

Telecoms & Media 2019

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Telecoms & Media

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Contributing editors**Alexander Brown and Peter Broadhurst**

Simmons & Simmons LLP

Lexology Getting The Deal Through is delighted to publish the twentieth edition of *Telecoms & Media*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Korea.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Alexander Brown and Peter Broadhurst of Simmons & Simmons LLP, for their continued assistance with this volume.



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COMMUNICATIONS POLICY

Regulatory and institutional structure

1 | Summarise the regulatory framework for the communications sector. Do any foreign ownership restrictions apply to communications services?

In Brazil, the fundamental law that governs the telecommunications sector is Law No. 9,472/1997, the General Telecommunications Law (GTL or Telecoms Act). The GTL provides the legal structure of telecoms services, defines the general principles governing the telecoms services, and has created the Brazilian Telecoms Agency (Anatel).

Anatel is the agency responsible for the regulation of the telecoms sector, including the granting of licences and authorisations for the exploitation of services. Licensing is regulated by Law No. 13,116/2015, which also provides the general rules applicable to the process of installation and sharing of telecoms infrastructure.

Cable TV is also regulated by Law No. 12,485/2011, which aims to foster competition, creates quotas for Brazilian content and regulates issues related to the Contribution to the Development of the Brazilian Film Industry (Condecine). The Brazilian film agency (Ancine), which was created by Provisional Measure No. 2,228-1/2001, has authority over the editorial activities involved in the cable TV industry, such as production and programming.

Further, the Civil Rights Framework for the Internet – or Internet Act – (Law No. 12,965/2014), as well as its regulation (Decree No. 8,771/2016), establishes principles, guarantees, rights and duties for the use of the internet in Brazil, as well as guidelines for state-oriented action with respect to such matters.

Regarding foreign ownership restrictions, article 1 of Decree No. 2,617/1998 provides that concessions, permissions and authorisations for the exploitation of telecoms services of public interest (which comprise fixed and mobile telecoms, paid TV and broadband internet) may be granted or issued only to companies that meet the following requirements:

- the company must be incorporated in accordance with Brazilian law and must have its headquarters and management in Brazil; and
- the majority of its quotas or shares with voting rights have to be owned directly by either natural persons resident in Brazil or companies governed by Brazilian law and with their headquarters and administration in Brazil.

In other words, the limitation imposed on foreign entities is the direct control of companies that hold concessions, permission and authorisations to exploit telecommunication services, except for TV broadcasters. Indirect control of such companies by foreign entities is not prohibited, as evidenced by the large international telecoms groups holding possessions in Brazil.

Law 10,610/2002 forbids foreign ownership that exceeds 30 per cent of the capital stock and the voting capital of news companies and broadcasting companies (radio and TV). The control and management of these companies must be exercised exclusively by Brazilians, born or naturalised for more than 10 years. In addition, foreign equity participation in these companies must be done indirectly through a Brazilian company incorporated in accordance with Brazilian law.

For more information about broadcasting, see question 17.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

The GTL provides that telecom services are classified in services of collective interest and private interest. Also, telecom services may be rendered under a public or a private regime.

Telecom services provided under a public regime are those understood as universal, which cannot be interrupted (for example, fixed phone). Such services may be provided through concession or permission. Therefore, there are specific obligations for providers of services under a public regime, related specifically to the continuity and universalisation of the services. For telecom services of private interest, on the other hand, Anatel grants a simple authorisation. Moreover, there is a cross-ownership rule that prevents companies exploring the same telecom service in both public and private regimes, except if they are in different areas.

Concessions are granted by Anatel through a bidding process, regulated by the GTL. Also, it can only be granted to companies incorporated under Brazilian Law, with headquarters and administration in Brazil, with the sole purpose of providing telecom services. The term of the concession may be up to 20 years with the possibility of renewal for an equal additional period.

Authorisations, on the other hand, are granted by Anatel through an administrative proceeding where the party interested has to demonstrate its financial and technical capacity to provide the telecom service it is applying for. The price charged for authorisations can go from approximately US\$100 to US\$2,200, depending on the service. For services under the public regime, periodic fees are charged according to Anatel's regulation.

Fixed phone services are considered services of collective interest, and are rendered under a public regime.

Mobile phones, on the other hand, are considered services of collective interest but are rendered under a private regime – once the authorisation is granted, providers can use the necessary radio frequencies for 15 years, renewable for an equal additional period. For 3G and 4G technologies, concessions are granted through a bidding process. In 2012, Anatel promoted a bidding procedure of 2,500MHz for 4G networks, and the providers Vivo, Tim, Claro, Oi, Sky and Sunrise acquired the frequencies.

The deployment of 5G networks is still in progress in Brazil, and the goal is to start the last phase of implementation during 2019 (the estimated year for full deployment is 2020).

As for satellites, according to the GTL, providing space capacity is not a telecoms service itself. However, Anatel is responsible for providing satellite exploitation rights to companies, whereby the satellite operators can only provide space capacity to entities who own concessions, permission or authorisation to utilise telecom services.

Anatel may grant satellite exploitation rights to foreign entities as long as a public consultation is carried out to confer the exploitation rights to the applicant. Nonetheless, the party must fulfil some requirements to guarantee the correct use of the satellite, such as the appointment of a representative in Brazil (which must be a Brazilian company) and to only offer the use of such satellite to authorised parties.

Anatel, through its Resolution 220/2000, protects Brazilian companies that exploit satellite services, giving preference to such Brazilian companies whenever it offers equivalent conditions to those offered by foreign entities. Such equivalence is measured by means of terms, price and technical parameters.

To obtain the right to exploit satellites, the interested party must file a requirement before Anatel, specifying the target area and the conditions for the use of the satellite. If there is more than one party interested, Anatel will set up an auction or public procurement. Such auction or public procurement will not be mandatory if unnecessary, meaning if there is only one interested party, or if there is enough space for all interested parties.

As for public Wi-Fi services, Decree No. 7,175/2010 provides the National Broadband Plan, which aims to promote and spread the use and supply of goods, information and communication technology services. The National Broadband Plan is an attempt to increase access to broadband internet connection services, especially in the areas less served in terms of technology, promoting 'digital inclusion'. Nonetheless, there are no concrete plans for a broad public Wi-Fi project in Brazil.

Flexibility in spectrum use

- 3 | Do spectrum licences generally specify the permitted use or is permitted use (fully or partly) unrestricted? Is licensed spectrum tradable or assignable?

According to the GTL, the spectrum of radio frequencies is classified as a public asset, and the use of radio frequencies is conditioned to the execution of auctions if there is more than one party interested in the same radio frequency band.

The authorisation for the use of radio frequencies granted by Anatel is, as a general rule, not transferable, as provided for in the Resolution No. 671/2016 issued by Anatel. However, is it possible to transfer the concession agreement itself, which will also depend on Anatel's consent, in which case the parties will be obligated to present the pertinent documents to the Agency. Therefore, sublicensing the authorisation is forbidden.

According to the Regulation for the Use of Radio Frequency Spectrum (Resolution No. 671/2016, Anatel), the attribution of radio frequency bands consists of the inclusion of such bands on radio frequency band attribution charts for the use of one or more communications services.

Ex-ante regulatory obligations

- 4 | Which communications markets and segments are subject to ex-ante regulation? What remedies may be imposed?

Generally speaking, all communications markets and segments are subject to ex-ante regulation, either by Anatel or the Administrative Counsel for Economic Defence (CADE).

According to Anatel's Resolution No. 101/1999, for instance, Anatel must previously analyse control changes in companies or other relevant corporate restructurings.

Law No. 12.529/2011, in turn, gives CADE jurisdiction to previously analyse and approve or reprove certain transactions that could present a risk for the balance of competition in the market.

Structural or functional separation

- 5 | Is there a legal basis for requiring structural or functional separation between an operator's network and service activities? Has structural or functional separation been introduced or is it being contemplated?

There are no rules regarding structural or functional separation between an operator's network and service activities in Brazil.

Universal service obligations and financing

- 6 | Outline any universal service obligations. How is provision of these services financed?

Currently, the only service subject to a public regime, and, therefore, subject to obligations of continuity and universality, is the fixed telephone service. Such obligations do not apply either to broadband or to any other services.

The General Plan of Goals for Universalisation of Services (Decree No. 7512/2011) established a series of obligations for fixed telephony providers and public authorities to grant the population general access to fixed telephony. In recent years, however, the relevance of fixed telephony has been questioned, and the focus changed to internet – nowadays, many believe that internet universality is more important than fixed telephony, which is gradually being abandoned.

Law No. 9,998/2000 has created the Universal Fund for Telecoms Services, dedicated to help operators of fixed telephone services to comply with its universalisation obligations.

Number allocation and portability

- 7 | Describe the number allocation scheme and number portability regime in your jurisdiction.

Numbers are allocated according to Resolution No. 86/1998 (fixed telephony) and Resolution No. 301/2002 (mobile), both issued by Anatel.

Portability is allowed, according to Anatel's Resolution No. 460/2007. However, portability is only permitted within operators of the same service (ie, mobile-to-mobile or fixed-to-fixed).

Customer terms and conditions

- 8 | Are customer terms and conditions in the communications sector subject to specific rules?

Resolution No. 632/2014, issued by Anatel, regulates consumers' rights before telecom services renderers. According to the Resolution, consumers have the right to access adequate information about contract conditions, payment methods, cases of service suspension, among others. The aforementioned Resolution provides a long list of obligations with which telecom services providers need to comply regarding consumers. Moreover, all obligations set forth in the Consumer Defence Code (Law No. 8,078/1990) fully apply to telecom services.

Net neutrality

- 9 | Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

The Internet Act, which provides the rules regarding the use of the internet in Brazil, also addresses net neutrality, which was established as one of the principles of the internet. According to the Act, internet providers responsible for the transmission, switching and routing of data have the obligation to treat data packets without distinction based on content, origin and destination, service, terminal or application. As a corollary, bandwidth 'throttling' is not permitted.

Decree No. 8.771, enacted on 11 May 2016, regulated the exceptions to net neutrality, establishing that traffic discrimination or degradation can only occur owing to technical requirements indispensable to the service provision and the prioritisation of emergency services. The indispensable technical requirements indicated in the Decree are those related to net security and network congestion.

In any case of exception to net neutrality, however, the service provider shall adopt transparent measures to provide the user with the proper information and reasoning regarding the data transmission discrimination or degradation, in accessible language. According to section 9, subsection 2 of Law No. 12.965/2014, the provider shall also:

- abstain from causing damage to the users;
- act with transparency, proportionality and isonomy;
- inform the user in advance about the measures adopted, including those related to net security; and
- offer services in non-discriminatory conditions and abstain from anticompetitive conduct.

Despite the fact that article 9 of Decree No. 8,771/2016 prevents agreements between internet services providers (ISPs) that prioritise data packages, there have been several ISPs that offered a zero rating for specific applications such as WhatsApp. The discussion regarding zero rating in Brazil is still far from over.

Platform regulation

- 10 | Is there specific legislation or regulation in place, and have there been any enforcement initiatives relating to digital platforms?

There are no specific regulations about digital platforms in Brazil.

Nonetheless, the Internet Act (Law No. 12,965/2014), which is better explained in question 12, establishes principles, guarantees, rights and obligations concerning the use of the internet in Brazil, including for internet connection access providers and internet application providers.

Next-Generation-Access (NGA) networks

- 11 | Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

NGA networks are still not subject to any specific regulation in Brazil, although new generation networks (especially the Internet of Things – IoT through the National IoT Plan) are becoming a reality. The government has been trying to foster broadband internet penetration since at least 2010, when Decree No. 7,175/2010 was enacted, which created the National Broadband Plan. Moreover, there is also a movement towards fostering 3G and 4G bands, which are offered annually by Anatel in bidding processes.

In 2016, several discussions regarding 3G and 4G bands took place, especially because of Draft Law No. 79/2016, which proposes a certain

number of changes in the GTL. One of the changes, which hampered the progress of the draft law and led to its suspension, was the possibility of telecom service providers limiting fixed internet broadband. Currently, the Draft Law is being analysed by the Senate, and it is not possible to estimate when it is going to be voted.

Data protection

- 12 | Is there a specific data protection regime applicable to the communications sector?

Data protection is primarily guaranteed by the Brazilian Federal Constitution, which provides the inviolability of personal data and respect of privacy.

Data protection is also the object of the Internet Act (Law No. 12.965/2014). According to the Act, the party responsible for collecting and processing such data (the ISP) may not communicate it to third parties without voluntary, express and informed consent of the owner of the data. Moreover, the ISP must observe certain strict principles, and the disclosure of personal data to third parties is only allowed under judicial order.

The Internet Act devotes several articles to user privacy. Not only is the disclosure of personal data restricted to judicial orders, but also authorities must appoint the legal basis for the request to access such data, except certain basic information such as personal qualification, filiation and address requested by administrative authorities. However, even for such basic information, current legislation requires annual publication by the authorities of reports containing statistics on personal data requests. This is an innovation brought in by Decree No. 8.771, enacted on 11 May 2016, which also regulated other matters from the Internet Act, such as net neutrality.

The Internet Act is applicable to any and all ISPs that provide services in Brazil, even if the service provider is a foreign entity.

The most relevant regulation regarding data protection, however, is Law No. 13.709/2018, the General Law for Personal Data Protection (GLPD). The GLPD, inspired by the European GDPR, aims to protect primarily the individual's personal data in the Brazilian territory or personal data from Brazilian citizens processed by foreign companies. The GLPD sets several obligations for companies and agencies regarding the treatment of personal data. It is still in its *vacatio legis* period, and the validity and enforcement of the Law shall start in August 2020.

Cybersecurity

- 13 | Is there specific legislation or regulation in place concerning cybersecurity or network security in your jurisdiction?

Brazil lacks a specific regulation about cybersecurity. However, Law No. 12,737/2012 provides that it is a felony to invade any computing device whether or not connected to the internet, by circumventing security mechanisms to obtain, alter or destroy data, or to install any program, virus, or other functionality to obtain unlawful gain without the consent of the owner of such device. The penalty for this crime is imprisonment and fines. The length of imprisonment and the amount of the fines depend on the outcome of the criminal proceedings.

Big data

- 14 | Is there specific legislation or regulation in place, and have there been any enforcement initiatives in your jurisdiction, addressing the legal challenges raised by big data?

GLPD provides some guidelines regarding big data (such as the use of anonymised data); however, it will be enforceable only after August 2020. Companies are obligated, notwithstanding that, to comply with the Internet Act.

Data localisation

15 | Are there any laws or regulations that require data to be stored locally in the jurisdiction?

Brazilian legislation does not require that data remain stored within its jurisdiction.

Key trends and expected changes

16 | Summarise the key emerging trends and hot topics in communications regulation in your jurisdiction.

The most relevant discussions in telecommunications regulation currently are related to Draft Law No. 79/2016, which proposes a certain number of changes to the GTL. One of the changes, which hampered the progress of the draft law and led to its suspension, was the possibility of telecom service providers limiting broadband fixed internet. Anatel first adopted the position that such limitation was necessary to guarantee better service provision by companies; after a lot of external pressure, however, Anatel publicly reviewed its position and stated that a limitation of that kind would be illegal.

Another relevant change brought by the draft law is regarding the extinction of services rendered under public regime (currently only fixed telephony) and the adoption of a fully private regime, in which the provision of all telecoms services would only need to be authorised by Anatel.

MEDIA

Regulatory and institutional structure

17 | Summarise the regulatory framework for the media sector in your jurisdiction.

Broadcasting services are regulated by Law No. 4.117/1962 (the Brazilian Telecommunications Code – not to be confused with the General Telecommunications Law) and related decrees, especially Decree No. 52.795/1963.

Radio frequencies, as explained above, are public assets, which the government, through Anatel, licenses to private parties that wish to provide broadcasting services. It is worth stating that, apart from technical issues related to radio frequencies, Anatel does not have authority over broadcasters.

The concessions are valid for 10 years for radio broadcasting and 15 years for TV, renewable for equal periods successively, according to change proposed by the recent Law No. 13.424/2017.

The main regulatory frameworks for cable TV are the General Telecommunications Law (Law No. 9.472/1997) and the SeAC Law (Law No. 12.485/2011). The legislation provides the principles to be followed by cable TV providers and sets up cross-ownership restrictions.

Law No. 12.485/2011 also conceptualises and regulates the activities included in the audiovisual communication field, which are production and programming (regulated by Ancine), as well as packaging and distribution (regulated by Anatel).

Ownership restrictions

18 | Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

Article 222 of the Brazilian Constitution states that the ownership of news and broadcasting companies is exclusive to native Brazilians or naturalised Brazilians who have been citizens for at least 10 years, or to legal entities incorporated according to Brazilian laws, with

headquarters in Brazil. In any case, at least 70 per cent of such companies' total and voting capital must be owned, directly or indirectly, by native Brazilians or by naturalised Brazilians for more than 10 years, who shall manage the companies and control the programming.

Law No. 10.610/2002 also prevents foreign ownership exceeding 30 per cent of the capital stock and the voting capital of news and broadcasting companies.

Regarding cross-ownership of media companies, Law No. 12.485/2011 expressly forbids radio and TV broadcasters, producers and programmers to control or own more than 50 per cent of the total and voting shares of collective interest telecommunications services providers. In turn, the latter are forbidden to own or control more than 30 per cent of the total and voting shares of radio and TV broadcasters, producers and programmers.

Licensing requirements

19 | What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

The GTL provides that the granting of licences is subject to a bidding process conducted by the Ministry of Communications. To obtain the authorisation to use a radio frequency, the interested party must comply with all requirements of the bidding process and pay a public price, which varies from 400 reais to 9,000 reais, and depends on several features, such as bandwidth, term, number of inhabitants in the targeted area, among other things. It is important to note that radio frequency licences are valid for a certain period, after which the party must pay the public price again to continue using the band. After the bidding, Congress has to approve the licence. There is no timetable provided by law.

Foreign programmes and local content requirements

20 | Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

SeAC Law (Law No. 12.485/2011), which regulates the cable TV sector, imposes local content quotas of at least 210 minutes at prime time to certain cable TV channels, half of whose programmes must be produced by independent Brazilian producers. Moreover, the same law imposes quotas for local cable TV channels that have to be offered by the cable TV operators and programmers.

Advertising

21 | How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

In Brazil, there are both governmental rules and self-regulation rules regarding broadcast media advertising. When it comes to self-regulation, the National Publicity Self-Regulation Board (CONAR), established in 1980, provides the enforcement of the Advertisement Self-Regulation Brazilian Code, dealing with litigation and disputes regarding consumers and broadcasters.

Under the Brazilian Telecommunications Code (Law No. 4.117/1962), the time dedicated to broadcast of commercial advertisements of broadcasting concessionaires and permissionaires cannot exceed 25 per cent of its daily programming.

Law No. 9.294/1996 also imposes a series of limitations regarding advertising of specific products such as tobacco, alcoholic beverages, medication, treatments and others.

When it comes to online advertising, however, there are no regulations other than those mentioned in the Advertisement Self-Regulation

Brazilian Code, which states that all advertising on the internet should be made with special care, with a more restrictive interpretation of all rules that may apply to it. Therefore, as with other advertising, internet advertising should respect the Consumer Defence Code and all rules enforced by CONAR.

Must-carry obligations

22 | Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

Law No. 12.485/11 establishes, in article 32, a list of channels that all programmers must offer in their packages, including open TV channels and governmental channels, among others. There are no mechanisms for financing the costs of such obligations, and the providers must deliver the mandatory channel at their expense, except if proven that the fulfilment of these obligations is impracticable by the provider.

Regulation of new media content

23 | Is new media content and its delivery regulated differently from traditional broadcast media? How?

There is no specific regulation for new media content and its delivery. Nonetheless, Congress is discussing two bills to regulate the video on demand (VOD) market, especially subscription VOD delivered through the internet.

Furthermore, on 16 May 2017, Ancine concluded its analysis of the regulation of VOD, concluding that there should be a specific law for its regulation, and a definition of the service should be established.

Digital switchover

24 | When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

The switchover from analogue to digital started with Decree No. 5,820/2006, which was altered by Decree No. 8.061/2013, which provided that the Ministry of Communications would establish the time frame for the switchover. In 2016, the state of São Paulo took the first steps towards making all TV broadcasting digital. On 29 March 2017, the analogue broadcasting signal was shut down in São Paulo city and in 37 other cities around it. On 9 January 2019, analogue signal was switched off in 80 cities, and currently 1,379 cities (around 128 million people) have already switched to digital broadcasting. The complete transition of the remaining 4,191 cities, however, is estimated for 2023, but around 60 per cent of the population already have access to digital broadcasting.

After the switchover, the radio frequencies freed up (700MHz) will have their use designated to mobile networks, improving 4G-based services.

Digital formats

25 | Does regulation restrict how broadcasters can use their spectrum?

Anatel is the competent authority for regulating technical aspects related to the radio frequencies dedicated to each telecommunication service. However, there is no specific discipline regarding how each broadcaster uses the spectrum.

Media plurality

26 | Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?

There is no specific legislation regarding media plurality in Brazil. SeAC Law (Law No. 12.485/2011), which regulates cable TV, provides that the diversity of cultures, sources of information, production and programming is one of its principles (article 3, II).

Key trends and expected changes

27 | Provide a summary of key emerging trends and hot topics in media regulation in your country.

As mentioned in question 23, Ancine is likely to propose the regulation of VOD, including the service provided by ISPs over the top, such as Netflix, Amazon Prime and HBO-GO.

Optical fibre should become the main technology for Brazil's fixed broadband accesses in the next few years. During the past two years, optical fibre accumulated net additions of 3.9 million accesses, while xDSL accesses shrank by 1.1 million.

REGULATORY AGENCIES AND COMPETITION LAW

Regulatory agencies

28 | Which body or bodies regulate the communications and media sectors? Is the communications regulator separate from the broadcasting or antitrust regulator? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

As described above, GTL has created the Brazilian Telecoms Agency (Anatel), which is the agency responsible for the sector's regulation, including the granting of licences and authorisations for the exploitation of telecom services. It is responsible for all telecoms services regulation, including the technical aspects related to radio frequencies.

The Brazilian Film Agency (Ancine) also regulates the sector, having authority over the film industry, editorial activities involved in the cable TV industry, such as producing and programming, and gaming, among others.

Broadcasters are subject to the control of the Ministry of Communications.

Law No. 12,529/2011, which regulates competition, is fully applicable to the telecoms sector. CADE is competent to analyse antitrust matters related to the telecom sector, such as anticompetitive conduct and mergers.

In the specific case of mergers, telecom providers, as well as companies in other markets, are only obligated to submit the operation to CADE's approval if certain conditions are fulfilled, such as an income at least above 750 million reais for one party, and at least 75 million reais for the other party. Anatel may also analyse the competition aspects of a certain merger when the parties submit the operation for the agency's prior approval.

Appeal procedure

29 | How can decisions of the regulators be challenged and on what bases?

The decisions of the regulators can always be challenged in federal courts, as universal access to the judiciary is a fundamental right guaranteed by the Brazilian Federal Constitution.

Competition law developments

30 Describe the main competition law trends and key merger and antitrust decisions in the communications and media sectors in your jurisdiction over the past year.

Mergers and acquisitions in the telecom market, as long as they imply the transfer of the telecom provider's control, are subject to Anatel's approval, according to Resolution No. 101/1999, as described above.

The parties involved in the operation must request Anatel's previous approval for the transfer of control, along with the documents required by the Resolution referred to above. Anatel will analyse the request and authorise, or not, the operation.

Additionally, as described in question 28, CADE is also competent to analyse such operations, if the conditions provided in Law No. 12,529/2011 and Interministerial Ordinance No. 994 are fulfilled.

The last big merger analysed by CADE was the acquisition of 21st Century Fox by The Walt Disney Company (the *Disney/Fox* merger). The transaction was first announced in December 2017, but CADE only issued its final decision on 29 March 2019, approving the merger with a major restriction: Disney has until the end of 2019 to sell the Fox Sports channel. The decision was based on a possible harm to competition identified in the sports channels market, as Fox owned Fox Sports and Disney owns ESPN, two major sports TV channels in Brazil, both focused on the transmission of sports competitions. The buyer of the channel is not known yet, but there are ongoing negotiations.



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