites providing services in national territory.

- Installation and operation of ground stations (gateways).

The license required to carry out a telecom activity (concession or authorization) may vary and shall be analysed on a case-by-case basis.

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

- Concessions: domicile in national territory is required.

- Authorizations: domicile in national territory is required.

Telecommunications sector allows foreign investment participation up to 100%.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Concessionaires operating public telecommunication networks shall provide interconnection to their networks to any other concessionaire that requests it and, for said purposes, subscribe an agreement within the sixty (60) days following the date in which the relevant request is submitted.

To that effect, in accordance with the provisions set forth in article 137 of the Law:

- on December 18, 2014 the IFT published in the Mexican Official Gazette the Resolution through which the IFT issued the methodology to calculate the interconnection costs pursuant to the Law ("*Acuerdo mediante el cual el Pleno del Instituto Federal de Telecomunicaciones emite la metodología para el cáuculo de costos de interconexión de conformidad con la Ley Federal de Telecomunicaciones y Radiodifusión*");

- on December 29, 2014 the IFT published in the Mexican Official Gazette the Resolution through which the IFT established the Electronic System of Interconnection Requests ("*ACUERDO mediante el cual el Pleno del Instituto Federal de Telecomunicaciones establece el Sistema Electrónico de Solicitudes de Interconexión*"); and

- on October 3, 2016 the IFT published in the Mexican Official Gazette the first Resolution through which the IFT points out the minimum technical conditions for interconnection between concessionaires that operate public telecommunication networks and determines the interconnection rates resulting from the calculation methodology for interconnection costs. This resolution is annually reviewed and approved by the IFT and published in the Mexican Official Gazette during the last quarter of the relevant year. The resolution applicable to the minimum requirements for interconnection for 2019 was published in the Mexican Official Gazette on November 13, 2018.

The general principle applicable to the approval and publication of the minimum requirements for interconnection is to avoid that resolutions regarding disagreements between concessionaires are carried out on a case by case basis. Thus, in the event that concessionaires fail to reach an agreement, the IFT will promptly apply the provisions contained in the referred resolution, unless the conflict is related to matters that are not covered therein. In this sense, the interconnection rates established by the IFT based on the cost model for network interconnection and reviewed annually shall be applicable in case of disagreements between networks operators.

Likewise, interconnection rates applicable to non-switched services have been established by IFT which shall be used to resolve interconnection disagreements between operators. These rates offer a larger variety of options since they depend on the location and type of collocation or haul.

In addition to the foregoing, there are certain additional regulations applicable to economic agents with substantial power in order to promote free competition in the telecom sector.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

- Mexican Constitution (Article 6) guarantees the right of access to information and communications technology, as well as to the telecom and broadcasting services, including internet by establishing the basis, principles and main aspects that shall be included in the Law, as well as the mechanisms to ensure the protection of this right.

- The Law (Articles 191 to 203) provides the rights of consumers and the mechanisms for protection to said rights before the Federal Office of Consumer Protection (*Procuraduría Federal de Protección al Consumidor (PROFECO)*). These provisions promote the access of users (including disabled users) to all public telecom services under the principles of free competition, quality, plurality, global coverage, interconnection, convergence, continuity, free access and no unlawful interferences.

- According to NOM 184 (Mexican Standard for Telecommunications Consumers), telecommunications service providers are required to obtain PROFECO's approval of the contract model they sign with their clients.

REGULATORY TAXES AND FEES

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

Companies in Mexico shall pay an income tax rate of 30% of the result obtained in the relevant fiscal year; incomes may be subject to preferential tax regimes depending on the relevant circumstances and certain legal provisions.

Main Taxes and Fees Levied Over Telecom Activities

- Public telecom services are subject to:
    - - Value Added Tax (Impuesto sobre el Valor Agregado (IVA)) equivalent to 16%; and
    - - Excise Tax on Production and Services (Impuesto Especial sobre Producción y Servicios (IEPS)) equivalent to 3%. Data transmission services (internet) are exempted from this tax.

- Telecom service for social purpose: exempted from paying taxes.

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

- Warnings

- Economic fines: from 0.01% up to 10% of annual revenues of the concessionaire or authorized depending on the seriousness of the contravention; up to double in case of recidivism.

- Cancellation of the concession of authorization granted and prohibition to obtain a new one.

- Economic and material sanctions to Telecom Services providers or to individuals causing damage to means of communication used for the provision of telecom and broadcasting services.

KEY CONTACTS

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NETHERLANDS

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OVERVIEW OF LEGAL LANDSCAPE

Subject to certain exemptions (mostly concerning the use of the radio spectrum and frequencies), communication providers have general authorisation to operate in the Netherlands and do not require a licence, permit, consent etc. There is, however, an obligation to register with the Dutch telecoms regulator; the *Autoriteit Consument & Markt* (ACM). Details of this obligation to register are provided under Registration/Licencing.

The concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States.

The roles and responsibilities of ACM, as well as the obligations of communication providers that operate in the Netherlands are codified in the primary telecoms legislation in the Netherlands, known as the *Telecommunicatiewet* (the 'Dutch Telecommunications Act').

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing the telecommunications sector in the Netherlands is the Dutch Telecommunications Act which came into force on 19 October 1998. The Dutch Telecommunications Act has been amended over time in order to implement (successive amendments of) the following European Directives:

- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services
- 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
- Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks
- Directive 2018/1972 establishing the European Electronic Communications Code

In addition to the Dutch Telecommunications Act the following legislation may also impact the provision of communication services and the operation of communication networks in the Netherlands:

- Competition Law (both the Dutch Competition Act (*Mededingingswet*) and EU Competition Law)

- Data Protection Law (primarily the Dutch Personal Data Protection Act (*Wet Bescherming Persoonsgegevens*)) which governs the processing of personal data

- Universal Service Decree of 13 June 2014 (*Regeling Universele Dienstverlening en Eindgebruikersbelangen*)

The key features of the Dutch Telecommunications Act are:

- The obligation for communication providers to register with ACM (paragraph 2)

- A regulatory framework for use and leasing of radio spectrum (paragraph 3)

- The regulation and allocation of telephone numbers and the regulation of number retention (paragraph 4)

- A regulatory framework for laying network cables in public grounds (paragraph 5)

- A regulatory framework for access to physical infrastructure (paragraph 5a)

- An obligation for communication providers who control the connectivity to end users to negotiate in good faith with other communication providers (i.e. the principle of interoperability, paragraph 6)

- The power of ACM to set specific conditions relating to interoperability, interconnectivity, universal services, access, privileged suppliers and - most notably - 'significant market power' (SMP). In accordance with the EU directives mentioned above, ACM has a duty to periodically review the telecoms markets recommended for review by the European Commission and where it finds that one or more of the operators have SMP it must impose such a condition on the SMP operator(s) (paragraphs 6a and 6b)

- An obligation to provide end users with clear information on the nature of the services, the most advantageous prices and clear contractual terms as well as several mandatory provisions in relation to consumers such as the right to compensation in case of an outage and the right to terminate a contract after the initial term with a maximum notice period of one month (paragraph 7)

- The principle of universal service; that affordable basic telephony services should be available to everyone (paragraph 9)

- Rules on protecting the end user's privacy and personal data (paragraph 11)

- The ACM's power to hear disputes between communication providers (although referral to ACM does not preclude the bringing of court proceedings), and the access for consumers to a dispute resolution committee (paragraph 12)

- The obligation for communication providers to ensure that the telecommunications services that are offered to end users can be intercepted upon request by the competent authority (paragraph 13)

- The obligation to notify an acquisition of predominant control in a Dutch telecommunications provider which gives rise to relevant influence in the telecommunications sector to the Minister of Economic Affairs and Climate (paragraph 14a)

REGULATORY BODIES OR AUTHORITIES

ACM

Physical Address: Muzenstraat 41, 2511 WB Den Haag

Postal Address: PO Box 16326, 2500 BH Den Haag

Telephone: +31 70 7222 000

Website: www.acm.nl

Telecoms Department (Agentschap Telecom) of the Ministry of Economic Affairs

Physical Address: Emmasingel 1, 9726 AH, Groningen

Postal Address: PO Box 450 9700 AL, Groningen

Telephone: +31 50 5877 444

Website: www.agentschaptelecom.nl

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

There are two main categories of communication providers for the purposes of the Dutch Telecommunication 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.

The definitions of electronic communications network and electronic communications service in the Dutch Telecommunications Act are fully in line with the EU Framework Directive (2002/21/EC):

- Electronic communications network: transmission systems and, where applicable, switching or routing equipment and other resources which permits the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, and networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed

- Electronic communications service: a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services, interpersonal communications services (e.g. applications like Gmail, Skype and Whatsapp)[1] and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in article 1 of the Notification Directive which do not consist wholly or mainly in the conveyance of signals on electronic communications networks

In relation to qualification of a service as an ECS, one of the decisive elements is whether the provider's (contractual) responsibility towards the user is mainly to bring about the transmission of a signal. Merely providing a connection to an ECS in itself is insufficient when the responsibility for bringing about the actual transmission is not a main element of the service for which the provider is contractually responsible towards the user. In this respect, Dutch practice seems is in line with the European Court of Justice's judgements in cases C-142/18 (Skype/IBPT) and C-193/18 (Google/Germany).

The Telecommunications Act's provisions relating to use of the radio spectrum and frequencies in principle apply to all ECN and ECS providers, but most other provisions only apply to providers of public ECNs or ECS. An ECS is 'public' when the services provided are available to the public, while an ECN is 'public' when it is only or mostly used for providing public electronic communications services.

Note 1: Services which enable interpersonal and interactive communication merely as a minor ancillary feature being intrinsically linked to another service shall not qualify as an Interpersonal Communication Service in terms of the Telecommunications Act (e.g. a chat function in an application for the lease of cars).

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

Communication providers have general authorisation to operate in the Netherlands and do not require a licence, permit, consent etc. In the Netherlands, all providers of public electronic communications services and all operators of public electronic communications networks must register with the regulatory authority (ACM) prior to the start of their operations in the Netherlands. In order to register, information must be provided on the provider's corporate structure, its turnover and the services provided in the Netherlands.

Once the registration is effective, the provider will be listed in the public register of communication companies and will receive a registration number. In case of a subsequent change of activities, the registration must be updated by notifying the change to ACM. All registered communication companies must annually report the turnover they achieved by providing communication services in the Netherlands to ACM. On this basis, ACM levies an annual fee (called 'contribution in the costs of regulation'), the amount of which depends on the turnover achieved. No fee is due if the turnover amounts to EUR 2 million or less.

Mobile operators (and other users of spectrum) do require a licence in order to install or operate certain mobile network equipment.

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

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

From a foreign direct investment perspective, there is a requirement for investors that intent to acquire predominant control in a Dutch telecommunications provider which gives rise to relevant influence in the telecommunications sector to notify the Ministry of Economic Affairs.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

ACM has certain powers with regards to ex-ante regulations on interconnection and roaming.

Providers of a public ECN or public ECS are under a general obligation to enter into negotiations with other providers in relation to access to end users. Whilst the underlying principle of these negotiations is freedom of contract, the outcome of these negotiations should be aimed at an agreement regarding end-to-end connectivity. Such negotiations are to be conducted objectively, transparently, proportionally, and non-discriminatorily, with a view to reaching agreement on the technical aspects of the connection of the network(s), tariffs, quality of the services, and other relevant conditions. Providers are to enter into these negotiations 'proactively'.

The obligation to enter into negotiations concerns an obligation to achieve a result. When the desired result is not reached, ACM may be requested to make the provider install the requested end-to-end connectivity on conditions set forth by ACM. These conditions may even relate to subjects such as what tariffs are considered 'reasonable'. ACM may also act on its own discretion, if no request is filed.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Specific obligations relating to consumers include:

- The requirement to include certain minimum terms in consumer contracts
- Conditions relating to maximum contract duration and maximum notice periods for contract termination

- The requirement to make certain information available to the customer such as a description of the services offered and the standard and the most advantageous tariffs

- Availability of number portability

In addition to specific telecoms regulations, provisions of general consumer law also apply, such as rules concerning unfair contract terms.

REGULATORY TAXES AND FEES

Registration with ACM itself is free of charge. Once registered, however, all providers that achieve a turnover in excess of EUR 2,000,000 in the Netherlands with the provision of a public ECN or public ECS must pay an annual fee to the regulator as a contribution to the costs of regulation. The fee is annually set at a percentage of the relevant turnover. For 2022, the fee is set at 0.03672% of the relevant turnover achieved in 2020.

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

Certain provisions of the Dutch Telecommunications Act, including those relating to use of frequencies (Chapter 3) and interception (Chapter 13), are subject to criminal prosecution by the Department of Justice on the basis of the Economic Offences Act. Depending on whether the violation was intentional or non-intentional, providers may be sentenced with a maximum fine of EUR 20,750 or EUR 83,000, respectively. If the infringement resulted in profits exceeding 25% of these amounts, however, the maximum fines are increased to EUR 83,000 or EUR 830,000 respectively. Individuals can receive a jail sentence of up to one year and six years, respectively.

Other violations of the Dutch Telecommunications Act are subject to administrative prosecution by either the Telecoms Department (*Agentschap Telecom*) of the Ministry of Economic Affairs or by ACM, depending on the subject-matter of the violation. Both authorities have a broad degree of discretion when deciding the measure to be imposed. The maximum penalties are generally set at a percentage of annual turnover, ranging between 1% and 40% depending on the nature, duration and the severity of the infringement.

The Ministry of Economic Affairs can prohibit a transaction if it considers it a threat to the public interest. This is the case if abuse or deliberate failure of the telecommunications party over which "predominant control" is obtained or held can lead to a threat to national security or public order (Chapter 14a).

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OMAN

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OVERVIEW OF LEGAL LANDSCAPE

The Omani Telecommunications Regulatory Authority (TRA) exercises jurisdiction over this sector.

The TRA, in conjunction with the Ministry of Transport and Communications, has the primary responsibility for approving applications for telecommunications licences. Generally speaking, it is a requirement that a telecommunications service provider hold a licence to provide telecommunications services.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Royal Decree No. 30 of 2002 promulgating the Telecommunications Regulation Law and its associated amendments (Telecoms Law) is the primary legislation governing the telecommunications sector in Oman and establishing the TRA. The Telecoms Law imposed a duty on the TRA to issue Executive Regulations which explain and elaborate on the policies set out in the Telecoms Law.

Ministerial Resolution No. 10 of 2007 issuing the Executive Regulation covers the following points:

- Procedures required to obtain a telecoms licence
- The review process for submitted applications
- Issuance of technical specifications
- Rules governing type approval of telecom equipment
- Rules governing the usage of telecommunications services

The remainder of the regulatory framework can be found on the TRA website and include the following:

- **Regulations and Decisions** including on:
    - The National Numbering Plan
    - Access and Utilisation of Passive Infrastructure
    - Ex Ante and Ex Post Regulations
    - Universal Service Implementation
    - Domain Names
    - VoIP

- **Guidelines**: rules and advisory documents which are issued on an ad hoc basis, directed at the operators of Class I, Class II and Class III licences, including:
    - Tariff Transparency
    - Billing Accuracy
    - Site Sharing
    - Tariff Rebalancing
    - International Roaming
    - Access Deficit Contribution
- **Determinations**: issued to resolve disputes which parties have not been able to resolve themselves

REGULATORY BODIES OR AUTHORITIES

The Telecommunications Regulatory Authority (TRA) is a financially and administratively independent body.

The Telecoms Law establishes the TRA's basic aims which include:

- Ensuring the provision of telecommunications services throughout Oman at reasonable prices
- Encouraging the use of telecoms services with the aim of facilitating access to global markets and information, encouraging visible and non-visible exports
- Ensuring optimal use of frequency
- Safeguarding the interests of beneficiaries and dealers regarding the prices of equipment, quality and efficiency of telecommunication services
- Preparing suitable conditions for competition between licensees

Telecommunications Regulatory Authority

Address: P.O. Box 3555, P.C. 111, Muscat, Sultanate of Oman

Website: www.tra.gov.om

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

A licence is required in order to 'establish, operate, or manage':

- 'A system that permits the conveyance of signals or symbols or signs or texts or visual and non-visual images or sound or data or information of any nature between defined terminal points by wire or radio or optical and other electromagnetic or electronic means'
- 'Telecommunications systems or a group of integrated systems including the necessary infrastructure that permits telecommunication between and among defined network termination points including means to access the World Wide Web'
- 'Services through which telecommunications are conveyed in whole or in part regardless of the systems or means used'
- 'Specified radio frequencies'

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

The regulatory regime provides for three main types of licence:

- **Class I licence:** Permits licensees to establish or operate a public telecommunications network or international telecommunications infrastructure, and/or offer public telecommunications services or international access services. This licence type is issued by Royal Decree following a proposal by the Minister of Transport and Communications after approval by the TRA. The Decree will determine the duration of the licence and will detail the terms and conditions under which the licensee must operate. According to the Law, these licences may not be exclusive. Class I licences include fixed, mobile and international gateway services licences.

- **Class II licence:** This class of licence is issued to those operators providing public telecommunications services which rely upon a Class I licence network capacity. In addition, licensees holding a Class II licence may provide 'additional, or value added, public telecommunications services which make use of numbering resources'. Class II licences are issued pursuant to a Ministerial Decision from the Minister of Transport and Communications based on an approved proposal by the TRA. According to the Law, the licence duration may not exceed 10 years but may be renewed upon application.

- **Class III licence:** Issued by the TRA to operators of private telecommunications services (not connected to the public network) who meet the requisite qualifying criteria (as set by the TRA). According to the Law, the licence duration may not exceed five years but may be renewed upon application.

The TRA also issues licences for the use of telecoms radio frequency and for the operation of radio stations and radio equipment.

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

There are no express domicile restrictions or requirements for the application of a licence.

However, foreign nationals and foreign companies may not conduct business activities in any sector of the Omani economy or participate in an Omani company without obtaining a licence to do so from the Ministry of Commerce and Industry. Such a licence is only granted once certain requirements have been met.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Telecoms Law provides licensees with a right to interconnect and share sites. Parties must seek to negotiate these agreements. If such negotiations do not result in an agreement within three months then the parties may seek the intervention of the TRA.

Dominant operators must issue a Reference Interconnection Offer (RIO), and the TRA may choose to approve or amend the RIO.

Terms and conditions must be reasonable and non-discriminatory, and be in accordance with the Executive Regulation.

The Executive Regulation details the TRA's Interconnection Principles, and outlines the required content of a RIO and pricing principles.

In 2012, the TRA issued regulations for ex-ante provisions 'to ensure fair competition in the telecom market', and a regulation regarding ex-post enforcement and guidelines was issued in 2013. These are contained in TRA Decisions 69 of 2012 and 70 of 2013 respectively.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The TRA has issued Consumer Guidelines outlining its powers, and its complaints and investigation process. The Omani Consumer Rights Law also states that 'the Consumer shall have the right to obtain correct information about the good he buys

or uses or the service he receives'. Therefore, with regard to telecommunications services, the following should be 'clearly indicated':

- Price
- Characteristics
- After sales services

REGULATORY TAXES AND FEES

Once an entity obtains a licence as required by the Telecoms Law, it will be required to pay the prescribed licence fee as set by the TRA.

Although it is often considered a 'tax free' jurisdiction, Oman has a number of taxes that apply to corporations.

Further fees are payable to government ministries depending upon the activities being performed by a company.

Detailed advice can be provided upon request, taking into account your individual circumstances.

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

Any person who establishes, operates, assists or incites another to establish or operate a telecommunications system or offer a service without a licence, or who uses non-type approved equipment is liable to a criminal punishment of imprisonment of up to two years or a fine of up to OMR 50,000 or both.

There are a range of other offences outlined in the Telecoms Law.

The TRA is given discretion by the Telecoms Law to take any one or more of the following actions 'according to the size of the violation':

- Suspend the licence granted to the licensee for three months
- Remedy the violation at the expense of the violator
- Reduce the licensed services of the licensee by one service per violation
- Reduce the licence duration for a period not exceeding half of the licence period
- Collect a financial fine of not more than OMR 1,000,000 for each violation
- Take custody of the seized equipment, devices, and instruments and hold them until the dispute is settled by a final court order
- Cancel the licence

The Telecoms Law also provides that: 'The fine shall be doubled in case of repetition or the violator pays up to two times the value of the damage, whichever is higher'.

However, any party concerned may request for the TRA to review any decision within one month of the decision being handed down if any new information which was not originally considered becomes available. A verdict on such a request must be made within 30 working days of the request being submitted, and any rejection by the TRA requires a justification. If no reply is given by the TRA within the 30 working day period, the lack of reply will constitute a rejection of the request.

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PERU

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OVERVIEW OF LEGAL LANDSCAPE

Telecommunication services are primarily regulated under Single Organized Text of the Law of Telecommunications and other decrees that establish specific provisions regarding several matters.

To provide telecom activities in Peru, companies must seek government concessions and permits. Authorization varies with the telecom activity that will be performed.

Additionally, there are two corporate bodies that are very relevant in the telecom sector in Peru.

The Ministry of Transport and Communications (MTC) is in charge of establishing the telecommunications policy to be followed and control its results. It includes preparing and proposing the approval of regulations and plans for the different services contemplated in the Law, and issuing resolutions regarding these matters. It can issue and revoke concessions, authorizations, permits and licenses, and control their correct use. It can also delegate its functions and faculties to the Supervisory Agency for Private Investment in Telecommunications (OSIPTEL).

OSIPTEL enjoys regulatory, normative, corrective, sanctioning and controversy-resolution faculties. OSIPTEL issues rules related to tariffs, conditions of use of telecommunication services, compliance with quality of the service, interconnection, infrastructure sharing, among others.

Relationship between the MTC and OSIPTEL is independent. Both entities coordinate when necessary.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

- Single Organized Text of the Law of Telecommunications (Law) and its amendments
- Single Organized Text of the General Regulations of the Law of Telecommunications (Regulations) and its amendments
- Single Organized Text of Administrative Procedures at the MTC

REGULATORY BODIES OR AUTHORITIES

The main regulatory bodies are:

The MTC

Address: Jirón Zorritos No. 1203, distrito de Lima, provincia y departamento de Lima.

Telephone number: +51 615-7800

Website: www.mtc.gob.pe

OSIPTEL

Address: De La Prosa 136, distrito de Cercado de Lima, provincia y departamento de Lima

Telephone number: +51 225-1313.

Website: www.osiptel.gob.pe

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

- Telecommunication services
- Public voice services
- Broadcasting services (TV and Radio)
- Radio communication
- Requirements for obtaining, installing, operating and exploiting the concession of telecommunications services
- Regulation for installing antennas, radiating systems and telecommunication towers

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

The MTC grants the single concession for the provision of all public services of telecommunications, which is perfected by means of a written agreement and approved by resolution of the MTC. The concession agreement includes the rights and obligations of the concessionaire, causes of termination, term of the concession (maximum term for the concession is 20 years), among others.

In the aforementioned concession agreement, the MTC can grant the right to provide all the public services of telecommunications. The concessionaire must previously inform the MTC the public service that it will initially offer.

If the Concessionaire wishes to provide additional services to those included in the single concession agreement, it shall request the registration of the new services in the registry enabled for such purpose, complying with the corresponding requirements.

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

Only legal persons legally registered and existing in Peru can hold the aforementioned telecom service concessions.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Peruvians can use their postpaid rate plans (voice, SMS and data services) without any additional surcharge in any of the member countries of the Andean Community (Bolivia, Colombia, Ecuador and Peru).

Additionally, Peru signed Resolution 2232, which approves the new wholesale tariff scheme for international roaming services in the member countries of the Andean Community, which was published in the Official Gazette of the Cartagena Agreement.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

As a general summary, users have the following rights:

- Freely choose the service, plan or promotion that best suits their needs.
- Receive a copy of the service contract.
- Have an uninterrupted and quality service.
- To file a complaint and to receive a code from the operator.
- Receive clear, detailed and updated information of the service.
- Receive a detailed payment receipt.
- Keep the same number, even if they change operator. The portability process is 100% free.
- Cancel the service without conditions or explanations.
- Block the equipment and suspend the service due to loss or theft.
- Temporarily suspend service.

REGULATORY TAXES AND FEES

The cost of licensing is as follows:

- **Concession**: One-time payment of 0.25% of the investment value declared for the first year of the Concession, upon the execution of the Concession agreement.
- **Spectrum use**: Annual payment for the use of the Spectrum denominated "canon". The canon is determined (i) on the basis of applying a certain percentage of Tax Unit, and/or (ii) by applying the applicable methodology. (i) and/or (ii) will be enforced, depending on the type of service for which the Spectrum is used for.
- **Post-grant fees**: (i) An annual fee for commercial exploitation of the telecommunication service subject matter of the concession of 0,5% of their gross invoiced and collected income; (ii) Contribution to FITEL (paid on an annual basis) equivalent to 1% of the invoiced and collected gross income received for rendering public services; (iii) Contribution to OSIPTEL of 0,5% of the invoiced and collected gross income received for rendering public service.

Additionally, the applicable Income Tax rate will be 29.5%. This rate will apply on annual net income.

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

The MTC and OSIPTEL are in charge of enforcing telecom regulations. Telecommunication regulations establishes possible reprimands, fines, suspension of the operation, expiration of the concession or cancellation of the license in case the operator incurs in certain conduct stated in such regulations.

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POLAND

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OVERVIEW OF LEGAL LANDSCAPE

Regulatory body

The UKE (*Urzd Komunikacji Elektronicznej* – the Office of Electronic Communications) is the Polish telecommunications and postal services regulatory body.

Applicable telecom regulations

The Telecommunications Law **("TL")** is the main telecom law in Poland.

Several executive regulations have been issued on the basis of the TL, including the National Frequency Allocation Table and the Regulation on radio devices which can be used without a radio licence.

It should be noted that legislative work on a new telecom regulation (the Electronic Communications Law) is currently ongoing in Poland. The law implements the European Electronic Communications Code (Directive (EU) 2018/1972) and it will supersede the TL. It is difficult to predict how this legislative work will progress or when the new law will be passed.

Scope of each regulation

The TL is applicable to both fixed and mobile telecommunications activities, including ISPs and networks and services for the dissemination or distribution of radio and television programmes. The scope of the regulation includes:

- the conducting of telecommunications activities and the supervision thereof;
- the rights and obligations of telecommunications undertakings;
- the rights and obligations of users and users of radio devices;
- the conditions for undertaking activity consisting in the provision of networks and associated facilities and the provision of telecommunications services, including networks and services for the dissemination or distribution of radio and television programmes;
- the conditions for regulating telecommunications markets;
- the conditions for the provision of the universal service;
- the protection of service users, in particular as regards the right to privacy and confidentiality;

- the conditions for the management of frequencies, orbital resources and numbering;
- the conditions for data processing in telecommunications and the protection of telecommunication secrecy;
- the tasks and duties in the field of telecommunications related to defence, state security and public safety and order;
- the requirements that radio devices should meet;
- the functioning of the telecommunications administration body and its cooperation with other national bodies and European Union institutions in the field of telecommunications regulation;
- the requirements regarding facilitation of access to telecommunications services for people with disabilities.

Regulations issued on the basis of the TL contain implementing rules and technical details.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Key regulatory provisions

Key provisions of the TL include:

- General rules on conducting telecommunications activities [Art. 10 et seq.];
- Rules on the powers and tasks of the UKE concerning the regulation of the telecommunications market [Art. 21 et seq.];
- Telecommunications access [Art. 26 et seq.];
- Regulation of services in the retail market [Art. 46 et seq.];
- Consumer and end-user protection [Art. 56 et seq.];
- Universal service [Art. 81 et seq.];
- Liability for non-performance or improper performance of telecommunications services [Art. 104 et seq.];
- Administration of spectrum and numbering assignments [Art. 110a et seq.];
- Use and operation of radio devices [Art. 143 et seq.];

Key features of the laws, regulations and policies

The TL ensures freedom to conduct telecommunications activities, subject to being entered in the Register of Telecommunications Undertakings (General Authorisation). Registration must be completed prior to the commencement of telecommunications activities, but it is a relatively straightforward process. Use of a radio device generally requires obtaining a separate licence, but there are numerous exemptions.

REGULATORY BODIES OR AUTHORITIES

Urzd Komunikacji Elektronicznej

Address: ul. Giedowa 7/9, 01-211 Warszawa

Telephone number: +48 22 33 04 000

Website: www.uke.gov.pl

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

Who is subject to the regulations?

The TL distinguishes between providers of telecommunications networks, providers of telecommunications services, and providers of ancillary services as follows:

- the provision of telecommunications networks means the provision of transmission systems and commutation or routing devices, as well as other resources, including inactive network elements, which enable the broadcasting, reception or transmission of signals by means of wires, radio waves, optical waves or other means using electromagnetic energy, regardless of their type [Art. 2(35)];

- the provision of telecommunications services means the provision of services consisting mainly in the transmission of signals in a telecommunications network [Art. 2(48)];

- the provision of ancillary services means the provision of services related to a telecommunications network or telecommunications services, which enable or support the provision of services through those networks or services, or which may serve that purpose, and include number translation systems or systems with equivalent functions, conditional access systems and electronic programme guides, as well as other services such as identification, localisation and presence signaling services [Art. 2(44a)].

Since the TL contains general regulations on the use of radio devices, certain provisions are also applicable to users who are not conducting business activities.

Who is not subject to regulations?

Entities that do not fall within the scope described above.

Which activities are regulated?

The provision of telecommunications networks, telecommunications services and ancillary services and the use of radio devices.

Which activities are not regulated?

Activities that do not fall within the scope described above.

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

Do telecom providers need special licensing or authorization from a regulatory body?

Yes, in order to be able to provide telecommunications services in Poland, it is necessary to be entered in the Register of Telecommunications Undertakings kept by the UKE [Art. 10 of the TL].

What is needed to be granted a consent, license, and authorization?

In order to be entered in the Register of Telecommunications Undertakings, it is necessary to file an application with the UKE. The application must include information about the applicant as well as a general description of the telecommunications network, telecommunications service or accompanying services which the application concerns, an indication of the area in which the telecommunications activity will be conducted, and the anticipated date of commencement of the telecommunications activity.

What is the scope of consents, licences and authorizations?

Being entered in the Register of Telecommunications Undertakings enables the registered entity to conduct the telecommunications activities indicated in the application.

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

Do providers need to live or conduct business in the country?

Telecommunications activities may be conducted by:

- a domestic undertaking, i.e. either a company established in Poland or a branch of a foreign undertaking which is entered in the business register in Poland;

- a telecommunications undertaking from any EU Member State or a country which has concluded an agreement with the European Community and its Member States governing the freedom to provide services, which **temporarily provides services** in Poland, under the terms provided for in the Treaty establishing the European Community, in the Agreement on the European Economic Area, or in any other agreement on freedom to provide services.

Are their regulations for global businesses?

There are no specific regulations for global businesses. In order for global businesses to conduct telecommunications activities on a permanent basis in Poland, they just have to establish a local company or branch - this is relatively common.

Are there special regulations for specific geographic locations?

No, there are no special telecommunications regulations for specific geographic locations.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The TL sets out the rules ensuring network interconnection, i.e. a specific type of telecommunications access provided between operators by way of the physical and logical linking of public telecommunications networks to allow the users of the services or networks to communicate with the users of the services and networks of the same or another undertaking, or to access the services provided by another undertaking.

There are certain obligations imposed on operators of a public telecommunications network to ensure telecommunications access, such as:

- to negotiate an access agreement for network interconnection and for telecommunications access, to be provided in accordance with the regulatory obligations imposed on that operator, for the purpose of providing publicly available telecommunications services and ensuring the interoperability of services [Art. 26a of the TL]. The UKE may be involved in such negotiations and takes a decision on telecommunications access ensuring the interests of users of telecommunications networks and the continuity of provision of the universal service.

- to meet the technical or operational conditions set out by the UKE, necessary for the proper operation of the telecommunications network [Art. 35 of the TL];

Further obligations are imposed on an operator with significant market power:

- to meet reasonable requests from telecommunications undertakings to provide telecommunications access, including the use of specific network elements and associated facilities, taking account of, in particular, the level of competition in the retail market and the interests of end users [Art. 34 of the TL];

- to prepare and submit a draft reference offer for telecommunications access determining the terms and conditions of co-operation (in the case of an operator with significant market power on which the obligation to ensure equal treatment has already been imposed) [Art. 42 of the TL].

As regards international roaming, Poland is directly bound by the EU Roaming Regulation (Regulation (EU) 2022/612). Under the Regulation, the RLAH (Roam-Like-At-Home) rule was extended for another 10 years, i.e. until the end of June 2032. Consumers are entitled to the same quality of roaming services in other EU/EEA countries as at home, as well as access to emergency services without additional charges. The cost of wholesale roaming charges is capped at EUR 2 per gigabyte as of 2022, and will be further reduced gradually to EUR 1 in 2027.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Are there specific consumer protections?

General rules on contracting with consumers are regulated by the Consumer Rights Act, in particular the extensive right to information before concluding a contract [Art. 8, Art. 12] and additional rights to withdraw if the contract was concluded at a distance or off-premises [Art. 12 (9)].

Specific consumer protections applicable to telecommunications activities are regulated in the TL (see point 3 below).

In the case of the conclusion of contracts by telecommunications undertakings with consumers, the provisions of the TL and the Consumer Rights Act must be applied in an appropriate manner so that the provisions of both acts are not violated.

Who is considered a consumer?

According to Art. 2(18) of the TL, a consumer is ‘a natural person who requests the provision of publicly available telecommunications services, or who uses such services for purposes which are not related directly to the economic activity pursued or the profession practised by that person”.

As a side note, consumers of telecommunications services may also fall within broader categories of users, such as:

- end-user - defined as "an entity using a publicly available telecommunications service or requesting the provision of such a service for its own needs" [Art. 2(50) of the TL];

- subscriber – defined as "an entity who or which is a party to a contract with a provider of publicly available telecommunications services for the provision of such services" [Art. 2(1) of the TL].

What are telecom providers’ obligations to consumers?

The following obligations must be complied with when contracting with consumers:

- informing a consumer about the right to choose the form of the contract for the provision of telecommunications services, and providing that choice [Art. 56(2a) of the TL];

- the initial commitment period in a telecommunications services contract cannot exceed 24 months [Art. 56(4a) of the TL].

- recording and delivering the contents of the proposed and agreed terms and conditions of the contract to the subscriber along with the subscriber’s statement on submitting to these on a durable medium, if declarations of will are submitted in document form [Art. 56a of the TL];

- providing a tool to monitor the use of services and notifying the consumer about reaching the limit of the chosen traffic package, if the services provided are in a mobile public telecommunications network and are accounted for on the basis of the used time or volume of data or tariff units [Art. 63a (1-1a) of the TL].

REGULATORY TAXES AND FEES

What is the cost of licensing?

Being entered in the Register of Telecommunications Undertakings or obtaining a licence to use a radio device does not require an application fee. The following annual fees are required under the TL:

- telecommunications fee applicable to telecommunications undertakings [Art. 183 of the TL];
- fee relating to the allocation of numbers [Art. 184 of the TL];
- fee relating to spectrum assignments [Art. 185 of the TL].

Is there a tax for providing telecom services?

No, there is no special tax for providing telecom services.

However, it should be noted that in order to subsidise the universal service (i.e. a set of telecommunications services that includes facilities for people with disabilities, provided at a good quality and affordable price, which should be available in the territory of Poland [Art. 81 of the TL]), the UKE may require telecommunications undertakings to cover the costs of providing that service incurred by the entity selected through a competition [Art. 98 of the TL].

How are fees determined?

The telecommunications fee [Art. 183 of the TL] is the product of the annual telecommunications revenue of the undertaking in the financial year two years preceding the year for which the fee is due and the fee index. The fee index is determined annually by the Minister of Digital Affairs and it cannot exceed 0.05%.

The numbering fee [Art. 184 of the TL] – the TL determines the maximum rates for specific types of numbers. The current rates are set out in the Regulation of 18 December 2013 (consolidated text of 3 February 2022).

The spectrum fee [Art. 185 of the TL] depends on the type of radiocommunications service. The TL determines the maximum rates for each service and the current rates are set out in the Regulation of 6 December 2013 (consolidated text of 11 February 2016 amended by the Regulation of 7 December 2017 and the Regulation of 5 October 2018).

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

What governmental entity enforces telecom regulations?

The UKE is responsible for enforcing telecom regulations and can impose fines [Art. 210(1) of the TL]. A small number of requirements related to data privacy that are included in the TL are enforced by the Polish Data Protection Authority (*Prezes Urzdu Ochrony Danych Osobowych*) [Art. 210a of the TL]. In these cases, the provisions concerning fines imposed by the UKE are applied accordingly.

Additionally, the use of radio transmitting or transmitting and receiving devices without holding a radio licence (if required) constitutes a criminal offence and is therefore subject to punishment under the general rules of criminal law.

What are the penalties for violating the law and/or regulation?

The penalty for violating the law is an administrative fine (see below).

In case of a criminal offence (i.e. the use of a radio device without a required licence), in addition to a criminal fine imposed on the perpetrator (see below), the court may order the forfeiture of the devices intended or used in the commission of the offence,

even if they do not belong to the perpetrator. The court is obliged to order the forfeiture of the devices if their use poses a risk to human life or health. If the perpetrator of the offence acts in a persistent manner, he/she is also subject to the penalty of a restriction of liberty or imprisonment of up to two years [Art. 208 of the TL].

Is there a fine for violations?

Yes. The UKE can impose fines of up to 3% of the telecommunications undertaking's income obtained in the preceding calendar year. If the entity has not generated income in the calendar year preceding the year in which the fine is imposed or has generated income of less than PLN 500,000, the UKE takes into account the average income received during the three preceding calendar years. Where an entity has not generated income or has generated income of less than PLN 500,000 in this period, a fine of up to PLN 15,000 can be imposed [Art. 210 of the TL] The UKE may also impose a fine on a person who is the head of a telecommunications undertaking, in particular a person who performs a managerial function or is a member of the management body of a telecommunications undertaking or an association of such undertakings. The fine can be up to 300% of his/her monthly remuneration [Art. 209(2) of the TL].

In the case of the criminal offence of using a radio device without a required licence, the perpetrator is subject to a fine of up to PLN 1,000. If the perpetrator of this offence acts in a persistent manner, a fine can be imposed under general criminal law rules, i. e. between 10 and 540 daily rates, where a daily rate is calculated taking into account the perpetrator's income, his/her personal and family situation, property relations and earning potential, and may range from PLN 10 to PLN 2,000. As a result, the maximum amount of a fine is PLN 1,080,000 Art. 208 of the TL] The fine is imposed on a specific person and not the entity on behalf of which this person acts. The commission of the offence may take place within the framework of telecommunication activities carried out by a telecommunication undertaking. In such a case, the director of the entity may be personally liable. In the case of the use of a device by an employee of the entity, the liability of the director is not excluded if he/she directs the performance of a prohibited act or orders the employee to perform such an act taking advantage of the employee's dependence on him/her.

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PORTUGAL

Last modified 6 October 2022

OVERVIEW OF LEGAL LANDSCAPE

To create effective competition in the provision of telecommunications networks and services, to ensure a national efficient infrastructure and to protect the citizen rights and interests, the telecommunications market in Portugal is subject to sovereign regulation mechanisms.

Nowadays, companies are free to provide electronic communications networks and services, only subject to a general authorisation. This regime determines that the execution of activities in the telecommunications sector does not depend on any prior authorization by the competent regulatory authority.

Both national and European legislation aims at opening the telecommunications markets and creating equal competition conditions. The Portuguese Electronic Communications Law assigned the National Communications Authority (ANACOM) as the national regulatory authority and provides it with the functions of regulation, supervision, monitoring and sanctioning.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The fundamental law for the electronic communications sector is the Electronic Communications Law, approved by Law No. 5 /2004 of 10 February. This law transposes into national legislation Directives 2002/19/EC, 2002/20/EC, 2002/21/EC and 2002/22 /EC, of the European Parliament and of the Council of 7 March, and Directive 2002/77/EC of the Council of 16 September.

Besides the Electronic Communications Law, several aspects of this sector can be found in other regulations:

- Decree-Law No. 123/2009 of 21 May, governs the construction of infrastructure suitable for the accommodation of electronic communications networks, the deployment of electronic communications networks and the construction of infrastructure for telecommunications in housing developments, urban settlements and concentrations of buildings.
- The regime applicable to radio communications networks and stations, established in Decree-Law No. 151-A/2000 of 20 July.
- The regime for essential public services and the means of user protection, regulated under Law No. 23/96 of 26 July.
- The regimes governing the placing on the market, setting into service and use of radio equipment, approved by Decree-Law No. 57/2017 of 9 June.
- Law No. 99/2009 of 4 November establishes the legal framework applicable to administrative offences committed within the communications sector, including infringement of legal and regulatory provisions.

REGULATORY BODIES OR AUTHORITIES

ANACOM is the Portuguese regulatory authority for postal communications and electronic communications.

Address: Av. José Malhoa, 12, 1099-017 Lisbon, Portugal

Telephone: +351 217 211 000

Website: www.anacom.pt

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

The Portuguese Electronic Communications Law establishes the legal regime applicable to electronic communications networks and services and to associated services. Therefore, providers of electronic communications networks and services are subject to this regulation.

An "**electronic communications network**" is defined in this law as transmission systems and, where applicable, the switching or routing equipment and other resources which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.

An "**electronic communications service**" is defined as a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting.

"**Associated facilities**" means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service, including conditional access systems and electronic programme guides.

This being said, any activities of providing electronic communications networks and services, except from the ones referred in point a) and b) of No. 1 of article 2 of the present law, are subject to this regulation.

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

In Portugal, the provision of telecommunications networks and services is only subject to a general authorisation regime. Therefore, the provision of activities in this sector does not depend on any prior decision or act of ANACOM but is subject to a mere declaration of initiation of activity signed by the provider, after which the company who wishes to initiate offers in Portugal may commence its activities.

However, the use of spectrum frequencies and number allocation depends on the award of individual rights of use that are conducted by ANACOM.

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

According to the Portuguese telecommunications regulation, there is no requirement for a provider of telecommunications services to be domiciled in Portugal for the provision of these services.

Moreover, there are no restrictions on foreign ownership or investment in the electronic communications sector in Portugal, except for the limits to cross-ownership (which are not exclusive to foreign investors) that apply to television and radio activities.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Every public telecommunications network operator is required, upon request, to make an interconnection offer to other public telecommunications network operators to secure user communication and the provision and interoperability of electronic communications services throughout the European Union (cf. article 64, No. 2 of Portuguese Electronic Communications Law).

According to article 77 of the referred regulation, ANACOM has the power to impose obligations on any telecommunications network operators that control access to end-users (regardless of whether it holds a significant market power) to interconnect to their networks with those of other public telecommunications network operators.

Additionally, ANACOM has the power to require public telecommunications network operators with significant market power to create the necessary prerequisites for the interoperability of end-to-end communication, including the provision of facilities for intelligent network services and roaming (enabling the use of other operators' mobile networks outside the coverage area of the requesting mobile operator, for the requesting operator's end-users) (cf. article 72, No. 2, point e).

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The Portuguese Electronic Communications Law has adopted several consumer protection rules. These rules not only refer to the term "consumers" but also to "users", "end-users" and "subscribers".

According to the present law:

"Consumer" means any natural person who uses or requests a publicly available electronic communications service for non-professional purposes (cf. article 3, point j)

"User" is defined as a legal entity or natural person using or requesting a publicly available electronic communications service. (cf. article 3, point nn)

"**End-user**" means a user not providing public communications networks or publicly available electronic communications services. (cf. article 3, point oo)

"Subscriber" is defined as any natural person or legal person who or which is party to a contract with a provider of publicly available electronic communications services for the supply of such services. (cf. article 3, point e).

Specific obligations regarding consumers protection include:

- The obligation to specify in contracts with consumers and end-users, among other things/conditions, the following:
    - Services provided
    - Details of prices
    - The duration of the contract and the conditions whereby the contract or services may be renewed, suspended or terminated
    - Explicit indication of the subscriber's willingness in respect of the inclusion or not of their respective personal information in a public directory
    - The type of action that might be taken by the provider in reaction to network security or integrity incidents.
- The availability of number portability when required by the subscriber of the new service provider
- Regarding contract duration, the binding period in contracts for the provision of electronic communications services with consumers may not exceed 24 months
- The obligation to take into account the interests of disabled users

REGULATORY TAXES AND FEES

Concerning the applicable fees for the authorisation and licensing process, administrative rule No. 1473-B/2008 of 17 December approves the value of each payable fee.

Fees are due in respect of:

- The issuance by ANACOM of statements supporting rights
- The exercise/execution of the activity by a provider of telecommunications networks and services (regulatory fee)
- The assignment of rights of use of frequencies and numbers
- The use of frequencies and numbers

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

The Portuguese Electronic Communications Law provides for numerous measures which are at the national regulatory authority (ANACOM) disposal to enforce the applicable telecommunications regulations. These measures include formal information requests, investigations, full or partial suspension or revocation of the respective usage rights and the prohibition of business operations.

Breaches of the present Law can also trigger penalties. The penalties range from fines between EUR 100 to EUR 20.000 and from EUR 200 to EUR 5.000.000 whether they respect natural or legal persons, respectively (cfr. article113, No. 9, 10 and 11 of Electronic Communications Law).

In addition to these sanctions, in the cases referred to in the article 110 of the above-mentioned law, ANACOM may determine the application of a compulsory penalty payment under the terms of article 116 of the present law.

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QATAR

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OVERVIEW OF LEGAL LANDSCAPE

Communications Regulatory Authority ("**CRA**") is the communications regulator of the State of Qatar established by virtue of the Amiri Decree 42 in 2014. CRA regulates the telecommunications and information technology sector, the postal sector and the access to digital media. The country's primary service providers include only two licensees, which provide both fixed and mobile telecommunications services in Qatar. They are Vodafone Qatar and Ooredoo (formerly QTel). Each offers mobile, broadband, and fixed line services. Ooredoo is a state-majority owned company that is also responsible for building much of the country's telecom infrastructure. Vodafone is a private company also operates within Qatar under the Telecommunications Law. Both of these operators are listed in the Qatari capital markets.

Additionally, the Qatari Government has incorporated the Qatar National Broadband Network (QNBN), which was developed in order to provide passive access network infrastructure to these licensees. QNBN was incorporated by the government to provide passive dark fibre network infrastructure to telecommunication service providers on a wholesale basis, and owners and operators of private networks on a retail basis.

Qatar is considered one of the regional leaders in terms of its telecoms maturity, having one of the highest fixed and mobile penetrations in the world.

Until 2014, Qatar's telecoms sector was regulated by Supreme Council for Information and Communications Technology ("**ictQatar**"), which was part of the now Ministry of Transport and Communications.

Through various amendments and restructures of the regulatory framework in 2014, the CRA was established as an independent regulator and has taken over the role of ictQatar. Therefore, references to ictQatar in the applicable regulatory framework (below) are now taken to refer to the CRA.

Licenses

Individual Licenses

- Ooredoo QPSC:
  - Public Fixed Telecommunications Networks and Services (Oct. 7, 2007):
    - Unilateral administrative grant by the State of Qatar acting in the public interest through the Supreme Council issued pursuant to a decision of the Supreme Council authorizing the Licensee to provide the specified telecommunications networks and services pursuant to the terms and conditions of the license.
  - Public Mobile Telecommunications Networks and Services (Oct. 7, 2007):

    - Authorizes licensee to establish, install, operate and provide to the public on a non-exclusive basis the Authorized Telecommunications Services by means of the Authorized Telecommunications Networks in accordance with the requirements [contained in license].

- Vodafone Qatar QPSC:
  - Public Mobile Telecommunications Networks and Services (June 29, 2008):
    - This license shall provide Public Mobile Telecommunications Networks and Services in conformity with each of the network roll-out and Coverage Obligations [contained in license].
  - Amended Mobile Telecommunications Networks and Services (April 4, 2009):
    - This license shall provide Public Mobile Telecommunications Networks and Services in conformity with each of the network roll-out and Coverage Obligations [contained in license].
  - Amended Mobile Telecommunications Networks and Services (March 25, 2018):
    - Extension of the term of the license of Vodafone Qatar for the Provision of Public Mobile Telecommunications Networks and Services for forty years. License term: valid for period of sixty years beginning Effective Date.
  - Public Fixed Telecommunications Networks and Services (April 29, 2010):
    - Unilateral administrative grant by the State of Qatar acting in the public interest through the Supreme Council issued pursuant to a decision of the Supreme Council authorizing the Licensee to provide the specified telecommunications networks and services pursuant to the terms and conditions of the license.
  - Amended Public Fixed Telecommunications Networks and Services (April 29, 2010):
    - Obligations relating to provisions and quality of service to retail customers (as amended in March 2018).
- Qatar National Broadband Network Company "Qnbn" QPJSC:
  - Passive Fixed Telecommunications Networks and Services (July 22, 2012):
    - Unilateral administrative grant by the State of Qatar acting in the public interest through the Supreme Council issued pursuant to a decision of the Supreme Council authorizing the Licensee to provide the specified telecommunications networks and services pursuant to the terms and conditions of the license.
  - Amended Passive Fixed Telecommunications Networks and Services (Aug 30, 2018):
    - [Document Unavailable].
- Qatar Satellite Company "Es'hailSat":
  - Public Satellite Telecommunications Networks and Services (Oct. 7, 2013)
    - Unilateral administrative grant by the State of Qatar acting in the public interest through the Supreme Council issued pursuant to a decision of the Supreme Council authorizing the Licensee to provide the specified telecommunications networks and services pursuant to the terms and conditions of the license.

- United Development Company QPSC:
  - Wholesale Fixed Telecommunications Networks (March 15, 2010):
    - Unilateral administrative grant by the State of Qatar acting in the public interest through the Supreme Council issued pursuant to a decision of the Supreme Council authorizing the Licensee to provide the specified telecommunications networks and services pursuant to the terms and conditions of the license.
- RigNet Qatar WLL:
  - Very Small Aperture Terminal ("VSAT") Networks and Services (Dec. 22, 2010):
    - Licensee is hereby authorized to establish, install, operate and provide to "Closed User Group" on a non-exclusive basis to the Authorized VSAT services by means of the Authorized VSAT Network in accordance with the requirements [contained in this license].
- Qsat Communications WLL:
  - Very Small Aperture Terminal ("VSAT") Networks and Services (Dec. 22, 2010):
    - Licensee is hereby authorized to establish, install, operate and provide to "Closed User Group" on a non-exclusive basis to the Authorized VSAT services by means of the Authorized VSAT Network in accordance with the requirements [contained in this license].
- Harris Salam WLL:
  - Very Small Aperture Terminal ("VSAT") Networks and Services (March 22, 2012):
    - Licensee is hereby authorized to establish, install, operate and provide to "Closed User Group" on a non-exclusive basis to the Authorized VSAT services by means of the Authorized VSAT Network in accordance with the requirements [contained in this license].

Class Licenses

- CLASS LICENSE for the Resale of Retail Telecommunications Services:
  - Version 3 of July 10, 2011 license; clarifies scope of license, various text updates and improvements, and replaces Supreme Council of Information and Communication Technology with Communications Regulatory Authority, removal of the notification requirements for Resale.
- CLASS LICENSE to Own and/or Operate a Private Telecommunications Network:
  - Version 3 of July 11, 2011 license; clarifies scope of license, various text updates and improvements, and replaces Supreme Council of Information and Communication Technology with Communications Regulatory Authority.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Key telecoms statutes include:

Decree Law No. (34) of 2006 on the promulgation of the Telecommunications Law ('Telecoms Law')

This contains provisions relating to telecommunications licences, radio spectrum management, controls on interconnection and access agreements, dominant service providers, service tariffs, numbers and numbering, competition policy, consumer protection and property access, as well as the objectives and powers of the Supreme Council of Information and Communication Technology (ictQATAR). The Telecoms Law can be found here.

Executive By-Law No.1 of 2009 for the Telecommunications Law ('Bylaws')

This supplements the Telecoms Laws, and includes provisions regulating the telecommunications sector.

Amiri Decision No. (42) of 2014 establishing the Communications Regulatory Authority of Qatar

This is the instrument by which the CRA (successor to ictQatar's regulatory arm) was established, and it covers, amongst other things, the CRA's objectives and powers functions and management responsibilities, and financial resources.

Regulatory documents

ictQATAR, and more recently the CRA, have also published a number of regulatory documents. These include, for example, the recently published Competition Framework, Market Definition and Dominance Designation, and Consumer Protection Policy which contains principles and rules relating to monitoring and enforcing service provider's compliance with fair competition and dispute resolution processes. These, and other regulations, can be found on the CRA website.

REGULATORY BODIES OR AUTHORITIES

CRA

The CRA regulates the telecommunications and information technology, postal services and access to digital media sectors.

Address

The Communications Regulatory Authority
Al Nasr Tower B
Corniche
PO Box 23404
Doha, Qatar
cra.gov.qa

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

The types of telecommunications activities which are subject to legal and regulatory requirements include but are not limited to:

- The provision of telecommunications services to the public in return for a fee
- Ownership or operation of a telecommunications network used for the provision of telecommunications services to or for the public in return for a fee
- Ownership or operation of any other telecommunications network

In addition, a person who wishes to import telecoms equipment to Qatar must be registered with the CRA and may need to obtain an import authorisation license, type approval and a customs clearance certificate from the CRA.

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

A licence is required from the CRA to engage in:

- The provision of telecommunications services to the public in return for a fee
- Ownership or operation of a telecommunications network used for the provision of telecommunications services to or for the public in return for a fee
- Ownership or operation of any other telecommunications network

Telecommunications licences can be individual licences or class licences. Individual licences are for mobile and fixed services, VSAT and public satellite services. Class licences exist for short range devices, telecommunications service on-board aircraft, and private networks.

A telecommunications license typically lasts 25 years.

Updates

June 15, 2022: The Communications Regulatory Authority (CRA) launched a public consultation about fifth-generation (5G) private mobile networks, with the aim of receiving views and comments of stakeholders about their level of interest in implementing 5G private mobile networks in the State of Qatar and about various regulatory options to support enterprises, businesses and government entities, that wish to implement them.

June 20, 2022: CLASS LICENSE to Own and/or Operate a Private Telecommunications Network. Version 3 of July 11, 2011 license; clarifies scope of license, various text updates and improvements, and replaces Supreme Council of Information and Communication Technology with Communications Regulatory Authority.

June 20, 2022: CLASS LICENSE for the Resale of Retail Telecommunications Services. Version 3 of July 10, 2011 license; clarifies scope of license, various text updates and improvements, and replaces Supreme Council of Information and Communication Technology with Communications Regulatory Authority, removal of the notification requirements for Resale.

May 18, 2022: Minister of Communications and Information Technology Approves Amendments of Mobile Telecom Network Rollout and Coverage Obligations. His Excellency Mohammed bin Ali Al-Mannai, Minister of Communications and Information Technology approved the amendments made by the Communications Regulatory Authority (CRA) to Annexure "G" (related to Network Rollout and Coverage Obligations), which is part of Ooredoo Qatar Q.P.S.C. and Vodafone Qatar P.Q.S.C. licenses for the provision of public mobile telecommunications networks and services.

April 27, 2022: The Communications Regulatory Authority (CRA) issued the Class License for the use of Radio Local Area Network (RLAN) devices over the lower part (5925 - 6425 MHz) of the 6 GHz band (5925 - 7125 MHz), which is commercially known as Wireless Local Area Network (Wi-Fi 6E). Additionally, CRA published on its website the related Policy Statement.

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

The CRA requires that companies wishing to hold licences should be registered in Qatar.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Telecoms Law and Bylaws contain provisions relating to interconnection and access, negotiations/requests between/by service providers to reach interconnection agreements and related objectives, and provides for a binding resolution by the General Secretariat in the event that an agreement cannot be reached (see, for example, '*Determination on Interconnection Charges between Vodafone & Qtel*' issued in February 2009, and available here).

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Telecom Rules

The Telecoms Law provides for the preparation, development and implementation of a consumer protection policy and the setting of rules regulating the same. In addition, the Telecoms Laws prescribe certain 'fair dealing practices', including requiring the service provider to provide the consumer, before the consumer subscribes to the service or incurs any commercial obligations to the service provider, with the terms of the service and any other terms and conditions and all tariffs, rates and costs applicable to any telecommunications service. These rules have been supplemented by a number of regulatory documents that the CRA have issued.

Consumer Charges

The Service provider may not charge a consumer except for the service fee relating to telecommunications services or telecommunications equipment ordered by the consumer. The consumer cannot be liable for any service or equipment relating to telecommunications that has not been ordered. There are also additional protections relating to the protection of customer /consumer information.

The Bylaws overlap and supplement the consumer protection provisions in the Telecoms Law. Additional provisions in the Bylaws include, for example, requirements relating to the provision, accuracy and format of invoicing, record keeping, and the avoidance of certain misleading practices/claims to consumers.

Consumer Protection

The Executive Regulation of the Telecommunications Law of Qatar No. (1) of 2009 forbids service providers from charging customers for services other than what is outlined in customer orders, agreed service terms or other written customer directions. More information is available under Decree Law No. 14 of 2011 Amending Certain Provisions of Law No. 8 of 2008 on Consumer Protection as well as consumer's complaint process.

CRA President Decision No. (13) of 2020 – Cell Broadcast Orders

The CRA has developed the Cell broadcast Orders in collaboration with the Ministry of Interior ("MoI"). The primary objectives are to implement effectively a Cell Broadcast solution for emergencies. This requires telecom Service Providers to upgrade their platforms and connect to MoI emergency platform so that messages will be sent directly to mobile phones in the area where an emergency has arisen. The users in the specific area will receive a notification in several languages, enabling them to react appropriately to the emergency.

December 23, 2018: CRA Issues New Retail Tariff Instruction for Sustainable Competition and Development in the Telecommunications Market. In line with the Communications Regulatory Authority (CRA) aim of improving the consumers' experience and ensuring the sustainable competition and development of the telecommunications market in Qatar, His Excellency Mohammed Ali Al-Mannai, President of CRA has issued a decision to promulgate the new Retail Tariff Instruction (RTI) for telecommunications services, to be complied by all service providers in Qatar, effective January 1, 2019.

REGULATORY TAXES AND FEES

The CRA determines licence fees, any other fees, remuneration or charges. In addition, corporate taxes on taxable income and withholding taxes apply in Qatar.

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

The Telecoms Laws list a number of offences and associated penalties. For example, providing a telecommunications service without a licence is punishable by imprisonment of up to one year and a fine of up to QAR 1,000,000.

Appeals

A decision by the Communications Regulatory Authority (CRA) constitutes final action of the CRA for purposes of the appeals process. There are no provisions in the current Decree Law No. 34 of 2006 on the Promulgation of the Telecommunications Law

(Telecommunications Law) addressing appeals from CRA decisions. At present, the appeals procedure involves going through the administrative courts that can take few years before a final decision is issued.

KEY CONTACTS

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ROMANIA

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OVERVIEW OF LEGAL LANDSCAPE

Regulatory body

The Romanian telecommunications regulatory body is the National Authority for Management and Regulation in Communications of Romania ("**ANCOM**").

Applicable telecom regulation(s)

The legislative framework is dense and is composed of various laws, Government emergency ordinances and ANCOM decisions.

The main legislative act is Government emergency ordinance no. 111/2011 on electronic communications ("GEO no. 111/2011") which transposed in Romania the provisions of EU Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code and provides vast regulatory provisions that guide both operators and ANCOM.

Scope of each regulation

Please see below.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Key regulatory provisions

Provisions regulating telecommunications may be found in GEO no. 111/2011 and in other various regulations, including:

- Law no. 159/2016 on the regime of the physical infrastructure of electronic communications networks, as well as for establishing measures to reduce the cost of installing electronic communications networks
- Law no. 175/2022 on ensuring access of natural persons to fixed large bandwidth internet services
- Law no. 362/2018 on ensuring a high common level of security of networks and informational systems
- Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector
- Government Decision no. 740/2016 on the marketing of radio equipment

- ANCOM Decision no. 987/2012 on the general authorisation regime for providing electronic communications networks and services
- ANCOM Decision no. 353/2015 on the procedure for granting radio frequency utilisation rights
- ANCOM Decision no. 311/2016 on radio frequencies or frequency bands exempted from licensing regime
- ANCOM Decision no. 551/2012 on establishing the spectrum utilisation fee
- ANCOM Decision no. 1112/2017 on establishing the quality indicators for Internet access service and publishing the corresponding parameters
- ANCOM Decision no. 375/2013 on the National numbering plan
- ANCOM Decision no. 376/2013 on the procedure for requesting and issuing numbering resources use licenses
- ANCOM Decision no. 144/2006 on implementing number portability

Key features of the laws, regulations and policies

Key features of GEO no. 111/2011 include:

- the provision of electronic communications networks and services, other than number-independent based interpersonal communications services, is carried out under the conditions of the general authorization regime; as such, any person intending to provide public electronic communications networks or electronic communications services intended for the public, except for non-number based interpersonal communications services, has the obligation to send ANCOM a notification (art. 5 and 6 of GEO no. 111/2011)
- ANCOM promotes competition through the process of granting, amending, or renewing the rights to utilize the radio frequencies spectrum, being able to:
    - limit the quantity of spectrum for a certain operator
    - establish conditions for granting spectrum, such as granting access to wholesale market
    - reserve certain bands for new entrants on the market
    - refuse to grant new rights of use
    - amend existing rights of use, as indicated by the Competition Council (art. 231 of GEO no. 111/2011)
- Regulation of limited resources, such as numbering resources and radio frequencies, which are allocated by ANCOM (Chapter III of GEO no. 111/2011)
- Regulation of the providers of public electronic communications networks or electronic communications services' obligation to take all appropriate, objective, and proportionate technical and organizational measures to properly manage the risks to the security of electronic communications networks and services (Chapter IV of GEO no. 111/2011)
- Regulation of consumers' rights, including requirements for agreements between providers and consumers and transparency obligations (Chapter V of GEO no. 111/2011)
- Regulation of the universal service obligation (Chapter VI of GEO no. 111/2011)

- Regulation of promotion of competition on the market (Chapter VII of GEO no. 111/2011).

REGULATORY BODIES OR AUTHORITIES

Relevant regulator(s) for the local telecom sector

The Romanian telecommunications regulatory body is the National Authority for Management and Regulation in Communications of Romania (ANCOM).

Address: 2 Delea Nou Street, Sector 3, Cod 030925, Bucharest, Romania.

Telephone: 0800 855 855 (general interest information), 0372 845 400 (registry office)

Website: www.ancom.ro

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

Who is subject to the regulations?

The provision of electronic communications networks and services, other than number-independent based interpersonal communications services, is carried out under the conditions of the general authorization regime.

"**Electronic communications service**" means a service normally provided for remuneration via electronic communications networks, which encompasses the following types of services:

- 'internet access service' as defined in point (2) of the second paragraph of Article 2 of Regulation (EU) 2015/2120;
- interpersonal communications service; and
- services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting.

The following services are not considered electronic communications services: services through which the content of the information transmitted through the networks or electronic communications services is provided or editorial control over this content is exercised and the information society services, defined in art. 1 point 1 of Law no. 365/2002 on electronic commerce, republished, with subsequent amendments, which do not consist, in whole or in part, in the transmission of signals through electronic communications networks.

"**Electronic communications network**" means transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.

"**Number-independent interpersonal communications service**" means an interpersonal communications service which does not connect with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which does not enable communication with a number or numbers in national or international numbering plans.

Manufacturers, distributors and importers of certain transmitters and other telecommunications equipment may also be subject to certain requirements and obligations under GEO no. 111/2011.

Furthermore, ANCOM is the authority on allocation of limited resources, such as numbers from the national plan and radio frequencies.

Who is not subject to regulations?

Please see above.

What activities are regulated?

Please see above.

What activities are not regulated?

Please see above.

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

Do telecom providers need special licensing or authorization from a regulatory body?

The provision of electronic communications networks and services, other than number-independent based interpersonal communications services, is carried out under the conditions of the general authorization regime; as such, any person intending to provide public electronic communications networks or electronic communications services intended for the public, except for non-number based interpersonal communications services, has the obligation to send ANCOM a written notification.

Licenses for radio frequency and frequency assignment authorisation, respectively numbering resources use license may be needed, depending on the envisaged activity.

What is needed to be granted a consent, license, and authorization?

Written notification sent to ANCOM containing information such as name, legal structure, headquarters, contact person, description of envisaged activities etc.

What is the scope of consents, licences and authorizations?

The general authorisation contains the general rights and obligations for providing electronic communications networks and services, while the licenses for limited resources provide for the specific frequency or number that may be used.

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

Do providers need to live or conduct business in the country?

Foreign entities which carry out activities on the national territory which are permanent or have a character of continuity must be legally established in Romania.

Since Romania is an EU Member State, the authorisation of foreign entities is regulated as follows:

- Foreign entities with their main headquarters outside the European Union / the European Economic Area must have a secondary establishment (with or without legal personality) in Romania.

- Foreign entities with main headquarters in other EU Member States or of the European Economic Area may exercise the freedom to provide services under Article 56 TFEU and can apply for the general authorisation; nevertheless, if the activity carried out on the national territory becomes permanent or has a character of continuity (e.g. if services are provided to end-users having the domicile/ residency in Romania and are not only provided in a trans-border context), said entities must legally establish in Romania.

Are their regulations for global businesses?

The provision of electronic communications networks and services by both domestic and foreign entities is done under the terms of the *general authorisation* regime (unless an exemption applies).

The law does not specifically regulate the provision of services by foreign entities. It only requires that foreign persons who provide trans-border public electronic communication services to end-users in the Romanian territory submit a notification for general authorisation to ANCOM.

Are there special regulations for specific geographic locations?

Please see above.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The obligations imposed by ANCOM through the general authorisation may envisage service interoperability and network interconnection.

Furthermore, operators of public electronic communications networks have:

- the right to negotiate an interconnection agreement with any other operator of a public electronic communications network, for the purpose of providing publicly available electronic communications services, including electronic communications services available to users through another public communications network interconnected with the network of either provider

- the obligation to negotiate an interconnection agreement with a third party authorised under the conditions of GEO 111 /2011, upon the latter's request, for the purpose of providing publicly available electronic communications services, including electronic communications services available to users over another public communications network interconnected with the network of either provider.

ANCOM may impose on the providers of electronic communications networks obligations regarding the joint use of passive infrastructure or obligations regarding the conclusion of localized access agreements to roaming services, as well as the obligation to provide necessary services to ensure the interoperability of the roaming service in mobile networks.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Are there specific consumer protections?

Geo no. 111/2011 contains numerous provisions pertaining to consumer protection which cannot, for the most part, be excluded. These provisions do not exclusively refer to the term "consumer", but also to "users", "end-users" and "subscribers".

Who is considered a consumer?

"Consumer" means any natural person that uses or requests a public electronic communications service intended for purposes other than those of his commercial or professional activity.

"User" means any natural or legal person that uses or requests a public electronic communications service.

"Subscriber" means any natural or legal person that has concluded a contract for the provision of public electronic communications services offered by a provider of such services, regardless of whether the payment is made in advance or after the provision of the services.

"**End-user**" means any user that does not provide public electronic communications networks or services.

What are telecom providers obligations to consumers?

Specific obligations related to consumer protection include:

- The requirement to include certain minimum terms in contracts with consumers and other end-users (Chapter V of GEO no. 111/2011)
- The initial minimum contract term of a contract with a consumer may not exceed 24 months (art. 50 of GEO no. 111 /2011)
- Before the conclusion an agreement, regardless of the method of its conclusion, providers of public electronic communications services provide consumers, free of charge, on a durable medium or, if the provision on a durable medium is not feasible, in a document that can be easily opened, viewed and downloaded, a concise and easy-to-read summary of the agreement (art. 506 of GEO no. 111/2011)
- Providers of internet access services or public interpersonal communication services shall offer consumers the facility to monitor and control in a timely manner the level of consumption related to each of the services included in the tariff plan, which are charged according to the volume or the period of use and shall inform consumers when the volume of a service is fully consumed. (art. 5010 of GEO no. 111/2011)
- In the case of the provision of services or the delivery of terminal equipment without the consent of the consumer, the consumer is exempted from any payment (art. 597 of GEO no. 111/2011)
- Number portability is free of charge for end users (art. 75 of GEO no. 111/2011)

REGULATORY TAXES AND FEES

What is the cost of licensing?

Any provider of electronic communications public networks or publicly available services is under the obligation to pay an annual monitoring tariff to ANCOM, as of the date it was granted until such provision of service ceases. However, providers that obtain a turnover below the RON equivalent of EUR 100,000 are exempted from the obligation to pay the monitoring tariff.

All license for radio frequency holders must pay annually tariffs to ANCOM for spectrum use. The tariff is individualised based on the radio frequencies allocations or assignations carried out.

From Romanian tax perspective, there are several aspects to be considered in relation with carrying out operational activity at local level.

Is there a tax for providing telecom services?

Please see above.

How are fees determined?

Please see above.

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

What governmental entity enforces telecom regulations?

ANCOM is the governmental entity that enforces telecom regulations.

The National Supervisory Authority for the Processing of Personal Data (ANSPDCP) is the governmental entity that enforces the provisions of Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector.

What are the penalties for violating the law and/or regulation?

GEO no. 111/2011 provides for various measures which are at ANCOM's disposal to enforce the applicable telecommunications regulations. These measures include formal information requests, investigations, fines and the suspension or withdrawal of the right to provide electronic communications networks or services or the right to use technical, numbering resources or radio frequencies.

Fines range between RON 5.000 – 60.000 and may go up to RON 100.000 for repeated breaches. Fines may also reach up to 5% turnover for persons with turnover above RON 3.000.000, respectively 10% turnover for repeated breaches.

Is there a fine for violations?

Please see above.

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SAUDI ARABIA

Last modified 6 October 2022

OVERVIEW OF LEGAL LANDSCAPE

The Kingdom of Saudi Arabia (KSA) has a tightly regulated telecommunications market.

Broadly speaking, it is a requirement that a locally incorporated company must hold a licence to provide public telecommunications services.

Currently, there are two fixed and three mobile service providers in KSA, and these service providers have been issued with Individual Licences. There are a number of other licensees that provide specialised services under class licences, including, but not limited to, ISPs, IoT VNOs, VSAT, GMPCS, SMS and On-board Aircraft services.

As noted in the "Key Telecommunication Law, Regulations and Policies" section below, a new Communication and Technology Law was published in the KSA Official Gazette on 11 June 2022. However, this new law will not take effect until 8 December 2022. The implementation of the new law is also subject to the publication of an accompanying set of implementing regulations, which are expected to be published on or before 8 December 2022.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Key telecoms statutes include:

The Telecommunications Act (the 'Act')

Issued under the Council of Ministers Resolution No. (74), dated 05/03/1422H (corresponding to 27/05/2001),(as amended by the Council of Ministers Resolution No (121), dated 21/02/1440H (corresponding to 01/11/2018) , and it was approved pursuant to the Royal Decree No. (M/12), dated 12/03/1422H (corresponding to 03/06/2001).

The Act came into force in June 2001, and provides a legal foundation for developing the telecommunications sector whilst also including a number of objectives pursuant to which the telecommunications sector is to be regulated.

The CITC Ordinance ('Ordinance')

Issued pursuant to the Council of Ministers Resolution No. (74), dated 05/03/1422H (corresponding to 27/05/2001), and it was amended pursuant to the Council of Ministers Resolution No. (133), dated 21/05/1424H (corresponding to 21/07/2003) and the Council of Ministers Resolution No. (120), dated 21/02/1440H (corresponding to 01/11/2018).

The Ordinance came into force in June 2001, and is the instrument by which the Communications and Information Technology Commission (CITC) was established. It covers, amongst other things, the CITC's responsibilities, board composition and membership, governance and sources of finance.

The Telecommunications Bylaws ('Bylaws')

Under the provisions of Article 40 of the Act, the Bylaws were issued by the Ministerial Resolution No. (11), dated 17/05/1423H (corresponding to 27/07/2002).

The Bylaws came into force in July 2002. They supplement the Act and include provisions by which the telecommunications sector is regulated.

Regulatory instruments

The CITC has also issued a number of more specific technical and regulatory instruments covering, for example, quality of service, numbering, frequency, equipment approval and licensing instruments.

Communication and Information Technology Law ("CITL")

On 11 June 2022 (11/11/1442 H) a new Communication and Information Technology Law (Cabinet Decision No. 592 of 1443H and approved by virtue of Royal Decree No. 106 dated 02/11/1443 H) was published in KSA Official Gazette Issue No. 4936. The CITL will become effective on 11/11/1443, which is 8 December 2022.

The CITL provides that Implementing Regulations will be published within this same period and will take effect at the same time as the CITL.

Whilst the CITL refreshes the Act (i.e. the existing telecommunications law), it does not appear to radically change the regime. For example, licenses are still required prior to conducting telecommunication activities. It remains to be seen if the new Implementing Regulations to the CITL will amend the current structure of licenses required to provide telecommunication services.

REGULATORY BODIES OR AUTHORITIES

The CITC

The CITC regulates the telecommunications sector in KSA.

The CITC's contact details and address in Riyadh are:

Address: P.O Box 75606 - Riyadh 11588 Kingdom of Saudi Arabia

Phone: 0114618000

Int'l. phone: 00966114618000O

Fax: 0114618120

Int'l. Fax: 00966114618120

Website: www.citc.gov.sa

The Ordinance lists a number of activities which the CITC is required to undertake, including, amongst other things, the issuing of licences in accordance with the Act, Bylaws and Ordinance, and implementation of approved polices, plans and programs for the development of the telecommunications sector.

The Ministry of Communications and Information Technology ("Ministry")

The Ministry is required by the Act to undertake a number of activities, including, amongst other things, the making of general policies, plans and development programs for the telecommunications sector, and representing KSA in domestic, regional and international bodies in the telecommunications sector. Appeals against the decisions of the CITC, in the first instance, can be made to the Minister of Communications and Information Technology.

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

The Act defines Telecommunications Services as the conveying and routing of signals in whole or in parts over the public telecommunications networks, including TV and Radio Transmission and Internet Services.

The By Laws state that a licence is required in order to provide a telecommunications service to the public, or to operate a telecommunications network used to provide a telecommunications service to the public.

Private internal telecommunications networks with limited capacity for the interconnection between the parts of one facility (such as hospitals, residential compounds and hotels) do not require a licence. Such networks cannot be interconnected with a public telecommunications network without CITC approval.

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

The CITC has currently limited the number of fixed, mobile and MVNO licences available.

However, other types of class licences are available. These include, but are not limited to, ISP, IoT VNOs, VSAT, GMPCS, SMS and On-board Aircraft services – the full list can be found on CITC's website.

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

The Act provides that fixed and mobile telecommunications services shall only be provided through joint stock that places their stock for public subscription. The licence for these services is subject to Council of Ministers' approval.

The CITC appears to require that all licensees are registered entities within KSA.

Certain licences, such as the NOC licence and IoT licence (noting there are different types of IoT licences), require that the licensee maintains equipment and data within KSA.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Act and Bylaws contain provisions relating to interconnection agreements, and the CITC has also issued dedicated interconnection regulations.

'Dominant' service providers must generally submit copies of interconnection agreements to the CITC, and must provide to the CITC, at such time or times as the CITC prescribes, a report on its interconnection arrangements, which must satisfy certain requirements. The CITC may require non-compliant interconnection agreements to be amended.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The CITC approved terms and conditions for fixed, mobile and data services can be found on CITC's website.

REGULATORY TAXES AND FEES

Initial and annual licence fees for various licences can be found in the Regulations of the Fees for the Telecommunications Services (fifth version dated April 2022) accessible **here**.

Generally, telecoms licence fees are paid in favour of the General Treasury. Other fees may be payable to various Saudi Government bodies, depending upon what form of entity is established to hold the licence.

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

The Act and the Bylaws do not specify fines or penalties for breaches of specific provisions. Violations of the Act and Bylaws are to be referred by the CITC to a Violations Committee (nominated by the CITC Governor and approved by its board), which will assess violations on a case-by-case basis and determine an appropriate penalty that is proportionate to the gravity of the violation and the circumstances. Penalties can include fines of up to SAR 25,000,000, as well as an account of profits and publication of details of the violation and the violator. The Violations Committee is required to issue reasoned decisions in writing.

KEY CONTACTS

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SINGAPORE

Last modified 21 November 2022

OVERVIEW OF LEGAL LANDSCAPE

With effect from 1 October 2016, the regulatory landscape changed with the restructuring of the Info-communication Development Authority of Singapore (IDA) and the Media Development Authority of Singapore (MDA) to form the Info-communications Media Development Authority of Singapore (IMDA). The IMDA - alongside accompanying telecommunications legislation and regulation - aims to pave the way for a pro-consumer and pro-business telecommunications environment within Singapore.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The Info-Communications Media Development Authority Act 2016 is an Act that establishes and incorporates the IMDA, to provide for its functions and powers, and for connected matters. It deals with matters that include:

- the establishment, incorporation and constitution of IMDA
- the functions, duties and powers of IMDA
- the staff, finances and assets of IMDA

Additionally, subsidiary legislation under the Info-Communications Media Development Authority Act can be found here.

The Telecommunications Act 1999 is an Act that aims to provide for the operation and provision of telecommunication systems and services in Singapore. It deals with matters that include:

- the licencing of telecoms systems and services and the granting of spectrum rights
- the erection, maintenance and repair of telecom installations
- IMDA's powers to issue codes of practice, standards of performance, directions and advisory guidelines relating to telecom systems and services
- telecom cable detection work
- ownership and management controls over designated telecom licencees
- offences and penalties relating to telecom systems and services

Subsidiary legislation under the Telecommunications Act can be found here.

In addition, the IMDA also regulates the provision of postal services and postal systems. While these are typically not categorized as telecommunications, postal and telecommunications services do fall under the same wider category of communications services.

REGULATORY BODIES OR AUTHORITIES

Infocomm Media Development Authority of Singapore (IMDA)

Address: 10 Pasir Panjang Road #03-01, Mapletree Business City. Singapore 117438

Contact Centre: +65 6377 3800

Email: info@imda.gov.sg

Website: https://www.imda.gov.sg/

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

Broadly speaking, a telecommunication service is any service for telecommunications but excludes any broadcasting service. A telecommunication system means any system used or intended to be used for telecommunications, including any such system capable of being used for the operation of any broadcasting service. Any person who operates a network or provides a telecommunication service in Singapore must be licensed and will be regulated by the IMDA. This includes, but is not limited to facilities-based operators, service-based operators, any parties who establish Very Small Aperture Terminal (VSAT) networks, radio-communications stations operators and any parties who works on telecommunication cable detection works.

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

The Info-communication Media Development Authority has the exclusive privilege for the operation and provision of telecommunication systems and services in Singapore. Under the Telecommunications Act 1999, the IMDA has authority to license telecommunication systems and services.

There are various licences regulated by IMDA, including but not limited to the following:

- Facilities Based Operators (FBO) licences for holders that intend to deploy telecoms infrastructure to provide telecoms services to other telecoms licence holders or end users. An FBO must be individually licensed.

- Service Based Operators (SBO) licences for holders that do not intend to deploy telecoms infrastructure, but instead lease telecoms network elements from FBO licence holders to provide telecoms services, or resell telecoms services of other telecoms licence holders. A SBO can be individually or class-licensed.

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

In order for a company to be granted an FBO licence by the IMDA, the company can be foreign-owned but must be incorporated under the Singapore Companies Act 1967. As for SBO licensees, these must be companies incorporated or foreign companies registered under the Singapore Companies Act 1967. SBO (Class) licences may also be held by a Limited Liability Partnership (LLP) or a Limited Partnership.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Code of Practice for Competition in the Provision of Telecommunications and Media Services 2022 ('Code') distinguishes between licensees who are able to act without significant competitive restraints from competitors and licensees who are not able to act without significant competitive restraints from competitors. Most licensees are subject to competitive market forces and,

therefore, IMDA will impose minimum regulatory 'rules of the road', coupled with the *ex post* enforcement of general prohibitions on anti-competitive conduct, on these licensees . By contrast, where a licensee's or regulated person's conduct is not constrained by competitive market forces, IMDA will require it to comply with more stringent regulatory requirements (The Code 2.1).

Several sections of the Code impose ex ante regulatory obligations on licensees. Some of these duties include:

- The duty to provide service at just and reasonable prices, terms and conditions;
- Non-discrimination;
- Service unbundling;
- Duty to provide service on reasonable request;
- Duty to allow resale of end-user services;
- Duty to allow sales agency
- Duty for Wholesale Services; and
- Duties in relation to tariffs.

Other sections of the Code provide a basis for IMDA to take enforcement action if a Licensee has engaged in conduct that unreasonably restricts, or is likely to unreasonably restrict, competition (ex post enforcement). These include:

- Abuse of dominant position and unfair methods of competition
- Agreements involving Licensees that unreasonably restrict competition

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

There are no major differences between the telecommunication laws and regulations applying to the provision of services to businesses and those which apply to the provision of services to consumers. Specifically, consumer protection provisions in the Code apply equally to both residential and business end users in the telecommunications market. This is except for the prohibition of detrimental or disadvantageous mid-contract changes which will only be applied to residential end users.

REGULATORY TAXES AND FEES

SBO Class Licence

SGD 200 per licence (one-time payment).

SBO Individual Licence

SGD 4,000 per annum licensing fee for the first SGD 50 million of the Annual Gross Turnover (AGTO).

The next SGD 50-100 million in AGTO attracts a fee of 0.5% of the AGTO.

For a company with above SGD 100 million in the AGTO, there is a licensing fee of 0.8% of the AGTO.

FBO Licence

SGD 80,000 or SGD 200,000 minimum licensing fee for the first SGD 50 million of the Annual Gross Turnover (AGTO), depending on whether the FBO licensee is an FBO or an FBO designated as a public telecommunication licensee.

The next SGD 50-100 million in AGTO attracts a fee of 0.8% of the AGTO.

For a company with above SGD 100 million in the AGTO, there is a licensing fee of 1% of the AGTO.

FBO licensees holding licences for terrestrial telecommunication network for broadcasting purposes only or satellite uplink / downlink for broadcasting purposes must pay an annual fee of SGD 5,000.

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

Any person guilty of an offence under the Telecommunications Act or any regulations made under it, may be subject to a fine not exceeding SGD 10,000, or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding SGD 1,000 for every day or part thereof during which the offence continues after conviction.

KEY CONTACTS

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SLOVAK REPUBLIC

Last modified 6 October 2022

OVERVIEW OF LEGAL LANDSCAPE

The main regulation in the area of telecommunication is Act No. 452/2021 Coll. on Electronic Communication (in Slovak: *Zákon o elektornických komunikáciách*) ("AEC**"**).

The regulatory telecommunication authority in Slovakia is Regulatory Authority for Electronic Communications and Postal Services (in Slovak: *Úrad pre reguláciu elektronických komunikácií a poštových služieb*) ("**TeleOff**").

The aim of the AEC is to ensure the development of the electronic communications sector and thus the efficient provision of and access by persons to quality, affordable and secure services and networks, the efficient use of radio spectrum and numbers, and the protection of end-users in the electronic communications sector, as well as to promote sustainable and effective competition, the building and use of very high capacity networks, investment and innovation in the electronic communications sector and market development in the electronic communications sector.

Also, the AEC promotes sustainable and effective competition, the building and use of very high capacity networks, investment and innovation in the electronic communications sector and market development in the electronic communications sector.

Regulatory body

Úrad pre reguláciu elektronických komunikácií a poštových služieb

Address: Továrenská 7, P.O.BOX 40, 828 55 Bratislava 24, Slovakia

Telephone: +421 24020 6918

Website: teleoff.gov.sk

Applicable telecom regulation(s)

The indicative list of the applicable legislation is as follows:

- Act No. 452/2021 Coll. on Electronic Communication (in Slovak: *Zákon o elektornických komunikáciách*)
- Act No. 402/2013 Coll. on Regulatory Authority for Electronic Communications and Postal Services and on Transport Authority, as amended (in Slovak: *Zákon o Úrade pre reguláciu elektronických komunikácií a poštových služieb a Dopravnom úrade*)
- Act No. 324/2011 Coll. on Postal Services, as amended (in Slovak: *Zákon o poštových službách a o zmene a doplnení niektorých zákonov*)

- Act No. 264/2022 Coll. on Media Services (in Slovak: *Zákon o mediálnych službách a o zmene a doplnení niektorých zákonov (zákon o mediálnych službách)*)

- General Authorization No. 01/2014 as amended by General Authorization No. 01/2019 (*Všeobecné povolenie*) ("**GA 01 /2014**")

Scope of each regulation

The AEC governs the following areas:

- Regulation within the field of the electronic communications;

- Conditions for provision of the electronic communications networks **("networks")** and electronic communications services **("services")** and related tools and related services;

- Protection of the fair competition in the field of the electronic communications and protection of the user's rights and their further progress;

- Determination of the rights and obligations relating to building of the sites and access to the passive infrastructure;

- Determination of the conditions for using the end-user devices;

- Tasks and competence of the authorities in the field of the electronic communications.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Key features of the laws, regulations and policies

The primary legislation governing the telecommunications sector in Slovakia is AEC.

According to Section 10 of the AEC, the person intending to carry out business in the provision of public networks or services under GA 01/2014, shall notify this intention to TeleOff at least 15 days prior to the provision of networks or services.

According to Section 21 et seq. of the AEC and specific conditions stipulated therein, an undertaking may, to the extent necessary, for reasonable compensation and if it is in the public interest, establish and operate public networks and construct and place their lines or other parts thereof on or in someone else's real property.

Under Section 23 (1) of the AEC, everyone is obliged to act in such a way that their activities do not damage lines or telecommunications equipment and do not interfere with the operation of networks or services and do not unlawfully interfere with the network and the provision of services.

In line with Section 35 of the AEC, TeleOff issues individual authorizations for the use of radio spectrum in accordance with the National Frequency Allocation Plan according to the radio spectrum use plan. Individual authorization for the use of radio spectrum is a decision by the TeleOff to allocate frequencies or to determine the conditions under which frequencies may be used.

The process for obtaining an individual authorization for the use of radio spectrum is outlined in Section 36 of the AEC.

The individual authorization for the use of numbers is outlined in Section 55 of the AEC, according to which numbers can be used only under an individual authorization for the use of numbers. Individual authorization for the use of numbers means the decision of TeleOff on the assignment of numbers provided in the national numbering plan.

Universal service is outlined in Section 96 of the AEC, according to which universal service is a minimum set of services that are available in a specified quality throughout the territory of the Slovak Republic to all consumers regardless of their geographical location and at an affordable price, which is a price that takes into account the level of consumer prices and incomes of the population.

Security and integrity of public networks and services and privacy and personal data protection is outlined in Sections 103 – 117 of the AEC.

Supervision and sanctions is outlined in Sections 122 – 124 of the AEC.

REGULATORY BODIES OR AUTHORITIES

Relevant regulator(s) for the local telecom sector

Úrad pre reguláciu elektronických komunikácií a poštových služieb

Address: Továrenská 7, P.O.BOX 40, 828 55 Bratislava 24, Slovakia

Telephone: +421 24020 6918

Website: www.teleoff.gov.sk

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

Who is subject to the regulations?

The controlled person may be (i) an undertaking[1] or (ii) other person which is required to comply with the obligations or conditions referred in the AEC.

Who is not subject to regulations?

Other persons than persons (entities) mentioned in the response to question 1 above.

What activities are regulated?

The AEC regulates the (i) electronic communications sector and (ii) the terms and conditions for the provision of electronic communications networks and electronic communications services and associated facilities and associated services.

What activities are not regulated?

The AEC shall not apply to the content of services provided via networks, unless otherwise provided in the AEC.

Note 1: Undertaking means a person which provides networks or services on the basis of a general authorisation for the provision of networks or services a general authorisation for the use of radio spectrum, an individual authorisation for the use of radio spectrum or an individual authorisation for the use of numbers pursuant to (with the exception of the entities referred in Section 55(3) of AEC).

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

Notification of business in the field of electronic communications

In general, anyone planning to start a business in the field of electronic communications must meet the conditions laid down in the GA 01/2014 authorizes any person to provide electronic communications networks or electronic communications services on the territory of the Slovak Republic subject to terms as stipulated therein and also other terms and obligations laid down in the AEC and other applicable regulations.

The notification process under the GA 01/2014 is relatively straightforward and no obstacles should arise in this respect.

Individual authorization

Individual authorisation for the use of radio spectrum

TeleOff issues individual authorizations for the use of radio spectrum in accordance with the National Frequency Allocation Plan according to the Radio Spectrum Use Plan. Individual authorization for the use of radio spectrum is a decision of TeleOff to allocate frequencies or to determine the conditions under which frequencies may be used.

An application for an individual authorisation for the use of radio spectrum shall include several information, e.g.:

- the number, type and location of radio equipment as well as transmitting and receiving antennas, if necessary,
- the frequency or radio spectrum band requested and the delimitation of the area envisaged, if necessary,
- the purpose and method of use of the radio equipment,
- the expected date of commissioning of the radio equipment and commencement of the service, if necessary,
- the period for which the applicant applies for the allocation of frequencies.

Individual authorisation for the use of numbers

- Numbers can be used only under an individual authorisation for the use of numbers. Individual authorisation for the use of numbers means the decision of the TeleOff on the assignment of numbers provided in the national numbering plan.
- The application for the allocation of numbers shall include, e.g.:
    - data of the applicant
    - details of the requested numbers,
    - the purpose of use of the numbers,
    - time of use of the numbers,
    - annex, which shall be evidence of compliance with the conditions for the assignment of a harmonised European number of social significance according to a special regulation (if such a number is requested).
- Please note that TeleOff may require the submission of documents and information necessary to prove the facts stated above in such application.

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

There is no requirement for a provider of networks or services to have company or branch office registered in the Slovak Republic (to be reviewed on an individual basis).

Regarding the special regulation concerning the geographic location, please note that certain frequencies are allocated in the National Frequency Allocation Plan for military purposes only and are considered as special networks according to Section 12 of the AEC.

In addition to special networks, according to Section 33 (6) of the AEC, limitations may apply to frequencies that are allocated in the National Frequency Allocation Plan for shared priority use for civil and military purposes or secondary use for military purposes. In this case, the Special Network Operators may request TeleOff to decide on usage of these frequencies for the purpose specified in the request and conditions of their use.

However, in our view, locating in specific areas is not relevant for the allocation of frequencies.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Please note that AEC regulates the general framework for network interconnection and access, whereby it is possible to request the undertaking providing a public network for access or interconnection. Specific conditions are regulated by Section 56 et seq. of the AEC.

The applicable law is also Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Are there specific consumer protections?

AEC contains numerous provisions pertaining to consumer. These provisions do not exclusively refer to the term 'consumer' but also to “users”, “end-users” and “subscribers”.

Also, please note that Act No. 250/2007 Coll. on Consumer Protection, as amended (in Slovak: *Zákon o ochrane spotrebitea*) **(“CPA”)** and Act No. 102/2014 Coll. on Consumer Protection in the Sale of Goods or the Provision of Services on the Basis of a Distance Contract or an Off-Premises Contract, as amended (in Slovak: *Zákon o ochrane spotrebitea pri predaji tovaru alebo poskytovaní služieb na základe zmluvy uzavretej na diaku alebo zmluvy uzavretej mimo prevádzkových priestorov predávajúceho*) and Act No. 22/2004 on E-Commerce, as amended (in Slovak: *Zákon o elektronickom obchode*) shall be observed.

Who is considered a consumer?

The legal definition of a consumer differs in the Slovak legislation.

Based on the Civil Code, a consumer means a natural person who, when concluding and fulfilling a consumer contract, does not act within the scope of his/her commercial activity or other business activity.

According to the CPA, a consumer means a natural person, who during the conclusion and fulfilment of the consumer contract does not act within the scope of his/her business activity, employment or profession.

As the AEC does not exclusively refer only to the term 'consumer', please find below associated definitions in the AEC:

- **"User"** means a person using or requesting a publicly available service.
- **"End-user"** means a user not providing public networks or publicly available services; in the case of radio and television program services, the end-user includes the listener and the viewer.
- **"Subscriber"** means an end-user who has entered into a contract for the provision of a publicly available service with an undertaking providing a publicly available service.

What are telecom providers obligations to consumers?

Specific obligations relating to consumer protection within the AEC include e.g.:

- An undertaking providing a publicly available interpersonal communications service shall not apply different requirements to end-users or impose different conditions on end-users regarding access to or use of networks or services on the basis of the nationality, place of residence or place of establishment of end-users, except where such different treatment is justified on objective grounds.

- An undertaking providing a publicly available service shall ensure that end-users with disabilities are able to access services equivalent to those used by the majority of end-users, including information provided in contracts pursuant to the AEC.

- An undertaking providing publicly available services, other than machine-to-machine (M2M) communications services, shall provide the consumer, before being bound by a service contract or any related offer, with the requested information, in so far as it relates to the services provided information required pursuant to CPA and information pursuant to Annex No. 3 of the AEC.

- Where a consumer undertakes to use an undertaking's publicly available service for a minimum period of time, and this period may not exceed 24 months when the service contract is first concluded.

- The agreed contract duration or commitment period may not be extended by an undertaking providing internet access services or publicly available number-based interpersonal communication services by concluding a contract or an amendment to a contract for the provision of any additional service or terminal equipment from the same undertaking, unless the consumer expressly agrees to this.

- An undertaking providing universal services can be obliged by a decision of TeleOff to charge consumers special prices and shall be obliged to provide those services and to charge special prices only to a person who proves that he or she is a low-income consumer or a consumer with special social needs, at prices which comply with the decision of the TeleOff.

REGULATORY TAXES AND FEES

What is the cost of licensing?

There are 3 types of payment (Administrative fees, Payment for using numbers, Payment for the use of radio spectrum).

Details on the respective amount of fees are available online (available in Slovak only).

Is there a tax for providing telecom services?

According to the Act on Value Added Tax, the subject of the tax is the provision of a service for consideration in the Slovak Republic performed by a taxable person. The tax liability arises on the day of delivery of the service.

Nevertheless, this should always be assessed by a local tax advisor.

How are fees determined?

In determining the amount of administrative charges for the right to use numbers or for the right to use radio spectrum, TeleOff shall take into account the need to guarantee the optimal use of these resources.

In determining the amount of administrative charges for the right to use radio spectrum, TeleOff shall also take into account the amount of costs resulting from the rights and obligations specified in the individual authorisation for the use of radio spectrum pursuant to the AEC.

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

What governmental entity enforces telecom regulations?

Regulatory Authority for Electronic Communications and Postal Services (in Slovak: *Úrad pre reguláciu elektronických komunikácií a poštových služieb*)

What are the penalties for violating the law and/or regulation?

- Fines
- Prohibition from providing networks or services for a period of up to 24 months, depending on the gravity and duration of such breach

Is there a fine for violations?

Legal entity, natural person – entrepreneur:

The fine from EUR 200 up to 5 % / 10 % of the turnover for the previous accounting period (up to EUR 300,000 in case there is no turnover or its turnover cannot be calculated).

Other entity

Whoever is not an entrepreneur and violates or fails to comply with any of the obligations under Section 124 (1) to (3) of the AEC commits an offence; for this offence the TeleOff shall impose a fine of between EUR 200 and EUR 20,000.

In addition, pursuant to Section 264 of Slovak Criminal Act (in Slovak: *Trestný zákon*), violations of telecommunications secrecy can be punished with a fine or imprisonment of up to twelve years.

KEY CONTACTS

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SLOVENIA

Last modified 6 October 2022

OVERVIEW OF LEGAL LANDSCAPE

The Slovenian telecommunications market is subject to a stringent system of legal acts to provide a fair and competitive market in the telecommunications sector.

The competent authority/regulator in the telecommunications sector the Agency for Communication Networks and Services of the Republic of Slovenia (*Agencija za komunikacijska omrežja in storitve Republike Slovenije* – hereinafter referred to as "**Agency**") and, to a lesser extent, the Slovenian Ministry of Economic Development and Technology (*Ministrstvo za gospodarski razvoj in tehnologijo*).

The mainstay of relevant provisions within the Slovenian legal framework can be found in the Slovenian Electronic Communications Act (*Zakon o elektronskih komunikacijah*, hereinafter referred to as "**ZEKom-1**"). ZEKom-1 is expected to be amended in the near future by the new Slovenian Electronic Communications Act (*Zakon o elektronskih komunikacijah*), transposing the Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (EECC) into the Slovenian legal system.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Besides ZEKom-1, the following non-extensive list of legal acts includes provisions for the regulation of telecommunications:

- General Act on the radio frequency utilisation plan – NURF-4 (*Splošni akt o nartu uporabe radijskih frekvenc*)
- General Act on network and service security (*Splošni akt o varnosti omrežij in storitev*)
- General Legal Act on the conditions for the use of radio frequencies envisaged for amateur and amateur-satellite services (*Splošni akt o pogojih za uporabo radijskih frekvenc, namenjenih radioamaterski in radioamaterski satelitski storitvi*)
- General Act on the method for calculating fees for radio frequency usage (*Splošni akt o nainu izrauna plail za uporabo radijskih frekvenc*)
- General Act on the method for calculating fees for the use of numbering resources (*Splošni akt o nainu izrauna višine plail za uporabo elementov oštevilenja*)
- General Act on data transfer rates suitable for functional internet access (*Splošni akt o prenosni hitrosti, primerni za funkcionalen dostop do interneta*)
- Decree on the radio frequency band allocation plan (*Uredba o nartu razporeditve radiofrekvennih pasov*)

The key features of ZEKom-1 are:

- Prior to the commencement or alteration of the provision of public communications networks and/or public communications services, notification must be given in writing to the Agency (Article 5 of ZEKom-1)
- Specific provisions for the construction of networks and associated infrastructure (Part III of ZEKom-1)
- Special rules on expropriation and restriction of the right to property (Part IV of ZEKom-1)
- Special provisions on ensuring competition. To ensure competition under this chapter, the Agency may not request or receive instructions from other national authorities. The Agency may, with a view to promoting regulatory predictability, prepare and publish on its website multi-year regulatory strategies (Part VIII of ZEKom-1)
- Regulating of digital radio and television broadcasting (Part IX)
- Universal services, which are defined as a minimum set of services of specified quality available to all end users in Slovenia at an affordable price, regardless of their geographic location (Part X of ZEKom-1)
- Specific rights of users (Part XI of ZEKom-1)
- Special provisions on processing of personal data and protection of privacy of electronic communications. For example, service providers may only collect specific data from their subscribers as specified in the Article 148 (Part XII of the ZEKom-1)
- Cookies (Article 157 of ZEKom-1) and unsolicited communication (Article 158m of ZEKom-1) are specifically regulated
- Where personal data protection is violated, the public communications service provider must immediately inform the Agency (Article 159 of ZEKom-1)
- The provisions governing the operation of the Agency, the Agency's bodies and their powers, regulatory principles, competences of the Agency in the area of electronic communications, cooperation of the Agency with other bodies in the area of electronic communications etc. (Part XIV of ZEKom-1)
- Electronic Communications Council of the Republic of Slovenia, which is an advisory body in steering the development of electronic communications and in the protection of consumer interests in the area of electronic communications in Slovenia (Article 229 of ZEKom-1)

REGULATORY BODIES OR AUTHORITIES

Communications Networks and Services Agency of the Republic of Slovenia

Address: Stegne 7, 1000 Ljubljana, Slovenia

Telephone: +386 (0)1 583 63 00

Website: www.akos-rs.si

Ministry of Economic Development and Technology

Address: Kotnikova ulica 5, 1000 Ljubljana, Slovenia

Telephone: +386 (0)1 400 33 11

Website: www.gov.si

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

Article 4 of ZEKom-1 stipulates that any natural person or legal entity may provide electronic communications networks and/or electronic communications services, subject to certain conditions set out in ZEKom-1 and implementing regulations issued on the basis thereof and other applicable legislation.

An "**electronic communications network**" means a transmission system and, where applicable, switching or routing equipment and other resources, including inactive network elements, which permit the conveyance of signals by wire, by radio, by optical, or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, if they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed (Article 3 No. 3 of ZEKom-1).

Additionally, an "**electronic communications service**" is defined as a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but excluding services providing, or exercising editorial control over, content transmitted using electronic communications networks or electronic communications services. It does not, however, include information society services which do not consist wholly or mainly in the conveyance of signals on electronic communications networks (Article 3 No. 6 of ZEKom-1).

ZEKom-1 also sets out the conditions for the use of electronic communications equipment.

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

In Slovenia, the provision of telecommunication services is generally license-exempt, however, there is a mandatory written notification requirement to the Agency prior to the commencement or alteration of the provision of public communications networks and/or public communications services.

The notification referred to in the preceding paragraph must cite the following data required by the Agency, in particular:

1. name, address and tax number for natural persons,
2. company name, registered office, tax number and indication of the legal representative for legal entities,
3. brief description of public communications networks and/or public communications services, including a description of typical physical and environmental characteristics of the networks and facilities, and of the manner of their provision,
4. envisaged date of commencement or alteration of the provision of public communications networks and/or public communications services.

The Agency specifies the contents and form of the notification by way of a general act.

Radio frequencies in Slovenia are to be used on the basis of general authorisation arising from the general act referred to in Article 27 of ZEKom-1.

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

ZEKom-1 does not provide for any specific requirements for providers of telecommunication services to be domiciled in Slovenia whilst providing telecommunication services. Therefore, foreign entities are allowed to provide public communication networks and/or public communication services. To do so, a foreign entity would need to either:

- establish a branch office in Slovenia, or
- provide services directly in Slovenia (which would require the foreign entity to be registered in the Slovenian Tax Registry and obtain a Slovenian tax number).

Additionally, please note that the latter option is limited only to entities based in a Member State of the EU – conversely, as far as entities based outside of the EU are concerned, Articles 676 in conjunction with 680 of the Slovenian Companies Act (*Zakon o gospodarskih družbah*) stipulate that provision of services on a lasting basis requires establishment of a local branch office.

An establishment of a local branch would be required if the entity in question would not be based in the EU.

Nevertheless, a local entity might be required for the purposes of obtaining right of ownership in immovable property (provided earth stations will be built thereon), which depends on potential bilateral agreements/other regimes of the states concerned.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

ZEKom-1 provides for certain obligation regarding interconnection/roaming regulations as operators shall, by notification to the Agency, acquire the right to negotiate interconnection with other operators and obtain operator access or interconnection from them. Under certain terms and conditions, an operator may be designated as a universal service provider subject to Article 117 ZEKom-1

Additionally, operators of public communications networks have the right and/or obligation to negotiate amongst themselves contracts regarding interconnection for the provision of public communications services. Public communications network operators shall also provide other operators operator access and/or interconnection under conditions compliant with the obligations imposed by the Agency in accordance with Article 90 et. seqq. ZEKom-1.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

ZEKom-1 contains numerous provisions pertaining to customer protection. These provisions do not exclusively refer to the term "customer" but also to "consumers", "end-users" and "subscribers".

"Consumer" (*potrošnik ali potrošnica*) means any natural person using or requesting a publicly available communications service for purposes other than their trade, business or profession.

"End user" (*konni uporabnik ali konna uporabnica*) means a user not providing public communications networks or publicly available electronic communications services.

"Subscriber" (*naronik ali naronica*) means any natural person or legal entity which is a party to a contract with a provider of publicly available electronic communications services for the supply of such services.

Specific obligations relating to customer protection include, for example:

- The requirement to include certain minimum terms in contracts with subscribers (Article 129 of ZEKom-1)
- The initial minimum contract term of a contract with a subscriber may not exceed 24 months (Article 130 of ZEKom-1)
- The availability of number portability to all subscribers (Article 131 of ZEKom-1)
- Operators are encouraged to publish transparent, comparable, appropriate and up-to-date information on valid prices and tariffs, on all payments related to contract termination, and on general conditions of access to and use of publicly available electronic communications services by end users and consumers. Such information shall be published in a clear, comprehensive and easily accessible form (Article 132 of ZEKom-1)

- The obligation of providing free of charge and without the use of any means of payment to emergency call numbers (Article 134 of ZEKom-1)
- The obligation to take into account the interests of disabled users (Article 135 of ZEKom-1)
- Subscribers of publicly available telephone services shall have the right to be registered in the universal directory (Article 137 of ZEKom-1)
- The obligation to provide to subscribers itemised billing upon request (Article 139 of ZEKom-1)

REGULATORY TAXES AND FEES

There is no licensing requirement for the provision of telecommunication services *per se*, but Article 5 of ZEKom-1 sets forward a notification requirement which imposes fee amounts based on a percentage of annual revenues.

Standard value added tax of 22 per cent and corporate income tax of 19 per cent apply. The Slovenian VAT Act also provides for special provisions entities that are not established in Slovenia but provide telecommunications services to non-taxable entities.

Additional fees pertaining to the establishment of a branch office in Slovenia might apply (i.e., court registry registration, tax registry registration etc.).

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

Pursuant to Article 228 of ZEKom-1 the competent decision-making bodies for the enforcement of telecom regulations are the Agency and the Information Commissioner.

ZEKom-1 sets forward a various array of measures that can be taken by the competent decision-making bodies, whereas the predominant focus lies on administrative penalty provisions stating fines for minor offences (Article 232 et seqq.). The fines vary for legal persons, sole proprietorships, and individual who performs independent activities, ranging between EUR 1,000 to EUR 400,000 whilst also including fines for the respective responsible persons. Some fines are also calculated as a percentage of the total turnover generated in the public communications network and/or public communications services market in the respective financial year.

KEY CONTACTS

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SOUTH AFRICA

Last modified 21 November 2022

OVERVIEW OF LEGAL LANDSCAPE

The licensing framework for telecommunications is contained the Electronic Communications Act, 2005 ('ECA'). Licences are required for the provision electronic communications network services ('ECNS') and electronic communications services ('ECS') as well as for the use of radio frequency spectrum.

Telecommunications services in South Africa are regulated by the Independent Communications Authority of South Africa ('ICASA') which was established in terms of the Independent Communication Authority of South Africa Act, 2000 ('ICASA Act').

ICASA is an independent regulator charged with regulating the telecommunications, broadcasting and postal industries in the public interest and with ensuring the availability of affordable services of a high quality for all South Africans. It is responsible for licensing of services, prescribing regulations and for enforcing compliance with rules and regulations, protecting consumers from unfair business practices and poor quality services. Its mandate includes conducting inquiries and adjudicating disputes and complaints brought against licensees. ICASA has concurrent competition jurisdiction with the Competition Commission, a body established in terms of the Competition Act,1998. In most instances, ICASA's competition jurisdiction is secondary to that of the Competition Commission. However, in terms of section 67 of the ECA, ICASA is specifically authorised to define markets and impose appropriate pro-competitive licence conditions on licensees which it determines have significant market power.

The function of the Minister of Communications ('Minister') is to develop legislation and to make policies on matters of national policy applicable to the ICT sector that are consistent with the objects of the ECA and related legislation. ICASA is obliged to consider, but not necessarily implement, Ministerial policies in executing its regulatory mandate.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The ECA

The ECA provides for the regulation of electronic communications in the public interest based on a technologically neutral licensing framework. The primary policy imperative underlying the ECA is the facilitation and implementation of a simplified, flexible regulatory regime which recognises and accommodates the convergence of new technologies, platforms and services and promotes the development of interoperable and interconnected networks.

The ECA delineates the respective roles of ICASA and the Minister. It contains provisions broadly governing: licensing; access to facilities; infrastructure rights such as way-leaves; the management and assignment of radio frequency; markets and competition; interconnection; facilities leasing; type approvals; consumer protection; and promotion of universal service and access.

Regulations prescribed by ICASA pursuant to the provisions of the ECA cover: facilities leasing; interconnection; call termination rates; type approvals; numbering; number portability; labelling of equipment; license fees; consumer protection, ownership and control of licences; standard terms and conditions; and procedures for applying for licences and for licence exemptions.

The ICASA Act

The object of the ICASA Act is to establish an independent authority for the regulation of broadcasting, electronic communications and postal services for the public benefit. As an independent regulator, ICASA is subject only to the Constitution of South Africa and is required to perform its functions without fear, favour or prejudice, free from political or commercial interference.

The ICASA Act enumerates the powers and functions of ICASA and its chairperson. It also delineates the respective roles of ICASA and the Competition Commission. The ICASA Act permits ICASA to hold inquiries into matters within its remit and sets out the procedures for conducting these inquiries. The ICASA Act also establishes the Complaints and Compliance Committee ('CCC'). The CCC is an independent body tasked with dealing with matters referred to it by ICASA and with complaints.

The *ICASA Compliance Procedure Manual Regulations,2011* ('Compliance Procedure Manual Regulations') prescribed in terms of the ICASA Act impose extensive reporting obligations on licensees. In terms of the Compliance Procedure Manual Regulations, licensees must submit prescribed reports on compliance with regulations relating to universal service, E-rates, tariffs, and codes of conduct for customers and persons with disabilities. Licensees are also required to submit annual financial statements to ICASA.

Other relevant legislation

Other legislation which it is relevant to the telecommunications sector includes:

- **The Regulation of Interception of Communications and Provision of Communication-related Information Act,2002 ('RICA')**: RICA sets out a lawful intercept regime and details the obligations of electronic communications service providers in relation to cooperating with law enforcement authorities and the storage of traffic data. Electronic communication service providers are required to verify the identity of the consumer prior to providing services. Consumer information and documents must be retained by the service provider for the periods specified in RICA.

- **The Electronic Communications and Transactions Act, 2002 ('ECT Act')**: The ECT Act exempts any person who provides information system services from liability for damages if that person acts as an mere conduit, caches data, or provides hosting services, if the applicable provisos contained in the ECT Act are met.

- **The Competition Act 89,1998**: The Competition Act legislates against anti-competitive practices such as collusion and cartels. The Commission, established in terms of the Competition Act, enforces the provisions of the Competition Act. ICASA and the Competition Commission have concurrent jurisdiction in the telecommunications sector. Subject to ICASA's section 67 powers, the Competition Commission has primary authority to detect and investigate past or current commissions of alleged prohibited practices in the communications sector and to review mergers within the sector. ICASA may not take any action where a matter has already being dealt with by the Competition Commission. On 29 August 2019, ICASA and the Competition Commission signed a Memorandum of Agreement ('MOA') setting out the principles of cooperation and interaction when dealing with complaints, mergers and when making determinations regarding the effectiveness of electronic communications markets and significant market power in those markets. Where a merger requires the approval of both the Competition Commission and ICASA the MOA requires that the Competition Commission and ICASA consult with each other and that they each make independent determinations based on their respective legislative mandates.

- **The Films and Publications Act,1996**: This Act requires internet service providers ('ISPs') and others to register with the Films and Publications Board ('FPB'). ISPs are required to take reasonable steps to prevent the use of their services for the hosting or distribution of child pornography. An amendment to the Films and Publications Act in October 2019, effective from 1 March 2022 imposed new obligations on persons providing child orientated services via mobile cellular phones or the internet and controversially places an obligation on service providers to prohibit the distribution through any medium of any film, game or publication, which amounts to propaganda for war, incites imminent violence or advocates hate speech.

- **The Consumer Protection Act, 2008 ('CPA')**: The CPA is applicable to the telecommunications sector as it does not include electronic communications services among the categories of services that are exempted from its application. For the purposes of the CPA a 'consumer' includes natural persons and juristic persons with an asset value or turnover which equals or exceeds a threshold of ZAR 2 million. The CPA recognises the role of regulators in promoting and safeguarding consumer interests. To this end, the CPA authorises the National Consumer Commission ('NCC') to enter into agreements with regulatory authorities such as ICASA. In terms of a Memorandum of Understanding concluded in 2016, the NCC and ICASA have agreed to liaise on matters of common interest.

- **Cybercrimes Act, 2020** ('CCA') : The CCA creates cybercrime as a criminal offence under South African law, and defines a number of specific types of cybercrime. The CCA places an obligation on the holders of ECNS and ECN licences to report any cybercrimes committed via their network or services, to the South African Policer Services.

REGULATORY BODIES OR AUTHORITIES

ICASA

Physical Address:

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Email:

General enquiries: info@icasa.org.za

Consumer complaints: consumer@icasa.org.za

International relations: international@icasa.org.za

Website:

www.icasa.org.za

COMPETITION COMMISSION

Physical Address:

The DTI Campus, Mulayo (Block C), 77 Meintjies Street, Sunnyside, Pretoria

Postal Address:

Private Bag x23, Lynwood Ridge, 0040

Telephone:

+27 (0)12 394-3200 / 3320

Email:

ccsa@compcom.co.za

Website

www.compcom.co.za

NATIONAL CONSUMER COMMISSION

Physical Address:

Building C - South African Bureau of Standards Campus (SABS), 01 Dr. Lategan Road, Groenkloof, Pretoria

Telephone:

NCC Call Centre: 012 428 7000

Email:

Enquiries: Enquiries@thencc.org.za

New complaints: Complaints@thencc.org.za

Website:

www.thencc.gov.za

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

Licences are required to provide ECS and ECNS unless an exemption applies.

Facilities leasing and interconnection agreements between licensees are subject to regulatory requirements and approval by ICASA.

A radio frequency spectrum licence is required to make use of radio frequency spectrum. Type approval is required for electronic communications facilities and equipment. Numbers from the national numbering range are managed and allocated by ICASA.

Further particulars regarding these regulatory requirements are set out below.

Electronic Communications Network Services

The ECA defines ECNS as a service whereby a person makes available an electronic communications network ('ECN'), whether by sale, lease or otherwise:

- for that person's own use for the provision of an electronic communications service or broadcasting service;
- to another person for that other person's use in the provision of an electronic communications service or broadcasting service; or

- for resale to an electronic communications service licensee, broadcasting service licensee or any other service contemplated by the Act.

An ECN is defined in the ECA as being a system of electronic communications facilities and, in line with the technologically neutral licensing framework, there is no restriction on the types of facilities and systems that can be used for the conveyance of electronic communications. These may include, but are not limited to, satellite systems, fixed and mobile systems, fibre-optic cables, and electricity cable systems.

Electronic Communications Services

The ECA defines ECS as any service provided to the public, sections of the public, the State, or the subscribers to such service, which consists wholly or mainly of the conveyance by any means of electronic communications over an ECN, but excludes broadcasting services. An operator who holds an ECS licence may provide services to customers over its own or a third party's network.

It is helpful to consider the following fundamental distinctions between these ECS and ECNS types:

- **Wholesale vs. retail**: An ECNS licensee wholesales network capacity to ECS licensees or other ECNS licensees for resale, but it does not deal with the public. An ECS licensee, on the other hand, offers retail services to the public (and may also provide wholesale services for resale to third parties).

- **Physical vs. virtual networks:** An ECNS licensee operates physical networks made of facilities such as fibre or base stations. An ECS licensee operates virtual networks such as VPNs and MPLS networks.

Radio Frequency Spectrum

The ECA vests the control of radio frequency spectrum in ICASA. Unless exempted, no person may make use of radio frequency spectrum without a licence. *The National Radio Frequency Plan, 2021* ('National Radio Frequency Plan') allocates the electromagnetic spectrum to radio services in the frequency bands between 8.3 kHz and 3000 GHz. All frequency assignments must be in accordance with the current version of the national radio frequency plan. Only ECNS licensees may apply for a radio frequency spectrum licence in terms of the Radio Frequency Spectrum Regulations. The National Radio Frequency Plan takes into account the International Telecommunications Union ('ITU') spectrum allotments for radio frequency spectrum use.

Radio Apparatus

Unless exempted, no person may possess radio apparatus without a radio frequency spectrum licence. This applies to all persons and not just to licensees and exempted persons. Apparatus that have low power applications are generally exempted from the radio frequency spectrum licence requirement.

Type Approval and Labelling

No person may possess, use, supply, sell or lease any type of electronic communications equipment, facility, or radio apparatus used (or to be used) in connection with the provision of electronic communications unless that equipment, facility or radio apparatus has been type approved by ICASA. in accordance with the *Type Approval Regulations, 2013* ('Type Approval Regulations'). These regulations apply to all persons (including retailers and importers) and not just to electronic communication service providers and exempted persons. Guidelines relating to type approvals have also been published in the Government Gazette.

ICASA is authorised by the ECA to prescribe the types of equipment, facilities and radio apparatus and the circumstances in which type approval is not required. In this regard, low power devices operating on FM Band II are exempt from licensing and type approval.

ICASA generally recognises type approval given by international standards organisations such as the European Telecommunications Standards Association.

All equipment that has been type approved and received type approval certificate must have a label permanently affixed thereto reflecting ICASA's logo and the type approval reference number. Electronic labels may also be installed in products with a built-in display which is integral to the equipment. The labelling requirements set out in the *Labelling Regulations, 2013*. New regulations were published in March 2022, which are not in force yet.

Number Allocation

The ECA requires that ICASA maintain and manage a national numbering plan consisting of geographic and non-geographic numbers. Only individual ECS licensees may apply for numbers from the national numbering plan for use in conjunction with mobile, fixed line and VoIP voice services. Numbers are regarded as a national resource and are not owned by a licensee. Conditions apply to the allocation of numbers. These conditions as well as application procedures are set out in the *Numbering Plan Regulations, 2016*.

Number Portability

ICASA introduced number portability as a consumer protection initiative in 2005. The *Number Portability Regulations, 2005*, were published under the Telecommunications Act in 2005 as were the *Functional Specifications for Mobile Number Portability*. The *Functional Specifications for Geographic Number Portability* were published in 2007.

New regulations, namely the Number *Portability Regulations, 2018* and the Order*ing System Specification for Number Portability, 2019* have been gazetted and these replaced and repealed the existing regulations on 7 March 2022.

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

Service Licences

Unless exempted, no person may provide ECS or ECNS without a licence. Depending on the scope of the services, either an individual or class service licence will be required. Applications for licenses will not be considered unless the applicant is a South African citizen (in the case of a natural person) or a juristic person registered in South Africa and which has its principal place of business in South Africa.

The ECA requires that ICASA must, in granting any service licence, ensure that the services, viewed collectively, are provided by persons or groups of persons from a diverse range of communities in South Africa. ICASA is also required to promote broad-based black economic empowerment when considering licence applications.

An application for an individual licence may only be made in response to an Invitation to Apply ('ITA') issued by ICASA. ICASA may only issue an ITA pursuant to a Ministerial policy direction. It is unlikely that an ITA will be issued for either individual ECS or individual ECNS in the foreseeable future.

Applicants for individual licences must demonstrate to ICASA that at least 30% of the applicant is owned by historically disadvantaged individuals. The term "historically disadvantaged individuals or groups" is not defined in the ECA or the ICASA Act or any regulations but it is taken to include black people, women, the youth and people with disabilities.

The processes and procedures applicable to individual ECNS licence applications are contained in the *Regulations regarding the Processes and Procedures for Applications for an Individual Licence to Provide Electronic Communications Network Services, Electronic Communications Services and Broadcasting Services and for Temporary Special Authorisations and Matters Pertaining Thereto, 2008*.

The standard terms and conditions applicable to individual ECNS licensees are contained in the *Regulations Regarding Standard Terms and Conditions for Individual Licences, 2010*. An individual licence endures for twenty years and the licence may be renewed upon application to ICASA. ICASA may refuse to grant the application for renewal if the ownership and control of the applicant by historically disadvantaged persons is less than 30%.

A class licence may be obtained by registration and application can be made at any time. The processes and the procedures applicable to the registration of class licences are contained in *Processes and Procedures for Applications for an Individual Licence to Provide Electronic Communications Network Services, Electronic Communications Services and Broadcasting Services and for Temporary Special Authorisations and Matters Pertaining Thereto, 2008*. ICASA is required to process the application within 30 days unless it notifies the applicant otherwise. The standard terms and conditions applicable to class licences are set out in the *Regulations Regarding Standard Terms and Conditions for Class Licences, 2010*. A class licence endures for ten years and a licensee can apply to have its licence renewed upon application. ICASA's decisions are not contingent upon ownership by historically disadvantaged persons.

The requirements for individual and class service licences are elaborated upon below:

- **Individual ECNS licence (issued for 20 years):** An individual ECNS licence is required for ECNs of provincial and national scope operated for commercial purposes.

- **Class ECNS licence (issued for 10 years):** A class ECNS is required for ECNS of district municipality or local municipal scope operated for commercial purpose South Africa has 48 district municipalities and 231 local municipalities as well as 7 metropolitan municipalities.

- **Individual ECS (issued for 20 years):** An individual licence is required to provide ECS that consists of voice telephony utilising numbers from the national numbering plan. An individual service licensee may provide all forms of electronic communications in addition to voice telephony and there is no is restriction on the geographical scope of the services. It is the use of numbers from the national numbering plan that triggers the individual licence requirement. An individual ECS licensee can make use of its own ECN if it holds the requisite ECN licence or it can enter into agreements with third party ECNS licensee to carry the services to the customer.

- **Class ECS (issued for 10 years):** A class licence is required to provide ECS that does not make use of numbers from the national numbering plan. This licence allows the holder to provide the same services as those authorised in terms of and individual ECS licence, including voice services. As is the case with individual ECS licensees, a class ECS licensee can make use of its own ECN if it holds the requisite licence or it can enter into agreements with third party ECNS licensees to carry the services to the customer.

Radio Frequency Spectrum Licences

Absent an exemption, no person may make use of the radio frequency spectrum without a licence issued by ICASA. The Radio Frequency Spectrum Regulations, mentioned above, are applicable.

A standard application procedure is applicable to radio frequency spectrum used for the services listed in annexure C to the Radio Frequency Spectrum Regulations. These include amateur radio, frequencies above 40 GHz, microwave point to point, citizen band radio and satellite bands direct links.

An extended application procedure is required for all other radio frequency spectrum licences and for frequency bands which are the subject of an ITA. An ITA will be published where ICASA determines that the radio frequency spectrum concerned is insufficient to meet demand.

Radio frequency spectrum licences that are the subject of an ITA are awarded on a competitive basis. An applicant for a radio frequency spectrum licence that is the subject of an ITA will be disqualified unless it can show that it has a minimum 30% equity ownership held by persons from historically disadvantaged groups or is a level 4 Broad-Based Black Economic Empowerment contributor.

Service Licence Exemptions

The ECA permits ICASA to prescribe regulations regarding the types of ECNS, ECNs, and ECS that may be provided without a licence. ICASA may also prescribe the radio frequency spectrum that may be used without a licence.

In terms of the *Regulations Regarding Licence Exempt ECN, ECNS and ECS, 2008,* ('Licence Exemption Regulations') the following persons providing ECS may apply for a licence exemption:

- persons providing ECS on a non-profit basis;
- resellers of ECS obtained from a licensed ECS; and
- persons providing an ancillary service (i.e. a retail service which incorporates ECS elements that do not constitute the major purpose, utility or value of the retail services, for example, tracking, alarm and similar services).

In terms of the Licence Exemption Regulations, the following ECNs are exempt from licensing:

- small electronic networks, provided that small electronic networks must use frequencies that are licence exempt; and
- private electronic networks.

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

The ECA requires that applicant for a licence in terms of the ECA must show that it is a South African citizen (in the case of a natural person) or that it is be registered in South Africa with its principal place of business located within South Africa. If a foreign entity wishes to apply for a licence it will, at the very least, need to incorporate a local entity in South Africa. There are however provisions in the ECA and its regulations that effectively prevent foreign entities from acquiring ownership and control of more than 70% of an individual licensee.

If a foreign entity wishes to apply for an individual licence, that foreign entity must, in addition to incorporating a local company, ensure that at least 30% of the local company is owned and controlled by historically disadvantaged individuals or groups. This shareholding requirement also will apply if a foreign owner wishes to take transfer of an existing individual licence.

If a foreign entity's acquisition of shareholding in an individual licensee results in a change of control of that licence, ICASA will need to be satisfied that 30% of the licensee is still owned and controlled by historically disadvantaged individuals if permission for the transfer is to be granted. If the acquisition of equity in an individual licence does not result in a change of control then ICASA need only be notified of the change in shareholding after the transaction has been concluded. ICASA may however require a copy of the shareholder agreement and affidavits from the parties to satisfy itself that the acquisition did not in fact amount to a change of control.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Interconnection Regulations

ECNS and ECS licensees must, upon request, interconnect to any other ECA licensee and to exempted persons requesting interconnection. The processes for requesting, negotiating and enforcing interconnection agreements are contained in ICASA's pro-competitive *Interconnection Regulations, 2010* ('Interconnection Regulations'). In general, interconnection must be provided on a non-discriminatory basis as between comparable types of licences and must be of the same standard and quality as provided by a licensee to itself. All interconnection agreements concluded pursuant to the Interconnection Regulations are filed with ICASA and are available for public inspection. An interconnection agreement does not become binding until approved by ICASA. ICASA is empowered to adjudicate interconnection agreement disputes that are referred to it in terms of the Interconnection Regulations.

Call Termination

The *Call Termination Regulations, 2014* ('Call Termination Regulations') are aimed at remedying market failure in the wholesale call termination markets. Following a review of the fixed and mobile wholesale call termination markets ICASA has imposed procompetitive conditions on Telkom SA SOC Limited ('Telkom') in the fixed termination markets and on both MTN (Pty) Ltd ('MTN') and Vodacom (Pty) Ltd ('Vodacom') in the mobile termination markets.

In terms of the Call Termination Regulations, Telkom, MTN and Vodacom are required to publish a reference interconnection offer that complies with the requirements set out in the Call Termination Regulations. These licensees are also subject to cost-based pricing control. The maximum termination rates are specified in the regulations. Between 1 October 2019 and 30 September 2020, Telkom may charge no more than R0.07 for termination to a fixed location and Vodacom and MTN may charge no more than R0.10 for termination to a mobile location. From 1 October 2020, Telkom may charge no more than R0.06 and Vodacom and MTN may charge no more than R0.09 for termination to a mobile location. ICASA is required to review the effectiveness of the procompetitive terms as well as the prescribed termination rates when it deems necessary but may not do so before 1 October 2021.

Call termination rates aside, tariffs are not tightly regulated. It is a requirement that all licensees lodge their tariffs with ICASA prior to offering a service and that the tariffs be made known to the public. Only Telkom's year on year increases are limited by regulation.

Roaming

Roaming is not defined in the ECA although it does fall within the definition of ECNS. There are no regulations directly applicable to roaming or to the conclusion of roaming agreements. In practice, roaming agreements are concluded between the ECNS service providers on commercial terms and payment is made by one network operator to the other network operator for the services utilised by its subscribers. Roaming agreements are not subject to regulatory approval and are not made publicly available.

Facilities Leasing

In terms of the ECA, ECNS licensee must, on request lease electronic communications facilities to any other person licensed or exempted in terms of the ECA. The *Electronic Communications Facilities Leasing Regulations, 2010* ('Facilities Leasing Regulations') prescribe, in terms very similar to those in the Interconnection Regulations, the processes for requesting, negotiating and enforcing facilities leasing agreements. The Facilities Leasing Regulations require that facilities leasing be provided on a transparent and non-discriminatory basis. Facilities leasing agreements only become enforceable when approved by ICASA. Facilities leasing agreements are made publicly available. ICASA is empowered to adjudicate facilities leasing agreement disputes that are referred to it in terms of the Facilities Leasing Regulations.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

One of the primary objects of the ECA is to promote and safeguard the interests of consumers with regard to price, quality and variety of licensed services. In furtherance of this objective and as required by the ECA, ICASA has published a number of regulations aimed at advancing and protecting the rights of consumers. These include:

- ***Regulations Drafted in Terms of Section 4 Read with Section 76, 2008***: These are more commonly known as the known as the 'Emergency Call Regulations'. Amongst other things, provision is made for a 112 emergency call centre in these regulations.

- ***Carrier Pre-selection Regulations, 2010:*** The ECA requires that ICASA prescribe carrier pre-selection regulations and these regulations were accordingly prescribed in 2010. Carrier pre-selection has not however been implemented in South Africa.

- ***End User and Subscriber Service Charter Regulations, 2016:*** These regulations impose a wide range of obligations on licensees that are aimed at ensuring that consumer rights are protected. In addition to satisfying the requirements of these regulations, licensees must file periodic reports with ICASA to show continued compliance with the regulations

- ***Regulations in Respect of the Code of Conduct for Electronic Communications and Electronic Communications Network Services Licensees, 2007:*** Licensees are required, amongst other things, to develop a code of conduct intended to safeguard and promote the interests of consumers. The code of conduct must include the key commitments enumerated in the regulations and must be displayed at the licensee's business premises and on its website. In addition to complying with the requirements of these regulations, licensees must file periodic reports with ICASA to show continued compliance.

- ***Code on People with Disabilities, 2007:*** These regulations set out the basic standards applicable to licensees in order to ensure that their services are accessible and available to people with disabilities. Licensees are required to file periodic reports with ICASA to show compliance with these regulations.

- ***Regulations in Terms of Section 4 read with Section 73 of Electronic Communications Act in Respect of E-Rate, 2009:*** These regulations are more commonly known as the e-rate regulations. These regulations oblige licensee to provide internet services to schools at discounted rates. Annual compliance reports must be filed with ICASA.

- **Number Portability Regulations**: ICASA, as required by the ECA, prescribed number portability regulations in 2005. As mentioned above, new regulations came into force in March 2022.

In addition to the above regulations, ICASA has established a Consumer Advisory Panel to advise it on matters relating to consumer issues. Consumers may also lodge complaints against licensees with the CCC.

The Consumer Protection Act is applicable to the provision of telecommunications services. Complaints regarding the provision of services licensed under the ECA can be lodged with either ICASA or the NCC.

REGULATORY TAXES AND FEES

Annual licence fees are payable in accordance with the terms of the *ICASA General Licence Fee Regulations, 2013*.

Annual service licence fees for both class an individual service licensees are calculated using the following formula:

Pa = R x B

Where:

Pa = payable annual licence fee

R= revenue from licence services

B = applicable percentage as set out in the following table:

Licence Revenue (R)	Percentage applied (B)
0 -50 000 000	0.15%
50 000 001 -100 000 000	0.20%
100 000 001 -500 000 000	0.25%
500 000 001 -1 000 000 000	0.30%
1 000 000 001 -and above	0.35%

Revenue is defined in terms of international accounting standards. The calculation of the amount due must supported by audited financial statements (Fees can be paid quarterly or annually, and late payments are subject to stringent interest penalties and fines for non-compliance.

Licensees are further required to pay an annual contribution to the Universal Service and Access Fund - an entity set up by Government to fund development of services in rural areas - amounting to 0.2% of annual turnover derived from licensed services.

The following fees are payable in respect of initial licence applications, applications to amend or renew or transfer licences. The fees applicable to applications to transfer a licence are also applicable to applications for approval for a change of control of a licensee.

APPLICATION TYPE	FEE (ZAR)
INDIVIDUAL ECS AND ECNS LICENCES	
Initial applications for licences	As specified in the ITA
Applications for the amendment of licences	ZAR 69,409
Applications for renewal of licences	ZAR 6,941
Applications for transfer of licences	ZAR 69,409
CLASS ECS AND ECNS LICENCES	

Initial applications for licences	ZAR 13,881
Applications for the amendment of licences	ZAR 6,941
Applications for renewal of licences	ZAR 6,941
Applications for transfer of licences	ZAR 6,941

Application fees for radio frequency spectrum licences are specified in the Radio Frequency Spectrum Regulations. Application fees for radio frequency spectrum that is the subject of an ITA will be specified in the ITA. Other fees, including annual fees, are specified in the Radio Frequency Spectrum Licence Fee Regulations, 2010.

Fees for type approvals and numbers are specified in the applicable regulations.

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

The CCC is required, in terms of the ICASA Act, to investigate, and hear (if appropriate), and make findings on: all matters referred to it by ICASA; complaints received; and allegations of non-compliance with applicable law. Once the CCC has made a finding, ICASA may, based on the recommendations made by the CCC, impose fines and issue directions to the licensee.

If the licensee has been found to be repeatedly in violation of ECA, applicable regulations or its licence conditions, ICASA may revoke or suspend its licence.

Most of the regulations that require compliance on the part of licensees make provision for penalties and fines. In most instances, a maximum fine is specified and ICASA has the discretion to impose a lesser fine or no fine at all. Certain contraventions are treated as offences which may result in imprisonment.

Presently, the highest maximum fines that are contained in the Call Termination Regulations and the End-User and Subscriber Service Charter Regulations. These regulations allow ICASA to impose a maximum fine of ZAR 5 million or 10% of the licensee's annual revenue for every day of non-compliance with the regulations, whichever is greater.

In terms of the Type Approval Regulations any person that offers for sale or possesses, with the intention to sell, any equipment (including but not limited to radio apparatus) that is not type approved is guilty of an offence and is subject to imprisonment of 6 months and/or is liable to a fine not exceeding ZAR1 million.

In terms of the Radio Frequency Spectrum Regulations, which postdate the Type Approval Regulations, a person who is in possession of radio apparatus may be found guilty of an offence and, upon conviction, may be imprisoned for not less than 6 months but no more than 24 months and/or be held liable to a fine of not less than ZAR250,000. A person found in unauthorised possession of a radio blocking device may be subject, on conviction, to imprisonment of not less than 12 months and/or liable to a fine of not less than ZAR 250,000 but not exceeding ZAR 5 million. Any person that contravenes the terms and conditions of their radio frequency licence is subject to a fine not exceeding ZAR 5 million.

Failure to comply with the provisions of the Interconnection Regulations or the Facilities Leasing Regulations may result in a fine of up to ZAR 500,000.

Failure to comply with certain provisions of the RICA Act may result in fines of up to ZAR 5 million and to imprisonment of up to 10 years, as well as licence revocation.

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SPAIN

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OVERVIEW OF LEGAL LANDSCAPE

The regulatory framework for electronic communications adopted by the Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code was recently transposed to the Spanish legal framework (June 2022) by means of the Spanish General Telecommunications Act 11/2022 which supersedes the Spanish Telecommunications Act 9/2014 (in force since 9 May 2014). This main regulation is supplemented by various regulations which refer to, amongst others, the use of spectrum in Spain, frequency allocation, the obligations of electronic communication services providers or rights of end users.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Currently, the primary piece of legislation governing the telecoms industry in Spain is the Spanish Telecommunications Act 9/2014 (the 'Spanish Telecommunications Act').

The following subordinate legislation may also impact the provision of communication services and the operation of communication networks:

- The Spanish Royal Decree 424/2005, approving the rules on the conditions for the provision of electronic communications, universal service and consumers' protection
- The Spanish Royal Decree 2296/2004, of 10 December, approving the Regulations on electronic communication markets, access to networks and numbering
- The Spanish Royal Decree 899/2009, of 22 May, which approves the rights of the electronic communication services users
- The Spanish Royal Decree 123/2017, of 24 February, approving the Regulations on the use of the public radioelectric domain
- Order ETD/1449/2021 of 16 December approving the National Frequency Allocation Table

In addition to this, the following legislation may also impact the provision of communication services and the operation of communication networks:

- General Data Protection Regulation ('GDPR')
- The Spanish Competition Act 15/2007 ('Spanish Competition Act')
- The Spanish Royal Legislative Decree 1/2007 approving Consumer Protection Act ('Spanish Consumer Protection Act')

The key features of the Spanish Telecommunication Act are to:

- Protect recipients of communication services, making sure that telecommunication providers comply with the regulatory requirements set forth in the applicable regulations
- Ensure that telecommunication services are provided in a competitive market
- Ensure the principle of universal service, namely that affordable basic telephony services should be available to everyone

REGULATORY BODIES OR AUTHORITIES

The Spanish regulatory authorities for telecommunication matters are the Directorate for Telecommunications of the Spanish Commission for the Markets and Competition (*Comisión Nacional de los Mercados y la Competencia or the CNMC*) and the State Secretariat for Telecommunications and Digital Infrastructures (*Secretaría de Estado de Telecomunicaciones e Infraestructuras Digitales*), part of the Ministry of Economic Affairs and Digital Transformation.

Comisión Nacional de los Mercados y la Competencia

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

Under the Spanish Telecommunications Act, there are two types of telecommunications services providers:

- Providers of electronic communication services
- Providers of electronic communication networks

(together, the 'Services')

As detailed below, providing those Services is subject to having previously been registered before the Spanish Telecoms Operators Registry of the CNMC.

Telecommunication services are provided in Spain on the basis of free competition and, therefore, no prior license is required unless the company providing services requires the use of radio electric public domain (spectrum) for the effective provision of services. In this case, license/permits must be obtained from the Ministry of Economic Affairs and Digital Transformation covering the allocation of spectrum, the deployment of telecoms infrastructure and operations using such infrastructure.

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

As indicated before, successfully completing a registration process before the Spanish Telecoms Operators Registry is required prior to providing the Services in Spain. Besides being registered, an additional regulatory authorisation or licence is not requested unless the allocation of spectrum or the deployment of telecom infrastructure using such spectrum is required to provide electronic communication services.

By completing the registration process, any operator will be qualified as a 'telecommunication operator' in Spain, and shall be legally entitled to start providing the Services.

In order to successfully complete this registration process, certain administrative and technical documentation shall be submitted to the CNMC, as follows:

Administrative documentation

Application form: the legal representative signing this form shall be empowered to act on behalf of the company, as representative of the operator before the CNMC. A copy of the relevant Power of Attorney shall be attached to the application form.

Corporate information of the company that aims to be registered as a telecom operator: This includes the incorporation deed, Tax Identification Number, powers of attorney, etc. If it is not a Spanish company, all such documents shall be duly legalised, apostilled, and translated (sworn translation).

Technical information

Description of the network to be used including the following information:

- Brief description of the engineering and network design including:
  - Territorial coverage scope
  - Information on whether the network is owned by the operator or by others (wholly or partially)
  - Information on whether the network implementation requires the occupation of public domain or private property
  - Information on whether the network implementation requires the occupation of radio spectrum
  - Information on whether the network shall provide the support service for broadcasting services (radio/TV)
  - Explanatory block diagram to facilitate the description
- Type of technology or technologies that shall be used
- Security and confidentiality measures to be implemented in the network
- Confirming the particular type of communication network which is to be operated

Description of the service to be supplied:

- Functional description of the services including:
  - Complementary block diagram to facilitate the description of the services, including the technology that shall be used
  - Information on whether the network used is owned by the operator or by others. In the event that their own network is used, the technical documentation listed above (in 'description of the network to be used including the following information') shall be also submitted
  - Territorial scope of the provision of services

- Commercial information of the services to be provided
- Indicate the specific type of telecommunication services to be provided

The notification shall also include a statement from the operator's representative stating that the operator meets all legal requirements set forth in any applicable provisions.

In order to successfully complete this registration process, operators should be registered within 15 working days following CNMC's analysis of the documentation submitted by the operator. The CNMC will only be entitled to dismiss a registration request in the case where the operator has not provided the completed information requested.

After registration, the operator must communicate its intention to continue providing the registered services in Spain at the end of each 3 year period.

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

From a regulatory standpoint, it is not required to have a permanent establishment or legal residence in Spain in order to be registered in the Spanish Telecoms Operators Registry or being granted with the use of radio-electric public domain in Spain. Any entity located within the EU territory is entitled to be registered in the Spanish Telecoms Operators Registry (provided that the administrative and technical requirements described in Registration / licensing are met) and request the allocation of spectrum in Spain.

However, a legal representative in Spain should be designated for notification purposes.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Interconnection: The interconnection principle is set forth by the Spanish Telecommunications Act, establishing the right to have access to network resources in order to provide electronic communication services.

Roaming: Roaming regulations in Spain are provided by the Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union which renews the Regulation (EU) No 531/2012.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

In addition to the principles and obligations set forth in the Spanish Telecommunication Act, there are other regulations regarding consumer protection principles, which will also be applicable to telecommunication operators registered before the Spanish Telecoms Operators Registry and providing telecoms services involving consumers.

The main piece of legislation in Spain regarding consumer protection matters is the Spanish Consumer Protection Act.

It should be noted that the provisions and principles in connection with consumer protection (set forth in the Spanish Telecommunication Act) will prevail from the principles set forth in the Spanish Consumer Protection Act, which will only be applicable on a subsidiary manner.

Moreover, the Spanish Data Protection Law will also be applicable to operators responsible for collecting and processing the personal data of consumers in Spain, who will be considered data controllers.

REGULATORY TAXES AND FEES

General Operators' Fee

The registration with the CNMC entails the payment of this annual fee, based on the operator’s gross revenues but limited to a maximum of one per thousand (1/1000) of the annual gross income generated by the operator.

Fee for Reservation of the Radio-electric Public Domain

This fee must be paid annually by the entity granted with the license on a pro rata basis according to the number of years for which the license has been granted.

The calculation of this fee is made by the Ministry using a formula contained in Law 22/2021, of 28 December, on the General State Budget for the year 2022: *T = [N × V] / 166,386= [S (km2) × B (kHz) x F (C1, C2, C3, C4, C5)] / 166,386*. This formula applies several parameters:

- the degree of use and congestion of the different bands and in the different geographical areas;
- the type of service for which the reservation is intended to be used and, in particular, whether it carries public service obligations;
- the spectrum band or sub-band to be reserved;
- the equipment and technology to be used; and
- the economic value derived from the use or exploitation of the reserved public domain.

Telecommunications Fees

Finally, there are other minor fees to be satisfied as a consequence of the submission of: (i) applications to be granted with a license to use the radio-electric public domain, or (ii) applications to obtain the authorization to commence operations with telecommunications infrastructure. These fees **must be paid before sending the applications** described and attach the proof of payment to the formal application.

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

The infringement of the provisions of the Spanish Telecommunications Act may result in the imposition of fines by the State Secretariat for Telecommunications and Digital Infrastructures and/or CNMC to the entity as well as its directors/officers /representatives depending on the severity of the conduct:

- **Very serious infringements** can be sanctioned with fines amounting up to EUR 20 million and potential disqualification up to 5 years for the operation of electronic communications networks or the provision of electronic communications services. If the CNMC is competent to decide on the infringement, the fine can be up to five times the gross profit obtained from the infringement. In this case, fines for directors/officers/representatives can be up to EUR 60,000. In the case of very severe breaches, additional penalties such as the operator being disqualified from offering the Services in Spain for 5 years

- **Serious infringements** can be sanctioned with fines amounting up to EUR 2 million. If the CNMC is competent to decide on the infringement, the fine can be up to two times the gross profit obtained from the infringement. Fines for directors/officers/representatives can be up to EUR 30,000.

- **Minor infringements** can be sanctioned with fines amounting up to EUR 50,000. Fines for directors/officers /representatives can be up to EUR 5,000.

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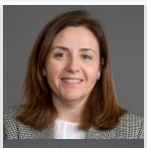

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SWEDEN

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OVERVIEW OF LEGAL LANDSCAPE

In order to promote functioning competition and to ensure a nationwide efficient infrastructure, the telecommunications market in Sweden is subject to certain regulation mechanisms.

Applicable national and European legislation aims at opening the telecommunications markets and creating equal competition conditions. The Swedish Telecommunications Act (*Lag 2022:482 om elektronisk kommunikation - LEK*) provides the Swedish Post and Telecommunications Agency (*Post-och Telestyrelsen - PTS*) with ample regulatory instruments to foster effective competition.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Provisions relating to the regulation of telecommunications are found in the LEK as well as in various other regulations. These include:

- Electronic Communications Regulation (*Förordning (2022:511) om elektronisk kommunikation*)
- National internet domain names act (*Lag (2006:24) om nationella toppdomäner för Sverige på Internet*)
- Regulation about support for telephony and Internet accessibility measures (*Förordning (2018:20) om stöd för åtgärder som ger tillgång till telefoni och funktionell tillgång till internet*)
- Act on measures to support broadband network roll-outs (*Lag (2016:534) om åtgärder för utbyggnad av bredbandsnät*)
- Regulation on measures to support broadband network roll-outs (Förordning *(2016:538) om åtgärder för utbyggnad av bredbandsnät*)
- Act on information security for socially critical and digital services (*Lag om informationssäkerhet för samhällsviktiga och digitala tjänster (2018:1174)*)
- Protective security act (*Säkerhetsskyddslagen (2018:585)*)
- Protective security regulation (*Säkerhetsskyddsförordningen 2018:658)*)
- Act about radio equipment (*Radioutrustningslagen (2016:392)*)
- Regulation about radio equipment (*Radioutrustningsförordningen (2016:394)*)

The key features of the LEK are:

- Any person operating a public telecommunications network on a profit-oriented basis or providing a publicly available telecommunications service on a profit-oriented basis shall notify the PTS without undue delay of their intention to provide, or of their ceasing to provide the activity and/or any changes in their undertaking (Chapter 2, Section 1 LEK)

- The PTS has the power to put in place market regulation measures regarding markets which lack effective competition and to impose measures on undertakings having significant market power (Chapter 5 LEK)

- Specific customer protection provisions - eg pertaining to price transparency and information obligations prior to concluding contracts with customers (Chapter 7 LEK)

- Regulation of services that are society universal - eg requirements on pricing (Chapter 6 LEK)

- The granting of frequencies and numbers (Chapter 4 LEK)

- Provisions pertaining to the processing of traffic data and integrity protection. In particular, it regulates that operators must delete or anonymise traffic data when no longer needed for the transmission of an electronic piece of communication, with certain exemptions (Chapter 9 LEK)

- Provisions pertaining to the competence and powers of the PTS. Eg the PTS may access facilities and premises where activities covered by the LEK are carried out, resolve certain disputes between operators and impose sanctions on operators that breach the LEK (Chapters 11 and 12 LEK)

REGULATORY BODIES OR AUTHORITIES

Post- och telestyrelsen

Address: Hälsingegatan 38, 113 43 Stockholm, Sweden

Telephone: +46 (0)8 678 55 00

Website: www.pts.se

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

The LEK distinguishes between providers of telecommunications networks and providers of telecommunications services. These categories are then further sub-divided into public and private providers.

A 'telecommunications network' is defined in the LEK as a system for transmitting, connecting and directing signals, including passive network parts and other resources, by wire, radio, optical or other electromagnetic means, including satellite networks, fixed and mobile terrestrial networks, electricity cable systems (to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed) (Chapter 1, Section 7 LEK).

A 'telecommunications service' is defined as a service normally provided against remuneration using telecommunications networks and that – excluding firstly services that constitute the supply of content that is transmitted through telecommunications networks or communications services and secondly services that entail editorial responsibility for such content – are internet connectivity services, interpersonal communications services or services that wholly or partially involve the transmission of signals (Chapter 1, Section 7 LEK).

In addition to operators of telecommunications networks and telecommunications services, the LEK covers also certain other usage of radio equipment (Chapter 1, Section 2 LEK).

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

Providers of publicly available electronic communications networks that are generally provided against remuneration and publicly available electronic communications services may only provide networks or services of these kinds following a notification to the PTS. This does however not apply to communications services that are number-independent or certain program content (such as in radio, TV or other similar media) that is covered by the Swedish constitutional right to freedom of speech (Chapter 2, Section 1 LEK).

A notification does not suffice, however, where applicable provisions require an express authorisation for carrying out other activities. For instance, radio transmitters may only be used in Sweden following an authorisation (Chapter 3, Section 1).

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

From a telecommunications law perspective, there is no requirement for a provider of telecommunications services to be domiciled in Sweden prior to, or during, the provision of services. However, the LEK includes certain general requirements about the consideration that should be given to Swedish national security when applying the LEK, which may require consideration to be given to the domiciliate of certain providers of communications services and networks (Chapter 1, Section 1 LEK).

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Operators of publicly available telecommunications networks are required to negotiate interconnectivity with operators that provide or intend to provide a publicly available telecommunications services that are not number-independent interpersonal communications services (Chapter 5, Section 1 LEK).

In addition, the PTS has the power to impose obligations, upon request, on public telecommunications network operators that control access to end-users and that provide a telecommunications network or service that must be notified to the PTS to enable interconnectivity or other measures that enable end-users to reach each other or to make their services interoperable with other operators' services (Chapter 5, Section 3 LEK). Similar powers apply to number-independent interpersonal communications services with significant geographical coverage or with a significant number of users (Chapter 5, Section 4 LEK).

Further, the PTS has the power to impose certain obligations on public telecommunications network operators with significant market power. Those obligations may include, among others: (i) transparency obligations relating to technical specifications, network properties (Chapter 5, Section 12 LEK), (ii) non-discrimination obligations to provide equal terms to equal opposite parties (Chapter 5, Section 13 LEK), and (iii) inter-connectivity obligations to provide others with access to certain parts of its network (Chapter 5, Section 16 LEK).

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The LEK contains numerous provisions pertaining to customer protection which cannot, for the most part, be excluded. These provisions do not exclusively refer to the term 'customer' but also to 'consumers', 'end-consumers', 'end-users', 'subscribers' and 'invoice recipients'.

"User" means a user of a publicly available telecommunications service (Chapter 1, Section 7 LEK).

"**End-user**" means a user that is not operating a public telecommunications network or providing a publicly available telecommunications service (Chapter 1, Section 7 LEK).

"Subscriber" means those individuals that have concluded a contract with an operator of a publicly available telecommunications service about receipt of such services (Chapter 1, Section 7 LEK).

Specific obligations relating to customer protection include:

- The requirement to inform consumers about contract terms (Chapter 7, Section 1 LEK)
- The initial minimum contract term of a contract with a consumer may not exceed 24 months (Chapter 7, Section 8 LEK)
- The obligation to provide to subscribers itemised billing upon request free of charge (Chapter 7, Section 29 LEK)
- The obligation to take into account the interests of disabled end-users (Chapter 7, Section 37 LEK)
- The availability of number portability to all subscribers (Chapter 7, Section 19 LEK)

REGULATORY TAXES AND FEES

Chapter 14 of the LEK empowers the PTS to impose certain fees on operators that must notify the PTS about their telecommunications network or telecommunications service (among certain others). These fees include administration fees to cover the PTS' costs for dealing with regulatory matters, annual fees and a specific fee to finance measures against peacetime threats and stresses.

On the basis of the LEK, the PTS has implemented fee regulations (*Post- och telestyrelsens föreskrifter om avgifter*). These fee regulations are generally updated annually. Simplified, the administrative fees constitute fixed amounts while the annual fees and the fees to finance measures against peacetime threats are based on the turnover of the operator, although certain revenue thresholds apply below which no fees are payable.

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

The LEK provides for various measures which are at the PTS' disposal to enforce the applicable telecommunications regulations. These measures include formal information requests, investigations, seizures and the prohibition of business operations.

Breaches of the LEK can also trigger penalties (Chapter 12 LEK). The penalties range from fines between SEK 5,000 to SEK 10,000,000. Other violations can trigger criminal liability which can lead to fines or imprisonment of up to six months.

KEY CONTACTS

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UKRAINE

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OVERVIEW OF LEGAL LANDSCAPE

The telecoms market is mainly regulated by the Law of Ukraine "On Electronic Communications" No. 1089-IX dated 16 January 2020 ("**Electronic Communications Law**") and subordinate documents of the National Commission for the State Regulation of Electronic Communications, Radiofrequency Spectrum and the Provision of Postal Services ("**NCEC**") and, for the time being, Administration of the State Service of Special Communications and Information Protection of Ukraine ("**Administration of SSSC**").

On 1 January 2022 the Electronic Communications Law entered into force and replaced the Law of Ukraine "On Telecommunications" as of 18 November 2003 No. 1280-IV ("**Telecom Law**") and the Law of Ukraine "On Radio Frequency Source of Ukraine" as of 01 June 2000 No. 1770-III ("**Law on RFR**"). The Electronic Communications Law aims to harmonize Ukrainian and EU legislation in telecom sector and implements the main provisions of the European Electronic Communications Code.

The secondary legislation in telecom sector setting various technical requirements, licensing procedures etc. has not been brought in compliance with the Electronic Communications Law yet.

The NCE is the state regulatory authority in the field of electronic communications, radio frequency spectrum and provision of postal services.

Administration of SSSC is an authority responsible for the development and implementation of state policy in the areas of special communications, information security, cybersecurity and telecommunications. It is planned that in six months following the end of the martial law (which is currently in effect till 23 August 2022, but is likely to be extended) the authorities of the Administration of SSSC with regard to electronic telecommunication policy will be transferred to the Ministry of Digital Transformation of Ukraine.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The regulatory framework for the Ukrainian telecom market is mainly established by Electronic Communications Law, which outlines the rights, obligations and liabilities of the market players, as well as regulates the usage of radio frequency spectrum.

In addition to the Electronic Communications Law, the following legislation (and subordinate legislation sitting underneath) also impacts the provision of communication services and the operation of communication networks:

- Rules for Provision and Receipt of Telecommunications Services, approved by the Regulation of the Cabinet of Ministers of Ukraine as of 11 April 2012 No. 295;
- Plan for Use of Radio Frequency Resource of Ukraine, approved by the Decree of the Cabinet of Ministers of Ukraine as of 09 June 2006 No. 815;

- Basic Requirements to the Agreement on Provision of Telecommunications Services approved by the Decision of NCCIR as of 29 November 2012 No. 624;
- Procedure for Maintenance of the Register of Operators, Providers of Telecommunications, approved by the Decision of the NCCIR as of 1 November 2012 No. 560; and
- License Terms and Conditions for Use of Radio Frequency Resource, approved by the Decision of NCCIR as of 19.08.2005 No. 53.

However, the abovementioned secondary legislation are outdated and still refer to the Telecom Law and/or the Law on RFR which are no longer in force. The NCEC and the Administration of SSSC are currently developing amendments to such regulations bring them into compliance with the Electronic Communications Law.

REGULATORY BODIES OR AUTHORITIES

The legal status and the authorities of the regulatory bodies are established by:

- the Electronic Communications Law;
- the Law of Ukraine "On the National Commission for the State Regulation of Electronic Communications, Radiofrequency Spectrum and the Provision of Postal Services" No. 1971-IX dated 16 December 2021;
- the Law of Ukraine "On the State Service of Special Communications and Information Protection of Ukraine" No. 3475-IV dated 23 February 2006; and
- the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Regulation on the Administration of the SSSC" No. 411 dated 3 September 2014.

Cabinet of Ministers of Ukraine (CMU)

CMU is the government of Ukraine. Under the Electronic Communications Law the CMU is responsible for enforcement of state policy in the sphere of electronic communications and radiofrequency resource. The CMU coordinates ministries, approves the national plan of development of broadband telecommunication networks, approves and amends the radiofrequency spectrum plan, ensures proper conversion of the radiofrequency spectrum, approves the rules of provision of electronic communication services, determines the fees for radiofrequency licenses and develops other secondary legislation in the electronic communications sphere etc.

General Staff of the Armed Forces of Ukraine (General Staff)

General Staff regulates the usage of the radiofrequency spectrum by the special users (i.e. military users and other state bodies defined by the law). Among other things, the General Staff takes part in the development and approval of the radiofrequency spectrum plan, radiofrequency conversion plan, issues permits for the importation of radio electronic devices by special users etc.

NCE

NCE is a state body, which exercises powers of a licensing, regulatory and state controlling authority in the fields of e-communications, radio frequency spectrum and provision of postal services.

Among other things, the NCE has the following responsibilities:

- to exercise state supervision over the activities of providers of electronic communications services and networks;
- to administer various telecom registers (register of providers of electronic communications services and networks, radio frequency spectrum register, equipment register etc.) and an electronic regulatory platform;

- to regulate and to license the use of the radio frequency spectrum and to determine the terms and conditions of the licenses;
- to allocate, assign, and account for the numbering resource, to issue and withdraw permits, and supervise the use of the numbering resource;
- to define the relevant telecom markets, conduct an analysis of these markets, determine providers with significant market power and impose special regulatory obligations on them;
- to regulate cooperation between providers through network interconnection, including traffic transmission services;
- to carry out out-of-court settlement of disputes between consumers and/or providers, as well as out-of-court settlement of disputes over access to infrastructure.

Address: 3, Solomianska Str., Kyiv 03110, Ukraine; website: www.nkrzi.gov.ua

Administration of SSSC's main responsibilities include:

- Setting technical specifications to telecom networks; and
- Defining the list of technical means which may be used in public telecommunication networks.

Administration of the SSSC includes the National Centre for Operational and Technical Management of Telecommunications Networks, which is responsible for managing the telecommunication networks during the martial law or the state of emergency.

Address: 13, Solomianska Str., Kyiv 03680, Ukraine; website: cip.gov.ua

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

All legal entities and individuals involved in provision or consumption of electronic communication services. provision of or access to electronic communication networks, ensuring competition in the market, use of spectrum or numbering resource as well as protection of services users are subject to regulation under Electronic Communications Law.

The Electronic Communications Law defines the "*electronic communication network*" as a set of technical means of electronic communications and facilities designated for the provision of electronic communication services, and "*electronic communication service*" as a service where acceptance and/or conveyance of information is performed via electronic communications networks.

The list of electronic communication services was approved by the NCEC on 20 April 2022 and includes:

- internet access services;
- broadband Internet access service;
- interpersonal electronic communication services using numbering;
- interpersonal electronic communication service without the use of numbering;
- signal transmission service in electronic communication networks for inter-machine interaction;
- signal transmission services in electronic communication networks for IoT;
- signalling services in electronic communications networks for the provision of channels, VPNs, etc.

- signalling services in electronic communications networks for broadcasting;
- maintenance and operation of electronic communication networks and others.

The list is not exhaustive.

The Electronic Communications Law differentiates between the following market players:

1. operators of electronic communications ("**Operators**") – the business entities (i.e., legal entities and individual entrepreneurs) which operate and manage the electronic communication networks. In case of provision of electronic communication networks/services the operator is also considered to be a provider of electronic communication networks /services respectively;
2. providers of electronic communication services – the business entities which actually provide or have the right to provide electronic communication services on their own networks and/or on the networks of other providers;
3. providers of electronic communication networks – the business entities which provide services of access to electronic communication networks owned by them, as well as to the related equipment or using the virtual networks;
4. consumers and end users of electronic communication services; and
5. manufacturers, importers and/or other suppliers of technical means of electronic communications.

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

Activities in the field of electronic communications are carried out on the basis of general authorization, except for cases when the radio frequency resource and/or numbering resource is used.

Under the Electronic Communications Law business entities (i.e., legal entities and individual entrepreneurs) that intend to conduct activity as the providers of electronic communication services or networks ("**Providers**") shall submit to NCEC a notification on the commencement of activities in the area of electronic communications (in a form approved by NCEC) within a month following commencement of such activities. The NCEC shall add respective information to the Register of providers of electronic communication networks and services based on said notification.

If the Provider intends to use the radio frequency spectrum, then the Provider shall additionally obtain a license from the NCEC to use spectrum.

If the Provider intends to use the numbering resource, it shall obtain a permission from the NCEC to use the numbering resource.

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

Only residents of Ukraine – legal entities and private entrepreneurs – may be registered as providers of electronic communication services or networks.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Ukrainian telecom regulations provide for a number of technical, organisational and economic requirements regarding the interconnection between operators. Among other things, the requirements are as follows:

- Providers shall comply with the technical requirements established for electronic communication networks;

- Providers shall ensure the interconnection of electronic communication networks in all technically possible places with the bandwidth necessary for the quality provision of electronic communication services;
- Providers shall not create obstacles to interconnection;
- Interconnection is to be negotiated between the concerned operators according to the established procedure under law;
- Agreement on interconnection shall be in written form in accordance with the mandatory requirements for such agreements established by NCEC; and
- Economic conditions and tariffs for interconnection, as well as tariffs for traffic transmission services, are to be calculated in accordance with the procedure approved by NCEC.

NCEC may impose additional obligations on those providers recognized by NCEC as having significant market power, such as transparency, non-discrimination, and separate accounting/bookkeeping for certain interconnection activities.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Providers shall provide electronic communication services to consumers on the basis of an agreement. Such an agreement shall be concluded in accordance with the rules for the provision and receipt of electronic communication services, which are currently approved by the Decree of the Cabinet of Ministers of Ukraine dated 11 April 2012, No. 295. Since these rules were adopted on the basis of the Telecom Law that is no longer valid, it is expected that they will be amended to comply with the Electronic Communications Law.

Also, under the Electronic Communications, all consumers in Ukraine have the right to receive so-called "universal electronic communication services" of the quality established by the law and at the affordable price. The universal electronic communication services include fixed broadband internet access services and fixed voice communication services.

Moreover, the Electronic Communications Law obliges the Providers to:

- provide free of charge services of calling and connection with operational dispatch services that receive emergency calls;
- publish complete information about electronic communication services in an accessible format. Such information should be regularly updated;
- take measures to ensure stable functioning of electronic communication networks, which are used to provide electronic communications services in emergency situations, state of emergency and martial law.

Under the Electronic Communications Law, Operators/Providers are also obliged to protect data about:

1. a customer obtained as a result of conclusion of the agreement;
2. telecommunications services that te customer has obtained (the scope and volume of services, routes of data transmission, etc); and
3. data about the location of the customer's end user equipment.

Such data can only be transferred if required by the law or subject to the customer's prior written consent.

In addition, personal data protection requirements must also be complied with.

REGULATORY TAXES AND FEES

Taxes

Providers pay corporate profit tax (CPT), value added tax (VAT), personal income tax (PIT), unified social security contribution (USSC) and some other taxes and duties.

VAT

VAT is chargeable on the value of telecommunication services provided in Ukraine. The standard 20% VAT rate applies. VAT does not apply if services are rendered abroad,

CPT

Providers pay corporate profit tax at the standard rate of 18%. The CPT base should be determined as the financial result before tax for the reporting period adjusted by tax differences.

PIT

Providers must withhold personal income tax at the rate of 18% and military levy at the rate of 1.5% from the income payable to their employees.

USSC

USSC shall be paid by the Providers at the rate of 22% of the income payable to their employees. USSC is paid at the cost of the Operators and Providers of telecommunication services. Maximum USSC is set as 22% of 15 minimum salaries and is thus currently capped by USD 604 per month per employee.

Radio frequency rent

Those Providers which use radio frequency when rendering telecommunication services, and which obtained the respective authorisations, shall pay rent for their use of radio frequency. The base for rent payment is calculated by reference to radio frequency bandwidth. The rent shall be calculated by the Providers based on the fixed rate established in the Tax Code of Ukraine and which depends on the type of radio connection, radio spectrum and bandwidth.

Pension Fund duty

Those Providers which provide mobile communication services are liable for transferring to the budget a 7.5% Pension Fund duty calculated based on the value of mobile communication services. Duty is included in the price of mobile communication services and is paid by customers as part of the price.

Fees

Provision of electronic communication services

As mentioned above the Providers shall send the notification to the NCEC about the commencement of such activities in the area of electronic communications (in a form approved by NCEC) within a month following commencement of such activities. The NCEC shall adds respective information to the Register of providers of electronic communication networks.

There is no fee for submission of such notification and for inclusion of the information into the Register.

Allocation of the numbering resource

Operators are obliged to pay a fee for the allocation of numbering resources. The amount of the fee depends on the type of numbering resource (e.g. the national identification code of the mobile communication network).

Use of radio frequency resource

Depending on the type of radio connection, range of radio spectrum and region of Ukraine, there are different fees for obtaining a licence for the use of radio frequency resource. In case the license is obtained via the auction, the fees/cost of obtaining such license may be higher.

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

Compliance bytelecom market players with the requirements of telecommunications laws is controlled by NCEC by means of its inspections and review of regulatory reports submitted by Operators/Providers.

The Electronic Communications Law envisages the financial sanctions/penalties for the following offences:

Offence	**Sanction / Penalty**
Carrying out activities in the field of electronic communications without submitting a notification about the commencement of activities or using the licensed radio frequency spectrum without a license	Confiscation of all proceeds received as a result of such activities (or a fine in the amount of approx. USD 4,600 in case it is impossible to determine the proceeds)
Non-fulfilment or improper fulfilment by the significant market power provider of regulatory obligations imposed on it based on the results of market analysis	A fine in the amount of 0,5% of revenue from activities which are subject to regulatory obligations
Non-disclosure or provision of false reports or other information required by the Electronic Communications Law	A fine in the amount from approx. USD 450 to USD 2,300
Violation of the traffic routing procedure or use of the numbering resource without permission	A fine in the amount of approx. USD 4,600
Violation of the requirements for provision of electronic communication services to consumers	A fine in the amount from approx. USD 450 to USD 2,300
Failure to comply with an order to eliminate violations of legal requirements, unmotivated refusal to conduct an inspection, failure to provide documents and information necessary for state supervision	A fine in the amount from 0,5% to 0,3% of revenue received in the last reporting year preceding the year in which the fine is imposed, or a fine in the amount from approx. USD 1,400 to 4,600
Failure to comply with the requirements of officials of NCEC to eliminate radio interference	A fine in the amount of approx. USD 900

The repeated commitment of the above offences may lead to increases of the amounts of the fines.

Amounts of collected administrative and economic sanctions are transferred to the State Budget of Ukraine.

Also, in case of significant incompliances of Provider's business activity with regulatory requirements NCEC may exclude the Provider from the Register, annul the license(s) for the use of the radio frequency spectrum and/or permit(s) for the use of the numbering resource (e.g., incompliance with the orders of the National Centre for Operational and Technical Management of Telecommunications Networks, unauthorized transfer of the radiofrequency license, repeated offences etc.).

KEY CONTACTS

UNITED ARAB EMIRATES

Last modified 6 October 2022

OVERVIEW OF LEGAL LANDSCAPE

The United Arab Emirates ("UAE") is a regional business hub and, increasingly, a technology hub, for international telecommunications and ICT providers interested in the UAE and the wider Gulf region.

Many international telco operators have established branches either 'onshore' in the UAE, or in one of its purpose built 'free zones', such as Dubai Internet City or Dubai Media City. However, such branches are limited in what they can do, particularly within the UAE. For example, they cannot offer public telecommunications services in the UAE, as the UAE is effectively a closed market, limited by a policy of duopoly regarding infrastructure based services. At the time of providing this update there is one MVNO service provider currently offering services in the UAE through one of the existing network based operators. In order for international operators to provide services to entities in the UAE they will need to do so through contractual arrangements with one or both of the UAE's licensed operators in order to provide 'last mile' services in to the UAE.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The United Arab Emirates has a Federal Telecommunication Law.

The Telecommunications Law:

- Establishes a regulatory authority, now called the Telecommunications and Digital Government Authority ("**TDRA**")
- Requires that a company hold a telecommunications licence in order to provide public telecommunications services and operate public telecommunications networks
- Makes the provision of unlicensed services punishable by fine or imprisonment

Arabic language prevails, although the TDRA's website publishes an English translation of the Telecommunications Law and Regulations.

The UAE currently has a policy of a duopoly market for public telecommunications services.

REGULATORY BODIES OR AUTHORITIES

The Telecommunications and Digital Government Regulatory Authority ("**TDRA**") regulates the telecommunications sector in the UAE.

One of the TDRA's main prerogatives is to foster sustainable competition in the UAE's telecommunications sector. The UAE's TDRA is also involved in cyber security, and hosts the UAE's Computer Emergency Response Team, as well as managing an ICT development fund.

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

The UAE's Telecommunications Law defines 'Telecommunications Services' as:

'...the service of transmitting, broadcasting, switching or receiving by means of a Telecommunications Network of any of the following:

- Wired and wireless telecommunications
- Voice, music and other sounds
- Visual images
- Signals used in radio and TV broadcasting
- Signals used to operate or control any machinery or apparatus
- The installation, maintenance, adjustment, repair, replacement, moving or removal of apparatus which is or will be connected to a Public Telecommunications Network
- The construction maintenance and operation of networks for telegraph, telephone, telex, leased circuits, domestic and international data networks, Internet and Wireless Transmission
- Any other Telecommunications Services approved by the Board'

Entities that wish to provide Telecommunications Services in the UAE should be established in the UAE. However, apart from certain specific licenses that have been issued, and certain exceptions allowing the provision of certain limited "over the top" services (see our comments on VoIP in Key sanctions and penalties), the UAE government has a policy of duopoly for the provision of public telecommunications services, which means that in practice it is not possible to obtain such licenses.

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

A licence is required from the TDRA in order to provide public telecommunications services to and within the UAE.

Currently there are only two operators licensed to provide public telecommunications services to and within the UAE via telecommunications networks. There is currently one MVNO operator in the UAE, however the TDRA does not otherwise appear to be currently issuing further licences for public telecommunications services or networks.

A number of other licences have been issued to specific entities for specific purposes eg, for certain satellite services and PAMR services.

In March 2018 the TDRA published a Regulatory Policy regulating the provision of Internet of Things. This requires that IOT Service Providers should register with the TDRA.

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

Only entities that are established pursuant to a decision issued by the TDRA Board may hold a licence to provide Public Telecommunications Services within the UAE.

A number of international telecoms operators have established branch offices within free zones in the UAE in order to market their international services within the UAE, or to act as bases for their regional operations.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The TDRA does have powers to issue ex ante regulations and conduct ex post investigations.

The TDRA has conducted market reviews and has taken steps to issue ex ante regulation against the licensed operators.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The TDRA actively regulates consumer protection and has recently issued a consolidated and updated Consumer Protection Regulation, which can be found here.

REGULATORY TAXES AND FEES

Licensees are required to pay licence fees and royalties.

Certain corporate taxes do apply to 'on shore' entities in the UAE. Many free zones do not charge taxation for a specific period of time. Each company and individual should assess their tax obligations on a case-by-case basis.

On 1 January 2018 the UAE introduced a 5% Value Added Tax to goods and services in the UAE.

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

Provision of illegal public telecommunications services, including the provision of IOT Services without being adequately certified by the TDRA, and possibly the provision of VoIP services, can carry a risk of criminal prosecution, resulting in fines and imprisonment.

The UAE's licensed operators may also take steps to block access to certain services they consider to be in breach of the Telecommunications Laws.

The TDRA has taken issue in the past with certain OTT services that were not susceptible to lawful interception. However, since the Covid pandemic, the TDRA has relaxed its position on the provision of VoIP in the UAE to a degree, and has published a list of those service providers who may provide limited VoIP services here.

KEY CONTACTS

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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.
- 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 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).

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

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.

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

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

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.

REGULATORY TAXES AND FEES

Licensee's 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

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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UNITED STATES

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OVERVIEW OF LEGAL LANDSCAPE

In the United States, interstate telecommunications are regulated at the Federal level by the Federal Communications Commission (FCC) and intrastate telecommunications are regulated by the state public utility commissions/public service commissions. The FCC also regulates, but to a lesser extent, Voice Over Internet Protocol (VoIP), which, according to the FCC, is a jurisdictionally mixed service.

All 50 states and the District of Columbia regulate intrastate telecommunications, including intrastate portions of VoIP service. There is great variation in telecommunications regulation under state law. However, all states generally require telecommunications providers to register with the state public utility/service commission, some require particular types of carriers to file tariffs for applicable services, and about half of the states requires carriers to contribute to state universal service funds and other similar programs. Additionally, some states and many localities collect emergency 911 fees.

The states do not have jurisdiction over either information services or wireless services, both of which are inherently interstate.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The Communications Act of 1934, as amended (the Act), authorizes the Federal Communications Commission (FCC) to regulate telecommunications, cable, wireless, satellite and other similar services in the US. Please see Chapter 5 of Title 47 of the United States Code (47 U.S.C § 151 et seq.)) and 47 C.F.R Chapter I, the rules of the FCC implementing the Act.

REGULATORY BODIES OR AUTHORITIES

The Act authorizes the FCC to regulate and license telecommunications services and the use of the radio spectrum, as well as to enforce the Act.

Where not pre-empted by the Act, state public utilities commissions/public service commissions regulate intrastate telecommunications, including by requiring a state authorization.

Either the US Congress (through the Act) or the FCC has designated certain non-governmental or quasi-governmental entities with the authority to administer and audit compliance with certain programs. For example, the Universal Service Administrative Corporation (USAC) is authorized by the Act to administer the Universal Service Fund (USF), which subsidizes telephone and broadband services in rural and high-cost areas and to low-income individuals, and Internet service to schools and libraries. USF is supported by the revenue contributed by telecommunications carriers and other providers of telecommunications. USAC is authorized to audit contributor compliance with the FCC rules on USF contributions. USAC also makes disbursements from the USE programs to service providers qualifying for support.

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

The FCC regulates:

- Telecommunications services generally and some Voice over Internet Protocol (VoIP) offerings
- Submarine cables
- Wireless services including, but not limited to, commercial mobile wireless, private mobile wireless, microwave, and satellite through rules on licensing, technical requirements, and interference applicable to both commercial, private, and non-commercial spectrum users (ie local governments/public safety) except Federal government agencies
- TV and radio broadcast services
- Experimental radio services
- Access to telecommunications, advanced communications services, cable/video programming, and customer premises equipment for people with disabilities
- Intercarrier compensation for the exchange of traffic
- Use and protection of customer information by telecommunications carriers
- Cable television (but not "Over the Top" streaming services) rates at the basic level
- Equipment authorizations for both intentional and unintentional emitters of radio frequencies

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

Entities are authorized to provide domestic telecommunications services in the US pursuant to a Section 214 authorization, which is automatically granted by the FCC upon registration with the FCC (and USAC). There is no requirement to renew a Section 214 authorization.

Entities seeking to utilize the radio spectrum to provide domestic telecommunications service must apply for and obtain a radio license for the frequencies to be used before commencing service. Providers of licensed wireless, broadcast or satellite services are required to operate consistent with the terms of their FCC license and applicable FCC rules, including those limiting operating parameters to protect against interference. Licensees providing commercial mobile radio services are classified as telecommunications carriers. Radio licenses are term-limited and must be renewed to permit continued operation beyond the license term.

Entities seeking to provide telecommunications services between the United States and any foreign point must apply for and obtain an international Section 214 authorization from the FCC before commencing service. There is no requirement to renew a Section 214 authorization.

Telecommunications carriers must obtain an FCC Registration Number (FRN).

Telecommunications carriers and other providers of telecommunications must file an FCC Form 499-A registration with USAC prior to commencing service and contribute to USF pursuant to the revenue reported in quarterly filed Form 499-As.

FCC radio licenses and Section 214 authorizations generally may not be transferred or assigned except with the prior approval of the FCC (internal reorganizations and involuntary bankruptcy being exceptions). Approval of applications for license transfers or assignments may occur as rapidly as overnight or can take many months, depending on the nature of the license(s), the competitive issues raised, and whether foreign ownership is involved. Some state laws also require approval by the state's respective public service/utilities commission prior to the transfer of control or assignment of state telecommunications authorizations.

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

With respect to non-wireless services, there are no outright prohibitions on foreign telecommunications carriers serving US customers and no requirement for foreign carriers to hold the Section 214 authorization through a US subsidiary. However, an applicant for Section 214 authority that is a foreign telecommunications carrier, an entity that is affiliated with one or more foreign carriers, and/or an entity with a 10% or greater direct or indirect foreign owner, generally will experience a more rigorous and much longer application process often taking six months or more. This is because the FCC will refer such application to an interagency review body called Team Telecom to review the application with respect to national security, law enforcement, foreign policy, and trade concerns. Team Telecom is comprised of officials from the Department of Justice, Department of Homeland Security, Federal Bureau of Investigation, Department of Defense, and potentially other agencies. Team Telecom will typically seek more information from the applicant regarding its ownership (particularly foreign ownership), affiliates, the nature of the facilities and equipment used, the provisioning of services, the protection of customer data, network security, and how the applicant will respond to law enforcement service of process. The FCC will not act on the application until Team Telecom indicates it has no objection to the grant. In some cases, the applicant may be asked to execute a network security agreement or take other mitigating measures to address potential concerns. On rare occasions, Team Telecom may object, in which case the FCC will generally not grant the license application.

The Communications Act does impose foreign ownership limitations on radio licenses. Section 310 of the Act prohibits any radio license from being held by a foreign government or its representative. Commercial mobile radio licenses, broadcast licenses, certain types of aeronautical licenses are subject to additional restrictions. These restrictions prohibit such licenses from being held by any foreign entity and any US corporation with more than 20% direct foreign ownership or voting power. In addition, where an application for a commercial mobile radio, broadcast, or aeronautical license has indirect non-controlling foreign ownership of 20% or more or indirect controlling foreign ownership of 25% or more, the FCC will refer the application to Team Telecom for review. The FCC will not act until the executive agencies indicate no objection.

Telecommunications common carriers, providers of interconnected VoIP and non-interconnected VoIP are required to have an agent in Washington, DC to receive service of process related to FCC matters (47 U.S.C. § 413; see also 47 C.F.R. § 1.47(h)).

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Telecommunications carriers are required to interconnect facilities and equipment with other carriers in order to exchange traffic. Generally, interconnection is negotiated between telecommunications carriers. State public service/public utilities commissions approve interconnection agreements and adjudicate interconnection disputes between carriers. Carriers are required to pay various forms of intercarrier compensation for the exchange of traffic.

Providers of wireline local exchange service are sometimes required to file intrastate tariffs with state public service/public utilities commissions pursuant to state law. Carriers file interstate tariffs for a decreasing number of legacy services with the FCC.

Mobile wireless service providers enter into roaming agreements with each other in order to allow customers to receive service outside of their home network. Providers of commercial mobile data services must offer data roaming arrangements on commercially reasonable terms and conditions, subject to certain limitations.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The FCC has adopted numerous consumer protection rules, which generally do not apply to telecommunications services provided to enterprise/business customers or to wholesale services provided to other carriers.

FCC consumer protection rules include:

- The protection of telecommunications proprietary information generally and customer privacy by telecommunications carriers (including both wireline and wireless) based upon the requirement under the Act to protect and hold confidential, Customer Proprietary Network Information (CPNI), which is defined as:

  - 'Information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information. Subscriber list information is the information in a telephone directory' (47 U.S.C. § 222)

- The FCC Truth-in-Billing policy, which applies to telecommunications services offered to consumers and is designed to improve consumers' understanding of their telephone bills. Among other things, the rules require that a telephone company's bill must:
  - Be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered
  - Identify the service provider associated with each charge
  - Clearly and conspicuously identify any change in service provider
  - Contain full and non-misleading descriptions of charges
  - Identify those charges for which failure to pay will not result in disconnection of the customer's basic local service
  - Provide a toll-free number for customers to call in order to lodge a complaint or obtain information (47 C.F.R § 64.2401)
- The regulation by the FCC of the process for switching a consumer's telecommunications carrier in order to protect against unauthorized changes (47 C.F.R §§ 64.1100 - 64.1190)
- Telemarketing including using robocalls, robotexts, and auto-dialers
- Access to telecommunications services and equipment by persons with disabilities, including hearing aid compatibility, access to advanced communications services and equipment, access to Internet browsers built into mobile phones, telecommunications relay services, and accessible video programming and video programming apparatus

REGULATORY TAXES AND FEES

Telecommunications carriers and other providers of telecommunications are required to pay various regulatory fees and surcharges. These fees and surcharges, however, are not classified as 'taxes' and must clearly be distinguished from taxes on any invoice.

Specifically, a telecommunications carrier must contribute to the Universal Service Fund, absent an applicable exemption. The current contribution factor for USF is approximately 25% of qualifying interstate revenues.

Telecommunications carriers and other providers of telecommunications may be required to pay contributions to Telecommunications Relay Service, Local Number Portability (LNP), and the North American Numbering Plan Administrator (NANP) for numbering resources (invoiced following registration with USAC). It is permissible under FCC rules to pass these contributions and fees through to end user customers.

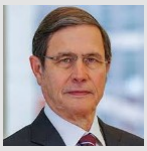
Telecommunications carriers, submarine cable licensees, and wireless, broadcast and satellite licensees are required to pay an annual FCC regulatory fee (which is established annually in August based upon the service category).

Most states have instituted state universal service fund and emergency 911 fees (emergency 911 fees are also frequently assessed at the local/municipal level).

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

Compliance with the Act, the FCC rules, and the terms and conditions of licenses and authorizations are investigated and enforced by the Enforcement Bureau of the FCC. The Enforcement Bureau may first contact the licensee through a notice of inquiry or proceed directly to a Notice of Apparent Liability. If the Bureau finds noncompliance, the investigation is typically resolved through an Order of Forfeiture, which can mandate fines or order the seizure of property. Alternatively, the Bureau and licensee can resolve the investigation by jointly entering into a Consent Decree, which may involve an admission of liability, a reduced fine, and a multi-year compliance plan. Violations of a consent decree's terms is considered a violation distinct from any subsequent violation of the FCC's rules. In cases of egregious violation, the FCC may revoke some or all of a wrongdoer's licenses. The FCC has delegated investigative capacity to USAC to review (in the first instance) a carrier's compliance with its Universal Service Fund contribution obligations.

KEY CONTACTS



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