TELECOMS & MEDIA 2022

Contributing editors
Alexander Brown and David Trapp
Simmons & Simmons LLP

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Lexology Getting the Deal Through is delighted to publish the 23rd 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 new chapters on Australia, Brazil and Pakistan.

Lexology Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

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 David Trapp of Simmons & Simmons LLP, for their continued assistance with this volume.

LEXOLOGY
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Introduction

Alexander Brown and David Trapp

Simmons & Simmons LLP

Continual changes to technology and how end users consume information mean that the laws concerning the telecoms and media sectors remain under constant review. The purpose of Telecoms & Media is to give an overview of the framework in these areas across a wide range of different jurisdictions.

The answers to the questions posed in this publication address not only the regulatory structure in each market but also the practical aspects of how those regulations impact service providers and end users alike. The responses to each question highlight any key changes over the past year, as well as any proposed plans for change and future developments. In answering these questions, the responses seek to address both the legal and practical aspects of these industries.

The importance of telecoms and media for end users generally means that, for many countries, these areas are heavily regulated and are subject to detailed competition law requirements. Attention is, therefore, also given to how these restrictions on competition will impact organisations operating in these sectors. Additionally, consideration is given to how areas of law that are not specific to these sectors, such as cybersecurity and data protection legislation, may impact the telecoms and media sectors.

The responses to these questions avoid focusing on only one or two segments of the industries but instead look to give an overview of a wide range of areas, from mobile communications to broadband connectivity for telecoms and newspapers to online video content for media.

Over the past two years, this publication has considered the impact of the onset and full effect of the covid-19 pandemic and corresponding lockdowns. This year – while the pandemic is anything but over as we learn to live with the virus – lawmakers and regulators deal with the fallout and the profound effect that coronavirus and the lockdowns have had on society and business as well as the interaction between them.

The covid-19 crisis has had a mixed outcome on the technology, media and telecommunications sector as those technologies and services that have enabled remote working and maintaining personal contact have continued to thrive (eg, video conferencing, cloud services, home broadband and e-commerce) while those that feed off live interaction with people or are connected to the offline retail sector are still suffering the after-effects of being hit hard (eg, services supported by broadcast advertising, live events streaming or ticketing services, etc). That said, it is clear that the covid-19 crisis has acted as a catalyst to the digital transformation of business and society as they have had to adapt to the various challenges posed by the pandemic. While working practices may never completely return to the pre-pandemic ways, we currently find ourselves in the midst of a hybrid working-pattern lifestyle. While this has, of course, created challenges for, by way of example, communications service providers, we have seen that there are opportunities for those that are able to bridge the gaps between business and society in a hybrid working lifestyle (eg, software innovators or connectivity providers).

In addition, this year, we have, sadly, also seen the onset of the Ukraine crisis. Apart from the issues of the clear humanitarian crisis, we have seen it create an additional economic shock around the world as supply chains are severely disrupted by difficulties in sourcing raw materials for hardware, the effects of economic sanctions are felt and energy prices increase.

The outcome of these phenomena, from a regulatory perspective, has been to bring increasing scrutiny over business' mitigating strategies to face each of the economic and practical challenges that are currently in play, whether that be in relation to sourcing, supply chain, data or industry collaboration. The other side of the coin brings with it increasing regulatory concern for consumer protection and, in particular, the dramatically increasing cost of living which has caught the eye of the competition regulators as they seek to ensure effective competition including in the regulated sectors.

In light of the above trends, it is no surprise that we are seeing competition authorities double-up their efforts to focus upon the regulation of consumer-facing digital platforms and increasingly relevant segments such as the consumer-focused internet of things.

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Australia

Angela Flannery and Clare Giugni

Holding Redlich

COMMUNICATIONS POLICY

Regulatory and institutional structure

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

The communications sector is regulated federally, with the primary legislation being the Telecommunications Act 1997 (Cth). The objects of the Act are to protect the long-term interests of end-users of carriage services and ensure accessible and affordable services for Australians. The Act distinguishes between carriers (ie, infrastructure owners and operators) and other entities that provide services to end-users, referred to as carriage service providers or CSPs. The Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) establishes Australia's regime for universal service and other public interest telecommunications services.

Spectrum is regulated under the Radiocommunications Act 1992 (Cth). The Competition and Consumer Act 2010 (Cth) includes a telecommunications-specific regime, regulating anticompetitive conduct and establishing an access regime. The Telecommunications (Interception and Access) Act 1979 regulates the interception of communications.

The Australian Communications and Media Authority (ACMA) is Australia's communications specific regulator, although the Australian Competition & Consumer Commission (ACCC) is responsible for competition regulation and the eSafety Commissioner is responsible for some online content regulation.

Foreign persons must seek approval under the Foreign Acquisitions and Takeovers Act 1975 (Cth) to acquire a direct interest in a carrier (and a subcategory of CSPs) and also prior to starting a carrier business. Foreign government investors generally require foreign investment approval for any acquisition of a direct interest in an Australian business.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

Carrier licences are required under the Telecommunications Act 1997 (Cth) for owners and operators of 'network units' used to supply carriage services to the public, subject to limited exceptions. Network units are cable, optical fibre and similar, used for carrying communications and designated radiocommunications facilities, such as base stations. No distinction is made between fixed-line, mobile or satellite networks. The ACMA issues licences. The approval process typically takes approximately one month and national security agency consultation is required.

Carrier licences do not have fixed terms. General conditions are imposed on licence holders under the Telecommunications Act and carrier-specific conditions may also be imposed. Carriers pay an initial small fee for a licence and ongoing fees to meet regulator costs and support public interest telecommunications services.

Service providers that do not own or operate network units do not require a licence irrespective of whether they provide fixed, mobile or public Wi-Fi services.

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?

Spectrum is licensed by the ACMA under spectrum, apparatus and class licences.

Spectrum licences apply to geographic areas; frequency bands are required for mobile telecommunications and are typically auctioned for periods of up to 15 years. Spectrum licences can be traded.

Apparatus licences are used for transmitters and receivers. Transmitter licences allow the use of specific transmitter equipment at a location or area and receiver licences apply to receivers in allocated frequencies. Apparatus licences are typically granted for one year on a renewals basis. Fees apply. Apparatus licences may be transferred.

Ex-ante regulatory obligations

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

The National Broadband Network (NBN), funded and owned by an Australian government business enterprise, is a wholesale only, open-access broadband network, covering the vast majority of Australia. It is predominantly a fixed-line network but includes fixed wireless and a small amount of satellite coverage. It is primarily intended to serve residential customers. The NBN is subject to ex-ante regulation by the ACCC, through access undertakings and determinations that regulate the terms and conditions of access, including in relation to non-discrimination.

The ACCC is also able to set wholesale prices and wholesale terms of access for non-NBN carriage services (including transmission, fixed and mobile) that are declared by the ACCC. The ACCC may only make a declaration where this is in the long-term interests of end-users.

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?

Structural and functional separation requirements are imposed under the Telecommunications Act 1997 (Cth). Telstra, the dominant fixed-line network operator prior to the rollout of the NBN, is subject to a structural separation undertaking (SSU) and regulation requiring the migration of its customers to the NBN from Telstra's copper and hybrid

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fibre-coaxial (HFC) networks. The SSU commenced in 2012 and Telstra has ongoing compliance obligations, including not to use its legacy networks where the NBN is available.

To ensure a competitive level playing field for the NBN, the Telecommunications Act also requires that, subject to an exception for small networks, other superfast fixed-line broadband network operators serving residential customers implement functional separation between their wholesale and retail business units. Superfast networks are those that have download speeds of at least 25 megabits per second (Mbps). Operators may adopt a standard undertaking determined by the ACCC or provide a customised undertaking on an individual or corporate group basis.

Universal service obligations and financing

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

Telstra is obliged under the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) and by contract to deliver the universal service obligation, which provides access to fixed-line standard telephone services as well as payphones. The costs of the universal service obligations (USO) are met in part by government and in part by a levy on carriers, known as the telecommunications industry levy.

The USO is supplemented by statutory infrastructure provider (SIP) obligations. SIPs must on reasonable request provide broadband infrastructure to allow retail providers to supply voice services. NBN Co (the government business enterprise that owns the NBN) is the SIP except where another infrastructure provider is declared for a particular area. No general government funding is provided although the Regional Broadband Scheme provides for levies to be imposed on carriers to fund regional and remote broadband services provided by NBN Co.

Number allocation and portability

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

The ACMA is responsible for allocating all telephone numbers under the Telecommunications Numbering Plan 2015 (Cth) (the Plan). The Plan regulates the allocation, transfer, surrender, withdrawal, portability and use of different types of numbers. The Plan is supported by industry codes, developed by the industry body, Communications Alliance. Providers must pay an annual charge for the numbers allocated to them.

Providers are required to provide number portability to customers upon request, on terms primarily governed by Communications Alliance codes. A different code will apply depending on whether the number to be transferred is a fixed-line, mobile, freephone (namely, toll-free) or local rate (or smart numbers, being incoming call numbers used by businesses) number. The general rule is that all numbers are able to be ported and most regulation is intended to provide safeguards, for example, to protect against fraud.

Customer terms and conditions

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

Customer terms and conditions are subject to specific rules. The Australian Consumer Law contains general consumer protection provisions that apply economy-wide, for example, requiring customer guarantees for defective goods and services, as well as a prohibition against unfair contract terms. Additional rules apply in the communications sector. The Telecommunications Consumer Protections Code (the Code), registered with the ACMA, is the key regulation and contains a broad range of rules to protect retail customers and small businesses who use mobile, fixed-line and internet services, including in relation to the content of contracts, invoicing and disputes. Providers must provide standard contracts as well as Customer Information Summaries of the key terms for each of their services under the Code.

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?

There is no specific regulation of net neutrality in Australia. Retail fixed-line broadband services are primarily delivered over the government-owned NBN, which provides almost ubiquitous coverage to Australian households. NBN Co provides wholesale services to providers, allowing for strong competition in the Australian retail services market. While the ACCC closely monitors advertising of speeds by providers, it has not found evidence of practices such as throttling that would support the imposition of net neutrality rules.

Platform regulation

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

The ACCC has undertaken numerous inquiries into digital platforms since its Digital Platforms Inquiry, completed in 2019. These investigations have resulted in enforcement action by the ACCC against Google, for misleading and deceptive conduct regarding its data-collection practices and against Meta, again for misleading and deceptive conduct regarding data collection but also regarding cryptocurrency scam advertisements featuring prominent Australians without their consent.

The ACCC's inquiries have prompted the implementation of sector-specific regulation, including a mandatory news media bargaining code, which resulted in Google and Meta making payments to media organisations for news content. The Online Safety Act 2021 (Cth) provides Australia's eSafety Commissioner with powers to regulate abuse and harmful content on online platforms. The Australian government has proposed online privacy regulation, under an Online Privacy Bill. In addition, over 2022, the ACCC is consulting on sector-specific competition and consumer protection measures similar, for example, to the EU's Digital Markets Act and Digital Services Act.

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?

The Australian government's commitment to the provision of near-universal super-fast broadband services (with a minimum of 25 Mbps download speeds) has been implemented through the government's funding of the rollout of the NBN. The NBN is required to operate on a wholesale-only basis to ensure that its monopoly infrastructure ownership does not impact efficiencies in the market for the supply of retail services and it is subject to access undertakings and determinations that regulate the terms and conditions of access.

Australia's mobile network owners, Telstra, Optus and TPG are currently rolling out 5G network infrastructure and provide some 5G services. There is no specific regulation of 5G infrastructure, although the Australian government has provided support for this rollout including

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through its Digital Economy Strategy, which includes an investment of A$31.7 million to promote 5G and future 6G mobile networks.

Data protection

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

Part 13 of the Telecommunications Act 1997 (Cth) contains data protection measures specific to the communications sector. These apply in addition to the Privacy Act 1988 (Cth). Providers must not (subject to a number of exceptions such as related to law enforcement) improperly use or disclose information or documents that come into their possession in the course of their business, where the information relates to the contents of a communication:

- that has been, or is being carried;
- the carriage services supplied; or
- the affairs or personal details of a person.

The Telecommunications (Interception and Access) Act 1979 (Cth) restricts interception of, and access to, communications subject to limited exceptions. That Act includes a data retention regime for 'metadata', that is, information about communications but not the content of the communications. This data must be stored for two years by providers. Metadata is deemed to be subject to the Privacy Act and is subject to confidentiality requirements including encryption.

Cybersecurity

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

The Security of Critical Infrastructure Act 2018 (Cth) designates eleven sectors including ports, water, data storage and processing, energy, financial services and the defence industry, and associated asset classes, as 'critical' to the functioning of Australia's economy. The legislative framework is designed to manage risks to national security relating to critical infrastructure.

The Act, among other matters, requires entities responsible for critical infrastructure assets to report cyber security incidents to the Australian Cyber Security Centre. Those entities are also required to identify and manage risks, including cyber risks, relating to those assets. Enhanced cyber security obligations are imposed on systems of national significance, which are assets that have particularly critical impacts on social or economic stability, defence or national security. Controversially, the Australian government is given powers under the Act to intervene to respond to serious cyber security incidents, including by gathering information, providing directions or requesting agency intervention.

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?

No Australian legislation specifically regulates big data (or artificial intelligence or data analytics more generally).

The Office of the Australian Information Commissioner (OAIC) has released guidance about best practices for data analytics involving personal information. The OAIC recommends using de-identified data, adopting privacy by design approaches, privacy impact assessments and openness and transparency regarding privacy practices.

The most well-known case involving big data concerned *Prygodicz v Commonwealth of Australia (No 2) [2021] FCA 634 (11 June 2021)*, otherwise known as the Robodebt litigation. It concerned an Australian government agency using big data for a welfare payment recovery programme to infer if individuals had under-reported their income. The Australian courts found this practice was unlawful as the relevant decision-maker did not have a valid basis to determine that under-reporting had occurred.

The newly enacted Data Availability and Transparency Act 2022 (Cth) is intended to facilitate greater use of Australian government data for public purposes and provides guardrails for that use.

Data localisation

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

There are ad hoc cases where personal information is required by law to be stored in Australia, although these are limited in operation. For example, personal information collected through the use of the COVIDSafe app, introduced during the recent pandemic, is required under Part VIIIA of the Privacy Act 1988 (Cth) to be stored in Australia. Another example is the My Health Records Act 2012 (Cth), which creates a privacy regime for the Australian government's digital health records scheme, My Health Record. My Health Record is an online record of an individual's health information. These records must be held in Australia.

Although not legally binding, the Hosting Certification Framework requires Australian government entities that host high-value government data, whole-of-government systems and systems rated as protected to do so within certified data centres and to use the services of certified providers. This is a procurement obligation rather than a legislative requirement. The Framework will be fully implemented from 1 July 2022. This has data sovereignty but not data localisation requirements.

Key trends and expected changes

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

Communications regulation continues to evolve in Australia. There is a significant focus on using regulation to promote the provision of communications services in regional and remote areas. The government has supported the findings of the Regional Telecommunications Independent Review 2021, which included calls for regulation to increase the transparency of mobile network quality and coverage information and further reform of Australia's universal service obligation.

Cybersecurity is also a continuing focus, with the government recently consulting on new regulations seeking to ensure that telecommunications companies notify cybersecurity incidents to the government. Telecommunications companies may also in future be subject to the Security of Critical Infrastructure Act 2018 (Cth).

In relation to spectrum, the allocation of mid-band spectrum for wireless broadband across Australia is the immediate objective of the ACMA, which allocation will occur by the end of 2023–2024. The government is also focused on a future restack of the broadcasting spectrum, establishing a Future of Broadcasting Working Group in early 2022 to find a way forward to free up the broadcasting spectrum for other uses.

MEDIA

Regulatory and institutional structure

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

The Broadcasting Services Act 1992 (Cth) is the key legislation governing television and radio broadcasting. The Radiocommunications Act 1992 (Cth) regulates spectrum allocation and use although the

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primary entitlement of broadcasters to spectrum is provided under the Broadcasting Services Act.

There is no sector-specific regulation for print-news publishing.

There is limited sector-specific regulation for streaming services, contained primarily in the Online Safety Act 2021 (Cth) but also to a limited extent in the Broadcasting Services Act, which regulates gambling advertising in streamed live sports.

The ACMA is the sector-specific regulator. The ACCC is the primary competition regulator, including for the media sector.

In the past year, the Mandatory News Media Bargaining Code was implemented, which resulted in Google and Meta agreeing to pay Australian media companies for news content. Likely short-term reform is new laws to combat online disinformation and misinformation to supplement an existing voluntary code monitored by the ACMA.

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?

Foreign persons (and foreign government investors) acquiring a direct interest in an Australian media business, regardless of value, require foreign investment approval under Australia's Foreign Acquisitions and Takeovers Act 1975. Where an interest is already held, acquisitions of additional interests will require further approval. An Australian media business includes traditional businesses as well as ones operated solely online (see section 13A of the Foreign Acquisitions and Takeovers Regulation 2015 (Cth)).

Media ownership restrictions also apply under the Broadcasting Services Act 1992 (Cth). These restrict the number of television and radio broadcasting licences that may be owned in the same area (generally only one television and only two radio) and promote media diversity, generally requiring five media voices (television, radio and print) in metropolitan licence areas and four in regional areas. The ACMA must also maintain a register of foreign persons with more than 2.5 per cent interest in media companies.

Licensing requirements

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

Australia's national broadcasters (the Australian Broadcasting Authority (ABC) and Special Broadcasting Service (SBS)) are not licensed, being created under statute instead. Commercial free-to-air television and radio broadcasters require a broadcasting licence issued by ACMA under the Broadcasting Services Act 1992 (Cth), which then entitles the licence holder to a transmitter licence (a form of apparatus licence) for use of spectrum under the Radiocommunications Act 1992 (Cth). Commercial broadcasting licences are allocated for specific areas of Australia. Annual fees are payable for transmitter licences, not for broadcasting licences, by means of a Commercial Broadcasting Tax (CBT). The CBT raises approximately A$46 million per annum (although relief from payment was provided in part during the covid-19 pandemic). It is not possible to obtain a new commercial television broadcasting licence under the Broadcasting Services Act, given limits imposed under section 37A of that Act. The ability to obtain a commercial free-to-air radio licence is also significantly restricted.

Subscription television broadcasters require licences under the Broadcasting Services Act but are not allocated in a specific area so broadcasts may occur anywhere in Australia. Apparatus licences are separately required under the Radiocommunications Act where delivery uses spectrum.

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?

The Broadcasting Services Act 1992 (Cth) requires commercial free-to-air television broadcasters to broadcast at least 55 per cent Australian content between 6am and midnight on their primary channels and 1,460 hours per annum during the same periods on their multichannels. In addition, these broadcasters are subject to first release Australian programme quotas based on a points system with higher points for first release Australian drama under the Broadcasting Services (Australian Content and Children's Television) Standards 2020 (Cth).

Subscription TV broadcasters and channel providers are subject to the New Eligible Drama Expenditure scheme. Under that scheme, at least 10 per cent of total programme expenditure for each drama channel must be on new Australian drama programmes.

Streaming services are not subject to any obligations in respect of Australian content. Large streaming providers are however required to report their level of investment in Australian content to the ACMA.

Advertising

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

The national broadcaster, ABC, is unable to broadcast any advertising. The other national broadcaster, SBS, has a very limited remit to broadcast advertising.

Television and radio alcohol advertising cannot target children. Broadcasting tobacco advertising is completely prohibited. Therapeutic goods advertising is regulated under Therapeutic Goods Administration rules.

Commercial free-to-air television broadcasters must not show advertising during preschool classified programmes and advertising during children's television programming is restricted.

All radio and television licensees are prohibited from showing election advertising for 48 hours before any federal, state (or) territory or local election until the close of the poll. Other restrictions apply for election advertising, for example, to identify who authorised the advertisement.

Commercial television advertising is subject to Australian content requirements (80 per cent of advertisements that are broadcast between 6am and midnight). Commercial television and SBS are subject to advertising time limits.

Gambling advertising is restricted during live sports broadcasts and when live sports are streamed. This gambling advertising restriction is the only streaming service-specific advertising restriction.

Traditional print media (and online equivalents) are subject to voluntary advertising codes.

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?

Australia does not have a 'must carry' or similar regulatory regime requiring a basic package of programmes to be carried.

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Regulation of new media content

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

As compared to traditional media, particularly television and radio broadcasting, commercial subscription streaming services are subject to very limited regulation in Australia.

An Online Content Scheme applies under the Online Safety Act 2021 (Cth). That Scheme regulates the streaming of illegal and restricted online content, which covers both seriously harmful material, that may not be shown at all, and material that should not be made available to children, which may be made available if it is subject to an appropriate restricted access system. The Scheme applies to commercial subscription streaming services, as well as other streaming services. Material may be classified by reference to the National Classification Scheme. The Scheme operates primarily on the basis of a complaints mechanism, although the eSafety Commissioner (the regulator under the Act) may in some cases instigate investigations. Remedies include requirements to remove material and remedial notices.

Advertising is subject to limited restrictions, with the primary restriction being in relation to gambling advertising under Schedule 8 of the Broadcasting Services Act 1992 (Cth).

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?

Australia completed the transition from analogue to digital television broadcasting in December 2013. The spectrum freed up by the digital switchover was auctioned by the ACMA in 2013. Three communications companies – Telstra, Optus and TPG Internet – participated in the auction, which raised A$1.9 billion.

There is a focus on a future restack of broadcasting spectrum, with the government establishing in early 2022 the Future of Broadcasting Working Group to find a way forward to free up broadcasting spectrum for other uses.

Digital formats

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

A transmitter (apparatus) licence for spectrum under the Radiocommunications Act 1992 (Cth) is a broadcasting licence that only authorises the operation of transmitters to broadcast TV or radio programmes. As this type of licence authorises the use of transmitters only (and only in specific areas), it cannot be used for any other purpose, for example, it cannot be used for broadband services.

There is no regulatory obligation on broadcasters to make services available in either standard or high definition or regulation that requires or restricts multi-channelling. Each free-to-air television broadcaster, both national and commercial, holds sufficient transmitter (apparatus) licences to broadcast multiple channels, and to have both standard definition and high definition channels, and each does so.

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 are limited diversity requirements in the Broadcasting Services Act 1992 (Cth). These are the '5/4 rule' and platform-specific licence limits. The 5/4 rule requires that at least five independent media groups (traditional print media and commercial television and radio) operate in metropolitan commercial radio licence areas and four independent media groups operate in regional commercial radio licence areas. The platform-specific licence limits prohibit a person from controlling more than one commercial television licence in a licence area or more than two commercial radio licences in a licence area.

At the time other cross-media ownership rules were abolished in 2017, the Act was amended to impose additional local programming requirements for regional commercial television broadcasting licensees if a change of control occurred.

In addition, the ACCC will assess media diversity when looking at mergers and acquisitions in the sector. The Media Merger Guidelines 2017 state that the ACCC will consider market concentration, which may potentially reduce media diversity, and also whether a merger is likely to result in a reduction in quality, which may be through a reduction in the quality or also the range of content that is provided post-merger.

Key trends and expected changes

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

The 2019 Final Report from the ACCC's Digital Platforms Inquiry, resulted in the government announcing in December 2019 that it would undertake significant staged reform of media regulation, primarily to make it technology or platform-neutral. The first stage was to develop a uniform classification framework applicable across all platforms and to reform Australian content obligations (including considering the vexed question of whether subscription video-on-demand services (SVODs) should have Australian content requirements). The second stage would primarily consider advertising rules across all platforms and the implementation of a coherent legal framework.

Little progress has been made on either stage of the proposed reform package. There has been some limited change to Australian content obligations for free-to-air commercial television broadcasters, but no Australian content regulatory obligations have been imposed on SVOD providers and the classification framework review has not moved past an initial consultation phase.

In early 2022, the Australian government released its Media Policy Statement 2022, which proposed, among other reforms, a Future of Broadcasting Working Group to progress future broadcasting spectrum reforms and to consider issues of prominence, as well as a proposed limited Streaming Services Reporting and Investment Scheme, under which designated large streaming services would be required to report Australian content investment but would not necessarily be under a positive obligation to make such investments.

Prominence is a key issue for television broadcasters (both commercial and national), who are seeking the imposition of regulation to require that their services are prominent and easy to find on connected TVs and other content distribution platforms.

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?

The communications and media sectors are regulated by the ACMA, the ACCC and the Office of the eSafety Commissioner.

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The ACMA is responsible for regulating communications (internet, telephones and mobile phones), television, radio and content as well as spectrum management and allocation and equipment compliance. It has both an infrastructure role (eg, approving carrier licences and allocating spectrum) and a consumer protection role in monitoring compliance with communications service regulation and content regulation.

The ACCC is the economy-wide competition and consumer protection regulator. It has a specific remit for the communications sector under Parts XIB and XIC of the Competition and Consumer Act 2010 (Cth).

Those Parts were introduced in the then Trade Practices Act 1974 (Cth) in 1997 in connection with the privatisation of the then Australian government-owned telecommunications company, Telecom Australia, and the policy aim of promoting an open and competitive telecommunications market. The ACCC's communications sector remit now extends to the NBN, the government-owned near-ubiquitous broadband network.

The eSafety Commissioner has specific regulatory responsibility for online safety. The Commissioner's responsibilities include an Online Content Scheme under the Online Safety Act 2021 (Cth). That Scheme regulates the streaming of illegal and restricted online content, which covers both seriously harmful material, that may not be shown at all, and material that should not be made available to children, which may be made available if it is subject to an appropriate restricted access system. The Scheme applies to commercial subscription streaming services, as well as other streaming services.

Each of these regulators has distinct roles provided by statute and there is very limited overlap between the roles of each (noting that the ACCC and ACMA both have a consumer protection role, but in distinct areas).

Appeal procedure

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

Decisions of the ACCC, the ACMA, and other regulators, are either legislative or administrative in nature. Legislative decisions create rules of law that have general application to the community at large – for example, by making regulations under the delegation or authority of Parliament. Administrative decisions are typically characterised as the application of laws or other regulations to the circumstances of a particular case.

A regulator's legislative decisions may be challenged if the regulator exceeds the power delegated to it by Parliament. This could occur, for example, if a regulator issues rules about matters beyond the scope of its authorisation.

Administrative decisions may be subject to merits review or judicial review. A merits review will usually involve a tribunal reviewing the facts and law of the original decision. The tribunal may then substitute its own decision. When an administrative decision is subject to judicial review, the court will only consider the legality of the decision. For example, the court may assess whether the regulator had the power to make the decision or whether the regulator granted procedural fairness.

Judicial review may occur under the general law or pursuant to the Administrative Decisions (Judicial Review) Act 1977 (Cth) (ADJR Act). A decision will only be eligible for review under the ADJR Act if it is a decision of an administrative character made under an enactment or by a Commonwealth authority or officer of the Commonwealth. Certain decisions are specifically exempt from review under the ADJR Act.

In addition, if the ACCC objects to a merger under its informal merger clearance processes, a disgruntled merger party may seek a declaration from the Federal Court that the proposed merger does not breach the Competition and Consumer Act 2010 (Cth) or complete the merger anyhow, requiring the ACCC to take action against it if the ACCC considers it is uncompetitive.

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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.

Over the past 12 months, the ACCC has been very active in the media sector. The Competition and Consumer Act 2010 (Cth) was amended in 2021 to incorporate the Mandatory News Media Bargaining Code (the Code). The threat of being designated under the Code, a world first, resulted in Google and Meta entering into agreements to make payments to many Australian news media businesses. The ACCC has continued its investigations of digital platforms, completing its Digital Advertising Services Inquiry in late 2021. The ACCC is now consulting on whether it requires additional powers to address anticompetitive conduct in relation to advertising technology (and other digital sectors). Regulatory reform is likely to have a significant impact on the advertising technology sector, and revenues for media companies from online advertising. The most significant media merger over the past year was the acquisition by Seven West Media, a national media company, with Prime, a regional media operation. This was not opposed by the ACCC.

There has not been any significant merger activity in the communications sector over the previous 12 months, although there has been recent activity in relation to communications infrastructure, with the sale of Axicom (Australia's largest wireless infrastructure operator) and the announced sale of BAI Communications, which owns approximately 750 transmission sites that are used predominantly for broadcast transmission. A significant competition focus in recent years has been on the rollout of the NBN, to ensure competition in the provision of superfast carriage services to retail customers. The ACCC has also recently been directed to undertake an inquiry into towers used for mobile and other radiocommunications services in regional areas.

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Brazil

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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?

The Brazilian telecommunications sector has as its basis Law No. 9,472/1997, the General Telecommunications Law, which sets forth that the national government is competent to organise the exploitation of telecommunications services, as per the terms of policies established by the executive and legislative branches. The organisation of telecommunications services includes the regulation and inspection of the services' execution, trade, and use, deployment and operation of telecommunications networks, in addition to the use of orbit resources and radio frequencies spectrum. Moreover, telecommunications services' organisation is based on free, broad and fair competition among providers thereof.

The National Telecommunications Agency (Anatel), is the sector's regulatory body, having the competence to implement the national telecommunications policy, issue rules concerning the grant, provision, and enjoyment of telecommunications services in the public and private regimes, administer the radio frequencies spectrum and the use of orbits, conduct inspections and apply sanctions, in addition to other roles.

Broadcasting services in Brazil, in turn, are regulated by Law No. 4,177/1962 and Decree No. 52,795/1963, according to policies instituted by and subject to the control of the Ministry of Communications. The Federal Constitution, moreover, sets forth that radio and television broadcasters' productions and programmes shall:

- give preference to educational, artistic, cultural and informative purposes;
- promote national and regional culture and stimulate independent production aimed at dissemination thereof;
- regionalise cultural, artistic and journalistic production; and
- respect ethical and social values.

However, opposed to free-to-air television broadcasting, the pay television services are called conditioned access services, which are deemed telecommunications services, being subject to the provisions of Law No. 12,485/2011.

Anatel does not regulate broadcasting services, except for certain technical aspects concerning the radio frequency use and compliance of equipment. The National Cinema Agency regulates audio-visual content regarding the registration of works and implementation of governmental policies intended to develop the national cinematographic sector.

In general, there are no restrictions concerning foreign ownership, but telecommunications service providers shall be companies organised in accordance with Brazilian laws, having their headquarters and administration in Brazil. Broadcasting companies, however, shall be owned by native Brazilians or individuals naturalised as Brazilian citizens for over 10 years, or by legal entities organised under Brazilian laws, headquartered in Brazil. Additionally, at least 70 per cent of the total capital and voting capital of broadcasting companies shall be directly or indirectly held by native Brazilians or individuals naturalised as Brazilian citizens for over 10 years, who will mandatorily manage their activities and establish the programming content, thus limiting foreign ownership.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

Telecommunications services in Brazil might be provided under the public or private regime. In the public regime, a concession or permit (in specific circumstances and on a temporary basis) granted by Anatel is required for the service provision. In the private regime, an authorisation shall be granted for the services to be provided. Notwithstanding, according to the terms of Law No. 13,879/2019, if the applicable requirements are met, concessionaires might request the adjustment of a concession into an authorisation.

Only companies organised according to Brazilian law, with headquarters and administration in Brazil, having as their corporate object the provision of telecommunications services, might be granted the relevant licenses. Capacity to bid and enter into agreements with the public authority, technical qualification to provide the services, in addition to other requirements, also apply. Moreover, a company might not hold more than one licence to provide the same kind of service in the same area. The transfer of both concessions and authorisations depends on an approval by Anatel.

Fixed-switched telephone services (FSTS) are the only telecommunications services provided under the public regime, although they might also be provided under the private regime. Concessions are granted by means of a bidding procedure for a period of up to 20 years, renewable for equal terms, provided the applicable conditions for this purpose have been fulfilled.

Mobile services and multimedia communications services are provided under the private regime, with authorisations being granted for 20 years, and renewable for equal terms. Spectrum for the deployment of 3G and 4G technologies has been granted in bidding procedures. 5G technology, in turn, is to be implemented in Brazil from 2022 and, similarly, authorisations related thereto were also granted during a bidding procedure held in November 2021.

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The cost for issuing an authorisation is 400 reais (approximately US$80), but regarding the bid for spectrum, the highest offer is to be paid by the winning party. Other fees might also be due, such as, for example, the installation inspection fee and the operating inspection fee.

According to Brazilian regulations, the provision of satellite capacity does not constitute a telecommunications service. However, when there is communication with earth stations in Brazil, satellite exploitation over the country's territory is dependent on the grant of the right to exploit satellites (which authorises the use of orbit resources and radio frequencies for satellite control and monitoring, satellite communications, and provision of satellite capacity over the country's territory, whether by a Brazilian or a foreign satellite), in addition to other requirements, depending on the specific case. The party interested in being granted such rights shall be a private or public legal entity, organised under Brazilian laws, with headquarters and administration in Brazil, have the legal and technical qualification to exploit satellites, in addition to other requirements, and submit an application in this regard to Anatel. Once the right to exploit satellites is granted, the respective operator might provide the satellite capacity to companies holding a concession, permission, or authorisation to provide telecommunications and broadcasting services, or even to the armed forces. Satellite operators are not forbidden to be telecommunications services providers as well. The exploitation right might be granted for up to 15 years, extendable for further 15-year periods for the remainder of the authorised satellite's useful life. The need to conduct bidding procedures for an orbital position has recently been eliminated. Compliance with the Radiocommunication Regulations of the International Telecommunication Union and guidelines of the United Nations Office for Outer Space Affairs might be applicable.

Concerning public Wi-Fi services, Decree No. 7,175/2010 instituted the National Broadband Plan, intended to provide broadband connection and digital inclusion. Said Decree was later revoked by Decree No. 9,612/2018, which provides on telecommunications public policies. Presently, the Wi-Fi Brasil programme counts on a partnership with Telebrás to provide high-speed connectivity throughout the country, especially to socially vulnerable communities, having benefitted schools, healthcare units, Indian villages and others so far.

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 General Telecommunications Law, the spectrum of radio frequencies is a limited resource and public asset, which might only be used as authorised by Anatel according to a prior licence. In this regard, it should be noted that in the destination of radio frequency bands, Anatel takes into consideration the rational and economic use of spectrum, as well as the existing attributions, distributions, and consignations, to avoid damaging interference.

The possibility of transferring authorisations among telecommunications services providers is foreseen by the General Telecommunications Law, but depends on Anatel's approval, and for this purpose, the regulatory agency might set forth certain conditions, including limitations to the number of radio frequencies being transferred. In addition, the analysis of the Administrative Council for Economic Defence (CADE), the Brazilian antitrust authority, might also be required.

Ex-ante regulatory obligations

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

In general, telecommunications services in Brazil shall comply with ex-ante regulations, and the General Telecommunications Law sets forth that such services are to be organised based on free, broad and fair competition.

Anatel's Resolution No. 600/2012, which approved the General Competition Plan, also sets forth guidelines regarding:

- competition aspects;
- measures concerning transparency, isonomic and non-discriminatory treatment;
- price control;
- the obligation of access and provision of specific network resources;
- the offer of wholesale products according to conditions set by such agency;
- obligations aimed to remedy specific market failures or to comply with the legal and regulatory rules in force; and
- accounting, functional or structural separation.

CADE's analysis and approval might also be required in the case of risk of impact on market competition, according to Law No. 12,529/2011.

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 is no legal basis concerning the structural or functional separation between an operator's network and service activities, but Anatel might impose accounting, functional or structural measures to achieve the General Competition Plan's objectives, as per Resolution No. 600/2012.

Universal service obligations and financing

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

Universal service obligations are applicable to services provided under the public regime. In Brazil, only FSTS are provided by concessionaires under the public regime, which, in addition thereto, shall also comply with continuity obligations. Failure to comply therewith might lead to a fine, forfeiture or an intervention decree.

Decree No. 10,610/2021 approved the current General Universalisation Goals Plan for 2021–2025, setting forth obligations and universalisation goals for FSTS, among which the obligation to deploy optical fibre backhaul in 100 per cent of municipalities, villages, isolated urban areas and rural agglomerates until the end of 2024, and install individual access to FSTS in locations with over 300 inhabitants.

Concessionaires shall bear the costs of their obligations, but such costs might be financed in part with resources from the Universalisation Fund for Telecommunications Services, created by Law No. 9,998/2000.

Number allocation and portability

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

Number allocation is presently based on Anatel's Resolution No. 86/1998 for the FSTS and No. 301/2022 for personal mobile services (PMS).

According to Anatel's Resolution No. 460/2007, number portability in Brazil is allowed between providers of the same class of telecommunications services, being applicable to FSTS or PMS, if the relevant user

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remains in the same area. It is not possible to apply for portability from FSTS to PMS, or from PMS to FSTS.

Customer terms and conditions

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

Terms and conditions applicable to the provision of telecommunications services must be included in end-user agreements, which shall also comply with rules set forth by the Brazilian Civil Code, Consumer Defence Code and General Data Protection Act, in addition to being in line with rules applicable to the relevant class of service. Mandatory clauses relate to the service's object, plan, conditions for changing the user's access codes, installation address, termination, customer services, and others. Moreover, a template of Terms and Conditions shall be submitted to Anatel for approval. Anatel's Resolution No. 632/2014, which approved the General Regulation on Rights of Consumers of Telecommunications Services, regulates the rights of users of fixed and mobile telephone, multimedia communications and paid television services, and also applies.

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?

Net neutrality is set forth by Law No. 12,965/2014 (the Internet Law). According thereto, preserving and ensuring net neutrality is one of the principles applicable to Internet use in Brazil, and the party in charge of the transmission, switching or routing has the duty to process any data packages in an isonomic manner, with no distinction related to content, origin and destination, service, terminal or application. Therefore, 'throttling' in general is not allowed.

However, traffic discrimination or degradation might be possible, if resulting from technical requirements essential for the proper provision of services and applications, and for the prioritisation of emergency services, in which cases the provider shall:

- not cause damages to users;
- act with proportionality, transparency and isonomy;
- previously inform users, in a transparent, clear, and sufficiently descriptive manner, with regard to traffic management and mitigation practices adopted, including those related to network security; and
- offer services in non-discriminatory commercial conditions, refraining from practising anticompetitive conducts.

It is also forbidden to block, monitor, filter or analyse data packages' content.

Decree No. 8,771/2016 regulated the Internet Law and specifies that traffic discrimination and degradation are exceptional measures, aimed at maintaining the stability, security, integrity and functionality of networks, of which users should be aware. For these purposes, technical measures consistent with international standards, developed for Internet good operation and in accordance with Anatel's regulatory parameters and guidelines established by the Internet Management Committee in Brazil (CGI.br) are required.

Platform regulation

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

There is no specific legislation or regulation in place regarding exclusively digital platforms. Legislation such as the Internet Law (Law No. 12,965/2014) and its Regulatory Decree (Decree No. 8,771/2016); and the General Data Protection Act (Law No. 13,709/2018) (LGPD) provide guidance and establish rules regarding the use of the internet and the processing of personal data in physical and digital media.

There are, however, a lot of bills regarding the regulation of platforms, such as the Bill of Fake News (Bill No. 2,630/2020), which aims to establish rules regarding the transparency of social networks and private messaging services, especially with regard to the responsibility of service providers to combat misinformation and increase transparency on the Internet, transparency in relation to sponsored content and the performance of public authorities, as well as it establishes sanctions for non-compliance with the law. This Bill is currently on its way through the House of Representatives.

There is also Bill No. 21/2020, which establishes foundations and principles for the development and application of artificial intelligence in Brazil, listing guidelines for the promotion and performance of public authorities on the subject. This Bill is currently in the Federal Senate.

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?

No specific regulatory obligations are presently applicable to NGA networks in Brazil. However, the Brazilian government has been continuously promoting access to broadband since 2010, when Decree No. 7,175/2010 launched the National Broadband Plan. In the following years, several bids granting rights to use spectrum bands allocated for 3G and 4G technologies were held and, in 2022, the largest auction of Anatel's history granted authorisations that will expand telecommunications services in Brazil and result in 5G technology deployment beginning in 2022, thus also positively impacting the internet of things and machine-to-machine communications markets.

Data protection

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

There is no specific regime of data protection for the communications sector. The LGPD applies to all sectors in Brazil, including communications.

The LGPD applies to all processing operations carried out by a natural person or by a legal entity governed by public or private law, regardless of the format, the country of its headquarters or the country where the data are located, provided that the processing operation:

- is carried out in the national territory;
- the processing activity has the objective of offering or providing goods or services or the processing of data of individuals located in the national territory; or
- personal data subject to processing have been collected in the Brazilian territory.

The LGPD also establishes principles that must be observed when processing personal data, with emphasis on purpose, adequacy, necessity, transparency, security, and accountability, among others.

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The communications sector may process personal data based on several legal bases, among which are consent, compliance with legal or regulatory obligations, the performance of a contract, protection of an individual's life, and the legitimate interest of the controller (provided that the legitimate expectations of the individual are respected). It is important to mention that there are specific legal bases when the processing of personal data involves sensitive data such as:

- data related to racial or ethnic origin;
- religious conviction;
- political opinion;
- affiliation to a union or organisation of a religious, philosophical or political nature;
- data related to health or sex life, genetic or biometric data, when linked to a natural person.

With regard to controllers, they have a legal duty to:

- appoint a data protection officer;
- prepare a data protection impact assessment, with a description of the processes that may generate risks to civil liberties and fundamental rights, as well as measures, safeguards and risk mitigation mechanisms; and
- notify the Data Protection Authority (ANPD) and the data subjects of the occurrence of a security incident that may cause significant risk or damage to the holders.

They also have to respond to requests from personal data subjects, which may include requests such as:

- access to the data;
- correction of incomplete, inaccurate or outdated data;
- anonymisation, blocking, or erasure of unnecessary or excessive data or data processed in non-compliance with the provisions of the LGPD;
- portability of data to another service provider;
- deletion of the personal data processed with the consent of the data subjects;
- information about public and private entities with which the controller has shared data;
- review of decisions taken by the controller solely based on automated processing of personal data that affects the data subject's interests, including decisions intended to define his or her consumer or credit profile, among others.

All processing agents must also maintain records of processing of personal data, especially when based on legitimate interest, in addition to adopting security, technical, and organisational measures.

Finally, it is worth mentioning that failure to comply with the provisions of the LGPD may give rise to the opening of an administrative process by the ANPD, which may impose sanctions such as warning, blocking of data, deletion of data, prohibition of processing activities and even fines that can reach the limit of 50 million reais per infraction. The administrative process by the ANPD does not prevent the filing of lawsuits by data subjects and the action of specific regulatory bodies such as Anatel.

In addition, Anatel has made an online page available about the processing of personal data carried out by the Agency, as well as privacy notices and contact information for the data protection officer, in compliance with the LGPD.

Cybersecurity

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

Anatel's Resolution No. 740/2020 approved the Regulation of Cybersecurity Applied to the Telecommunications Sector, setting that conduct and procedures intended to promote cybersecurity in telecommunications networks and services shall ensure the principles of authenticity, confidentiality, availability, diversity, integrity, interoperability, priority, responsibility, and transparency. Accordingly, individuals and legal entities directly or indirectly involved in the management or development of telecommunications networks and systems shall:

- adopt national or international rules and standards and good cybersecurity practices;
- seek the safe and sustainable use of such networks and services;
- identify, protect, diagnose, reply to – and recover – cybersecurity incidents; and
- stimulate the adoption of security by design and privacy by design concepts in the development and acquisition of products and services in the telecommunications sector, in addition to other guidelines.

Some of the Resolution's provisions, however, might not apply to all telecommunications service providers.

Also, Decree No. 10,222/2020 (the National Strategy of Cybersecurity) determines in its annex the federal government's goals to be achieved and actions to be taken, nationally and internationally, regarding cybersecurity, with an agenda from 2020 to 2023.

Decree No. 9,637/2018 establishes the National Information Security Policy, which determines the governance of information security to assure the availability, integrity, confidentiality, and authenticity of the information in Brazilian territory.

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?

There is no specific legislation or regulation regarding exclusively big data in Brazil. Nevertheless, several legislations apply to big data. The LGPD, for instance, applies when addressing these matters as it determines the rules on personal data processing and establishes duties and rights for both processing agents and data subjects, ruling to protect the subjects' privacy and self-determination regarding their personal data.

The Consumer Protection Code (Law No. 8,078/1990) establishes rules regarding consumers, granting consumers access to their data compiled in databases. The Internet Law also promotes as a goal the adherence to open technological standards that allow communication, accessibility, and interoperability between applications and databases.

Data localisation

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

There are no rules requiring the storage of personal data in Brazil. The Internet Law and LGPD cover matters related to the application of Brazilian law, rules on international data transfers and security measures to be adopted when storing information, but are silent on the subject of data localisation.

However, different economic sectors, especially the regulated ones (eg, banking, insurance and pensions, and health) may establish specific requirements. Brazilian Central Bank, for example, issued Resolution No. 4658/2021, which provides for cybersecurity policy, in addition to the

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requirements for contracting storage and cloud computing services to be observed by financial institutions. According to the Resolution, the contracting of data storage services must be previously communicated to Brazilian Central Bank, including information about the countries and regions where the services may be provided and the data may be stored.

Also, Complementary Norm/No. 14/IN01/DSIC/GSIPR, established in 2012 and edited in 2018, has the objective of setting guidelines regarding the use of technologies in government agencies. More specifically, it addresses cloud computing and the aspects related to security and data protection. The Norm requires that information classified as secret or top secret cannot be processed on the cloud, for any reason. Also, data and metadata produced by and (or) under the responsibility of the agency must be stored in data centres within national territory.

Key trends and expected changes

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

In 2021, in the largest auction in Brazil's history, Anatel granted authorisations for the use of radio frequencies in the 700 MHz, 2.3 GHz, 3.5 GHz and 26 GHz bands. This will not only result in the implementation of 5G technology in Brazil from 2022, but will also imply in major investments in the sector, expanding access to communications and services in the country, also with 4G technology, as a consequence of investment commitments undertaken by the winning bidders.

Additionally, other radio frequencies might come to be used for 5G applications following public consultations and further analysis and approval by Anatel, but it is not possible to predict if or when the applicable reallocation might become effective.

MEDIA

Regulatory and institutional structure

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

Broadcasting services in Brazil are regulated by Law No. 4,117/1962, the Telecommunications Code, and Decree No. 52,795/1963, which approved the Broadcasting Services Regulation. Control of broadcasting services is incumbent upon the Ministry of Communications. The National Telecommunications Agency (Anatel) does not regulate these services but has authority concerning the technical aspects of the use of radio frequencies and compliance of equipment used in related activities.

Pay television services, in turn, are called conditioned access services (SeAC) and are deemed telecommunications services, thus being subject to the provisions of the General Telecommunications Law, in addition to those of Law No. 12,485/2011.

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?

The Federal Constitution sets forth that ownership of news and broadcasting companies might only be held by native Brazilians or individuals naturalised as Brazilian citizens for over 10 years, or legal entities organised under Brazilian laws, having headquarters in the country. Moreover, at least 70 per cent of the total capital and voting capital of such companies shall be directly or indirectly held by native Brazilians or individuals naturalised as Brazilian citizens for over 10 years, who shall manage the activities thereof and stipulate the programming content.

Licensing requirements

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

The provision of broadcasting depends on a concession or permission agreement entered into with the Brazilian government, which has also to be approved by the National Congress. The respective licensing is subject to a bidding process carried out by the Ministry of Communications. The interested parties shall comply with the applicable requirements set forth by the invitation to bid, which includes requirements related to limited ownership. Fees to be paid depend on the bidding process results, and there is no timescale provided for by law for the conclusion thereof.

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?

Broadcasting of foreign-produced programmes is allowed, even with the Federal Constitution setting forth that the production and programming of radio and television broadcasters shall promote national and regional culture, artistic and journalistic production in addition to encouraging independent production.

Law No. 12,485/2011, which provides on SeAC, also allows the transmission of foreign programmes, but imposes that at least three hours and thirty minutes per week of the content transmitted at prime time in certain channels shall be of Brazilian content, half of which is to be produced by an independent Brazilian producer. However, such rules are not applicable to online media or mobile content.

Advertising

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

Law No. 4,117/1962 provides that no more than 25 per cent of the total time of broadcasting stations' programming might be intended for commercial advertising. The commercial advertising of tobacco, alcoholic beverages, medications, therapies and agricultural chemicals is subject to restrictions according to Law No. 9,294/1996. Publicity is also controlled by a self-regulation code, and the National Publicity Self-Regulation Board (CONAR) is the private entity that settles complaints, claims, and disputes related thereto, and that issues guidelines for specific practices, such as the Best Practice Guide for Online Advertising for Children.

Online advertising is subject to the provisions of the Consumer Defence Code, as well as to CONAR regulations on the matter.

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. 12,485/2011 sets forth that SeAC providers must make available certain specific channels in all packages offered, such as a

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channel reserved for the Federal Supreme Court. There is no mechanism for financing the costs related to must-carry obligations, and providers shall bear the expenses related thereto. Notwithstanding, should technical or economic unfeasibility be proven, Anatel might determine that the provider is not subject to the distribution of such channels, whether in full or in part.

Regulation of new media content

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

There is no regulation concerning new media content and its delivery in Brazil. However, analyses concerning the potential regulation of more recent technologies, such as video on demand (VOD), are presently ongoing.

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?

Based on Decree No. 5,820/2006, the switchover from analogue to digital broadcasting began in 2007. More recently, as per Ordinance No. 2,524/2021, the Ministry of Communications instituted Programa Digitaliza Brasil, setting guidelines for the process of digitalisation of analogic television signals, expected to be concluded until 31 December 2023. The resulting freed radio frequencies are allocated to mobile networks.

Digital formats

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

There are no specific provisions regulating how spectrum might be used by broadcasters. However, Anatel regulates the technical aspects related to the use of radio frequencies in Brazil, while the Ministry of Communications is responsible for controlling broadcasters.

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 are no specific regulations concerning media plurality in Brazil. However, the promotion of cultural diversity and sources of information, production and programmes is one of the principles applicable to SeAC, according to Law No. 12,485/2011.

Key trends and expected changes

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

The Ministry of Communications is drafting a bill for a new legal framework encompassing both the SeAC and streaming services. In addition, other initiatives regarding the possibility of regulating VOD are presently being discussed by the National Congress. However, it is not possible to estimate whether the bill will in fact be approved, or when.

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?

The National Telecommunications Agency (Anatel) is the agency that regulates and supervises telecommunications services, being also in charge of implementing the national telecommunications policy and carrying out administrative activities, such as the grant of licenses and regulation of technical aspects related to radio frequencies. Broadcasting services, in turn, are controlled by the Ministry of Communications.

As per the Federal Constitution, social communications media might not, directly or indirectly, be subject to monopoly or oligopoly. All telecommunications services providers and broadcasting companies are subject to legislation on the prevention and repression of violations of the economic order, in particular, Law No. 12,529/2011 (the Antitrust Law). Therefore, the Administrative Council for Economic Defence (CADE), has competence to analyse antitrust issues involving such companies, such as anticompetitive conduct and concentration acts. Considering that Anatel also analyses competition aspects according to the regulatory framework, its assistance and cooperation, including for the preparation of technical reports, might be required by CADE.

Appeal procedure

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

The decisions of the regulators are administrative, which, consequently, can be challenged by means of administrative appeals or judicial claims. Each regulatory agency establishes its own procedural rules for the administrative process and related appeals, all subject, however, to general guidelines provided for by Law No. 9,784/1999. The regulators are entitled to nullify their own acts if there are illegalities or revoke them, based on convenience and opportunity (precedent 473, Supreme Court of Justice).

The guidelines concerning administrative appeals filed against Anatel's decisions are set in such Agency's Resolution No. 612/2013, which approved its Internal Regulations. Similarly, provisions on administrative appeals in the scope of CADE can be found in its Internal Regulations, approved by Resolution No. 22/2019.

The annulment of the administrative act can also be sought through a judicial claim, which, however, is only entitled to discuss the legality of the act. The judicial claim shall follow the ordinary procedure, subject to evidence production and appeals to state courts and the Supreme Court. A writ of mandamus can apply in cases of a violation or a threatened violation of a clear and indisputable right (Law No. 12,016/2009). In any case, the merits of the administrative action cannot be reviewed judicially. The exhaustion of the administrative instance is not a condition for admission of the judicial claim, according to article 5, XXXV of the Federal Constitution.

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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.

After an operation that began with an auction held in 2020, and after Anatel's approval following a comprehensive analysis regarding its regulatory aspects, CADE recently approved the sale of mobile assets of Oi SA to the three major Brazilian telecommunications services providers, TIM SA, Telefônica Brasil SA and Claro SA, with some conditions being imposed. In 2020, Oi was the fourth-largest mobile services provider in Brazil, holding 16 per cent of the market, exceeding 36.5 million accesses.

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Egypt

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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?

Egypt is one of the three largest economies in Africa and is strategically positioned at a crossroads between the East and the West, making the country a significant player in international trade in the Middle East and Africa. Egypt is home to the Suez Canal, which connects the Mediterranean Sea with the Red Sea and is a key artery in global trade.

The total area of Egypt is 1,001,450 square kilometres, including 995,450 square kilometres of land and 6,000 square kilometres of water. According to the Egyptian Central Agency for Public Mobilisation and Statistics, the population reached more than 100 million people in 2020. Egypt is divided into 27 governorates, 217 cities and 4,617 villages. The governorates with the highest population are Cairo (10.8 per cent), Giza (8.6 per cent) and Sharqiyya (7.4 per cent).

The Egyptian government has worked hard to attract more foreign direct investment (FDI) to the country, and these efforts resulted in the recognition of Egypt as one of the top five destinations globally for greenfield FDI in 2016. Also, in 2016, Cairo was named as one of the top 10 cities in the world to found a tech start-up, according to the fDi Report 2020 issued by fDi Intelligence:

Egypt replaced South Africa as the second-ranked destination by projects in the region, experiencing a 60 per cent increase from 85 to 136 projects, which covers both the Middle East and Africa. Software and IT services are the top project sectors.

Further, Egypt also managed to top all ranked countries in the Middle East and Africa for capital investment in 2019 by acquiring 12 per cent capital investment with a total value of US$13.7 billion.

The telecom sector in Egypt is mainly governed by Telecoms Law No. 10/2003. Also, there are several other key laws and regulations related to the telecom sector, including the following (as amended to date):

- Penal Code No. 58/1937;
- Presidential Decree No. 236/1985 approving the International Telegraph (currently Telecommunication) (ITU) Convention, which ITU Convention entered into force in Egypt on 10 October 1985;
- Presidential Decree No. 379/1999 regulating the Egyptian Ministry of Communication and Information Technology (MoCIT);
- E-signature Law No. 15/2004 and its Executive Regulation;
- Economic Court Law No. 120/2008;
- Cybercrime Law No. 175/2018; and
- Personal Data Protection Law No. 151/2020.

The National Telecommunication Regulatory Authority (NTRA) is mainly empowered by the Telecoms Law to regulate and enhance telecommunication services in Egypt. In addition to the NTRA, other key entities are involved in the telecom sector, namely:

- MoCIT is empowered by the Presidential Decree No. 379/1999 to, inter alia, expand, regularly develop and improve communication and information services as well as encourage investment in the telecoms sector based on the antitrust basis;
- the Information Technology Development Agency is empowered by the E-signature Law to, inter alia, promote and develop the information technology and communication industry, support small and medium-sized enterprises in using e-transaction and regulating e-signature services activities; and
- the Economic Court has executive jurisdiction over settling litigation related to the Telecoms Law.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

Under the Telecoms Law, no one is allowed to establish or operate any telecom network, provide any telecom service to third parties, transmit international calls or announce doing so unless a licence is obtained from the NTRA.

The term 'telecom' is defined by the Telecoms Law as 'any means of sending or receiving signs, signals, messages, texts, images or sounds of whatsoever nature and whether the communication is wired or wireless'.

The restriction above does distinguish between the different types of telecom services and includes one exception only for establishing or operating a private network that does not use a wireless system.

In practice, telecom services are generally classified as follows:

Main service	Sub-service
Fixed services	Fixed telephony
	Virtual fixed telephony
	Access
International services	International gateway
	International submarine cable
Data services	Class A
	Class B
	Class C
	Global peering
	Registrar

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Main service	Sub-service
Cellular	Mobile services
	Bulk SMS (one to many)
	VAS
	Wireless trunk
	Nilesat
	VSAT
Satellite services	GMPCS
	Navigation services (aviation/maritime)
Infrastructure leasing	Infrastructure
	Towers
AVL	
Accounting authorities	
Wireless institutes	

The licence of each telecom service allows the relevant licensees to provide such service within a very specific scope.

Generally, all licences are granted under a licence agreement with the NTRA noting that all licences for major services (eg, fixed telephony and cellular) are granted by the NTRA through a bidding process. However, the other licences may be granted by the NTRA upon request. This request is required to be assessed from a different perspective including, inter alia, the market demand and the financial and technical adequacy of the applicant.

Licences are granted for a period between one and 15 years, depending on the services that are the subject of such licences.

The NTRA applies a different fee structure for issuing licences for each type of service as per the following examples:

Service	Applicable fees and security
Wireless infrastructure leasing	• A one-time licensing fee of 50,000 Egyptian pounds; • 3% of the total annual revenues; • a licence burden annual fee of 10,000 Egyptian pounds plus the inflation rate declared by the Central Bank of Egypt (CBE); and • a performance bond of 500,000 Egyptian pounds.
Registrar	• A one-time licensing fee of 50,000 Egyptian pounds; • 3% of the total annual revenues; • a licence burden annual fee of 10,000 Egyptian pounds plus the inflation rate declared by the CBE; and • a performance bond of 20,000 Egyptian pounds.
GMPCS	• No one-time licensing fee; • 3% of the total annual revenues; • a licence burden annual fee of 1,000 Egyptian pounds plus the inflation rate declared by the CBE; • annual charges for the equipment of the licensee's subscribers; and • a performance bond of 150,000 Egyptian pounds.
Access	• A one-time licensing fee of 1 million Egyptian pounds; • 8% of the total annual revenues; • a licence burden annual fee of 500,000 Egyptian pounds plus the inflation rate declared by the CBE; • annual charges for the equipment of the licensee's subscribers; and • a performance bond of 50 million Egyptian pounds.
Class A	• No one-time licensing fee; • 3% of the total annual revenues; • a licence burden annual fee of 10,000 Egyptian pounds plus the inflation rate declared by the CBE; and • a performance bond of 500,000 Egyptian pounds.
Class B	• No one-time licensing fee; • 3% of the total annual revenues; • a licence burden annual fee of 10,000 Egyptian pounds plus the inflation rate declared by the CBE; and • a performance bond of 150,000 Egyptian pounds.
Global peering	• No one-time licensing fee; • 3% of the total annual revenues; • a licence burden annual fee of 10,000 Egyptian pounds plus the inflation rate declared by the CBE; and • a performance bond of 200,000 Egyptian pounds.
Bulk SMS (one to many)	• A one-time licensing fee of 500,000 Egyptian pounds; • 3% of the total annual revenues; • a licence burden annual fee of 1,000 Egyptian pounds plus the inflation rate declared by the CBE; • annual charges for the equipment of the licensee's subscribers; and • a performance bond of 500,000 Egyptian pounds.
VAS	• An upfront royalty fee of 3 million Egyptian pounds; • 3% of the total annual revenues; • a licence renewal fee of 1 million Egyptian pounds; • a licences and liability fee of 20,000 Egyptian pounds; and • a cash deposit guarantee of 500,000 Egyptian pounds.
VSAT	• No one-time licensing fee; • 3% of the total annual revenues; • frequency charges to be determined on a case-by-case basis; • a licence burden annual fee of 1,000 Egyptian pounds plus the inflation rate declared by the CBE; and • a performance bond of 100,000 Egyptian pounds.

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?

All spectrum licences generally specify the permitted use and are not tradable or assignable, fully or partly, under the Telecom Law unless prior approval is obtained from the NTRA. Also, all licence agreements include a change of control restriction, so that the licensee may not even merge with any third party unless prior written approval is obtained from the NTRA.

Ex-ante regulatory obligations

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

All licences are required, under the Telecoms Law, to include several ex-ante provisions concerning transparency, price control, cost accounting, accounting separation, access to and use of specific network facilities and non-discrimination.

For example, the NTRA has the right to review any audited financial statement including, inter alia, appointing an auditor other than the licensee's auditor to review the said financial statement. Further, each licensee is required to obtain an approval from the NTRA before applying tariffs or changing them.

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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?

According to the Telecoms Law, all licensed operators are required to not support one service in favour of another service. All licensed operators are required to comply with the ITU's recommendations and international standards. That said, if, for any reason, a structural or functional separation is required as per the NTRA's instructions, the ITU's recommendation or international standards, then the relevant operator should comply with this requirement.

The first time the NTRA introduced structural or functional separation was for Telecom Egypt to ensure its non-discriminatory behaviour.

Universal service obligations and financing

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

According to the Telecoms Law, the provision of any telecom service must be based on four principles, one of which is the availability of the universal service.

The NTRA is required by the Telecoms Law to transfer its budget's surplus, except for the amount allocated to the state by the Cabinet of Ministers, to the Universal Service Fund on an annual basis. Any amounts to be transferred to the Universal Service Fund must be utilised on, inter alia, infrastructure projects required for the universal service, reallocation for the spectrum, indemnifying telecom services operators and providers for the price difference between the approved economical price for the services and that which may be determined in favour of the telecom consumers.

Number allocation and portability

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

There is a specific number allocation plan adopted by the NTRA, which is updated from time to time depending on the increase of telecom service subscribers in Egypt, whereby each operator has a dedicated first two-to-three digits. There are also dedicated numbers for emergency services (eg, ambulance, police and fire brigade).

There is also a mobile number portability regulation adopted by the NTRA whereby mobile subscribers may freely shift between operators without losing their numbers. This regulation includes several mandatory terms and conditions applied to both operators and subscribers.

Customer terms and conditions

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

Yes, all telecom services providers are required to have written contracts with their customers in Egypt. These written contracts are required to follow the form approved by the NTRA and cover, inter alia:

- the type of services that are subject to the customer agreement;
- the confidentiality requirement for the customers' data and communications;
- the terms of payment including interest, administrative fees, tax and any other burdens;
- the duration and its renewal;
- rights in the case of default or termination; and
- the agreement is personal and may not be assigned to any third party without the approval of the licensed telecoms provider.

Any violation of the requirements above will result in a penalty from the NTRA as per the Penalties Regulation. For example, in 2016, the NTRA imposed a penalty of 250,000 Egyptian pounds on Etisalat Misr for not complying with this mandatory requirement.

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 provision of telecom services in Egypt must always be based on transparency; therefore, internet service providers may not control or prioritise the type or source of data they deliver.

The Administrative Courts rendered a judgment ordering the NTRA to block pornographic content; however, the NTRA challenged this judgment on the basis that the Telecoms Law does not grant this power to the NTRA.

However, the Cybercrime Law of 2018 allows the competent authorities in Egypt to block any website that is broadcast from Egypt or abroad if that website contains any statements, digits, images, videos or any other advertising material that is deemed a crime under the Cybercrime Law. This blockage is subject to judicial review within 24 hours.

Platform regulation

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

Digital platforms are mainly regulated by the following:

- the Telecoms Law;
- Law No. 180/2018 regarding press, media and the Supreme Council of Media (SCoM) Regulation (the Media Law) and its Executive Regulation; and
- SCoM Decree No. 26/2020, issuing the SCoM Licensing Regulation (the Media Licensing Regulation).

Digital platforms may not be created unless a licence is obtained from the SCoM and that licence also requires an approval from the NTRA.

According to the Media Licensing Regulation, companies carrying out any business activity related to creating digital or satellite platforms must be owned by the state with a minimum authorised capital of 50 million Egyptian pounds.

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?

There is no specific well-developed regulation yet applicable to NGA networks. However, our law firm obtained the first-ever authorisation from the NTRA for using a wide area network or Multiprotocol Label Switching in Egypt.

The main general regulatory requirement that is currently adopted by the NTRA is to have NGA networks implemented by a licensed provider of Class A services.

Data protection

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

There are two main laws in Egypt governing the use, collection, storage, transfer and protection of personal data in Egypt as follows.

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Data Protection Law No. 151 of 2020 (the Data Protection Law)

The Data Protection Law applies to any personal data that is subject to any electronic processing whether partially or entirely.

The Personal Data Law shall not apply to any personal data that is being:

- saved by natural persons for third parties and that is processed for personal usage only;
- processed for official statistics purposes or in the application of laws or regulations in Egypt;
- exclusively processed for media purposes and provided that the said personal data is correct and accurate and not to be used for any other purposes without prejudice to any applicable press and media regulations in Egypt;
- related to judicial seizure record, investigations and lawsuits;
- held by the national security authorities; and
- held by the CBE and the entities that are subject to its control and supervision except for money transfer and forex companies provided that they take into account the rules established by the CBE regulating personal data.

It is worth noting that any entity that is subject to the Data Protection Law is required to legitimise its position with the provisions of the said Data Protection Law within a year starting from the issuance date of its Executive Regulation, which has not yet been issued.

Anti-Cybercrimes Law No. 175 of 2018 (the Anti-Cybercrimes Law)

According to Article No. 2 of the Anti-Cybercrimes Law, any person, whether a natural or legal person, that uses, collects, or processes personal data whether a natural or legal person shall maintain the privacy of the data stored and not disclose the same without an order of a relevant judicial authority.

Further, any IT services provider shall retain and store users' data for at least 180 days continuously including identification, the content of services' system, communication traffic, terminals and any other data required by the NTRA.

In addition to the Data Protection Law and the Anti-Cybercrimes Law, few other laws deal with special nature personal data such as the Telecom Law, whereby telecom services providers are required to ensure and maintain the confidentiality of any customer's data.

Cybersecurity

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

Yes, the Cybercrime Law concerns any person providing, directly or indirectly, users with any information technology and telecom service including, inter alia, processing or data storage. These providers are required to retain and store users' data continuously for at least 180 days, including identification, the content of the services' system, communication traffic, terminals and any other data required by the NTRA.

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?

Unfortunately, there is no special regulation yet for big data. However, it is within the NTRA's ongoing strategy to regulate it.

Data localisation

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

Consumer Protection Law No. 181/2018 and its Executive Regulation require all providers of services and products in Egypt, except for the entities that are subject to the supervision of the CBE and the Egyptian supervisory authority, to have all advertising, data, information, documents, invoices, receipts, contracts including e-documents with the consumer to be in Arabic or a bilingual or multilineage form, providing that the Arabic language must be one of these languages.

Key trends and expected changes

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

Egypt aims to be a significant information and communications technology hub in North Africa and the Middle East, with the New Administrative Capital (NAC) being built as one of the many smart-city projects that are attracting and simulating investments into 5G and fibre broadband in Egypt, in addition to the adoption of many internet of things and artificial intelligence solutions. One of the largest telecom companies in Egypt, Etisalat, plans on launching 5G in the NAC. That said, later in 2022, further 5G trials will be held in Egypt mainly focusing on the NAC.

Further, because of Egypt's strategic geographical position that makes the international cable infrastructure an important asset to the country, in 2021, Telecom Egypt, Egypt's first integrated telecom operator and one of the largest subsea cable operators in the region, plants to launch Hybrid African Ring Path by 2023, which is a new subsea system that will outline the African continent. The system will connect Africa's eastern and western bounds to Europe, spanning South Africa to Italy and France along the continent's east coast, and to Portugal along its west coast. Highly reliable terrestrial routes will connect the landing points within South Africa, Europe and Egypt, forming a complete ring around the continent.

MEDIA

Regulatory and institutional structure

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

The media sector is governed by various laws and regulations, including the following:

- Investment Law No. 72/2017 and its Executive Regulation;
- the Law No. 180/2018 regarding press, media and the Supreme Council of Media (SCoM) Regulation (the Media Law);
- Prime Minister Decree No. 411/2000 establishing the Media Public Free Zone (MPFZ); and
- SCoM Decree No. 26/2020, issuing the SCoM Licensing Regulation (the Media Licensing Regulation).

Most of the key media projects in Egypt operate inside the MPFZ, which is a public free zone governed by regulated by various directives of the Chairman of the General Authority for Investment (GAFI).

All projects operating under the Investment Law are qualified by a large number of investment incentives.

For any media project to be qualified for operation inside MPFZ, the project must, in general, take a specific legal form and must comply with the Arab Media Ethical Charter and MPFZ's Business Controls and Principles.

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The services generally allowed to operate inside the MPFZ include, inter alia, radio, television, information broadcasting, e-content production and marketing. The MPFZ may also authorise hotels, banks and malls to operate inside the MPFZ to provide their services to the licensed media projects.

According to the Media Law and the Media Licensing Regulation, which was published on 13 May 2020, SCoM is empowered, inter alia, to:

- receive notification for establishing Egyptian newspapers or non-Egyptian newspapers that are issued or distributed in Egypt;
- grant licences to visual, audio or digital channels that are either registered in Egypt with GAFI or non-Egyptian channels that are being broadcast from Egypt;
- determine and apply the rules and requirements protecting the audience in Egypt;
- grant licences to broadcast relay stations, websites, digital and satellite platforms, fibre satellite distribution and content distribution;
- authorise the importation of satellite and internet broadcasting devices; and
- authorise the importation of non-Egyptian prints.

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?

According to the Media Law and the Media Licensing Regulation, which was published on 13 May 2020, foreign ownership restrictions apply to holding the majority stake or any stake giving the right to manage any Egyptian satellite or terrestrial television, as well as any Egyptian digital, wired or wireless station. However, non-Egyptian satellite and terrestrial television as well as non-Egyptian digital, wired and wireless stations may be licensed to operate in Egypt providing an approval is obtained from the SCoM. This approval requires, inter alia, operating inside a specific media area, the ability to block any content involving, inter alia, violence, suicide, self-harm or nudity.

Licensing requirements

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

According to the Media Law and the Media Licensing Regulation, which was published on 13 May 2020, a licence from the SCoM is required for any company to be in a position to operate a broadcast relay station in or to Egypt. This licence requires the following:

- payment of 250,000 Egyptian pounds to the SCoM;
- obtaining an approval from the National Telecommunication Regulatory Authority; and
- incorporation of a company in a form of a sole person company, limited liability company or joint-stock company with a minimum authorised capital of 5 million Egyptian pounds.

If the licence request is accepted, it should be valid for five years, renewable upon a request at least six months before the end of the said five years.

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?

According to the Media Law and the Media Licensing Regulation, which was published on 13 May 2020, a licence from the SCoM is required for any company to be in a position to operate and distribute recorded or live content in Egypt, whether through satellite or the internet. This licence requires the following:

- payment of 500,000 Egyptian pounds to the SCoM for the company and 50,000 Egyptian pounds for each website; and
- incorporation of a company in a form of a sole person company, limited liability company or joint-stock company with a minimum authorised capital of 50 million Egyptian pounds;

If the licence request is accepted, it should be valid for five years, renewable upon a request at least six months before the end of the said five years.

All content must, inter alia:

- comply with the Egyptian Constitution, applicable laws, regulations and professional codes and ethics; and
- be stored for at least one year and hosted by a server that is located at a secure location in Egypt, which location may not be changed without prior approval from the SCoM.

Advertising

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

The Media Law and the Media Licensing Regulation, which was published on 13 May 2020, differentiate between Egyptian and non-Egyptian media advertising companies as follows:

For Egyptian media advertising companies:

- a licence is required from the SCoM;
- non-Egyptians may not hold any majority stake or any other stake that allows them to manage the company;
- incorporation of a company in a form of sole person company, limited liability company or joint-stock company with a minimum authorised capital of:
- 100,000 Egyptian pounds for holding websites;
- 5 million Egyptian pounds for general or news television stations;
- 2 million Egyptian pounds for specialised television stations;
- 15 million Egyptian pounds for each broadcasting station; and
- 2.5 million Egyptian pounds for each electronic, television station or channel; and
- shareholders must subscribe to at least 35 per cent of the company's capital.

For non-Egyptian media advertising companies:

- an approval is required from the SCoM;
- this approval requires, inter alia, operating inside a specific media area, the availability of blocking any content involving, inter alia, violence, suicide, self-harm or nudity; and
- payment of the licensing fee as per the following table.

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Fee (Egyptian pounds)	Type of media
1 million	General and news media
500,000	Specialised media
100,000	general website
3 million	• social networking or promoting an individual's websites; • audio, video and text service on demand websites; and • goods, products and services marketing websites.
100,000	Any other website

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?

The Media Law and the Media Licensing Regulation, which was published on 13 May 2020, do not yet specify any must-carry obligations or a mechanism for financing the cost of such obligation.

Regulation of new media content

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

New media contents are subject to the same regulation as advertising.

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 digital switchover started in Egypt in 2013. The National Telecommunication Regulatory Authority is empowered under the Telecoms Law to reallocate and manage radio frequencies.

Digital formats

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

No.

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?

The Media Law and the Media Licensing Regulation, which was published on 13 May 2020, do not yet specify any process of media plurality in Egypt.

Key trends and expected changes

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

The Media Licensing Regulation entered into force in Egypt on 14 May 2020. It does not yet involve any practice in Egypt and includes several provisions that need clarification on how they will be applied in reality.

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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?

According to Antitrust Law No. 3/2005, the Egyptian Competition Protection Authority (CPA) is the competent regulator for antitrust. However, there has been a dispute between the CPA and the National Telecommunication Regulatory Authority (NTRA) regarding jurisdiction over any antitrust issue related to the telecoms sector.

Law No. 180/2018 regarding press, media and the Supreme Council of Media (SCoM) Regulation (the Media Law) also grants SCoM the power to guarantee freedom of competition and to prevent dominance practices within the media sector. This is similar to the provisions included in the Telecoms Law and, given that the Media Law was just issued, we are not sure if there will be a dispute between the CPA and the SCoM as there has been between the CPA and the NTRA.

However, in all cases, the Egyptian administrative litigation courts have the jurisdiction to order which authority is the competent one.

Appeal procedure

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

All decisions of the regulator are subject to the review of the administrative litigation courts if these decisions are not in line with the applicable laws or reasonable. The administrative litigation courts have the jurisdiction to assess the validity or legality of each decision.

Further, in the case of a dispute between the NTRA and any licence, the licensee may resort to arbitration under most of the telecom licence agreements.

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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.

In September 2021, the NTRA and the Egyptian Competition Authority (ECA) signed a memorandum of understanding to form a joint executive committee to enhance free competition practices in Egypt's telecom market. This cooperation reflects both authorities' interest and goals in the welfare of the telecom market and the consumer in Egypt.

This cooperation would create and provide companies operating in the telecom sector with a fair environment, which would enable such companies to operate on a non-discriminatory basis. Further, the NTRA would be enabled to communicate better with the ECA, therefore positively impacting the control of anti-competitive practices that could harm the telecom industry in Egypt as well as attracting more investments via the expertise exchanged between both authorities.

Further, cooperation between the ECA and NTRA will take place in the exchange of technical support provisions as well as the standardisation of methods of economic and legal analysis conducted in the telecom sector especially those related to the definition of the relevant market and different means of control of practices that might harm free competition. In addition, the ECA also aims to restrict any decrees or policies that may harm competition in the telecom sector, to ensure competitive impartiality.

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European Union

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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?

Background

In the European Union, the progressive yet quick liberalisation of electronic communications services paved the way for the creation of a single electronic communications market. The liberalisation process, which began in the 1980s, finally led to a full opening of the electronic communications sector on 1 January 1998. Since then, the never-ending evolution of the electronic communications market, reshaped notably by the convergence of the electronic communications, broadcasting and IT sectors, has required several reforms of the EU electronic communications framework. The new EU electronic communications frameworks generally come in packages of directives. The first Telecom Package was adopted in 2002. It was later amended in 2009 and 2015.

Electronic communications regulatory framework

The current EU electronic communications framework includes the following texts:

- Directive 2002/58/EC (Directive on Privacy and Electronic Communications), as amended by Directive 2009/136/EC (Citizens' Rights Directive), which, inter alia, deals with the processing of personal data in the context of the provision of electronic communications services and contains provisions in relation to the security of networks and services and notification of breaches of security;
- Decision No. 676/2002/EC (Radio Spectrum Decision), which establishes the European policy for radio spectrum with the aim of ensuring coordination between EU member states and harmonisation conditions for the efficient use of radio spectrum;
- Regulation (EU) No. 717/2007 on roaming on public mobile telephone networks, as amended by Regulation (EC) No. 544/2009 and Regulation (EU) No. 531/2012;
- Regulation (EU) 2015/2120, laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No. 531/2012 on roaming on public mobile communications networks within the European Union, amended by Regulation (EU) 2017/920;
- Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks;
- Directive (EU) 2016/1148 concerning measures for a high common level of security of network and information systems across the Union (NIS Directive);
- Regulation (EU) 2017/1953, amending Regulations (EU) No. 1316/2013 and Regulation (EU) No. 283/2014, regarding the promotion of internet connectivity in local communities (Wifi4EU);
- Regulation (EU) 2018/1807 on a framework for the free flow of non-personal data in the European Union;
- Regulation (EU) 2018/1971 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) 1211/2009;
- the Directive (EU) 2018/1972 establishing the European Electronic Communications Code (the EECC Directive); and
- Implementing Regulation (EU) 2019/2243, establishing a template for the contract summary to be used by providers of publicly available electronic communications services pursuant to Directive (EU) 2018/1972.

The EECC Directive introduced several changes, inter alia, new measures to:

- increase competition and predictability for investments;
- reduce regulation for co-investment of rival operators in very high-capacity networks;
- improve coordination and use of spectrum across the European Union;
- strengthen consumer protection; and
- create a safer online environment.

The EECC Directive had to be transposed into national law by 21 December 2020, except for article 53 'on coordinated timing of assignments for access to radio spectrum', which applies as of 20 December 2018 (articles 124 and 126 of the EECC Directive). The Directive repealed, from 21 December 2020, the four main directives of the pre-existent Telecom Package, namely:

- Directive 2002/21/EC (Framework Directive), as amended by Directive 2009/140 (Better Regulation Directive);
- Directive 2002/20/EC (Authorisation Directive), as amended by the Better Regulation Directive;
- Directive 2002/19/EC (Access Directive), as amended by the Better Regulation Directive; and
- Directive 2002/22/EC (Universal Service), as amended by the Citizens' Rights Directive.

Overhaul of the electronic communications regulatory framework

Considering the rapid digitalisation of the world market and the opportunities it entails, the European Commission (the Commission) identified the completion of the Digital Single Market as one of the Commission's 10 political priorities.

The Digital Single Market is defined by the Commission as a market in which:

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> *the free movement of goods, persons, services and capital is ensured and where individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition, and a high level of consumer and personal data protection, irrespective of their nationality or place of residence.*

The goal of the Commission is to help generate €415 billion per year and create 3.8 million jobs by knocking down regulatory barriers in the digital space and transforming 28 separate digital markets across the European Union into a single one.

The Digital Single Market Strategy, which was launched in May 2015, was built on three pillars:

- better access for consumers and businesses to digital goods and services across the European Union;
- creating the right conditions and a level playing field for digital networks and innovative services to flourish; and
- maximising the growth potential of the digital economy.

The EECC Directive is part of the wider connectivity package proposed by the Commission in September 2016. It aims at enabling the full participation of EU citizens and businesses in the digital economy. This initiative plans to achieve the following milestones by 2025:

- gigabit connectivity for major economic drivers such as schools, medium-sized and large enterprises and main providers of public services;
- upgradeable connectivity of at least 100 megabits per second for all European households; and
- 5G coverage for all urban areas and all major terrestrial transport paths.

To take into account the recent developments in the communications sector such as the increased use by end users of services based on Voice over Internet Protocol (VoIP), messaging services or web-based email services in place of traditional voice and short message services, the EECC Directive sets out a new definition of the term 'electronic communications service'. Three types of service categories are introduced:

- internet access services;
- interpersonal communications service (allows direct communications over an electronic communications network between finite numbers of people either based, or not, on a number); and
- services consisting wholly or mainly of the conveyance of signals (eg, for machine-to-machine communications or for broadcasting).

Most provisions apply indifferently to all electronic communications services except number-independent interpersonal communications services.

Institutions

The Commission is the main institution responsible for the enforcement of the electronic communications policy and regulation. Two Directorates-General are mainly involved in the electronic communications policy:

- the Directorate-General for Communications Network, Content and Technology (DG Connect) headed by Thierry Breton; and
- the Directorate-General for Competition (DG Comp) headed by Olivier Guersent.

BEREC also plays a key role in the development and better functioning of the internal market for electronic communications. On 7 March 2020, BEREC published guidelines for intra-EU communications. These guidelines clarified the provisions for regulating intra-EU communications services to ensure a common regulatory approach and assist EU member states in their consistent implementation. These Guidelines are complementary to the provisions set out in the Regulation and are not presented as an official legal interpretation of those provisions.

The Independent Regulators Group as well as each EU member state's national regulating authority (NRA) are also influential actors. Finally, decisions of national courts and tribunals and the European Court of Justice also significantly contribute to the interpretation of the electronic communications framework.

The EECC Directive enhanced the role of BEREC and reinforced the role of NRAs, both at the national and EU level, to increase consistency and predictability of the application of the rules in the context of the Digital Single Market.

Foreign ownership

The EU electronic communications framework does not contain provisions imposing foreign ownership restrictions for the provision of electronic communications services.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

Under EU law, the freedom to provide services is guaranteed under article 56 of the Treaty on the Functioning of the European Union (TFEU), according to which:

> *restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of member states who are established in an EU member state other than that of the person for whom the services are intended.*

This principle is reflected in article 12(1) of the EECC Directive according to which EU member states shall:

> *ensure the freedom to provide electronic communications networks and services, subject to the conditions set out in the Directive.*

For this purpose, the EECC Directive is based on a 'general authorisation' regime. Under this authorisation regime, the provision of electronic communications networks or services can only be subject to a 'general authorisation' (namely, the operator may be required to submit a prior notification of its activity to the NRA but cannot be required to obtain an explicit decision or any other administrative act). As an exception to the 'general authorisation' regime, EU member states can grant, upon request, individual licences for the use of scarce resources like frequencies, numbers and rights of way.

The list of information required as part of the notification procedure to the NRAs has been harmonised by the EECC Directive to avoid excessive administrative costs for operators.

In December 2019, under article 12 of the EECC, to approximate notification requirements and to harmonise accordingly the notification forms currently in use at the national level, BEREC published guidelines for the notification template. These guidelines define a template of the notification form to be filled up at the beginning of the activities by electronic communications network (ECN) or electronic communications service (ECS) providers. A set of minimum operator's rights are attached to the 'general authorisation'. Thanks to the 'general authorisation', an operator has notably the rights to:

- operate electronic communications networks and provide electronic communications services;
- apply for rights of way;
- negotiate interconnection with and where applicable obtain access to or interconnection from other operators;

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- be allowed being designated to provide different elements of a universal service; and
- have access to scarce resources (radio spectrum and numbering resources) (article 15 of the EECC Directive).

On 21 December 2021, BEREC released an Opinion on the national implementation and functioning of the general authorisation. The main purpose of this Opinion is to provide ideas to the Commission to consider for future reflections around the general authorisation regime, in the light of the challenges reported by the stakeholders and of the BEREC's own experience. In this Opinion, BEREC came to the conclusion that the general authorisation regime has been properly working so far in regulating market entry, without creating barriers for operators in entering national markets. According to BEREC, the general authorisation regime appears as a winning choice as it was reported to guarantee simplicity, together with a clear overview of the markets, hence a good transparency level.

The EECC Directive also provides for an exhaustive list of conditions that an EU member state may attach to the general authorisation such as:

- fees for the rights of use;
- administrative charges;
- interoperability and interconnection;
- accessibility by end users of numbers from the national numbering plan; or
- 'must carry' obligations (article 13 of the EECC Directive).

EU law does not provide for a limit of the duration of the 'general authorisations'. However, when individual rights of use of scarce resources are granted for a limited period, the duration shall be appropriate for the service concerned.

The EU member states can allow the relevant NRA to impose fees for the rights of use for radio spectrum and numbers, as well as rights to install facilities. These fees have to be objectively justified, transparent, non-discriminatory and proportionate concerning their intended purpose and take into account the objectives set out in the EECC Directive (article 95 of the EECC Directive).

The EU Regulatory framework for electronic communications is technologically neutral (in particular, Recital 14 of the EECC Directive) and as such applies to all electronic communications networks and services. There is no difference in the regime applicable to fixed, mobile or satellite networks and services.

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?

Permitted use restriction

Member states shall facilitate the use of radio frequencies, under 'general authorisations'. However, EU member states shall grant individual rights of use to avoid harmful interference, ensure technical quality of service, safeguard efficient use of spectrum or fulfil other objectives of general interest as defined by EU member states under EU law. This set of principles is not only for the use of radio frequencies but also for radio spectrum (article 46 of the EECC).

When it is necessary to grant such individual rights, EU member states must comply with several provisions in particular concerning the efficient use of resources under the EECC Directive.

Also, the now-repealed Authorisation Directive established that only certain conditions may be attached to rights of use for radio frequencies. As a consequence, the permitted use may only be restricted under spectrum licences by the following conditions attached to the rights of use:

- the designation of service or type of network or technology for which the rights of use for the frequency have been granted including, where applicable, the exclusive use of a frequency for the transmission of specific content or specific audiovisual services;
- effective and efficient use of frequencies;
- technical and operational conditions necessary for the avoidance of harmful interference and for the limitation of exposure of the general public to electronic fields, where such conditions are different from those included in the general authorisation;
- maximum duration subject to any changes in the national frequency plan;
- transfer of rights at the initiative of the right holder and conditions for such transfer;
- usage fees;
- any commitments that the operator obtaining the usage right has made in the course of a competitive or comparative selection procedure; and
- obligations under relevant international agreements relating to the use of frequencies and obligations specific to an experimental use of radio frequencies.

Under the EECC Directive, these conditions have remained identical ((D) of Annex 1 of the EECC Directive), with additional obligations to pool or share radio spectrum or allow access to radio spectrum for other users in specific regions or at the national level.

Principles must be taken into account by EU member states where it intends to limit the number of rights of use to be granted for radio frequencies (article 45 of the EECC Directive).

Also, the EECC Directive introduced further harmonisation measures for spectrum including promoting shared use of spectrum and coordinating spectrum assignments. The consistency of the spectrum assignment process will be safeguarded through a process involving BEREC scrutiny of NRA's planned spectrum measures (articles 4.3 and 35 of the EECC Directive).

Tradability of spectrum licences

Under the EECC Directive, EU member states shall ensure that undertakings may transfer or lease to other undertakings individual rights of use for radio spectrum.

EU member states shall:

- submit transfers and leases to the least onerous procedure possible;
- not refuse the lease of rights of use for radio spectrum where the lessor undertakes to remain liable for meeting the original conditions attached to the rights of use; and
- not refuse the transfer of rights of use for radio spectrum unless there is a clear risk that the new holder is unable to meet the original conditions for the right of use (article 51 of the EECC).

When an operator wishes to transfer rights to use frequencies, it shall notify the NRA responsible for granting individual rights of use. Such notification must also be made once the effective transfer has occurred. Notifications shall be made public.

Ex-ante regulatory obligations

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

In February 2003, the Commission published a recommendation detailing a list of 18 markets susceptible to being subject to ex-ante regulation. Such recommendation was updated in December 2007, reducing the list to seven markets and then in 2014 to four markets, none of which were retail markets.

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The recommendation was updated again on 18 December 2020, reducing the list to two markets, namely, the market for wholesale local access and the market for wholesale access to dedicated connectivity, both defined on the basis of competition law principles and with regard to the overall technological, regulatory and market trends in the European Union.

The EECC Directive introduced the implementation of ex-ante market regulations into the missions of the NRAs and provides that NRAs shall 'impose ex-ante regulatory obligations only to the extent necessary to secure effective and sustainable competition in the interest of end-users and relax or lift such obligations as soon as that condition is fulfilled', these obligations include the imposition of access and interconnection obligations (article 67 of the EECC Directive).

Also, the EECC Directive codified the 'three criteria test' contained in the Commission's Recommendation on Relevant Markets (2002) and used to determine whether a specific market should be regulated (eg, high barriers to entry, no dynamic tendency towards effective competition and insufficiency of competition law). The EECC Directive also extended the current maximum market-review period from three to five years. However, NRAs may still conduct such analysis within shorter intervals if market developments require it. New provisions are introduced for revision of remedies imposed by NRAs, for instance when market conditions have changed because of new commercial agreements or the breach of existing ones or new co-investment agreements. A double-lock system is introduced whereby in cases where BEREC and the Commission agree that a draft remedy would create a barrier to the single market, the relevant NRA may be required to amend or withdraw the contemplated measure.

In the context of the elaboration of the Digital Markets Act introducing a series of rules for platforms acting as 'gatekeepers' in the digital sector, BEREC published on 30 September 2021, a report in which it proposed a regulatory model for an ex ante regulation of these platforms (for further information on the Digital Markets Act.

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?

The remedy of functional separation was introduced in the Access Directive in 2009 by the repealed Better Regulation as an exceptional measure and was reproduced identically in the EECC Directive. It may only be imposed on vertically integrated operators when the relevant NRA concludes that the other ex-ante regulatory obligations have failed to achieve effective competition and that there are important and persistent competition problems or market failures identified concerning the wholesale provision of certain access product markets. Such measure consists of imposing on the concerned operator a duty or obligation to place activities related to the wholesale provision of relevant access products in an independently operated business. On this basis, the operator shall supply access products and services to its other business entities and other operators under the same terms and conditions, including price and service levels.

Also, the EECC Directive implemented the possibility of imposing functional separation on a significant market power (SMP) operator if the remedies imposed following a market-review process have not succeeded in achieving competition.

The now-repealed Access Directive also introduced a voluntary separation mechanism under which a vertically integrated operator that has been identified as having SMP in one or several markets informs the competent NRA in advance and in a timely manner of its intent to transfer their local access network assets or a substantial part thereof to a separate legal entity under different ownership or to establish a separate business entity to provide to all retail providers, including its own retail divisions, fully equivalent access products. Upon such information, the NRA shall assess the effect of the intended transaction on existing regulatory obligations and, in accordance, shall impose, maintain, amend or withdraw obligations. This has been reaffirmed in article 78 of the EECC Directive.

BEREC has published guidelines that an NRA may rely upon when considering the appropriateness and the manner to implement functional separation (Guidance on Functional Separation under articles 13a and 13b of the revised Access Directive and national experiences).

Universal service obligations and financing

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

Scope of universal service

Under recital 210 of the EECC Directive, universal service is defined as a:

> *safety net to ensure that a set of at least the minimum services is available to all end-users and at an affordable price to consumers, where a risk of social exclusion arising from the lack of such access prevents citizens from full social and economic participation in society.*

This concept is based on the now-repealed Universal Service Directive but evolved to reflect advances in technology, market developments and changes in user demand. The national NRA is in charge of ensuring all citizens have access to a universal service.

Operators must provide a certain number of mandatory services, including:

- provision of access at a fixed location and provision of telephone services;
- provision of directories and directories enquiry services;
- provision of public payphones; and
- measures for disabled users.

The EECC Directive sets new mandatory services to which consumers should have access at an affordable price. EU member states may adopt different tariff options to ensure that the services are also affordable to consumers with low-income or special social needs such as older people, end users with disabilities and consumers living in rural or geographically isolated areas. The new services include the provision of available adequate broadband internet access service and provision of voice communications services at least at a fixed location, indicating that EU member states can now extend universal service to mobile services. 'Adequate broadband' means the broadband 'necessary for social and economic participation in society' (namely, minimum needed to support services, eg, email, internet banking, standard quality video calls and social media (as set out in Annex V)).

EU member states may consider that the need for the previous services set by the now-repealed Universal Service Directive is established in light of national circumstances and shall be provided along with the new services as from 21 December 2021.

EU member states can designate one or more 'providers of services' according to the EECC Directive in charge of guaranteeing the provision of these services for the whole of the territory to be covered. Different providers of services may provide different elements of universal services. The universal service must be affordable; NRAs shall monitor the evolution and level of retail tariffs of these services. EU member states may require designated providers of services to provide customers with tariff options that depart from those provided under normal commercial conditions.

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Funding of universal service

The methods for designating operators or providers of services in charge of the provision of universal service must ensure that such service is provided cost-effectively. NRAs that consider that the provision of universal service may represent an unfair burden on the designated providers of services are given the possibility to calculate the net costs of its provision. If it is found that such an operator is subject to an unfair burden, EU member states can, upon request, put in place a mechanism to compensate that provider of services or to share the net cost of universal service obligations between providers of electronic communications networks and services. According to the EECC Directive, the net costs of this universal service are to be paid for either through general taxpayer funds or else through a specific levy on electronic communications networks and service providers.

In its Work Programme for 2022, BEREC announced that it will report on the potential of satellite solutions for ubiquitous broadband connectivity in an objective and technology-neutral way and on the regulatory steps needed if member states plan to use satellite solutions for universal service.

Number allocation and portability

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

Under article 94 of the EECC Directive, a number allocation scheme is handled by EU member states through their NRAs, which control the granting of rights of use of all national numbering resources and manage the national numbering plans. NRAs are also under the obligation to establish objective, transparent and non-discriminatory assigning procedures for the grant of such resources. An equal treatment principle must be applied between all providers of publicly available electronic communications services. The national numbering plan and its subsequent amendments must be published subject only to national security limitations.

EU member states have a role to support the harmonisation of specific numbers and number ranges within the European Union where this promotes both the functioning of the internal market and the development of pan-European services. Implementing measures may be taken by the Commission on the subject.

Where the assignment of numbers with exceptional economic value is concerned, EU member states may use, inter alia, competitive or comparative selection procedures for the assignment of radio frequencies.

The right to use numbers may be subject only to the conditions listed in Annex I of the EECC. These conditions include, inter alia, designation of service for which the number shall be used, including:

- any requirements linked to the provision of that service;
- effective and efficient use of numbers in conformity with the EECC Directive;
- number portability requirements in conformity with the EECC Directive; and
- an obligation to provide public directory subscriber information for transfer of rights in conformity with the EECC Directive.

According to the EECC Directive, NRAs may also grant rights of use for numbering resources from the national numbering plans for the provision of specific services to undertakings other than providers of electronic communications networks or services, provided that adequate numbering resources are made available to satisfy current and foreseeable future demand.

On 6 March 2020, BEREC published guidelines on common criteria for assessing non-ECN or ECS undertakings, and the assessment of the ability to manage numbering resources by undertakings other than ECN or ECS. These guidelines also set out rules to avoid the risk of exhaustion of numbering resources if numbering resources are assigned to such an undertaking. Also, the EECC Directive provides that each EU member state shall make available a range of non-geographic numbers that may be used for the provision of electronic communications services other than interpersonal communications services and shall promote over-the-air provisioning, where technically feasible, to facilitate switching of providers of electronic communications networks or services by end users, in particular, providers and end users of machine-to-machine services.

Number portability is a requirement under the EECC Directive. It applies equally to fixed and mobile networks and geographic and non-geographic numbers. However, the requirement does not apply to the porting between numbers from a fixed network to a mobile network and vice versa. All subscribers of publicly available telephone services are entitled to keep their number upon request, independently of their service provider.

Operators are required to port and activate a number within the shortest possible time and within a maximum delay of one working day. NRAs ensure that the prices charged between operators concerning the provision of portability are cost-orientated.

Appropriate sanctions must be provided for by EU member states including an obligation to compensate subscribers in the case of delay in the porting or abuse of porting by them.

Customer terms and conditions

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

Most of the specific rules underlined hereinunder have been implemented by the now-repealed Universal Service Directive and have been reproduced identically in the EECC Directive.

Consumers must be offered contracts of 12 months and operators cannot offer contracts exceeding 24 months. The conditions and procedures for contract termination should not constitute a disincentive against changing service provider.

Consumers and other end users have a right to a contract with their operator. This contract must comprise several mandatory provisions that include, inter alia, the identity and the address of the operator, the services provided, the details of prices and tariffs, the means to obtain up-to-date information on all applicable tariffs and maintenance charges, payment methods, duration of the contract and the conditions for renewal and termination services and of the contract, any compensation and the refund arrangements applicable if service quality levels are not met.

EU member states have the possibility to require that the contract include any information that may be provided by the relevant public authorities on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security, privacy and personal data.

Subscribers also have a right to withdraw from their contract without penalty upon notice of modification to the contractual conditions proposed by their provider. Subscribers shall receive a notification not shorter than one month of such modification, along with information on the right to withdraw, without penalty in the case of refusal of these new terms.

Finally, NRAs must ensure that operators publish transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, on charges due upon termination and standard terms and conditions in respect of access to, and use of, services provided by them to end users and consumers.

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The EECC Directive includes the Universal Service Directive requirements, harmonises end-user rights and establishes additional contract requirements. The EECC introduces a detailed list of information requirements to be included in end-user contracts, which include, inter alia, information about the technical characteristics of the service, the price, the duration of the contracts and conditions for switching, procedures for dispute settlements or actions to be taken in security and integrity incidents. These requirements also apply to contracts with micro and small enterprises acting as end users. New provisions aimed at facilitating the switch from one service provider to another have been introduced, for instance, provisions dealing with the issue of bundles as an obstacle to switching.

On 17 December 2019, the Commission adopted the Implementing Regulation (EU) 2019/2243, establishing a template for the contract summary to be used by providers of publicly available electronic communications services.

This Implementing Regulation also sets out:

- the length of the contract;
- the presentation of the information (headings, font size and pagination); and
- the language requirements.

This Implementing Regulation entered into force on 21 December 2020.

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 principle of net neutrality was formally taken into account on the occasion of the 2009 reform of the Telecom Package. The now-repealed Better Regulation Directive included references to the principle of net neutrality.

After intense discussions and debate, the European Parliament and the European Council adopted Regulation (EU) 2015/2120 concerning open internet access, which enshrines the principle of net neutrality into EU law. BEREC published guidelines on the implementation by NRAs on these European net-neutrality rules in August 2016. At the end of 2019, BEREC announced that it had worked on an update to the BEREC Net Neutrality Guidelines, which have been renamed the BEREC Guidelines on the Implementation of the Open Internet Regulation. On 10 October 2019, BEREC launched a public consultation on these Guidelines that ran until 28 November 2019. The received feedback did not justify any major changes to the Guidelines. However, it was clear that some further clarifications were needed and now these are included in the Guidelines, which were published on 17 June 2020. These Guidelines are designed to guide the implementation of the obligations of NRAs. Specifically, this includes the obligation to closely monitor and ensure compliance with the rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-user rights.

In its Work Programme for 2022, BEREC announced that it will work on an update of its Net Neutrality Regulatory Assessment Methodology designed, among other things, to further develop the methodology regarding the measurement of the general quality of internet access services.

Regulation (EU) 2015/2120 concerning open internet access guarantees the rights of end users to access and use the internet. Providers of internet access services are under the obligation to treat all traffic equally without discrimination, restriction or interference and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used. This prohibits, in particular, the practise of bandwidth throttling. However, this principle does not prevent providers of internet access services from implementing traffic management measures as long as they are transparent, non-discriminatory, proportionate and not based on commercial considerations. Three additional exceptions are provided for:

- compliance with other laws;
- preservation of integrity; and
- security and congestion management measures.

Providers of electronic communications to the public are free to offer services other than internet access services that are optimised for specific content, applications or services or a combination thereof, which BEREC refers to as 'specialised services'. However, this is possible only where some conditions are met:

- the optimisation must be necessary to meet the requirements of the content, applications or services for a specific level of quality;
- the network capacity must be sufficient to provide these services in addition to any internet access services provided;
- they must not be usable or offered as a replacement for internet access services; and
- must not be to the detriment of the availability of the general quality of the internet access services for end users.

As NRAs are in charge of ensuring compliance with these provisions, they will contribute to the determination of the necessity and capacity tests. The recitals of the Open Access Regulation give examples of specialised services 'services responding to a public interest or by some new machine-to-machine communications services'. BEREC also identifies services such as Voice over Long-Term Evolution and linear broadcasting Internet Protocol television services with specific quality of service requirements.

The practise of zero-rating, whereby traffic from certain sources does not count towards any data cap in place for the subscriber, is not prohibited under the rules governing net neutrality. However, BEREC considers that different forms of zero-rating may have different consequences and that the acceptability of each practise should be assessed on a case-by-case basis. For instance, a zero-rating offer where all applications are blocked (or slowed down) once the data cap is reached except for the zero-rated applications would infringe net-neutrality rules.

Platform regulation

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

As part of the Digital Single Market Strategy, a comprehensive assessment of the role of online platforms has been conducted. It is also one of the three emerging challenges identified in the Digital Single Market Strategy mid-term review.

In its mid-term review on the implementation of the Digital Single Market Strategy, the Commission identified actions to be implemented concerning online platforms. Thus, the Commission launched an action plan against disinformation and, on 26 September 2018, a self-regulatory code of practice was published to measurably reduce online disinformation on online platforms, leading social networks and in the advertising industry. On 5 December 2018, the Commission reported on the progress made and published an action plan that foresees an increase of resources allocated to counter-disinformation efforts.

On 1 March 2018, the Commission also adopted a recommendation including a set of (non-binding) operational measures to be taken by companies and member states to tackle illegal content online. Also, Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services was adopted on

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20 June 2019. This Regulation aims at establishing a legal framework that guarantees transparent terms and conditions for business users of online platforms (that is, that the terms and conditions of platform services are plain and easily available for business users, as well as that any modification to the terms and conditions is notified with proportionate and reasonable advance to their business users), as well as effective possibilities for redress when these terms and conditions are not respected by online platforms (namely, online market places, online software application stores, online social media and online search engines). Online service providers will need to change their terms and conditions to include these new requirements. The Regulation entered into force with direct effect in EU member states on 12 July 2020.

On 25 March 2022, an agreement was reached by the European Council and the European Parliament on the Regulation on contestable and fair markets in the digital sector (the Digital Markets Act), which will introduce further rules for large platforms service providers (including social media, search engines and operating systems) designated as gatekeepers. Under the Digital Markets Act, gatekeepers will be subject to a number of requirements and restrictions, including data access, interoperability and self-preferencing. Non-compliance might lead to fines of up to 10 per cent of the gatekeeper's worldwide turnover, or up to 20 per cent in the event of repeated infringements to ensure the effectiveness of the new rules. The Digital Markets Act is expected to enter into force in late 2022 or early 2023.

On April 2022, an agreement was reached by the European Council and the European Parliament on the Regulation on a Single Market For Digital Services (the Digital Services Act) (DSA). The Digital Services Act will regulate the obligations of online intermediary services providers to counter illegal content, while promoting traceability and effective safeguards for users. Once the Digital Services Act is formally adopted, it will be published in the Official Journal of the European Union and enter into force 20 days after its publication. The DSA will be directly applicable across the European Union and will apply 15 months after entry into force or from 1 January 2024, whichever comes later.

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?

The European Regulatory Framework for electronic communications and the EECC Directive are technologically neutral so it applies to NGA networks in the same manner that it applies to other networks. However, the 2010 Commission Recommendation of 20 September 2010 on regulated access to the NGA sets out a common approach for promoting the consistent implementation of remedies concerning NGAs and provides for regulatory principles that NRAs should follow. NGAs are also dealt with in the 2013 Commission Recommendation on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment.

Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks also aims at facilitating and incentivising the rollout of high-speed electronic communications networks by reducing its cost. It includes measures such as the sharing and reuse of existing physical infrastructure, which are expected to create conditions for more cost-efficient network deployment.

The EECC Directive introduced a new mission for NRAs, which is to promote access to, and take-up of, very high capacity connectivity for both fixed and mobile networks. The new EECC Directive sets out provisions concerning co-investment and NGAs, in particular, 'very high-capacity networks'. The EECC Directive establishes an exception on access market and price regulation for operators with 'significant market power' undertaking to build or to co-invest in the infrastructure necessary for the creation of high connectivity networks.

On 6 March 2020, BEREC published guidelines on very high capacity networks. The Guidelines set out the criteria that a network must fulfil to be considered a very high capacity network, particularly in terms of down and uplink bandwidth, resilience, error-related parameters, latency and variation. The Guidelines shall contribute to the harmonisation of the definition of the term 'very high capacity network' in the European Union.

Data protection

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

Data protection and privacy in the European Union is currently governed by Regulation (EU) 2016/679 (General Data Protection Regulation) (GDPR) and Directive 2002/58/EC (ePrivacy Directive), as amended by the Citizens' Rights Directive.

Since 25 May 2018, the GDPR directly applies in all EU member states, without having to be transposed into national law. The GDPR fully regulates the processing of personal data in the European Union. By setting uniformly high standards of data protection, it ensures the free flow of personal data in the European Union. It has, in particular, a significantly broader territorial scope than the previous EU Data Protection Directive. It places, among others, greater emphasis on the documentation obligations of data controllers to demonstrate their accountability and significantly strengthens data subjects' rights to give them more control over their personal data. The GDPR also introduced significant fines for any data breaches in the amount of up to 4 per cent of a company's global revenue or €20 million, depending on whichever is higher. These pose a significant financial risk to data controller organisations, such as telecommunication service providers. Many telecommunication service providers use third-party service providers that process and store data on their behalf and thus, must comply with the provisions outlined in GDPR to avoid any sanctions by the competent authority.

The ePrivacy Directive ensures the protection of fundamental rights and freedoms, in particular the respect for private life, the confidentiality of communications and the protection of personal data in the electronic communications sector. It obliges EU member states to ensure the privacy of communications and related traffic data. Under the ePrivacy Directive, any interception or surveillance of communications (including listening, storage or tapping) is prohibited, unless explicitly permitted under national law. To be permissible, such interception would have to be necessary, appropriate and proportionate for specific 'public order' purposes; namely, to safeguard national security, defence or public security or for the purposes of law enforcement and would have to comply with the general principles of EU law and the European Convention on Human Rights.

As a part of the Digital Single Market Strategy, the ePrivacy Directive is currently under evaluation. In 2015, the Commission considered it necessary to verify whether its rules have achieved their main objectives (ensuring adequate protection of privacy and confidentiality of communications in the European Union) and whether they are still fit for purpose in the regulatory and technological context.

It shall now be adapted to the new EU data protection framework as well as recent technological and economic developments in the EU market since the last revision of the ePrivacy Directive in 2009. Such new technologies include, among others, new internet-based services such as VoIP, instant messaging and web-based email services, which are not subject to the current ePrivacy Directive.

On 10 January 2017, the European Parliament and the European Council published the first draft of a new Regulation on Privacy and Electronic Communications, which shall replace the current ePrivacy

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Directive and shall be directly applicable in the EU member states, without having to be transposed into national law. The key aspects of the proposal are the following:

- applicability of privacy rules to providers of electronic communications services (eg, WhatsApp, Facebook Messenger or Skype);
- enhancing security and confidentiality of communications (including content and metadata, such as sender, time, location of a communication), while reducing unjustified barriers to the free flow of data;
- new opportunities for telecommunication operators to provide additional services and develop their business, once consent is given for communications data content or metadata or both;
- more user-friendly and simpler rules on cookies; and
- protection against unsolicited electronic communications (spam).

The proposal includes fines for breaches in the amount of up to 4 per cent of a company's global revenue or €20 million, depending on whichever is higher. To date, the European Council published several amended drafts of the proposal since September 2017 and no final draft has yet been voted upon.

On 5 January 2021, the Portuguese presidency released a new version of the draft proposal and succeeded in convincing the EU member states to agree on a common position. In May 2021, the trialogue negotiations with the European Parliament finally began but there are some points of contention regarding the current text of the Regulation and the ePrivacy Regulation is certainly not expected to enter into force before 2023.

Cybersecurity

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

The Commission has launched several initiatives concerning cybersecurity.

In December 2020, the European Union released its new Cybersecurity Strategy, aimed at tackling cyber-attacks and at strengthening resilience against major security breaches by proposing several new initiatives. The strategy identifies three priorities:

- the increase of cyber resilience and technological sovereignty;
- to build operational capacity to prevent deter, and respond to cyber-attacks; and
- to advance a global and open cyberspace through increased cooperation.

It also provides concrete proposals for regulatory, investment and policy initiatives to safeguard a global and open internet and to protect European values.

Further, the Commission adopted the Communication Strengthening Europe's Cyber Resilience System and Fostering a Competitive and Innovative Cybersecurity Industry on 5 July 2016. It sets a series of measures aiming, inter alia, at stepping up cooperation across the European Union, promoting the emerging single market for cybersecurity products and services. During this event, as part of the Digital Single Market Strategy presented in May 2015, a public-private partnership (PPP) on cybersecurity was signed. It aims to foster cooperation between public and private actors to allow people in the European Union to access innovative and trustworthy European solutions including information and communications technology (ICT) products, services and software. The PPP also aims to stimulate the cybersecurity industry by helping to align demand and supply sectors, especially in sectors where cybersecurity solutions are important, such as energy, health, transport and finance. The PPP includes a wide range of actors, from innovative small and medium-sized enterprises, producers of components and equipment, critical infrastructure operators and research institutes.

On 18 October 2018, the European Council called for measures to build strong cybersecurity in the European Union. EU leaders particularly referred to restrictive measures to respond to, and deter, cyber-attacks. The proposal sets out new initiatives, inter alia:

- building a stronger EU cybersecurity agency;
- introducing an EU-wide cybersecurity certification scheme; and
- swiftly implementing Directive (EU) 2016/1148 concerning measures for a high common level of security of network and information systems across the Union (the NIS Directive).

Institutions

ENISA is a European cybersecurity centre of expertise, located in Greece. Founded in 2004 by Regulation (EC) No. 460/2004, ENISA actively contributes to a high level of network and information security within the European Union, thus contributing to the smooth functioning of the internal market.

ENISA works closely with EU member states and the private sector to provide advice and solutions. This includes:

- pan-European cybersecurity exercises;
- the development of national cybersecurity strategies;
- Computer Emergency Response Team's (CSIRT) cooperation and capacity-building;
- studies on data protection issues;
- secure cloud adoption; and
- technology aimed at improving life and trust services.

ENISA also supports the development and implementation of EU Network and Information Security policy and legislation.

After a year-long pilot phase, the EU institutions set up a permanent Computer Emergency Response Team (CERT-EU) for the EU institutions, agencies and bodies in September 2012. It is composed of a team of IT experts and cooperates closely with other CERTs in EU member states as well as with companies specialising in IT security.

On 13 September 2017, the Commission issued a proposal for a regulation on ENISA, the EU Cybersecurity Agency, and on Information and Communication Technology cybersecurity certification (the Cybersecurity Act). The Cybersecurity Act was adopted on 17 April 2019. This Regulation foresees a permanent mandate for ENISA and the creation of an EU certification framework for ICT products and services. The certifications will be recognised in all EU member states, making it easier for businesses to trade across borders and for purchasers to understand the security features of the product or service.

Legislation

In 2010, the Commission published a proposal for a directive on attacks against information systems, which was eventually adopted in 2013 (Directive 2013/40/EU on attacks against information systems and replacing Council Framework Decision 2005/222/JHA). Under this Directive, EU member states are required to criminalise the 'intentional access, without right, to the whole or part of an information system', at least concerning cases deemed not to be minor. It also requires that illegal system interference and illegal data interference be punished as criminal offences. Provisions also oblige EU member states to criminalise the instigation or aiding and abetting of any of these acts.

The NIS Directive is the first EU-wide piece of legislation on cybersecurity. It was adopted in July 2016 and EU member states were required to transpose it at the latest by 9 May 2018 and to identify operators of essential services by 9 November 2018. It provides for legal measures to boost the overall level of cybersecurity in the European Union.

The NIS Directive requires EU member states to adopt a national strategy on the security of network and information systems defining the

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strategic objectives and appropriate regulatory measures to achieve and maintain a high level of security of network and information systems, covering at least the sectors listed in the Directive, including:

- energy;
- transport;
- banking;
- financial-market infrastructures;
- health sector;
- drinking-water supply; and
- distribution and digital infrastructure.

Each EU member state must designate a national competent authority on the security of network and information services, which will be in charge of monitoring the application of the Directive at the national level. One or more CSIRTs must be designated by each EU member state, covering at least the sectors listed in the Directive. These CSIRTs must be allocated adequate resources to carry out their tasks, which include, inter alia:

- the monitoring of incidents at a national level;
- providing early warnings, alerts, announcements and the dissemination of information to the relevant stakeholders;
- participating in the CSIRTs network; or
- establishing cooperation relationships with the private sector.

The Directive established a cooperation group to support and facilitate strategic cooperation and the exchange of information among EU member states and to develop trust and confidence and to achieve a high common level of security of network and information systems in the European Union.

Under the NIS Directive, two categories of actors are subject to security requirements:

- operators of essential services; and
- digital service providers.

Operators of essential services are private businesses or public entities with an important role for society and the economy, and will have to be identified by each member state following three criteria:

- the entity provides a service essential for the maintenance of critical societal or economic activities, the provision of which depends on network and information systems;
- an incident would have significant disruptive effects on the provision of that service; and
- they operate in the sectors exhaustively listed in the Directive.

Digital service providers are defined as being any legal person that provides:

- a service of an online marketplace;
- online search engine; and
- cloud computing service.

Concerning digital service providers, EU member states will have to ensure that service providers identify and take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of network and information systems that they use in the context of offering their services. The same requirement applies to operators of essential services concerning the security of network and information systems they use in their operations. Additionally, EU member states shall ensure that these operators of essential services also take appropriate measures to prevent and minimise the impact of incidents affecting the security of the network and information systems used for the provision of such essential services, with the view to ensuring the continuity of these services. Both categories of operators are also subject to an obligation of notification to the competent authority or the CSIRT without undue delay of any incident having a substantial impact on the provision of their services.

On 13 September 2017, the Commission adopted Communication COM(2017)476 final/2, (NIS Toolkit), which aims at supporting EU member states in their efforts to implement the Directive swiftly and coherently across the European Union. It presents the best practices from the EU member states and provides an explanation and interpretation of specific provisions of the Directive to clarify how it should work in practice.

On 6 December 2020, the EU Commission published its proposal for a directive on security of network and information systems, (NIS2 Directive). The NIS2 Directive is designed to update the current NIS Directive. The proposed NIS2 Directive suggests abolishing the distinction between operators of essential services and digital service providers and strengthens the security requirement for companies by imposing a risk-management approach providing a minimum list of basic security elements that must be applied.

It also introduces better provisions for incident reporting, content and timelines. EU member states were also required to prepare a CSIRT and a competent national NIS authority. Trilogues between the European Council and the European Parliament are currently taking place. On 12 May 2022, the European Parliament and the Council reached an agreement on the NIS2 Directive. Once published in the Official Journal, the NIS2 Directive will enter into force 20 days after publication and Member States will then need to transpose the new elements of the Directive into national law. Member States will have 21 months to transpose the NIS2 Directive into national law.

On 13 September 2017, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy published a Joint Communication on Resilience, Deterrence and Defence: Building Strong Cybersecurity for the European Union. This wide-ranging cybersecurity package builds on existing instruments and presents new initiatives to further improve EU cyber resilience and response in three key areas:

- building EU resilience to cyber-attacks and stepping up the European Union's cybersecurity capacity;
- creating an effective criminal law response; and
- strengthening global stability through international cooperation.

On 11 December 2020, Regulation (EU) 2021/887 establishing the European Cybersecurity Industrial, Technology and Research Competence Centre and the Network of National Coordination Centres was adopted. It was published on 8 June 2021. The Centre, in cooperation with the Network, is the EU's new framework to support innovation and industrial policy in cybersecurity and relies upon financial support from the Horizon Europe and Digital Europe programmes. The Centre and the Network together will enhance EU technological sovereignty through joint investment in strategic cybersecurity projects. The Centre is currently being set up and will be located in Bucarest, Romania.

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?

Big data plays a major role in the European Union and was subject to various actions taken by EU institutions. The European Union recognises the potential of big data as a driver of the economy and innovation in its EU Digital Single Market Strategy and points out that it is becoming essential to the development of data-driven technologies and services. The European Council marked big data as a high priority in its political agenda in October 2013. In the context of the action plan of 2 July 2014 on how to maximise the EU's data-driven economy, the Commission recommended investing in big data solutions and infrastructure. In this

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context, it suggested setting up a €2.5 billion big data PPP, creating a network to help individuals building sustainable businesses using big data and adopting new rules on data ownership and liability.

The European Data Protection Supervisor (EDPS) stressed the importance of coherent rights' enforcement in the age of big data in several opinions and initiatives. The EDPS is an independent institution of the European Union responsible for ensuring the protection of an individual's rights in the context of processing personal data. It set up the Ethics Advisory Group in February 2016, which assesses the ethical implications of how personal data is defined and used in the context of big data and artificial intelligence.

As requested in the EDPS opinion of 23 September 2016, a voluntary network of regulatory bodies (the Digital Clearing House) was established. The goal of the Digital Clearing House is to share information about possible abuses in the digital ecosystem and the possibilities to handle them. The report also recommends that the EU institutions, together with external experts, investigate the possibility to create a common cyberspace where individuals can interact without being tracked.

The text of a European Parliament resolution on the implications of big data on fundamental rights was tabled by rapporteur Ana Gomes in October 2016. The European Parliament passed this non-legislative resolution on 14 March 2017. The European Parliament stressed that the immense opportunities of big data could only be fully enjoyed by citizens and institutions within the European Union if public trust in new technologies was ensured by strong enforcement of fundamental rights, compliance with current EU data protection law and legal certainty for all actors involved. According to the resolution, big data analytics pose specific challenges to fundamental rights and raise concerns over discrimination and security. The most pressing risks associated with data processing activities include security breaches, unauthorised access to data and unlawful surveillance. In that regard, the European Economic and Social Committee has published a study concerning the ethics of big data and how to balance its economic benefits and ethical questions of it in the EU policy context.

According to the European Parliament, the intrinsic purpose of big data analysis should be the achievement of comparable correlations with as little personal data as possible. Science, business and public communities should therefore focus on research and innovation in the field of data anonymisation. The resolution also points out that it is of particular importance to raise the awareness of EU citizens about digital rights, privacy and data protection. It concludes that the corresponding risks in the context of big data analysis should be addressed with specific guidelines, more transparency and accountability.

Together with various initiatives in the field of public-sector data, research data and private-sector data, the Commission announced its intention to fund a support centre for data sharing under the Connecting Europe Facility. This support centre will make it easier to share private-sector data by providing best practices and know-how. Also, the Commission announced several initiatives that will make different types of data available for re-use in Communication COM(2018)232 final Towards a Common European Data Space and accompanying Commission Staff Working Document SWD(2018)125 final Guidance on Sharing Private-Sector Data in the European Data Economy. This Staff Working Document aims to provide a toolbox on legal, business and technical aspects of data sharing and transfers for companies that are data holders or data users.

On 19 February 2020, the Commission published Communication COM(2020)66 'A European strategy for data', which outlines a strategy for policy measures and investments to enable the data economy for the coming five years. This Communication announces the creation of nine European common spaces and the continuation of work on the European Open Science Cloud. This data strategy is presented at the same time as the Commission's Communication on 'Shaping Europe's digital future' and a white paper on artificial intelligence. That same day, the Commission launched a public online consultation regarding the European strategy for data.

As part of its data strategy, on 25 November 2020, the Commission released a Regulation on European data governance (the Data Governance Act), which plays a vital role in ensuring the European Union's future leadership in the global data economy. This new regulation aims to create a framework that encourages greater reuse of data by increasing trust in data intermediaries and strengthening various data-sharing mechanisms across the European Union. It complements the Open Data Directive of 20 June 2019, which regulates and encourages the re-use and publication of public sector information held or funded by public institutions (such as governments, libraries and archives). The European Parliament and EU member states have reached a political agreement on the Commission's proposed Regulation on European data governance in December 2021. The Regulation will now be validated in a plenary vote of the European Parliament, and in the European Council and is expected to enter into force by mid-2023.

On 23 February 2022, the Commission released the European Data Act, a proposal for a regulation to establish a harmonised framework for data sharing in the European Union. The proposal aims at making more data available for reuse and is expected to create €270 billion of additional gross domestic product by 2028.

This proposal includes:

- measures to allow users of connected devices to gain access to data generated by them;
- measures to rebalance negotiation power for small and medium-sized companies by preventing abuse of contractual imbalances in data-sharing contracts;
- measures for public entities to request access and use of the data held by the private sector that is necessary for exceptional circumstances; and
- measures on cloud and data processing services to further allow customers to switch between services providers.

The Data Act has yet to be approved and adopted by the European Parliament and the European Council and, as of today, there is no current indication of when this will be.

Data localisation

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

The GDPR contains provisions concerning international transfers of data, but it contains no data localisation obligations. Conversely, the principle of the free flow of data is enshrined in the GDPR. At the time of writing, no specific legislation or regulation is yet in place at the EU level concerning data localisation.

Some EU member states have adopted data localisation laws. For instance, Germany has passed the Data Retention Act, which requires public electronic communication and internet providers to retain various call detail records for law-enforcement purposes. The European Union is concerned that this type of rule might hinder the free flow of data. The then Digital Single Market vice president, Andrus Arsip, declared that:

> *Data should be able to flow freely between locations, across borders and within a single data space . . . in the EU, data flow and data access are often held up by localisation rules or technical and legal barriers.*

The Building European Data Economy initiative, part of the Digital Single Market strategy, aims at fostering the best possible use of the potential

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of digital data to benefit the economy and society. Following the adoption of a Communication on Building a European Data Economy, a Staff Working Document in January 2017 and a public consultation, Regulation (EU) 2018/1807 on a framework for the free flow of non-personal data in the European Union was adopted. The Regulation entered into force in December 2018, with effect in June 2018. This Regulation prohibits EU member-state governments from putting in place data localisation restrictions, except if they are required for national security and similar objectives because these represent a form of protectionism for which there is no place in a true single market. The goal is to create legal certainty for businesses, with reassurance that they can process their data anywhere in the European Union. According to the Council of Europe, it will, in the long run, increase trust in cloud computing and counter vendor lock-in, resulting in a more competitive cloud-computing market and a boost of operational efficiency for EU businesses that operate across borders.

Key trends and expected changes

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

New Regulation (EU) 2022/612 on roaming on public mobile communication networks (recast) within the Union was published in April 2022. This Regulation is an update to Regulation (EU) No. 531/20212. The purpose here is to extend it for another 10 years, while adjusting the maximum wholesale charges to ensure the sustainability of the provision of retail roaming services at domestic prices, introducing new measures to increase transparency and ensuring a genuine roam-like-at-home experience in terms of quality of service and access to emergency services while roaming.

MEDIA

Regulatory and institutional structure

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

Articles 167 and 173 of the Treaty on the Functioning of the European Union (TFEU) can be considered the legal basis for audiovisual policy in the European Union, with the main objective being to create a single European market for audiovisual services. It encourages cooperation between the EU member states, in particular, in the audiovisual sector, and supports them where necessary. Within the European Union, the European Commission (the Commission) is responsible for any media policy.

Within the European Union, audiovisual media services (including broadcasting and on-demand services) are broadly regulated under Directive 2010/13/EU (Audiovisual Media Services Directive) (AVMS Directive). The AVMS Directive was adopted to codify and harmonise the existing legislation concerning audiovisual media services. Audiovisual media service is defined under article 1, paragraph 1a, of the AVMS Directive, as a service that is:

> *under the editorial responsibility of a media service provider and the principal purpose of providing programmes, to inform, entertain or educate, to the general public by electronic communications network*

On 6 November 2018, the Commission adopted a revised version of the AVMS Directive, Directive 2018/1808 (AVMS Directive 2.0). EU member states had to transpose the new rules into their national legislation by 19 September 2020. AVMS Directive 2.0 ensures that EU regulation is adapted to the advanced convergence of audiovisual media services and current technological developments.

AVMS Directive 2.0 applies to broadcasts over terrestrial, cable, satellite and mobile networks as well as over the internet (platform and technology neutrality). It distinguishes between linear services (which push content to viewers, eg, by broadcasting via traditional television, internet or mobile phones) and non-linear services (which pull content from a network, eg, video-on-demand services), as well as video-sharing platforms (which, without bearing editorial responsibility, provide programmes and user-generated videos, or both). Under AVMS Directive 2.0, all three services are subject to tight regulations.

In 2014, the European Regulators Group for Audiovisual Media Services was established, which is responsible for advising on the implementation of the AVMS Directive.

The AVMS Directive, in particular, aimed to harmonise national rules on:

- regulation of television broadcasts, including satellite broadcasts, under the country of origin, including the right for EU member states to restrict the retransmission of unsuitable broadcast content from another EU member state;
- promotion, production and distribution of television programmes within the European Union, including quotas for EU-produced content and content made by independent producers;
- access by the public to major (sports) events;
- television advertising, product placement and programme sponsorship;
- protection of minors from unsuitable content; and
- the right of reply (of any natural or legal person whose legitimate interest has been damaged by an assertion in a television programme).

AVMS Directive 2.0 added in particular the following new elements:
providing broadcasting companies with more flexibility on the time frame of television advertising;

- the general permission of product placement;
- simplification of the country-of-origin principle;
- clarification of cooperation procedures between EU member states;
- extension of the provisions on EU-produced content to on-demand service providers;
- alignment of the rules on the protection of minors for television broadcasting and on-demand services; and
- extension of the scope of applicability of the AVMS Directive on video-sharing platforms.

In February 2018, Regulation (EU) 2018/302 on addressing unjustified geo-blocking and other forms of discrimination (Geo-Blocking Regulation) was adopted, which entered into force on 22 March 2018. The regulation took effect on 3 December 2018 and shall prevent geo-blocking (namely, businesses from discriminating (private or commercial)) end customers in obtaining goods or certain services being offered within the European Union. To this end, the following measures are prohibited:

- electronic measures blocking or restricting the access of end customers to online offers of goods or (non-finance, gambling, healthcare and transportation) services based on the nationality, residence or customer place of establishment; and
- indirect restrictions on cross-border online trade, including discriminatory use of general terms and conditions (including prices, conditions and acceptance of payment methods).

The Geo-Blocking Regulation generally covers audiovisual copyright content, but not audiovisual content (eg, e-books, online music, software and videogames). On 20 November 2020, the Commission published a

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report on the first short-term review of the Geo-Blocking Regulation. Concerning extending the scope of the Geo-Blocking Regulation, the report identifies potential benefits, particularly for audiovisual content, the availability of which is often limited within the national territory. However, the report also identifies possible challenges for investment in content production and implications for the overall sector ecosystem and welfare impact requiring further assessments. Overall, the effects of extending the scope of the Regulation would largely depend on copyright-licensing practices and copyright-law considerations. Therefore, it remains to be seen whether the scope of the Geo-Blocking Regulation will be extended shortly.

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?

The ownership of broadcasters is, to a great extent, regulated by the EU member states under their national broadcasting laws. National law must, however, comply with EU law, including (among others) the provisions of the TFEU and AVMS Directive 2.0.

EU law prohibits, in particular, any discrimination on grounds of nationality. Consequently, foreign ownership restrictions are generally prohibited. EU law also prohibits any actions that can prevent or impede the activities of persons or companies established in other EU member states. The TFEU outlines the following fundamental freedoms with which any national laws must comply:

- article 34: prohibition of national restrictions on the freedom of movement of goods within the European Union (eg, including material, sound recordings and other apparatus for broadcasting);
- article 49: right of EU citizens and companies to establish businesses in other EU member states (eg, including broadcasting businesses);
- article 56: prohibition of national restrictions on the freedom to provide services by EU citizens (eg, including television and radio broadcasting); and
- article 63: free movement of capital in the European Union eg, (including, capital for purchasing shares in a company).

National laws restricting any of these fundamental freedoms may be compliant with EU laws under certain circumstances (eg, where necessary for public safety or public health reasons) or in the case of an overriding public interest (eg, maintenance of the social order, protection of consumers' rights, guarantee of the freedom of speech and plurality of media). However, such restrictions have to be interpreted narrowly and must be objectively justified.

According to recitals 8 and 94 of the AVMS Directive, EU member states shall prevent any actions that create dominant positions or a concentration of media ownership and shall contribute to the promotion of media pluralism. AVMS Directive 2.0 includes new provisions on the transparency of media ownership (recitals 15 and 16, article 5). According to the Commission, these provisions will have positive spillover effects on media pluralism. The revised Directive particularly allows EU member states to adopt legislative measures, obligating service providers under their jurisdiction to make accessible information concerning their ownership structure, including the beneficial owners. As far as Germany is concerned, the final proposal of the State Media Treaty implementing the revised AVMS Directive – currently under review by the Commission – does not make use of such legislative permission.

Licensing requirements

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

The licensing requirements, fees and timescales for authorisations are generally regulated by the EU member states. The AVMS Directive, however, specifies which EU member state is competent to regulate a broadcaster (under the country-of-origin principle) and sets out certain common minimum requirements and standards with which broadcasters have to comply and that are enforceable by national authorities. These minimum standards include, among others:

- transparency and information obligations;
- prohibition on discrimination based on race, religion or nationality;
- accessibility for users with a visual or hearing disability;
- prohibition of surreptitious or subliminal commercial communication;
- rules on commercial communications for alcoholic beverages;
- protection of cinematographic works;
- protection of minors; and
- promotion of EU and independent works.

AVMS Directive 2.0 further introduced, among other things:

- prohibition of incitement to violence or hatred directed against any groups or members of such groups because of an affiliation to one of the categories that are subject to equal treatment principles (eg, race, religion or nationality), article 21 of the EU Charter of Fundamental Rights;
- prohibition of public provocation to commit a terrorist offence; and
- even stronger rules on commercial communications for alcoholic beverages.

EU member states are not entitled to apply less stringent rules to broadcasters but may impose stricter rules on audiovisual media service providers under their jurisdiction, provided that these do not violate fundamental rights.

In view of the war in Ukraine, legislation has been put into force to invalidate the broadcasting licences of Russian broadcasters and ban them from broadcasting. Pursuant to Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No. 833/2014, broadcasting licences or authorisation, transmission and distribution arrangements with Russia Today and Sputnik are suspended from 1 March 2022 onwards.

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?

According to the AVMS Directive, EU member states shall ensure, where practicable, that broadcasters reserve a majority of their production, budget and transmission time (except for time allocated to news, sport, games, advertising, teletext services and teleshopping) for 'European works' (as defined in article 1 of the AVMS Directive). EU member states shall report on the implementation of this obligation. Such report shall, in particular, include a statistical statement on the achievement of the proportion for each television programme.

EU member states shall also ensure, where practicable, that broadcasters reserve at least 10 per cent of their transmission time for European works supplied by independent producers. Alternatively, EU member states may reserve at least 10 per cent of their programming budget for independent European works. EU member states shall

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define such 'independent works', taking into account the ownership of the production company, the number of programmes supplied to the same broadcaster and the ownership of secondary rights.

The AVMS Directive does not distinguish services through transmission (eg, online or mobile content). It rather distinguishes between linear and non-linear services. To the extent online or mobile content qualify as audiovisual media services, they are, thus, regulated in the same way as 'traditional' broadcast networks and fall under the scope of the AVMS Directive.

AVMS Directive 2.0 introduced a content quota according to which providers of non-linear services must secure at least a 30 per cent share of European works in their catalogues and ensure prominence of those works. However, this quota shall not apply to media service providers with a low turnover or a low audience.

In view of the war in Ukraine, legislation has been put into force to invalidate the broadcasting licences of Russian broadcasters and ban them from broadcasting. Pursuant to Council Regulation (EU) 2022/350 it is prohibited for operators to broadcast or to enable, facilitate or otherwise contribute to broadcast, any content by Russia Today and Sputnik, including through transmission or distribution by any means such as cable, satellite, internet protocol TV, internet service providers, internet video-sharing platforms or applications, whether new or pre-installed, from 1 March 2022 onwards.

Advertising

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

The delivery of television advertising, sponsorship and teleshopping are broadly regulated by the AVMS Directive. A prerequisite for the applicability of the AVMS Directive is that the online service is qualified as an audiovisual media service or as a video-sharing platform.

The AVMS Directive aims at protecting consumers against excessive television advertising. It, therefore, outlines strict rules to ensure consumer protection, stipulating, in particular, that television advertising and teleshopping shall be recognised as such and shall be distinguishable from editorial content, either by optical, acoustic or spatial means. It allows for an interruption of the transmission of films (excluding series, serials and documentaries) once for each scheduled period of at least 30 minutes. Under the AVMS Directive, the proportion of television advertising and teleshopping spots within a given hour was not permitted to exceed a total of 20 per cent. Under the AVMS Directive 2.0, broadcasting companies are provided with more flexibility on the time frame of television advertising, changing the limit for advertising from 20 per cent per hour to 20 per cent per day (between 6am and 6pm and between 6pm and 12pm).

The AVMS Directive prohibits certain types of advertising, namely, advertising or teleshopping inserted during religious services and teleshopping for medicinal products subject to a marketing authorisation or medical treatment. It also restricts the advertising of alcoholic beverages to a large extent. However, AVMS Directive 2.0 widely waived the ban on product placement.

In addition to the restrictions under the AVMS Directive, Directive 2003/33/EC (Tobacco Advertising Directive) contains an EU-wide ban on cross-border tobacco advertising and sponsorship in the media other than television. The ban covers print media, radio, internet and events' sponsorship involving several EU member states (eg, the Olympic Games or Formula One racing).

Any form of advertising is also subject to the fundamental principles of human dignity, non-discrimination on the grounds of race, nationality, religious or political belief as well as the protection of minors, health, safety and the environment. Further, Directive 2006/114/EC concerning misleading and comparative advertising stipulates general requirements for advertising, irrespective of the means of transmission. Additionally, article 13 of Directive 2002/58/EC on privacy and electronic communications establishes certain requirements for unsolicited communications such as electronic mail for direct marketing. These rules must be implemented into national law by the EU member states.

In 1992, advertising industry representatives in Europe launched the European Advertising Standards Alliance (EASA), an independent coordinating body promoting responsible advertising. EASA provides detailed guidance on how to advertise self-regulation for the benefit of consumers and businesses. It has become the single authoritative voice on advertising self-regulation and promotes high ethical standards in commercial communications. In 2016, the Commission explicitly recognised the role and effectiveness of advertising self-regulation.

Depending on the sector, additional national legislation on advertising remains possible. For example, with regard to gambling advertising, there are separate member state regulations. Most states of the European Union have imposed certain restrictions, including the requirement to obtain a licence to be allowed to advertise. In many cases, the national regulations are aligned with the 2020 'Code of Conduct on Responsible Advertising for Online Gambling' by the European Gaming and Betting Association. For example, in 2021, Germany's new State Treaty on Gambling (GlüStV 2021) came into force. According to the GlüStV 2021, holders of a licence for games of chance pursuant to paragraph 4 of the GlüStV 2021 are allowed to advertise their services, subject to provisions for the type and scope of advertising set out in paragraph 5 of the GlüStV 2021 (which are in addition to the requirements set out in other applicable legislation, eg, media law).

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?

According to article 31, paragraph 1 of Directive 2002/22/EC (Universal Service Directive), EU member states may impose must-carry obligations for the transmission of specific broadcast channels or services on companies providing electronic communications networks for the distribution of radio or television broadcast (eg, cable companies or telecoms operators). The prerequisite is that a significant number of end users use such networks as the principal means for radio and television broadcasts.

Must-carry obligations shall only be imposed to the extent necessary to meet clearly defined objectives of general interest (eg, media plurality). According to the European Court of Justice, economic considerations would not be considered general-interest obligations.

The rules for must-carry obligations must be transparent, proportionate and subject to periodical review at least every three years. They must be clearly identified and based on objective non-discriminatory criteria known in advance. Broadcasters and network operators have to be able to know their specific rights and obligations.

Must-carry obligations may also entail a provision for proportionate remuneration. However, it must be ensured that there is no discrimination in the treatment of different companies providing electronic communications networks in similar circumstances.

Article 31, paragraph 1 of the Universal Service Directive does not cover the content of the services delivered (eg, which broadcasters benefit from must-carry obligations). Such content issues are, however, subject to the principles of non-discrimination and proportionality.

AVMS Directive 2.0 introduced a content quota of 30 per cent share of European works. Where EU member states require media service providers under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and

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contribution to national funds, they may also require media service providers targeting audiences in their territories, but established in other EU member states to make such financial contributions, which shall be proportionate and non-discriminatory.

Such financial contribution shall be based only on the revenues earned in the targeted EU member states. If the member state where the provider is established imposes such a financial contribution, it shall take into account any financial contributions imposed by targeted EU member states. However, the obligation to contribute financially to the production of European works shall not apply to media service providers with a low turnover or a low audience.

Regulation of new media content

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

The delivery of new media content is regulated by the AVMS Directive, if and as far as it qualifies as an audiovisual media service.

Regulation (EU) 2017/1128 on cross-border portability of online content services (the Portability Regulation) obliges providers of online content, including audiovisual media services, to enable paying subscribers to access and use such service under terms equal to the offering at each subscriber's residence, within all EU member states.

If a service does not qualify as an audiovisual media service, it is covered by Directive 2000/31/EC (e-Commerce Directive). A prerequisite for the applicability of the e-Commerce Directive is that the service qualifies as an information society service. According to article 1, paragraph 1 of Directive 98/34/EC (Information Society Services Directive), such information society service is any service normally provided for remuneration, at a distance, by electronic means and at the individual request of the recipient of the service (eg, web-based content, video portals, e-commerce and web-hosting).

Similar to the AVMS Directive, the e-Commerce Directive is also based upon the country-of-origin principle. A provider of information society services is therefore generally subject to regulation in the EU member state in which it has its establishment. In general, providers of information society services do not require prior authorisation under the AVMS Directive or the e-Commerce Directive.

On 6 May 2015, the Commission adopted the Digital Single Market Strategy, which announced a legislative initiative on harmonised rules for the supply of digital content and services and online and other distance sales of goods. These initiatives were followed by two new directives.

Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services was enacted on 10 June 2019. It shall be transposed into EU member states' national law by 11 June 2021. This Directive creates a holistic framework for business-to-consumer transactions regarding digital content and digital services. 'Digital content' means data created and made available in digital form (eg, audio and video content, video games and other software). Digital services are such that enable processing of or access to digital data; or interaction with data uploaded by any user of the service (eg, over-the-top communications services). EU member states are free to adopt this framework for business-to-business transactions as well. The Directive stipulates criteria for defects in digital content and services, and minimum standards for sellers' warranty obligations (eg, provision of updates). Guidance on the relation between (IT and cyber-security) vulnerabilities and defectiveness in such products, however, is not included. Warranty obligations for digital content and services might also be imposed on sellers of hardware with pre-installed software (apart from those according to Directive (EU) 2019/771).

Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods entered into force on 11 June 2019. It shall be transposed into EU member states' national law by 1 July 2021 and enforced no later than 1 January 2022. The initial proposal envisages the regulation of online and other distance sales of goods. However, the enacted version aims to ensure the proper functioning of the internal market, while providing consumers with a high level of protection. It does so by laying down certain common rules on sales contracts between sellers and consumers. These cover:

- conformity of goods with the contract;
- remedies if there is no conformity;
- ways to exercise these remedies; and
- commercial guarantees.

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?

According to the Commission, the European Union is leading the world in switching from analogue to digital television. The Commission recommended that switch-off in all EU member states should be completed by 2012. By the end of 2015, all EU member states had finally completed the switchover.

The re-farming of freed-up spectrum is mainly regulated by the EU Radio Spectrum Policy Programme (RSPP), which was established in 2012. The RSPP covers all types of radio spectrum use and sets general regulatory principles and policy objectives to enhance the efficiency and flexibility of spectrum use in the European Union. A key aspect of the programme is the establishment of an inventory of spectrum bands identifying the current use of spectrum together with an analysis of technology trends, future needs and spectrum-sharing opportunities. Through the use of spectrum bands, the Commission aims to identify inefficient spectrum allocations and to free up capacity for new (more economic and efficient) uses of such spectrum.

Digital formats

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

No. This is regulated by the EU member states themselves.

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?

Media pluralism is protected at the EU level as a part of the fundamental right to information and freedom of expression, which is stipulated in article 11 of the EU Charter of Fundamental Rights. Also, article 30 of the AVMS Directive assumed the independence of audiovisual media regulators. However, under the AVMS Directive, there were no clear and enforceable safeguards available to ensure the independence of regulators.

In October 2011, the Commission appointed a high-level expert group on Media Pluralism and Freedom to provide recommendations on media plurality. The Commission also established the Centre for Media Pluralism and Media Freedom (CMPF). The CMPF's objective is to accompany the process of EU integration regarding media pluralism and to develop policy reports on EU competencies in this area.

In 2013, the CMPF conducted a pilot test implementation of the Media Pluralism Monitor Tool (MPM Tool). The MPM Tool was to identify potential risks to media pluralism in the European Union and provide support to policy and rulemaking processes. On 30 June 2014, the

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Commission adopted the Work Programme for 'Measures concerning the digital content and audiovisual and other media industries' and related pilot projects in the field of media pluralism and freedom to finance the implementation of the MPM Tool.

In 2016, an examination of the 28 EU member states, as well as two candidate countries, was carried out via the MPM Tool. The result showed that none of these countries was free from risks relating to media pluralism and media freedom. It also showed the erosion of freedom of expression and protection for journalists in one-third of the countries. The key findings of the examination were the following:

- high concentration of media ownership with a significant barrier to a diversity of information and viewpoints represented in media content as a result;
- lack of transparency of media ownership, which makes it difficult for the public to understand the biases in media content;
- media authorities in many countries were under strong political pressure, particularly concerning appointment procedures and the composition of authorities;
- underdeveloped media literacy policy;
- lack of adequate access to media; and
- underrepresentation of women in media.

In November 2016, the Commission organised a colloquium on fundamental rights focusing on media pluralism and democracy, including topics such as:

- how to protect and promote media freedom and independence from state intervention or undue political or commercial pressures;
- how to empower journalists and protect them from threats of physical violence or hate speech; and
- the role of media and ethical journalism in promoting fundamental rights.

AVMS Directive 2.0 includes new provisions on the independence of regulators (recital 53, article 30) and transparency of media ownership (recitals 15 and 16, article 5). According to the Commission, these provisions will have positive spillover effects on media pluralism (European Commission, 8 November 2018, answering the parliamentary question on the concentration of media ownership). AVMS Directive 2.0 particularly allows EU member states to adopt legislative measures, obliging service providers under their jurisdiction to make accessible information concerning their ownership structure, including the beneficial owners. As far as Germany is concerned, the new State Media Treaty, in force since 7 November 2020 and aimed to implement AVMS Directive 2.0, does not make use of such legislative permission.

Key trends and expected changes

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

On 15 December 2020, the Commission published a legislative proposal on a Single Market For Digital Services (Digital Services Act) (DSA), amending the e-Commerce Directive. The expressed purpose of the DSA is to update the EU's legal framework, in particular by modernising the e-Commerce Directive adopted in 2000.

On 23 April 2022 the Commission, the European Parliament and the European Council reached a political agreement on the DSA. Once adopted, the DSA will be directly applicable across the European Union and will apply from 1 January 2024. As regards very large online platforms and very large online search engines, the DSA will apply from an earlier date, that is, four months after their designation by the European Commission according to the press release on the Digital Service Act by the European Commission of 23 April 2022.

The DSA contains EU-wide due diligence obligations that will apply to all digital services that connect consumers to goods, services, or content, including new procedures for faster removal of illegal content as well as comprehensive protection for users' fundamental rights online.

In the scope of the DSA are various online intermediary services. Their obligations under the DSA depend on their role, size, and impact on the online ecosystem. These online intermediary services include:

- intermediary services offering network infrastructure: Internet access providers, domain name registrars;
- hosting services such as cloud computing and web hosting services;
- very large online search engines with more than 45 million users in the European Union;
- online platforms bringing together sellers and consumers such as online marketplaces, app stores, collaborative economy platforms and social media platforms; and
- very large online platforms, with a reach of more than 45 million users in the European Union.

Concretely, the DSA contains:

- measures to counter illegal goods, services or content online, such as a mechanism for users to flag such content and new obligations on traceability of business users in online marketplaces;
- new measures to empower users and civil society, including:
  - the possibility to challenge platforms' content moderation decisions and seek redress, either via an out-of-court dispute mechanism or judicial redress;
  - provision of access by vetted researchers to the key data of the largest platforms and provision of access to NGOs as regards access to public data, to provide more insight into how online risks evolve; and
  - transparency measures for online platforms on a variety of issues, including on the algorithms used for recommending content or products to users; and
- measures to assess and mitigate risks, such as:
  - obligations for very large platforms and very large online search engines to take risk-based action to prevent the misuse of their systems and undergo independent audits of their risk management systems;
  - mechanisms to adapt swiftly and efficiently in reaction to crises affecting public security or public health; and
  - new safeguards for the protection of minors and limits on the use of sensitive personal data for targeted advertising.

On 10 January 2022, the Commission published an open public consultation on the upcoming European Media Freedom Act, an initiative aimed to safeguard the pluralism and independence of the media in the EU internal market. It will build on the revised Audiovisual Media Services Directive, Directive (EU) 2018/1808 of the European Parliament and of the European Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the provision of audiovisual media services in view of changing market realities (AVMS Directive 2.0), which currently gives a framework for the Media Sector. The media Freedom Act aims to unify different national substantive rules and scrutiny procedures over media market operations, to create more transparency on media ownership and to establish comparable audience measurement mechanisms.

Consideration is being given to whether the Commission should only make recommendations or whether EU legislation is necessary to reach this goal. EU legislation would establish common principles for national scrutiny procedures of media market transactions and other restrictions to market entry and operation of the media. It would also envisage measures to enhance the transparency of media markets.

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On 25 November 2021, the Commission published a proposal on transparency and targeting of political advertising, as part of measures aimed at protecting election integrity and open democratic debate. The proposed rules would require any political advert to be clearly labelled as such and include information such as who paid for it and how much. Political targeting and amplification techniques would need to be explained publicly in unprecedented detail and the use of sensitive personal data for such activities without the explicit consent of the individual would be banned. The aim is for the new rules to enter into force and be fully implemented by member states by spring 2023, namely, one year before the elections to the European Parliament 2024. The proposed Regulation builds on and complements relevant EU law, including the General Data Protection Regulation (GDPR) and the DSA.

On 16 September 2021, the Commission published the Commission Recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union. Member States are expected to ensure full implementation of the European and national legal frameworks on confidentiality of communications and online privacy with a view to ensuring that journalists and other media professionals are not subject to illegal online tracking or surveillance.

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?

The responsible administrative body for telecoms and media policy at the EU level is the European Commission (the Commission). It is also responsible for the enforcement of EU competition law and EU competition policy.

Within the Commission, the following bodies are relevant for the communications and media sectors:

- the Directorate-General for Communications Networks, Content and Technology (DG Connect): responsible for carrying out and developing the Commission's Digital Single Market Strategy (including policies on the digital economy and media) and for supervising and monitoring the implementation of the EU telecoms and broadcasting regulations in the EU member states;
- the Directorate-General for Competition (DG Comp): responsible for the application and enforcement of EU competition law in the area of telecoms and broadcasting at the EU level;
- the Directorate-General for Internal Market, Industry, Entrepreneurship and Small and Medium-sized Enterprises: responsible for ensuring an open internal market for goods and services in the European Union, in particular relating to electronic and online commerce; and
- the Directorate-General for Justice and Consumers: responsible for EU policy on justice, fundamental rights and consumers, including the protection of EU citizens' personal data anywhere in the European Union and other data protection policy at the EU level.

The Commission's Directorate-Generals cooperate with each other. DG Comp will, in particular, consult the other Directorate Generals if the telecommunications, media or data protection sector is involved, before adopting a decision in a competition law case. DG Comp and DG Connect cooperate, in particular, in developing specific policies that may have an impact on competition law in the telecommunications or media sectors.

There are several other competent EU bodies and committees within the field of communications and media at the EU level, including in particular the following:

- the Body of European Regulators for Electronic Communications: comprising the heads of the national regulatory authorities within the European Union and is responsible for the promotion of greater coordination and coherence between the national authorities regarding the establishment and regulation of the electronic communications market within the European Union;
- the Communications Committee: comprising representatives of the EU member states and responsible for the provision of opinions on draft measures of the Commission, in particular regarding the regulation of roaming and notification obligations for personal data breaches;
- the Radio Spectrum Committee: comprising EU member-state representatives and responsible for the harmonisation of the use of radio spectrum at the EU level, in particular, advice on the specific technical measures required to implement the EU Radio Spectrum Policy;
- the European Network and Information Security Agency: assists the Commission and the EU member states in meeting the requirements of network and information security;
- the Radio Spectrum Policy Group: comprising governmental officials and experts in the field of radio spectrum regulation and assisting the Commission in the development of radio spectrum policy at the EU level; and
- the European Regulators Group for Audiovisual Media Services (ERGA): while cooperation between EU national supervisory authorities in the broadcasting sector has constantly increased since 2000, the resulting structures were formalised by Directive 2018/1808 (AVMS Directive 2.0). ERGA essentially operates as a consulting organ of the Commission.

As far as regulatory supervision of the broadcasting sector is concerned, AVMS Directive 2.0 introduced requirements on the independence of national regulatory authorities. These obliged EU member states to ensure that such authorities are legally distinct, functionally independent and remain free from any undue instructions of their governments and any other public or private body. EU member states shall also oblige their national regulatory authorities to exercise their powers impartially, transparently and in a manner fostering media pluralism, cultural and linguistic diversity, consumer protection, accessibility, non-discrimination, as well as fair competition and functioning of the internal market. Finally, national regulatory authorities must be adequately funded to carry out their functions (including contributing to the work of the ERGA) effectively.

To ensure EU-wide consistent application of its regulations, Directive 2010/13/EU (Audiovisual Media Services Directive) (AVMS Directive) provides for information obligations of its EU member states (towards each other as well as the Commission) regarding any information required for the application of this Directive. AVMS Directive 2.0 has reinforced these obligations as follows:

> *any media services to be wholly or mostly directed at the audience of another member state shall be notified between informed and concerned national regulatory authorities, and the former shall assist the latter on information gathering on such service providers' activities.*

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Appeal procedure

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

Any EU member state, the European Parliament or the Council can appeal decisions of the Commission to the General Court of the European Union on points of law or fact, article 263, paragraphs 1 and 2 of the Treaty on the Functioning of the European Union (TFEU). A further appeal on points of law can be made to the Court of Justice of the European Union. Natural or legal persons are only entitled to challenge a decision of the Commission if such decision is either addressed to that person or of direct and individual concern to that person, article 263, paragraph 4 of the TFEU. Natural or legal persons are also entitled to challenge an EU regulatory act, in the case such act is of direct concern to them and does not require its transposition into national law by the EU member states.

Concerning decisions of the national regulatory authorities, EU law obliges the EU member states to provide effective appeal mechanisms to challenge such decisions under their jurisdictions. According to AVMS Directive 2.0, however, any such appeal shall normally not suspend the enforceability of the contested regulatory decision; such effect shall only be granted if the plaintiff also seeks interim measures according to applicable national laws.

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.

Legislative changes and trends

One of the main trends in EU law remains the proposal and introduction of different regulatory tools to address and regulate big tech and the functioning of the Single Market in the digital sector that have similar goals to classic competition law tools and supplement enforcement possibilities.

Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services concerns online platforms like Google, Airbnb or Amazon, which have gained major importance in the market. Their position of strength as gatekeepers, particularly concerning commercial users, triggered many questions regarding the applicable legal framework and the need for further regulatory oversight. The Regulation establishes rules, for example, transparency requirements for terms and conditions and limits on commercial terms including:

- best-price clauses for online intermediation services;
- electronic measures blocking or restricting the access of final customers to online offers of goods or services based on the nationality;
- customer residence or place of establishment; and
- indirect restrictions on cross-border online trade, including discriminatory use of general terms and conditions (including prices, conditions and acceptance-of-payment methods).

The Regulation covers audiovisual copyright content but generally excludes audiovisual content such as e-books, online music, software and videogames.

Further, Regulation (EU) 2017/1128 was adopted to enable subscribers to use their audiovisual content services subscriptions outside their home member state when travelling in the European Union.

Regulation (EU) 2018/302 regarding unjustified geo-blocking entered into force on 3 December 2018 and is aimed at addressing issues of customers not being able to buy goods and services from traders located in a different EU member state, even with the same conditions as locals due to their nationality, place of residence or place of establishment. Regulation (EU) 2018/302 on addressing unjustified geo-blocking and other forms of discrimination (Geo-Blocking Regulation) is part of a wider set of measures aimed at boosting e-commerce in the Single Market. The Geo-Blocking Regulation also supplements existing competition-law tools.

Building on the AVMS Directive 2.0, the Commission has initiated the adoption of the European Media Freedom Act (MFA) that will focus on eliminating barriers to the establishment and operation of media services and will aim to establish a common framework for advancing the internal market in the media sector, in view of safeguarding media freedom and pluralism in that. The adoption of the MFA is planned for the third quarter of 2022.

The Commission published plans to extend its review powers of transactions that apply in all sectors but also the technology, media and telecom (TMT) field. The European Union published plans to introduce new powers to scrutinise foreign subsidies and to level the EU playing field by eliminating distortions caused by foreign subsidies. The proposal has three main tools:

- mechanisms to call in and veto mergers and acquisitions (M&A) deals;
- review of public-procurement bids where foreign subsidies are in play; and
- a discretionary power to investigate concerns on the market.

It remains to be seen which industry will become the focus of these new powers once introduced. Further, the Commission announced a change of policy regarding the application of article 22 of the EU Merger Regulation in March 2021. Acquisitions, notably in the TMT, healthcare and life sciences sectors, that do not meet the EU or EU member states' national thresholds can be reviewed by the Commission following referral requests from EU member states. This is particularly directed at 'killer acquisitions' in the tech space. These plans and new guidance on the existing tool will mean that M&A transactions may become subjected to closer scrutiny.

In July 2021, the Commission has published its findings of the evaluation of the Market Definition Notice and announced to reflect on updating the notice, inter alia, for the definition of digital markets, in particular with respect to products or services marketed at zero monetary price and to digital 'ecosystems'. Further, the Commission is revising the Horizontal Guidelines and announced to provide updated guidance on data sharing, to ensure that companies can take the most out of data without undermining competition and to reflect the specificities of digital markets.

The Commission published its proposal on the 'Data Act' that shall introduce rules on who can use and access data generated in the European Union across all economic sectors. Namely, in relation to connected devices, the Data Act aims to introduce data access or data sharing rights that are similar to current access claims based on competition law but without the requirement of a dominant position. The current plan foresees that the access right may be granted only against compensation based on fair, reasonable and non-discriminatory terms.

In March 2022, the European Council and the European Parliament reached a provisional agreement on the Digital Markets Act, which will introduce further rules for platforms acting as gatekeepers. The Digital Markets Act aims to prevent gatekeepers from imposing unfair conditions and ensure the openness of important digital services. The Digital Markets Act is intended to create ex-ante regulation to complement the powers of intervention under the EU competition rules. Gatekeepers will be subject to certain obligations such as giving users the possibility to opt-out of having their data that was collected across different services being combined or prevented from prohibiting business users to offer better prices or conditions via other channels. All gatekeepers must

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also inform the Commission of any acquisitions they make. The provisional agreement is still subject to approval but is expected to enter into force in 2023. The Commission adopted the new text for the Vertical Block Exemption Regulation (Regulation (EU) 2022/720), which will enter into force on 1 June 2022. While the Regulation focuses on questions regarding the distribution and resale of products and services, it introduces certain rules for platforms and intermediation services namely in relation to dual distribution or parity clauses.

Internet of things sector inquiry

In January 2022, the Commission published the final report of the sector inquiry into the sector of the internet of things for consumer-related products and services in the European Union. The sector inquiry focused on consumer-related products and services that are connected to a network and can be controlled at a distance, which includes smart home appliances and wearable devices. The inquiry raised concerns on the issues of pre-installations, default settings and prominent placement as these practices give competitive advantages. In addition, concerns have been raised about exclusivity, concurrency and tying in relation to voice assistants as big players are trying to restrict the possibility of using different voice assistants on the same smart device. The inquiry also addressed a lack of interoperability in the consumer IoT sector due to technology fragmentation, lack of common standards and the prevalence of proprietary technology. In terms of data, participants in the inquiry raised the concern that access to and accumulation of big data provides voice assistant providers with the ability to improve their market position and exploit it in neighbouring markets. The Commission concluded that, in relation to the concerns identified, both the enforcement of competition law and appropriate regulation is required. The results of the sector enquiry have already been incorporated into the ongoing legislative debate on the scope of the Digital Markets Act.

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Antitrust decisions

A big part of the ongoing cases still relates to the Google saga. Over the last years, the Commission imposed various fines on Google ranging from a fine of €2.42 billion on Google for abusing its dominant position in general internet search, to a fine of €4.34 billion for conduct relating to the Android operating system including the requirement to pre-install the Google Search app and Chrome browser app, as a condition for licensing Google's app store (or preventing manufacturers wishing to pre-install Google apps from selling devices using alternative versions of Android that were not approved by Google (Android forks).

The Google saga continues with two more investigations opened against Google. On 22 June 2021, the Commission opened an investigation into possible anti-competitive conduct by Google in favouring its own online display advertising technology services in the ad-tech supply chain to the detriment of competing providers of advertising technology services, advertisers and online publishers. On 11 March 2022, the Commission opened another investigation into whether an agreement between Google and Meta (formerly Facebook) on online display advertising services may have breached EU competition rules. The Commission is concerned that the agreement may form part of efforts to exclude ad tech services competing with Google's Open Bidding programme, and therefore also restricts or distorts competition in markets for online display advertising to the detriment of publishers and ultimately consumers. This may be considered a breach of EU competition rules on anti-competitive agreements between companies and (or) the abuse of a dominant position. Both investigations are still ongoing. In January 2021, the Commission fined game developer Valve (of the Steam gaming platform) and five publishers (Bandai Namco, Capcom, Focus Home, Koch Media and ZeniMax) €7.8 million for breaching EU antitrust rules and restricting cross-border sales of certain personal computer video games based on the geographical location of users within the European Economic Area (namely, geo-blocking practices).

On 21 February 2022, the Commission closed its in-depth investigation on a proposed Czech regulation on the mobile access market. The Commission found that O2, T-Mobile and Vodafone do not have collective significant market power in the Czech wholesale mobile access market and that a regulation that would oblige these three operators to provide national roaming to all operators is not justified.

The Commission has also re-adopted a decision against Telefónica and Pharol (formerly Portugal Telecom) and has imposed a fine of €79 million on Telefónica and Pharol for entering into a non-compete agreement. The parties are alleged to have agreed on not competing in the Iberian telecommunications market. The decisions of the General Court and the Court of Justice annulled the initial fines imposed by the Commission, as the courts found that the Commission should have examined the parties' arguments that there was no potential competition between them in certain markets and that those markets should have been excluded from the value of the sales on the basis of which the fines were calculated. The Commission's new decision took the Court's judgment into account but re-imposed the fine.

Merger decisions

On 28 July 2021, the Commission conditionally cleared the acquisition of Telekom Romania Communications (TKR) by Orange. The Commission's concerns included that Orange would acquire TKR's 30 per cent minority shareholding in TRMC, one of its key competitors in this market. This may have reduced Orange's incentives to compete with TRMC, would have given Orange access to commercially sensitive information about its competitor, and allowed it to block important investments by TRMC or the operator's acquisition by a strategic buyer.

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The commitments offered to address these concerns comprised, inter alia, that Orange secures the divestment of TKR's 30 per cent minority shareholding in TRMC to Hellenic Telecommunications Organization SA, which is the current controlling shareholder of TRMC and a subsidiary of Deutsche Telekom.

The Commission approved the acquisition of Nuance by Microsoft on 21 December 2021. The Commission's market investigations found that the transaction would not significantly reduce competition in the markets for transcription software, cloud services, enterprise communication services, customer relationship management, productivity software and PC operating systems.

On 27 January 2022, the Commission conditionally cleared the acquisition of Kustomer by Meta (formerly Facebook). Following its market investigation, the Commission had concerns that the transaction, as initially notified, would have harmed competition in the market for the supply of customer relationship management (CRM) software and the market for the supply of customer service and support CRM software. The Commission found, inter alia, that Meta would have the ability and economic incentive to engage in foreclosure strategies against Kustomer's close competitors and new entrants. To address the competition concerns identified by the Commission, Meta offered comprehensive access commitments with a 10-year duration. Meta offered access to its publicly available APIs for its messaging channels to competing customer service CRM software providers and new entrants. Further, to the extent any features or functionalities of Messenger, Instagram messaging or WhatsApp that are used by Kustomer's customers today may be improved or updated, Meta commits to also make available equivalent improvements to Kustomer's competitors and new entrants.

On 15 March 2022, the Commission unconditionally approved the acquisition of MGM by Amazon. Regarding the horizontal overlaps between the activities of Amazon and MGM in the audio-visual (AV) content value chain, the Commission found that the overlaps between Amazon and MGM are limited. The parties are primarily active in different parts of the AV content value chain. Where both parties are active, their combined market shares are low. Concerning conglomerate links regarding MGM's content and Amazon's existing bundle of AV retail and marketplace service products, the Commission found that the addition of MGM's content into Amazon's Prime Video offer would not have a significant impact on Amazon's position as a provider of marketplace services.

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Greece

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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?

The decision-making procedure in Greece is divided and fragmented. The basic framework is set out in the acts that are enacted by the Hellenic Parliament. There is, however, an enormous quantity of secondary legislation that involves decisions that must be taken jointly by different ministers and three independent authorities.

The ministry with the most direct involvement and key role in the telecoms and media fields is the Ministry of Digital Policy, Telecommunications and Information.

However, the major responsibilities in these sectors are undertaken by regulatory agencies that are independent administrative authorities, with full independence from network operators and service providers. The agencies that regulate the communications and media sectors are the following:

- the National Commission for Telecommunications and Post (EETT): the national regulatory authority that supervises and regulates the electronic communications and postal services market. It is also responsible for the application of competition law in the electronic communications sector and the postal services sector;
- the National Council of Radio and Television (ESR): an independent administrative authority that supervises and regulates the radio and television market. The existing regime is drawn along the lines that content is regulated by the ESR and infrastructure and frequencies by the EETT;
- the Competition Commission: which is responsible for the application of competition law in all sectors, excluding the telecoms sector under the EETT's field of competence;
- the Hellenic Authority for the Assurance of Communications Security and Privacy (ADAE): an independent authority responsible for the protection of security and privacy of communications; and
- the Hellenic Data Protection Authority (HDPA): an independent authority responsible for the protection of personal data in all sectors.

The main legal framework determining the obligations of electronic communication network or electronic communication service providers consists of:

- Law No. 4070/2012;
- Law No. 4727/2020 and secondary regulatory decisions issued by the EETT;
- Law No. 4463/2017 on the transposition of cost-reduction Directive 2014/61/EU decisions of the ADAE;
- Law No. 3471/2006 on data processing and privacy in the electronic communications sector and decisions of the HDPA: and
- Law No. 4002/2011 on games of chance.

The new European Electronic Communications Code (Directive (EU) 2018/1972) was transposed into national legislation in September 2020 through Law No. 4727/2020, in which:

- the definition of 'electronic communications service' has been expanded to include any interpersonal communications services provided over the internet, including voice over internet protocol services, messaging apps and email services that do not use telephone numbers; and
- the number-based interpersonal communications services (interpersonal communications services which connect with publicly assigned numbering resources; namely, a number or numbers in national or international numbering plans, or that enable communication with a number or numbers in national or international numbering plans) is subject to a general authorisation.

In the media sector, the liberalisation of the market in Greece and the transition from the state-controlled radio and television to the regime of radio and television operated by privately owned companies has been the result of a de facto development in the market that occurred before the appropriate legal framework. An immediate effect of this is that the market developed in an unregulated way. Few of the free-to-air television stations still operate with a temporary licence, and the majority of the free-to-air radio and television stations operate legally under certain temporary provisions, in a very muddy legal environment. In October 2015, Law No. 4339/2015 entered into force, introducing the provisions on the authorisation of digital terrestrial television broadcasting content providers. It specifies the extent of the investment, financial reliability, experience and existing position in the market to avoid concentration, as well as the kind of programmes that will be transmitted.

According to the applicable legislation (Law No. 3592/2007), controlling more than one licence holder in the television or radio sector is prohibited. Everyone is allowed to participate in more than one licence holder in television or radio to the extent that he or she does not control more than one (a person has control over a licence holder if they can substantially influence the decision-making process or has the power to appoint at least one member of the board of directors or an administrator in another operator). Foreign investors have the opportunity to participate in broadcasting activities in Greece, subject to the generally applicable restrictions. The concentration of media is prohibited. Concentration in media is considered to exist if an undertaking acquires a dominant position that is defined in Law No. 3592/2007, which also provides for the complementary application of Competition Law No. 3959/2011. The Competition Commission is the competent authority to consider competition law issues in the media sector, including issues of concentration. Market share is calculated based on income from

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advertising and exploitation of programmes or provision of other similar services during the previous year.

Nevertheless, Law No. 4339/2015 (as amended by Law No. 4487/2017) sets the following restrictions on shareholders holding more than 1 per cent of the board members and legal representatives of entities that participate in tenders for digital terrestrial television content providers:

- non-convictions by irrevocable court decision for specific crimes; and
- non-participation in any manner in companies researching the radio or television market and advertising companies, as well as in companies conducting telemarketing.

The law also refers to the general prohibition from participating in companies that execute public contracts and require licence applicants to submit evidence proving how the applicant acquired the financial means used or intended to be used for the operation of the content provider.

Telecoms and audio-visual media distribution sectors are open to foreign investment including concerning the supply of telecoms equipment. Both electronic communications and media sectors are open to foreign investment, subject to generally applicable restrictions. Also, no restrictions apply to the supply of telecoms equipment from foreign companies.

Finally, except for online gambling, e-commerce and data-protection legislation, there is no other internet-specific legislation. General provisions of the law are applicable, along with certain guidelines or ad hoc decisions of the Greek Data Protection Act that are used as guidelines for the interpretation of such general provisions on specific electronic communications services.

The general EU framework provisions on radio and television content apply to Greece, meaning that the programme must adhere to the general principles of the Greek Constitution and there are further obligations concerning minors, rating of programmes, advertising, pluralism and non-discrimination, etc. The current EU Audiovisual Media Services Directive, Directive 2010/13/EU (the AMS Directive), as amended in 2018 by Directive (EU) 2018/1808 and transposed in Greece by Law No. 4779/2021, governs EU-wide coordination of national legislation on all audiovisual media, both traditional television broadcasts and on-demand services.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

Any natural or legal person can apply to acquire a general authorisation to provide electronic communications services or networks, which is processed at once. To obtain a general authorisation, the requesting entity needs to submit a registration declaration to the EETT, along with the relevant supporting documents. This registration declaration must be submitted solely through the Online Application System for Electronic Communications Services Providers. When submitting the application, the person concerned must electronically submit all required supporting documents attached to the declaration. To access the Online Application System for Electronic Communication Providers, the applicant must submit an 'administrator's statement'. The person providing this statement may perform the specific electronic communications activity described in the registration declaration, immediately upon filing a complete registration declaration. For the declaration to be deemed complete, relevant administrative fees must be paid. The requesting operator is included in the Registry of Authorised Operators and may obtain a relevant certificate by the EETT upon request within seven days of receipt of such request.

Any natural or legal person can apply for rights of use, which will be processed within three weeks from the application for a right of use of numbers or six weeks for numbers with significant economic importance; applications for rights of use of frequencies will be processed within six weeks if there is no limitation of the number thereof or up to nine-and-a-half months from the application if such a limitation is imposed.

Except for free spectrum bands, for all wireless services, an individual right to use frequencies is required and is granted by the competent authorities upon a relevant request. Only if the spectrum available is not enough to cater for existing demand from existing or new competitors will a limitation on the number of individual licences be effected. This will be the result of a public consultation that the EETT must prepare following a ministerial decision to that effect. If, as a result of that consultation, the number of individual rights has to be limited, the EETT must decide how this limited number of individual rights will be granted. Any kind of tender can be held under the principles of transparency, etc, that are set by Greek law under EU directives. In practice, in cases of a limited number of rights of use of frequencies, the EETT usually awards them through auctions.

Licensing for terrestrial pay-TV and free-to-air television is carried out based on a tender or auction. Law No. 4339/2015, as in force, defines the process and key conditions for awarding licences to digital terrestrial television content providers. It specifies the extent of the investment, financial reliability, experience and existing position in the market to avoid concentration, as well as the kind of programmes that will be transmitted.

In July 2017, the ESR issued a decision defining that the number of television licences to be awarded through the tender will be seven. In 2018, the ESR awarded five out of the seven available free-to-air national terrestrial digital television licences, while in 2019 it awarded one more.

Regarding Digital Audio Broadcasting (DAB), in January 2018, following the issuing of Ministerial Decision Nos. 169–171/2018, an auction was launched by the EETT for the awarding of rights to use radio frequencies of terrestrial DAB of national and regional coverage, with the procedure of sealed tenders in which each tenderer pays the price offered. Through this process, a national coverage radio frequency use right would be granted for the DAB+ multiplex channels described in the relevant tender document and several regional radio frequency use rights for the award areas specified in the same tender document. The auction received two applications for awards, which were both found non-eligible by the EETT in May 2018. Analogue radio FM stations in Greece still operate under a temporary licensing regime.

As far as licences for antennas and base stations are concerned, the relevant framework was reviewed in 2019 with Law No. 4635/2019 (articles 20 to 38) and new EETT Regulation No. 919/26/2019 on the licencing of antennas and base stations. According to Law No. 4635/2019, the EETT's issuance of antenna construction licences is carried out through the Antenna Electronic Application System (SILYA), as per the previous legislative framework, but without any requirement for planning permission to be granted. The planning approval is issued following the EETT's antenna construction permit, through the e-Licensing electronic system already used for buildings and intended to automatically interoperate with the SILYA at the request of an authorised engineer and followed by a building inspection. The new law greatly simplifies the process of modifying antenna constructions, while a recent joint ministerial decision also exempts low electromagnetic environmental nuisance antenna facilities from the licensing process, resulting in a significant number of antennas, mainly within urban centres, now requiring a simple registration procedure, also implemented through the SILYA.

The duration of general authorisations is indefinite. The duration of rights of use of frequencies is defined in the relevant EETT decisions, awarding the rights of use.

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Fees imposed on operators with a general authorisation are paid on an annual basis and correspond to the costs of management, monitoring and compliance with the general authorisation regime and to the rights to use radio frequencies or numbers it derives from a formula included in the EETT Decision on General Authorisations. The main factors taken into account for the calculation of the fees are the total turnover from electronic communications networks or services minus the wholesale interconnection and roaming costs paid to other operators. The fees are equal to a percentage that varies depending on the net revenues, calculated as described above.

According to EETT General Authorisation Regulation No 991/4/31-5-2021, should the natural or legal person registered in the Electronic Communications Networks and Services Providers Registry fail to submit a fee statement for over two financial years, the EETT shall, without further notice, consider deregistration. If the person fails to comply by 30 September, the EETT shall, following that date, proceed without notice to its deletion from the Registry. In this case, the EETT shall also revoke the rights to use numbers and (or) radio frequencies that have been assigned to this natural or legal person, as well as enforce the provisions of the Code for the Collection of Public Revenue to collect the relevant annual administrative fees and any other outstanding amounts payable by the person to the EETT. To re-register in the Electronic Communications Networks and Services Providers Registry, the person concerned must settle any outstanding financial issues with the EETT.

Fees for use of numbers are defined for each series of numbers in a decision of the EETT on the allocation of numbering resources.

Fees for rights of use of spectrum are imposed by the EETT decision and are usually paid on an annual basis, except for rights of use of frequencies that are granted through competitive procedures, such as auctions, in which case the EETT only defines the minimum bid, and the final fees result from the auction procedure.

All telecoms operators are obliged to have registered themselves under the general authorisation regime and be granted individual rights to use frequencies or numbers and the appropriate licences for every antenna they use. Apart from that, there is no other substantial difference concerning the regulation of fixed, mobile and satellite services.

There is no exclusivity granted to any operator in any sector. However, there are a limited number of licences concerning mobile and fixed wireless access networks and digital television networks. According to the relevant legislation, the EETT proceeds to a public consultation that leads to a proposal by the EETT to the Minister of Digital Policy concerning how licences will be granted, the cost, the duration of the entitlement, etc.

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?

Spectrum licences, and applicable secondary legislation, specify the permitted use and the technical characteristics of equipment that may be used, to the extent that specifications are required, taking into account the principle of proportionality and technological neutrality. The law allows for spectrum trading under specific conditions. To transfer, lease or make any change in the control of the rights holder, an application must be filed with the EETT that considers the relevant application and decides based on specific criteria defined by law.

In December 2020, Radio Frequency Rights for terrestrial systems capable of providing wireless broadband electronic communications services in the 700 megahertz (MHz), 2 gigahertz (GHz), 3400–3800MHz and 26GHz bands, were granted through an auction, and they have been pointed out as pioneering frequency bands to be used for the introduction and development of 5G networks in the European Union.

By May 2022, the procedures for the allocation of spectrum in the band 410–430 MHz are expected to be completed. The only participant in the process is telecoms group OTE.

Ex-ante regulatory obligations

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

In April 2020, the EETT decided on the deregulation of the retail leased lines with a capacity up to 2 megabits per second (Mbps), the only retail market that was still subject to ex-ante regulation, while in December 2020, the EETT decided on the deregulation of the fixed origination market.

The incumbent Greek legacy operator, OTE, has also been designated a significant market power (SMP) operator in the following wholesale markets:

- termination of individual fixed networks;
- wholesale local access provided at a fixed location;
- wholesale central access provided at a fixed location for mass-market products; and
- wholesale high-quality access is provided at a fixed location (trunk and terminating segments of leased lines).

All fixed network operators are designated as having SMP in the markets for termination to individual fixed networks and all (three) mobile network operators are designated as having SMP in the markets for termination to individual mobile networks.

The ex-ante regulatory obligations for transparency, price controls, cost accounting separation, access to and use of specific network facilities and non-discrimination have been imposed on SMP operators in the above markets (with a few exceptions in specific markets).

In the context of regulation of fixed wholesale local access market, prices for local-loop unbundling access, virtual access products and ancillary facilities such as co-location are regulated based on cost orientation. Further, the EETT imposed an obligation on the OTE to provide access for the deployment of next generation access (NGA) networks based on very high-speed digital subscriber line (VDSL) vectoring infrastructure and services by other operators (or based on other NGA technology) through a process managed by the EETT for the assignment of local sites to operators. Wholesale price is cost-oriented and defined by the EETT through a bottom-up long-run incremental cost plus (LRIC+) model. For that purpose, in 2020, the EETT developed a bottom-up LRIC+ model and defined new wholesale cost-oriented prices.

On the third round of market analysis for 2020, the OTE was found to hold SMP in the market for:

- terminating segments of leased lines; and
- trunk segments of leased lines, which has also led to cost regulation.

Wholesale price is cost-oriented and defined by the EETT through a bottom-up LRIC+ model. Until the development of the bottom-up model in 2020, the EETT defined temporary wholesale prices using the retail minus methodology.

According to EETT Decision No. 968/1/2020 on the analysis of termination market to individual fixed networks, the European Commission's delegated act setting single maximum EU-wide voice termination rates, is implemented for fixed termination rates.

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Additional issues regarding telecoms regulation (fixed infrastructure)

In practice, there are no cable networks in Greece.

In cases of interconnection disputes, the EETT can intervene through the standard dispute resolution procedure, provided for by the Law on Electronic Communications. Prices of wholesale interconnection services that are regulated are defined based on cost orientation.

Additional issues regarding telecoms regulation (mobile)

A general obligation to provide access to mobile virtual network operator (MVNO) operators is imposed on mobile network operators (MNOs) through a relevant provision included in the rights of use of frequencies. However, this obligation does not specify the pricing or non-pricing terms of access provision.

Volton Group (via its related company Cell Mobile) is preparing its entry into the telecommunications market, having reached a commercial agreement with Vodafone Greece to operate as a MVNO.

The provisions of the EU Roaming Regulation have been fully implemented from 15 June 2017.

Additional issues regarding internet services (including voice over the internet)

Except for radio and television legislation, online gambling legislation, the provisions of the Greek presidential decree implementing e-commerce and the data protection legislation, which includes specific provisions on internet services, there is no specific national regulation. The general provisions of law and relevant EU framework, recommendations, opinions and self-regulation instruments also affect the provision of internet services.

There are no specific limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers. The EU legislation on Open Internet Access, namely Regulation (EU) 2015/2120, is fully implemented. The Regulation prohibits operators from blocking, slowing down or prioritising traffic. Traffic management measures are authorised if they are reasonable, meaning that the measures shall be transparent, non-discriminatory and proportionate and based on objectively technical differences in traffic (article 3(3)). Such measures cannot monitor specific content and cannot be maintained longer than necessary. The EETT issued the Decision on National Open Regulation Issues, which implemented Regulation (EU) 2015/2120 in 2018.

Additional issues regarding access and securing or enforcing rights to public and private land to install telecommunications infrastructure.

Law No. 4463/2017 implemented EU cost-reduction Directive 2014/61/EU. Until the operation of the Information System, which will support the one-stop procedure for the granting of the rights of way, the procedure of article 11 of Annex X of Law No. 4070/2012, as amended by Law No. 4463/2017, applies.

In July 2018, the EETT conducted a public consultation on the modification of EETT Regulation No. 528/075/2009 for the determination of fees for rights of way, rights of use of rights of ways and the number of guarantees of good performance of rights of ways operations for Greece to simplify the relevant procedures. Additionally, in August 2018, the EETT issued its new Regulation on Collocation and the common use of facilities.

In 2022, Wind transferred its fibre business to a newly established company, Hellenic Open Fiber (also owned by United Groups), covering physical infrastructures like ducts, sites, fibre cables and active equipment.

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 is an obligation to keep separate accounts or structural separation for entities providing public electronic communications networks or publicly available electronic communications services that have special or exclusive rights for the provision of services in other sectors in the Greek state or another EU member state and their annual turnover is over €50 million in activities associated with electronic communications networks or services.

Voluntary separation by a vertically integrated operator that has been designated as having SMP in one or several relevant markets was introduced by Law No. 4727/2020. Operators shall inform the EETT at least three months before any intended transfer of their local access network assets or a substantial part thereof to a separate legal entity under different ownership, or an establishment of a separate business entity, to provide all retail providers, including their own retail divisions, with fully equivalent access products. Such operators may also offer commitments regarding access conditions that are to apply to their network during an implementation period after the proposed form of separation is implemented, to ensure effective and non-discriminatory access by third parties. the EETT shall assess the effect of the intended transaction, together with the commitments offered, where applicable, on existing regulatory obligations under Law No. 4727/2020.

According to Law No. 4727/2020, functional separation is included between the remedies that may be imposed by the regulator on SMP operators, under the conditions stipulated in law, which are under the relevant EU directive. However, in practice, the issue has not been raised by the EETT and no relevant consultation has been undertaken. Apart from that, accounting separation could be imposed on operators with SMP in specific markets and has indeed been imposed on the incumbent in the markets where it has been found to hold an SMP position, as well as MNOs in the mobile termination markets.

Universal service obligations and financing

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

The universal service obligations apply to the following services:

- adequate broadband internet access service; and
- voice communications services, including the underlying connection, at a fixed location.

According to the decision on cost allocation, the cost is undertaken by all operators authorised under the general authorisation regime (including the incumbent), by a proportion depending on their total revenues deriving from the provision of electronic communications networks or services, provided that their turnover exceeds €15 million.

The designated Universal Service Provider, OTE SA, has already applied for compensation concerning the net cost of the Universal Service Obligation for the years 2012 to 2016. In April 2021, the EETT issued its decision for the net cost of universal service fo

The universal service obligations apply to the following services:

- adequate broadband internet access service; and
- voice communications services, including the underlying connection, at a fixed location.

Ministerial Decision (7435 EX 2022/18-3-2022) on the definition of the content of the Universal Service, the reasonable request, the conditions, the selection criteria and the procedure for the designation of an

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enterprise or businesses that are subject to the obligation to provide the Universal Service, was published in March 2022.

According to this Decision, the services offered in the context of the Universal Service must have at least the following characteristics:

- broadband internet access service with a minimum rated download speed of 10 Mbps and upload speed of 1 Mbps and with a real download speed of no less than 4 Mbps and at least 30 gigabytes (GBytes) available per month if the service is not offered at a flat rate regardless of data consumption
- free unlimited urban and long-distance calls or call time of 1,500 minutes per month to fixed or to both fixed and mobile networks if the service is not provided over a fixed network;
- the obligated provider provides broadband connection services at a flat rate either through its own infrastructure or through wholesale broadband connections received from other networks and only if this is not possible, does it provides broadband connection services with a limit to the total GByte volume; and
- the charge to the end user may not exceed €27 per month including value added tax (VAT) and fees.

The obligated provider satisfies requests if there are no commercially available service packages with the same or better characteristics than the above and with a price lower or equal to €27 per month including VAT and fees in the areas concerned.

An undertaking that is subject to an obligation to provide services in the framework of the Universal Service must satisfy all requests for access to the public electronic communications network in a fixed location, at no cost to the end user, provided that:

- for wired public communications networks, the connection point for which access is requested is located up to 200 metres (on a public road or through the property of the applicant) from the nearest distribution box of the public communications network of the obliged provider;
- for wireless public communications networks, the connection point for which access is requested is located within the network coverage area; or
- the budgeted maximum cost of implementation of the connection (wired or wireless) of the access point to the public communications network does not exceed €1,500, including VAT.

According to the decision on cost allocation, the cost is undertaken by all operators authorised under the general authorisation regime (including the incumbent), by a proportion depending on their total revenues deriving from the provision of electronic communications networks or services, provided that their turnover exceeds €15 million.

This decision is to be amended. The EETT held a public consultation in July 2021, in the published results of which, taking into account the proposals made by participants, the EETT proposes that Universal Service companies with a total turnover of over €9 million participate in the cost.

Also, according to Ministerial Decision 12698 EX 2022/4-4-2022, which contains affordability measures for Universal Service services that are not provided in a fixed position, mobile telephony providers are obliged to provide broadband internet access service with a minimum rated download speed of 10 Mbps and at least 30 GBytes available per month and call time of at least 1,500 minutes per month to fixed networks or fixed and mobile networks, to end users for whom none of the following criteria is met:

- for wired public communications networks, the connection point for which access is requested is located up to 200 metres (on a public road or through the property of the applicant) from the nearest distribution box of the public communications network of the obliged provider;
- for wireless public communications networks, the connection point for which access is requested is located within the network coverage area; or
- the budgeted maximum cost of implementation of the connection (wired or wireless) of the access point to the public communications network does not exceed €1,500, including VAT.

The designated Universal Service Provider, OTE SA, has already applied for compensation concerning the net cost of the Universal Service Obligation for the years 2012 to 2016. In April 2021, the EETT issued its decision for the net cost of universal service for the years 2012 to 2016, which stipulates that the net cost amounts to €12,691,504 for 2012; €7,289,044 for 2013; €6,018,574 for 2014; €6,639,429 for 2015 and €4,166,869 for 2016.

r the years 2012 to 2016, which stipulates that the net cost amounts to €12,691,504 for 2012, €7,289,044 for 2013, €6,018,574 for 2014, €6,639,429 for 2015 and €4,166,869 for 2016.

Number allocation and portability

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

Number allocation includes primary and secondary allocation. Numbers are primarily allocated by the EETT by awarding 'rights of use of numbers' following the application of the providers that have obtained a general authorisation covering services that justify the use of the requested number range. Providers may proceed to secondary allocation to users. No third-level allocation is permitted (allocation from one user to another).

Numbers from the number range of machine-to-machine (M2M) communications are allocated by the EETT to any company. In addition, only numbers from the number range of M2M communications numbers may be used abroad in the European Union.

The decision on the allocation of numbers is issued within three weeks from the date of submission of a complete application. The fees for allocation and use of numbering resources (for the first year) must be paid within 15 days from the submission of the application and proof of payment must be submitted to the EETT, or else the application is considered non-existent. In the case of rejection of the application, the allocation and usage fees are reimbursed to the applicant. The allocation is valid until the due date of payment of the annual usage fees for the coming year and is renewed upon payment of the annual fees every year.

Number portability applies to fixed and mobile numbers and the following special categories of numbers:

- corporate and virtual private network access numbers (50);
- personal numbers (70);
- freephone numbers (800);
- shared cost (801);
- numbers for services with a maximum charge (806, 812, 825, 850 and 875);
- numbers used for calling-card services (807);
- numbers for access to data services (896 and 899); and
- premium-charge numbers (90).

Portability requests are addressed to the recipient provider, which communicates the request through the national portability database to the donor-operator.

Portability for both fixed and mobile numbers must be completed within one working day from the date of acceptance of the portability request from the donor operator. However, for fixed numbers, when the portability request is submitted jointly with a local-loop unbundling transfer request, the numbers are ported on the date of transfer and

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activation of the local loop, which technically extends the deadline for fixed numbers.

The EETT's new rules on both fixed and mobile numbers' portability entered into force in June 2018, intending to resolve inadequacies of the former framework. Under the new arrangements, a subscriber has the right to withdraw without charge and in the case of a contract either remotely (via telephone, internet or fax) or out of the shop (eg, through a representative of the company at the subscriber's site) without explanation. Therefore, it can cancel the number-portability application that it has submitted. Those options apply for a period of 14 calendar days from the conclusion of the contract. More specifically, under the new framework:

- the request for portability is forwarded to the actual operator after 14 days when the implementation process starts;
- if the subscriber wishes the request to be processed earlier than 14 days, he or she must make a declaration to the new company. The company has the right either not to accept the request or to ask the subscriber for a written statement that he or she then accepts to lose the right of withdrawal. In this case, the subscriber has the option to apply for cancellation of portability until the service reaches a new company and if the 14-day deadline has not passed; and
- to cancel portability, the subscriber must send a request only to the company to which he or she has submitted the portability request and by one of the means of communication available to him or her for this purpose.

Customer terms and conditions

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

Customer terms and conditions for the provision of electronic communications networks and services are subject both to general consumer protection legislation and to sector-specific regulation and particularly to the General Authorisation Regulation of the EETT, which defines the minimum content of such terms and conditions.

From May 2021, the EETT's General Authorisation Regulation introduced obligations for:

- automatic service interruption to avoid overcharging;
- maximum termination rate for early termination of a fixed-term contract; and
- seamless access of customers to conventional terms and pricelists.

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?

There are no relevant specific limits. The EU legislation is fully implemented.

EETT Decision No. 876/7b/2018 introducing an open internet regulation that establishes measures for the purchase of internet access services, under the relevant EU regulation, Regulation (EU) 2015/2120, was issued in December 2018. The regulation was amended in 2019 and 2020.

It addresses issues such as:

- speed definitions;
- a methodological framework for speed assessment;
- user information;
- the definition of continuous or repeated deviation;
- the definition of significant deviation; and
- control of subscribers' complaints.

Additionally, in the field control of commercial practices (regarding zero-rating and subsidised access), services or information for the purposes of subscriber support, as well as applications for speed measurement in cell phones is acceptable, whereas the following are not permitted:

- provider pages that include the promotion of products and services;
- services (eg, music, videos and e-books) favouring the content of the provider itself against third-party content providers; and
- discrimination after exceeding the data cap.

Platform regulation

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

There is no national legislation or regulation specifically addressing digital platforms, except for video-sharing platforms that are regulated in Law No. 4779/2021 in accordance with the EU's Audiovisual Media Services Directive. Nevertheless, Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services is directly applicable to national legislation, and on November 2020, Law No. 4753/2020 was published in Greece, containing supplementary measures for the implementation of the Regulation. The Regulation sets out rules to ensure that business users of online intermediation services and corporate website users concerning online search engines are granted appropriate transparency, fairness and effective redress possibilities. It applies to online intermediation services and online search engines provided, or offered to be provided, to business users and corporate website users, respectively, that have their place of establishment or residence in the European Union and that, through those online intermediation services or online search engines, offer goods or services to consumers located in the European Union, irrespective of the place of establishment or residence of the providers of those services and irrespective of the law otherwise applicable. The European Commission encourages the drawing up of codes of conduct by providers of online intermediation services and by organisations and associations representing them, together with business users, including small and medium-sized enterprises (SMEs) and their representative organisations, that are intended to contribute to the proper application of this Regulation, taking account of the specific features of the various sectors in which online intermediation services are provided, as well as of the specific characteristics of SMEs.

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?

In the fourth round of market analysis referring to the market for wholesale fixed local access, the EETT found once more that the fixed incumbent OTE holds an SMP position in these markets and imposed additional obligations related to the deployment of NGA networks through VDSL Vectoring. These obligations include the provision of information on the incumbent's local access network for the purpose of assignment of specific local sites to other operators with the obligation to deploy VDSL Vectoring infrastructure following an allocation process managed by the EETT. The operators that are assigned specific areas (local sites) also undertake obligations related to the terms of provision of services at the wholesale level.

In the context of regulation of fixed wholesale local access market prices for virtual access, NGA products are regulated based on cost orientation. Wholesale price is cost-oriented and defined by the EETT through a bottom-up LRIC+ model. For that purpose, in 2020, the EETT developed a bottom-up LRIC+ model and defined new wholesale cost-oriented prices.

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In general, Greece is accelerating its high-speed broadband (NGA) coverage, making significant progress in this sector.

Data protection

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

In addition to the general provisions on data protection, special provisions have been imposed by law concerning data protection in communications. The Hellenic Data Protection Authority is responsible for monitoring the implementation of relevant legislation.

Further, the Greek Constitution provides for an independent authority, the ADAE, which is responsible solely for the communications sector and has issued relevant secondary legislation (the Regulations). The ADAE sets the rules that must be followed by all telecommunications operators and service providers in safeguarding secrecy in telecommunications, which is a constitutionally protected right.

The Greek data protection regime is primarily set out in the General Data Protection Regulation (EU) 2016/679 (GDPR) and Law No. 4624/2019 on the Protection of Personal Data, incorporating the GDPR and Directive (EU) 2016/680. Moreover, while the e-Privacy Law (Law No. 3471/2006) applies mainly to the electronic communications sector, certain provisions are not sector-specific, such as the provisions on unsolicited communications.

Specific issues

Interception and data protection

Specific legislation (article 19 of the Greek Constitution, Law No. 2225/1994 (as in force today), Presidential Decree No. 47/2005, article 255 of the Penal Code of Procedure, Law No. 3471/2006, Law No. 3674/2008, Law No. 3917/2011 and the Regulation on General Authorisations as in force) requires operators to assist the government to lawfully intercept telecommunications messages after the intervention of the public prosecutor when explicitly defined major crimes that explicitly defined are being investigated and under ADAE's supervision.

Data retention and disclosure obligations

The relevant EU directive has been fully implemented in Greece with Law No. 3917/2011. Operators and service providers must destroy customer data 12 months after the time of every communication unless otherwise specifically requested by the public prosecutor. Operators and service providers are not compensated for their efforts. Following the annulment of the Data Retention Directive (Directive 2006/24/EC) by the European Court of Justice, the national legal framework on data retention is under review but remains in force. This framework is subject to obligations arising from GDPR and Law No. 4624/2019.

Unsolicited communications

The relevant EU directives have been fully implemented in Greece with Law No. 3471/2006.

Cybersecurity

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

Data controllers and processors are required by law to ensure the implementation of appropriate organisational and technical measures to ensure the protection of personal data. Security obligations of electronic communications networks and services providers are mainly governed by articles 148 and 149 of Law No. 4727/2020 and relevant ADAE Regulations (ADAE Decision Nos. 165/2011 and 205/2013, in force as amended by ADAE Decision No. 99/2017). According to the above-mentioned pieces of legislation, providers of public electronic communications networks or publicly available electronic communications services are required to implement appropriate and proportionate organisational and technical measures to ensure the security of networks and services (eg, security policies and analytical procedures). In addition, article 12 of Law No. 3471/2006 regarding data and privacy protection in the electronic communications sector and article 2 of Law No. 3674/2008 regarding the enhancement of the framework on the privacy of telephony services, are applicable and provide for similar obligations.

Law No. 4577/2018 transposed the Network and Information Systems Directive (EU) 2016/1148 (the NIS Directive). According to the NIS Directive, certain additional obligations are imposed on a list of operators and providers. Businesses falling within the scope of Law No. 4577/2018 have the following basic obligations:

- adopt technical and organisational measures for the security of networks and information systems;
- adopt measures to prevent and minimise the impact of incidents affecting the security of networks and information systems;
- notify the National Cybersecurity Authority and the Hellenic Data Protection Authority of incidents with a serious impact on business continuity. The notification must be made without undue delay and be accompanied by additional information to the Authority regarding the severity of the relevant incident; and
- cooperation with the competent authorities.

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?

No legislation or regulation specifically addresses the legal challenges raised by big data. Businesses planning to run big data projects processing personal data in Greece need to consider the GDPR and Law No. 4624/2019. Regarding the use of non-personal data, businesses should take note of Regulation No. 2018/1807 on the free movement of non-personal data, which entered into force on 28 May 2019 and is applicable in Greece.

Law No. 4727/2020, which transposed Directive (EU) 2019/1024 on open data and the re-use of public sector information, establishes the principle of availability of public administration information, according to which citizens have the right to immediately access and reuse public information. The aforementioned law repealed the Greek Code on Access to Public Documents and Data (PD 28/2015) almost in its entirety (with the exception of article 1 (access to public documents) and article 3 (access to, and provision of, electronic public documents).

Data localisation

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

Law No. 3917/2011 imposes on operators an obligation to store in Greece all data retained in compliance with the data retention obligation for 12 months. The initial wording of the law in 2011 required retained data to be 'generated and stored' in Greece. This was amended in 2013 and the current framework only refers to the obligation to 'store' such data in Greece and retain it for 12 months.

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Key trends and expected changes

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

A number of issues were the topic of the EETT's recent public consultations to enable the public to present their comments and views on the following proposed text:

- the definition of the Universal Service pricing principles;
- the modification of the Code of Conduct for the Provision of Electronic Communications Services to Consumers;
- the determination of the methodology for the calculation of prices and the prices of wholesale urban and interurban Ethernet circuits with a capacity greater than 1 Gbps for a commitment of 12 and 36 months and the modification of the EETT's Decision on the General Authorisation Regulation, pursuant to which the EETT invites all stakeholders, from the market for the provision of electronic communications services and networks; and
- the terminal equipment market and relevant bodies and associations, to present their comments and views on the proposed text.

In August 2021, the EETT issued Decision No. 1000/02 on the approval of OTE's Reference Order for the provision of Leased Wholesale Lines, implementing its Decision No. 934/03/27.4.2020.

Finally, in May 2022, the procedures for the allocation of spectrum in the band 410–430 MHz are expected to be completed and the only participant in the process is the OTE.

MEDIA

Regulatory and institutional structure

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

In the media sector, there is a significant difference between the development and regulation of pay-TV and radio on one hand and free-to-air content providers on the other. Licenses for digital terrestrial free-to-air (FTA) content providers are obtained by public auction pursuant to the requirements of Law No.4339/2015, while in the case of pay-TV (via cable or satellite) licenses are obtained after an application subject to certain requirements of Law No. 2644/1998, as amended by Law No. 4779/2021. Linear TV services via broadband networks are regulated by article 15 of Law No. 3592/2007, which sets out that the provision of the said services, is subject to a general authorisation by the Hellenic Telecommunications and Post Commission (EETT), insofar the broadcaster is a network provider or a provider of electronic communications services. The concentration of control in media is subject to the provisions of Law No. 3592/2007 in complementarity with Law No. 3659/2011 (the Greek Competition Law).

Law No. 4779/2021, which transposed amended Directive 2018/1808/EU (the Audiovisual Media Services Directive) (AVMSD) into the Greek legal order, regulates audiovisual media, in all its forms of promotion and reproduction; namely, traditional television, custom-made audio-visual services, video-sharing platforms and social media services exclusively with regard to their user-generated audio-visual content. Obligations are set on the above media forms in relation to advertising, as well as in relation to content. Content obligations mainly refer to non-discrimination, protection of minors, consumer protection and protection of public order. Online media platforms, in their capacity as information society services, are supplementarily regulated by e-commerce rules, namely Presidential Decree No. 131/2003 that has transposed the E-Commerce Directive, while all media also fall under the scrutiny of consumer protection laws.

In February 2014, the EETT awarded the first licence for a digital television network to Digea Digital Provider Inc (DIGEA). DIGEA provides networking and multiplexing, as well as network broadcasting for any legitimate TV station that uses its services. In 2018, the National Radio and Television Council (ESR) awarded five of seven available free-to-air national terrestrial digital television licenses, and in January 2019, the ESR published a new tender document (1/2019) for two licenses to be awarded to providers of free, nationwide, general information, terrestrial digital television broadcasting content.

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?

According to the applicable legislation (Law No. 3592/2007), controlling more than one electronic media of the same form (television or radio) is prohibited. Participation in another business of the same form is allowed, provided that there is no control over it according to the definition of 'control' as set out in article 5(3) of Law No. 3592/2007. Foreign investors have the opportunity to participate in broadcasting activities in Greece, subject to certain restrictions.

The concentration of control on the media market refers to the rate of influence of the public by the information media, in relation to the ownership of, or participation in, information media of the same or any other form (television, radio, newspapers and magazines) in the relevant market or in the individual relevant markets in which the information medium or media is active (television, radio, newspapers and magazines). The concentration of control in media is subject to the provisions of Law No. 3592/2007 in complementarity with Law No. 3659/2011 (Greek Competition Law).

The concentration of control determines the concept of dominant position, which exists as follows:

- when the natural or legal person is active in one or more media of the same type, by acquiring a market share of more than 35 per cent in the relevant market (television, radio, newspapers and magazines) of the scope of each medium;
- where the natural or legal person is active in two or more other types of media:
  - either by acquiring a market share of more than 35 per cent per cent in the individual relevant market within the scope of each medium; or
  - either by acquiring a market share of:
    - more than 32 per cent in the total of the two markets, when operating in two different media of the same scope;
    - more than 28 per cent in all three markets, when it operates in three different media of the same scope; and
    - more than 25 per cent in all four markets, when it operates in four different media of the same scope.

Market share is calculated on the basis of advertising expenditure and the revenues from the sale in Greece of programmes or other broadcasting services during a financial year.

The concentration of media businesses is prohibited, either where a dominant position in one or more of the participating companies is attested, or where a dominant position is created as a result of the concentration. The Hellenic Competition Commission is the competent authority for the supervision of media concentration, the adoption of measures and the enforcement of the relevant sanctions.

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Licensing requirements

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

Pursuant to Law No. 4339/2015, licenses for digital terrestrial free-to-air TV are granted by way of public auction. The tender procedure is conducted in accordance with the applicable frequency map of terrestrial digital broadcasting of television signals, which sets in detail the frequencies, the transmission restrictions imposed on network providers, the permitted broadcasting centres, as well as their geographic coverage area and the technical specifications that network providers must satisfy. During this procedure, the ESR holds a consultative role, which consists of issuing a reasoned opinion on the number of licenses to be auctioned and on the starting price for each category of auctioned licenses.

To qualify for participation in the auction the applicants shall meet certain conditions set out in articles 3–9 of Law No. 4339/2015, namely:

- minimum share capital;
- registered shares;
- legal form;
- non-conviction of shareholders and members of the board for certain crimes;
- not having entered liquidation or insolvency procedures;
- compliance with tax and insurance obligations;
- presentation of evidence regarding the source of the financial means available for the operation of the company; and
- not exercising control in another company operating in the same media sector.

There are also some content requirements, mainly of qualitative nature.

After the consideration of the applications by the ESR during the preselection stage, the ESR draws up a catalogue of the participants that meet the above qualifications. The auction is carried out by way of a multi-round procedure with an increasing price on the starting price fixed in accordance with article 2(4) of Law No. 4339/2015. The auction ends on the date of the proclamation of the successful bidders. The duration of each round, the determination of the increase of the bid price per round, the obligations of the participants, the way of submission of offers by the participants, the announcement of the successful bidders, the method of payment of the price and any other necessary details for its conduct are determined by the relevant announcement of the ESR. Licenses for digital terrestrial FTA radio are also granted by way of auction according to articles 220–238 of Law No. 4512/2018.

The licensing framework for pay-TV, via cable or satellite, is outlined in Law No. 2644/1998, as amended by Law No. 4779/2021. Licenses are granted by ministerial decision after approval from the ESR and a concession agreement with the Greek state. There is no limit on the number of licenses granted while there is a definite period of six months within which the concession agreement with the Greek state must be concluded.

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?

According to articles 20 and 21 of Law No. 4779/2021, broadcasters reserve 50 per cent of their transmission time for European works, calculated on an annual basis, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping. Also, broadcasters reserve at least 10 per cent of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping, for European works created by producers who are independent of broadcasters. The aforementioned obligations only apply to nationwide television broadcasting.

Advertising

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

Broadcast media advertising is regulated under the AVMS Directive and articles 23–29 of Law No. 4779/2021 and the Open Frontiers Directives, fully implemented, which do not apply to online advertising. Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content and kept quite distinct from other parts of the programme by optical, acoustic and (or) spatial means, without prejudicing the use of new advertising techniques. Also, isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.

Television advertising or teleshopping during programmes shall not affect their integrity, taking into account the physical pauses, duration and nature of the programme, as well as the rights of the beneficiaries. In any case, their sound level should not exceed the average sound level of the immediately preceding programme. The transmission of television films, except for series of stand-alone episodes, television series and documentaries, cinematographic works and news programmes may be interrupted for commercials and (or) teleshopping once for each scheduled period of time of at least 30 minutes. Also, the transmission of children's programmes may be interrupted for advertising messages once for each scheduled time period of at least 30 minutes, if the programmed duration of the programme exceeds 30 minutes. The transmission of teleshopping messages is prohibited during children's programmes. Inserting advertisements and teleshopping messages during religious ceremonies is forbidden. The transmission of television commercials, messages and teleshopping, as well as erotic advertisements between the hours of 6am and 1am of the following day is prohibited. Articles 20 and 21 apply only to national television broadcasts.

Teleshopping for medicinal products, which are subject to a marketing authorisation, as well as teleshopping for medical treatment, is prohibited. There are strict criteria set for television advertising and teleshopping for alcoholic beverages.

The proportion of the time of transmission of advertising messages and telesales messages should not exceed 20 per cent during the period from 6am to 6pm, and 20 per cent during the period from 6.01pm to midnight. Teleshopping windows shall be clearly identified as such by optical and acoustic means and shall be of a minimum uninterrupted duration of 15 minutes.

The aforementioned provisions apply mutatis mutandis to television channels exclusively devoted to advertising and teleshopping as well as to television channels exclusively devoted to self-promotion.

Also, under the law for the protection of consumers (Law No. 2251/1994), which also applies to online advertising, unfair commercial practices (acts or omissions) that are adopted before, during and after a commercial transaction related to a specific product are prohibited.

Online advertising is regulated by general provisions in the legislation concerning e-commerce and consumer protection. Further, the recently established Electronic Media Business Register aims at the registration of all online media. The relevant Register and its members were published on 18 April 2017 on the website of the Ministry of Digital Policy. Only online media providers that are registered are eligible to receive state advertising.

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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?

No, regulations specify a basic package of programmes that must be carried by operators' broadcasting distribution networks, the only exception being the obligation on these operators to provide some spots with social content. In Greek legislation in force, radio and television content providers must broadcast free of charge 'social content' spots (messages) for a specific period, calculated daily. These are considered to be messages that inform the public on: public health, protection, welfare and facilitation of people with disabilities and the population groups in need of social protection, promoting genuine gender equality, equal treatment, the fight against violence against women, eliminating gender stereotypes and generally removing all forms discrimination on the grounds of sex, racial or ethnic origin, religion or other beliefs, disability, illness, age, family or social status, sexual orientation, identity or gender characteristics, or the transmission of messages referring to educational or other programmes organised by the Hellenic Parliament, as well as to all its national, political, cultural and social activities.

Regulation of new media content

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

According to applicable legislation (Law No. 3592/2007), new media content and its delivery are regulated in the same way as traditional broadcast media.

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 relevant legislation (Law No. 3592/2007) is in place and sets the framework. The schedule and technical specifications for the digital switchover have been defined by joint ministerial decisions. According to these decisions, the switch-off of analogue broadcasting and completion of digital broadcasting was scheduled to be completed within 325 days from 7 February 2014 (the date of the awarding of the rights of use of frequencies for terrestrial digital broadcasting) (namely, by 29 December 2014). However, according to Digea's public announcements, the last switch-off was scheduled for 6 February 2015.

Digital formats

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

The existing regulation does not restrict how broadcasters can use their 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?

The provision of broadcasting services over broadband networks requires a network operator and a content provider, who may be the same or different entities.

The provision of television and radio services via terrestrial digital technology (using radio frequencies allocated for broadcast television and radio digital signal) requires a network provider of electronic communications and a content provider. The network provider and the content provider are required to be separate entities.

The main activity of Digea is to provide networking and multiplexing, as well as network broadcasting for any legitimate television station wishing to use its services. In essence, Digea creates the network and transfers the content of the channels, as delivered to its systems.

Following the EETT's plenary decision in February 2014, Digea was granted all spectrum rights of use of national and regional coverage to develop a digital terrestrial television network. After the successful completion of the tender process by the EETT, Digea has developed infrastructure for the digital terrestrial television networks and the last analogue broadcasting to be switched off was on 6 February 2015. According to the licence granted by the EETT, Digea must serve all licensed programmes under the same conditions (non-discriminatory treatment).

In addition, the purpose of the legislation governing the operation of the media is to ensure media plurality. Specifically, Law No. 4779/2021 provides that

> *By a presidential decree, issued following a proposal of the Minister to whom the responsibilities of the General Secretariat of Communication and Information have been assigned, following the opinion of the National Council of Radio and Television (ESR), measures may be taken to the appropriate promotion of audiovisual media services of general interest and in particular services promoting plurality, freedom of speech and cultural diversity shall be ensured.*

This presidential decree has not yet been issued.

Key trends and expected changes

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

Law No. 4779/2021, which transposed the amended AVMSD into the Greek legal order, was issued and it regulates audiovisual media, in all its forms of promotion and reproduction; namely, traditional television, custom-made audio-visual services, video-sharing platforms and social media services exclusively with regard to their user-generated audio-visual content.

Moreover, in January 2019, the ESR published a new tender document (1/2019) for two licenses to be awarded to providers of free, nationwide, general information, terrestrial digital television broadcasting content.

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?

All the regulatory agencies are independent administrative authorities. They are fully independent of network operators and service providers. The agencies that regulate the communications and media sectors are the following:

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- the National Commission for Telecommunications and Post (EETT): the national regulatory authority that supervises and regulates the electronic communications and postal services market. Additionally, it is responsible for frequency allocation and spectrum management. It is also responsible for the application of competition law in the electronic communications sector and the postal services sector. It is also the Dispute Resolution Body for disputes arising from the application of the cost-reduction Directive and rights of way under Law No. 4463/2017 and Law No. 4727/2020.
- the National Council of Radio and Television (ESR): an independent administrative authority that supervises and regulates the radio and television market;
- the Hellenic Competition Commission (HCC), which is responsible for the application of competition law in all sectors, except the electronic communication and postal services sector;
- the Hellenic Authority for Communication Security and Privacy: an independent authority responsible for the protection of security and privacy of communications; and
- the Hellenic Data Protection Authority: an independent authority responsible for the protection of personal data in all sectors.

Appeal procedure

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

Decisions of the regulators can be challenged at the Administrative Court of Appeal and the decisions of the court can be challenged at the Council of State, which is the Supreme Administrative Court of Greece. Major regulatory issues are challenged directly at the Council of State. In the case of the EETT, all regulatory decisions (regulatory administrative acts) are appealed against before the Council of State with a petition for annulment, whereas decisions with the content of an individual administrative act are appealed against before the Administrative Court of Appeal. All regulatory decisions brought before the Council of State and decisions with the content of an individual administrative act, not imposing penalties, are challenged only concerning the appropriate application of law and procedural rules, and not on the merits (the facts) of the case. Decisions that impose fines, etc, can be challenged both in their substance and concerning the appropriate application of law and procedural rules at the Administrative Appeal Court. Decisions of the Administrative Court of Appeal can be appealed against on a second grade before the Council of State only concerning the appropriate application of law and procedural rules.

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.

With regard to competition law trends in this jurisdiction over the past year, in March 2021, the HCC introduced a digital environment for the reporting or submission of anonymous information, following the standards of the respective digital tools (whistleblowing) used by the European Competition Commission. Through that platform, any individual can anonymously address anti-competitive practices that harm the Greek economy and consumers. The certain tool was expanded for contracting authorities on public procurement as well.

As far as key merger decisions are concerned, in January 2022, the European Commission cleared the acquisition of Wind Hellas by United Group, a leading telecommunications and media operator in South-Eastern Europe. In 2020, United Group acquired the Greek telecommunications and pay-TV provider, NOVA (Forthnet).

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In the media sector, in March 2021, by its Decision No. 728/2021, the HCC approved a proposed transaction concerning the acquisition of joint control by Alpha Satellite Television SA (which operates the Greek TV station Alpha) and New Television SA (which operates the Greek TV station Star) over the company Green Pixel Productions SA (a company active mainly in the production of television programmes, films and videos).

On 12 November 2020, with Decision No. 967/1, the EETT approved the concentration of mobile operators Vodafone Hellas and Wind Hellas that was notified to it (article 5-10 of Law No. 3959/2011), according to which the two companies separate or spin-off their branches holding passive infrastructure and offering them to a new company, Vantage Towers Greece, which will manage them offering related services, through a lease agreement. The new company, which is now entirely controlled by Vodafone, has become the largest infrastructure management company for mobile base stations in Greece, including in its portfolio more than 5,200 base stations.

Concerning certain business sectors, the Hellenic Competition Commission has initiated, among others, the following sector inquiries:

- a sector inquiry into e-commerce primarily focusing on the following markets:
  - clothing and footwear (with emphasis on the relevant sportswear and footwear market);
  - electronic and electric devices;
  - books;
  - mediation services to provide travel tickets, tickets for events, and catering services;
  - accommodation and rental – Airbnb; and
  - e-pharmacies (with emphasis on dietary supplements and para-pharmaceuticals). Publication of the final report is expected in 2022; and
- a sector inquiry into fintech services in collaboration with the Bank of Greece. Publication of the final report is expected in 2022;
- a sector inquiry into the provision of private health services and related insurance services. Publication of the final report is expected in December 2022; and

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- a sector inquiry into the waste management and recycling sectors in specific categories of waste. Publication of the final report is expected in December 2022.

Further, in December 2020, the HCC decided ex officio to launch a market investigation in the press distribution sector pursuant to article 11 of Law No. 3959/2011. The first interim report focused on the lack of effective competition in this sector, with a focus on the market for printed press distribution. The second interim report concluded that there is a lack of effective competition in the press distribution sector and proposed remedies to restore competition in the sector, including changes in the corporate governance of the sole press distribution agency, Chinese walls, a policy to avoid conflicts of interests, etc. Following the second public consultation, which lasted from 6 October 2021 to 8 November 2021, the HCC will issue its final report.

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Ireland

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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?

The Department of Environment, Climate Action and Communications (DECC) is the relevant governmental department responsible for the telecoms sector and the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media is responsible for the media sector. The telecommunications regulator is the Commission for Communications Regulation (ComReg).

Ireland has implemented the EU regulatory framework governing the electronic communications sector by way of primary and secondary legislation. Primary legislation consists of the Communications Regulation Acts 2002–2016. Secondary legislation currently consists of regulations that transpose the EU framework, namely:

- the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (SI 333/2011);
- the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (SI 334/2011) (the Access Regulations);
- the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (SI 335/2011) (the Authorisation Regulations);
- the European Communities (Electronic Communications Networks and Services) (Universal Service and User's Rights) Regulations 2011 (SI 337/2011) (the Universal Service Regulations); and
- the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (SI 336/2011) (the Privacy Regulations).

Following a review of the regulatory framework for electronic communications, the directive establishing the European Electronic Communications Code (EECC) (namely, Directive 2018/1972) entered into force in December 2018. The EECC revises the entire legislative framework for the electronic communications sector in Europe and aims to codify all existing EU telecoms regulatory regimes into one legal instrument. Ireland missed the deadline for implementation of 21 December 2020, and in April 2022, was subsequently referred to the Court of Justice of the European Union (CJEU) over its failure to fully transpose and communicate to the European Commission how national measures transpose the EECC.

However, following informal stakeholder consultation over the past two years, on 22 December 2021, the DECC published draft legislation intended to transpose the EECC using two legislative instruments:

- the Communications Regulation (Enforcement) Bill 2022 (the Bill); and
- the European Union (Electronic Communications Code) Regulations 2022 (the Regulations).

Specifically, a summary of the Bill and a full version of the Regulations were published in draft and the public was invited to comment on the draft Regulations only, by 11 February 2022. Enactment of both legal instruments is expected before the fourth quarter of 2022.

No foreign ownership restrictions apply to communications services at this time, although Ireland is expected to adopt implementing legislation giving effect to the EU Foreign Direct Investment Screening Regulation in 2022. The Investment Screening Bill, which proposes to give effect to such a domestic screening regime, is deemed to be priority legislation as part of the Irish government's 2022 Spring Legislative Programme, with pre-legislative scrutiny being waived to expedite transposition. However, the scope of Irish rules in respect of any prospective foreign ownership restrictions is not yet clear.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

The provision of communications services is currently subject to the regime set out in the Authorisation Regulations, which confers a general right to provide an electronic communications network (ECN) or an electronic communications service (ECS) (or both) provided certain conditions are complied with. No distinction is made as to the type of network or service (eg, mobile, fixed (including public Wi-Fi) or satellite).

The notification procedure for obtaining a general authorisation can be completed on the ComReg online porta (Electronic Register of Authorised Undertaking (ERAU)). Operators are free to commence operations once a properly and fully completed notification has been received by ComReg. It is envisaged that ComReg will assess all notifications, before sending out confirmation of authorisation within seven working days. Notwithstanding that any registered services will automatically be listed on the ERAU on ComReg's website, a notifying party is, however, immediately subject to the Irish regulatory regime and the conditions set out in the general authorisation. Conditions that may be attached to a general authorisation are set out in the schedule to the Authorisation Regulations. ComReg has also produced a document identifying the conditions of a General Authorisation, which outlines the conditions for the provision of ECN and ECS, before registering with ComReg.

General Authorisations are unlimited in duration. No fee is payable on notification; however, an annual levy (0.2 per cent of relevant turnover) is payable where an operator's relevant turnover (ie, relating to the service or network) in Ireland in the relevant financial year is €500,000 or more.

The EU Framework as transposed also governs the granting of rights of use for numbers and radio spectrum. ComReg revised the numbering conditions of use and application process, amalgamating the Numbering Conventions and conditions of use to simplify the rules.

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Fixed and mobile service providers may also need to obtain a licence under the Wireless Telegraphy Act 1926 (as amended) in connection with the use of wireless telegraphy apparatus. Non-compliance with the Wireless Telegraphy Act can be prosecuted by ComReg.

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?

The legal framework controls ComReg's management of the radio frequency spectrum in Ireland. ComReg issues licences on a technology and service-neutral basis (eg, the 'liberalised use' licences issued following a spectrum auction were issued 'to keep and have possession of apparatus for wireless telegraphy for terrestrial systems capable of providing ECSs'). ComReg considers that spectrum trading is a spectrum management tool that, along with other measures, can increase the efficient use of spectrum rights.

However, ComReg may, through licence conditions or otherwise, provide for proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used for ECS where this is necessary (eg, to avoid harmful interference and safeguard the efficient use of spectrum, etc).

ComReg has published regulations (the Wireless Telegraphy (Transfer of Spectrum Rights of Use) Regulations 2014 (SI 34/2014)) and guidelines for spectrum trading in the Radio Spectrum Policy Programme (RSPP) bands and is prioritising the setting out of a spectrum leasing framework for the RSPP bands a priority action as part of its Strategy Statement. ComReg has imposed an ex-ante regime for reviewing notified spectrum transfers to determine whether such transfers would distort competition in the market. Where the transfer forms part of a wider transaction that is subject to merger control scrutiny by the Irish Competition and Consumer Protection Commission (CCPC) or by the European Commission, the framework and guidelines will not apply and the appropriate competition body will be the sole decision-making body. ComReg must be informed of any such merger or acquisition at the same time it is notified to the relevant competition body. The framework and guidelines deal solely with spectrum trading; ComReg has indicated that it will deal with spectrum leasing and sharing or pooling on a case-by-case basis pending further consideration of the same.

ComReg has also published its Framework for Spectrum Leases in Ireland concerning:

- transfer of spectrum regime under the EU Spectrum Transfer Framework and implementing Irish legislation;
- the scope of the proposed Spectrum Lease Framework (noting the difference between a spectrum lease or transfer);
- the procedural framework for spectrum leasing; and
- how ComReg intends to grant and issue a spectrum lease licence.

ComReg published a decision in December 2020 concerning a significant release of spectrum (known as a multi-band spectrum auction) concerning the 700 megahertz (MHz), 1.4 gigahertz (GHz), 2.3GHz and 3.6GHz bands. This decision outlines the award or auction process for the release of licences in these bands and licence conditions for spectrum in these bands (eg, roll-out obligations). This decision was appealed by one operator, Three Ireland, on various grounds and is currently before the Irish courts.

In May 2021, ComReg initiated the application process for the award of multi-band spectrum in respect of the 700 MHz duplex, 2.1 GHz, 2.3 GHz and 2.6 GHz bands. In June 2021, ComReg awarded a 2.1 GHz Band Liberalised Use Licence to both Three Ireland and Vodafone. ComReg (following consent of the Minister for Environment, Climate and Communications) also adopted the following regulations in May of 2021:

- the Wireless Telegraphy (Liberalised use and related Licences in the 700 MHz duplex, 2.1 GHz, 2.3 GHz and 2.6 GHz bands) Regulations 2021 (SI 264 of 2021): these regulations are applicable to the grant of new rights of use for the Award Spectrum; and
- the Wireless Telegraphy (Third Generation and GSM Licence (Amendment) and Interim Licensing) Regulations 2021 (SI 265 of 2021): these regulations give effect to ComReg's decisions for the liberalisation of existing 2.1 GHz rights of use, and the grant of interim 2.1 GHz rights of use to Three Ireland in respect of the Multi Band Spectrum Award.

Given the government measures to address the extraordinary situation presented by the covid-19 pandemic and the increased traffic demands placed on wireless networks arising from the same, since April 2020, ComReg has put in place a number of consecutive licensing frameworks for the temporary assignment of use (the Temporary Frameworks). Each of these licensing frameworks has provided for the temporary assignment of spectrum rights in the 700 MHz and 2.6 GHz bands for an overall period of up to six calendar months. Following a common letter from three Irish mobile network operators (MNOs) (Three Ireland, eir and Vodafone), on 4 March 2022, ComReg established a fourth further temporary licensing framework for rights of use in the 700 MHz duplex and 2.1 GHz bands. Such a framework was made effective via The Wireless Telegraphy (Further Temporary Electronic Communications Services Licences) (No.4) Regulations 2021 (SI 138 of 2022) on 28 March 2022. After assessing each application received from all Irish MNOs, ComReg issued licenses to Meteor (700 MHz and 2.1 GHz bands), Three Ireland (700 MHz), and Vodafone (700 MHz) from 2 April 2022 to 1 July 2022.

Ex-ante regulatory obligations

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

The following communications markets are subject to ex-ante regulation.

Fixed communications

Retail access to the public telephone network at a fixed location

Eir has been designated with significant market power (SMP) in this market and the remedies imposed on eir include access and price control obligations, and an obligation not to unreasonably bundle this service with its other services.

Wholesale call origination on the public telephone network provided at a fixed location

Eir has been designated with SMP in this market and the remedies imposed on eir include access, non-discrimination, transparency, accounting separation, price control and cost accounting.

Wholesale call termination on individual public telephone networks provided at a fixed location

Seven fixed-service providers (eir, BT Communications Ireland Limited, Verizon Ireland Limited, Virgin Media Ireland Limited (formerly UPC Communications Ireland Limited), Colt Telecom Ireland Limited, Smart Telecom Holdings Limited and Magnet Networks Limited) have been designated as having SMP. All operators are subject to price control and cost-accounting obligations, with separate price control and accounting obligations applying to eir.

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Wholesale local access (provided at a fixed location)

Eir has been designated with SMP in this market and the remedies imposed on eir include access, transparency, non-discrimination, accounting separation, price control and cost-accounting obligations. On 13 August 2021, eir was deemed to be non-compliant with the obligations imposed on it by the WLA Decision Instrument in that it failed to:

- allow access to exchange chambers and access to ingress/egress points to other network operators; and
- did not allow access to exchange chambers under the same conditions and of the same quality as eir provides to itself, or its subsidiaries, affiliates or partners.

Wholesale central access

Eir has been designated with SMP in the regional wholesale central access (WCA) market (but not the urban WCA in which ComReg considered there was enough competition in this market) and the remedies imposed on eir include access, transparency, non-discrimination, accounting separation, price control and cost-accounting obligations.

Wholesale terminating segments of leased lines

Eir has been designated with SMP in this market and the remedies imposed on eir include access, transparency, non-discrimination, accounting separation, price control and cost-accounting obligations.

Mobile communications

Wholesale voice call termination on individual mobile networks

Six mobile network operators were designated as having SMP in this market (Vodafone, O2 Ireland (acquired by Three Ireland), Meteor, Three Ireland, Tesco Mobile Ireland Limited and Lycamobile Ireland Limited). Remedies imposed on these operators include access, non-discrimination, transparency and price-control obligations.

ComReg took court action against eir seeking to impose significant penalties (about €10 million) over alleged breaches of the Access Regulations by failing to allow access to its network to other telecom providers. In December 2018, eir agreed to pay ComReg €3 million to settle these enforcement proceedings. As part of the settlement deal, eir also consented to allow independent observers to monitor its internal divisions between its wholesale and retail structures.

Non-compliance with requests for information to inform market analysis or to enable ComReg to carry out its statutory function can be prosecuted by ComReg.

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?

Structural separation has not been provided for in the Irish communications regulatory framework. Structural separation can be imposed under the Competition Acts 2002–2017 as a remedy in cases entailing an abuse of dominance contrary to section 5 of the Competition Acts 2002–2017.

Functional separation powers do exist as an exceptional remedy in respect of vertically integrated operators with SMP under the regulatory framework, in circumstances where ComReg concludes that:

- transparency, non-discrimination, accounting separation, access and price-control obligations have failed to achieve effective competition; and
- where it has identified important and persisting competition problems or market failures concerning the wholesale provision of certain access markets.

Following a settlement agreement between eir and ComReg, eir is to impose a revised regulatory governance model to separate its retail and wholesale arms (with independent observers monitoring such a separation for a five-year period).

Universal service obligations and financing

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

Eir has been designated as the universal service provider (USP) for telephony services since 2006.

The following points should be noted concerning the universal service obligation (USO):

- eir must satisfy any reasonable request to provide, at a fixed location, connections to the public telephone network and access to a publicly available telephone service (PATS);
- the maintenance of the National Directory Database (NDD) is no longer a USP obligation;
- an accessibility statement being published to ensure equivalence in access and choice for disabled end users is now an obligation of all undertakings and the provision of specialised terminal equipment for disabled end users is no longer an obligation of the USP or any undertaking since 1 January 2016; and
- eir must adhere to the principle of maintaining affordability for universal services.

In December 2018, ComReg decided that PortingXS (a Dutch company) would be responsible for the management and maintenance of the NDD from 1 July 2019, after the expiry of the transition period to allow the transfer of functions from eir. As such, PortingXS must ensure that a comprehensive record exists of all subscribers of publicly available telephone services in the state, excluding those who have refused to have their details included in the NDD. In August 2015, ComReg specified certain requirements to be complied with by all undertakings to ensure equivalence in access and choice for disabled end users (previously, only eir as the USP had obligations in respect of a Code of Practice concerning the provision of services for people with disabilities).

Eir is subject to legally binding performance targets relating to timescales for connection, fault-rate occurrence and fault repair times. ComReg issues quarterly reports detailing eir's performance data covering its legally binding and non-legally binding performance targets.

There is currently no USO fund in Ireland. Eir, as the USP, may apply to receive funding for the net cost (if any) of meeting the USO where ComReg determines there is a net cost and that it represents an unfair burden. There is currently litigation before the Irish courts following ComReg's rejection of eir's application for funding and a reference has been made in May 2020 to the Court of Justice of the European Union (CJEU) on certain aspects of this case including the fairness of USO burden on eir.

On 7 April 2017, ComReg published the outcome of its assessment of eir's 2015 compliance with the annual

performance targets set out in Performance Improvement Plan 3. Eir submitted a force majeure claim in June 2016 and sought relief in respect of fault repair time performance only. The submission set out the basis for eir's force majeure claim as being the 'exceptional weather events in January, November and December 2015'. Also, eir submitted an expert report on the weather conditions associated with the force majeure claim. In response, ComReg formed the view that it could be considered that force majeure conditions applied in December 2015 but that the January and November 2015 weather events did not constitute force majeure events within the meaning of the Performance Improvement Programme (PIP3). Eir paid ComReg a penalty of €3,094,000 in December 2016 for its failure to meet the PIP3

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agreed USO quality of service performance targets for 2015. In light of this, ComReg does not intend to take further enforcement action against eir for the 2015 period. In March 2017, eir initiated High Court proceedings against ComReg concerning fault repair time obligations imposed on eir. In January 2017, ComReg imposed a 48-hour deadline on eir to repair faults in its telecoms lines (pursuant to complaints from eir's competitors).

In June 2017, ComReg applied to the High Court for declarations of non-compliance concerning eir's transparency, non-discrimination and access obligations to provide access to its network to other operators, seeking a financial penalty of up to €10 million (which would be the largest in the state) concerning these regulatory breaches. In December 2017, eir launched counter proceedings against the Minister claiming the EU telecoms regulations have been wrongly applied in Ireland (Access Regulations) and that ComReg has overstepped its remit in trying to impose civil penalties 'of the kind it is proposing under existing law'. In December 2018, eir agreed to pay €3 million to ComReg to settle these enforcement proceedings. As part of the settlement deal, eir also consented to allow independent observers to monitor its internal divisions between its wholesale and retail structures. In February 2020, ComReg published an update on the progress of the commitments under its settlement agreement with eir. The set of commitments, when fully implemented, will result in the establishment and operation of an enhanced regulatory governance model in eir. Completion of the commitments is underpinned by €9 million held in escrow that is partially released to eir on completion of commitments milestones.

In July 2016, ComReg designated eir as the USP for access at a fixed location (AFL USO) for a period of five years, which designation remained in full force and effect until 30 June 2021. Pursuant to ComReg Decision D05/21, this timeframe was extended to 30 October 2021. Notwithstanding the fact eir appealed to the Irish High Court against ComReg's decision to extend the designated period, On 5 November 2021, ComReg published a decision (21/112) in respect of Universal Service Requirements regarding the Provision of AFL USO. As part of this decision, eir has been designated as the USP of AFL USO in Ireland, from 31 October 2021 until 30 June 2023. In addition to this, the Reasonable Access Request process and threshold has been amended to include, inter alia, the following:

- the new connections and (or) PATS obligation is now amended;
- the initial cost threshold of €1,000 is now removed;
- the automatic USP obligation to supply all reasonable access requests costing under €1,000, irrespective of whether there is an alternative infrastructure and an equivalent service available, is now removed;
- eir now has an obligation to supply reasonable access requests where there is no alternative infrastructure and equivalent service available; and
- the 'equivalent service' definition is now amended to include voice and broadband services supplied in a bundle, providing the bundle meets certain existing criteria, including affordability.

ComReg has further agreed to keep any AFL USO and designation under review, in light of the transposition of the EECC and developments in the market. Eir's litigious appeal regarding the extension of the designated period, by ComReg, remains ongoing.

ComReg will continue to closely monitor eir's USO performance and publishes quarterly reports on its USO performance.

Number allocation and portability

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

All operators providing a PATS must provide number portability to subscribers at no direct charge. Operators must ensure that the porting of numbers is carried out within the shortest possible time; numbers must be activated within one working day and loss of service during the process may not exceed one working day. ComReg may specify the payment of compensation to subscribers for delays in porting.

ComReg has confirmed as part of 2013 and 2017 decisions on machine-to-machine numbering, that number portability is in principle an entitlement of machine-to-machine number holders.

ComReg is tasked with the management of the National Numbering Scheme, including attaching conditions to rights of use for numbers and generally makes allocations and reservations of numbering capacity from the scheme to notified network operators, who each sub-allocate individual numbers to service providers and end users. ComReg's tasks include:

- assigning numbers for existing services;
- developing frameworks for new and innovative services;
- ensuring numbers are used following conditions of use set out in the Numbering Conditions of Use; and
- monitoring number utilisation and number changes when required.

Applications for allocation are made via an application form and numbers are granted on a first come, first served basis except when starting allocation from newly allocated number ranges. Allocation is carried out in an open, transparent and non-discriminatory manner. ComReg currently does not charge fees to recipients for allocations of numbers.

In December 2018, ComReg introduced measures regulating the costs of using non-geographic numbers. Since 1 December 2019, the cost of a call to a non-geographic number cannot exceed the cost of calling a landline number.

Since 1 January 2022, the number of non-geographic number (NGN) ranges available in Ireland has been reduced from five to two. The 1850, 1890 and 076 NGN ranges are no longer in service. 1800 Freephone and 0818 Standard Rate NGNs remain in operation. These changes will simplify NGNs and provide clarity on the costs of calling the two remaining NGN ranges (1800 and 0818). For callers, 1800 calls are free. Calls to 0818 are included in customer call bundles that include calls to landlines or, out of bundle, charged at the Standard Rate, which is no more than the cost of calling a landline.

Notably, for organisations, the cost of maintaining 1800 numbers has reduced significantly since the introduction of new wholesale charges last year. In general, there is no per call cost to an organisation for receiving an 0818 call.

Customer terms and conditions

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

Operators providing a publicly available ECN or ECS must provide certain standard contract conditions to consumers in a clear, comprehensive and easily accessible form (eg, details of price and tariffs and contract duration, etc). Operators must notify customers one month in advance of any proposed changes to their terms and conditions and of their right to withdraw without penalty if they do not accept the changes. Failure to do so may be prosecuted as a criminal matter as failure to comply is an offence. It is a defence to establish that reasonable steps were taken to comply, or that it was not possible to comply, with the requirement. ComReg also has the choice of bringing a civil action for

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non-compliance to the High Court. ComReg has not specified a medium to be used for contract change notifications but provides that notifications must be presented to customers clearly, unambiguously and transparently, and must include certain minimum information.

Following implementation in Ireland, the EECC is set to strengthen and harmonise consumer protection across the European Union. Telecoms operators will be required to implement a number of changes to give effect to the new end-user rights introduced in the EECC. These include, inter alia:

- developing pre-contract summary templates in line with the prescriptive guidelines set out in the EECC;
- building in the provision of best tariff advice and best tariff information into the contract process; and
- updating the scripts of the customer service representatives to comply with the obligations set out in the EECC in relation to cancellation, renewal and automatic prolongation of contracts.

ComReg has initiated enforcement actions regarding several alleged breaches of the rules and most recently issued notices of non-compliance against eir, Vodafone Ireland, Virgin Media Ireland and Sky Ireland in 2018 for failure to notify customers in the prescribed manner as required under the Universal Service Regulations.

ComReg has also issued several requirements concerning bills and billing mediums. By way of example, consumers must have a choice about whether to receive paper bills or alternative billing mediums, and a paper bill must be provided free of charge where access to online billing is not possible.

ComReg's enforcement powers concerning consumer contracts derive from both the telecommunications framework (the Universal Service Regulations) and the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (SI 484/2013) (the Consumer Information Regulations) (following Directive 2011/83/EU (Consumer Rights). Consumer contract compliance continues to be a core focus of ComReg, and it has engaged in several enforcement actions against operators in recent years including the following examples.

In 2016, ComReg imposed a €255,000 fixed penalty notice on Virgin Media Ireland for failure to provide 26,046 of its customers with a contract in a durable form in contravention of the Consumer Information Regulations 2013. ComReg investigated Virgin Media Ireland as a result of complaints from Virgin customers who claimed the lack of a contract in durable form made it difficult for the affected Virgin Media Ireland customers to identify the precise charges to which they were subject. This was the first time that ComReg has imposed fixed penalty notices (FPNs). ComReg has the power to issue FPNs under the Consumer Protection Act 2007 for breaches of the Consumer Information Regulations 2013.

In 2017, ComReg initiated an investigation into how Vodafone Ireland notified its customers of changes to their roaming terms and conditions (to include an automatic opt-in provision). ComReg determined Vodafone Ireland incorrectly notified its customers of this change and imposed a fine of €250,000 and forced Vodafone Ireland to remediate its customers to the tune of €2.5 million. Vodafone Ireland also made binding commitments not to use auto opt-ins in future.

In 2018, Sky Ireland made a settlement and paid ComReg €117,000 concerning an alleged failure to provide customers with a contract on a durable medium, and breaches of their right to a cooling-off period. As part of this settlement, Sky Ireland agreed to take remedial action to prevent any further breaches of these consumer obligations.

In 2018, ComReg brought proceedings against Yourtel concerning billing customers for a service that it was alleged was never received. In February 2019, Yourtel consented to orders before the Commercial Court requiring it to cease its contraventions (and has since been served with restraining orders to prevent it from doing so). Eir was fined €23,500 and received 10 separate criminal convictions concerning 10 counts of incorrect charging of customers for electronic communications services.

In 2019, the District Court heard a prosecution taken by ComReg against Pure Telecom Limited concerning Pure Telecom failing to provide full pricing information in its customer contracts. Pure Telecom pleaded guilty to the counts brought against it and in lieu of a conviction was required to make a charitable donation of €10,000. ComReg also found Vodafone Ireland was non-compliant because it did not provide customers of its 'Extra' Pay as You Go product with their contract on a durable medium, in contravention with the Consumer Information Regulations 2013. ComReg reached a settlement agreement with Vodafone Ireland that included an undertaking by Vodafone Ireland to refund 72,774 customers the sum of €416,972.

ComReg has brought cases in the Dublin District Court against eir, Vodafone Ireland and Yourtel in recent years. In June 2018, eir plead guilty to 10 offences concerning overcharging customers and paid a total of €23,500. Vodafone Ireland had the Probation Act applied to it on condition that it donates €7,500 to charity and Vodafone Ireland agreed to contribute to ComReg's costs of €15,000, and Yourtel pled guilty to failing to comply with a statutory request for information and was required to make a payment towards ComReg's costs (the *Yourtel* case related to an overcharging complaint). Following a further investigation, ComReg, since February 2019, applied for, and received, a restraining order concerning Yourtel and the overcharging of customers (as Yourtel had 89 prior convictions for such an offence).

In February 2020, Virgin Media Ireland entered into a settlement agreement with ComReg following a failure to comply with Regulation 14 of the Universal Service Regulations. Virgin Media's non-compliance related to the manner in which tariffs associated with certain extra charges, for example, late payment fee and unpaid direct debit fee, were presented and subsequently charged by Virgin Media to portions of its customers. It concerned, in particular, the transparency and accessibility of the contractual provisions relating to those tariffs. Virgin Media agreed to refund the sum of €420,200 to approximately 24,000 customers who were charged all or any of the extra charges during the period from 1 September 2016 to 27 October 2017. In March 2020, Three Ireland paid ComReg a penalty of €51,000 after an investigation found that between July 2017 and November 2019, Three Ireland had failed to provide 57,147 of its 'affinity plan' customers who signed up via a sales agent with a contract on durable medium, contrary to Regulation 12 of the Consumer Information Regulations 2013.

More recently, in May 2021, Tesco Mobile advised ComReg that 27,500 customers were impacted by the charging of Post Cancellation Charges to a value of €388,000. Tesco Mobile made a commitment to ComReg to refund all affected customers. Tesco Mobile's review of its billing system to determine whether its customers were being charged for services beyond the cancellation of their contracts came on foot of a December 2020 ComReg publication that detailed the outcome of a ComReg investigation into Virgin Media Ireland and its then practice of charging customers beyond the cancellation of their contract for what was termed 'post cancellation charges'. ComReg secured a commitment from Virgin Media that it would provide accumulative refunds of approximately €3 million to all affected customers by 31 March 2021.

In November 2018, ComReg announced Formal Dispute Resolution Procedures for End-Users of Electronic

Communication Services and Networks, introducing structures and timelines for disputes concerning any regulations under which ComReg has the power to resolve disputes. These measures entered into force in September 2019. Formal Dispute Resolution Procedures apply to issues for end users of mobile phones, home phones and broadband whose complaints have been unresolved for 40 working days or more after lodging a complaint with a service provider. ComReg will

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adjudicate the dispute once the end user has applied for the service. The application procedure is set out in greater detail in Annex 2 of ComReg document 18/104.

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 Telecom Single Market Regulation, effective from June 2017, laid down measures regarding open internet access and net neutrality. ComReg has stated that its approach to network neutrality will be informed by ongoing Body of European Regulators for Electronic Communications (BEREC) work.

BEREC published its Guidelines on Net Neutrality to National Regulatory Authorities (NRAs) on 6 September 2016 providing guidance for NRAs to take into account when implementing the rules and assessing specific cases. On 30 June 2020, ComReg published its 2020 Report on the Implementation of the Net Neutrality Regulations in Ireland (as obliged under Regulation (EU) 2015/2120 (the TSM Regulation) and outlined how ComReg would:

- safeguard open internet access;
- ensure transparency measures are in place for open internet access;
- supervise and enforce breaches of the TSM Regulation; and impose penalties for such breaches.

In its 2020 Report, ComReg found that having regard to the implementation of the Net Neutrality Regulation, it found no evidence for the existence of relevant zero-rated services in Ireland. This is in contrast to a similar report by ComReg from 2019 that stated that it was aware of zero-rating practices in Ireland. A 'zero-rating' practice typically involves an internet service provider (ISP) excluding the use of certain applications and services from customers' data consumption limits. From a competition perspective, zero rating raises a number of concerns as it allows ISPs to prioritise access to certain applications and (or) services. Thus, this may fall foul of article 3 of the Net Neutrality Regulations pursuant to the fact that ISPs may not limit end-users' access and distribution rights through agreements or commercial practices. This is important in the context of the recent decision regarding the CJEU joined cases of C-807/18 and C-39/19, *Telenor Magyarország Zrt v Nemzeti Média- és Hírközlési Hatóság Elnöke* (15 September 2020) in which it was held that an internet package that included zero rating for certain applications and services, and allowed unrestricted access only to those services once a certain data volume had been exhausted, was liable to restrict the rights contained in article 3(1) of the Net Neutrality Regulation while also reducing the use of other applications and services.

It is noted that ISPs are permitted to put reasonable traffic management measures in place so long as they are transparent, non-discriminatory and proportionate, as well as being used as being based on technical requirements.

The European Union (Open Internet Access) Regulations 2019 (SI 343/2019) gives enforcement powers to ComReg concerning net neutrality. ComReg may give a direction to an undertaking requiring the undertaking to take a measure under article 5(1) of SI 343/2019. Where ComReg finds an undertaking has not complied with its direction or with the obligations under the Net Neutrality Regulations, and that undertaking has not corrected its behaviour following a notification from ComReg, ComReg can seek an order from the High Court, which can include an order for payment of a financial penalty to ComReg.

In December 2019, ComReg issued notifications of non-compliance for breaches of net neutrality regulations to seven telecommunications companies operating in Ireland. The notifications were issued to internet access service providers regarding transparency breaches in their consumer contracts. With the recent expansion of its powers, ComReg has taken formal enforcement action against providers who appeared to have not been providing the required information in their customer contracts concerning net neutrality.

ComReg's 2020 Report notes that it devotes considerable resources to relevant BEREC workstreams related to net neutrality and to engage with its peer NRAs to ensure that its approach to net neutrality is consistent with that being taken by regulators across the European Union.

Platform regulation

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

In addition to Part 8 of the Broadcasting Act 2009, which provides for digital broadcasting and the associated migration from analogue television, there is limited regulation of digital platforms in Irish law.

Regulation (EU) 2019/1150 (the Platform to Business Regulations) came into force in Irish law in July 2020, which provides a framework to ensure a transparent and predictable business environment for smaller businesses and traders on online platforms and marketplaces. These rules apply to intermediation service providers and search engine providers and include rules concerning terms and conditions and equal treatment of products. These are enforced by the CCPC in Ireland.

To the extent that a digital platform provides an ECS or ECN (or both), it would be subject to the authorisation regime set out in the Authorisation Regulations, which confers a general right to provide ECN or ECS (or both) subject to certain conditions.

Following publication on 14 June 2022, once enacted, the Online Safety and Media Regulation Bill (the OSMR Bill) will transpose the revised Audiovisual Media Services Directive into Irish law, including the regulation of video-sharing platform services as part of the regulatory framework for online safety.

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?

In November 2018, ComReg issued a decision concluding that eir continued to hold SMP in the wholesale broadband access market and, as such, imposed a series of remedies on eir. Such remedies are designed to ensure telecoms operators have access to eir's wholesale services, including the imposition of price control obligations concerning the fibre-to-the-cabinet wholesale market through a cost-orientation obligation. This decision was based on a market review carried out by ComReg examining the nature and structure of the wholesale broadband access markets.

Following a stakeholder consultation, the government approved plans for a new National Broadband Plan that will provide the initial stimulus required to deliver high-speed broadband to every city, town, village and individual premises in Ireland. There were several delays in the design and procurement phases of the NBP owing to negotiations with another commercial provider (eir) seeking to provide high-speed broadband to some of the areas originally designated under the NBP. Most recently, one bidder, National Broadband Ireland (NBI), was selected as the preferred bidder to deliver the NBP project. In a recent update provided by NBI in April 2022 with respect to the roll-out or deployment of the high-speed broadband network, it is envisaged that by year-end 2022, NBI is on track to have 221,000 homes in the 'under construction' phase of the project, with 128,000 homes 'available to

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order'. NBI also said it expects the number of premises passed by the network to be 102,000 homes, an increase of 102 per cent.

The NBP follows several previous state-funded broadband schemes in operation in Ireland:

- the Metropolitan Area Networks Scheme, which aimed to create open-access fibre networks in more than 120 Irish towns for €170 million with support from EU structural funds;
- the National Broadband Scheme, operated by Three Ireland, provided mobile broadband to all premises in locations where no services were available or likely to be made available by the market (this contract expired in August 2014); and
- the Rural Broadband Scheme, which aimed to provide broadband to parts of Ireland where it was not commercially available and was designed to meet the needs of the last 1 per cent of the population not covered by any service.

Previous governments established the Mobile Phone and Broadband Taskforce to identify immediate solutions to broadband and mobile phone coverage deficits and to investigate how better services could be provided to consumers before the full build and rollout of the network planned under the NBP. The Taskforce published its report in 2017 outlining the issues considered and set out its recommendations and actions to alleviate barriers to mobile reception and broadband access, and the DECC publishes quarterly updates on how the recommendations are being implemented. While ComReg does not have direct responsibility for the implementation of the NBP, the Mobile Phone and Broadband Taskforce outlines several regulatory actions that can assist in the NBP rollout, and ComReg has announced it will undertake such action areas that support the Taskforce's objectives.

Separately to the NBP, in June 2018, ComReg decided to legalise some mobile phone repeaters in an attempt to boost the coverage of mobile phone services in respect of indoor reception. This was a key recommendation of the government's Mobile Phone and Broadband Taskforce. ComReg decided to make certain mobile phone repeaters licence-exempt provided certain technical conditions as outlined in the ComReg decision are met.

Data protection

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

The communications sector is subject to the general Irish data protection regime as set out in the Data Protection Act 2018.

The Communications (Retention of Data) Act 2011 sets out a specific regime for the retention of certain communications data for, inter alia, the investigation, detection and prosecution of criminal offences. A regime is also in place for the interception of communications by the Irish police force and the Defence Forces. The CJEU recently found that Directive 2006/24/EC (Data Retention), the basis for the Communications (Retention of Data) Act 2011, was invalid. As a result of the CJEU decision, no specific legal act at the EU level obliges Ireland to maintain a data retention regime in place. In December 2018, the Irish High Court ruled that the 2011 Act is incompatible with EU and European Convention on Human Rights law, and the Supreme Court recently referred this issue to the European Court of Justice.

While the 2011 Act formally remains law in Ireland, the government has published the General Scheme of the Communications (Retention of Data) Bill 2017 designed to replace the 2011 Act. The 2011 Privacy Regulations from the EU electronic communications reform package previously mentioned also apply pending the publication of the proposed ePrivacy Regulation.

On 25 May 2018, Regulation (EU) 2016/679 (General Data Protection Regulation) (GDPR) came into force across the European Union and is implemented in Ireland through the Data Protection Act 2018. This follows a two-year implementation period following which the GDPR will replace existing Directive 95/46/EC (Data Protection). The GDPR aims to harmonise data protection across the European Union and will affect how the communications sector operates.

Cybersecurity

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

The Criminal Justice (Offences Relating to Information Systems) Act 2017 was the first piece of national legislation specifically relating to cybercrime and is designed to modernise the Irish framework relating to such crimes (previous legislation referred to 'unlawful use of a computer' that did not adequately address problems facing current society).

This legislation introduced several new offences such as:

- accessing an information system without lawful authority;
- interfering with an information system without lawful authority to intentionally hinder or interrupt its functioning;
- interfering with data without lawful authority;
- intercepting the transmission of data without lawful authority; and
- use of a computer, password, code or data for the commission of any of the above offences.

Other pieces of legislation that include cybersecurity-related provisions also include:

- the GDPR: data controllers are required to take 'appropriate security measures' against unauthorised access, alteration, disclosure or destruction of data, in particular where the processing involves the transmission of data over a network, and comply with strict reporting obligations in relation to incidents;
- the Privacy Regulations: require providers to implement appropriate technical and organisational measures to safeguard the security of its services and report incidents. It is also prohibits interception or surveillance of communications and the related traffic data over a publicly available ECS without users' consent; and
- SI 360/2018 European Union (Measures for a High Common Level of Security of Network and Information Systems) Regulations 2018 (the NISD Regulations): the NISD Regulations require that operators of essential services (OES) and digital services take appropriate measures to prevent and minimise the impact of incidents affecting the security of the network and information systems used for the provision of essential and digital services with a view to ensuring continuity.

The DECC published an updated National Cybersecurity Strategy in December 2019 (effective until 2024). Objectives of the strategy include:

- to continue to improve the ability of the state to respond to and manage cybersecurity incidents;
- to identify and protect critical national infrastructure by ensuring that essential services have appropriate cybersecurity incident response plans;
- to improve the resilience and security of public sector IT systems;
- to invest in educational initiatives to prepare the workforce for advanced IT and cybersecurity careers;
- to raise awareness of the responsibilities of businesses around securing their networks, devices and information; and
- to invest in research and development in cybersecurity in Ireland.

In common with similar bodies in other EU member states, the National Cyber Security Centre (NCSC) has also steadily moved towards a more proactive approach across a range of areas. The provisions of the NISD Regulations have been used to develop a quasi-regulatory approach for

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critical infrastructure providers, an approach that operates in tandem with the NCSC's existing and ongoing work. Enforcement powers under the NISD Regulations allow NCSC-authorised officers to conduct security assessments and audits, require the provision of information and issue binding instructions to remedy any deficiencies.

Measure 7 of the NCSC's 2019 Strategy sets out how the Irish government will introduce a new and specific set of security requirements for the telecommunications sector, with detailed risk mitigation measures to be developed by the NCSC. Over the course of 2020, a working group consisting of the NCSC, ComReg and selected providers of ECN and ECS held a series of thematic workshops culminating in a set of documents known as the Electronic Communications Security Measures or ECSMs. The security measures contained in the ECSMs will be provided with a legislative basis through the transposition of the EECC. The ECSMs were subject to a technical stakeholder consultation process in January 2022 and are now being further considered by the DECC.

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?

No new data protection legislation has been introduced in Ireland to deal specifically with big data, so the debate has focused on the application of general data protection rules to each new way in which personal data are collected, stored, used and analysed.

For instance, current data protection law requires that personal data is only used for specific purposes, which, naturally, restricts the trend in big data to make use of data in previously unknown ways. This means that big-data systems should ideally be set up with this purpose limitation in mind, with each new use of personal data generating its own risk profile. There have been discussions around the use of techniques to effectively anonymise or pseudonymise personal data as a solution to this, so that the data falls outside the scope of data protection rules, although achieving this can sometimes be difficult.

While this may somewhat limit the ability to commercially exploit big data, the enforcement of data protection law in Ireland is not static and is adaptable to each new innovation. The Irish Data Protection Commissioner takes a pragmatic approach to the treatment of big data and considers meaningful consultation with organisations operating in this space, including the many leading multinational technology companies based in Ireland, as essential to this strategy. The Edward Snowden allegations of large-scale access by US authorities of EU citizens' personal data have brought the treatment of big data to the forefront of political discussion in the European Union, including Ireland. Significant changes are likely to come about as a result of the GDPR, implemented in Ireland by the Data Protection Act 2018.

Concerning big data, article 22 of the GDPR provides inter alia that:

> *[…] the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.*

Section 57 of the Data Protection Act 2018 gives effect to article 22 of the GDPR in outlining the rights of the individual concerning automated decision making. As such, automated processing is only permitted with the express consent of the individual, when necessary for the performance of a contract or where authorised by EU or EU member state law. Also, where automated processing is permitted, measures must be in place to protect the individual (eg, the right to present their point of view). Automated processing can apply to sensitive personal data (as outlined under the Data Protection Act 2018) based on express consent or reasons of substantial public interest.

Many of the big data companies have important locations for their businesses in Ireland. The Data Protection Commissioner (DPC) is tasked with investigating breaches of data regulation by these companies where such breaches occur in this jurisdiction. The DPC opened an inquiry into Facebook in 2019 on how it stored user login data, and in 2018 the DPC investigated Facebook for non-compliance with its obligation under the GDPR to implement technical and organisational measures to ensure the security and safeguarding of the personal data it processes.

On 23 April 2022, the European Commission welcomed an agreement reached between the European Parliament and the EU member states on the proposed Digital Markets Act (DMA). The DMA aims to tighten regulation in respect of the largest global tech companies (referred to as 'gatekeepers') from using their 'interlocking services' to combine data from multiple platforms and allow big tech to gain sophisticated profiles of users. Among the key changes as part of the DMA, it is envisaged that combined personal data for targeted advertising will only be allowed with explicit consent from the gatekeeper.

Data localisation

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

There are no laws or regulations that require data to be stored locally in Ireland. The Data Protection Act 2018 does not detail specific security measures that a data controller or data processor must have in place, although the Authorisation Regulations 2011 detail some requirements specific to the electronic communications services sector. Instead, the Data Protection Act 2018 places an obligation on data controllers to ensure that data is processed in a manner that ensures 'appropriate security of the data'. The measures used by the data controller must ensure that a level of security is provided that is proportionate to the harm that may result from destruction, loss, alternation or disclosure of the data. Data controllers and data processors are also obliged to ensure that their staff and 'other persons at the place of work' are aware of security measures and comply with them. The legal obligation to keep personal data secure applies to every data controller and data processor, regardless of size.

Section 96 of the Data Protection Act 2018 specifies conditions that must be met before personal data may be transferred to third countries. Organisations that transfer personal data from Ireland to third countries (ie, places outside of the European Economic Area) need to ensure that the country in question provides an adequate level of data protection. Some third countries have been approved for this purpose by the EU Commission. The adequacy decision of the European Commission that underpinned the US Safe Harbour arrangement has now been invalidated by a decision of the CJEU of 6 October 2015 (Case C-362/14). Consequently, it is no longer lawful to make transfers based on the EU–US Safe Harbour framework. This was replaced by the EU–US Privacy Shield, which imposes stronger obligations on US companies to take measures to protect personal data.

Key trends and expected changes

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

In the Electronic Communications Strategy Statement 2021–2023, ComReg identified four principle trends it considers will both shape the sector and pose regulatory challenges over the next five years, and are as follows:

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- enhanced connectivity and new technologies: the deployment of high-speed ECN will play an increasingly important role across the country over the next 5 years, enabling innovation and digitalisation across different sectors of Irish society. In addition to ensuring coverage and reliability, a key consideration regarding future networks and connectivity will be improving security and reliance. Network security depends not only on technical security features, but also on the design, implementation, and operation of the network;
- the consumer experience: the development of networks and the adoption of new technologies have enabled people to connect in new ways. Enterprise and Consumers' reliance on ECN and ECS to carry out various social and economic-related activities has only accelerated with the onset of the Covid-19 pandemic. However, the pattern of network rollout across the country as well as varying levels of technology adoption across demographics mean that consumer experiences in the sector are not uniform. ComReg has a role to protect consumers' rights and prevent operators from exploiting consumers in the telecom markets;
- the evolution of adjacent and related markets: as the markets relevant to the regulation of ECN and ECS evolve, the lines between them blur and change the industry's structure and competitive landscape. Due to these changing dynamics, effective regulation will require an understanding of the complex ecosystem of related markets and the role of electronic communications as an enabler of innovation in these markets; and
- the changing future of regulation in the sector: given the rapidly evolving and expanding nature of the ECS sector, the final key trend relates to the range of developments in regulation that will arise during ComReg's strategy statement. In addition to the transposition of the EECC and the 2020 Programme for Government's commitment to the publication of a National Digital Strategy, several legislative changes and developments are anticipated to take place that will impact ComReg's role and mandate, concerning the following areas:
  - consumer protection mandate;
  - cybersecurity strategy for the digital decade;
  - broadband cost reduction;
  - privacy and electronic communications; and
  - market surveillance.

MEDIA

Regulatory and institutional structure

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

The broadcasting sector in Ireland is regulated by the Broadcasting Act 2009 (as amended) (the Broadcasting Act), which established a content regulator, the Broadcasting Authority of Ireland (BAI) and sets out the regulatory framework for the media and broadcasting sector in the state. The Commission for Communications Regulation's (ComReg) role in respect of the broadcasting sector is limited to the issuing of licences under the Wireless Telegraphy Acts, in respect of wireless equipment and assignment of required radio spectrum.

The Broadcasting Act and regulator are due to be modernised and changed in legislation expected to be enacted by the end of 2022 – the OSMR Bill, which was brought before Seanad Éireann on 25 January 2022 for consideration for enactment, transposes the provisions of Directive (EU) 2018/1808 (the 2018 Directive), which revises Directive (EU) 2010/13 (the 2010 Directive), into Irish law.

Among numerous things, the OSMR Bill establishes a new regulator, a multi-person Media Commission to which an Online Safety Commissioner will be appointed. The Media Commission will replace the BAI and be responsible for overseeing updated regulations for broadcasting and video-on-demand services and the new regulatory framework for online safety created by the OSMR Bill. Within its structure, it is envisaged to have a chairperson and separate commissioners overseeing broadcast media, on-demand media and online safety, although this is not explicitly referenced in the General Scheme. The OSMR Bill also provides for additional powers for the Media Commission in relation to compliance and enforcement, including the power to impose administrative financial sanctions.

The OSMR Bill proposes extensive provisions for online safety and sets out a definition for harmful online content. This transposes requirements under the revised AVMSD (the 2018 Directive) with regard to video-sharing platforms. However, the OSMR Bill also proposes a definition of age-inappropriate online content and sets out procedures for addressing harmful online content. These procedures include the formulation of online safety codes by the Media Commission, addressed to designated online services.

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?

Non-EU applicants for broadcasting contracts are required to have their place of residence or registered office within the European Union or as otherwise required by EU law. The framework for the ownership and control policy of the BAI is set out in the Broadcasting Act, which requires the BAI, in awarding a sound broadcasting contract or television programme service contract (or consent to a change of control of the holder of a broadcasting contract), to have regard, inter alia, to the desirability of allowing any person or group of persons to have control of or substantial interests in an 'undue number' of sound broadcasting services, or an 'undue amount' of communications media in a specified area. The BAI has also issued an ownership and control policy, setting out the regulatory approach that the BAI will take and the rules that will be enforced regarding ownership and control of broadcasting services. The policy will be used by the BAI to assess applications for broadcasting contracts and requests for variations in ownership and control structures of contract holders.

Media mergers must be notified to both the Irish Competition and Consumer Protection Commission (CCPC) and the relevant minister. The CCPC is responsible for carrying out the substantive competition review to determine whether the merger is likely to give rise to a substantial lessening of competition. It is the role of the Minister for Communications (the Minster) to assess 'whether the result of the media merger will not be contrary to the public interest in protecting the plurality of the media in the State' and this includes a review of 'diversity of ownership and diversity of content'. The Competition Acts provide for a set of 'relevant criteria' by which the Minister for Communications must assess whether the media merger will be likely to affect the plurality of the media in the state. In particular, the relevant criteria include considering, inter alia, the undesirability of allowing one undertaking to hold significant interests within a sector of the media business, the promotion of media plurality and the adequacy of the existing state-funded broadcasters to protect the public interest in a plurality of the media in the state. The Department of Communications, Climate Action and Environment published Media Merger Guidelines in May 2015. In the interests of transparency, the Minister publishes summary details of the rationale for clearing media mergers.

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Licensing requirements

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

The BAI is responsible for the licensing of the national television service, and content on digital, cable, multimedia displays and satellite systems. The licensing of content on these systems is an ongoing process with no time frame for applications, no competitive licensing process and one-off application fees (these depend on the licence being acquired but are typically less than €2,000).

The BAI is responsible for the licensing of independent radio broadcasting services in Ireland and Part 6 of the Broadcasting Act sets out the mechanism by which the BAI shall undertake the licensing process for commercial, community temporary and institutional radio services.

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?

The European Communities (Audiovisual Media Services) Regulations 2010 (SI 258/2010) and the European

Communities (Audiovisual Media Services) (Amendment) Regulations 2012 (SI 247/2012) (the AVMS Regulations) implement the Audiovisual Media Services Directive (AVMSD) (2010 Directive). The AVMS Regulations outline that, where practicable and by appropriate means, broadcasters must progressively reserve at least 10 per cent of their transmission time (excluding the time applied to news, sports events, games, advertising and teletext services) for European works created by producers who are independent of broadcasters, or reserve 10 per cent of their programming budget for European works that are created by producers who are independent of broadcasters, having regard to its various public responsibilities. The AVMS Regulations require EU member states to ensure that on-demand audiovisual media services also promote European works; however, quotas for European works are not imposed on non-linear audiovisual services.

In transposing the revised AVMSD (2018 Directive), the OSMR Bill is set to implement a new 30 per cent quota for European works in the catalogues of video-on-demand services, alongside a content production levy and content production scheme to support the creation of European works, including independent Irish productions. This will translate into an obligation for video-on-demand services, such as Apple TV or Disney Plus, to meet a quota of 30 per cent and ensure the prominence of European content in their catalogues, and is to be regulated across Europe depending on the country where the company is based. Ireland will be responsible for regulating a significant number of these companies because it is home to the headquarters of a number of social media companies such as Apple and Google. It will be considered a criminal offence for an on-demand audiovisual media service to not comply with this obligation and the relevant rules in its application.

Advertising

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

The BAI is currently tasked with the development, review and revision of codes and rules concerning advertising standards to be observed by broadcasters, and consideration of and adjudication on complaints concerning material that is broadcast, including advertising. The Broadcasting Act provides that advertising codes must protect the interests of the audience and in particular, any advertising relating to matters of direct or indirect interest to children must protect the interests of children and their health. By way of example, the BAI has issued General and Children's Commercial Communications Codes, including rules to be applied to the promotion of high fat, salt and sugar foods to children. Further rules are set out in the AVMS Regulations concerning 'audiovisual commercial communications' on on-demand services. The BAI's General Commercial Communications Code sets out the rules with which Irish radio and television stations must comply when it comes to airing advertising, sponsorship, product placement and other forms of commercial communications. The Broadcasting Act does not apply to broadcast services that are provided through the internet or to non-linear services, but this will change following the implementation of the OSMR Bill

A voluntary self-regulatory code is also in operation and is administered by the Advertising Standards Authority of Ireland (ASAI), which sets out guidelines for advertising concerning a range of topics including food, financial services and business products. This code applies to online advertising. On 1 March 2016, the new ASAI Code of Standards for Advertising and Marketing Communications in Ireland came into effect. The updated Code features new sections on e-cigarettes and gambling and revised sections on food (including rules for advertisements addressed to children), health and beauty and environmental claims. Further, broadcasters should observe relevant national and EU rules on advertising of specific types of products and services (eg, alcohol, tobacco, health foods, airfares, etc) and consumer protection rules on types of advertising practices permitted (eg, consumer information requirements, misleading information rules, etc).

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?

The Broadcasting Act requires 'appropriate network providers' to ensure, if requested, the retransmission by or through their appropriate network of each free-to-air television service provided for the time being by RTÉ, TG4 and Virgin Media Ireland's free-to-air service. An appropriate network is defined as an electronic communications network provided by a person, the 'appropriate network provider', that is used for the distribution or transmission of broadcasting services to the public. The appropriate network provider is not permitted to impose a charge for the above-mentioned channels.

A public service broadcasting charge was suggested by previous governments as a means of funding public broadcasting in light of the changing ways that viewers now access public service broadcasting. However, such plans have been shelved and, the current Minister for Communications (the Minister) recently announced that there was little chance of this being introduced and the government would not introduce the necessary enabling legislation.

Regulation of new media content

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

The Internet Services Providers Association of Ireland (ISPAI) has responsibility for supervising the ongoing evolution of the self-regulation of the internet in Ireland and has set out guidelines in its Code of Practice and Ethics (the Code) that ISPAI members should take into account when operating.

In its statement of policy, the ISPAI acknowledges that its members must observe their legal obligation to remove illegal content when informed by organs of the state or as otherwise required by law. The

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general requirements of the Code issued by the ISPAI include a requirement on all members to use best endeavours to ensure that services (excluding third-party content) and promotional material do not contain anything that is illegal or is likely to mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise. They must also ensure that services and promotional material are not used to promote or facilitate any practices that are contrary to Irish law, nor must any services contain material that incites violence, cruelty, racial hatred or prejudice or discrimination of any kind.

Members' internet service providers are also required to register with www.hotline.ie, which is a notification service to facilitate the reporting of suspected breaches under the Child Trafficking and Pornography Act 1998 (as amended by the Child Trafficking and Pornography (Amendment) Act 2004) and the removal of illegal material from internet websites.

The On-Demand Audiovisual Media Services Code of Conduct is an industry-developed code that covers on-demand audiovisual services in Ireland, addressing topics such as advertising, content standards and dispute resolution.

The regulation of new media content will change following the implementation of the OSMR Bill and the creation of the new regulator, the Media Commission. The Media Commission will be tasked with the responsibility of overseeing updated regulations for broadcasting and video-on-demand services. This will update how television broadcasting services and video-on-demand services are regulated, to ensure greater regulatory alignment between traditional linear TV and video-on-demand services, such as RTÉ Player and Apple TV. As part of the Media Commission's statutory remit, it will create binding Media Codes and Rules reflecting the standards that audiovisual services must adhere to in relation to programme content, and may investigate the compliance of audiovisual media services with Media Codes, Media Rules, on its own initiative or on the basis of a complaint. The Media Commission will have the power to seek the imposition of a number of sanctions on a non-compliant on-demand audiovisual media service, in the event that they have failed to comply with a warning notice. It will also have the power to seek the prosecution of senior management of designated online services for failure to comply with a notice to end non-compliance.

The Media Commission will also have the power to impose a levy on registered providers' Irish revenue, which would be used to fund its regulatory activities and new grant schemes for Irish media production. However, this power will not be exercised until there is a full review and consultation on its merits and it is not intended that a levy would be imposed on providers with a minimal Irish presence.

As provided for in the Broadcasting Act, television broadcasting services are regulated on a contractual basis and non-compliance by such services with Media Codes and Media Rules may be pursued by the Media Commission as a breach of contract. Non-compliance with these obligations will be dealt with through a stepped process of compliance and warning notices. Ultimately, non-compliance with a warning notice is a criminal offence.

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 digital switchover occurred on 24 October 2012. The 800 megahertz (MHz) band had been used for analogue terrestrial television services. This spectrum was auctioned off (along with the 900MHz and 1,800MHz spectrum) in autumn 2012 for use in electronic communications services (ECSs).

Digital formats

25 Does regulation restrict how broadcasters can use their spectrum?

As required by the legislative framework, ComReg has moved towards a position where it will issue licences on a technology and service-neutral basis and that new rights of use will issue on a service and technology-neutral basis. For example, ComReg awarded the 3.6 gigahertz spectrum band in 2017, following a lengthy consultation process on a service and technology-neutral basis (ie, holders of the new rights of use may choose to provide any service capable of being delivered using the assigned spectrum). For instance, they could distribute television programming content, subject to complying with the relevant technical conditions and with any necessary broadcasting content authorisations or they could adopt some other use. ComReg may, through licence conditions or otherwise, provide for proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used for ECSs where this is necessary (eg, to avoid harmful interference and safeguard the efficient use of 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?

The Competition Acts 2002–2017 provide for special additional rules for 'media mergers' (ie, a merger or acquisition in which two or more of the undertakings involved carry on a media business in the state, or that one or more of the undertakings involved carries on a media business in the state and one or more of the undertakings involved carries on a media business elsewhere). A 'media business' means the business (whether all or part of an undertaking's business) of:

- the publication of newspapers or periodicals consisting substantially of news and comment on current affairs, including the publication of such newspapers or periodicals on the internet;
- transmitting, retransmitting or relaying a broadcasting service;
- providing any programme material consisting substantially of news and comment on current affairs to a broadcasting service; or
- making available on an electronic communications network any written, audiovisual or photographic material, consisting substantially of news and comment on current affairs, that is under the editorial control of the undertaking making such material available.

Media mergers are notifiable to both the CCPC and the Minister (regardless of the turnover of the undertakings concerned) to assess whether the media merger would be contrary to the public interest in protecting the plurality of the media in the state. The Competition Acts provide for a set of 'relevant criteria' by which the Minister must assess whether the media merger will be likely to affect the plurality of the media in the state. In particular, the relevant criteria include considering, inter alia, the undesirability of allowing one undertaking to hold significant interests within a sector of the media business, the promotion of media plurality and the adequacy of the existing state-funded broadcasters to protect the public interest in a plurality of the media in the state. The BAI may play a role in assessing media plurality should the transaction be referred to a phase II process by the Minister.

In terms of steps the authorities may require companies to take as a result of a media merger review, the Minister may determine that the media merger be put into effect, determine that the media merger be put into effect subject to conditions or determine that the media merger may not be put into effect. The Department of Environment, Climate Action and Communications' (DECC) Media Merger Guidelines guide

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the media-merger process and the DECC now publishes information regarding its process and a summary of each media merger determination in the interests of transparency. There is an ongoing review of the media merger regime by the DECC.

In June 2019, the BAI published two new documents:

- the Media Plurality Policy, which sets out how the BAI will support media plurality in the future. It sets out a definition for media plurality, outlines why media plurality is important, details policy objectives and outlines the measures the BAI takes and will take to promote and support media plurality in Ireland; and
- the Ownership and Control Policy, which will be used by the BAI to assess requests for changes to the ownership and control of existing broadcasting services. The policy provides guidance and rules for the BAI when considering the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of media services in the Irish state.

Key trends and expected changes

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

There has been a marked increase in the number of media mergers in Ireland, a trend that can be seen across Europe as traditional media outlets need to consolidate to ensure continued survival in a difficult environment. In 2021 alone, the CCPC reviewed and issued merger determinations in relation to five media mergers. There has only been one phase II media merger in the Irish context (2017), which involved the proposed acquisition of the Celtic Media Group by Independent News & Media and was referred to the BAI for a full media-merger examination (the first such media merger in the state). No ministerial decision was made by the Minister as the parties terminated the transaction during the lengthy process by mutual consent.

The primary legislative focus for the DECC will be the enactment of the OSMR Bill (on 23 September 2021, Ireland was directed to implement the revised AVMSD (2018 Directive) without further delay following a failure to ensure transposition of the same before year-end 2020), which will significantly impact on how non-traditional media companies and broadcasters operate in Ireland through enhanced regulatory scrutiny by the newly established Media Commission. The full consequences of the new Media Commission regime will not be clear until the Media Commission issues the below-described Rules and Codes and we hope that these will be subject to industry consultation. However, there will be more near-term consequences, including an obligation for all providers of audiovisual on-demand services in the state to register with the Media Commission within three months of its establishment.

While noting the pending change in guard from BAI to the Media Commission, the BAI's Strategy Statement 2021–2023 also sets out five strategic themes that it considers will be of prominence over the course of the next year, namely:

- promoting diversity and plurality;
- empowering audiences;
- enhancing innovation and sectoral sustainability;
- achieving excellence and accountability;
- leadership in change;

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?

The Broadcasting Authority of Ireland (BAI) is currently responsible for the regulation of the broadcasting and audiovisual content sector. The Irish Competition and Consumer Protection Commission (CCPC) is responsible for administering and enforcing the Competition Acts 2002–2017 across all sectors. The Commission for Communications Regulation (ComReg) is responsible for the regulation of the electronic communications sector and ComReg has co-competition powers with the CCPC that enable it to pursue issues arising in the electronic communications sector under competition law and to take action in respect of anticompetitive agreements and abuse of dominance. ComReg and the BAI are each party to a cooperation agreement with the CCPC to facilitate cooperation, avoid duplication and ensure consistency between the parties insofar as their activities consist of, or relate to, a competition issue.

Appeal procedure

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

A decision of ComReg may either be challenged by way of judicial review or for decisions made under the Regulatory Framework a merits-based appeal under the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (SI 333/2011) (the Framework Regulations) in the High Court. Under the Framework Regulations, the appeal must be brought by a user or undertaking that is affected by the decision and must be lodged within 28 calendar days of the date after the user or undertaking has been notified of the decision. An appeal can be brought based on law or errors of fact. Where the appeal is made to the High Court, either party may seek for the matter to be transferred to the Commercial Court, which is a specialist part of the High Court that generally hears appeals within six months of the date the appeal is lodged. Lodgment of an appeal against a decision of ComReg does not automatically stay that decision unless an application for a stay or interim relief has been made.

Judicial review proceedings should be launched at the earliest opportunity or in any event within three months from the date when grounds for the application first arose (eg, the date of a ComReg decision (although this can be extended by the court if it considers that there is good and sufficient reason to do so)). The Irish courts have jurisdiction to examine the procedural fairness and lawfulness of decisions of public bodies in judicial review proceedings, rather than the merits of a decision.

Any other procedures available to remedy the matter must usually be exhausted before bringing judicial review proceedings. A decision of the BAI may be challenged by way of judicial review in the High Court. Also, a decision by the BAI to terminate or suspend a contract made under Part 6 or Part 8 of the Broadcasting Act may be appealed by the holder of the contract to the High Court under section 51 of the Broadcasting Act. A decision by the Minister for Communications (the Minister) in respect of a media merger must be brought in the High Court not later than 40 working days from the date of determination. Alternatively, this period may be extended by the High Court if it considers that there is a substantial reason why the application was

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not brought in the period and it is just to grant leave to appeal outside the period.

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.

There has been a marked increase in the number of media mergers notified since the 2014 media merger regime was implemented. In 2021 alone, five media mergers were notified to the CCPC, compared to three in 2020 and four in 2019. None of these media mergers involved an extended phase I investigation and none required commitments to be entered into. In 2021, the average clearance timeframe for media mergers was of 18.8 working days within phase I, as against the statutory timeframe of 30 working days.

Some notable media mergers include:

- the 2016 proposed acquisition by Independent News & Media of seven regional newspapers that made up the Celtic Media Group. No ministerial decision was made as the parties terminated the transaction by mutual consent during the extended merger process;
- the 2017 clearance of the 21st Century Fox and Sky merger with no commitments;
- the 2018 clearance of the Trinity Mirror and Northern & Shell merger with binding CCPC commitments; and
- the 2019 clearance of Formpress' acquisition of certain business assets of Midland Tribune from Alpha Publications Limited with binding CCPC commitments (this media merger was subject to an extended phase I investigation).

The Irish Times notified the CCPC of its intention to purchase the *Irish Examiner* (the effect of which would reduce the number of reputable daily broadsheets from three to two) and received phase II CCPC clearance on 24 April 2018. In June 2018, the Minister decided that the proposed merger would not adversely affect the plurality of media in Ireland. The Minister noted that, because of the financial position of the target company, the proposed transaction may in fact preserve the diversity of content and thus protect media plurality in the state.

An overhaul of the Irish competition law regime is expected in 2022 upon enactment of the Competition (Amendment) Bill 2022, which was published by the Irish government in spring 2022. The Competition (Amendment) Bill 2022 will transpose much-anticipated Directive (EU) 2019/1 (ECN+ Directive) into Irish law.

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Italy

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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?

The primary legislation governing the communication sector in Italy is Legislative Decree No. 259/2003 (2003 Electronic Communications Code) as a result of EU directives from 2002 regulating the electronic communications networks and services, the authorisation of electronic communications networks and services, the interconnection of electronic networks and user rights, as recently amended by Legislative Decree No. 207/2021 (the 2021 Electronic Communications Code), which aims at:

- updating and harmonising the regulation of electronic communications networks and services;
- promoting the efficient, effective and coordinated use of spectrum and the development of very high-capacity networks;
- creating a favourable environment for investment and co-investment in very high-capacity networks;
- facilitating the access of operators into electronic communications markets and promoting competition;
- facilitating the access of users to electronic communications services and strengthening the protections provided for them;
- defining the competencies of the regulatory and administrative authorities of the sector, and in particular of the Italian Communications Authority, the Ministry of Economic Development and the newly established National Cybersecurity Agency.

Also, the Italian Communications Authority (the Authority) issues resolutions as secondary legislation containing detailed rules in the offering of electronic communication services and networks. Indeed, the Authority, established by Law No. 249/1997, is a regulatory agency designed to actively promote the integration between the telecommunication and media markets and to supervise and monitor the markets.

Moreover, the Data Protection Authority issues resolutions containing specific obligations for operators in the storage, processing and use of personal data information.

The Ministry of Economic Development – Communications Department (the Ministry) is in charge, inter alia, of issuing authorisations and allocating the spectrum.

A general authorisation is required to offer electronic communications services in Italy. Such authorisation can be issued only to:

- entities with a permanent establishment in Italy or a country within the European Economic Area;
- member states of the World Trade Organization; and
- countries granting Italian citizens reciprocal rights of access to the relevant telecoms activity (article 11 of the 2021 Electronic Communications Code).

Such general authorisation must be obtained for every single service offered, by submitting an application drawn up in accordance with Annex 14 to the 2021 Electronic Communications Code, exclusively through the website of the Ministry of Economic Development on a platform called SIDFORS.

Requests for general authorisations to operate phone centres, internet points, fax and data-processing centre services do not have to be submitted through the SIDFORS portal but directly to the competent territorial inspectorate.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

Under article 11 of the 2021 Electronic Communications Code, an operator that intends to provide electronic communications networks and services or to establish and operate network equipment at a point of presence in Italy shall apply with the Ministry for the issuance of a general authorisation that is required to offer electronic communications services in Italy.

The request must describe the services to be rendered and identification data about the applicant.

Starting from the filing of the relevant request, the operator is immediately entitled to run the activity. However, the Ministry has a 60-day term (from filing) to deny the authorisation. If the Ministry does not respond within this deadline, the authorisation is definitively issued.

General authorisations have a maximum validity of 20 years and may be renewed.

All operators holding a general authorisation are obliged to register with the Register for Communications Operators (ROC) kept by the Authority.

General authorisations are subject to payment of an annual contribution to the Ministry, whose amount is indicated in the Electronic Communication Code based on the service currently provided by the operator and the relevant extension thereof.

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?

The spectrum licences specify the permitted spectrum use. Under article 14 of the 2003 Electronic Communications Code, the Ministry prepares the master plan for the use of spectrum licences, while the Authority is in charge of the allocation plan.

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The last most up-to-date master plan is Ordinary Supplement No. 49, published in Italian Official Gazette No. 244 on 19 October 2018. It provides the principles for the allocation of the frequencies between zero and 3,000 gigahertz to each type of service (eg, fixed, mobile, satellite or radio navigation), the authorities to which the frequencies shall be required (eg, the Ministry of Economic Development and the Ministry of Defence) and the frequency bands and (if any) the international provision applicable. The allocation plan has instead been adopted by the Authority on 7 February 2019 with Resolution No. 39/19/CONS. The revision draft of the master plan was subject to a public consultation, which ended on 31 January 2022, with comments and amendment proposals from administrations, telecommunications service operators, television operators, information and communications technology (ICT) manufacturers, national associations of the radio and television sector, manufacturers of radio equipment, national radio amateurs and private citizens.

Individual rights of spectrum use are granted within the limits set out in the master plan, and any holders of such rights shall be compliant with the spectrum use allocated.

Ex-ante regulatory obligations

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

According to EU Recommendation No. 879 of 17 December 2007, the electronic communications sector that is subject to ex-ante regulation can be divided into two groups:

- markets for fixed networks (eg, services for the access to new generation networks); and
- markets for interconnection services on fixed and mobile networks (eg, interconnection services on fixed networks).

EU Recommendation No. 710 of 9 October 2014 has modified the number and list of markets that are subject to ex-ante regulation. In particular, the latest Recommendation included fixed and mobile call-termination markets in the list, as well as wholesale broadband access markets.

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?

Under article 17 of the 2021 Electronic Communications Code, companies with exclusive or special rights for public communication networks installation or communication services provision – in Italy or even abroad – shall provide networks or electronic communication services accessible to the public only through their subsidiaries or affiliated companies (eg, structural separation). This limitation does not apply to companies that generate an annual turnover of less than €50 million with the provision of electronic communication networks or services in Italy.

Functional separation is instead provided by article 88 of the 2021 Electronic Communications Code as an exceptional measure to be implemented if the Authority assesses that other available remedies have failed to achieve effective competition. If the Authority intends to impose a functional separation, it shall notify its proposal to the European Commission, explaining the grounds of such proposal.

Universal service obligations and financing

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

The services that must be made available to end users and must be provided by all operators as universal service obligations are:

- access to end users from a fixed workstation (article 96 of the 2021 Electronic Communications Code);
- special measures for disabled and low-income users (articles 95 of the 2021 Electronic Communications Code).

The Authority identifies one or more undertakings in charge of providing the universal service at an accessible price.

If the Authority finds that the provision of the universal services by the identified undertaking results in an unfair burden to the latter upon the undertaking's request, it will share the net costs deriving from the provision of the universal services among providers of electronic communications networks and services using the ad hoc fund established by the Ministry (article 98-bis of the 2021 Electronic Communications Code).

Number allocation and portability

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

With Resolution No. 274/07/CONS (article 6 et seq), the Authority has set the standards for activation and migration of fixed number procedures and pure number portability (it will take place without being accompanied by the transfer of physical access resources).

Under article 98-octies decies of the 2021 Electronic Communications Code, users have the right to change operator for mobile phone, voice and data services, while keeping their own mobile number (mobile number portability). The relevant inter-operator procedures are regulated by Resolution No. 339/18/CONS. The user is not actively involved in the transfer procedure. It is simply requested to subscribe to an offer with a new operator and communicate to the latter the transfer code. Thus, the user shall not even communicate the withdrawal to the former operator as the new operator is in charge of dealing with the transfer procedure, including liaising with the former operator to terminate the user's contractual relationship.

Customer terms and conditions

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

Consumers are generally protected by Italian Legislative Decree No. 206/2005 (the Consumer Code) both from a contractual point of view (including off-premises agreements) and against unfair business-to-consumer commercial practices (including teleselling practices).

Specific rules are further provided by Italian Legislative Decree No. 70/2003 (implementing Directive 2000/31/EC) on information society services and electronic commerce, which, among others, includes specific provisions on the information to be provided to consumers when dealing with electronic agreements.

Also, the Electronic Communications Code provides for specific terms and conditions to be included in communications contracts, such as the services provided, the minimum service level, and the procedures used by the company for measuring the network traffic.

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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?

Net neutrality is regarded as a fundamental principle recognised by the Authority to ensure democratic internet service provision. Net neutrality is regulated by Regulation (EU) 2015/2120, and in Italy, the competent Authority issued specific Resolution No. 348/18/CONS concerning the net-neutrality regulation. Several legislative discussions have resulted in the Declaration of Internet Rights of 14 July 2015 approved by the Italian parliament, a document consisting of 14 sections and conceived as a guideline to drive an evolutionary interpretation of the existing provisions and to serve for any legislative developments.

Article 4 of Law No. 167/2017, raised the maximum penalty that can be imposed by the Authority, in the case of a violation of net neutrality, to a limit of €2.5 million.

In compliance with the Body of European Regulators for Electronic Communications' (BEREC) guidelines, the Authority published the 2021 Report including the activities carried out concerning net neutrality. The report reveals that many inspective and monitoring actions have been taken on the commercial practices adopted for the provision of telematics services on the Italian market, by gaining information both directly from the major internet service providers and through hearings with the interested persons.

The resolution concerning the abolition of net neutrality in the United States, taken by the Federal Communications Commission on 14 December 2017, does not seem to have influenced the activity of the Italian legislator yet. On the other hand, the advent of 5G connectivity may be a game-changer as it will be necessary to understand if the innovative capacity of the network is inextricably linked to its free accessibility or not.

Platform regulation

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

No specific legislation or regulations have yet been enacted in Italy concerning digital platforms. However, preparatory works for a law project have been carried out in recent years and a draft law concerning the regulation of digital platforms for the sharing economy was presented to the Italian Chamber of Deputies on 27 January 2016. The draft law began its parliamentary procedure in January 2016, denominated as Act 3564 on 'Discipline of digital platforms for the sharing of goods and services and provisions for the promotion of the sharing economy' and is still under examination by the competent parliamentary commission.

In any case, the following legislation may apply to various aspects of the digital platforms:

- the e-commerce regulation provided by the Legislative Decree No. 70/2003;
- the Consumer Code and the data protection rules provided by Regulation (EU) 2016/679 (the General Data Protection Regulation) (GDPR); and
- Legislative Decree 196/2003, as modified by Legislative Decree No. 101/2018 (the Data Protection Code).

Finally, Regulation (EU) 2019/1150, in force in EU member states since July 2020, outlines the relationship between business users of online intermediation services (marketplaces) and search engines.

The purpose of this Regulation is to guarantee greater transparency in the contractual terms applied to business users by, among others, the big players of the network. The target of the Regulation is the relationship of dependence that business users have on these large online players to offer their goods and services to consumers, which indirectly affects consumers who may not be able to enjoy balanced offers. The Regulation is directly applicable in EU member states and, so far, Italy has issued no specific rules regarding its implementation. By 13 January 2022, and subsequently every three years thereafter, the European Commission shall evaluate this Regulation and report to the European Parliament, the European Council and the European Economic and Social Committee.

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?

Since 2015, Italy has been executing the ultra-broadband strategic plan (UBP) to develop an ultra-broadband network across all Italian territory and create a public telecommunications infrastructure in coherence with the purposes of the European Digital Agenda. The Italian Ministry of Economic Development acts through its in-house company (Infratel Italia Spa) whose mission is to implement the infrastructure development schemes throughout the country, with a particular focus on the development of an ultra-broadband network and Wi-Fi public-services connection.

The UBP is part of the wider Italian Ultra-Broadband Strategy – approved by the government in March 2015 – which intends to reduce the existing market and infrastructure gap through the creation of conditions that are more favourable to the integrated development of fixed and mobile telecommunications infrastructure. Such strategy represents the reference national framework for any public initiative supporting the development of ultra-broadband networks in Italy.

The strategy is implemented through state aid (national and EU funds alike), approved by the European Commission. Moreover, on 11 February 2016, the Council of Ministers and the Conference of the Regions approved the 'Framework agreement on the developing of the NGA as European target 2020', allocating €3 billion to the project, subdividing the funds to the regions, according to their population, and strengthening the management of the project.

The intervention is intended to build a publicly owned network that will be made available to all operators willing to provide services in favour of the population and undertakings.

Data protection

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

The provisions applicable to the communications sector are contained in the Data Protection Code and the resolutions of the Data Protection Authority. In particular, articles 121 to 132, a quarter of the Data Protection Code, apply to the processing of personal data connected to the provision of electronic communication services accessible to the public on public communications networks.

The retention of data in the terminal equipment of a user or the access to information already stored is permitted only on the condition that the user has given his or her consent after being informed in a simplified manner. This does not prohibit any technical archiving or access to information that has already been archived if it is solely aimed at transmitting a communication over an electronic communication network, or as strictly necessary for the provider of an information society service explicitly requested by the user to provide this service.

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Traffic data concerning users processed by the provider of a public communications network or an electronic communication service accessible to the public are erased or anonymised when they are no longer necessary for the transmission of electronic communications.

The provider of an electronic communications service accessible to the public may process user data to the extent and for the duration necessary for the marketing of electronic communication services or the provision of value-added services, only if the user to whom the data relates has previously expressed their consent, which is, however, revocable at any time.

The processing of personal data relating to traffic is only allowed for subjects authorised to process and operate under the direct authority of the provider of the electronic communication service accessible to the public or, as the case may be, of the provider of the public communications network that deals with billing or traffic management, analysis on behalf of customers, fraud detection or the marketing of electronic communication services.

If calling line identification is available, the service provider of electronic communication accessible to the public assures the calling user the possibility of preventing, free of charge and through a simple function, the presentation of the calling line identification, call by call.

Location data other than traffic data referring to users can be processed only if anonymised or if the user has previously expressed his or her consent, and is revocable at any time.

Without prejudice to the provisions of articles 8 and 21 of Legislative Decree No. 70/2003, the use of automated call or call communication systems without the intervention of an operator for sending advertising material or direct sales or for carrying out market research or commercial communication is permitted only with the user's consent.

Further, the provisions of the GDPR (articles 15 et seq) shall be integrated into the processing of data, including a data-protection impact assessment (article 35).

Concerning the security of the processing, article 32 of the GDPR shall apply, and therefore, providers of a publicly available electronic communications service shall, also through other entities entrusted with the provision of the service, implement technical and organisational measures appropriate to the risk involved.

The latter measures shall ensure that traffic and location data and other personal data stored or otherwise transmitted are protected against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, as well as ensure the implementation of a security policy. Where the security of the service or personal data also requires the adoption of security measures to be taken concerning the network, the provider of the publicly available electronic communications service shall take such measures jointly with the provider of the network. In the event of failure to reach an agreement, at the request of one of the providers, the dispute shall be settled by the Communications Authority.

Further, the provider of a publicly available electronic communications service shall inform the subscribers and, where possible, users, using clear, appropriate and adequate language concerning the category and age group of the subscriber, with particular attention in the case of minors, if there is a particular risk of a breach of network security, indicating, when the risk is outside the scope of the measures to be taken by the provider described above, all possible remedies and the relative presumable costs. Similar information shall be provided to the Data Protection Authority and the Communications Authority.

At the end of March 2022, Italian Presidential Decree No. 26/2022 on the public register of oppositions (RPO) was published and repealed the Italian Presidential Decree No. 178/2010.

The RPO is a public registry where the contracting parties (those with a contract with a telco operator) are entitled to register their numbers to avoid being contacted for marketing purposes.

Pursuant to the Italian Presidential Decree No. 26/2022, it is possible to also include in the RPO the mobile phone numbers of the contracting parties or data subjects.

Therefore, the entity that is willing to run telemarketing activities shall consult the RPO before starting such activities and shall provide the list of the telephone numbers that it intends to contact.

Once registered before the RPO, the entity shall consult the RPO itself by accessing the relevant website.

Within the following 24 hours, the RPO shall return to the relevant entity with an updated and cleared list of telephone numbers that shall not be contactable.

The list is valid for 15 days only, to enable a continuous update of the RPO

It is noteworthy that with the registration before the RPO, the consent of the contracting party shall be deemed withdrawn.

In any case, the contracting party can withdraw the right to object only against one or certain operators or companies.

Cybersecurity

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

An essential moment in the evolution of cyber-security regulation in Italy was the implementation of Directive (EU) 2016/114 on Security of Network and Information Systems (the NIS Directive), through the issuing of Legislative Decree No. 65/2018, through which relevant innovations were introduced. The peak position of the prime minister's office was confirmed, as well as his or her leading role. A new centralised cyber incident collection system was set up through the computer security incident response team (CSIRT). Further, the Department of Security Intelligence (DIS) will act as the network and information system's single point of contact. Along with this, on 19 September 2019, the Italian Council of Ministers approved new Decree-Law No. 105/2019. The Decree-Law was then converted into a fully enforceable law by parliament with Law No. 133/2019. This Law aims to guarantee a high level of safety for the networks, the information systems and the informatics services of the public administration, institutions and private entities that rely on the implementation of an essential function or the provision of an essential service for the country.

Moreover, one of the relevant goals of this Law was set by the NIS Directive itself, which provided for the competent authorities to identify essential services operators and to define minimum security measures, later set by the Agency for Digital Italy. The purpose, fully implemented by the present Law, with the creation of the Cybersecurity Perimeter (the Perimeter), leading to the identification and protection of those essential services and functions providers, was to create an amour around such operators, both private and public entities, to shield Italy from possible attacks and an ensuing national crisis (preventing them and setting the ground to solve them as easily as possible).

In particular, five implementing decrees are provided to fully implement the architecture of the Perimeter. The first implementing decree was fully effective from 5 November 2020 (Presidential Decree No. 131/2020) and defines the criteria for identifying the entities included in the Perimeter and the obligations imposed on them to safeguard national security. The list of entities included in the Perimeter has already been drawn up, with about 100 entities involved, but was not published for national security reasons.

Nonetheless, the sectors in which to identify, as a matter of priority, public and private entities carrying out functions with a significant impact on national security include, among others, telecommunications, digital services and critical technologies.

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Further, Presidential Decree No. 131/2020 imposes several obligations on the entities within the Perimeter to ensure a high level of security.

First, entities must prepare, and annually update, the list of their ICT assets and must then identify the ICT assets needed to perform the essential function or service, to:

- assess the impact of an incident on the ICT asset, in terms of its operability and the compromise of data availability, integrity or confidentiality; and
- assess dependencies with other networks, information systems, IT services or physical infrastructures belonging to other subjects.

Finally, entities must identify the ICT assets that, in the event of an incident, would cause the total interruption of the essential function or service.

The second implementing decree on notifications of incidents affecting networks, information systems and information services, as well as security measures, which is expected to be published soon as it is already provided for by the Decree of 29 January 2021, regarding the one-hour window for reporting a serious computer incident to the CSIRT and DIS by the entities belonging to the Perimeter. Concerning the Decree of 29 January 2021, the latter identifies the procedures, modalities and terms by which the National Assessment and Certification Centre (CVCN) and the Assessment Centres of the Ministries of Interior and Defence (CV) carry out assessments on the acquisition, by the entities included in the Perimeter, of ICT technologies and software – including 5G technology – that could present vulnerabilities and therefore expose them to cyber risks.

The latter decree provides that, before the launch of award procedures or the conclusion of supply contracts, entities included in the Perimeter must notify the CVCN or the CV. Subsequently, the procedure is divided into three phases:

- preliminary assessments;
- preparation for the execution of tests; and
- execution of hardware and software tests.

The third implementing Decree, fully effective from 8 May 2021 (Presidential Decree No. 54/2021 of 5 February 2021), focuses on the procedures and terms for assessments by the CVCN and the CVs on products being acquired by entities included in the Perimeter.

The latter Decree also establishes the criteria for identifying the supply objects falling within the categories to which the assessment procedure applies.

Indeed, the categories of ICT goods, systems and services subject to the assessment by the CVCN or the VCs are identified based on the execution or performance of the following functions:

- switching or protection against intrusion and detection of cyber threats in a network, including the application of security policies;
- command, control and implementation in an industrial control network;
- monitoring and configuration control of an electronic communication network;
- network security concerning the availability, authenticity, integrity or confidentiality of services offered or data stored, transmitted or processed;
- authentication and allocation of the resources of an electronic communication network; and
- implementation of an IT service through the configuration of an existing software program or the development, in part or in full, of a new software program, constituting the application part relevant to the provision of the IT service itself.

The categories will then be detailed in a further decree of the President of the Council of Ministers, still to be enacted.

The entities included in the Perimeter will notify the commencement of a technology acquisition procedure together with a risk assessment.

The last two implementing decrees are still expected to be approved and published. The fourth implementing decree will identify the categories of networks, information systems and IT services for which it will be necessary to notify the CVCN, in the case of entrusting the provision of goods or services to third parties. The fifth implementing decree will define the criteria for the accreditation of laboratories responsible for verifying the security conditions in the procurement of products, processes and services for networks, information systems and IT services.

Further, as far as network security is concerned, under article 16-bis of the Electronic Communications Code, network providers and telecom operators are obliged to comply with the network security measures set out by the Ministry and to provide the latter with information about any security or integrity breach.

Moreover, the GDPR's provisions on privacy by design and default must be considered when dealing with cybersecurity, as telecom operators must comply with such obligation even before implementing a new product or service.

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?

There are no specific rules on big data in Italy.

However, big data often includes personal data and, in many cases, it is not possible to separate these data from non-personal data; therefore, as highlighted by the Data Protection Authority in the fact-finding survey on Big Data of February 2020, the privacy risks derived from the use of big data are different:

- the processing of personal data outside the purposes for which it was collected;
- the use of incorrect or outdated information;
- discrimination or prejudice against certain individuals or groups resulting from the application of certain profiling algorithms; and
- the processing of personal data above what is necessary to process them.

Considering that the accuracy and reliability of a large set of data may not be accurate but rather approximate, big data itself is contrary to a fundamental principle of the GDPR, namely, that every organisation or entity must respect the principle of accuracy of the personal data relating to a data subject.

As a general principle, moreover, article 22 of the GDPR provides that:

> *the data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.*

An efficient way to avoid GDPR non-compliance would be to adopt anonymisation or pseudonymisation processes.

Moreover, the GDPR provides for some exceptions to its principles. Data controllers can re-use personal data for purposes compatible with the initial purposes and, if the processing is carried out for public interest, scientific or historical research or statistical purposes, compatibility is implicit.

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Data localisation

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

Under Italian law, there are no specific provisions that expressly require that any kind of data shall be strictly retained within Italy's national borders.

However, certain limitations may apply concerning specific types of data.

By way of example, under article 39 of Presidential Decree No. 633/1972 (relating to the value added tax applicable to the sale of goods and services), any accounting document shall be retained through electronic archives and stored in a foreign country only to the extent that there are reciprocal assistance rights.

The GDPR imposes on the data controller, established outside the European Union, but using instruments located in the national territory, the obligation to appoint a local representative, which will be subject to national legislation and responsible for data processing on the territory.

Under articles 44 to 49 of the GDPR, the transfer of data from a data controller established in one of the EU member states to a controller of a third country or an international organisation is allowed if the European Commission has decided that the third country or international organisation ensures an adequate level of data protection or under one of the appropriate safeguards apply.

Key trends and expected changes

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

The Metaverse represents a new dimension of our era that is not yet entirely regulated. However, the regulation of a system in which physical, augmented and virtual reality converge, allowing users to interact with a computer-generated environment, is not easy to manage. With the implementation of Directive (EU) 2019/770 that refers to contracts for the supply of digital content and services, digital content is subject to stricter regulation to ensure the conformity of the digital content with the contract and the supplier's public statements. Furthermore, the Metaverse represents a marketplace as various types of trade take place within such dimension: for this reason, Regulation (EU) 2019/1150 was issued to promote fairness and transparency for commercial users of online intermediary services. This Regulation governs the relationship between the owners of platforms and business users who provide consumers with goods and services. In addition to these rules, there will be those provided for in Directive (EU) 2019/2161 on better enforcement and modernisation of EU consumer protection rules, the 'Omnibus Directive', as transposed by EU member states, which will apply in the European Union from 28 May 2022.

Another relevant topic in communications regulation is one related to the development of ultra-broadband, which is also an essential prerequisite for the development of 5G. Decree-Law No. 22 of 1 March 2021 established the Inter-Ministerial Committee for Digital Transition (CITD) chaired by the Minister for Technological Innovation and Digital Transition, which coordinates the governance of Italy's ultra-broadband strategy Towards the Gigabit Society, approved on 25 May 2021. The strategy consists of various interventions, including plan Italia 5G (for which €2,020 million of national recovery and resilience plan (PNRR) resources have been allocated). Further, with Resolution No. 67/22/CONS of 3 March 2022, AGCOM adopted the 'Guidelines to identify the conditions of wholesale access to ultra-broadband networks receiving public contribution – integration for 5G networks' are regulated by:

- general conditions;
- the minimum set of wholesale services to be provided by the beneficiary of the financed network;
- the pricing of those services; and
- the approval procedure of prices.

Finally, the European Union and the United States announced that they have agreed on a new Trans-Atlantic Data Privacy Framework two years after the *Schrems II* decision of the Court of Justice of the European Union.

Pursuant to the Trans-Atlantic Data Privacy Framework, the data will be available to flow freely and safely between the European Union and the United States.

Therefore, the United States will implement new measures to protect the privacy and personal data of EU individuals when their data is transferred to the United States.

The major key principles of the Trans-Atlantic Data Privacy Framework are the following:

- the United States will implement new safeguards to limit access to data by the US intelligence authorities to what is necessary and proportionate to protect the national security;
- the US intelligence agencies will adopt procedures to ensure effective oversight of the new privacy and civil liberties standards;
- a new two-tier redress system to investigate and resolve complaints of EU nationals on the access of data by US Intelligence authorities, which includes a data protection review court; and
- strong obligations for companies processing data transferred from the European Union, which will continue to include the requirement to self-certify their adherence to the Principles through the US Department of Commerce.

MEDIA

Regulatory and institutional structure

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

In November 2018, the European Parliament and Council issued Directive (EU) 2018/1808 (new Audiovisual Media Services Directive) (new AVMS Directive), amending AVMS Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in member states, concerning the provision of the AVMS Directive given changing market realities. The European Commission set the deadline for transposition into national legislation as 19 September 2020.

Decree No. 208 of 8 November 2021 for the implementation of the new AVMS Directive has been adopted and entered into force on 25 December 2021, reorganising the provisions of the Consolidated Audiovisual Media Act (CAMA), referred to in Legislative Decree No. 177 of 31 July 2005.

One of the aims of Decree No. 208/2001 is to adopt the national plan for the allocation of radio frequencies in analogue technique, taking into account the degree of development of radio broadcasting in digital technique.

Additionally, the main subject matter of Decree No. 208/2001 are the provisions on audiovisual media services, such as:

the transmission of:

- television programmes, both linear and on-demand;
- radio programmes; and
- data programmes, including those with conditional access; and
- the provision of associated interactive services and conditional access services on any broadcasting platform, including audiovisual commercial communications and video-sharing platform services.

Decree No. 208/2001 applies to audiovisual and radio media service providers and radio concessionaires operating in Italy, which are those that:

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- have their head office in Italy and editorial decisions on the audiovisual media service are taken in Italy;
- have their head office in Italy and editorial decisions on the audiovisual media service provided are taken in another EU member state or a third country, if a significant part of the persons employed in the performance of the audiovisual or radio media service activity linked to the programmes operate within Italian territory;
- despite having its head office in another EU member state or a third country, editorial decisions on the audiovisual media service provided are taken in Italy and a significant part of the persons employed in the performance of the audiovisual or radio media service activity linked to the programmes operate within Italian territory;
- a significant part of the workforce involved in the pursuit of the audiovisual media service activity relating to the programmes operates both in Italy and in another EU member state, if its head office is in Italy; and
- if it started its activity in Italy in compliance with the national legal system, maintaining over time a stable and effective link with the Italian economy.

To the already-existing prohibitions against incitement to hate and violence, the prohibition to commit public provocation to terrorist offences has been added. Moreover, Decree No. 208/2001 aims to ensure adequate protection of human dignity and minors in relation to audiovisual content and commercial communications by sharing platforms.

Legislative Decree No. 44/2010 has simplified the provision of linear services, regulated the provision of non-linear services (eg, download and on-demand services), and introduced some limits concerning advertisement crowding, as well as specific dispositions for the protection of European works.

The two main institutional bodies in Italy for the media sector are the Italian Communications Authority (the Authority) and the Ministry of Economic Development – Communications Department (the Ministry). The Authority is vested in all powers and responsibility for development and policymaking activities in connection with the provision of radio and audiovisual services. The Ministry has the power, among others, to grant licences, general authorisations and spectrum.

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?

CAMA was aimed at protecting the media market as well as ensuring pluralism in the provision of the relevant audiovisual services through the implementation of certain ownership restrictions for broadcasters. Article 51 of the Decree No. 208/2001 replaces article 43 of CAMA and contains the provisions related to the protection of pluralism fixing certain thresholds of incomes, and taking into account the changed market conditions with the increasing presence of multinational platforms. Such restrictions should be applied regardless of the nationality of the broadcasters.

In its judgment of 3 September 2020 in *Vivendi SA vAutorità per le Garanzie nelle Comunicazioni* (Case C-719/18), the Court of Justice of the European Union (CJEU) found article 43 of CAMA contrary to EU law, because, although it is based on the general interest of protecting pluralism in the media, it entails a restriction of the freedom of establishment within the meaning of article 49 of the TFEU.

To be compliant with the principles of such judgment, Decree No. 208/2021 provides an obligation for the companies to notify when thresholds are exceeded and a consequent detailed investigation carried out by the Authority to verify the impairment of pluralism as set out in the provisions.

Concerning the cross-ownership of media companies, article 51, paragraph 3(c) of Decree No. 208/2021 provides for companies whose revenues exceed 8 per cent of the total revenues of the integrated system of communications and that, at the same time, have or acquire stakeholdings in companies publishing daily newspapers, except for companies publishing daily newspapers distributed exclusively by electronic means, to formally notify the Authority of such context that constitute indications of a position of significant market power potentially detrimental to pluralism.

Licensing requirements

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

Under Decision No. 353/11/CONS of the Authority relating to the licensing of digital terrestrial radio and television broadcasting (the DTT Regulation), digital terrestrial television (DTT) network operators must have a general authorisation to operate a DTT network issued by the Ministry and must obtain the right to use the relevant radio frequency spectrum. The DTT Regulation provides for various requirements for DTT network operators, including the number of programmes to be broadcast, coverage requirements and, in particular circumstances, must-carry obligations.

Service providers must apply for a general authorisation before providing their services.

The broadcasting authorisation is issued by the Ministry for a maximum of 12 years, renewable for a successive period of equal duration upon request to be sent 30 days before the expiry date. Applications may be filed only by entities established in Italy, other EEA states or other countries applying reciprocal treatment to Italians willing to operate as broadcasters in such countries. No authorisation is required for the retransmission of programmes by broadcasters established and legitimately operating in countries that are signatories of the European Convention on Transfrontier Television. The Ministry decides within 60 days of the application.

Each broadcaster shall pay a one-off fee of €7,000.

The six-year renewable authorisation procedure for satellite broadcasters (including pay TV channels) is provided by Decision No. 127/00/CONS of the Authority. The Authority has 60 days to decide on any application for satellite broadcasting or cable transmission.

The satellite broadcasting and cable distribution of television programmes are subject to a one-off fee of €6,027.

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?

The broadcasting of European programmes is regulated by article 53 et seq of Decree No. 208/2021.

Linear audiovisual media service providers shall reserve for European programmes a majority proportion of their transmission time. The time used for news, sports events, games, advertising, teletext and teleshopping services shall not be taken into account.

A sub-quota of the quota envisaged for European programmes is reserved for original Italian programmes, wherever they are produced, to the extent of at least half for the concessionaire of the public radio, television and multimedia service and at least one third for other providers of linear audiovisual media services.

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In the time slot from 6pm to 11pm, the concessionaire of the public radio, television and multimedia service reserves at least 12 per cent of broadcasting time, excluding the time allocated to news, sports events, television games, advertising, teletext and teleshopping services, for cinematographic and audiovisual works of fiction, animation, original documentaries of Italian origin, wherever produced.

Concerning foreign programmes, article 26 of Decree No. 208/2021 sets out that the authorisation released to the local broadcaster association includes the right to transmit in Italy foreign companies' programmes for a maximum of 12 hours per day. In the case of interconnection with satellite channels or foreign television broadcasters, this shall not take more than 50 per cent of the maximum time provided for the interconnection.

Advertising

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

Article 43 et seq of Decree No. 208/2021 regulates broadcast media advertising.

As a general rule, the advertising shall not be hidden or subliminal and shall maintain a sound level not exceeding that of the programmes. Moreover, the advertising shall be respectful of human dignity and diversity and shall not encourage behaviour that is harmful to the safety and protection of the environment. There are specific items for which advertising is forbidden, such as cigarettes, medicines and gambling, and also specific protection for minors.

Pursuant to article 44, the advertising shall be clearly identifiable and recognisable from the editorial content. News, feature films and films for television (excluding series, serials and documentaries) shall be interrupted by spots no more than every 30 minutes.

The broadcasting of advertising messages by the concessionaire of the public radio, television and multimedia service, with reference to each individual channel, may not exceed 7 per cent, and from 1 January 2023, the limit is set at 6 per cent, in the time slot between 6am and 6pm and in the time slot between 6pm and midnight, and 12 per cent in each hour. The advertising slots of pay TV broadcasters shall not exceed a daily threshold of 15 per cent.

Regarding radio advertisements carried out by non-public broadcasters, the hourly threshold is equal to 20 per cent for national broadcasting, 25 per cent for local broadcasting and 10 per cent for national or local broadcasting by European broadcasters.

Online advertising is regulated by Legislative Decree No. 206/2005 (the Consumer Code) and Legislative Decree No. 70/2003 (on electronic commerce). The Consumer Code specifically prohibits unfair trade practices, as well as misleading and aggressive marketing practices, while electronic commerce, identifies some information that the information society service provider must provide as well as the minimum requirements that any advertisement operator and any person making an online advertisement must comply with.

It is provided that – in addition to the information requirements laid down for specific goods and services – commercial communications that are part of or constitute an information society service, must include, from the first time they are sent, clearly and unambiguously, a specific statement aimed at highlighting that:

- it is a commercial communication;
- the natural or legal person on whose behalf the commercial communication is made;
- it is a promotional offer such as discounts, premiums or gifts and the conditions for accessing it; and
- it is a promotional competition or game, if allowed, and the conditions for participation.

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?

No regulations specify a basic package of programmes that must be carried by operators' broadcasting distribution networks. However, under article 13, paragraph 4 of Decree No. 208/2021, broadcasters providing contents of 'particular value' shall have privileged access to the digital broadcasting network. Under Resolution No. 253/2004, contents of 'particular value' at the national or a local level are those containing, inter alia, a high educational value, news and facts, socio-economic, cultural and political context, improvement of the relationship between citizen and the public administration.

No particular mechanism is provided to finance this kind of obligation.

Regulation of new media content

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

Italian Legislative Decree No. 44/2010, deriving from Directive 2007/65/EC, has modified, inter alia, the provision of the audiovisual non-linear services (video on demand). It has introduced a minimum legal standard applicable to audiovisual linear services as well as to audiovisual non-linear services (eg, concerning the protection of minors and prohibition of hidden advertising). However, some specific provisions shall not apply to audiovisual non-linear services. The main example concerns advertising. Because the audience may easily avoid advertising, the daily threshold for the audiovisual non-linear advertising spots does not apply. Also, broadcasters may freely choose where to insert advertising spots.

Decree No. 208/2021, moreover, has implemented a specific regulation for the video-sharing platform services. Pursuant to article 41, paragraph 7 of Decree No. 208/2021, the supervisory Authority (AGCOM) may restrict the free circulation of user-generated programmes and videos that are conveyed by a video-sharing platform whose provider is located in an EU member state and are directed to the Italian public, to protect the freedom of expression, prevent discrimination and hate speech.

Further, Decree No. 208/2021 provides that all the providers of media services (including those through video-sharing platforms) have to comply with the provisions for the protection of minors laid down in the Media and Minors Self-Regulation Code.

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 procedure in Italy started in October 2008. The complete switchover from analogue to digital television in Italy occurred on 4 July 2012.

The rules and procedure for the reallocation of radio frequencies freed up by the switchover were contained in Resolution No. 550/12/CONS of the Authority. The television frequencies have been reallocated through the principle of the 'higher economic offer'. In particular, the resolution provided for the allocation of 21 national multiplexes, which enable various signals to be combined into a common flow of data and the transmission of several digital terrestrial television services simultaneously. It was, in addition, provided that, at the end of the selection procedure, no operator could obtain more than five national multiplexes.

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With two decisions dated 26 July 2017 (*Europa Way* and *Persidera*), the CJEU has ruled that the Italian switchover from analogue to digital terrestrial television was violating EU laws by failing to allocate one multiplex for each analogue channel.

Moreover, Italy has set a deadline of 30 June 2022 for the transition imposing that all TVs must gradually leave the frequencies allocated to telephone companies and can abandon Mpeg-2 video encoding and, to save bandwidth, broadcast their programmes in Mpeg-4 encoding.

Subsequently, the switchover to the new digital terrestrial television will get underway with the second phase from 2023, when all Italian regions will switch from DVB T to DVB T2, the second-generation digital TV standard.

Digital formats

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

No specific regulations restrict the use of spectrum by broadcasters.

As a general principle, broadcasters shall ensure efficient use of the radio spectrum (article 50 of Decree No. 208/2021).

This means that they shall minimise the environmental impact, avoid risks to human health, and ensure that there is no interference with other broadcasters' 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?

Under article 5, paragraph 1 of Decree No. 208/2021, the Italian media services system shall promote the media plurality, forbidding the creation or maintenance of positions against the pluralism and ensuring the transparency of broadcasters' corporate assets (eg, establishing that the same person, or persons in a relationship of control or connection between them, may not at the same time be authorised to provide digital radio media services at the national and local level). Article 51 sets out the principle that it is forbidden to create dominant positions detrimental to pluralism and it also specifies the rules for the assessment by the Authority.

Key trends and expected changes

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

The European Union has implemented the draft law on the Digital Services Act (DSA) that imposes greater responsibility on big tech for illegal or harmful content circulating on their platforms. The DSA aims to protect the users online and to ensure the freedom of expression. The major providers of such platforms shall be obliged to evaluate risks within their systems for public interests, fundamental rights, safety and public health. The DSA shall apply to all online intermediaries operating in Europe, introducing graduated obligations based on the nature of the services and proportionate to the number of users, for balancing user protection with market and innovation needs.

In its judgment of 25 November 2021 in Case C-102/20, the CJEU intervened in a case concerning the commercial practice of inbox advertising: between the need to protect users and the need to ensure fair competition between companies. A German company has been accused by a competitor of unfair competition for distributing advertisements consisting of the display of image messages (banners) in the email inboxes of users of a free email service. The CJEU held that the practice used in such a case constituted the use of electronic mail likely to undermine the aim of protecting users from interference with their privacy by unsolicited communications for direct marketing purposes. The CJEU specified that the use of electronic mail for direct marketing purposes is admitted only if the addressee has first given his or her free, specific and informed consent. Therefore, it will be the referring court that has to ascertain whether consent to receive advertising messages was given by users. Moreover, as regards unfair commercial practices, the CJEU held that a practice consisting of the display of advertising messages in the inbox of a user of an email service, in a form similar to that of a real email message, may fall within the concept of 'repeated and unwelcome commercial solicitations'.

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?

The two main bodies vested with the powers to regulate the communications and media sectors are the Italian Communications Authority (the Authority) and the Ministry of Economic Development – Communications Department (the Ministry).

The Authority grants licences and authorisations for public broadcasting, regulates the relationship between telecoms companies and settles disputes between operators or between operators and end users.

The Ministry is responsible for receiving requests for general authorisations to provide electronic communications networks and services and for public broadcasting. It is also responsible for the approval of the national spectrum allocation plan.

While the Authority regulates both the communications and the broadcasting sector, the antitrust regulation pertains to the Italian Competition Authority (ICA). The ICA has exclusive competence over the enforcement of Italian competition rules in the telecoms and broadcasting sectors. The Authority and the ICA entered into an agreement on 22 December 2016 for defining the modalities of their cooperation.

Moreover, the Data Protection Authority is the authority responsible for supervising the compliance of telecom operators with Legislative Decree No. 101/2018 (the Data Protection Code).

Appeal procedure

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

Any act, decision or resolution of the Authority or the ICA may be appealed, also regarding the merit of facts, to the Regional Administrative Court of Lazio by any individual or legal entity that has been directly affected by such act, decision or resolution. The Regional Administrative Court of Lazio's judgment may be appealed to the Council of State.

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.

The idea of the creation of a Media Freedom Act (MFA) in Europe seems to become reality. In the roadmap of the EU Commission, a formal proposal by the MFA shall be implemented before the end of the year 2022. The proposal will aim to improve the framework for media regulation in Europe, through a strengthening of Directive 2010/13/EU (the

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Audiovisual Media Services Directive) on the provision of media and audiovisual services, last amended in 2018. The referred AVMS Directive, in fact, already contains provisions to protect independence in the information sector, but now with the implementation of the MFA, the aim is to maintain a healthy media system in the long term as a fundamental support for the protection of democracy in Europe.

With its decision on 24 February 2022, the Italian Antitrust Authority (AGCM) concluded the procedure regarding FiberCop's infrastructure access agreements by accepting the commitments proposed by Telecom Italia SpA (TIM), Fastweb SpA (Fastweb), FiberCop SpA (FiberCop), Tiscali Italia SpA (Tiscali), Teemo Bidco Srl (Teemo) and KKR & Co Inc (KKR). The story starts from the decision by TIM, Fastweb and KKR, announced in August 2020, to set up a joint venture (FiberCop) to deploy an ultra-broadband secondary network in Italy (namely, the section connecting street cabinets and the end user's premises) using fibre-to-the-home optical technology. On 29 January 2021, TIM submitted to the Communications Regulator (AGCOM) and simultaneously made public, a co-investment offer pursuant to article 76 of Directive (EU) 2018/1972 (the European Electronic Communications Code) to open up the possibility of financing FiberCop's infrastructure project to all market operators. In the course of the proceedings, the AGCM expressed concern that, as configured, the agreements relating to FiberCop would have reduced competition in the wholesale telecommunications markets without resulting in any real infrastructure for alternative operators. Under these agreements, alternative operators would have been discouraged from investing in the primary infrastructure and would have ended up buying the active services provided by TIM. The commitments imposed by AGCM at the end of the procedure, therefore, go in the direction of reducing barriers to customer acquisition in the wholesale fixed telecommunications market and favouring full infrastructure competition.

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Japan

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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?

The main laws that regulate the Japanese telecommunications industry are the Telecommunications Business Act, the Radio Act and the Wired Telecommunications Act. The Telecommunications Business Act stipulates secrecy of communications, entry and exit from the telecommunications business, regulations on charges and services, connection rules between carriers, a universal service system, etc. The Radio Act stipulates radio station licences, radio equipment, technical regulations conformity certification of specified radio equipment, radio operators, etc. The Wired Telecommunications Act stipulates the standards and use of wired telecommunications equipment. The regulatory agency for the telecommunications industry is the Ministry of Internal Affairs and Communications.

The major carriers in Japan's telecommunications business are Nippon Telegraph and Telephone Corporation (NTT) (including NTT EAST, NTT WEST and NTT DoCoMo), KDDI Corporation and Softbank Corp. Meanwhile, Rakuten Mobile, Inc has recently entered the mobile phone business.

The Foreign Exchange and Foreign Trade Act stipulates comprehensive restrictions on foreign ownership in Japanese corporations. The telecommunications business is also subject to foreign ownership restrictions under the Foreign Exchange and Foreign Trade Act, and if a foreigner acquires 1 per cent or more of the shares of a corporation in a national security-related industry, including the telecommunications business, prior notification to the government is required, in principle.

There is no comprehensive foreign ownership regulation in the Telecommunications Business Act, but NTT, which was originally a state-owned enterprise, has a communication network all over Japan, and has the largest market share among telecommunications carriers, is subject to foreign ownership regulations under the NTT Act. According to the NTT Act, it is prohibited for foreigners, foreign governments and foreign corporations to hold more than one-third of the voting rights of NTT Corporation (including indirect investment). It is also prohibited for foreigners to serve as officers of NTT and its regional companies, NTT EAST and NTT WEST.

Also, according to the Radio Act, foreigners, corporations represented by foreigners, corporations in which foreigners occupy more than one-third of officers, and corporations in which foreigners hold more than one-third of voting rights are not granted a radio station licence. However, radio stations of telecommunications carriers are not subject to foreign ownership regulations regarding radio station licences under the Radio Act.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

Business operators that provide services intermediating other persons' telecommunications, such as fixed phone companies, mobile phone companies, satellite phone service companies, internet service providers, email service providers and messaging service providers, must perform the entry procedure under the Telecommunications Business Act. The type of entry procedure depends on the scale of the telecommunications line facilities (eg, fibre optics and base stations). If a business operator installs telecommunications line facilities on a scale exceeding the threshold, the business operator must be registered after the screening process performed by the Ministry of Internal Affairs and Communications (MIC). If a business operator installs telecommunications line facilities on a scale below the threshold or does not install telecommunications line facilities (including over-the-top service providers), it only has to file a notification with the MIC. When a foreign business operator intends to be registered or make a filing as a telecommunications business operator, it must designate a domestic representative. The validity period and licence fee are not determined regarding the registration or notification of telecommunications services.

To establish and operate a radio station, a radio station licence from the MIC is generally necessary. To obtain the radio station licence, the applicant must first make an application to the MIC. If the applicant passes the document screening, the applicant obtains a provisional licence and constructs the radio station accordingly. If the radio station passes the inspection test after the construction, the applicant finally obtains a licence to operate the radio station. However, there are many exceptions to be exempted from or to simplify these procedures. For example, the applicant can obtain a radio station licence through simplified document screening procedures for certain radio equipment certified as complying with applicable technical standards.

The licence period, usage fee and use conditions of radio station licences are dependent upon the categories of radio stations. In Japan, while there is still no pure spectrum auction system, certain spectrum bands for the 5G have been recently allocated through the auction-like mechanism under which the evaluated price for the spectrum offered by the applicants is taken into account among other factors. A frequency is allocated for each type and purpose of wireless communications under the Frequency Allocation Plan made and published by the MIC. The frequency of each generation's mobile network and satellite networks are also allocated under the Frequency Allocation Plan.

As for public Wi-Fi services, registration or notification under the Telecommunications Business Act is necessary except for services ancillary to the original business of the operator or services that are not for profit. Obtaining a radio station licence for the establishment and operation of the Wi-Fi system is not required as long as the services are provided by using apparatuses that meet the technical standards

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under the Radio Act and the technical standards compliance mark is attached thereto.

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?

Any person who intends to establish a radio station under the Radio Act shall, in principle, obtain a radio station licence. Radio station licences specify certain matters such as the permitted use, the permitted frequency and antenna power, etc. As an exception, some wireless systems, such as 2.4 gigahertz-band wireless local area networks, are permitted to operate without a radio station licence under certain conditions. Radio station licences are not freely transferable or assignable; however, they can be succeeded in certain cases such as through mergers of corporations.

Ex-ante regulatory obligations

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

In the Telecommunications Business Act, most rules are ex-post regulations but there are some ex-ante regulations.

As for universal services (eg, fixed telephone) and services that are provided by using bottleneck facilities and cannot be sufficiently substituted by other services, the providers of such services must notify the MIC in advance regarding the fixed terms and conditions stipulating the service conditions including the price. Also, the price-cap regulation applies to the services that have particularly significant impacts on the interests of users.

Companies designated by the MIC as business operators establishing major networks are the targets for ex-ante regulations regarding their fixed terms and conditions stipulating the connection fees and the connection conditions to connect the networks to other business operators' networks (namely, prior authorisation by the MIC for the fixed terms and conditions regarding fixed telecommunications, and prior notification to the MIC for the fixed terms and conditions regarding mobile telecommunications). Further, the designated companies are obliged to keep accounts regarding the connection of networks.

Business operators that have dominant market positions (NTT EAST and NTT WEST for the fixed telecommunications market, and NTT DOCOMO for the mobile telecommunications market) are under special regulations such as a prohibition on the use or provision of information acquired concerning their business operations regarding the connection of networks and unreasonably preferential or disadvantageous treatment of specific business operators.

NTT is subject to special regulations under the NTT Act such as the authorisation procedure for its business plan and the obligation to submit its financial statements, considering that NTT took over the capital of Nippon Telegraph and Telephone Public Corporation, which had a monopoly on the installation of domestic phone lines in Japan until 1985.

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?

No general rules require either structural separation or functional separation between an operator's network and service activities. However, NTT EAST/WEST, which owns essential facilities, must implement certain functional separation, such as setting up firewalls between the network development and service development.

Universal service obligations and financing

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

Fixed phones, public phones and emergency calls are deemed universal services. To allocate part of the costs of universal services, contributions named universal service fees are collected from mobile phone companies, fixed phone companies and internet protocol (IP) phone companies, and the contributions are distributed to NTT EAST and NTT WEST, who are the universal service providers. The amount of the contributions is between ¥2 to ¥3 per month per telephone number, and the contributions are passed on to the end users in most cases.

Broadband is not deemed a universal service at this time, but the MIC has proposed a bill designating wired broadband as a universal service, establishing a fund derived from universal services fees collected from broadband service providers and distributing the contributions to support the maintenance of broadband networks in underpopulated areas.

Number allocation and portability

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

Telecommunication numbers such as fixed phone numbers or mobile phone numbers are assigned to telecommunication service providers under the Telecommunication Number Plan outlined by the Minister of Internal Affairs and Communications. Any telecommunication service provider that intends to use telecommunications numbers shall, in principle, prepare a Telecommunication Number Use Plan and obtain an authorisation from the Minister of Internal Affairs and Communications. In the past, only major telecommunication service providers such as fixed network operators (FNOs) and mobile network operators (MNOs) were subject to regulation; however, the amendment to the Telecommunications Business Act in 2019 imposed regulations on telecommunication numbers upon not only FNOs or MNOs but also fixed virtual network operators (FVNOs) and mobile virtual network operators (MVNOs).

For local fixed phone numbers, bilateral number portability is scheduled to be achieved by 2025; but currently, only unilateral number portability from NTT EAST/WEST to other operators is performed.

Conversely, for mobile phone numbers, bilateral number portability between MNOs and MVNOs is currently required. Further, an amendment to the guidelines, which came into effect in 2021, has facilitated mobile number portability by, for instance, requesting number portability fees to be waived in general.

The MIC is also planning to introduce a one-stop system to facilitate mobile number portability, which currently requires procedures by both the origin service provider and the destination service provider.

Customer terms and conditions

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

When telecommunications business operators or their sales agencies conclude contracts with consumers of mobile phone services or fibre-to-home services, etc, they are obliged to explain the outline of the terms and conditions in advance and deliver a document clarifying the terms and conditions, and they are prohibited from misrepresenting and persistently soliciting, etc. Within an eight-day period, consumers can terminate contracts regarding mobile phone services or fibre-to-home

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services, etc, by only having to pay necessary costs such as usage fees until then and construction costs.

Also, the following are obliged to separate communication service fees and the price of a device and are prohibited from performing excessive enclosures such as prolonged minimum contract periods and expensive cancellation penalties (article 27-3 of the Telecommunications Business Act):

- MNOs;
- group companies of MNOs;
- MVNOs whose market shares exceed 0.7 per cent; and
- sales agencies of the above points.

The Ordinance for the Enforcement of the Telecommunications Business Act, which was amended in February 2022 and will come into effect on 1 July 2022, obligates telecommunications business operators to take measures enabling users to terminate contracts promptly and sets a maximum amount for cancellation penalties.

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?

Article 6 of the Telecommunications Business Act provides that:

> *Telecommunications business operators must not engage in unfair and discriminatory treatment concerning the provision of telecommunications services.*

Further, the behaviour of analysing packets regarding telecommunications for zero-rating services or bandwidth throttling may violate the secrecy of communications(Article 4 of the Telecommunications Business Act.)

The legality of controlling or prioritising the type or source of data delivered by internet service providers is judged by analysing whether such behaviour violates the aforementioned rules on a case-by-case basis.

Net-neutrality issues are being discussed in the Study Group on Network Neutrality held by the Ministry of Internal Affairs and Communications, and this study group published an interim report in April 2019.

Based on this interim report, the Guidelines on the Application of the Telecommunications Business Act for Zero-Rating Services were developed, and the Guidelines for the Interpretation of Bandwidth Control (in Japanese) were revised. These guidelines provide case-by-case analyses regarding whether or not zero-rating services and bandwidth control violate the Telecommunications Business Act.

Platform regulation

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

The Act Regarding the Improvement of Transparency and Fairness of Specified Digital Platforms was enacted on 27 May 2020 and came into force on 1 February 2021. This Act obliges platform service providers that have a high need to improve their transparency and fairness (Specified Digital Platforms) to disclose information regarding the terms and conditions of their transactions, establish procedures and systems to promote mutual understandings with their users who provide goods or services using the platforms and submit annual reports. Only online malls and application stores with especially high sales volumes are designated as Specified Digital Platforms at this time, but the government is planning to expand the subject of these regulations to large-scale digital advertising platforms.

Moreover, the Act Regarding the Protection of the Interests of Consumers Who Use Digital Platform for Transactions was enacted in 2021 and came into effect on 1 May 2022. This Act provides that the Minister of Consumer Affairs can request digital platform service providers like online malls to delete the exhibition of items that have significant misrepresentations in important points and that consumers can demand digital platform service providers to disclose information of sellers to the extent necessary to exercise claims (eg, claims for damages).

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?

There are no specific regulatory obligations that are particularly applicable to NGA networks.

The Japanese government provides subsidies to entities that intend to develop fibre optic in certain areas such as rural areas, to improve the spread of broadband access.

Moreover, to facilitate 5G, which was launched in 2020, the Japanese government provides special financial support, such as tax incentives, to carriers and vendors who intend to develop the 5G network. To be eligible for this special financial support, carriers or vendors must prepare a development plan and obtain approval from the government.

The MIC has proposed a bill designating wired broadband as a universal service, establishing a fund derived from universal services fees collected from broadband service providers and distributing the contributions to support the maintenance of broadband networks in underpopulated areas.

Data protection

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

Data protection in Japan is regulated by the Act on the Protection of Personal Information (APPI). The APPI is in line with the eight principles under the Organisation for Economic Co-operation and Development Guidelines and stipulates the acquisition and use of personal information, security management measures, provision to third parties, and the rights of individuals. The Personal Information Protection Commission (PPC) supervises the handling of personal information based on the APPI. Also, regarding the specific interpretation and operation of the APPI, the PPC has published guidelines on the protection of personal information (general rules, rules on the provision to third parties in foreign countries, rules on confirmation and recording obligations when providing to third parties, rules on pseudonymously processed information and anonymously processed information, rules on accredited personal information protection organisations) and frequently asked questions.

Also, regarding the protection of personal information in the telecommunications business, the MIC and the PPC have jointly published Guidelines for the Protection of Personal Information in the Telecommunications Business that stipulate the basic matters that telecommunications carriers should comply with to properly handle personal information, and the purposes of use, ensuring accuracy, retention period, safety management measures, and restrictions on the provision to third parties regarding personal information. The guidelines also stipulate the handling of information specific to

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the telecommunications business, such as communication history, usage details, caller information, location information and non-payer information.

Also, the Telecommunications Business Act (TBA) stipulates the prohibition of censorship of communications and secrecy of communications during the handling of telecommunications carriers.

Moreover, the MIC has proposed an amendment to the TBA, which includes the following new regulations regarding data protection:

- large-scale telecommunications service providers (including search engine operators and social media providers) must develop internal rules, publish their policies, conduct self-assessments, and appoint an executive manager to legally and properly handle user information; and
- when telecommunications service providers transmit user information externally, including via cookies, they must take any one of the following measures:
  - notifying the users of the transmission;
  - publishing information regarding the transmission;
  - obtaining consent from the users; or
  - providing an opt-out method.

Cybersecurity

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

The Basic Act on Cybersecurity stipulates Japan's basic policy on cybersecurity as well as the fundamental responsibilities of the national and local governments. Under the Basic Act on Cybersecurity, critical infrastructure operators, including certain telecommunications carriers, shall endeavour to voluntarily and proactively secure cybersecurity and to cooperate with cybersecurity measures implemented by the national and local governments.

Under the Telecommunications Business Act, telecommunications service operators shall have obligations to protect the secrecy of telecommunications, and to maintain and operate certain telecommunication facilities in compliance with the applicable technical standards established by the MIC. These technical standards include certain requirements for network security.

Moreover, the Economic Security Promotion Act was enacted on 11 May 2022. This Act stipulates a pre-screening system for the installation of critical infrastructure by important providers (including information and communications technology companies) and the consignment of the maintenance and management thereof.

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?

In the past, there was no specific law regulating big data, but this changed with the revision of the Act on the Protection of Personal Information (APPI) in 2015, which created a system for anonymously processed information. Under the revision, by applying a certain amount of anonymous processing to personal information so that a specific individual cannot be identified and personal information cannot be restored, it becomes possible to utilise it as big data. Also, the 2020 revision of the APPI, which came into force in April 2022, created a system for handling pseudonymously processed information. Under this new system, personal information may be utilised in house as big data if it has been processed such that a specific individual cannot be identified unless the data is collated with other information (eg, original data).

In 2016, the Basic Act on the Advancement of Public and Private Sector Data Utilisation was enacted, and the Basic Plan of Public-Private Data Utilisation was formulated under this Act. Currently, the smooth distribution of data is being encouraged through this legislation by promoting open data and the construction of a mechanism for individual involvement in data distribution.

After that, in 2018, the Unfair Competition Prevention Act was amended to clarify that illegal acquisition, use and disclosure of certain big data are subject to injunction and compensatory damages. In 2018, the revision of the Copyright Act clarified that certain use of big data does not infringe copyright under certain circumstances, and the use of big data is being promoted. Also, the utilisation of big data is being promoted in various fields, such as promoting the utilisation of big data in the medical field through the Next Generation Medical Infrastructure Act. On the other hand, in 2019, the Japan Fair Trade Commission published the Idea of Antitrust Act Regarding Abuse of Dominant Bargaining Position in Transactions Between Digital Platform Operators and Consumers who Provide Personal Information, etc, to ensure the proper use of big data from the perspective of the Antitrust Act.

Data localisation

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

There are no general laws or regulations requiring data to be stored in Japan. Generally speaking, the APPI provides restrictions on the cross-border transfer of personal data. Specifically, a business operator that intends to transfer personal data to any third party overseas, is required, in principle, to obtain the prior consent of the data subject. As an exception, a business operator can transfer personal data to a third party outside of Japan without the data subject's prior consent if either:

- a receiving country is recognised by the Personal Information Protection Commission as having a sufficient level of protection (currently, only the EU member states, Iceland, Liechtenstein, Norway and the United Kingdom are recognised); or
- the third party who is a recipient of personal data has implemented protective measures at the same level as required by the APPI.

The recent amendment to the APPI, which came into effect on 1 April 2022, has enhanced the regulations on the cross-border transfer of personal data. For example, a business operator who intends to obtain prior consent from the data subject for the cross-border transfer of his or her personal data must provide the data subject with certain information such as the name of the receiving country and an outline of personal data laws of such receiving country.

Key trends and expected changes

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

The MIC has proposed an amendment to the Telecommunications Business Act. The Diet is currently deliberating the bill.

The main points of the amendment are as follows:

- wired broadband services are designated as universal services;
- large-scale telecommunications service providers (including search engine operators and social media providers) must develop internal rules, publish their policies, conduct self-assessments and appoint an executive manager to legally and properly handle user information;
- to decrease the fees paid by FVNOs/MVNOs to FNOs/MNOs, major FNOs/MNOs must provide wholesale services to FVNOs/MVNOs and provide necessary information regarding the wholesale

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services as requested by FVNOs/MVNOs, unless there is a good reason for not doing so; and
- when telecommunications service providers transmit user information externally, including by using cookies, they must take any of the following measures.
  - notifying the users about the transmission;
  - publishing information regarding the transmission;
  - obtaining consent from the users; or
  - providing an opt-out method.

The MIC has also proposed an amendment to the Radio Act. The Diet is currently deliberating the bill.

The main points of the amendment are as follows:
- to accelerate frequency reallocation, the authority of the Radio Regulatory Council is enhanced;
- the frequency reallocation systems of mobile phone operators, etc, are established; and
- to accelerate research and development (R&D) for the realisation of 6G, etc, the delivery of R&D subsidies is added as a purpose of use for collected spectrum usage fees.

Moreover, the MIC is discussing a drastic re-examination of the spectrum allocation system. including the introduction of a system like a spectrum auction.

The Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Sender stipulates the right to demand the disclosure of identification information of a creator of an illegal social media post, etc (eg, defamation, privacy invasion and piracy), was amended in 2021. To speed up disclosure procedures, the amended Act introduces a new legal procedure that combines the procedure for the disclosure of internet protocol addresses, etc, from social media operators, etc, and the procedure for the disclosure of names, etc, from telecommunications service providers, etc. The amended act will come into force in autumn 2022.

MEDIA

Regulatory and institutional structure

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

The main laws that regulate the Japanese media industry are the Broadcasting Act, the Telecommunications Business Act, the Radio Act and the Wired Telecommunications Act. The regulatory agency for the media industry is the Ministry of Internal Affairs and Communications (MIC).

The Broadcasting Act, which is central to the broadcasting field regulations, stipulates editing standards for broadcast programmes, the establishment and operation of NHK (Japan's public broadcaster), certification and registration of broadcasters, and restrictions on foreign ownership, among other things. In Japan, broadcasting and communication are distinguished and different regulations are applied. Broadcasting in Japan includes terrestrial television broadcasting, satellite television broadcasting (broadcast satellite and communications satellite), wired television broadcasting, wireless and wired radio broadcasting and internet protocol multicast broadcasting, all of which are subject to the Broadcasting Act. However, general internet programme distribution, which is typically on-demand streaming, is not subject to the Broadcasting Act and may be subject to information and communication regulations such as the Telecommunications Business Act, depending on the circumstances. In the field of communications, the secrecy of communications is guaranteed, but in the field of broadcasting, diversity of programmes and political neutrality are required due to their public nature.

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?

Under the Broadcasting Act, any person intending to conduct basic broadcasting operations must obtain approval from the Minister of Internal Affairs and Communications after proving that it is not:

1 a person who does not have Japanese nationality;
2 a foreign government or its representative;
3 a foreign corporation or organisation;
4 a corporation or organisation, any specified officer of which is a person outlined in (1) to (3); or
5 a corporation or organisation in which 20 per cent or more of its voting rights are held by a person outlined in (1) to (3).

Additionally, for certain types of broadcasting, a basic broadcaster is not allowed to permit any person outlined in (1) to (3) to indirectly hold 20 per cent or more of its voting rights through another Japanese entity (hereinafter referred to as 'Indirect Foreign Ownership Disqualification').

If the basic broadcaster violates this regulation, the Minister shall revoke the approval; provided, however, that the Minister does not have to revoke the approval during the remainder of the valid period of the approval if it is deemed necessary taking the circumstances into account.

Further, a basic broadcaster that is a company that has issued listed shares may refuse to list or record the name and address of a shareholder in its shareholder registry if the transfer of its shares would result in a violation of the foreign ownership restrictions listed above. Moreover, if a basic broadcaster falls under the Indirect Foreign Ownership Disqualification due to an increase of indirect control via another Japanese entity by the persons outlined in (1) to (3), such Japanese entity is deemed as not holding voting rights in the basic broadcaster to the extent of exceeding the limit.

There are similar restrictions under the Radio Act, and a radio station licence will not be granted to any person outlined in (1) to (3) above, or a corporation or organisation if:
- its representative or one-third or more of officers (for certain types of broadcasting, its specified officers) are any person outlined in (1) to (3); or
- one-third (for certain types of broadcasting, one-fifth) of its voting rights are held by any person outlined in (1) to (3).

No specific foreign ownership restrictions apply to newspapers, but it is restricted in practice because most publishers of daily newspapers have restricted the assignment of their shares through their articles of incorporation under the Act on Restriction on Transfer of Shares in Stock Companies whose Business Purpose is the Publication of Daily Newspapers.

There is no general regulation of cross-ownership between broadcasters and other media outlets such as newspaper publishers, while it is still prohibited for one group company to own all of the terrestrial television broadcasting, the radio broadcasting and the newspaper in the same area if there are no other mass media in such area.

As of 25 May 2022, the Diet is currently discussing the amendment to the Broadcasting Act and the Radio Act, which proposes

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the reinforcement of the monitoring system for foreign ownership of broadcasters. Among other things, this bill proposes:

- an applicant for a broadcasting service or radio station licence must declare certain items regarding the Indirect Foreign Ownership Disqualification, including the amount of ownership of such applicant by foreign entities, in its application;
- a broadcaster must notify regulators of any changes in certain items regarding the Indirect Foreign Ownership Disqualification, including the amount of ownership of such applicant by foreign entities; and
- the regulatory authority may give a broadcaster an opportunity to cure the Indirect Foreign Ownership Disqualification before revoking its licence, depending on the circumstances.

Licensing requirements

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

Any person who intends to conduct broadcasting must, in principle, obtain both the licence of the broadcast station under the Radio Act and the approval under the Broadcasting Act (in the case of a basic broadcaster) or registration (in the case of a general broadcaster).

Under the Radio Act, a person who has submitted an application stating the necessary matters shall be granted a radio station licence if he or she satisfies certain requirements such as:

- the application does not violate the foreign ownership restrictions;
- the construction design conforms to the technical standards;
- the frequency allocation is possible; and
- the applicant has sufficient financial basis and technical capability to maintain the service (in the case of a basic broadcaster).

Depending on the type of radio station, the size of the basic transmitter, and the application method, the application fee for the television broadcasting station is ¥8,600 to ¥167,800. A registration and licence tax is also imposed separately upon registration and the spectrum use fees are charged annually. The standard processing period for licences for radio stations is not specified and is determined on a case-by-case basis.

Approval under the Broadcasting Act is granted to a person who has submitted an application stating necessary matters after satisfying requirements such as:

- not violating foreign ownership restrictions or the media plurality rules ;
- having the financial basis and technical capability sufficient to maintain the service; and
- having the broadcasting facilities conform to the technical standards.

On the other hand, registration is granted to a person that submits a written application to the Minister of Internal Affairs and Communications, except where there are grounds for refusal of registration, such as the fact that the approval or registration has been revoked or the person has been charged with a violation of the Radio Act or the Broadcasting Act in the past.

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?

While there are no direct regulations, NHK must contribute to enhancing international goodwill and developing economic exchange with foreign countries by promoting accurate information on Japan through introducing the culture, industry and other factors surrounding Japan, etc, in the broadcasting or editing of programmes provided to foreign audiences.

Moreover, under the Broadcasting Standards outlined by the Broadcasting Ethics and Improvement Organisation (BPO), private broadcasting companies must consider differences in historical context, national situation, tradition and customs, etc, when they refer to foreign programmes or cover foreign situations.

Advertising

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

In general, advertising in Japan is regulated under the Act against Unjustifiable Premiums and Misleading Representations (AUPMR) that restricts any misleading representation (which portrays the relevant good or service as being significantly superior to that of the actual goods or services, or, contrary to the facts, significantly superior to those of other entrepreneurs, etc) being made to general consumers.

Under the Broadcasting Act, a broadcaster must ensure that recipients of the broadcasts can clearly identify advertising broadcasts as advertisements. Additionally, a basic broadcaster shall not include advertisements in any educational programmes for schools if it is deemed that they would impede school education. Also, NHK and the Open University of Japan (an accredited educational institution utilising broadcasting media to provide a wide range of people with learning opportunities) must not broadcast advertisements for any third party's products and services.

On top of that, the Broadcasting Standards outlined by the BPO set various voluntary standards such as:

- any representations must be based on facts, and also be clear and plain;
- subliminal methods shall not be used; and
- the proportion of advertisements shall be below a certain level.

Online advertising is subject to the regulations under the AUPMR and the Act on Specified Commercial Transactions. The Fair-Trade Commission has issued a report titled Problems and Points of Concern under the AUPMR Concerning Representations in Business-to-Consumer E-Commerce, which summarises the problems specific to online advertising.

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?

In Japan, subscription rates for cable TV are relatively low and there are therefore no general rules like must-carry obligations. As a side note, the relay broadcasting functioning as a gap filler in rural areas with poor reception plays a similar role. Currently, there are many cases where local governments become gap fillers. Fees shall not be charged for the viewing of relay broadcasts for measures against poor reception. Additionally, a basic broadcaster must endeavour to ensure that the broadcasted programmes are receivable as broadly as possible within the broadcasting area. In the event of a disaster such as a storm, heavy rain, flood, earthquake or large-scale fire, basic broadcasters shall broadcast programmes to prevent the occurrence of such disasters or to reduce the damage.

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Regulation of new media content

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

Generally speaking, on-demand streaming services on the internet are excluded from the definition of 'broadcasting' under the Broadcasting Act, and the Act does not apply.

With the revision of the Broadcasting Act in 2011, broadcasting by wired and wireless means other than basic broadcasting was broadly defined as general broadcasting. Basic broadcasting requires authorisation to be obtained from the Minister of Internal Affairs and Communications and strict requirements such as not violating foreign ownership restrictions and securing the facilities of basic broadcasting stations, etc, apply. On the other hand, general broadcasting merely requires registration from the Minister. An applicant can be registered except where it has violated the Broadcasting Act and regulations or other disqualifications are found, and the requirements are relatively lenient.

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 nationwide switchover from terrestrial analogue television to terrestrial digital television was completed on 31 March 2012, and the switchover from satellite analogue television to satellite digital television was completed on 24 July 2011.

Part of the very high-frequency bands that had once been allocated to terrestrial analogue television was allocated to the mobile multimedia broadcasting service upon the switchover to digital television; however, the mobile multimedia broadcasting service is currently out of service. In the same spectrum band, advanced broadcasting and communication services are being examined.

Further, part of the ultra-high frequency bands that had once been allocated to terrestrial analogue television is currently allocated to mobile phone services. Since August 2020, it has been permitted to operate 5G mobile communication systems in the spectrum bands that were initially allocated for 4G mobile communication systems.

Digital formats

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

The MIC has established technical standards of transmission for various types of broadcasting including digital television that provide certain technical requirements, such as multiplexing, scrambling and video resolution.

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?

The media plurality rules prohibit the granting of basic broadcaster authorisation to the following entities, in principle:

- an existing basic broadcaster;
- a person who has control over another basic broadcaster; or
- a person controlled by any of the foregoing.

In other words, one person cannot conduct multiple basic broadcasting activities. However, there are some exceptions to this principle, which are outlined in the Ministerial Ordinance on Definitions of Specific Officers and Controlling Relationships Related to the Business of Basic Broadcasting and on Special Provisions of the Standards of Freedom of Expression, and certified broadcasting holding companies have also been allowed. Cross-ownership between broadcasters and other media such as newspaper publishers is not regulated, while it is still prohibited for one group company to own all of the terrestrial television broadcasting, the radio broadcasting and the newspaper in the same area if there are no other mass media in such area.

Key trends and expected changes

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

On 1 May 2021, the MIC revoked the approval of one satellite broadcaster, as its foreign ownership ratio had exceeded 20 per cent at the time such approval was granted in 2017. Moreover, it was also pointed out that one of the largest groups of basic broadcasters in Japan had once violated the foreign ownership restrictions. However, this was not a violation of the foreign ownership regulations at the time of approval, and the approval was not revoked because the violation of foreign ownership restrictions has now been resolved. The MIC has instructed all basic broadcasters and their holding companies to report on their compliance with the foreign ownership restrictions. In response, the Diet is discussing an amendment to the Broadcast Act and Radio Act as of 25 May 2022. Among other things, the bill proposes:

- an applicant for a broadcasting service or radio station licence must declare certain items regarding the Indirect Foreign Ownership Disqualification, including the amount of ownership of such applicant by foreign entities, in its application;
- a broadcaster must notify regulators of any changes in certain items regarding the Indirect Foreign Ownership Disqualification, including the amount of ownership of such applicant by foreign entities; and
- the regulatory authority may give a broadcaster an opportunity to cure the Indirect Foreign Ownership Disqualification before revoking its licence, depending on the circumstances.

In Japan, under the Broadcasting Act, all persons who have installed receiving equipment that can receive NHK broadcasts are obliged to execute a contract with NHK for receiving such broadcasts. In a case where a plaintiff who had set up a television set that was modified to be unable to access NHK sought a judgment declaring that he or she was not obligated to subscribe to NHK, the plaintiff won the case in the first instance at the Tokyo District Court. The court stated that the individual had no obligation to execute a contract, but the Tokyo High Court recognised the individual's obligation to subscribe and NHK won the case on appeal.

The Cabinet previously approved a bill to amend the Broadcasting Act, which enables NHK to collect extra fees from households that do not pay fees without reasonable grounds and requires NHK to use the annual surplus as a source of funds for lowering the fees. However, the above-mentioned violation of foreign ownership restrictions affected the bill, and it was therefore suspended. In 2022, a new bill that encompasses not only the viewing fee rules reforms proposed in 2021 but also the foreign ownership rules reforms was resubmitted to the Diet. On 25 May 2022, the bill was passed by the House of Representatives but is still under discussion in the Senate.

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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?

The Ministry of Internal Affairs and Communications (MIC) regulates the communications and media sectors. The MIC also regulates the broadcasting sectors. The antitrust area is regulated by the Fair Trade Commission (FTC) under the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (the Antimonopoly Act).

There are no specific mechanisms to avoid conflicting jurisdiction; however, to ensure the consistent application of competition and sectoral regulation, the MIC and the FTC have jointly published the Guidelines for Promotion of Competition in the Telecommunications Business Field since 30 November 2001. These guidelines have been periodically revised, and the latest version of these guidelines was issued on 18 December 2020. These guidelines provide for acts that pose a problem under the Antimonopoly Act or the Telecommunications Business Act and actions that businesses are encouraged to take from the perspective of further promoting competition, etc.

Appeal procedure

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

A person who wants to challenge a disposition by the MIC under the Radio Act or the Broadcasting Act (eg, refusal or revocation of a licence of a radio station or broadcasting services) must first submit a request for review to the Minister of Internal Affairs and Communications (the Minister). Upon receipt of a request for review, the Minister shall, in principle, refer the case to the Radio Regulatory Commission that shall commence a hearing within 30 days of the date of receipt of the request for review. Not only the petitioner but also approved interested parties may attend the hearing. The petitioner and approved interested party are guaranteed the opportunity to appoint an attorney, appear at the hearing, make statements and submit evidence. The Minister shall decide on the request for review under an opinion of the Radio Regulatory Commission within seven days from the receipt of the opinion. Any person who is dissatisfied with the decision of the Minister may file an action for revocation of the decision before the Tokyo High Court. In principle, the court shall be bound by the facts found by the Radio Regulatory Commission.

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.

Nippon Telegraph and Telephone Public Corporation, which had been a public company monopolising the domestic telecommunications market, was privatised as Nippon Telegraph and Telephone Corporation (NTT) in 1985. The mobile telecommunications business of NTT was separated as NTT DOCOMO based on the governmental policy of 1992, and NTT and NTT DOCOMO then performed their own businesses as publicly listed companies since such time; however, NTT has now acquired all of the shares in NTT DOCOMO through a take-over bid, and NTT DOCOMO has become a wholly owned subsidiary of NTT.

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Given that telecommunications companies, especially mobile phone carriers, expressed concerns related to fair competition issues caused by the acquisition, the MIC held review conferences and indicated its policy to designate NTT DOCOMO as a business operator with specific affiliations of NTT EAST and NTT WEST and to prohibit NTT from appointing the same person as a director of those companies and treating other telecommunication business operators in a more disadvantageous manner regarding business related to the connection of networks. The MIC also indicated its policy of continuing to pay close attention to the possible issues regarding fair competition caused by the acquisition and to review the competition rules appropriately if a problem is recognised.

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Mexico

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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?

On 14 July 2014, the new Federal Telecommunications and Broadcasting Law and the new Law for the Public Broadcasting System of the Mexican State were published in the Official Mexican Gazette.

The Federal Telecommunications and Broadcasting Law and the Law for the Public Broadcasting System of the Mexican State supersede the previously enacted Federal Telecommunications Law and the Federal Radio and Television Law. Also, any provisions in the Law on General Communications that conflict with those in the Federal Telecommunications and Broadcasting Law will no longer be in effect.

The issuance of the new telecommunications and broadcasting legal framework derives from the constitutional reform published in the Official Mexican Gazette on 11 June 2013. This reform created the Federal Telecommunications Institute (FTI) as an autonomous public agency, independent in its decisions and function, with its own legal status and resources, to regulate and promote competition and efficient development of the telecommunications and broadcasting sectors.

The FTI is responsible for the regulation, promotion and supervision of the use, enjoyment and exploitation of the radio spectrum, orbital resources, satellite services, public telecommunication networks, and broadcasting and telecommunications services, and has the authority to regulate access to active and passive infrastructure, as well as to other essential resources related to such industries.

The FTI, which supersedes the previous Federal Telecommunications Commission, is the authority in terms of antitrust matters in the broadcasting and telecommunications sectors, for which it shall exercise the powers, outlined in the Mexican Constitution, the Federal Telecommunications and Broadcasting Law and the Federal Competition Law.

According to the Federal Telecommunications and Broadcasting Law, the FTI may issue, among others, administrative regulations, licences and authorisations on telecommunications and broadcasting matters and decide on their renewal, modification or revocation, as well as authorising assignments or change of control, title-holding or operation of the business entities related to such licences and authorisations. The Ministry of Communications and Transportation shall issue non-binding technical opinions on the above-mentioned matters.

The Mexican Constitution and the Foreign Investment Law outlined that direct foreign investment is allowed up to 100 per cent for telecommunications and satellite services, and up to 49 per cent for broadcasting services, subject to a standard of reciprocity.

The United States–Mexico–Canada Agreement (USMCA), which entered into full force and effect on 1 July 2020, and replaced the North American Free Trade Agreement; the new provisions contemplated in the USMCA intend to promote the entrance of new operators into the Mexican market for purposes of promoting market competition that will result in an improvement in the quality of telecommunication services in Mexico.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

The Federal Telecommunications and Broadcasting Law sets forth the current licensing and authorisation regime, which consists of a sole licence, licence to use, enjoy or exploit frequency bands of the radio spectrum, licence for the occupation and exploitation of orbital resources, and authorisations.

A sole licence shall be required to provide all kinds of telecommunications and broadcasting public services including public Wi-Fi services. The sole licence may be granted for commercial, public, private or social use, for a term of up to 30 years and may be extended for up to equal terms. Statutorily, the FTI shall analyse and assess the documents submitted for this application within a term of 60 calendar days, and the FTI may request additional information when necessary. Once such a term has expired and all requirements have been met, according to the FTI, the sole licence shall be granted.

The Federal Telecommunications and Broadcasting Law outlines the current licensing and authorisation regime, which consists of a sole licence, licence to use, enjoy or exploit frequency bands of the radio spectrum, licence for the occupation and exploitation of orbital resources, and authorisations.

A sole licence shall be required to provide all kinds of telecommunications and broadcasting public services including public Wi-Fi services. The sole licence may be granted for commercial, public, private or social use, for a term of up to 30 years and may be extended for up to equal terms. Statutorily, the FTI shall analyse and assess the documents submitted for this application within a term of 60 calendar days, and the FTI may request additional information when necessary. Once such a term has expired and all requirements have been met, according to the FTI, the sole licence shall be granted.

On 25 November 2013, the Mexican government published an action plan called Estrategia Digital Nacional to provide public broadband internet access through certain programmes, including the Mexico Conectado programme. Generally, the licence to provide such public Wi-Fi services shall be granted through a public bidding process.

The licence to use, enjoy or exploit frequency bands of the radio spectrum for a determined use and the occupation and exploitation of orbital resources, shall be granted for a term of up to 20 years and may be extended for up to equal terms. When the exploitation of the services subject to such licence requires a sole licence, it may be granted in the same administrative act.

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The licence for the use, enjoyment or exploitation of the radio spectrum for commercial, and in some cases, for private use, shall only be granted through a public auction.

The radio spectrum licences for public or social use shall be granted through direct allocation for a term of up to 15 years and may be extended for up to equal terms. This licence shall not be for profit purposes, and licensees shall not share the radio spectrum with third parties. Upon meeting the requirements of this application, the FTI shall resolve accordingly within a term of 120 business days after submitting the application.

Authorisation from the FTI is required to:

- incorporate and operate or exploit a telecommunications service provider without licensee status;
- install, operate or exploit terrestrial stations to transmit satellite signals;
- install telecommunications and broadcasting equipment that crosses the national borders;
- exploit landing rights; and
- temporarily use spectrum bands for diplomatic visits.

The installation and operation of transmitting earth stations do not require any type of authorisation. These authorisations shall be valid for a term of up to 10 years and may be extended for up to equal terms; the process to obtain such authorisation shall be resolved no later than 30 business days after submitting the application. Once this period expires with no resolution from the FTI, the authorisation shall be considered as granted.

According to the Federal Telecommunications and Broadcasting Law, current licensees may obtain authorisation from the Institute to provide additional services to those indicated in the original licence or to migrate to a sole licence.

The applicable payable fees regarding the licensing and authorisation regime are the following:

- a sole licence to provide all kinds of telecommunications and broadcasting public services, 22,282.16 Mexican pesos, and for its renewal, 9,858.24 pesos;
- a licence to use, enjoy or exploit the radio spectrum for a determined use or for the occupation and exploitation of orbital resources, 36,302.38 pesos, and for its renewal, 16,497.59 pesos;
- authorisation to exploit landing rights, 11,958.20 pesos, and for its renewal, 6,778.50 pesos;
- authorisation to incorporate and operate or exploit a telecommunications service provider without licensee status, 7,708.39 pesos, and for its renewal, 4,236.54 pesos;
- authorisation to install, operate or exploit earth stations to transmit satellite signals, 4,605.63 pesos, and for its renewal, 3,529.54 pesos;
- migrating to a sole licence, 14,827.88 pesos; and
- authorisation to provide an additional service to those indicated in the original licence that use the radio spectrum, 24,621.33 pesos, and that do not use the radio spectrum, 9,002.26 pesos.

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?

Spectrum licences granted for commercial or private use shall contain, among other things, the permitted frequency band subject to the licence, usage terms and geographic coverage zone where they shall be used, enjoyed or exploited. Only the spectrum licences granted for commercial or, in some cases, private use, may be assigned to third parties with prior authorisation from the FTI. Licensed spectrum is generally not tradable.

Ex-ante regulatory obligations

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

The public telecommunications network licensees shall, among others:

- interconnect, directly or indirectly, their networks at the request of other licensees, and shall refrain from performing acts to delay, obstruct, or cause service inefficiency;
- offer and allow effective number portability;
- refrain from charging long-distance communications to national destinations;
- provide non-discriminatory service to the public; and
- refrain from establishing contractual or any other type of barriers to prevent other licensees from installing or accessing telecommunications infrastructure in shared real estate properties.

Licensees of public telecommunications networks providing mobile services may freely sign agreements regarding visiting user services; the execution of such agreements shall be mandatory to preponderant economic agents in the telecommunications sector or agents with substantial power (as those terms are defined hereinafter).

Also, the Federal Telecommunications and Broadcasting Law outlines that public telecommunications network licensees shall adopt a transparent approach to guarantee interconnection and interoperability of their networks with other licensees, on a non-discriminatory basis.

The FTI is vested with the authority to determine the existence of preponderant economic agents in the broadcasting and telecommunications sectors, and to impose the measures deemed necessary to allow competition and free-market participation. These measures may include, among others, service offer and quality, exclusive agreements, usage limitations on telecommunications terminal equipment, asymmetric regulation on tariffs and network infrastructure, including unbundling of essential resources and accounting, functional or structural separation of such agents.

The FTI shall define economic agents who have, directly or indirectly, national market participation of more than 50 per cent in telecommunications and broadcasting services, as preponderant. Market participation shall be measured by the number of users, audience, network traffic or capacity used.

Further, the FTI shall declare whether an economic agent has substantial power in telecommunications and broadcasting relevant markets, under the procedure established in the Federal Competition Law.

Also, the FTI is empowered to declare, at any time, preponderant economic agents, as well as economic agents with substantial power in any of the relevant markets of the telecommunications and broadcasting sectors.

Preponderant economic agents in the telecommunication sector or agents with substantial power shall be subject, among other things, to the following obligations:

- to register with the FTI a list of unbundled interconnection services;
- to submit before the FTI at least once a year;
- to separate accounting and cost-accounting of interconnection services; and
- not to carry out practices that prevent or limit the efficient use of infrastructure devoted to interconnection.

To promote competition, the FTI has the authority to impose specific obligations and limitations on agents with substantial power on matters regarding information, quality, rates, commercial offers and billing.

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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?

Structural and functional separation has been introduced in the Federal Telecommunications and Broadcasting Law, thus the FTI may impose measures to promote competition in such sectors, including asymmetric regulation, such as unbundling of essential resources and functional or structural separation of preponderant economic agents.

The Law defines 'unbundling' as the separation of physical elements, including fibre optic, technical and logical, functions or services of the local networks of the preponderant economic agent in the telecommunications sector, or the agent with national substantial power in the relevant market of access services to end users.

The FTI also has the authority to establish measures and impose specific obligations to allow the effective unbundling of the local networks of the preponderant economic agent in the telecommunications sector or the agent with national substantial power in the relevant market of access services to end users.

Breaching or violating the FTI's resolutions regarding local network unbundling, divestiture of assets, rights or other necessary resources or breach of asymmetric regulation, may result in the revocation of the corresponding licences and authorisations.

Universal service obligations and financing

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

The Mexican Constitution and the Federal Telecommunications and Broadcasting Law impose upon the state certain responsibilities regarding public telecommunications services. The state shall guarantee that telecommunication services, including broadband and internet, are provided under conditions of competition, quality, plurality, universal coverage, interconnection, convergence, continuity and free access.

The Mexican Constitution defines 'universal coverage' as general public access to telecommunications services that shall be subject to availability, affordability and accessibility conditions. Consequently, the Ministry of Communications and Transportation shall prepare annually a social coverage programme and a public connectivity programme. The purpose of these social programmes is to increase network coverage and penetration of telecommunications services in such priority areas as determined by the Ministry.

The sole licence and spectrum licence for commercial and private use shall consider, among others, the programmes and commitments regarding investments, quality, geographic, demographic or social coverage zones, public connectivity and contribution to universal coverage determined by the FTI in considering the annual programmes prepared by the Ministry.

In 2002, under the provisions outlined in the previous Federal Telecommunications Law, a telecommunications social coverage fund was created to ensure the provision of telecommunications services in Mexican territory and to offer to fund to public telecommunications network licensees aimed at rural communities. To this end, the Mexican Congress approved funding for the Telecommunications Social Coverage Fund, which is governed by a technical committee composed of six federal government representatives.

In connection with the foregoing, the productive subsidiary of the Federal Electricity Commission called CFE Telecommunications and Internet for All was incorporated on 2 August 2018, to provide telecommunications services, on a non-profit basis, to guarantee the right of access to information and communication technologies, including broadband and internet. The service provided by CFE Telecomunicaciones e Internet para Todos will be non-profit and its objective is to reach remote and marginalised communities.

In 2020, to provide high-quality internet access throughout the Mexican territory, CFE Telecommunications and Internet for All executed an agreement with a private entity, so that the latter provides its wholesale services consisting, in principle, in the implementation of telecommunications infrastructure. The goal is to make possible one of the largest projects to overcome the digital gap, provide connectivity to rural communities in Mexico and reach regions that lack connectivity. In its first stage, the project between the companies involves the installation of 2,000 home broadband services in 1,000 priority care areas, which will allow schools, clinics and integration centres in small rural communities to benefit from the connectivity achieved through such alliance. From December 2021, approximately 5 million users of different rural communities in Mexico have been provided with connectivity.

Additionally, in December 2021, the Ministry of Infrastructure, Communications and Transportation announced the 2022 Public Site Connectivity Programme, by which, among others, the Ministry developed the concept of 'Smart Villages, sustainable wellbeing', based on the International Telecommunication Union's smart-village concept, through which communities located in rural areas may take full advantage of the possibilities and resources of digital connectivity to improve their quality of life. To be eligible to be a smart village, the rural areas must have a preponderant agricultural or fishing economic activity, with potential for sustainable tourism, be located in protected areas, or have a 50 per cent female or indigenous productive population. In January 2022, the Ministry reported having made 50 connected rural areas in 11 different states.

Number allocation and portability

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

The Federal Telecommunications and Broadcasting Law grants the FTI the authority to create, update and manage the technical plan for number allocation. Such a plan outlines that licensees and authorised telecommunication service providers shall obtain number allocation by submitting an application before the FTI. In general, such request shall be submitted at least three or four months (depending on the type of number allocation requested) before the date on which such number allocation is intended to be used. The process of obtaining number allocation shall be resolved no later than 60 business days after submitting the application. To determine whether the requested number allocation proceeds, the FTI shall take into account the following: use given to previous number allocations, and number availability.

The Federal Telecommunications and Broadcasting Law outlines that users have the right to keep the same telephone number when changing service provider. Effective portability shall be completed within a period not exceeding 24 hours upon submitting the corresponding application to the service provider. This provision entered into force on 10 February 2015.

Customer terms and conditions

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

Customers are entitled to the rights provided for in the Federal Telecommunications and Broadcasting Law, the Federal Consumer Protection Law and the Data Protection Law.

In general, customers have the right, among others, to execute and have knowledge of the commercial conditions outlined in the standard

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form contract registered before the Consumer Protection Agency. Such standard form contract shall be registered with the agency and shall comply with the provisions of the Federal Telecommunications and Broadcasting Law, the Federal Consumer Protection Law and other applicable provisions. Also, under the Data Protection Law, agreements shall comply with provisions thereof and customers shall be afforded the rights thereunder.

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?

Licensed and authorised internet service providers shall comply with, among others, the following guidelines regarding network neutrality:

- free choice: users may access any content, application or service offered by the licensee or authorised service provider, within the legal applicable framework, without access being limited, deteriorated, restricted or discriminated against;
- non-discrimination: providers shall refrain from obstructing, interfering with, inspecting, filtering or discriminating among content, applications or services;
- privacy: providers shall maintain user privacy and network security; and
- transparency and information: providers shall publish on their web page the information regarding the features of the service offered, including traffic management policies and network administration authorised by the FTI, as well as the speed, quality, nature and guaranteed service.

Although zero rating of data transmission could affect the guidelines and regulations on net neutrality and provided for in the Federal Telecommunications and Broadcasting Law, leading mobile telephone companies in Mexico have expanded their offerings of free navigation for social networks, messaging applications and other online services. The foregoing derives from the fact that the FTI has not determined whether these offers affect or contravene the provision of the law.

Bandwidth throttling is not permitted. On 28 June 2018, the Advisory Council of the FTI issued a non-binding recommendation through which, it urged all participants in the telecommunications sector to avoid practices such as zero rating and bandwidth throttling. The project of the Guidelines for Networks Operations concerning the neutrality principles provided under article 145 of the Federal Telecommunications and Broadcasting Law, includes provisions in connection with the zero-rating practice. These guidelines were submitted to public consultation from 18 December 2019 to 13 April 2020.

On 18 February 2021, a federal Mexican court issued a resolution in connection with an *amparo* proceeding filed by Red en Defensa de los Derechos Digitales and Observacom, pursuant to which it ordered the Federal Telecommunications Institute to issue the Guidelines for Network Operations with respect to the neutrality principles, as provided under article 145 of the Federal Telecommunications and Broadcasting Law, at the latest, on 30 June 2021. As a result, in June 2021, the IFT issued guidelines to protect net neutrality, effective from September 2021, that have as a priority to guarantee the privacy and free browsing of users, as well as to provide updated transparency concepts.

Platform regulation

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

In Mexico, there are no laws or regulations that currently regulate digital platforms specifically. The Mexican FinTech Law was published in the Official Mexican Gazette on 9 March 2018 (effective from the following day), with the purpose of regulating financial services provided by financial technology companies or institutions, their organisation and operation.

In connection with the Mexican labour legislation, in May 2021, a bill was filed with the Mexican Congress to provide minimum labour rights in favour of the employees of transportation platforms, and in general to improve their working conditions. If approved, the bill will amend several provisions of the Mexican Federal Labour Law.

Further, there is a bill currently in discussion in the Mexican Congress, to amend several provisions of the Federal Telecommunications and Broadcasting Law, so that over-the-top platforms (namely, those platforms that provide video and streaming services to end users) are obliged to include Mexican content in at least 30 per cent of their catalogues, along with several other bills that propose to regulate the content for underage persons and to protect the free speech right for the content creator.

The imposition of a 16 per cent federal tax (value added tax) on foreign digital platforms, has been imposed. Additionally, the Tax Code of Mexico City was amended to implement, among other things, a local tax of 2 per cent on delivery platforms, 5 per cent on intermediary platforms for hotel services (including business models such as Airbnb) and 8 per cent on streaming shows.

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?

There is no specific regulation regarding NGA networks nor are there government financial schemes to promote broadband penetration in Mexican territory; however, the Mexican Constitution and the Federal Telecommunications and Broadcasting Law outlined that the executive branch shall publish the broadcasting and telecommunications policies and perform actions to ensure broadband internet access in buildings and facilities of the federal government. Each state shall do the same in their own jurisdiction.

Data protection

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

Public telecommunications network licensees and authorised entities shall keep a record and control of all communications made, in any form, to identify accurately the following information:

- the name and address of the user;
- the type of communication (voice, voicemail, conference and data), additional services and messaging or multimedia services used;
- the necessary information to trace and identify the origin and destination of mobile communications;
- the necessary information to determine the date, time and duration of the communication, as well as messaging or multimedia services;
- a record of the date and time of the first activation of the service and location tag from the activation of the service; and

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- the digital location of the geographic positioning of the corresponding telephone lines.

For these purposes, the licensee shall keep the above information during the first 12 months in systems that allow real-time analysis and delivery to competent authorities through electronic media. Upon completion of said period, the licensee shall keep the information for an additional 12 months in electronic storage systems; in which case, delivery of such information to the competent authorities shall take place within 48 hours upon request notification.

In general, the protection, processing and control of personal data are governed by the Data Protection Law, which outlines that the processing of personal information is subject to the consent of the owner. Such consent may be implied, which is sufficient to process general personal data, whereas express consent is required to process financial information, and written consent is required to process sensitive information.

Additionally, as a result of the issuance of the European Union's General Data Protection Regulation, Mexican individuals and entities are required to comply with such regulation if they offer and deliver products or services on a regular basis to inhabitants of the European Union, or use tools that allow them to track cookies or IP addresses of persons visiting their website from European Union countries. In the case of non-compliance, Mexican individuals or entities, or their affiliates in the European Union, may be subject to fines under the regulation.

Cybersecurity

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

In Mexico, there are no laws or regulations that currently regulate cybersecurity specifically. On 13 November 2017, the Mexican government published the Cybersecurity National Strategy. This strategy defines objectives and cross-cutting themes and reflects the guiding principles regarding the articulation of efforts from individuals, civil society, and private and public organisations in the field of cybersecurity.

The Cybersecurity National Strategy defines cybersecurity as a set of policies, controls, procedures, risk-management methods and standards associated with the protection of society, government, economics and national security in cyberspace and public telecommunication networks.

In October 2017, the Mexican government created the Cybersecurity Sub-Commission, chaired by the Ministry of the Interior.

Currently, around 13 initiatives have been submitted before the Mexican Congress, of which nine are bills to modify existing laws and four are bills to publish the cybersecurity law.

Further, the USMCA provides a chapter on digital commerce. Among others, the implementation of such provisions seeks to strengthen the collaboration measures between the parties thereto to mitigate risks and incidents related to cybersecurity.

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?

In Mexico, there are no laws or regulations that currently regulate big data specifically; also there have not been any relevant initiatives on this matter. Companies seeking to participate in big data operations shall ensure that their proposed activities comply with the Data Protection Law that is applicable to the data involved in their operations.

Data localisation

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

In Mexico, there are no laws or regulations that currently regulate data localisation specifically. The Data Protection Law allows cross-border transfers of personal information, provided that the data subject gives informed prior consent.

Key trends and expected changes

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

In Mexico, the communications and media sectors fall under the same legal framework.

MEDIA

Regulatory and institutional structure

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

The key regulatory framework for the media sector in Mexico is comprised of the following statutes:

- the Federal Telecommunications and Broadcasting Law;
- the Law for the Public Broadcasting System of the Mexican State; and
- the Law on General Communications.

According to the said regulatory framework, the Federal Telecommunications Institute (FTI) is vested with the authority to regulate, promote and oversee the use, enjoyment and exploitation of the radio spectrum, orbital resources, satellite services, public telecommunications networks, and broadcasting and telecommunications provisions.

The FTI is empowered to grant, revoke, renew or modify licences and authorisations in broadcasting and telecommunications sectors, as well as to authorise assignments or changes of control of licensed and authorised individuals or business entities. The FTI also has the authority to regulate matters related to antitrust and fair trading in such sectors.

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?

According to the Foreign Investment Law, direct foreign investment is allowed up to 49 per cent for both broadcasting services, subject to a standard of reciprocity, and printing and publishing newspapers for distribution in Mexican territory.

There is no specific regulation regarding cross-ownership of newspaper companies and telecommunications and broadcasting companies. However, the Federal Telecommunications and Broadcasting Law sets limits regarding broadcasting and telecommunications licensees that prevent or restrict access to plural information in the same market or the same geographic coverage zone.

For that purpose, the FTI shall order pay TV licensees to include in their service those channels that carry news or information programmes of public interest, to guarantee access to plural information promptly. Also, pay TV licensees shall include at least three channels, in which the

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content is predominantly produced by national independent programme-makers, whose funding is mostly Mexican in origin.

Licensing requirements

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

Under the Federal Telecommunications and Broadcasting Law, the FTI is empowered to grant the sole licence. The sole licence grants the right to provide, in a convergent manner, all kinds of public telecommunications and broadcasting services. The licensee requiring the use of frequency bands of the radio spectrum for broadcasting purposes shall obtain the appropriate licence separately.

The sole licence shall be granted for commercial, public, private or social use for a term of up to 30 years and may be extended for up to equal terms. The interested party in obtaining a sole licence shall submit a request containing, at least, the following information:

- the name and address of the applicant;
- the general characteristics of the project; and
- documents and information attesting to their technical, legal and administrative conditions.

Obtaining the sole licence from the FTI shall take a minimum of 60 calendar days upon submitting the application; however, the FTI may request additional information where necessary. Once the agency has concluded the analysis and assessment of the documents submitted for this application within such period, and all requirements have been met, the sole licence shall be granted.

The services provided by the licensees shall not grant the privilege or distinction to create any kind of discrimination, and in the case of individuals, all discrimination motivated by ethnic or national origin, gender, age, disability, social background, health condition, religion, sexual orientation, marital status or anything else that undermines human dignity or to nullify or impair the rights and freedoms of individuals shall be prohibited.

The spectrum licence for broadcasting purposes shall be granted for a term of up to 20 years and may be extended for up to equal terms. This licence for commercial and, in some cases, private use, shall be granted only through public auctions with prior payment of the corresponding fee.

When requesting a spectrum licence to provide broadcasting services that involve the participation of foreign investment, a prior and favourable opinion shall be required from the Foreign Investment Commission, and this agency shall verify the limits of the foreign investment outlined in the Mexican Constitution and the Foreign Investment Law.

When granting a broadcasting licence, the FTI may consider the following factors, among others:

- the economic proposal;
- coverage, quality and innovation;
- the prevention of market concentration that conflicts with the public interest;
- the possible entry of new competition into the market; and
- consistency with the licence programme.

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?

There is no specific regulation that restricts or limits the amount of local or foreign content broadcasted. However, the Federal Telecommunications and Broadcasting Law outlines certain rules and incentives regarding content requirements that shall be followed by licensees.

Broadcasted programmes shall promote, among other things:

- family integration;
- sound child development;
- artistic, historical and cultural principles; and
- equality between men and women.

To promote free and harmonious child and adolescent development, broadcasting aimed at this sector shall, among other criteria:

- broadcast programmes and information to support cultural, ethical and social principles;
- avoid content that stimulates or justifies violence; and
- foster interest in knowledge, particularly concerning scientific, artistic and social matters.

Broadcasting licensees shall use the Spanish language in their transmissions. If transmissions are in a foreign language, subtitles or translation into Spanish shall be used. The use of foreign languages without subtitles and translation into Spanish may be authorised by the Ministry of Interior.

Pay TV and audio licensees shall retransmit broadcasting signals of federal institutions free of charge, and shall reserve channels for the transmission of television signals from federal institutions, as indicated by the executive branch, under the following:

- one channel, when the service contains between 31 and 37 channels;
- two channels, when the service contains between 38 and 45 channels; and
- three channels, when the service contains between 46 and 64 channels.

If there are more than 64 channels, the reserve shall increase by one channel for every 32 channels.

When the service contains up to 30 channels, the Ministry of Communications and Transportation may require that a specific channel devote up to six hours daily to transmit programmes indicated by the Ministry of the Interior.

The incentives for licensees regarding local content programmes are that those covering at least 20 per cent of their programmes with national production may increase advertising time up to two percentage points, and those covering at least 20 per cent of their programmes with national independent production may increase advertising time up to five percentage points.

Advertising

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

The Federal Telecommunications and Broadcasting Law outlines that broadcasting, pay TV, programme-makers and signal operator licensees shall maintain a prudent balance between advertising and programmes transmitted daily.

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Broadcasting licensees shall apply, among others, the following rules:

- that in television stations, commercial advertising time shall not exceed 18 per cent of the total transmission time per channel; and
- in radio stations, commercial advertising time shall not exceed 40 per cent of the total transmission time per channel.

Pay TV licensees shall transmit, daily and per channel, up to six minutes of publicity in every hour of transmission. For this purpose, publicity contained in retransmitted broadcast signals and own channel advertising shall not be deemed as publicity.

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?

Broadcast television service licensees shall enable pay TV service licensees to retransmit their signal, free of charge and in a non-discriminatory manner, within the same geographic coverage zone, in full, simultaneously and without any changes, including advertising, and with the same quality of the broadcast signal.

Pay TV service licensees shall also retransmit the broadcast television signal, free of charge and in a non-discriminatory manner, within the same geographic coverage zone, in full, simultaneously and without changes, including advertising and with the same quality of the broadcasted signal, and shall include such retransmission in their services, with no additional cost.

Satellite pay TV service licensees shall only retransmit broadcast signals with coverage of 50 per cent or more of the Mexican territory. All pay TV licensees shall retransmit broadcast signals by federal institutions.

Public telecommunications networks or broadcasting television licensees, declared by the FTI as agents with substantial power in either market or as a preponderant economic agent, shall not be entitled to the gratuitous rule of retransmitting signals and under no circumstance shall this be reflected as an additional cost of the services provided to users.

Regulation of new media content

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

There is a bill currently in discussion in the Mexican Congress, to amend several provisions of the Federal Telecommunications and Broadcasting Law, so that over-the-top platforms (namely, those platforms that provide video and streaming services to end users) are obliged to include Mexican content in at least 30 per cent of their catalogues, along with several other bills that propose to regulate the content for underage persons and to protect the free speech right for the content creators.

Nowadays there is no specific regulation regarding new media content; however, the right to information, expression and to receive content through public broadcasting services and pay TV services is free, and shall not be subject to any judicial or administrative prosecution or investigation, nor any limitation or prior censorship, and shall be exercised in accordance with the provisions of the Mexican Constitution, international treaties and applicable laws.

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 transition to digital broadcasting went into effect on 31 December 2015. Original licensees using the 700 megahertz (MHz) frequency band freed up by the switchover shall return them to the Mexican government.

At least 90MHz of spectrum freed up by the digital switchover shall be reallocated to Red Compartida, the shared public telecommunications network.

Digital formats

25 Does regulation restrict how broadcasters can use their spectrum?

The policy for the transition to digital terrestrial television (DTT) outlines the following rules, among others, regarding digital formats:

- A/53 ATSC is the transmission standard that shall be used by television licensees;
- television licensees transmitting DTT shall transmit at least one channel with A/53 ATSC; and
- fixed DTT services shall be transmitted in standard definition quality.

On 17 February 2015, the General Guidelines for Multi-Channelling Access were published in the Official Mexican Gazette to regulate the authorisation and operation conditions for multi-channelling access. Such authorisation shall be granted by the FTI.

Broadcasting licensees with access to television multi-channelling shall transmit at least one channel in high-definition quality, under the terms provided for in the policy for the transition to DTT.

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?

No specific media plurality rules are in place. The Mexican Constitution outlines that the state shall guarantee that telecommunications and broadcasting services are provided, subject to, among other conditions, competition, quality and plurality.

Also, the Federal Telecommunications and Broadcasting Law outlines provisions regarding cross-ownership and rights of the audience, in which plurality is contemplated. Such rights include providing the users with the benefits of culture, plurality and authenticity of the information.

On 6 May 2019, the FTI initiated an investigation on Telmex, for incurring relative antitrust practices in the telecommunications sector. This law requires certain conduct from licensees regarding cross-ownership, which shall not refrain or limit access to plural information.

Key trends and expected changes

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

The Federal Telecommunications Institute (IFT) was recognised by the International Telecommunications Union as a 5G regulator, meaning that Mexico has improved its regulatory environment rapidly and significantly since the implementation of a new legal and regulatory framework and the creation of an independent and strong regulator, positioning Mexico as one of the 60 countries with an advanced level of digital transformation preparation.

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Telecomunicaciones de México, a decentralised public institution, was granted the authority to carry out a national telecommunications inventory and provide regional operators with access to it. Understanding the quantity and quality of telecommunications infrastructure is key to designing public policies, business plans, network expansion plans and connectivity objectives to close the digital breach. In addition, Telecomunicaciones de México will be able to acquire, carry and install the equipment to manage and operate any fibre optic network of any federal public administration agency, state-owned company, federal entity and municipal government.

On 21 March 2018, the shared public telecommunications network Red Compartida started operations with more than 30 per cent coverage in the country. Red Compartida offers coverage in 48 different commercial zones and 111 towns known as *pueblos mágicos* covering about 78.6 per cent of the population, and with an expected coverage of 95.4 per cent by the end of 2022. In addition, the Ministry of Infrastructure, Communications and Transportation Ministry published the Public Sites Connectivity Programme 2022, a national internet coverage project through the installation of wireless services in highways, public plazas, health centres, hospitals, schools and community areas. The connectivity also includes the 'Smart Villages, sustainable wellbeing' initiative, which aims to offer free satellite connectivity to public sites in rural areas, as referred to in answer 8.

From 28 February 2022, Telcel, Mexico's largest telecommunications company, operates in 18 cities across Mexico, the first nationwide commercial 5G network in Mexico and announced that by the end of 2022, its network will cover 120 cities. The above makes Mexico the first country in Latin America to commercially launch a nationwide, mass-market 5G network. In addition, it is estimated that Latin America will reach 301 million subscriptions with 5G, but 4G-LTE technology will still dominate with 495 connections in the region.

The 5G network, in addition to providing faster internet connection speeds, provides power savings, cost reductions and mass connectivity support.

In April, 2021, an amendment to the Federal Telecommunications and Broadcasting Law ordering the creation of a registry that shall record the biometric data of mobile services' users, entered into full force and effect; such registry will be managed by the Federal Telecommunications Institute. Pursuant to these amendments, telecommunications carriers such as America Movil, AT&T and others will be obliged to collect customers' data and make the corresponding filings with the Federal Telecommunications Institute. In April 2022, the Supreme Court, by unanimous decision, ruled against the proposed amendment, providing that the creation of the biometric data registry did not justify the violation of privacy and human rights.

The covid-19 crisis has promoted the use of connectivity in the execution of different production processes and daily activities. 2021 was a year of recovery for the telecommunications sector, measured in terms of the revenue generation of service providers. The provision of telecommunications services resulted in an aggregate of 526,964 million Mexican pesos, 6.0 per cent more than in 2020. The Competitive Intelligence Unit (www.theciu.com) anticipates sector revenue growth for 2022 in the range of 3.4 to 6.6 per cent in annual terms, with an average scenario of 4.6 per cent.

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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?

The Federal Telecommunications Institute (FTI) is vested with the authority, as an autonomous body, independent in its decisions and functions, to regulate the communications and media sectors in Mexico. The FTI also has the authority in antitrust matters related to telecommunications and broadcasting sectors, under the Federal Competition Law.

Appeal procedure

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

General rules and actions from the FTI may be challenged as a matter of law or procedure only through an indirect *amparo* trial and shall not be subject to injunction. This trial shall be heard by specialised judges and courts in matters regarding antitrust, telecommunications and broadcasting.

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.

In August 2017, the Supreme Court ruled that the FTI is the sole regulator in matters of telecoms and media. Such ruling resulted in the elimination of the zero interconnection rate exclusively for the benefit of one of the players in the industry, which was an asymmetric resolution imposed by Congress (not by the FTI) on the preponderant economic agent in the telecommunications industry. Subsequently, the FTI imposed a new interconnection rate for the benefit of such a player as a preponderant economic agent in the telecommunications industry.

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Such interconnection rate was applicable during 2018 and resulted in more than a 50 per cent decrease in the asymmetric regulation previously imposed on such preponderant economic agent. Competitors of the telecommunications preponderant economic agent have expressed their disappointment and dissatisfaction with such a new interconnection rate. Additionally, in April 2018, the Supreme Court issued a second ruling that also resulted in the elimination of the zero interconnection rate, but this time also for the benefit of other entities.

Also, several telecommunications network operators complained to the FTI about various defaults of the obligations imposed on the telecommunication's preponderant economic agent, with no sanctions. On 27 February 2018, the FTI approved the unbundling plan for the preponderant economic agent in the telecommunications industry, known as the Functional Unbundling Plan. According to this plan, the new company shall exclusively provide wholesale services.

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Nigeria

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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?

Nigeria's communications sector is primarily regulated by the Nigerian Communications Act (NCA) and the Wireless Telegraphy Act (WTA). The NCA established the Nigerian Communications Commission (NCC), which is charged with the responsibility of regulating the communications sector. The Minister of Communications and Digital Economy (the Minister) under the NCA is vested with the responsibilities of the formulation, determination and monitoring of the general policy for the communications sector in Nigeria with a view to ensuring, among other things, the utilisation of the sector as a platform for the economic and social development of Nigeria, the negotiation and execution of international communications treaties and agreements, on behalf of Nigeria, between sovereign countries and international organisations and bodies, and the representation of Nigeria, in conjunction with the NCC, at proceedings of international organisations and on matters relating to communications. Under the NCA, the NCC is authorised to make and publish regulations and guidelines insofar as it is necessary to give effect to the full provisions of the NCA among other reasons.

The WTA sets out the framework for regulating the use of wireless telegraphy in Nigeria.

Foreign ownership restriction does not apply to the provision of communications services in Nigeria as a company with foreign ownership, as long as it is incorporated in Nigeria, is eligible to apply for a licence to provide communications services. Under the Nigerian Investment Promotion Commission Act, a foreign national can own up to 100 per cent of a business or can invest in any business except those on the negative list. None of the communications services authorised in Nigeria is on the negative list.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

Under the NCA, there are two broad licensing frameworks:

- an individual licence, which is a type of authorisation in which the terms, conditions and obligations, scope and limitations are specific to the service being provided. The NCC may issue an individual licence by auction through a first come, first served beauty contest or through standard administrative procedure. Presently, there are 26 licence types in the individual licence category. Some of the activities authorised by an individual licence are internet services, fixed wireless access, unified access services, electronic directory services, internet exchange, international gateway, international cable infrastructure and landing station services, collocation services and commercial basic radio communications network services; and
- a class licence, which is a type of general authorisation in which the terms and conditions or obligations are common to all licence holders. It requires only registration with the NCC for applicants to commence operation. Some of the services subject to a class licence are sales and installation of terminal equipment (including mobile cellular phones and HF, VHF, UHF radio, etc), repairs and maintenance of telecoms facilities, cabling services, telecentres, cybercafes and the operation of public payphones.

In terms of issuing a licence by an administrative procedure, an entity intending to carry out a service subject to an individual licence shall apply to the NCC in the prescribed form upon the payment of the processing or administrative fee (usually 5 per cent of the licence fee) and the licence fee, while a person intending to operate under a class licence is to submit a registration notice in the prescribed form and a registration fee of 10,000 naira to the NCC. In accordance with the NCA, a licence applicant must receive a response to the application within 90 days of submitting it. However, an offer letter is normally issued to applicants for a class licence if the application is complete. For individual licences, depending on the service and completeness of the required information, the conclusion of the process can take between four and 12 weeks. The duration of a licence depends on the type of service authorised or spectrum licensed.

The national carrier licence and international gateway licence are valid for 20 years. The unified access service licence is valid for a term of 15 years, while a digital mobile licence (DML) authorising the use of a specified mobile spectrum is valid for a term of 15 years. On the other hand, an internet service, paging, prepaid calling card and special numbering services licence are all valid for a term of five years. The licence fees payable depends on the type of service. Fees payable are fixed by the NCC and published on its website. In addition to licence fees, a prospective licensee is required to pay an administrative charge and, upon grant of the licence, a licensee shall pay an annual operating levy calculated on the basis of net revenue for network operators and gross revenue for non-network operators.

Fixed, mobile and satellite services are regulated and licensed under the NCA and to operate any of these services a licence must be obtained from the NCC. As these services are operator-specific, they fall under the individual licence category. In Nigeria, mobile telecommunications services are differentiated on the basis of whether the operator is authorised by a DML, fixed wireless access licence (FWAL) or unified access service licence. A DML authorises an operator to use appropriate equipment in a designated part of the electromagnetic spectrum and permits it to operate a network for the provision of public telecommunications services. In 2001, the NCC licensed four spectrum packages in the 900 megahertz (MHz) and 1,800MHz bands to Mobile Telecommunications Limited (now Ntel), Econet Wireless Nigeria

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Limited (now Airtel) and MTN Nigeria Communications Limited for use in the provision of digital mobile services. These were later joined by Etisalat and Globacom. A FWAL authorises an operator to use appropriate equipment in a designated part of the electromagnetic spectrum for a term of five years (with renewal for a further five years) and permits it to operate a network for the provision of public telecommunications service. FWALs are granted on a regional basis to reflect the 36 Nigerian states and the federal capital territory, with operators wishing to achieve national coverage required to obtain licences in each of the licensing regions. In 2002, the NCC, in authorising FWAL services, also offered 42MHz paired in the 3.5 gigahertz (GHz) band, and a total of 28MHz paired in the 3.5GHz band across the 37 licensing regions of Nigeria to 22 new licensees.

In 2007, the NCC introduced the unified access service licence (UASL) scheme and allocated 40MHz of paired spectrum in the 2GHz band in four equal blocks of 10MHz paired spectrum. On the successful allocation of spectrum, the allottees were issued with a spectrum licence and where necessary, a UASL. The UASL authorises the holder to provide both fixed and mobile services including voice and data, and imposes special conditions requiring its holders to build and operate a telecommunications network to provide voice telephony, video services, multimedia services, web browsing, real-time video streaming, video surveillance, network gaming, email, SMS, file transfer, broadband data and location-based services, and other services that may be authorised, and that the 3G network be built and operated according to certain defined technical standards.

For broadband internet services, a wholesale wireless access service licence (WWASL) authorises the holder to construct, maintain, operate and use a network consisting of a mobile communication system, a fixed wireless access telecommunications system, or a combination of any of these systems comprising radio or satellite or their combination, within Nigeria, deployed for providing point-to-point or switched or unswitched point-to-multipoint communications for the conveyance of voice, data, video or any kind of message. The WWASL also authorises the holder to construct, own, operate and maintain an international gateway, while an infrastructure company licence authorises the holder to provide and operate on a wholesale basis an open access metropolitan fibre network within a designated geographical area in Nigeria, in particular, among other things, to construct, maintain and operate fibre optic network facilities.

Commercial satellite services in Nigeria are regulated under the Commercial Satellite Communications Guidelines 2018 issued by the NCC. Under these Guidelines, there are two broad categories of commercial satellite service authorised:

- space segment operators (SSOs); and
- earth station operators (ESOs).

An SSO is authorised by a landing permit to beam its signal from a named geostationary satellite over the territory of Nigeria. The landing permit does not authorise the SSO to provide any other type of communications services directly to the last-mile user other than wholesale communications services to other communications operators licensed to provide services to last-mile users. The ESOs, on the other hand, are authorised under the applicable operational licence issued by the NCC to provide services to last-mile users in Nigeria.

Public Wi-Fi services are authorised pursuant to the Regulatory Guidelines for the Use of 2.GHz ISM Band for Commercial Telecoms Services. Under these Guidelines, Wi-Fi hotspots shall, inter alia, be deployed in the 2GHz industrial, medical and scientific band and must be registered and authorised by the NCC. In addition, commercial Wi-Fi hotspot operators must hold a licence for the provision of internet services.

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?

Yes, in line with the Frequency Management Policy, an applicant for a commercial frequency licence from the NCC must also hold a commercial operating licence from the NCC (or must have submitted an application for an operating licence to the NCC). The commercial operating licence authorises the provision of a specific service for which the spectrum is intended to be used. An applicant for a frequency licence may also be given a frequency reservation pending the outcome of the processing of his or her commercial operating licence. However, the frequency licence will be subject to the successful approval of the commercial licence.

Pursuant to the provision of Spectrum Trading Guidelines issued by the NCC, radio frequency spectrum is tradable, provided such transactions comply with the eligibility criteria set out in the Guidelines.

Ex-ante regulatory obligations

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

Historically, the NCC has subjected several communications markets to ex-ante regulation. For instance, in 2013, the NCC undertook a detailed study of the level of competition in the Nigerian communications market and identified the following communications markets for the purpose of ex-ante regulation:

Market segment	Sub-segment
Voice	• mobile telephony (including messaging); and • fixed-line telephony
Data	• fixed data, retail data transmission services and leased lines; and • mobile data (eg, dongles, data cards, tablets, internet through mobile phone connections, eg, 3G, GPRS, Edge)
Upstream segments	• spectrum; • tower sites; • network equipment; • wholesale broadband, internet access; and • wholesale leased lines and transmission capacity
Downstream segments	• handsets, devices (including the device operating system); and • applications, content (Includes m- commerce)

The identified markets were further divided into wholesale and retail sub-segment as follows:

	Upstream segment	Voice segment	Data segment	Downstream segment
Services provided as wholesale by an operator to other operators	Wholesale broadband access	Wholesale voice termination on voice network		

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Services provided as wholesale by an operator to other operators	Wholesale leased lines and transmission capacity	Wholesale voice termination on fixed network		
Service provided as retail by each individual operator to its consumers		Retail voice access on mobile networks	Retail broadband, internet access on mobile devices	Supply of applications, content and devices
Service provided as retail by each individual operator to its consumers		Retail access on fixed networks	Retail broadband, intern et access on mobile devices at fixed location	
Service provided as retail by each individual operator to its consumers			Retail leased lines	

In that study, the NCC determined that MTN held, and Globacom and MTN collectively held significant market power for the mobile voice and upstream segment respectively. As a result of which, the NCC (in exercising its power to remedy market failure and (or) prevent anti-competitive practices under the Competition Practice Regulations) imposed on MTN as the operator with significant market power in the mobile voice market the following obligations:

- accounting separation;
- the collapse of on-net and off-net retail tariffs;
- submission of required details to the NCC; and
- a determination of the pricing principle to address the rates charged for on-net and off-net calls for all operators in the mobile voice market.

In respect of the joint dominance collectively held by Globacom and MTN in the market for the upstream segment, the NCC imposed the following obligations on both operators:

- a price cap for wholesale services and a price floor for retail services as to be determined by the NCC on a periodic basis;
- accounting separation; and
- submission of required details to the NCC.

In October 2014, the NCC reviewed its direction requiring MTN to collapse its on-net and off-net retail tariff, by approving a stipulated differential for MTN's on-net and off-net call charges.

In addition, pursuant to Regulations 10 –12 of the Telecommunications Networks Interconnection Regulations 2007 issued by the NCC, one or more communications markets relating to interconnection in which a licensee has been declared dominant by the NCC would trigger the application of ex-ante regulatory obligations. In this regard, the dominant licensee would be obligated to:

- meet all reasonable requests for access to its telecommunications network, in particular, access at any technically feasible points;
- adhere to the principle of non-discrimination with regard to interconnection offered to other licensed telecommunications operators, applying similar conditions in similar circumstances to all interconnected licensed operators providing similar services and providing the same interconnection facilities and information to other operators under the same conditions and quality as it provides for itself and affiliates and partners;
- make available on request to other licensed telecommunication operators considering interconnection with its network, information and specifications necessary to facilitate the conclusion of an agreement for interconnection including changes planned for implementation within the next six months, unless agreed otherwise by the NCC;
- submit to the NCC for approval and publish a reference interconnection offer, describing interconnection offerings, broken down according to market need and associated terms and conditions including tariffs; and
- provide access to the technical standards and specifications of its telecommunications network with which another operator shall be interconnected.

In addition, the dominant licensee shall, except where the NCC has determined interconnection rates, set charges for interconnection on objective criteria and observe the principles of transparency and cost orientation. The burden of proof that charges are derived from actual costs lies with the licensed telecommunications operator providing the interconnection service to its facilities. The dominant licensee may set different tariffs, terms and conditions for interconnection of different categories of telecommunications services where such differences can be objectively justified on the basis of the type of interconnection provided.

A dominant licensee shall also:

- give written notice of any proposal to change any charges for interconnection services in accordance with the procedure set out in the guidelines on interconnection adopted by the NCC and the provisions of the operating licence;
- offer sufficiently unbundled charges for interconnection, so that the licensed telecommunications operator requesting the interconnection is not required to pay for any item not strictly related to the service requested;
- maintain a cost-accounting system, which, in the opinion of the NCC, is suitable to demonstrate that its charges for interconnection have been fairly and properly calculated, and provides any information requested by the NCC; and
- make available to any person with a legitimate interest on request, a description of its cost-accounting system showing the main categories under which costs are grouped and the rules for the allocation of costs to interconnection. The NCC, or any other competent body independent of the dominant telecommunications operator and approved by the NCC, shall verify compliance of the dominant telecommunications operator with the cost-accounting system and the statement concerning compliance shall be published by the NCC annually.

Last, if interconnection services are not provided through a structurally separated subsidiary, the dominant licensee shall:

- keep separate accounts as if the telecommunications activities in question were in fact carried out by legally independent companies, to identify all elements of cost and revenue on the basis of their calculation and the detailed attribution methods used;
- maintain separate accounts in respect of interconnection services and its core telecommunications services and the accounts shall be submitted for independent audit and thereafter published; and
- supply financial information to the NCC promptly on request and to the level of detail required by the NCC.

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It is also pertinent to note that in 2020, the NCC made a determination to impose mandatory accounting separation obligations on Airtel, EMTS, Globacom, MTN, MainOne Cable and IHS (four mobile network operators, a submarine cable operator and a collocation and infrastructure-sharing provider respectively). Although this determination did not identify (or define) any particular communications market, however, one of the key objectives of the NCC in imposing the accounting separation is to identify and prevent any undue discrimination or practices that substantially lessens competition such as cross-subsidisation, margin squeezes, etc. This determination took effect on 15 July 2020 and the licensees subject to the determination are to commence the full rollout of accounting separation by 1 January 2021. In addition, licensees with an annual turnover in excess of 5 billion naira are also subject to an accounting separation obligation pursuant to the Guidelines on the Implementation of an Accounting Separation Framework issued by the NCC.

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?

Under the Federal Competition and Consumer Protection Act 2018 (the Competition Act), the Federal Competition and Consumer Protection Tribunal is empowered, upon receipt of a monopoly report from the Federal Competition and Consumer Protection Commission, to order the division of any undertaking by the sale of any part of its shares, assets or otherwise if the monopoly cannot be adequately remedied under any other provision of the Competition Act or is substantially a repeat by that undertaking of conduct previously found by the Competition Tribunal to be a prohibited practice. In addition, pursuant to the provisions of the Competition Practice Regulations, the NCC in issuing a direction to remedy an abuse of a dominant position or an anticompetitive practice may direct a licensee to make changes in actions or activities including structural separation of services or businesses, as a means of eliminating or reducing the abusive or anti-competitive practice.

Universal service obligations and financing

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

The Universal Service Provision (USP) Fund established by the NCA is geared towards promoting the widespread availability of network services and applications services by encouraging the installation of network facilities and the provision of network services, application services and broadband penetration in unserved, underserved areas or for underserved groups within the community.

The USP Fund is financed from monies appropriated to the USP Fund by the National Assembly; contributions from the NCC are based on a portion of the annual levies paid by licensees; and gifts, loans, aids and such other assets that may from time to time specifically accrue to the USP Fund. In practice, the USP secretariat created by the NCC is responsible for implementing and executing USP programmes and USP projects. The USP board supervises and provides broad policy directions for the management of the USP Fund.

Number allocation and portability

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

The Numbering Regulations 2008 (the Numbering Regulations) regulates the allocation (or assignment) of numbers. In this regard, the Numbering Regulations provide a regulatory framework for the control, planning, administration, management and assignment of numbers, pursuant to section 128(1) of the NCA. Under the Numbering Regulations, the holder of a communications licence may apply in the prescribed form to the NCC to be assigned numbers (in a set of blocks) by stating:

- the name and contact details of the applicant;
- the licence under which the application is made;
- the services intended to use the assignment;
- the geographic areas for completing calls or transmitting messages to the numbers to be included in the assignment;
- the quantity of numbers requested for inclusion in the assignment;
- any particular blocks requested for inclusion in the assignment;
- the utilisation of the assignment predicted for 12 months after the grant of the assignment;
- the current utilisations of existing assignments to the applicant for the intended services;
- an indication of which, if any, portions of the application are confidential to the NCC;
- any other information that the applicant considers necessary or appropriate to justify the application; and
- any other information that the NCC may, from time to time, require to assess the application.

In making a decision on an application for an assignment, the NCC shall take into account factors including but not limited to:

- any earlier decisions about assignments to the applicant or other licensees for services similar to the intended services;
- any statements in the licence of the applicant about eligibility for providing services or being assigned numbers;
- the usage conditions;
- the digit analysis capabilities of communications networks that are operated in Nigeria;
- the utilisation of the assignment predicted for 12 months after the grant of the assignment over the next three years;
- the current utilisations of existing assignments to the applicant for the intended services; and
- the quantity and fragmentation of blocks that have not been assigned and whether or not the licensee has failed to fulfil an obligation in the Numbering Regulations or the National Numbering Plan, or any other numbering related obligation under the NCA, has committed a contravention of its regulatory obligation.

The Nigerian Mobile Number Portability Business Rules and Port Order Processes (the MNP Business Rules) sets out the regulatory, legal and technical framework for implementing MNP in Nigeria. The NCC has also issued the Mobile Number Portability Regulations 2014 to provide a regulatory framework for the operation of MNP in Nigeria. Under the terms of the MNP Business Rules, MNP is obligatory for all mobile network operators and is currently available across only global systems for mobile networks (although number portability is intended to be implemented in phases that will cover code division multiple access, fixed networks and location).

Under the MNP Business Rules, MNP is 'recipient led'. To initiate a porting request, the recipient operator would receive a porting request from a subscriber to port their number. The recipient operator, number portability clearinghouse and donor operator then exchange messages to validate the porting request. Porting is free and is normally completed within 48 hours.

A port request, however, can be rejected for a number of reasons including where the number is not included in the Nigerian numbering plan, where the number was ported within the last 90 days, where the

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number is not registered in the subscriber information database, and where the number is already subject to a pending port request.

Customer terms and conditions

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

Yes, the NCA requires each licensee to prepare a consumer code for their respective customers and such consumer code shall be subject to prior approval and ratification by the NCC. The individual consumer code governs the provision of services and related consumer practices applicable to the licensee. Where the NCC designates an industry body to be a consumer forum, any consumer code prepared by such industry body shall be subject to prior approval and ratification by the NCC. A consumer code prepared by a consumer forum, the NCC or licensees shall as a minimum contain model procedures for:

- reasonably meeting consumer requirements;
- the handling of customer complaints and disputes including an inexpensive arbitration process other than a court;
- procedures for the compensation of customers in the case of a breach of a consumer code; and
- the protection of consumer information.

The Consumer Code of Practice Regulation also requires that the individual consumer code after its approval by the NCC be published in at least two national newspapers (or as the NCC may direct), and the approved individual consumer code shall become applicable from the date of its publication. The Consumer Code Regulations are under review by the NCC, and may be amended by the Draft Consumer Code of Practice Regulations 2018 if eventually approved.

The provisions of the Competition Act, the NCA and (or) the Competition Practice Regulations may limit the application of certain customer terms and conditions deemed to be undermining consumer rights or anticompetitive in the communications sector. Also, the Enforcement Processes Regulations require every licensee to submit the contents and representations contained in any promotions of products or services to the NCC for its prior approval. Failure to obtain the required approval shall constitute a contravention under these Regulations.

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 Industry Code of Practice (the Internet Code) issued by the NCC on 26 November 2019 sets out the obligation of an internet access service provider (IASP) regarding the control and (or) prioritisation of the data that it delivers and other obligations regarding net neutrality. In this regard, the Internet Code inter alia:

- prescribes measures that seek to guarantee the rights of internet users to an open internet;
- imposes specific transparency obligation on IASPs with respect to performance, technical and commercial terms of its internet access service in a manner that is sufficient for consumers and third parties to make informed choices regarding their uses of such services;
- imposes a positive obligation on IASPs when providing internet access service, to treat all traffic equally, without discrimination, restriction or interference, independently of its sender or receiver, content, application or service, or terminal equipment;
- bars IASPs from blocking lawful content on the internet, unless under the condition of reasonable network management;
- bars IASPs from degrading or impairing lawful internet traffic unless under the condition of reasonable network management;
- bars IASPs from engaging in paid-prioritisation;
- prescribes the circumstance in which zero-rating is permissible; and
- sets out circumstances that warrant the use of reasonable network management practices.

In addition, the Guidelines for the Provision of Internet Service, the licence for the provision of internet service, the UASL and the WWASL do, however, impose some non-discriminatory obligations on an IASP and holders of these licences. In this regard, an IASP and the respective licensees are required not to show (whether in respect of charges or other terms or conditions applied or otherwise) undue preference to or to exercise undue discrimination against any particular person in respect of the provision of a service or the connection of any equipment approved by the NCC.

Platform regulation

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

Except for the Framework and Guidelines for the Use of Social Media Platforms in Public Institutions that provide guidance on the use of social media within a public institution's communications' environment issued by the National Information Technology Development Agency (NITDA) in January 2019, there is no specific legislation or regulation in respect of digital platforms.

However, the NCC in its Strategic Management Plan for 2020 – 2024 has indicated an intention to develop a framework for regulating over-the-top services and platforms.

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?

Yes, in addition to the application of regulatory obligations ordinarily applicable to other categories of communications licensees, the holder of the WWASL will be required by the licence to, among other obligations, roll out services at least as follows:

- three state capitals in year one;
- four additional state capitals in year two;
- six additional state capitals in year three;
- 12 additional state capitals in year four;
- 12 additional state capitals in year five; and
- two-thirds of all local government headquarters in the remaining licence period.

Also, a WWASL requires the holder to supply customer premises equipment adapted in such a way as to reasonably accommodate the needs of hearing-impaired individuals.

Notwithstanding the application of the USP fund for the facilitation of broadband penetration in Nigeria, there are other NCC-initiated projects such as the Wire Nigeria project aimed at facilitating the rollout of fibre-optic cable infrastructure in which subsidies are based on per kilometre of fibre and incentives to encourage the rapid deployment of non-commercially viable routes are provided. The State Accelerated Broadband Initiative is aimed at stimulating the demand for internet services and driving affordable home broadband prices where subsidies on terminal equipment based on broadband infrastructure deployed in

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state capitals and urban and semi-urban centres are provided to operators. Also, under the ongoing Open Access Model for Next Generation Fibre Optic Broadband Network, there shall be a one-off government financial support to facilitate the rollout of the infrastructure companies. This 65 billion naira financial support will be based on meeting pre-identified targets at certain points in time during the rollout of the broadband infrastructure phase.

Data protection

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

Part VI of the General Code (in appendix I of the Consumer Code Regulations) sets out the responsibilities of a licensee in the protection of individual consumer information. These responsibilities stipulate that a licensee may collect and maintain information on individual consumers reasonably required for its business purposes and that the collection and maintenance of such information on individual consumers shall comply with the following principles:

- fairly and lawfully collected and processed;
- processed for limited and identified purposes;
- relevant and not excessive;
- accurate;
- not kept longer than necessary;
- processed in accordance with the consumer's other rights;
- protected against improper or accidental disclosure; and
- not transferred to any party except as permitted by any terms and conditions agreed with the consumer, as permitted by any permission or approval of the NCC, or as otherwise permitted or required by other applicable laws or regulations.

Licensees are required by the Consumer Code Regulations to adopt similar provisions guaranteeing the same level of protection (or higher) in the production of their own individual consumer codes.

In addition, licensees are required by these responsibilities to meet generally accepted fair information principles including:

- providing notice as to what individual consumer information they collect, and its use or disclosure;
- the choices consumers have with regard to the collection, use and disclosure of that information;
- the access consumers have to that information, including to ensure its accuracy;
- the security measures taken to protect the information; and
- the enforcement and redress mechanisms that are in place to remedy any failure to observe these measures.

In addition, the National Information Technology Development Agency Data Protection Regulations, issued by NITDA, is a set of regulations that specifies the condition in which personal data may be processed. Among other things, the NITDA Data Protection Regulations sets out the lawful basis for processing personal data, the rights of the data subject, obligations of data controllers and conditions under which the cross-border transfer of personal data is permissible. NITDA Data Protection Regulations apply to all sectors of Nigeria's economy including the communications sector.

Cybersecurity

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

Yes. The Cybercrime Act 2015 (the Cybercrime Act) provides a unified and comprehensive legal framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria. The Cybercrime Act also ensures the protection of critical national information infrastructure and promotes cybersecurity and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights.

In addition, the National Information Systems and Network Security Standards and Guidelines 2013 and the Nigerian Cybersecurity Framework 2019 issued by NITDA prescribe mandatory minimum standards on seven primary areas of network security and cyber forensics, which are:

- categorisation of information;
- minimum security requirements;
- intrusion detection and protection;
- protection of object identifiable information;
- securing public web server;
- system firewall; and
- cyber forensic.

The Framework goes on to further recommend best practice guidelines for public- and private-sector organisations for instituting measures for enshrining cybersecurity culture and enthronement of cyber-resiliency in Nigeria.

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?

There is no specific legislation on big data. However, the Cybercrime Act has as one of its objectives the promotion of cybersecurity and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights. Although, the Cybercrime Act does not use the term 'big data' but instead uses the term 'data', which it defines as 'representations of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer'. The Cybercrime Act imposes a number of obligations relating to the retention and confidentiality of data on any public or private entity that provides to users of its services the ability to communicate by means of a computer system, electronic communication devices, mobile networks and entities that process or store computer data on behalf of such communication service or users of such service. We are unaware of any enforcement initiatives in this regard that have occurred since the enactment of the Cybercrime Act.

Data localisation

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

Yes. The Guidelines on Nigerian Content in ICT issued by NITDA require information and communications technology companies and data and information management firms in Nigeria to host, respectively, all subscriber and consumer data and government data locally within the country and further provide that they shall not for any reason host any government data outside the country without express approval from NITDA and the Secretary to the government of the federation.

Key trends and expected changes

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

In the communications sector, the attention of the Federal Government of Nigeria appears to be focused on how to develop and deploy 5G technologies for development and as a strategy for delivering communications services to unserved and underserved areas of Nigeria. As a result, the

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NCC, on 29 November 2021, auctioned two lots of 100 MHz each in the 3.5 GHz band ranging from 3500–3600MHz and 3700–3800MHz to facilitate the deployment of 5G in Nigeria. This was followed by the issuance of the National Policy for 5G networks for Nigeria's Digital Economy by the Minister of Communications and Digital Economy in January 2022. The policy is intended to address the provision of the required spectrum and enabling environment to ensure the full deployment of 5G in Nigeria.

Some of the objectives to be achieved by the policy include:

- the effective deployment of 5G to cover major urban areas by 2025;
- the security of the 5G ecosystem and the protection of data;
- the application of international best practices and globally accepted standards and specifications to the 5G ecosystem in Nigeria; and
- adequate infrastructure needed for the successful deployment of 5G networks such as data centres, power, etc.

The implementation of the policy has been assigned to the NCC, which implementation shall be through the development of strategies, standards, guidelines and frameworks aimed at accelerating 5G deployment in Nigeria. This implementation will commence immediately in Abuja, Anambra, Gombe, Kaduna, Lagos and Rivers states before extending to other urban areas by 2025. The policy prescribes two network deployment options for 5G deployment in Nigeria. These options are non-standalone (NSA) and stand-alone (SA). It is expected that network operators will implement SA after moving through an NSA. According to the 5G deployment timeline provided in the policy, there will be a spectrum allocation and auction in 2022. While in 2023, and beyond, phases one and two deployments shall commence respectively with NSA and SA. Regarding spectrum use and assignment, the policy states that the NCC is directed to enforce the use-it-or-lose-it policy to ensure the maximum utilisation of assigned spectrum. Last, in implementing the policy, the NCC will in collaboration with Nigerian Communications Satellite Limited explore how satellite communications technologies may be leveraged to accelerate the deployment of 5G across Nigeria.

MEDIA

Regulatory and institutional structure

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

The National Broadcasting Commission Act (the NBC Act) regulates the broadcasting sector in Nigeria. The NBC Act also established NBC, which is responsible for regulating the broadcasting industry. There is also the Nigeria Broadcasting Code (BC), which was issued by NBC in the exercise of its power under the NBC Act. The BC represents the minimum standard for broadcasting in Nigeria.

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?

Yes, the ownership of broadcasting networks is restricted. The NBC Act requires the NBC to satisfy itself when granting a broadcasting licence that the applicant can demonstrate to the satisfaction of the NBC that he or she is not applying on behalf of any foreign interest. The NBC is also prohibited from granting a licence to either a religious organisation or a political party. Foreign investors can therefore participate in broadcasting activities, provided that the majority of shares in a broadcasting company are held by Nigerians.

In terms of cross-ownership in the broadcasting industry, the NBC Act provides that a person is prohibited from having 'controlling shares in more than two of each of the broadcast sectors of transmission'. Apart from the provisions in the NBC Act, there are no regulations regarding cross-ownership of media companies.

Licensing requirements

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

To operate a radio, sound, television, cable or satellite station in Nigeria, an application in the prescribed form is addressed to the Director-General (DG) of the NBC requesting approval to purchase a set of application forms indicating the licence category and proposed location. If granted, the applicant would be required to purchase the application form at the cost of 50,000 naira and submit the completed application form to the DG. The form is accompanied by:

- a certificate of incorporation;
- a certified copy of the company's memorandum and articles of association;
- an engineering design of systems, including a feasibility study;
- a letter of undertaking to abide by the terms of the licence; and
- a letter of reference from the company's bankers.

Section 9(1) of the NBC Act sets out the criteria used by the NBC in the grant of a broadcast licence and these require the applicant to be a corporate body registered in Nigeria or a broadcasting station owned, established or operated by the federal, state or local government. The NBC is also required to satisfy itself that the applicant is not applying on behalf of any foreign interest. If the NBC is satisfied with the application, it will make a recommendation through the Minister of Information to the President for the grant of a licence.

The licence fee for an initial term of five years is as follows:

- Type Fee (naira) Category A (any location in the Federal Capital Territory, Lagos and Rivers states):
  - Radio 20 million;
  - Open TV 15 million; and
  - Cable TV 10 million;
- Category B (any location in all other states):
  - Radio 15 million;
  - Open TV 11.25 million; and
  - Cable TV 5 million;
- Public stations 5 million for five years or 1 million per television or radio channel per annum for five years;
- Direct broadcast satellite (single channel) 10 million;
- Direct-to-home (multi-channel) 25 million;
- Dealer (wholesale) 120 million per annum;
- Importer (wholesaler) 120 million per annum; and
- Retailer 30 million per annum.

There is no specific timescale for the grant of a licence.

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?

The NBC Act and the BC regulate the broadcasting of programmes and the minimum local and foreign programme content. Under the BC, foreign content is permissible provided it conveys intrinsic relevance to the education, information and entertainment of the Nigerian citizenry.

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The BC stipulates that a broadcaster shall ensure that the selection of foreign programmes reflects the development needs of the Nigerian nation and ensure respect for the Nigerian cultural sensibilities. In addition, with the exception of special religious and sports programmes or events of national importance, Nigerian broadcasters shall not relay foreign broadcasts live on terrestrial platforms.

In terms of characterising how a broadcasting programme may qualify as local content, the Addendum to the 6th Edition of the BC (the Addendum) issued by the NBC in 2020 provides that:

- the producer of the programme must be Nigerian, residing in Nigeria;
- the directors of the programme are Nigerian; or
- the authors of the programme are Nigerian.

In addition, it goes on to provide that:

- 75 per cent of the leading authors and major supporting cast, including voice actors, or on-screen presenters appearing in the programme are Nigerian;
- a minimum of 75 per cent of programme expenses and 75 per cent of post-production expenses are paid for services provided by Nigerians or Nigerian companies, which may be obtained from programme commission, licensing, advertising-funded programming grants, co-funding arrangements, commercial sponsorship and financing initiatives, all of which must not be subject to 'foreign ownership or arbitrary interference'; and
- where the production is a collaboration with a foreign entity, the producer shall ensure that Nigeria production locations, talents, skills, sets, etc, constitute at least 75 per cent of the entire production.

The broadcaster is required by the BC to ensure that all productions targeted at the Nigerian market must meet a minimum of 60 per cent local content requirement.

The local content requirement applies to all categories of programming including but not limited to fiction, series, serials, films, documentaries, arts and educational programmes, news, sports events, games, advertising, teleshopping or teletext services. Last, a broadcaster is required by the local content rules in the Addendum to source its local content from independent producers where it is not a direct production of the broadcaster. Failure to comply with the local content rules is a Class B breach under the BC and will attract sanctions.

Advertising

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

Broadcast media advertising is regulated by the NBC Act, the BC, the Advertising Practitioners Council of Nigeria Act (the APCON Act), the Nigerian Code of Advertising Practice and Sales Promotion and the APCON Vetting Guidelines (the Vetting Guidelines). Under the Vetting Guidelines, any broadcast media advertising material must be submitted for approval by the Advertising Standards Panel before it is aired.

Online broadcasting is subject to the BC to the extent that it is transmitted by an online or web broadcaster operating in Nigeria, and it shall additionally conform to the provisions of the BC on programming standards.

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?

Beyond the local content obligations mandated by the BC, there are no other obligations that specify the basic package of programmes, and (or) in relation to must-carry. At present. there is no mechanism for financing local content obligations in Nigeria. However, there is a local content development fund into which a subscription broadcaster shall make a mandatory payment, where it fails to comply with its local content obligations regarding its subscription service.

Regulation of new media content

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

Internet radio and broadcasting streaming signals from and into Nigeria requires a licence from NBC. In practice, most of the internet radio stations operating in Nigeria already have a radio (or another broadcast) licence issued by NBC. The BC also requires the local content for this category of licence to be 60 per cent. The regulations and conditions governing news, programmes, advertising and sponsorship in relation to other forms of broadcasting or broadcast licence are also applicable to internet broadcasting.

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 first phase of the digital switch over (DSO) was successfully launched in five states and the Federal Capital Territory in Nigeria between April 2016 and February 2018. According to the timeline released by the NBC in March 2021, the second phase of the DSO will commence in Lagos state on 29 April 2021 and be extended to four other states by 12 August 2021. The third and final phase of the DSO will commence in December 2021 and is expected to be concluded by 8 December 2022.

The Nigerian Communications Commission (NCC) is proposing that the radio frequencies freed up should be reallocated to mobile broadband.

Digital formats

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

Yes. Broadcasters are required to use the spectrum assigned to them in accordance with the technical specifications contained in the licence conditions.

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?

The BC incorporate some provisions that are consistent with media pluralism. Some of these provisions are that the BC requires broadcasters to ensure that all sides to any issue of public interest are equitably presented for fairness and balance and be above inherent biases, prejudices and subjective mindsets. In addition, the BC provides that panellists in discussion programmes are expected to reflect various

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viewpoints, and for political broadcasts, broadcasters are to accord equal airtime to all political parties or views, with particular regard to the duration and the particular time within which such programmes can be broadcasted during political campaign periods.

Key trends and expected changes

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

The Minister of Information and Culture, the supervising Minister of the NBC, has stated on several occasions that the Federal Government of Nigeria (FGN)intends to enact legislation that would subject social media and over-the-top (OTT) media services to the regulatory purview of the NBC; however, as at the time of this writing, no such legislation sponsored by the Executive has been presented to the National Assembly for consideration. Although it is noteworthy that the Addendum issued in 2020 by the NBC made some far-reaching provisions that have an implication for operators of social media, OTT and internet access platforms.

This intention by the FGN to regulate social media was amplified when on 4 June 2021, the Minister of Information and Culture announced the suspension of Twitter, the micro-blogging platform, in Nigeria. In making this announcement, the Minister cited the persistent use of the platform for activities that are capable of undermining Nigeria's corporate existence, and thereafter directed the NBC to immediately commence the process of licensing all OTT and social media operations in Nigeria. Although it is not clear what power the Minister exercised in making this announcement and effecting the subsequent suspension of Twitter in Nigeria, the FGN in court documents filed in its defence to the legal challenge of the suspension before the Economic Community of West African States Court of Justice, contended that the Minister exercised certain powers under the Penal Code (Northern States) and in the Criminal Code Act that authorises the Minister to ban the use, establishment, ownership and operation of any medium for the dissemination of information in the public interest. These provisions according to the FGN served as the legal authority for suspending Twitter, although this suspension has since been lifted on 13 January 2022. This case remains ongoing.

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?

The Nigerian Communications Commission (NCC) and the NBC respectively regulate the communications and broadcast sectors, while the Federal Competition and Consumer Protection Commission (FCCPC), created by the Federal Competition and Consumer Protection Act 2018 (the Competition Act) is the lead antitrust regulator in Nigeria, and is a separate institution from the NCC and NBC. The FCCPC is charged with the administration and enforcement of the provisions of the Competition Act including the approval of mergers and the protection and promotion of consumer interests.

However, it is pertinent to note that although the Competition Act establishes a concurrent jurisdiction between the FCCPC, and both the NCC and NBC in matters of competition enforcement, the FCCPC will have precedence over both the NCC and NBC and according to the provision of the Competition Act, all appeals or request for review of the exercise of the competition power of the NCC and NBC shall in the first instance be heard and determined by the Competition Commission before such appeals can proceed to the Federal Competition and Consumer Protection Tribunal (FCCPT) established under the Competition Act.

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Appeal procedure

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

Decisions of federal regulatory and administrative bodies such as the NCC and the NBC are subject to judicial review by the Federal High Court (FHC) and can be litigated up to the Supreme Court. Decisions can be challenged on the grounds of lack of authority, breach of the rules of natural justice, error of law on the face of the record and that the decision has been obtained by fraud. Under the NCA, a person dissatisfied or whose interest is adversely affected by any decision of the NCC must comply with a two-stage process within the stipulated time frame, before proceeding to the FHC for a review of the decision of the NCC. A person who is dissatisfied with the decision of the NCC will request that the NCC provide a statement giving the reason for the decision. Upon receipt of the NCC statement of reasons, the person may ask the NCC in writing for a review of its decision specifying the reason and basis for its request. The NCC, upon receipt of the written submission, shall meet to review its decision, taking into consideration the submission of the dissatisfied person. It is only after the person has exhausted this two-stage process that he or she can proceed to court for a review of the NCC's decision.

With respect to the FCCPC, the Competition Act provides that an appeal against the decision of the Commission shall lie to the FCCPT.

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.

On 18 February 2022, the FCCPC and competition authorities in Egypt, Kenya and South Africa released a joint statement committing to

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collaborate with respect to the enforcement of competition regulation in digital markets. In particular, they, among other things, agreed to collaborate by scoping conducts in digital markets subject to investigation in other jurisdictions and researching barriers to the emergence and expansion of African digital platforms that may stimulate competition for the benefit of African consumers and economies. This move is a result of the growing regulatory interest in the unique competition issues of digital markets in several jurisdictions.

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Pakistan

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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?

The Pakistan Telecommunication Authority (the PTA) established under the Pakistan Telecommunication (Re-organization) Act 1996 has the mandate to regulate the establishment, operation and maintenance of telecommunication systems and the provision of the telecommunication services in Pakistan, which are regulated in terms of the PTA Act and the rules, regulations and guidelines framed thereunder (the PTA Laws).

For the purposes of the foregoing:

- 'telecommunication system' includes any electrical, electromagnetic electronic, optical or optio-electronic system for the emission, conveyance, switching or reception of any intelligence within or into or from, Pakistan, whether or not that intelligence is subjected to rearrangement, computation or any other process in the course of operation of the system, and includes a cable transmission system, a cable television transmission system and terminal equipment; and
- 'telecommunication service' includes a service consisting of the emission, conveyance, switching or reception of any intelligence within, into or from Pakistan by any electrical, electromagnetic, electronic, optical or optio-electronic system, whether or not the intelligence is subjected to rearrangement, computation or any other process in the course of the service.

The PTA is also responsible for dealing with applications relating to the use of radio-frequency spectrum through its Frequency Allocation Board (FAB), which has the exclusive authority to allocate and assign portions of the radio-frequency spectrum to:

- the government;
- providers of telecommunications services and telecommunication systems;
- radio and television broadcasting operations;
- public and private wireless operators; and
- others.

The primary functions of the PTA include:

- regulations, establishment, operation and maintenance of telecommunication systems and provision of telecommunications services in Pakistan, including but not limited to the grant and renewal of licenses and the monitoring and enforcement of the terms thereof;
- establishment or modification of accounting procedures for licenses and regulation of tariffs for telecommunications services in accordance with the PTA Act;
- prescribing standards for telecommunications equipment and terminal equipment, certifying compliance of such equipment with prescribed standards and issuing approvals of terminal equipment and installers;
- providing guidelines for and determining the terms of interconnection arrangements between licensees where the parties to those arrangements are unable to agree upon such terms;
- receiving and expeditiously disposing of applications for the use of radio-frequency spectrum;
- to auction on such terms and conditions as the PTA may determine from time to time, or other open transparent competitive processes to determine eligibility for licensing the fab's allocated or assigned specific portions of the radio-frequency spectrum;
- to promote and protect the interests of users of telecommunications services in Pakistan;
- to promote the availability of a wide range of high-quality, efficient, cost-effective and competitive telecommunications services throughout Pakistan;
- to promote rapid modernisation of telecommunication systems and telecommunications services;
- to investigate and adjudicate complaints and other claims made against licensees arising out of alleged contraventions of the provisions of the PTA Laws;
- to make recommendations to the federal government on policies with respect to international telecommunications, provision of support for participation in international meetings and agreements to be executed in relation to the routing of international traffic and accounting settlements; and
- to perform such other functions as the federal government may assign from time to time.

The relevant government ministry vis-à-vis telecommunications services is the Ministry of Information and Technology and Telecommunication (the MOITT).

The telecommunications sector in Pakistan does not have a minimum domestic legal presence requirement; however, the PTA prefers that a local entity (special purpose vehicle) be established that applied for a licence to provide telecommunications services. The special purpose vehicle or local entity can be completely foreign-owned or controlled.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

In terms of the PTA Act, no person shall establish, maintain or operate any telecommunications system or provide any telecommunications service unless a licence for the same has been granted to it by the PTA. Additionally, no terminal equipment may be directly or indirectly

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connected to a public switch network, unless a type approval for such equipment has been granted by the PTA.

Licenses for core telecommunications services include:

- local loop (LL):
  - fixed local-loop licence issued for the provision of fixed-line telecommunication services within a telecom region using media excluding wireless; and
  - wireless local-loop licence issued for the provision of fixed-line telecommunication services within a telecom region using media including wireless, with limited mobility; and
- long distance and international (LDI): licence issued for the provision of end-to-end communication between points that are located in Pakistan with points that are located outside of Pakistan;
- cellular mobile operator (CMO): licence issued for the provision of a wireless-based telecommunication system by wireless means and used while in motion, but excluding a person that is licensed to provide a service using wireless in a local loop;
- internet of things low-power wide-area network: licence issued for the provision of services utilising wireless wide area network technologies that interconnect low bandwidth, low powered battery-operated devices having low bit rates, over a long range, however, such licensee must always utilise the services of an LL licence or a CMO licence holder for transmission of traffic to connect to a public switched telecommunication network; and
- class value-added services (CVAS): licence issued for voice and (or) data, without the obligation to deploy transmission infrastructure; such licensees use the transmission network of either a CMO licence or LL licence holder, or act as resellers. Recently, the PTA has suspended or stopped granting CVAS licenses for data and voice (excluding vehicle tracking services (VTS)) in Pakistan. All existing CVAS licence holders (excluding VTS) are required to obtain an LL licence. CVAS licenses are issued under the Class Licensing and Registration Regulation 2007.

The PTA Rules

The PTA Rules, provide that a licence granted under the PTA Act and the Pakistan Telecommunication Rules 2000 (the PTA Rules) shall be personal to the licensee and shall not be assigned, sub-licensed to or held on trust for any person, without the prior written consent of the PTA. An application for the grant of a licence to operate any telecommunication system or provide any telecommunication service shall be made in the form set out in Appendix A to the PTA Rule, be accompanied by the documents and details of information, along with fees in the amount prescribed in accordance with the conditions for each type of licence to be issued. An application may be withdrawn at any time before the grant of a licence.

The PTA may grant a licence to an individual, class of persons, company or corporation. Applications shall be considered on their individual merits and in determining whether or not to grant a licence the PTA shall take into account the following factors:

- the financial and economic viability of the applicant;
- the applicant's experience in telecommunications and relevant history;
- the technical competence and experience of the applicant's management and key members of staff and local participation in the business;
- the nature of the services proposed and viability of the applicant's business plan including the applicant's proposed roll-out and service quality commitments and its contribution to the development of the telecommunications sector;
- the quality of the applicant's telecommunications system or network; and
- the terms of the bid made by the applicant where the licence is to be issued under a competitive process.

The PTA may, if it is satisfied that there are any factors in relation to that application that threaten or potentially threaten national security, reject an application. A licensee shall have the right to establish, maintain and operate a telecommunication system in the territory and for the period stipulated by the PTA in the licence, in accordance with the provisions of the Act and the PTA Rules.

Subject to the PTA Act and PTA Rules, a licence shall be granted for an initial term of not less than 25 years. After the expiry of the initial term, the licence shall be renewed on terms and conditions consistent with the policy of the federal government at the relevant time. If the licence is not to be renewed, the PTA shall serve a written notice on the licensee of at least one-fourth of the initial licence term and that notice shall terminate the licence on the expiration of the initial term.

Change of control

A licence granted in accordance with the provisions of the PTA Act and the PTA Rules shall be subject to the restrictions on the transfer of the licence and on change of ownership of the licensee and such further restrictions as are contained in the PTA Rules. If a substantial ownership interest in, or control of, a licensee is proposed to be changed, the licensee shall give the PTA notice of such fact in writing. That written notice shall include all relevant details of the proposed change. If the PTA is of the opinion that change shall adversely affect the ability of the licensee to provide its licensed telecommunication services, it may impose such additional conditions in the licence as shall be reasonable and directly relevant to the proposed change.

For the purpose of understanding, the terms 'control' and 'substantial ownership interest' used in the response to this shall bear the following meanings:

- 'control' means the ability to direct the exercise, whether directly or indirectly and whether through one or more entities of more than 50 per cent of the voting rights exercisable at any general meeting of the shareholders of the licensee; and
- 'substantial ownership interest' means more than 10 per cent of the issued share capital of the licensee.

Additionally, telecom services cannot be resold without the prior written consent of the PTA. No distinction has been made vis-à-vis foreign or local companies in this regard.

Spectrum allocation

FAB has exclusive authority to allocate and assign portions of the radio-frequency spectrum to the providers of telecommunication services and telecommunication systems, radio and television broadcasting operations, public and private wireless operators and others.

Every application for allocation and assignment of radio-frequency spectrum has to be made to the PTA. The PTA is required to refer the application to the FAB within 30 days from the receipt of such application.

On receipt of the application, the FAB classifies the telecommunication services and may allocate or assign the specific frequencies to the applicant. The FAB is required to notify the applicant of the status of the application within three months.

It may also be noted that the FAB auctions spectrum or frequency for use by mobile network operators.

The Pakistan Table of Frequency Allocations is the broadest technical document showing the allocation of bands to various types of services. The Pakistan Table of Frequency Allocations is drawn from, and kept current with, the International Telecommunication Union (ITU) Radio Regulations, which are revised every few years at the World Radio Communication Conferences.

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Application package, qualification criteria and licence fee

LL licence

The PTA has divided Pakistan into telecom regions. Applicants wishing to obtain an LL licence in more than one region are required to file a separate application for each region along with necessary documents.

The application fee for an LL licence is US$500 (or equivalent in Pakistani rupees), the licence fee is US$10,000 (or equivalent in Pakistani rupees) per telecom region, and the renewal fee is 0.5 per cent of annual gross revenue minus inter-operators' payments.

Details relating to eligibility criteria, application package, information required to be provided by an applicant for an LL licence, grounds for disqualification, specific conditions, and a licence template for an LL licence are available at the PTA website.

LDI licence

The application fee for an LDI licence is US$500 (or equivalent in Pakistani rupees), the licence fee is US$500,000 (or equivalent in Pakistani rupees), and the renewal fee is 0.5 per cent of annual gross revenue minus inter-operators' payments. An LDI licence applicant is also required to provide a standby letter of credit of US$10 million (or equivalent in Pakistani rupees) in favour of the PTA as part of the application package.

The initial licence fee for a satellite landing station is 0.66 per cent of the annual gross revenue of the first year of operation after obtaining the licence.

The initial licence fee for a fibre optic submarine cable landing station is 5 million Pakistani rupees and the annual licence fee is 1.5 per cent of the annual gross revenue.

Details relating to eligibility criteria, application package, information required to be provided by an applicant for an LDI licence, and a licence template for an LDI licence are available at the PTA website.

CMO licence

Where the assignment of spectrum is linked to a set of licence conditions, the associated fees will consist of two parts. The spectrum price for national mobile cellular licenses will be determined through auction, which will also be used as a benchmark to determine the price per megahertz (MHz) per annum for the existing operators. The CMO licensees will pay the PTA, in addition to the spectrum administration fee and the spectrum price, an annual licence administration fee, to reasonably cover the cost of regulation.

The initial licence fee is to be determined in an auction through open bidding. The annual licence administration fee shall not exceed 0.5 per cent of last year's gross revenue, minus inter-operator and related PTA or FAB mandated payments.

Administrative fees for the radio spectrum will be set to recover the cost of administration of that spectrum. The total income generated from administrative fees for the whole spectrum should recover the reasonable operational costs by the FAB incurred while managing, licensing and policing that spectrum. Spectrum price for line-of-site links will be limited to the annual licence administration fee.

However, we note from a decision of the PTA, dated 23 July 2019, that the PTA has decided, inter alia, that the fee for the renewal of a licence shall be US$39.5 million per MHz for a frequency spectrum of 900MHz and US$29.5 million per MHz for a frequency spectrum of 1800MHz. Licences that require renewal shall be done on a technology-neutral basis, subject to payment of a renewal fee to be calculated in accordance with a per MHz price as provided above. The terms and conditions relating to enhanced quality of service and coverage of the network shall be finalised in line with applicable regulatory practice and the Telecom Policy 2015.

Public Wi-Fi hotspot

Only licensees of the PTA holding a valid licence from the PTA, enabling them to provide connectivity to the internet may provide internet connectivity to the internet through public Wi-Fi hotspots. The owner of a public Wi-Fi hotspot entity shall be required, pursuant to the Data Retention of Internet extended to Public WIFI-Hotspots Regulations 2018 to:

- register all the public Wi-Fi hotspots and maintain its list;
- ensure technical expertise and arrangements as prescribed by the PTA are observed;
- retain information or data of users or consumers of public Wi-Fi hotspots, in the manner as prescribed by the PTA;
- make available the retained information of the Wi-Fi hotspot's consumer or user to the PTA or its authorised officer, in the prescribed format, as and when required; and
- devise a mechanism for data retention of public Wi-Fi hotspots, wherein the following minimum information shall be required from the users of Wi-Fi hotspot, on a dedicated server, by means of an automated mechanism or form, before access to the Wi-Fi hotspot is granted to the user or consumer:
  - full name of the user;
  - Computerized National Identity Card number or passport numbers (in the case of foreigners);
  - mobile number (for the login ID);
  - acceptance of terms and conditions to use of such data services facilities; and
  - generation of passwords through SMS.

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?

FAB, as part of the licence granted to a licensee of the PTA, assigns radio frequencies with associated technical parameters for all wireless networks after technical evaluation of spectrum management tools, formulation or review of the National Frequency Spectrum Plan and suggests means for optimised spectrum utilisation, international coordination and agreements with other administrations in relation to various satellite and terrestrial-based communication networks, fulfilling national obligations as contained in international treaties of the ITU, etc, monitoring of spectrum for the detection of unauthorised wireless stations, site clearance of all wireless installations in the country.

To obtain type approval for radio or satellite-based telecom terminal equipment, a frequency clearance for the respective equipment will be required from the FAB, unless the same is being imported by a person duly licensed to operate using such radio frequency.

The band plans are formulated based on ITU Radio Regulations and best international practices thereby allocating potions of radio-frequency spectrum to different services. Spectrum licenses specify the permitted use thereunder. Spectrum is granted as part of a licence issued by the PTA, and shall be personal to the licensee and shall not be assigned, sub-licensed to or held on trust for any person, without the prior written consent of the PTA.

Ex-ante regulatory obligations

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

Licensees of the PTA having a share of more than 25 per cent of a particular telecommunication market are presumed to have a significant market power (SMP) status. The PTA has the authority to extend the SMP status to operators with less than 25 per cent market share or to relieve those with more than 25 per cent of the status after a comprehensive

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analysis of the market. PTA monitors SMP status licensees, such that they do not abuse their dominant positions through anti-competitive practices, and fair competition is promoted in the sector.

The Fixed Line Tariff Regulations 2004 provide, inter alia, that non-SMP operators are free to set and revise their tariffs at any time and in any manner they like, provided that they inform the PTA about their proposed tariffs thirty days before the applicability of new tariffs. The PTA may make amendments to the tariffs of non-SMP operators where the tariffs are considered anti-competitive.

Pursuant to the Interconnection Guidelines 2004 all operators are obliged to provide interconnection to other operators desiring to interconnect. The operator with SMP is obliged to prepare and submit its reference interconnect offer (ROI) to the PTA within one month of its determination as an SMP operator by the PTA. The SMP operator shall make the ROI publicly available within seven days after approval by the PTA.

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 requirements for a structural separation between the network and service activities of an operator.

Universal service obligations and financing

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

Every licence granted under the PTA Act read with the PTA Rules contains conditions requiring the licensee to contribute to the Research and Development Fund (R&D Fund) and the Universal Service Fund (USF).

R&D Fund

A person who has been issued a licence to provide telecommunication services has to contribute 0.5 per cent of gross revenue, minus inter-operator and related PTA or FAB mandated payments, to the R&D Fund.

USF

A person who has been issued a licence to provide telecommunication services is required to pay a USF charge of 1.5 per cent of gross revenue, minus inter-operator and related PTA or FAB mandated payments as determined by the government.

Number allocation and portability

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

Licenses of the PTA are eligible to apply for allocation of number capacity, as per the Number Allocation and Administration Regulations 2005. The PTA has been mandated to develop and manage a national numbering plan for the provision of a wide range of efficient telecommunication services in Pakistan. Under the plan, the leading digit defines the service or network for the use of a particular numbering range. The structure of the national numbering plan complies, as far as possible, with ITU-T Recommendations E.164.

Numbers that can be ported include, without exception, all numbers for which a written agreement exists between a subscriber and an operator. All subsequent portability shall be handled in the same manner as the first time. The current operator shall become the donor operator and the new operator becomes the recipient operator. If a subscriber wants to return to any previous operator, the order shall be handled like a standard porting request. There shall be no difference even if the recipient operator was the original number range holder. If for any reason, a subscriber wants to end his or her relationship with his or her current operator, the current operator shall handle this as a termination in its telecommunication system and shall reset the status of the number as a quarantine period, at the end of which period the number shall revert to the original range holder for recycling purpose.

The licensee can allocate individual numbers to customers from the blocks allocated to it by the PTA, and shall maintain suitable records of its utilisation of numbering capacity, subject to the following conditions:

- the blocks of numbers and short codes allocated to the licensee, and the individual numbers allocated by the licensee to its customers, are a national resource; and
- the allocation of a number does not confer ownership of the number to the customer.

However, an allocation conveys an ongoing right of use and an expectation of at least a three-month notice period, should it be necessary to withdraw or change allocated numbers.

All operators are required to make mobile number portability available to their subscribers, however, LL licensees are not required to make available number portability to their customers or other operators unless the PTA so requires.

Every recipient operator is required to keep and maintain records of the application forms of those subscribers who have requested porting for at least six months, for inquiry by concerned donor operators or examination by the PTA. The operators are required to maintain usage records, including, where available, called and calling numbers date, duration, time and the called number cell with regards to usage made on its central databases for a rolling 12 months, for security by, or as directed by, the PTA or as required by any law enforcement or intelligence agency.

Customer terms and conditions

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

All licensees are required to make available to their customers a set of standard terms and conditions that will act as a contractual relationship with their customers when providing such customers with line rental, terminal equipment and any form of telecommunication services. A licensee shall also file a copy of all such standard terms with the PTA prior to entering into such an agreement with its customers.

The above condition shall not, however, prevent the licensee from negotiating and entering into an agreement with any customer for the provision of any licensed service on terms that are not the standard terms and conditions or that have not been filed with the PTA.

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?

Currently, there are no specific laws relating to 'net neutrality' in Pakistan. While the Broadband Quality of Service Regulations 2014 allow the PTA to keep checks on internet service providers (ISPs) to maintain network availability and link speed, these indicators are not grounded in net neutrality. So while ISPs have to maintain certain speeds, there is no requirement for internet speech to be uniform and non-discriminatory for all content.

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Platform regulation

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

The PTA, being the telecom regulator in Pakistan, will implement policies to block websites with blasphemous, un-Islamic, offensive, objectionable, unethical and immoral material. In this regard, the PTA, as and when directed by the federal government, can direct or require its licensees to implement internet protocol or uniform resource locator-blocking or filtering protocols.

The Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules 2021 provide that a service provider and the social media company shall deploy mechanisms to ensure immediate blocking of live streaming or online content through online information systems in Pakistan if such content relates to terrorism, hate speech, pornography, incitement to violence, and is detrimental to national security on receiving intimation from the PTA. The removal or blocking of access to online content would be considered necessary in the interest of:

- the glory of Islam;
- the security of Pakistan;
- public order;
- decency and morality; and
- integrity and defence of Pakistan.

Where the service provider, social media company or significant social media company fails to respond to the notice or satisfy the PTA in respect of the alleged contravention, the PTA may, after affording an opportunity of a hearing and by an order in writing, take any of the following actions:

- degrade the services of such service provider or social media company or significant social media company for such period of time as deemed appropriate by the PTA;
- block or issue directions for blocking of the entire online information system; or
- impose a penalty up to 500 million Pakistani rupees.

Additionally, a significant social media company (a social media company having more than half-a-million users in Pakistan), shall be required to:

- register itself with the PTA, within three months of coming into force of these rules (the cut-off date being 13 January 2022);
- establish an office in Pakistan, upon the directions of the PTA with a physical address preferably located in Islamabad;
- appoint an authorised compliance officer, based in Pakistan, for ensuring compliance with the provisions of the Prevention of Electronic Crimes Act 2016 (PECA), these rules and directions of the PTA, within three months of coming into force of these rules (cut-off date being 13 January 2022);
- appoint a dedicated grievance officer based in Pakistan for the redressal of grievances received by him or her against online content, within three months of the coming into force of these rules (the cut-off date being 13 January 2022). The grievance officer shall expeditiously redress the complaints but not later than seven days from receipt of the complaint.

The significant social media company shall publish on its online information systems the contact details as well as the mechanism by which user or any complainant who suffers as a result of access or usage of online information system can notify their complaints and must:

- comply with the user data privacy and data localisation in accordance with applicable laws; and
- deploy suitable content moderation methods including an artificial intelligence-based content moderation system and content moderators well versed with local laws.

The service provider, social media company and significant social media company shall not knowingly host, display, upload, publish, transmit, update or share any online content in violation of local laws.

Pursuant to PECA, whoever, with dishonest intent, undertakes the following shall be punishable with imprisonment:

- gains unauthorised access to any information system or data;
- unauthorised access, copies or otherwise transmits or causes to be transmitted any data;
- interferes with or damages or causes to be interfered with or damages any part or whole of an information system or data; or
- interferes with or damages, or causes to be interfered with or damaged, any part or whole of a critical information system, or data.

It is pertinent to note that the provisions of PECA are not only specific to the licensees of PTA but the scope of PECA extends to every citizen of Pakistan, wherever he or she may be, and also to every other person for the time being in Pakistan. The same also applies to any act committed outside Pakistan by any person; whereby the act constitutes an offence under PECA and affects any person, property, information system or data, in Pakistan.

For the purposes of the above:

- 'information system' includes, an electronic system for creating, generating, sending, receiving, storing, reproducing, displaying, recording or processing any information; and
- 'data' includes any representation of fact, information or concept for processing in an information system including source code or a programme suitable to cause an electronic system for creating, generating, sending, receiving, storing, reproducing, displaying, recording or processing any text, message, data, voice, sound, database, video, signals, software, computer programmes, any forms of speech, sound, data, signal, writing, image or video, to perform a function or data relating to a communication indicating its origin, destination, route, time, size, duration or type of service.

Further, PECA provides that a service provider shall, within its existing or required technical capability, retain its specified traffic data (data relating to a communication indicating its origin, destination, route, time, size, duration or type of service) for a minimum period of one year or such period as PTA may notify from time to time and, subject to the production of a warrant issued by the court, provide that data to the investigation agency or the authorised officer whenever so required.

For the purpose hereof, a 'service provider' means to include a person who:

- acts as a service provider in relation to sending, receiving, storing, processing or distributing any electronic communication, or the provision of other services in relation to electronic communication through an information system;
- owns, possesses, operates, manages or controls a public switched network or provides telecommunication services; or
- processes or stores data on behalf of such electronic communication service or users of such service.

Service providers are required to retain traffic data by fulfilling all requirements of data retention and its originality, as per the provisions of PECA.

In 2010, access to Wikipedia, YouTube, Flickr and Facebook was banned in response to a contest to draw images of the Prophet Mohammad. In 2012, access to YouTube was banned from hosting anti-Islamic content. The ban was removed in 2016. In 2020, TikTok was

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banned by the PTA for 'immoral content', which ban was removed after the particular content was removed.

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?

There are no specific regulations targeted at NGA in Pakistan, however, the PTA's strategies are evolving to address the newly emerging digital priorities of Pakistan. With 5G on the global horizon, the government issued a policy directive for the introduction and trials of 5G wireless networks in Pakistan. On the advice of the federal government, the PTA has prepared the Framework for Test and Development of Future Technologies (Particularly Fifth Generation (5G) Wireless Networks) In Pakistan.

Also, as part of the report commissioned by the World Bank, the MOITT has published on its website a draft of the 5G Readiness Plan for Pakistan. In connection with the feedback received on the 5G Readiness Plan, the MOITT has also published on its website, 5G Strategic Plan & Policy Guidelines.

Data protection

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

While there is no general data protection regime in Pakistan, the MOITT has uploaded on its website, a consultation draft of the personal data protection bill for stakeholder comments before it is tabled before the Parliament. The definition of the term 'personal data' therein has been widened to include, inter alia, any information that is related directly or indirectly to a data subject whereby, a data controller shall (when once the law is promulgated) be required to provide to the data subject in a written notice, the legal basis for the processing of personal data and time duration for which the data is likely to be processed and retained thereafter. However, since the law has not yet been promulgated, the requirements thereunder are not yet applicable.

All licensees of the PTA are required to take all reasonable steps to ensure that those of its employees who obtain, in the course of their employment, information about customers of the licensee or the customer's business (customer information), observe the provisions of a code of practice on the confidentiality of customer information (the Confidentiality Code). Such Confidentiality Code is required to be prepared by the licensee in consultation with the PTA and is required to specify the persons to whom customer information may not be disclosed without the prior consent of that customer and regulate the customer information that may be disclosed without the prior consent of that customer.

The PTA, in the exercise of its powers under the PTA Act, has framed the Telecommunication Consumer Protection Regulations 2009, which is the principal consumer protection legislation that applies specifically to telecom service providers.

The highlights of the same are as follows:

- the ability of a consumer to choose an operator and service as per their choice, including the provision of services to such a consumer in a fair, transparent, efficient, and non-discriminatory manner;
- a consumer is to be provided with uninterrupted service, subject to certain technical exceptions;
- requirement of due notice in the case of suspension, withdrawal or disconnection of service by operators to a consumer;
- protections to a consumer against operators engaging in unfair commercial practices;
- an operator is to disclose to end users the price, terms and conditions of the service, and protection to a consumer against unilateral changes in tariff;
- requirement on the operator to establish and maintain robust complain handling and resolution mechanisms; and
- an operator is required to maintain the confidentiality of consumers' data or information.

Cybersecurity

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

The MOITT on its website has published the National Cyber Security Policy 2021, which inter alia provides a review of Pakistan's cybersecurity landscape, along with a vision, scope and objectives.

The current legal framework for cybersecurity is governed by PECA. The purpose of PECA is to, inter alia, control the increasing number of cybercrimes in Pakistan, and to control the offences related to information systems. It provides mechanisms for the investigation, prosecution and trial of electronic crimes.

PECA provides that the unauthorised access or the unauthorised copying or transmission of data or an information system with the intent of injury, wrongful gain or wrongful loss or harm to any person shall be treated as a punishable offence. Further, PECA provides that a service provider shall, within its existing or required technical capability, retain its specified traffic data (data relating to a communication indicating its origin, destination, route, time, size, duration or type of service) for a minimum period of one year or such period as the PTA may notify from time to time and, subject to the production of a warrant issued by the court, provide that data to the investigation agency or the authorised officer whenever so required.

PECA provides for the constitution of a computer emergency response team (CERT), to respond to any threat against or attack on any critical infrastructure information systems or critical infrastructure data, or widespread attack on information systems in Pakistan. To achieve this, the PTA has prepared an implementation framework titled CERT (Computer Emergency Response Team) – Pakistan Telecom Sector Implementation Plan. The framework is pertinent to the country's telecom sector and recommends steps to be taken by the PTA to establish such teams. The framework delineates upon functions and roles of CERT.

For the purposes of PECA, the term 'service provider' includes a person who:

- acts as a service provider in relation to sending, receiving, storing, processing or distributing any electronic communication, or the provision of other services in relation to electronic communication through an information system;
- owns, possesses, operates, manages or controls a public switched network or provides telecommunications services; or
- processes or stores data on behalf of such electronic communication service or users of such service.

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?

None.

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Data localisation

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

There are no specific laws that regulate data protection in Pakistan, and while PECA criminalises unlawful or unauthorised access to information or data, or copying or transmission of critical infrastructure data, it too does not regulate data protection in Pakistan. However, a personal data protection bill has been uploaded by the MOITT on its website for stakeholder comments before it is tabled before Parliament. The same provides that personal data shall not be transferred to any unauthorised person or system. If personal data is required to be transferred to any system located beyond the territories of Pakistan or a system that is not under the direct control of any of the governments in Pakistan, it shall be ensured that the country where the data is being transferred offers personal data protection equivalent to the protections provided under the regime provided thereunder, and the data so transferred shall be processed in accordance with the regime provided thereunder and, where applicable, the consent given by the data subject.

Further, all licences granted by the PTA generally, inter alia, contain provisions to the effect that the licensee shall keep confidentiality of the message transmitted over the licensee's system and shall not divulge the contents of any message or part thereof to any person not entitled to become acquainted with the system and shall conform to the rules and regulation. Licensees are required to take all reasonable measures to prevent information about their subscribers, including information about their business, other than directory information, from being disclosed to third parties, including the licensee's own subsidiaries, affiliates and associated companies. A licensee shall be permitted to disclose information about a subscriber where the licensee has clearly explained to the subscriber the nature of the information to be disclosed; the recipients of the information to be disclosed; and the purpose for the disclosure, and the subscriber has provided licensee with consent to such disclosure

Key trends and expected changes

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

The rapid growth in mobile data traffic and consumer demand for enhanced mobile broadband has led to an increasing emphasis on the upcoming 5G mobile technology. Seen as a comprehensive wireless-access solution with the capacity to address the demands and requirements of mobile communication, it is projected that this technology will operate in a highly heterogeneous environment and provide ubiquitous connectivity for a wide range of devices, new applications and use cases.

MEDIA

Regulatory and institutional structure

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

Pakistan Electronic Media Regulatory Authority (PEMRA), regulates the distribution of foreign and local TV and radio channels in Pakistan, established under the Pakistan Electronic Media Regulatory Authority Ordinance 2002 (the PEMRA Ordinance), and has the mandate to facilitate, regulate the establishment and operation of all broadcast media and distribution services, established for the purpose of international, national, provincial, district, local or special target audience broadcasting, which are regulated in terms of the PEMRA Ordinance and the rules and regulations framed thereunder (the PEMRA Laws).

PEMRA regulates the distribution of foreign and local TV and radio channels in Pakistan, and has the exclusive right to issue licenses for the establishment and operation of all broadcast media and distribution services, provided that this exclusive right shall be used by PEMRA in conformity with the principles of fairness and equity applied to all potential applicants for licenses, whose eligibility shall be based on prescribed criteria notified in advance. In the case of radio, television and multichannel multipoint distribution service (MMDS) broadcast station licenses, this shall be done through an open, transparent bidding process if the number of applications exceeds the number of licenses to be issued by PEMRA. No person or entity can engage in broadcasting or CTV operation except after procuring a licence issued by PEMRA.

For the purposes of the above:

- 'broadcast media' includes media that originates and propagates broadcast and pre-recorded signals by terrestrial means or through satellite for radio or television, and includes teleporting, provision of access to broadcast signals by channel providers and such other forms of broadcast media as PEMRA may, with the approval of the federal government, specify; and
- 'distribution services' includes a service that receives broadcast and pre-recorded signals from different channels and distributes them to subscribers through cable, wireless or satellite options and includes cable TV, local multipoint distribution services, MMDS, direct-to-home (DTH) services and such other similar technologies.

The relevant government ministry vis-à-vis telecommunications services is the Ministry of Information, Broadcasting, National History and Literary Heritage (Pakistan).

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?

Yes. PEMRA shall not grant a licence to:

- a person who is not a citizen of Pakistan or resident in Pakistan;
- a foreign company organised under the laws of any foreign government;
- a company the majority of whose shares are owned or controlled by foreign nationals or companies whose management or control is vested in foreign nationals or companies; or
- any person funded or sponsored by a foreign government or organisation.

Licensing requirements

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

PEMRA shall issue licenses for broadcast media and distribution services in the following categories, namely:

- international- and national-scale stations;
- provincial-scale broadcasts;
- local area or community-based radio and TV broadcasts;
- specific and specialised subjects;
- distribution services; and
- up-linking facilities, including teleporting and digital satellite news gathering.

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Pursuant to the PEMRA Ordinance, any person desirous of obtaining a licence for the establishment and operation of broadcast media or a distribution service shall apply to PEMRA in such manner and form as may be prescribed. PEMRA shall process each application in accordance with prescribed criteria and shall hold public hearings in the respective provincial capitals of each Province, or as the case may be, in Islamabad, before granting or refusing the licence. Each application shall be accompanied by such fee as the Pakistan Telecommunication Authority (the PTA) may prescribe. A licence shall be valid for a period of five, 10 or 15 years subject to payment of the annual fee prescribed from time to time. The PTA may renew a licence on such terms and conditions as may be prescribed and in the case of refusal to renew a licence reasons shall be recorded in writing.

PEMRA may also grant permission to a distribution service licensee for running of in-house distribution channel subject to such terms and conditions and payment of fee and other charges as the PTA may prescribe, provided that only Pakistani content shall be distributed on such channel.

PEMRA regulates the traditional distribution platforms, whereas the PTA, in addition to PEMRA, jointly regulates internet-based platforms.

Every application form shall be accompanied by a non-refundable application processing fee as set out in Schedule B of the Pakistan Electronic Media Regulatory Authority Rules 2009 (the PEMRA Rules). Applications for the grant of a licence shall, in the first instance, be shortlisted by adopting the following criteria:

- financial viability;
- technical feasibility;
- financial strength;
- credibility and track record;
- majority shareholding and management control shall vest in Pakistani nationals;
- prospects of technical progress and introduction of new technology;
- market advancement, such as improved service features or market concepts;
- contribution to universal service objectives; and
- contribution to other social and economic development objectives.

PEMRA shall, within 100 days from the date of its receipt, decide on the application for the granting of a licence, subject to clearance from the Ministry of Interior and frequency allocation by the Frequency Allocation Board (FAB) in relevant cases. PEMRA shall prescribe procedures for open and transparent bidding in such cases where the number of the applicants is likely to exceed the number of licences that PEMRA has fixed for that category or sub-category.

PEMRA shall, if it is satisfied that the applicant fulfils the criteria, and has paid the prescribed fee and other charges, if any, grant the licence to the applicant. Every licensee shall follow the general terms and conditions as set out in Schedule C of the PEMRA Rules.

Each successful applicant shall within the time prescribed by PEMRA and before the issues of the licence, deposit the applicable licence fee and make a security deposit, if applicable, as set out in Schedule B. The security deposit shall be refundable after the expiry of one year of operation of the station to the satisfaction of PEMRA.

Licensees of PEMRA shall, in terms of the PEMRA Ordinance, be required to:

- ensure the preservation of the sovereignty, security and integrity of Pakistan;
- ensure the preservation of the national, cultural, social and religious values and the principles of public policy as enshrined in the Constitution;
- ensure that all programmes and advertisements do not contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency;
- comply with rules made under the PEMRA Ordinance;
- broadcast, if permissible under the terms of its licence, programmes in the public interest specified by the federal government or PEMRA in the manner indicated by the government, or, as the case may be, PEMRA, provided that the duration of such mandatory programmes does not exceed 10 per cent of the total duration of the broadcast or operation by a station in 24 hours, except if, by its own volition, a station chooses to broadcast such content for longer duration;
- comply with the codes of programmes and advertisements approved by PEMRA and appoint an in-house monitoring committee, under intimation to PEMRA, to ensure compliance with the Code;
- not broadcast or distribute any programme or advertisement in violation of copyright or any other property right;
- obtain NOC from PEMRA before the import of any transmitting apparatus for broadcasting, distribution or teleporting operation; and
- not sell, transfer or assign any of the rights conferred by the licence without prior written permission of PEMRA.

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?

Pursuant to a direction issued by PEMRA to its licensees, the airing of Indian content on local networks in Pakistan has been banned. Further, airing programmes that are produced by international entities require prior approval from PEMRA. PEMRA has also prohibited the broadcast media or distribution service operator from broadcasting or re-broadcasting or distributing any programme or advertisement if PEMRA believes that such particular programme or advertisement is against the ideology of Pakistan or is likely to create hatred among the people or is prejudicial to the maintenance of law and order or is likely to disturb public peace and tranquillity or endangers national security or is pornographic, obscene or vulgar or is offensive to the commonly accepted standards of decency.

Licensees of PEMRA, pursuant to the terms of their licence are required to carry all channels of the National Broadcaster and all licensed satellite TV and foreign satellite TV channels having landing rights permission of PEMRA. Such licensees, under all circumstances, shall provide a 'basic service' that includes a bouquet of satellite TV channels as determined by PEMRA comprising channels with religious, educational, informational, news and entertainment content. A licensee shall be restricted to carry or relay only those foreign satellite TV channels that have obtained necessary landing rights permission of PEMRA for 'landing' into Pakistani territory. A licensee may not discriminate against any licensed TV channel or landing rights permission holder in offering its broadcast or distribution platform.

Licensees of PEMRA, pursuant to the terms of their licence, are required to offer at least one basic service package (means the free-to-air television channels of the national broadcasters, non-commercial educational and health-related TV channels licensed by PEMRA and such other free-to-air television channels as determined by PEMRA to be distributed by a distribution service licensee to its subscribers against a fixed minimum monthly subscription fee) that includes the must-carry channels (which means the channels of national broadcasters, non commercial educational channels licensed by PEMRA and such other free-to-air television channels as determined by PEMRA to be distributed by the distribution networks including IPTV networks to

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its subscribers), for which it does not charge a subscription fee at a rate higher than the maximum fee prescribed by PEMRA.

Web TV and over-the-top (OTT) platforms are currently not regulated by the PEMRA Laws; however, PEMRA is in the process of bringing web TV and OTT content services within the ambit of its regulatory framework. PEMRA has prepared a draft bill for the amendment to the PEMRA Ordinance that would bring web TV and OTT content services within its regulatory framework; however, the same has not yet been promulgated.

Advertising

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

Broadcast media advertising is also regulated by PEMRA. Advertisements broadcasted or distributed by the broadcast media or distribution service operator shall be required to comply with the PEMRA Laws, and the provisions of the Motion Pictures Ordinance 1979, the Pakistan Electronic Media Regulatory Authority Rules 2009, and the Electronic Media (Programmes and Advertisements) Code of Conduct 2015 (the EMCC).

The EMCC, inter alia, regulates the type of content that can be used for advertisements. Pursuant thereto:

- advertisements shall be required to be in conformity with the laws for the time being in force;
- advertisements intended for children shall not directly ask the children to buy the product;
- advertisements shall not promote obscenity, violence or other activities harmful to human health or property;
- advertisements of any alcoholic beverages, tobacco products, illegal drugs or narcotics shall not be aired;
- any health-related advertisement shall not be aired without prior permission of the federal government or provincial government, as the case may be, as required under the relevant applicable laws and the advertisement so aired after obtaining necessary permission shall strictly comply with the terms and conditions of the permission;
- advertisements of lotteries, gambling or betting as prohibited under Pakistan Penal Code 1860 or any other law for the time being in force shall not be aired;
- a licensee shall not advertise or promote black magic, quackery or superstition;
- the exploitation of religious or nationalistic sentiments and use of religious or national symbols and anthems purely for the purposes of promotion of a product or any quality in such product shall be prohibited;
- advertisements shall be readily recognisable as such and kept separate from programmes.
- advertisements in the form of subtitles, logos or sliding texts shall not exceed a maximum of one-tenth of the whole screen; and
- advertisements relating to telemarketing, teleshopping or other offers to make phone calls shall conspicuously identify the applicable charges inclusive of all taxes.

A licensee shall be held liable for the airing of illegal or prohibited advertisements. Further, a sponsor, advertiser or other authority shall not influence the content of a programme in such a way as to impair the responsibility and editorial independence of the broadcaster.

Where prior permission for the airing of any advertisement or programme is required to be obtained under any law, such advertisement or programme shall not be aired unless requisite prior permission has been obtained.

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?

Licensees of PEMRA, pursuant to the terms of their licence are required to carry all channels of the National Broadcaster and all licensed satellite TV and foreign satellite TV channels having landing rights permission of PEMRA. Such licensees, under all circumstances, shall provide a 'basic service' that includes a bouquet of satellite TV channels as determined by PEMRA comprising channels with religious, educational, informational, news and entertainment content. A licensee shall be restricted to carry or relay only those foreign satellite TV channels that have obtained necessary landing rights permission of PEMRA for 'landing' into Pakistani territory. A licensee may not discriminate against any licensed TV channel or landing-rights permission holder in offering its broadcast or distribution platform.

Licensees of PEMRA, pursuant to the terms of their licence, are required to offer at least one basic service package (which means the free-to-air television channels of the national broadcasters, non-commercial educational and health-related TV channels licensed by PEMRA and such other free-to-air television channels as determined by PEMRA to be distributed by a distribution service licensee to its subscribers against a fixed minimum monthly subscription fee) that includes the must-carry channels (which means the channels of national broadcasters, non commercial educational channels licensed by PEMRA and such other free-to-air television channels as determined by PEMRA to be distributed by the distribution networks including IPTV networks to its subscribers), for which it does not charge a subscription fee at a rate higher than the maximum fee prescribed by PEMRA.

There is no prescribed mechanism for financing the costs of such obligations.

Regulation of new media content

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

The extensive growth of web TV and OTT market and the excessive disruption of these services to traditional broad case services have made regulators vigilant all over the world. Since web TV and OTT operators are competing for the same advertisement or subscription revenue as the licensed operators, therefore, PEMRA is of the view that the services be regulated at par with other services, which it is currently not.

Additionally, with the growth in the fibre-to-home business, many licensees of the PTA have also started providing media content through an IPTV licence that is granted by PEMRA and is contingent on the PTA licensee to hold a valid local-loop licence for the relevant telecom region.

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 transition to replace analogue cable systems with digital cable TV systems has not yet been completed on account of litigation initiated against PEMRA vis-à-vis the auction of DTH licenses.

The Pakistan Table of Frequency Allocations is the broadest technical document showing the allocation of bands to various types of services. The Pakistan Table of Frequency Allocations is drawn from, and kept current with, the International Telecommunication Union Radio Regulations, which are revised every few years at the World Radio Communication Conferences.

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Digital formats

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

Spectrum can only be used for the purpose for which it has been assigned to broadcasters by the FAB, unless the licence held by them provides otherwise.

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?

None. There is no such process available in the public domain. However, a private entity called the freedom network independently operates a media ownership monitor for Pakistan. We cannot comment on the correctness of the data that has been reflected on their website.

Key trends and expected changes

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

PEMRA is in the process of bringing web TV and OTT content services within the ambit of its regulatory framework. PEMRA had previously provided on its website, Consultation Paper No. Web&OTT/1-2020, in relation to the consultation on regulating web TV and OTT content services (the Consultative Paper), in furtherance to which, PEMRA has prepared a draft bill for the amendment to the PEMRA Ordinance that would bring web TV and OTT content services within its regulatory framework.

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?

The Pakistan Telecommunication Authority (the PTA) is the regulator for the telecom sector in Pakistan and the Pakistan Electronic Media Regulatory Authority (PEMRA) is the regulator for the broadcast, distribution and media sector in Pakistan.

Anti-competitive practices are generally the subject of the Competition Commission of Pakistan (the CCP), which is an independent regulatory, quasi-judicial body that helps to ensure healthy competition between undertakings for the benefit of the economy, in terms of the Competition Act 2010. The CCP prohibits the abuse of a dominant position in the market, certain types of anti-competitive agreements, and deceptive market practices. It also reviews mergers of undertakings that could result in a significant lessening of competition, or which could have the effect of altering market conditions artificially.

The telecommunication and the media regulators are both separate; however, there is an overlap in terms of regulation of these entities from a competition perspective by their own respective regulators (PTA or PEMRA) and the CCP.

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Appeal procedure

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

PTA

Yes, the PTA Act, inter alia, provides any person aggrieved by any decision or order of the PTA on the grounds that is contrary to the provisions of the PTA Act, may within 30 days of the receipt of such decision or order, appeal to the High Court or to any other tribunal established by the federal government for that purpose, in the manner prescribed by the High Court for filing the first appeal before the Court (or the tribunal) the Court or the tribunal shall decide such appeal within 90 days.

No tribunal has yet been established by the federal government for this purpose; hence, all appeals are made before the relevant High Court.

PEMRA

Yes, the Pakistan Electronic Media Regulatory Authority Ordinance 2002, inter alia, provides that, any person aggrieved by any decision or order of PEMRA may, within 30 days of the receipt of such decision or order, prefer an appeal to the High Court. Provided that PEMRA shall make available a copy of its decision or order of revocation of licence within 24 hours after the decision to the licensee for referring an appeal to the High Court.

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.

The key decisions of the CCP relating to the communications and media sectors include:

- Order dated 14 March 2022 – First Phase Review – Acquisition of shareholding of AWAL Telecom (Private) Limited by Telecommunications Towers Company JSC;
- Order dated 01 November 2021 – First Phase Review – Acquisition of shareholding of Telephone Industries of Pakistan by The National Radio Telecommunication Corporation (Private) Limited;
- Order dated 23 September 2021 – First Phase Review – Acquisition of shareholding of Jaag Broadcasting Systems (Private) Limited;

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- Order dated 20 November 2018 – Abuse of Dominant Position – Tie-in arrangement with an analogue television service provider by Wateen Telecom Limited;
- Order dated 14 September 2018 – Abuse of Dominant Position – Complaint filed by LinkDotNet Telecom Limited, Nexlinx (Private) Limited & Micronet Broadband (Private) Limited against Pakistan Telecommunication Company Limited; and
- Order dated 18 March 2016 – Second Phase Review – Amalgamation of Pakistan Mobile Communications Limited and Warid Telecom (Private) Limited.

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Philippines

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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?

Communications services enterprises are generally viewed as public services subject principally to provisions of the Philippine Constitution, the Public Service Act (Commonwealth Act No. 146, as amended by Republic Act No. 11659) and the Public Telecommunications Policy Act (Republic Act No. 7925). The Philippines has other statutes and regulations that specifically apply to the communications sector, such as the Radio Control Act (Act No. 3846, as amended) and the issuances of the National Telecommunications Commission (NTC).

The NTC has supervision and control over telecommunications and broadcasting entities and generally has the mandate to administer and implement laws on the licensing and operations of the covered entities. The NTC is an attached agency of the Department of Information and Communications Technology (DICT). The DICT is mandated to be the primary policy, planning, coordinating, implementing and administrative entity of the executive branch that will plan, develop, and promote the national Information and communication-technology development agenda.

Prior to the amendment of the Public Service Act, telecommunications and related services were classified as public utilities and subject to the Philippine Constitution's nationality restrictions, which specifically provide that public utilities may only be owned and operated by Filipino citizens or entities that are 60 per cent owned and controlled by Filipinos.

Under the recent amendment, public telecommunications entities (PTEs) are no longer classified as public utilities subject to the constitutional requirements on Philippine nationality, but as a public service owning critical infrastructure. The law defines critical infrastructure as physical or virtual systems and assets so vital to the Republic of the Philippines that the incapacity or destruction of such systems or assets would have a detrimental impact on national security. Thus, under the new law, PTEs may be 100 per cent foreign-owned, provided reciprocity conditions are met. However, Filipino ownership requirements may still be imposed under certain conditions such as when the reciprocity requirement is not met, if the investors are sovereign wealth funds and independent pension funds of states, and if the investors are entities controlled by or acting on behalf of a foreign government or foreign state-owned enterprises.

Another telecommunications law-related change under the PSA amendment is the carving out of a value-added service (VAS) from telecommunications. Previously, VASs were considered PTEs under the Public Telecommunications Policy Act.

The amendments to the Public Service Act do not appear to remove the requirement for PTEs to obtain a legislative franchise and other licenses from the NTC, thus it seems PTEs would still have to obtain a legislative franchise from the Philippine Congress, as well as certain operating licences.

The discussions set out here regarding licensing and permitting requirements for PTEs and VAS providers are in line with the prevailing regulations prior to the amendment of the PSA. There is no indication yet whether regulators will issue new or revised guidelines to align licensing and other requirements with the amendments.

Broadcasting entities are considered mass-media enterprises and, under the Philippine Constitution, must be wholly owned by Filipinos.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

The provision of all types of public telecommunications services, including fixed, mobile and satellite services, is subject to the franchise and licensing requirements.

A PTE would need to be a corporation established in the Philippines with a franchise granted by the Philippine Congress. This franchise is in the form of a law, and therefore its grant goes through the same process as other types of statutes. The typical term of a congressional franchise is 25 years and is renewable upon application.

An enfranchised PTE would also have to obtain certain principal licenses from the NTC. These are:

- a certificate of public convenience and necessity (CPCN). The application process is quasi-judicial, where an applicant files a petition for the CPCN issuance, and must prove its legal, technical and financial capability, as well as the feasibility of offering the contemplated service. The parameters and specific requirements utilised by the NTC to assess an application will depend on the service being proposed. Parties, such as entities engaged in the same service, may participate in the proceeding to oppose the application. Typically, it takes up to 10 years for the NTC to act on the petition. CPCNs usually have a term of 10 years and are renewable upon application. They are non-exclusive and may be amended. A nationwide application for a CPCN has a filing fee of 330,981 Philippine pesos;
- provisional authority (PA). The PA is an authority to operate issued to a CPCN applicant once it successfully proves that it has the financial and technical capacity to deliver its services to the public. The PA is issued pending the full assessment of the application for, and issuance of, the CPCN. The holder of a PA can already operate the service even if the CPCN petition is still pending. A PA's term is 18 months and is renewable upon application; and
- frequency allocation. This is typically applied for and allocated after the issuance of the PA or CPCN. An application is made using the NTC-prescribed form, supported by technical specifications of the

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network and of the equipment to be used. The frequencies shall then be allocated upon verification that they are available or are properly allocated within the National RF Allocation Table and that the applicant can properly utilise them. Frequency bands assigned are subject to an annual spectrum user fee, depending on the frequency band, channel and coverage applied for.

On satellite services, and in general, enfranchised, and certificated PTEs, as well as VAS providers and internet service providers (ISPs) duly registered with the NTC, are allowed direct access to all satellite systems, whether fixed or mobile, international or domestic. Access is subject to the satellite operator's commercial presence in the Philippines, and the jurisdiction where the operator has been established as having reciprocal terms with the Philippines.

A VAS provider need not obtain a congressional franchise but must obtain a certificate of registration (CoR) from the NTC, provided it does not set up its own network. VAS providers may be 100 per cent foreign-owned. VAS are services that improve upon the quality and functionality of services ordinarily offered by PTEs, such as audio conferencing and videoconferencing. The CoR, which specifies the VAS that will be rendered, is valid for five years and may be renewed upon application. An application for a VAS CoR has a filing fee of 300 Philippine pesos. Further, there is an annual registration fee of 6,000 Philippine pesos for the first five services registered and an additional 1,000 Philippine pesos for each additional service.

The DICT recently issued the Implementing Rules and Regulations on the national policy for expanding the provision of internet services through inclusive access to satellite services (DICT Circular No. 02 s 2021). It provides for the licensing and regulation of satellite systems providers and operators (SSPOs). Under the regulatory regime, SSPOs desiring to provide satellite services by directly engaging with ISPs, VAS providers, enfranchised telecommunications entities or PTEs, and broadcast service providers (authorised entities) shall:

- have an adequate digital presence in the Philippines, such as having a readily accessing website with sufficient content and information;
- have an adequate local presence by setting up a branch or representative office, having an institutional agent or official distributor, or a combination of such modes;
- have the capacity, coverage and satellite footprint in the Philippines for the purposes of providing adequate satellite services to covered areas;
- be accredited by the DICT;
- be a national of a country that does not prohibit Philippine satellites to operate within its territories and does not prohibit its citizens or subjects to access Philippine satellite systems.

In relation to the accreditation requirement, SSPOs shall apply for a DICT accreditation certificate. An application is made using the DICT-prescribed form, with the company profile and documentary proof of meeting the requirements listed above. The DICT accreditation certificate is valid for five years and is subject to renewal upon application.

Other requirements for ISPs, VAS providers, PTEs, and broadcast service providers shall also apply to SSPOs desiring to do business as authorised entities in addition to obtaining a DICT accreditation certification.

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?

Use of spectrum allocated by the NTC can only be under services allowed in the PA or CPCN that are granted to the PTE. In this regard, the Public Telecommunications Policy Act and NTC regulations require periodic review of radiofrequency spectrum allocation and assignment. To optimise the use of the radio spectrum, regulations require radio frequency (RF) to be assigned to those who will use it efficiently and effectively to meet public demand for telecommunications services. Regulations provide for the recall of RF unused for at least one year from the date of issuance of the licence. RF licences are granted according to use permitted by the National RF Allocation Table, the service licensed to the grantee and the radio equipment to be used.

An RF spectrum is not tradable or assignable. The NTC has exclusive authority to allocate an RF spectrum to specific services and assign them to qualified entities. Unless the NTC permits otherwise, an RF spectrum may only be used for services indicated in the National RF Allocation Table and may not be transferred to another entity. However, in exceptional instances, the NTC may allow co-use of an RF spectrum.

Ex-ante regulatory obligations

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

Billing and rate-fixing are subject to ex-ante regulation. The NTC is empowered to regulate and fix rates of telecommunications entities upon due notice and hearing. Further, the NTC regulates the manner and procedure of billing subscribers of telecommunication providers. However, rates for VAS are deregulated.

Concerning accounting separation, the Public Telecommunications Policy Act provides that where a single entity spans more than one category of telecommunications service, a separate book of accounts must be maintained for each category or specialised classification. Separate books of accounts must also be maintained for VAS. There is also an Internet Consumer Protection and Net Neutrality bill currently pending in Congress that would require separate books of accounts between different data transmission segments, a violation of which would give rise to a presumption of anticompetitive cross-subsidisation.

The public Telecommunications Policy Act also provides that where PTEs provide VAS, other VAS providers must not be discriminated against in rates nor denied equitable access to their facilities.

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 is no existing or proposed law or regulation to effect structural separation in the industry. Provided that activities are covered by a PTE's franchise and operating licences, it may pursue those activities.

The Public Telecommunications Policy Act prohibits a single franchise authorising an entity to engage in both telecommunications and broadcasting. This was seen as a move to prevent entities from monopolising available resources, such as available frequencies.

Universal service obligations and financing

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

Universal service obligations (USOs) became a statutory obligation in the early 1990s for international gateway facility (IGF) and cellular mobile telephone system (CMTS) operators in the form of mandatory deployment of a required number of local exchange lines or public calling offices. These operators were expected to subsidise the costs of providing local exchange services from revenues generated from their IGF and CMTS operations. But the implementation of USOs through the

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NTC's Service Area Scheme has generally become viewed as unsustainable owing to falling revenue from international services, the weak demand for local exchange carriers in rural areas, and the growth of mobile telephony. The NTC has since generally eased the USO's enforcement but has extended the USO to 3G licensees. The NTC now allows USO compliance through an equivalent number of telecentres (ie, facilities providing voice, internet, or any telecommunications service) in lieu of local exchange lines or public calling offices.

Moreover, the Free Internet Access in Public Places Act (Republic Act No. 10929) requires that no fees be collected from users to connect to the public internet access points in public places such as government offices, public educational institutions, public hospitals, public airports and seaports and public transport terminals. Recently, the DICT has adopted rules regarding common towers to improve telecommunications services throughout the country. Moreover, the Philippine President has recently signed an executive order liberalising access to satellite services for enfranchised PTEs, VAS providers and ISPs. Further, DICT Circular No. 02 s 2021 authorises entities to have direct access to all satellite systems duly accredited in the Philippines. Authorised Entities shall also be allowed to access and use associated spectrum to effectively expand the provision of internet services through inclusive access to satellite services, for any or all segments of their broadband network.

Number allocation and portability

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

Number allocation in the Philippines is administered by the NTC and follows an open telephone numbering plan and open dial plan. On the other hand, the Mobile Number Portability Act (Republic Act No. 11202) was signed into law on 8 February 2019, requiring a licensed telecommunications provider to allow mobile number portability to all qualified subscribers free of charge. A qualified subscriber must be the assignee of the mobile number used in a device that is not locked to a particular telecommunications provider and must not have any outstanding financial obligation with the donor provider. The subscriber must also not be blacklisted due to previous fraudulent activities.

One of the leading mobile network operators is already implementing number porting within its own network. The NTC commenced the commercial rollout of the Mobile Number Portability Act on 30 September 2021, under which qualified subscribers can switch networks for free while retaining their mobile numbers by submitting porting applications. In this regard, the country's three major mobile phone network providers have formed a consortium to implement the law and have appointed Syniverse, a US-based company, as their mobile number portability service provider.

Customer terms and conditions

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

The NTC regulations state that a clear and unambiguous statement of the terms and conditions on which telecommunications service will be offered, including any discounts or special conditions that will be offered, must be contained in the tariff structure submitted to the NTC for approval. Terms pertaining to the rates, conditions of access and manner of opting in or out must be fully disclosed to subscribers.

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?

There is currently no law, rule or regulation on net neutrality or zero-rating of data transmission in the Philippines. However, the Internet Consumer Protection and Net Neutrality bill currently pending in Congress would generally prohibit, among others, paid prioritisation (including data transmission zero-rating) and bandwidth throttling.

While there is no specific law or rule prohibiting bandwidth throttling, the Department of Justice has issued an advisory warning ISPs against using false, deceptive and misleading advertisements when marketing the maximum internet speed in the internet packages that they offer. They must also fully disclose their respective fair use policies and terms of use to give the end-users equal opportunities to access their services. Failure to comply with these directives is seen as a violation of the Consumer Act (Republic Act No. 7394) and will lead to the imposition of the appropriate penalties.

It is possible that bandwidth throttling may be considered a form of abuse of dominant position under the Philippine Competition Act (Republic Act No. 10667). This assumes that the entity engaged in it can be shown as having a dominant position in the relevant market. We are not aware of any ruling made by the Philippine Competition Commission (PCC) on the matter.

Platform regulation

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

At present, there is no law dealing specifically with digital platforms. However, the Internet Transactions bill currently pending in Congress aims to regulate online transactions and establish a regulator dedicated to digital platforms.

Various implementing agencies have also issued Joint Administrative Order No. 22-01, which confirms that consumer protection laws that apply to brick-and-mortar stores equally apply to online commercial transactions. The issuance imposes obligations on e-commerce platforms and e-marketplaces in relation to commercial activities initiated, negotiated, or completed through their online platforms. Joint Administrative Order No. 22-01 makes e-commerce platforms and e-marketplaces equally liable to online sellers or merchants, and e-retailers for the latter's violation of consumer protection laws. The safe harbour provision gives e-commerce platforms and e-marketplaces three days from receipt of take-down notices to remove posts on their platforms deemed to violate consumer protection laws. Failure of platform owners or operators to comply with the take-down notices will be deemed as complicity in the offence.

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?

Philippine regulators have only recently regulated broadband services by imposing duties to disclose their service reliability to consumers and to observe the minimum service reliability standard of 80 per cent. They have not yet come up with circulars on standardisation and transition to next-generation access networks such as 5G.

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Data protection

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

The Philippines does not have a data protection regime that specifically applies only to the communications sector, although the NTC has issued regulations on retention periods on traffic data for voice and non-voice communications. The general law on the privacy of personal data, the Data Privacy Act (Republic Act No. 10173), applies to the communications sector.

Cybersecurity

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

The Cybercrime Prevention Act of 2012 (CPA) (Republic Act No. 10175) protects the confidentiality and integrity of computer data and systems by declaring the following as cybercrimes:

- offences against the confidentiality, integrity and availability of computer data and systems (illegal access, illegal interception, data interference, system interference, misuse of devices and cybersquatting);
- computer-related offences (computer-related forgery, computer-related fraud and computer-related identity theft); and
- content-related offences (cybersex, child pornography and cyber libel).

The CPA appointed the National Bureau of Investigation and Philippine National Police (PNP) as enforcement authorities, and regulates their access to computer data, creating the Cybercrime Investigation and Coordinating Center as an inter-agency body for policy coordination and enforcement of the national cybersecurity plan, and an Office of Cybercrime within the Department of Justice for international mutual assistance and extradition.

The Implementing Rules and Regulations of the CPA provide that, under certain conditions, service providers are exempt from civil or criminal liability in respect of a computer data for which the service provider merely provides access if such liability arises from:

- the obligations and liabilities of users under a computer data; and
- the making, publication, dissemination or distribution of such computer data or any statement made in such computer data, including possible infringement of any right subsisting in or in relation to such computer data.

The Electronic Commerce Act of 2000 (ECA) (Republic Act No. 8792) penalises:

- hacking and piracy of protected material, electronic signature or copyrighted works;
- limits the liability of service providers that merely provide access; and
- prohibits persons who obtain access to any electronic key, document or information from sharing them.

The ECA also expressly allows parties to choose their type of level of electronic data security and suitable technological methods, subject to guidelines issued by the Department of Trade and Industry.

The Access Devices Regulation Act of 1998 (Republic Act No. 8484), as amended, penalises various acts of access device fraud such as using counterfeit access devices. An access device is:

- any card, plate, code, account number, electronic serial number and personal identification number;
- other telecommunications service, equipment or instrumental identifier;
- other means of account access that can be used to obtain money, goods, services or any other thing of value; or
- to initiate a transfer of funds (other than a transfer originated solely by paper instrument).

Banks, financing companies and other financial institutions issuing access devices must submit annual reports of access device frauds to the National Bureau of Investigation and the Anti-Cybercrime Group of the PNP.

Under the Data Privacy Act, personal information controllers shall establish the following technical security measures:

- a security policy with respect to the processing of personal data;
- safeguards to protect its computer network against accidental, unlawful or unauthorised usage, any interference that will affect data integrity or hinder the functioning or availability of the system, and unauthorised access through an electronic network;
- the ability to ensure and maintain the confidentiality, integrity, availability and resilience of their processing systems and services;
- regular monitoring for security breaches, and a process both for identifying and accessing reasonably foreseeable vulnerabilities in their computer networks, and for taking preventive, corrective, and mitigating action against security incidents that can lead to a personal data breach;
- the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- a process for regularly testing, assessing, and evaluating the effectiveness of security measures; and
- encryption of personal data during storage and while in transit, authentication processes and other technical security measures that control and limit access. The National Privacy Commission recommends Advanced Encryption Standard with a key size of 256 bits (AES-256) as the most appropriate encryption standard. Passwords or passphrases used to access personal data should be of sufficient strength to deter password attacks. A password policy should be issued and enforced through a system-management tool.

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?

The Philippines currently has no specific legislation regarding big data. However, funds were appropriated under the Bayanihan to Recover as One Act (Republic Act No. 11494) for the establishment of a computational research laboratory at the University of the Philippines-Diliman Institute of Mathematics to process big data analysis for covid-19 and other pandemic research.

Moreover, there is a proposal in Congress to establish a big data centre for research purposes.

Data localisation

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

There are no laws generally requiring data to be stored locally.

Key trends and expected changes

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

The amendment to the Public Service Act that removed nationality restrictions in telecommunications was signed into law on 21 March

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2022. However, some have expressed the view that the law is against the Philippine Constitution.

Investments in telecommunications are subject to safeguard measures, including the power of the President to suspend or prohibit any proposed merger, acquisition, transaction or investment in a public service if all the following conditions are met, namely:

- the transaction results in a grant of direct or indirect control to a foreigner or foreign corporation;
- the suspension or prohibition is necessary for the interest of national security; and,
- the suspension or prohibition is recommended by the relevant administrative agency.

The suspension or prohibition must be effected within 60 days from such recommendation.

In addition, there is pending legislation in Congress that seeks to regulate internet transactions. Generally, this proposal aims to impose registration requirements on online merchants, as well as to adopt a code of conduct applicable to all online merchants. This proposal also outlines their obligations and corresponding liabilities.

There is also a pending Internet Consumer Protection and Net Neutrality bill in Congress that would generally prohibit paid prioritisation (including data transmission zero-rating) and bandwidth throttling.

MEDIA

Regulatory and institutional structure

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

There is no general law that applies to the media sector as a whole. Nevertheless, the laws and regulations in place typically focus on regulating access to content, such as age-gating concerning movies, age advisories for television shows, and ownership restrictions and consumer protection. In addition, the media sector is affected by legislation on press freedom, intellectual property, privacy, criminal law and general civil law.

Various government agencies handle content regulation, such as the Movie and Television Review and Classification Board, the Optical Media Board and the National Council for Children's Television.

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?

Only Philippine nationals or corporations, partnerships or associations wholly owned by Philippine nationals may engage in broadcasting.

There are no regulations concerning the cross-ownership of media. However, an entity cannot engage in both telecommunications and broadcasting under a single franchise.

Licensing requirements

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

A broadcasting company would need to be a corporation established in the Philippines with a franchise granted by the Philippine Congress. This franchise is in the form of a law and therefore its grant goes through the same process as other types of statutes. The typical term of a Congressional franchise is 25 years and is renewable upon application.

An enfranchised broadcasting company would have to also obtain certain principal licences from the National Telecommunications Commission (NTC). These are:

- the Certificate of Public Convenience and Necessity (CPCN). The application process is quasi-judicial, where an applicant files a petition for the CPCN issuance, and must prove its legal, technical and financial capability, as well as the feasibility of offering the contemplated service. The particular parameters and specific requirements utilised by the NTC to assess an application will depend on the service being proposed. Parties, such as entities engaged in the same service, may participate in the proceeding to oppose the application. Typically, it takes up to 10 years for the NTC to act on the petition. CPCNs usually have a term of 10 years and are renewable upon application. They are non-exclusive and may be amended. A nationwide application for a CPCN has a filing fee of 330,981 Philippine pesos.
- a provisional authority (PA). A PA is an authority to operate issued to a CPCN applicant once it successfully proves that it has the financial and technical capacity to deliver its services to the public. The PA is issued pending the full assessment of the application for, and issuance of, the CPCN. The holder of a PA can already operate the service even if the CPCN petition is still pending. A PA's term is 18 months and is renewable upon application.
- frequency allocation. This is typically applied for and allocated after the issuance of the PA or CPCN. An application is made using the NTC-prescribed form, supported by technical specifications of the broadcast network and of the equipment to be used. The frequencies shall then be allocated upon verification that they are available or are properly allocated within the National Radio Frequency Allocation Table and that the applicant can properly utilise them. Frequency bands assigned are subject to an annual spectrum user fee, depending on the frequency band, channel and coverage applied for.

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?

There are no rules requiring television broadcasters to include a minimum amount of local content in their programming. However, the Broadcast Code of the Philippines (which was formulated by the local organisation of broadcasters and adopted by the NTC) provides that the airing of programmes in a foreign language other than English must take into account the broader interests of the public in the scheduling and presentation of the programmes. Also, stations broadcasting such programmes are mandated to keep a record of the broadcasts for not less than six months. In respect of radio programming, the NTC requires all radio stations to broadcast a minimum of four original Philippine musical compositions every hour. Moreover, rules issued by the Film Development Council of the Philippines prohibit restrictions on the maximum number of Filipino films exhibited to screen in cinemas at any given week. They also require that an equitable ratio between Filipino films and foreign films be observed in applicable scenarios every playdate except in cases where a National Film Festival is held in support of the local film industry. There are no similar regulations for online or other media.

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Advertising

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

Only Philippine nationals or corporations, where at least 70 per cent of the capital stock is owned by Philippine nationals, may engage in advertising, including online advertising, directed at the Philippine market or using Philippine mass media. Advertising companies need not obtain a special licence or register with any regulatory body specifically supervising the advertising industry, and there is no such governmental body. Instead, local companies and other participants in the industry have formed an organisation called the Ad Standards Council (ASC). It is essentially a self-regulating body.

Advertising content is principally regulated by the provisions of the Broadcast Code of the Philippines and the Consumer Act, as well as various special laws and regulations, such as regulations issued on tobacco advertisements and those issued by the Philippine Food and Drug Administration. The ASC has also issued a Code of Ethics and is guided by its Manual of Procedures. These seek to regulate both advertising content and the behaviour of participants in the advertising industry.

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?

Local rules require a cable television system operating in a community that is within particular field intensity contours of an authorised television broadcast station or stations to carry the television signals of these stations. A cable television system operating in a community may carry or, upon request by a relevant station licensee or permittee, shall carry the television broadcast signals from certain broadcast stations such as non-commercial educational television stations. The cable company's retransmission of broadcast signals without charge does not infringe the intellectual property rights of the broadcasting station. In addition to the signals that such cable television system is required to carry, an access channel should be provided for the use of certain entities (eg, the national government and socio-civic organisations) for free, as a public service feature of the television cable system.

Regulation of new media content

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

Except for special laws against content-related offences online under the Cybercrime Prevention Act, the Anti-Child Pornography Act (Republic Act No. 9775) and the Safe Spaces Act (Republic Act No. 11313), there are no general regulations expressly governing new media content, so that to the extent that the new media operator is based in the Philippines and providing a service here, local authorities will likely try to apply media laws in general.

There are existing regulations on the aspect of the transmission of new media. Generally, entities engaged in the delivery of content, information, applications, programmes and emails online may be considered value-added service (VAS) providers. VAS providers may be 100 per cent foreign-owned. VAS providers do not need to obtain a congressional franchise or a CPCN but must register with the NTC.

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 NTC was initially set to switch from analogue to digital television by 11.59pm on 31 December 2015 and chose the integrated services digital broadcast-terrestrial standard as the sole standard in the delivery of digital terrestrial television services in the country. However, this did not occur, and the Department of Information and Communications Technology has mentioned that the switchover is now scheduled for 31 December 2023.

Digital formats

25 Does regulation restrict how broadcasters can use their spectrum?

No. Regulations allow multiplexing and broadcast of high-definition feeds. However, an early warning broadcast system is a required feature in the Philippine digital terrestrial television system. In general, broadcasters would need to use the spectrum only for the services covered by their franchise and licences.

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?

Media plurality per se has not been the subject matter of regulatory efforts in the country. Concepts such as diversity and representation are only beginning to enter the mainstream of public discussion. However, owing to the proliferation of fake news and its consequences in Philippine electoral politics, there have been attempts to pass bills regulating social media and penalising fake news.

Key trends and expected changes

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

The Securities and Exchange Commission has recently been active in policing compliance with nationality restrictions of new media platforms operating within or offering their products and services to the Philippine market. It has, for example, issued guidelines for an online or mobile app platform operator (which renders service to third-party clients) not to be deemed as engaging in mass media activities, namely:

- there is no pervasive or indiscriminate display to the general public of any promotional materials or advertisements on the products or services being offered by the third-party clients or even the platform or mobile app itself; and
- only the following information may be made available in the app, website or platform:
  - enumeration of the services offered by the platform itself;
  - instruction on how to use the said platform;
  - enumeration of a third-party partner, and this shall only be limited to the listing of the name or logo of the third-party client; and
  - any other information on the platform required to be disclosed by any law or regulatory measures; and
  - the disclosure of the products and services offered by its third-party clients is only for the purpose of completing the transaction enabled by the app, website or platform.

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There is also a trend towards recognising social media as mass media. The Commission on Elections, for example, explicitly stated in its implementing rules and regulations for the 2022 national elections, that social media is mass media and imposed limitations, qualifications and conditions on candidates' use of social media for campaign purposes. It also imposed compliance and reportorial requirements on social-media platforms.

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?

The National Telecommunications Commission (NTC) is the government body that principally regulates the telecommunications and broadcasting industries. The Department of Information and Communications Technology, Department of Trade and Industry and the National Privacy Commission are mandated to issue relevant regulations to communications services providers.

Content provision, however, is mainly regulated by the Movie and Television Review and Classification Board and the Optical Media Board. The National Council for Children's Television issues special regulations. Local broadcasters have formed a self-regulatory body called the Association of Philippine Broadcasters, which has issued certain programme standards for television and radio.

The Philippine Competition Commission (PCC) is the main antitrust regulator tasked with curbing anticompetitive agreements, abuse of dominant position, and anticompetitive mergers. However, the NTC has the power to exempt any specific telecommunications service from its rate or tariff regulations if the service has sufficient competition to ensure fair and reasonable rates or tariffs. The NTC nevertheless retains its residual powers to regulate rates or tariffs when ruinous competition results, or when a monopoly or a cartel or combination in restraint of free competition exists.

Appeal procedure

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

Decisions of the NTC issued in the exercise of its quasi-judicial powers may be brought to the Court of Appeals for review either through a petition for review or a petition for certiorari. The former may be taken based on questions of law, facts or mixed questions of law and facts, while the latter may be taken based on a claim of grave abuse of discretion on the part of the regulator whose decision is being challenged. Both are taken by filing verified petitions, with proof of service of a copy on the adverse party and on the regulator whose decision is challenged, and payment of docket and other fees.

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.

The PCC is finalising a draft memorandum circular to be jointly issued with other regulatory agencies involved in property development and information and communications technology, which will prohibit property developers from entering into exclusivity arrangements with internet service providers, public telecommunications entities and cable television service providers.

The PCC is also seeking to be included in the NTC's process of allocating and reallocating vacated or available frequencies. Towards this end, the PCC is recommending amendments to NTC's rules so that the PCC would become a member of the approving body for frequency assignment and reassignment. This move was prompted by the NTC's reallocation of frequencies formerly utilised by broadcasting company ABS-CBN to Advanced Media Broadcasting System, Aliw Broadcasting Corporation and Swara Sug Media Corporation.

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Singapore

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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?

Regulatory framework

The Info-communications Media Development Authority (IMDA) is the converged regulator for the info-communications and media sectors and is responsible for the development, promotion and regulation of the info-communications industry, which includes both the telecoms and IT sectors. The IMDA rests under the direct authority of the Ministry of Communications and Information.

At present, the telecoms and media sectors are governed by separate regulatory frameworks.

The telecoms sector is regulated by the IMDA under the Telecommunications Act 1999 (the Telecoms Act) and the Info-communications Media Development Authority Act 2016 (the IMDA Act).

'Telecommunications' is defined very broadly under the Telecoms Act as:

> *[A] transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, optical or other electro-magnetic systems whether or not such signs, signals, writing, images, sounds or intelligence have been subjected to a rearrangement, computation or other processes by any means in the course of their transmission, emission or reception.*

The Telecoms Act is the primary legislation governing the telecoms industry in Singapore. It sets out the broad licensing and regulatory framework for the telecoms sector. Specific issues are dealt with through regulations, codes of practice, standards of performance, directions and advisory guidelines issued by the IMDA, pursuant to its powers under the Telecoms Act.

The Telecoms Act itself does not make a distinction between fixed, mobile and satellite services. This is consistent with the technology-neutral approach that the IMDA has taken in regulating the industry. There are, however, licensing and regulatory requirements that are service-specific. For instance, the Telecommunications (Radio-Communications) Regulations (Radio-Communications Regulations) regulate the licensing process for radio frequency (RF) spectrum, the use of RF spectrum and the operation of radio stations and networks. This set of regulations applies primarily to mobile services.

Other regulations cover specific issues pertaining to fixed, mobile and satellite services. Examples of such regulations are the Telecommunications (Class Licence) Regulations, the Telecommunications (Dealers) Regulations and the Telecom Competition Code 2012 (TCC). While the TCC presently regulates competition, interconnection and market access across the entire telecoms industry, the IMDA has issued a new converged competition code (Converged Code) on 18 April 2022 to govern competition and market-related matters in both the telecoms and media markets, which will supersede the TCC when it comes into effect on 2 May 2022.

At present, the Telecoms Act does not apply to the licensing of any broadcasting service or any broadcasting apparatus that is already subject to regulation under the Broadcasting Act 1994.

Foreign ownership restrictions

Since 1 April 2000, no direct or indirect foreign equity limits have applied to telecoms licensees. However, other than in exceptional circumstances, the IMDA's current practice is to issue facilities-based telecoms licences only to companies incorporated in Singapore, which can be wholly owned by a foreign entity. In the case of services-based licences, the IMDA would also issue licences to foreign companies with a locally registered branch. Merger and acquisition control regulations exist under the TCC (and the Converged Code).

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

Licensing framework

All persons operating and providing telecoms systems and services in Singapore must be licensed under section 5 of the Telecoms Act. The IMDA categorises licences for the operation and provision of telecoms systems and services into licences for either facilities-based operators (FBOs) or services-based operators (SBOs), and where RF spectrum is required for the provision of wireless services, additional licensing is required under the Radio-Communications Regulations.

FBO licence

A person intending to deploy telecoms infrastructure (generally taken to refer to any transmission facility) to provide telecoms services to other telecoms licensees or end users must obtain an FBO licence. The IMDA generally adopts a technology-neutral approach towards the licensing of telecoms infrastructure. The configuration of the systems deployed and the technology platform (wireless or wired) adopted will be left to the choice of the licensee, subject to spectrum and other physical constraints.

An FBO licence is on a higher hierarchical level than an SBO licence. As such, an FBO licensee does not need an SBO licence if it wishes to provide services that on their own would have required an SBO licence. The converse, however, does not apply. An SBO licensee that wishes to deploy telecoms infrastructure in the provision of telecoms services must apply for an FBO licence. The FBO licence will then replace the SBO licence.

Although the general conditions of an FBO licence are standardised across all FBO licensees, additional specific conditions may apply

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to each individual FBO licensee depending on the services that the licensee may provide.

The following are some telecoms systems and services that may require an FBO licence:

- any terrestrial telecoms infrastructure for the carriage of telecoms or broadcasting traffic (be it cross-border or local traffic; network coverage may be nationwide or limited to selected local geographic broadcast), including but not limited to:
  - submarine cables (including the establishment of frontier stations, backhaul and sale of indefeasible rights of use);
  - satellite international gateways; and
  - domestic telecoms networks (including core backbone and local access networks);
- public switched telephone services;
- public switched integrated services digital network services;
- leased circuit services;
- public radio communication services;
- public cellular mobile telephone services;
- public trunked radio services;
- public mobile data services;
- terrestrial telecommunication network for broadcasting purposes only; and
- satellite uplink or downlink for broadcasting purposes.

FBO licences	Annual fees and duration
FBOs	Licence duration: 15 years, renewable for a further period as the IMDA thinks fit. Annual fee: • first S$50 million in annual gross turnover (AGTO): S$80,000; • next S$50 million–S$100 million in AGTO: 0.8 per cent of incremental AGTO; and • above S$100 million in AGTO: 1 per cent of incremental AGTO.
FBO designated as public telecoms licensee	Licence duration: 20 years, renewable for a further period as the IMDA thinks fit. Annual fee: • first S$50 million in AGTO: S$200,000; • next S$50 million–S$100 million in AGTO: 0.8 per cent of incremental AGTO; and • above S$100 million in AGTO: 1 per cent of incremental AGTO .
Public mobile data services Public trunked radio services	Licence duration: 10 years, renewable for a further period as the IMDA thinks fit. Annual fee: • first S$50 million in AGTO: S$80,000; • next S$50 million–S$100 million in AGTO: 0.8 per cent of incremental AGTO; and • above S$100 million in AGTO: 1 per cent of incremental AGTO.
Terrestrial telecoms network for broadcasting purposes only Satellite uplink/downlink for broadcasting purposes	Licence duration: 10 years, renewable every 5 years. Annual fee: S$5,000

SBO licence

SBO licences are granted to operators that do not intend to deploy telecoms infrastructure. Such licensees may instead lease telecoms network elements (eg, transmission capacity and switching services) from FBO licensees to provide telecoms services or resell the telecoms services of other telecoms licensees. SBO services can be individually licensed or class-licensed. Class licensing is a licensing scheme where the standard terms and conditions that apply to the category of licences are published in an official gazette for compliance. Operators providing the services within the scope of the class licence will be deemed to have read and agreed to the terms and conditions of the class licence. Generally, operators leasing international transmission capacity to provide telecoms services will be licensed individually.

Telecoms services that require SBO (individual) licensing include, without limitation:

- international simple resale;
- resale of local leased fixed-line connectivity services;
- public internet access services;
- internet exchange services;
- virtual private network services;
- managed data network services;
- mobile virtual network operation;
- live audio-text services;
- internet protocol (IP) telephony services;
- satellite mobile telephone or data services;
- mobile communications on aircraft;
- voice and data services with masking of calling line identity;
- machine-to-machine services;
- white space geolocation database services; and
- prepaid services for other telecoms services, such as:
  - callback and call re-origination services;
  - internet-based voice and data services;
  - international calling card (ICC) services;
  - resale of public switched telecoms services;
  - store-and-retrieve value-added network services; and
  - store-and-forward value-added network services.

Telecoms services that require only an SBO (class) licence include, without limitation:

- call-back and call re-origination services;
- internet-based voice and data services;
- ICC services;
- resale of public switched telecoms services;
- store-and-retrieve value-added network services;
- store-and-forward value-added network services;
- audio-text services; and
- public chain payphone services.

Certain services, such as audio-text and internet access services, are subject to concurrent telecoms and media licensing requirements. In this respect, audio-text and internet access services are also deemed to be class-licensed under the Broadcasting (Class Licence) Notification.

SBO (individual) licence	
SBO (individual)	Annual fee: • first S$50 million in AGTO: S$4,000; • next S$50 million to S$100 million in AGTO: 0.5 per cent of incremental AGTO; and • above S$100 million in AGTO: 0.8 per cent of incremental AGTO.
Live audio-text services only	S$200 every 5 years
SBO (class) licence	
Resale of public switched telecommunication services, public chain payphone services, and store-and-retrieve value-added network services (without the use of leased circuits)	No registration fee
All other categories of SBO (class) licences	S$200 (one-time payment)

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Licensing – radio frequency

Pursuant to its exclusive privilege under the Telecoms Act, the IMDA can determine how the RF spectrum is allocated. The IMDA can also make decisions on the assignment of unused radio spectrum. Specifically, the Radio-Communications Regulations give the IMDA the right to prepare and publish radio spectrum plans and RF band plans. The Radio Spectrum Master Plan is a document prepared by the IMDA pursuant to such statutory right and it serves to inform the industry and interested parties on the allocation and availability of spectrum, technological trends in the use of spectrum and the IMDA's policy concerning spectrum allocation and reallocation for public communication networks. At the time of writing, the Radio Spectrum Master Plan is in the process of being updated by the IMDA, and the updated version has yet to be published. The IMDA is also empowered under the Radio-Communications Regulations to vary or revoke any radio spectrum plan or RF band plan, in whole or in part.

RFs required for the provision of 2G, 3G and 4G mobile services, as well as wireless broadband services, have been granted as spectrum rights through an auction process. RFs required for the operation of a satellite are generally allocated administratively or assigned by the IMDA as part of the satellite licence. The Radio-Communications Regulations also regulate the installation and maintenance of radio communications stations or networks in Singapore.

Regarding the permitted use of licensed radio spectrum, the general powers of section 6(12) of the Telecoms Act and regulation 10(1)(i) of the Radio-Communications Regulations give the IMDA the discretion to direct the grantee concerning its use of the spectrum right. Additionally, the grantee may be restricted in its use of equipment within the allocated RF spectrum. For example, no station fitted in an aircraft shall be operated or used while such aircraft is at rest on land or water in Singapore, barring certain exceptional circumstances as stated in Regulation 36 of the Radio-Communications Regulations.

Provision of publicly available telephone services

Since 1 April 2000, subject to the IMDA's licensing requirements, any person may apply to the IMDA for a licence to provide telecoms services to the public. There are no special conditions imposed by the IMDA for such services. A holder of an FBO licence may, however, depending on the scope and requirements of its operations, apply to the IMDA to be designated as a public telecommunication licensee (PTL) under section 8 of the Telecoms Act. A PTL is accorded certain statutory powers under the Telecoms Act to facilitate the deployment of telecoms infrastructure, including the power to enter state and private property to lay telecoms infrastructure. The IMDA will grant such applications only if the FBO licensee has committed to substantial telecoms infrastructure investment and roll-out to offer services to a significant proportion of the population within a reasonable time. At present, four licensees have been designated as PTLs (namely, NetLink NBN Management Pte Ltd (as trustee-manager of NetLink NBN Trust) and NetLink Management Pte Ltd (as trustee of NetLink Trust) as joint licensees, Singtel, StarHub and StarHub Cable Vision). The IMDA also reserves the right to impose basic service obligations on a PTL.

The IMDA may modify the conditions of a telecoms licence granted under section 5 of the Telecoms Act. The procedure to be followed is set out in section 9 of the Telecoms Act, which prescribes that, in the case of a PTL, the IMDA first has to give notice to the PTL of the proposed modifications to the licence, including whether compensation is payable. Before finalising any direction to implement the licence modifications, the IMDA is also required to give PTLs at least 28 days to make written representations on the proposed modifications. In the case of a licensee that is not a PTL, the Telecoms Act does not set out the procedure to be followed concerning the modification of the licence. Instead, the modification procedure of a non-PTL licence is typically set out in the relevant licence. Under the terms of their licences, telecoms licence holders may not assign, transfer, deal with or otherwise dispose of the whole or any part of the rights, privileges, duties or obligations under the licence without obtaining the prior written approval of the IMDA.

Provision of public Wi-Fi services

Operators providing public Wi-Fi services may require a telecom licence granted by the IMDA, as well as a broadcasting class licence. However, commercial establishments that are open to the public and that merely provide Wi-Fi to customers within their own premises for purposes incidental to their primary business may be exempted from telecom licensing requirements.

In 2006, the Singapore government launched the Wireless@SG programme, in partnership with private-sector operators, to deploy wireless hotspots in public areas in Singapore to provide high-speed wireless broadband. The Wireless@SG programme aims to promote a wireless broadband lifestyle among citizens. At present, the four licensed Wireless@SG operators are Singtel, StarHub, M1 and TPG. Businesses, venue owners or tenants wishing to provide free Wi-Fi to their premises may enter into commercial agreements with the Wireless@SG operators for this purpose.

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?

The IMDA manages the allocation and usage of spectrum for various services, including public mobile, private land mobile, terrestrial fixed and broadcasting services. As such, spectrum licences generally specify that licensees can only use the assigned spectrum for the specified purpose. Conditions requiring the network to be operated on a non-interference and unprotected basis, and limiting the operation to specific geographical locations, may also be imposed.

The IMDA may also permit the existing assigned spectrum to be used for new purposes if there are grounds to do so. For example, in December 2014, the IMDA decided to allow 3G spectrum rights holders to deploy 4G and international mobile telecommunication (IMT)-Advanced services using the 3G bands, subject to the following conditions:

- 3G spectrum rights holders that wish to deploy 4G and IMT-Advanced systems and services using the 3G bands are required to seek the IMDA's prior approval;
- 3G spectrum rights holders must ensure there is no degradation of existing services;
- 3G spectrum rights holders must take measures to prevent interference to any IMDA-authorised networks; and
- the IMDA reserves the right to impose quality of service requirements on the 4G and IMT-Advanced systems and services, as well as other measures to protect consumer interests.

More recently, in August 2020, the IMDA also allowed mobile network operators to ride on existing 4G networks to deploy 5G non-standalone networks as part of trials to allow consumers to enjoy partial 5G experiences in the short-term, with faster mobile speeds on 5G-enabled devices as a key feature.

Licensed RF granted under a spectrum right may be traded and shared, subject to the IMDA's prior approval and any restrictions and conditions specified by the IMDA. At present, the IMDA has not issued any specific regulations on the trading and sharing of RF, aside from general conditions stated in the Radio-Communications Regulations. Conditions on trading and sharing of RF may also be imposed via the licences or relevant spectrum rights.

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Ex-ante regulatory obligations

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

Ex-ante regulations are primarily applied to licensees that are classified as 'dominant licensees' under the TCC. Under section 2.2.1 of the TCC (and section 2.3 of the Converged Code), a licensee will be classified as 'dominant' if it is licensed to operate facilities that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication market in Singapore by an efficient competitor; or if it has the ability to exercise significant market power in any market in Singapore in which it provides telecommunication services.

In this regard, dominant licensees are subject to a range of ex-ante obligations under the TCC (and the Converged Code), such as:

- accounting separation requirements;
- obligations to file tariffs with the IMDA for approval;
- to provide unbundled services; and
- to allow resale of end-user services by any licensee.

Dominant licensees may also be required to offer certain interconnection and access-related services on terms that are pre-approved by the IMDA, by way of a standardised reference interconnection offer (RIO).

Tariffing

Unless exempted by the IMDA, dominant licensees must file tariffs for any telecommunications service they intend to offer (including any offer on a trial basis) with the IMDA and obtain the IMDA's prior approval before offering the service. The proposed tariff filing must include:

- certain specified information, including a description of the service;
- the relevant prices, terms and conditions;
- any discounts or special considerations that will be offered; and
- the minimum period for which the service will be available.

The IMDA will assess whether the proposed tariff is just and reasonable under the principles in the TCC.

Interconnection with dominant licensees

If required by the IMDA, dominant licensees must also publish RIOs, under which they have to offer interconnection and access-related services on prices, terms and conditions that are pre-approved by the IMDA. A downstream operator that meets the relevant criteria may then request services from the dominant licensee under the terms of its RIO.

Presently, Singtel (which is the incumbent fixed-line network operator and also operates several telecoms facilities such as submarine cable landing stations) and NetLink Trust (whose assets include central offices, ducts and manholes) have been required to offer RIOs pursuant to the TCC.

In the context of the next-generation nationwide broadband network (NGNBN), the IMDA has also imposed similar obligations on the appointed network and operating companies to make available certain mandated services to qualifying persons under the terms of standardised interconnection offers (ICOs).

Accounting separation

Dominant licensees are subject to the IMDA's Accounting Separation Guidelines, which provide for two levels of accounting separation: detailed segment reporting and simplified segment reporting. The accounting separation requirements are intended to provide the IMDA with information to monitor cross-subsidisation by dominant FBO licensees, as well as to ensure that services provided internally by dominant FBO licensees to their downstream operators or affiliates are provided on similar terms to equivalent services provided to other unrelated licensees.

Briefly, detailed segment reporting involves separate reporting of key service segments and certain individual retail services. The requirements include a specified cost allocation process and prescribed allocation methodologies for certain cost and revenue items. Reports include both income statements and mean capital employed statements. In contrast, simplified segment reporting requires less disaggregation of operations and a less rigorous cost allocation process. Only income statement reporting is required.

Next-generation nationwide broadband network

To ensure effective open access to the NGNBN infrastructure for downstream operators, the IMDA has put in place structural separation and operational separation requirements on the network and operating companies.

Merger control

Under Part 5A of the Telecoms Act, all designated telecommunication licensees (DTLs), designated business trusts (DBTs) and designated trusts (DTs) are required to comply with merger control requirements. Where a transaction meets the specified pre-merger filing thresholds, generally, where the transaction would result in a party and its associates becoming either a 12 per cent controller (ie, holding 12 per cent or more) or a 30 per cent controller (ie, holding 30 per cent or more) of the ownership or voting power in a DTL, DBT or DT, the IMDA's prior approval must be sought for the transaction. Also, the IMDA must be notified if a transaction would result in a person holding 5 per cent or more but less than 12 per cent of the ownership or voting power in a DTL, DBT or DT.

Infrastructure sharing

Under certain circumstances, the IMDA may require an FBO licensee (which may not be a dominant licensee) to 'share' its infrastructure with other licensees. As provided under section 7 of the TCC (and the Converged Code), the IMDA may require sharing of any infrastructure that it determines is 'critical support infrastructure', or where the IMDA concludes that sharing would be in the public interest, in accordance with the principles in the TCC.

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?

Generally, the IMDA does not require structural or functional separation between an operator's network and service activities in Singapore. However, concerning the NGNBN industry, the IMDA has, with a view to ensuring effective open access for downstream operators, instituted a multilayered industry structure consisting of:

- the network company (NetCo);
- several operating companies (OpCos) including the appointed OpCo; and
- numerous retail service providers.

At the first layer, the NetCo appointed by the IMDA is responsible for building and operating the passive infrastructure, which includes the dark fibre network. OpenNet Pte Ltd was the initial NetCo appointed by the IMDA. The assets and operations of OpenNet have since been taken over by NetLink Trust (acting through its trustee, NetLink Management Pte Ltd), following NetLink Trust's acquisition of OpenNet effective 1

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October 2014. In July 2017, 100 per cent of the units in NetLink Trust were acquired by NetLink NBN Trust (acting through its trustee-manager, NetLink NBN Management Pte Ltd). Under the conditions of the FBO licence held jointly by NetLink NBN Management Pte Ltd (as trustee-manager of NetLink NBN Trust) and NetLink Management Pte Ltd (as trustee of NetLink Trust), the NetCo is required to ensure structural separation, which involves, among other things, ensuring that:

- it has no effective control over any other telecoms licensee or broadcasting licensee;
- it is not under the effective control of any other telecoms licensee or broadcasting licensee; and
- it is not under the effective control of the same controlling entity as any other telecoms licensee or broadcasting licensee (the 'no effective control' requirements).

These requirements are intended to ensure that the NetCo and its downstream operators are separate entities with fully autonomous decision-making considerations and that they do not have control over each other's management and major operating decisions.

At the second layer, Nucleus Connect Pte Ltd (Nucleus Connect), the appointed OpCo, is responsible for building and operating the active infrastructure, comprising switches and transmission equipment, to provide wholesale network services. While Nucleus Connect may be owned by its downstream operating units, it is nevertheless subject to a range of detailed operational separation requirements under its FBO licence conditions. The operational separation requirements are intended to ensure, among other things, that:

- downstream operators are treated in a non-discriminatory manner;
- Nucleus Connect independently formulates and makes its own commercial decisions; and
- it operates at arm's length from affiliated operators.

Section 92 of the Telecoms Act also empowers the Minister for Communications and Information (the Minister), if certain conditions are met and in the public interest, to issue a separation order requiring the transfer of a telecom licensee's business or assets to a separate or independent entity.

Universal service obligations and financing

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

Generally, universal service obligations (USOs) are applied by the IMDA only to PTLs pursuant to the conditions of their licence. For example, Singtel, the incumbent telecoms operator, is required under its licence to provide basic telephone services to any person in Singapore who requests such service. In respect of the NGNBN, which is intended to deliver high-speed broadband access throughout Singapore, the IMDA has imposed USOs on both the appointed NetCo and OpCo following the creation of the NGNBN. The NetCo's USO took effect on 1 January 2013. The NetCo's USO obliges it to fulfil all requests to provide its fibre services to all locations in Singapore. Correspondingly, the OpCo must meet all reasonable requests by any operating company or downstream retail service providers for access to a basic set of wholesale services offered under its standard ICO.

Compliance with USOs is not financed by a statutorily created fund (eg, universal service funds in other jurisdictions) or contributions from industry.

Number allocation and portability

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

The IMDA administers the number allocation scheme in Singapore under its National Numbering Plan. Among other things, the National Numbering Plan sets out rules and guidelines for the use and assignment of numbers to telecommunication services delivered over the public switched telephone network (PSTN), the radio network, user-centric data only (UCDO) and the internet or other IP-based networks; and describes the assignment of numbers to international services, trunk service, emergency services and special services such as voice mail and intelligent network (IN) services. There is only one numbering area in Singapore and area or trunk codes are not used. The PSTN, radio network, UCDO and IP telephony share the same numbering plan – a uniform eight-digit numbering plan.

Numbers are allocated to various service categories according to the first digit:

- '0' for international services;
- '1' for special services, including calls for operator assistance, service enquiry, machine-to-machine, internet dial-up, voice information, IN services and access code international direct dial type of services;
- '3' for IP telephony and UCDO services;
- '6' for PSTN and IP telephony services;
- '8' and '9' for eight-digit radio network numbers; and
- '99' for three-digit emergency services.

Number portability across mobile networks and fixed-line services is obligatory. Fixed-line and mobile telephony operators are required to allow consumers to retain full use of their existing phone numbers when switching service providers. Also, IP telephony operators utilising level '6' numbers (namely, Singapore telephone numbers beginning with '6') are subject to the same number portability requirements as fixed-line operators. Syniverse Technologies is the centralised database administrator appointed to operate the centralised number portability database system, starting with the launch of full mobile number portability in June 2008. The IMDA has published a document titled the Fixed Number Portability Guidelines to set out the technical approach to fixed number portability by FBO licensees offering a fixed-line voice service.

Customer terms and conditions

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

Retail tariffs filed by dominant licensees for approval with the IMDA must include information relating to the customer terms and conditions.

Section 3 of the TCC (and the Converged Code) also sets out several consumer protection-related provisions with which all FBO licensees and SBO licensees must comply. These include provisions relating to:

- minimum quality of service standards (and disclosure to end users of any lower standards agreed to);
- disclosure of prices, terms and conditions (including for services provided on a free trial basis);
- restrictions on service termination; and
- prohibition against charging for unsolicited telecoms services.

Section 3 of the TCC (and the Converged Code) also includes several mandatory contractual provisions that must be included in all FBO licensees' and SBO licensees' end-user service agreements (ie, service contracts with business or residential subscribers). These include provisions relating to:

- billing cycles;

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- the prices, terms and conditions upon which service will be provided; procedures for disputing charges; and
- termination or suspension of service.

The IMDA also has the right under the FBO and SBO licences to require licensees to file their schemes of service, including non-price terms and conditions for the provision of services, with the IMDA before the launch or announcement of such 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 IMDA's policy framework on net neutrality is set out in a policy paper dated 16 June 2011, which sets out five principles representing its approach towards net neutrality that internet service providers (ISPs) and telecoms network operators are required to adhere to:

- they must not block legitimate internet content or impose discriminatory practices, restrictions, charges or other measures that would effectively render any legitimate internet content inaccessible or unusable;
- they must comply with competition and interconnection rules in the TCC;
- they must comply with the IMDA's information transparency requirement and disclose to end users their network management practices and typical internet broadband download speeds;
- ISPs must meet the minimum broadband quality of service standards prescribed by the IMDA. Reasonable network management practices are allowed, provided that the minimum internet broadband quality of service standards are adhered to and that such practices will not render any legitimate internet content effectively inaccessible or unusable; and
- they are allowed to offer niche or differentiated services that meet the IMDA's information transparency, minimum quality of service and fair competition requirements.

In particular, the IMDA recognised that to promote the development of online services, ISPs and network operators must be given the flexibility to manage their networks or differentiate their service offerings to meet the needs of changing customer demands or niche user groups. At the same time, such flexibility cannot result in discriminatory practices that render legitimate internet content effectively inaccessible or unusable. In this respect, the IMDA has indicated in its decision that it intends to deal with any complaints on a case-by-case basis.

In connection with the above, the IMDA requires residential fixed broadband internet access service providers to publish, on their websites, information about their respective network management policies (including whether traffic shaping is implemented).

While there are no express laws or regulations that prevent zero-rating of data transmission by certain services or applications or bandwidth throttling per se, ISPs would nevertheless need to comply with the general principles set out under the IMDA's framework for net neutrality.

Platform regulation

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

At present, there is no overarching legislation or regulatory framework that specifically deals with digital platforms. In the case of online digital platforms such as search engines, social media platforms and online digital media stores, they may instead be subject to a range of existing legislation and regulatory frameworks that govern specific sectors or subject matter. These may include, without limitation:

- to the extent that a digital platform constitutes a telecoms service, it may be subject to the telecoms licensing and regulatory framework;
- to the extent that a digital platform constitutes a broadcasting service, it may be subject to the broadcasting licensing and regulatory framework. In particular, where the platform operator may be considered to be an internet content provider, it may be deemed to be subject to a broadcasting class licence;
- to the extent that the computer or computer system behind the digital platform has been designated as critical information infrastructure (CII) in Singapore, owners of such computers or computer systems are subject to cybersecurity obligations under the Cybersecurity Act 2018 (the Cybersecurity Act);
- to the extent that a digital platform collects, uses or discloses personal data relating to individuals, it may be subject to data protection obligations under the Personal Data Protection Act 2012 (PDPA);
- to the extent that digital platforms are regarded as internet intermediaries (eg, social networks, search engines, content aggregators, internet-based messaging services and video-sharing services), they may be subject to directions and obligations under the Protection from Online Falsehoods and Manipulation Act 2019 (POFMA); and
- competition issues involving a digital platform may be governed by the general competition law as established under the Competition Act that is administered by the Competition and Consumer Commission of Singapore (CCCS), or sector-specific regulatory frameworks as administered by the respective regulatory authorities. For example, competition issues that impact the telecoms and media sector may fall within the purview of the IMDA. The Competition Act provides that it does not apply insofar as another regulatory authority (other than the CCCS) has jurisdiction in a particular competition matter.

In respect of enforcement activity, the POFMA Office has issued directions and orders on several occasions to Facebook to publish correction notices on the Facebook posts of users who had published false statements, as well as to disable access for Singapore users to Facebook pages that had repeatedly conveyed online falsehoods and did not comply with any of the POFMA Directions that had been served on the owners of such pages.

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?

At present, NGNBN entities are regulated under existing telecommunication and media legislation, and through contractual obligations between them and the IMDA. In particular, the respective ICOs of NetLink Trust and Nucleus Connect, in fulfilment of their contractual obligation under their request-for-proposal bid commitment to the IMDA, set out the prices, terms and conditions upon which they would provide certain mandated NGNBN services.

Also, the IMDA has released specific regulations providing for licensing and regulatory frameworks in 2009 – namely, the NetCo Interconnection Code (updated in April 2020) and the OpCo Interconnection Code (updated in April 2020) – to regulate the activities of the NetCo and OpCo respectively. The Interconnection Codes

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are the regulatory instruments underlying the ICOs and specify, inter alia, requirements related to the pricing, terms and conditions for the services offered by the NetCo and OpCo under their respective ICOs, as well as the obligations placed on both the NetCo and OpCo and persons requesting services from them. The obligations contained under the Interconnection Codes are in addition to those contained in the Telecoms Act, other statutes, regulations, directions, licences and codes of practice.

Government schemes promoting basic and NGA broadband

The Singapore government has been keenly promoting the development of basic broadband infrastructure, application and services since the 1990s. Many initiatives have been put in place over the years to promote the establishment of nationwide broadband networks. The government has also devoted significant efforts to encourage the roll-out and take-up of NGA broadband services, in particular, service offerings over the NGNBN. In 2015, the Singapore government launched the 10-year Infocomm Media 2025 master plan, which seeks to be a key enabler of the Singapore government's vision to transform Singapore into the world's first Smart Nation, by harnessing the power of technology including in the area of infrastructure.

In terms of government financial schemes for the promotion of an NGNBN, it was announced in December 2007 that the government would grant up to S$750 million for the development of this high-speed broadband network. This is part of the government's intention to adopt a public-private partnership approach concerning the building, ownership and operation of the network. In particular, the government hopes that more small firms will be able to offer online services without being burdened by the cost of building the network. In line with the promotion of NGNBN, the IMDA has also spearheaded other broadband initiatives, including the Singapore Internet Exchange (SGIX), which serves as a neutral internet exchange for local and international IP traffic. By establishing multiple nodes in different sites in Singapore as its core, the SGIX plays a significant role in the deployment of services over the NGNBN, allowing for the efficient exchange of traffic, reducing latency and ensuring sustainable, reliable transmission of bandwidth-intensive services to end users.

To complement the NGNBN, a wireless broadband network has also been deployed in key catchment areas around Singapore: Wireless@SG allows end users to enjoy indoor and outdoor wireless broadband access in public areas. As part of the Singapore government's Smart Nation vision, it is currently exploring the concept of a nationwide heterogeneous network (HetNet), which will allow devices to stay seamlessly connected throughout Singapore by hopping automatically across wireless networks, such as cellular and Wi-Fi networks. In this regard, the IMDA has worked with local mobile network operators and other industry players to conduct trials to validate the technologies and capabilities of HetNet, beginning in 2015.

Data protection

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

The IMDA has prescribed specific rules for the telecommunication sector. Section 3.2.6 of the TCC (and the Converged Code) contains provisions that govern the use of end user service information by all FBO and SBO licensees. Different provisions may apply, depending on whether the licensee is dealing with a business end user or a residential end user. The IMDA's standard licence conditions also include provisions requiring licensees to ensure the confidentiality of customer information.

On a more general level, the PDPA established a baseline standard of data protection for all private sector organisations in Singapore. The PDPA also established a 'Do Not Call' registry that allows individuals to register their Singapore telephone numbers to opt out of receiving telemarketing calls and messages. The PDPA imposes data protection obligations on organisations that collect, use or disclose personal data in Singapore. Among other things, organisations are required to obtain an individual's consent before collecting, using or disclosing his or her personal data, unless an exception in the PDPA applies. Other obligations under the PDPA include requiring organisations to:

- make a reasonable effort to ensure that personal data they collect is accurate and complete if the personal data is likely to be used by the organisation to make a decision that affects the individual or is likely to be disclosed by the organisation to another organisation; and
- make reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification, disposal or similar risks.

The Personal Data Protection Commission (PDPC), which is responsible for administering the PDPA, has also issued a set of advisory guidelines that specifically aim to address certain unique circumstances faced by the telecommunication sector in complying with the PDPA.

The PDPA is not intended to override sector-specific data protection frameworks. To the extent of any inconsistency between the provisions of the PDPA and the provisions of other written laws, the latter will prevail. Also, the PDPA's provisions on data protection do not affect any obligation imposed by or under the law (except for contractual obligations), which may include regulatory obligations imposed under other written laws. Hence, licensees will need to ensure that they comply with any sector-specific obligations such as the TCC, as well as the general framework under the PDPA.

Cybersecurity

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

The primary legislative framework governing cybersecurity in Singapore is the Cybersecurity Act. On 31 August 2018, the Cybersecurity Act (except for sections 24 to 35 and the Second Schedule) came into effect. The Cybersecurity (Critical Information Infrastructure) Regulations 2018 and Cybersecurity (Confidential Treatment of Information) Regulations 2018 also came into operation on the same date. On 11 April 2022, Part 5 of the Second Schedule to the Cybersecurity Act, along with the Cybersecurity (Cybersecurity Service Providers) Regulations 2022 and Cybersecurity (Composition of Offences) Regulations 2022 came into effect.

Broadly, the Cybersecurity Act:

- creates a framework for the protection of designated CII against cybersecurity threats;
- provides for the appointment of the Commissioner of Cybersecurity (Commissioner) and other officers for the administration of the Cybersecurity Act;
- authorises the taking of measures to prevent, manage and respond to cybersecurity threats and incidents in Singapore; and
- establishes a licensing framework for providers of licensable cybersecurity services in Singapore; specifically, managed security operations centre monitoring services and penetration testing services.

Under the Cybersecurity Act, the Commissioner is empowered to issue codes of practice and standards of performance to ensure the cybersecurity of CII. Pursuant to these powers, the Commissioner has issued the Cybersecurity Code of Practice for Critical Information Infrastructure.

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The Cybersecurity Act provides for the regulation of CII in 11 critical sectors. CII is defined as a computer or computer system that is necessary for the continuous delivery of an essential service, the loss or compromise of which will lead to a debilitating effect on the availability of the essential service in Singapore. The 11 critical sectors containing essential services from which CII may be designated include the info-communications and media sectors.

The Cybersecurity Act will operate alongside the patchwork of existing legislation and various self-regulatory or co-regulatory codes that promote cybersecurity, including but not limited to the following:

- the Computer Misuse Act 1993 (CMA), which criminalises certain cyber activities such as hacking, denial-of-service attacks, infection of computer systems with malware, the possession or use of hardware, software or other tools to commit offences under the CMA, and other acts preparatory to or in furtherance of the commission of any offence under the CMA;
- the PDPA and the regulations issued thereunder, which impose certain obligations on organisations to make 'reasonable security arrangements' to prevent unauthorised access, collection, use, disclosure, copying, modification, disposal or similar risks concerning personal data held or processed by those organisations. The PDPC has issued general guides that, while not legally binding, provide greater clarity on, for instance, the types of reasonable security arrangements that can be adopted by organisations in the protection of personal data. These general guides include:
    - the Guide to Managing and Notifying Data Breaches Under the PDPA;
    - the Guide to Data Protection by Design for ICT Systems;
    - the Guide to Securing Personal Data in Electronic Medium; and
    - the Guide on Building Websites for SMEs; and
- sector-specific codes of practice, such as the Telecommunication Cybersecurity Code of Practice formulated by the IMDA, which is imposed on major internet service providers in Singapore and includes security incident management requirements.

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?

In Singapore, there is no legislation or regulation that specifically deals with big data per se. Rather, companies involved in big-data-related activities must ensure that they comply with existing data protection laws and regulatory frameworks as may be applicable, such as the PDPA and the Cybersecurity Act.

Data localisation

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

There is no overarching law or regulation that requires data, in general, to be stored locally in Singapore. The PDPA does not require personal data to be stored locally in Singapore. Nonetheless, organisations that wish to transfer personal data outside of Singapore would need to ensure that they fulfil certain requirements under the PDPA and its accompanying regulations, before such personal data may be transferred outside Singapore. Further, specific types of data may be the subject of regulatory obligations requiring that they be stored in Singapore. For example, licensed telecom operators may be required to store call detail records in Singapore pursuant to their licence conditions.

Key trends and expected changes

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

Measures to Address Rise in SMS phishing scams

There has been a recent spate of SMS-phishing scams, targeting, in particular, customers of local banks. In December 2021, S$13.7 million was reported to have been lost in phishing scams affecting customers of one of Singapore's largest banks, OCBC.

In response, IMDA (through its subsidiary, the Singapore Network Information Centre) established a new Singapore SMS Sender ID Registry that can identify spoofed messages using protected SMS sender IDs, and block these messages upfront. An earlier anti-spoof SMS registry piloted in August 2021 by IMDA and the Monetary Authority of Singapore, in collaboration with the UK Mobile Ecosystem Forum, was shut down.

New Measures to Strengthen Consumer Protection for Telecommunication and Media Services

On 1 April 2022, the Telecommunications (Dispute Resolution Scheme) Regulations 2022 and the Info-communications Media Development Authority (Dispute Resolution Scheme) Regulations 2022 came into effect.

Both regulations were introduced by IMDA to strengthen consumer protection in telecommunication and media services, as part of IMDA's Alternative Dispute Resolution (ADR) Scheme. The ADR Scheme is intended to provide an affordable and effective dispute resolution alternative for consumers facing contractual disputes with their service providers.

The ADR Scheme covers disputes or issues related to all telecoms and media services with a maximum dispute value of S$10,000. The dispute must also have occurred within the past one year and should be resolvable through service recovery efforts or compensated for in-kind or in monetary terms.

The ADR process, which consists of two stages comprising mediation followed by a determination for disputes that are not resolved after mediation, is expected to take no more than 2.5 months. In the first stage, once a case is submitted, the service provider will be given a 14-day notice period (namely, a notice of intention period) whereby the service provider and consumer can negotiate and resolve the dispute. If that does not work out, the parties go into mediation. If mediation still does not work, the consumers may choose whether to proceed with determination.

On top of the ADR Scheme, IMDA will also make available data on consumer complaints received by telecom service providers and their performance in handling complaints. Pay-television figures will not be included.

New Call for Application for Data Centres with a Focus on Sustainability

Singapore has had a moratorium on new data centre projects since 2019 due to resource constraints. However, on 4 March 2022, it was confirmed that Singapore will be launching a Call for Application for data centres with an emphasis on meeting environmental sustainability standards. It is expected to be launched by the second quarter of 2022.

While specific details of the conditions for the Call for Application have yet to be published, it has been publicly reported in January 2022 that local data centre players have been told in a closed-door virtual meeting that three applications will be approved during the pilot phase for data centre capacities ranging from 10 megawatts (MW) to 30MW. Additionally, new data centres will need to have a power usage effectiveness of 1.3 and below. Applicants are also expected to include their innovation and sustainability solutions and their track record in building

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and operating data centres in Singapore will likely be a factor that will be taken into consideration.

Converged competition code for telecommunication and media markets

On 5 January 2021, the IMDA launched its second public consultation to seek views on the draft converged competition code for the telecoms and media markets. At present, competition and market-related matters in the telecoms and media sectors are governed separately by two different codes of practice. In line with the IMDA's role as a converged regulator, it has decided to review both codes of practice with the aim of merging the two frameworks and develop a harmonised converged competition code for both markets.

On 18 April 2022, the Converged Code has been issued and is expected to come into operation on 2 May 2022.

Amendments to the PDPA

On 2 November 2020, the Singapore Parliament passed the Personal Data Protection (Amendment) Bill 2020 following the first comprehensive review of the PDPA since its enactment in 2012. The amendments to the PDPA, which will take effect in phases, introduced several significant changes such as:

- a mandatory data breach notification regime for data breaches;
- new exceptions to the consent obligation (legitimate interests' exception and business improvement exception);
- an expansion of the concept of deemed consent (deemed consent by notification and deemed consent by contractual necessity);
- new offences for the:
  - mishandling of personal data;
  - knowing or reckless unauthorised use of personal data; and
  - knowing or reckless unauthorised re-identification of anonymised data;
- higher financial penalties (from a maximum of S$1 million previously, to up to a maximum of 10 per cent of the organisation's annual turnover in Singapore); and
- provisions on data portability.

Most of the changes under the Amendment Act came into effect on 1 February 2021, while several other provisions (specifically provisions relating to the enhanced financial penalty and data portability) will only come into force at a later date, no earlier than 1 February 2022. The provisions on the enhanced financial penalty will come into effect from 1 October 2022.

MEDIA

Regulatory and institutional structure

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

The Info-communications Media Development Authority (IMDA) is the statutory body responsible for broadcasting and content regulation (irrespective of the transmission medium) and the primary applicable legislation is the Info-communications Media Development Authority Act 2016 (the IMDA Act) and the Broadcasting Act. The IMDA was formally established on 1 October 2016 as a converged regulator for the info-communications and media sectors. At present, the telecoms and media sectors continue to be governed by separate regulatory frameworks.

Under the existing framework, 'media' is defined in the IMDA Act as referring to any film, newspaper, broadcasting service or publication (as defined in the Films Act, Newspaper and Printing Presses Act, the Broadcasting Act and the Undesirable Publications Act respectively). The Minister for Communications and Information (the Minister) may further specify in the Gazette any other thing to be included under 'media'.

In respect of policy formulation, the IMDA consults several committees in creating and developing its regulatory framework. These include various programme advisory committees for broadcast programmes in different languages and several other consultative panels. Their members are drawn from a cross-section of society and the media industry.

Further, under the existing framework at the time of writing, content and broadcasting regulation remain separate from infrastructure regulation. Therefore, firms should be mindful that they must comply with both the licensing and regulatory requirements imposed by the IMDA for content and broadcasting, as well as for the establishment and operation of any infrastructure.

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?

Foreign investors

There are provisions under the Broadcasting Act regulating foreign participation in a broadcasting company. Prior approval of the IMDA must be obtained if a person wishes to receive funds from a foreign source to finance any broadcasting service owned or operated by a broadcasting company (section 43(1) of the Broadcasting Act). Also, no company (unless the Minister approves otherwise) is to be granted or permitted to hold a relevant licence (as defined in the Broadcasting Act) if the Minister is satisfied that any foreign source, alone or together with one or more foreign sources:

- holds no less than 49 per cent of the shares in the company or its holding company;
- is in a position to control voting power of no less than 49 per cent in the company or its holding company; or
- all or a majority of the persons having the direction, control or management of the company or its holding company are appointed by, or accustomed to or under an obligation to act in accordance with the directions of, any foreign source.

Ownership controls

The Broadcasting Act contains ownership and control provisions that apply to broadcasting companies as defined therein. A 'broadcasting company' is a Singapore-incorporated company or Singapore branch office that holds a 'relevant licence'. A relevant licence refers to any free-to-air licence, or any broadcasting licence under which a subscription broadcasting service may be provided, that permits a broadcast capable of being received in 50,000 dwelling houses (which is defined to include hotels, inns, boarding houses and other similar establishments) or more. Also, the Minister may designate any other broadcasting licence as a relevant licence on public interest or national security grounds. A class licence will not be considered a relevant licence.

Under the Broadcasting Act, no person may, on or after 2 September 2002, become a substantial shareholder, a 12 per cent controller or an indirect controller of a broadcasting company without first obtaining the approval of the Minister. The term 'substantial shareholder' is defined under section 81 of the Companies Act and generally refers to a person who has an interest in not less than 5 per cent of the voting shares in a company. The terms '12 per cent controller' and 'indirect controller' are defined in section 36 of the Broadcasting Act.

Under section 33(2) of the Broadcasting Act, unless the IMDA approves otherwise, the CEO of a broadcasting company and at least

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half of its directors must be citizens of Singapore. A broadcasting company may request to be exempt from this requirement, and exemptions have been made by the Minister.

Notably, the category of niche subscription television licensees has been exempted from all foreign ownership restrictions.

Broadcasting licensees that are regulated persons (within the meaning of section 2 of the IMDA Act) are subject to the provisions on consolidations and mergers in the IMDA Act and currently, the Media Market Conduct Code (MMCC). On 18 April 2022, the IMDA issued a new converged competition code (the Converged Code) to govern competition and market-related matters in both the telecoms and media markets, which will supersede the MMCC when it comes into effect on 2 May 2022.

Cross-ownership

No regulations specifically prohibit the cross-ownership of media companies, including radio, television and newspapers. Such mergers and acquisitions between media companies are regulated by the IMDA. The prior written approval of the IMDA is required for all consolidations or mergers between a regulated person (as defined in the IMDA Act) and another regulated person, or any other person (not being a regulated person) carrying on business in the media industry (section 65 of the IMDA Act). Paragraph 8 of the MMCC (section 10 of the Converged Code) details the IMDA's regulation of such consolidation activities. Intra-group consolidations are exempted from the requirement to obtain the IMDA's approval under paragraph 8.2 of the MMCC.

Licensing requirements

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

Under section 5 of the Broadcasting Act, the IMDA may grant two types of licences: broadcasting licences and broadcasting apparatus licences.

Broadcasting licences

To broadcast programmes in Singapore, a person must obtain a broadcasting licence from the IMDA. Broadcasting licences may be granted for the following categories of licensable broadcasting services:

- free-to-air nationwide, localised and international television services;
- subscription nationwide, localised and international television services;
- special interest television services;
- free-to-air nationwide, localised and international radio services;
- subscription nationwide, localised and international radio services;
- special interest radio services;
- audio-text, video-text and teletext services;
- video-on-demand services;
- broadcast data services; and
- computer online services.

Listed below are the licence fees that have been published by the IMDA as payable for the following broadcasting services:

- 2.5 per cent of total revenue or S$250,000 per annum, whichever is higher, and a performance bond of S$200,000 for a free-to-air nationwide television licence;
- 2.5 per cent of total revenue and a performance bond of $200,000 for a free-to-air nationwide radio service licence;
- S$5,000 per annum for a subscription international television services licence (commonly known as a satellite broadcasting licence). A performance bond of S$50,000 must be given to the IMDA by broadcasters not based or registered in Singapore. The performance bond must be issued by a financial institution approved by the IMDA;
- 2.5 per cent of total revenue for a nationwide subscription television licence, subject to a minimum licence fee of S$50,000 per year throughout. Also, a performance bond of S$200,000 must be furnished; and
- S$1,000 per year for a television receive-only (TVRO) licence (per satellite dish). For a temporary TVRO licence, the licence fee is S$100 per dish for a period of up to 30 days.

Section 8(2) of the Broadcasting Act provides that a broadcasting licence must be in such a form and for such a period and may contain such terms and conditions as the IMDA may determine. The Broadcasting Act sets out certain conditions that licensees must comply with, such as compliance with the IMDA's codes of practice and certain public service broadcasting obligations. Templates of such licences are not publicly available. The IMDA has not indicated publicly how long it will take to process all licence applications. Generally speaking, applicants may need to factor in several weeks for their applications to be processed, depending on whether all the information required for the IMDA's evaluation purposes has been submitted. For more complex or novel applications, the IMDA may take longer.

In addition to the individual broadcasting licences listed above, the IMDA has specified that the following licensable broadcasting services are subject to the class licence regime under the Broadcasting (Class Licence) Notification:

- audio-text, video-text and teletext services;
- broadcast data services;
- virtual area network computer online services; and
- computer online services that are provided by internet content providers and internet service providers (ISPs).

A company wishing to provide a licensable broadcasting service that is subject to the class licence regime above must register with the IMDA. In particular, audio-text service providers and ISPs must register with the IMDA within 14 days of commencing the service. The IMDA's guidelines state that a completed application will be processed within four working days.

All class licensees must comply with the licence conditions contained in the Broadcasting (Class Licence) Notification. Also, internet content providers and ISPs must comply with the Internet Code of Practice. The yearly fees payable for the services listed below have been published in the Schedule of the Broadcasting (Class Licence) Notification:

- S$2,000 for the provision of teletext services;
- S$1,000 for the provision of computer online services by internet access service providers;
- S$1,000 for the provision of computer online services by non-localised internet service resellers (with 500 or more user accounts);
- S$100 for the provision of computer online services by non-localised internet service resellers (with less than 500 user accounts); and
- S$100 (per premise) for the provision of computer online services by a localised internet service reseller.

The fees payable for the services not mentioned in the Broadcasting (Class Licence) Notification are not publicly available. If broadcasting infrastructure is to be deployed, a separate licence from the IMDA may also be required.

Separately, digital display panels operating on a distribution network (Distribution Network DDPs) that are installed in public places and within public passenger transport vehicles are also subject to the class licence regime under the Broadcasting (Class Licence — Broadcasting to Digital Display Panels) Notification 2020. This class

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licence is automatic and there are no requirements on operators of Distribution Network DDPs to register, pay licence fees or put up a performance bond.

Broadcasting apparatus licences

To install, import, sell or operate any broadcasting apparatus in Singapore, a person must obtain a licence from the IMDA under section 20 of the Broadcasting Act. This requirement applies to apparatus currently listed under the First Schedule to the Broadcasting Act (namely, the TVRO system). The IMDA retains the discretion to exempt any person or broadcasting apparatus (or class thereof) from this licence requirement.

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?

There are no express regulations concerning the broadcast of foreign programmes, irrespective of the media type. Such broadcasts are, however, subject to paragraph 16 of the Schedule of the Broadcasting (Class Licence) Notification, which states that an internet content provider licensee shall remove or prohibit the broadcast of the whole or any part of a programme included in its service if the IMDA informs the licensee that its broadcast is against the public interest, public order or national harmony, or offends good taste or decency.

There are no explicit rules requiring a minimum amount of local content. However, under section 17 of the Broadcasting Act, the IMDA may require a broadcasting licensee to broadcast programmes provided by the IMDA or the Singapore government as a condition of its licence, including the following:

- programmes for schools or other educational programmes;
- news and information programmes produced in Singapore or elsewhere;
- arts and cultural programmes; and
- drama and sports programmes produced in Singapore.

Further, free-to-air television and subscription television broadcasting licensees may be subject to programme codes issued by the IMDA containing programming and content guidelines, such as the Content Code for Nationwide Managed Transmission Linear Television Services and the Content Code for Over-the-Top, Video-on-Demand and Niche Services. Generally, programme codes will contain guidelines congruent with national objectives, uphold racial and religious harmony, observe societal and moral standards and promote positive family values.

Section 19 of the Broadcasting Act also provides for a must-carry obligation.

Advertising

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

At present, stricter content standards are applied to advertisements in public places (given their unsolicited viewing) and in media that have a wider impact on the general public, such as advertisements on television. The Advertising Standards Authority of Singapore (ASAS) lays down broad industry codes and guidelines. The Singapore Code of Advertising Practice (SCAP) is reviewed periodically by ASAS and was most recently updated in 2019 to include a chapter on the statutes and statutory instruments that have special relevance to advertising and related trading practices. The basic premise of the SCAP is that all advertisements should be legal, decent, honest and truthful. The SCAP applies to all advertisements for any goods, services and facilities appearing in any form or any media, including online advertisements in information network services, electronic bulletin boards, online databases and internet services. The SCAP seeks to promote a high standard of ethics in advertising through self-regulation against the background of national and international laws and practices, including the International Code of Advertising Practice published by the International Chamber of Commerce. In August 2016, ASAS also issued Guidelines for Interactive Marketing Communication & Social Media (Interactive and Social Media Guidelines), which set out standards for advertising and marketing communication that appear on interactive and social media. The Interactive and Social Media Guidelines set the standard of ethical conduct that are to be adopted by all marketers, establish the levels of disclosure that are required of sponsored messages that appear on social media, prohibit false reviews and engagement, and dictate the clarity of the purchase process in e-commerce. Between November 2017 and January 2018, ASAS conducted a public consultation seeking post-implementation feedback on the Interactive and Social Media Guidelines. In particular, it sought feedback on the implementation of the guidelines, and areas where the guidelines might be fine-tuned or updated. At the time of writing, ASAS has not published its response to the feedback received.

Alongside ASAS, the IMDA also plays a role in guiding the advertising industry when the need arises. For television broadcasts, the IMDA issues advertising codes to broadcasters, which are stricter than those for the print media, because of the wider reach of television broadcasts. The IMDA has issued the Television and Radio Advertising and Sponsorship Code (the Advertising Code), which aims to protect the interests of viewers as consumers and requires advertisements to be truthful, lawful and not contain any misleading claims. All claims and comparisons must be capable of substantiation. The Advertising Code requires advertisements to respect public taste and interests and uphold moral and social values. Among other things, the Advertising Code also stipulates that broadcasters should exercise discretion when scheduling advertisements and trailers to ensure that these are appropriate for the viewing audience.

Concerning holders of class licences, paragraph 16 of the Schedule to the Broadcasting (Class Licence) Notification states that a licensee shall remove or prohibit the broadcast of the whole or any part of a programme included in its service if the IMDA informs the licensee that its broadcast is against the public interest, public order or national harmony, or offends good taste or decency. In the case of online advertising, internet content providers and ISPs are considered class licensees and must also comply with paragraph 16 of the Schedule to the Broadcasting (Class Licence) Notification. Also, paragraph 13(a) of the same requires licensees to comply with the IMDA's codes of practice. In this respect, the IMDA-administered Internet Code of Practice requires class licensees to use their best efforts to ensure that prohibited material is not broadcast over the internet to users in Singapore. Examples of prohibited material include, without limitation, content that endorses ethnic, racial or religious hatred, strife or intolerance, and material that depicts extreme violence. Internet content providers and ISPs must also ensure that these advertisements are in line with the SCAP.

Separately, the Undesirable Publications Act prevents the importation, distribution or reproduction of undesirable publications. This may include advertisements that are accessible by computers or other electronic devices, such as online advertisements.

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?

The Broadcasting Act provides for a must-carry obligation. Under section 19 of the Broadcasting Act, the IMDA may require a broadcasting

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licensee to provide for transmission and reception of any broadcasting service that is provided by any other person or that is specified in its licence.

Currently, must-carry obligations are imposed on all nationwide subscription television licensees to allow their subscribers to access all local free-to-air channels on their network.

Paragraphs 2.1.5 and 2.7 of the MMCC (now sections 11.1.4 and 11.6 of the Converged Code respectively) establish a cross-carriage measure for the pay-television sector, under which a mandatory obligation is imposed upon all licensed subscription television service providers that acquire exclusive broadcasting rights to any channel or programming content (supplying licensees) to provide such channels or content for cross-carriage on the pay-television network of other subscription nationwide television service providers, that are in turn obliged to carry such channels and content on all 'relevant platforms' (as defined in paragraph 2.3(ea) of the MMCC and section 11.3(h) of the Converged Code) in their entirety, with no alteration or degradation in quality. A relevant platform means a managed network over or using any (or any combination of) hybrid fibre coaxial, optical fibre or asymmetric digital subscriber line. Supplying licensees may stand to benefit from an increased subscriber base, as the MMCC (and the Converged Code) requires that any consumer accessing such cross-carried content shall, for billing and operational purposes, also be considered a subscriber of the supplying licensee. The mandatory cross-carriage obligation applies to all exclusive channel and content arrangements signed or renewed on or after 12 March 2010.

Under paragraph 2.4 of the MMCC (section 11.4 of the Converged Code), free-to-air television and radio licensees (and any other person as the IMDA may direct) must comply with the IMDA's requirements regarding the broadcast of events that are of national significance. The IMDA will provide written notification to free-to-air television and radio licensees regarding the events of national significance that they are to broadcast. The IMDA will generally designate only very select events as events of national significance that are to be broadcast live or delayed.

The following events have been identified in the MMCC as being events of national significance:

- the National Day parade;
- the National Day rally;
- the Prime Minister's National Day message;
- parliamentary proceedings, including the budget speech and debate;
- a general election, by-election and presidential election; and
- state funerals.

The IMDA may specify additional events or remove existing ones.

If it is not desirable for more than one entity to locate cameras and other equipment at the site of such an event, the IMDA may select a broadcaster to be the sole broadcaster for the event (the lead broadcaster) or conduct a competitive tender for the position. The lead broadcaster must make the feed from the event available to all free-to-air television and radio licensees and any other person that the IMDA specifies.

Any television or radio licensee that receives the feed from the lead broadcaster must compensate the lead broadcaster for reasonable costs that are not otherwise compensated (eg, through government subsidies) incurred by the lead broadcaster in providing the television or radio licensee with the feed.

Regulation of new media content

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

The IMDA adopts a two-tier licensing framework for the provision of internet protocol television (IPTV) services in Singapore: nationwide subscription television licence and niche television service licence (niche licence).

The niche licence was introduced to facilitate the growth of IPTV and other novel services in Singapore by offering operators greater flexibility to roll out services for different market segments, with less onerous regulatory obligations. It is for service providers targeting specific niche market segments.

The nationwide subscription television licence applies to operators targeting the mass market. The first nationwide IPTV licence was awarded to SingNet Pte Ltd (SingNet) in January 2007 for the provision of its mio television service, which has since been renamed Singtel TV.

Licence applicants are free to decide which licence tier they wish to operate under.

Online news sites

Since 1 June 2013, online news sites that report regularly on issues relating to Singapore and have significant reach among local readers are required by the IMDA to obtain an individual licence, placing them on a more consistent regulatory framework with traditional news platforms that are already individually licensed.

Under the licensing framework, online news sites will be individually licensed if they report an average of at least one article per week on Singapore news and current affairs over a period of two months, and are visited by at least 50,000 unique internet protocol addresses from Singapore each month over a period of two months.

These sites were previously automatically class-licensed under the Broadcasting Act. Presently, when the IMDA has assessed that a site has met the criteria to be individually licensed, the IMDA will issue a formal notification, and work with the site to move it to the new licensing framework.

The IMDA has stated that it does not expect any changes in content standards to result. Individually licensed news sites will be expected to comply within 24 hours with the IMDA's directions to remove content found in breach of content standards and will be required to put up a performance bond of S$50,000.

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?

Singapore has completed its digital switchover and analogue television channels have been switched off as of 1 January 2019.

In June 2012, the then Media Development Authority (now IMDA) announced that all free-to-air channels would be transmitted digitally by the end of 2013 using the digital video broadcasting – second generation terrestrial broadcasting standard. In this regard, the nationwide free-to-air broadcaster MediaCorp announced that it would transmit all free-to-air channels in digital format from December 2013. To ensure a smooth switchover, there was a simulcast period during which all free-to-air channels were broadcast in digital and analogue until the switchover was fully completed.

In January 2016, the Ministry of Communications and Information, which is the parent ministry overseeing the IMDA, announced that it aimed to complete the switchover and switch off analogue broadcasting by the end of 2017. Freed-up spectrum has been reallocated to mobile broadband services in the 2016–2017 spectrum allocation exercise by the IMDA, which administers the allocation of radio-frequency spectrum.

In November 2017, the Singapore government announced a further one-year extension of the cessation of analogue broadcast from the end of 2017 to the end of 2018. The purpose of this extension was to give households more time to make the switch from analogue to digital broadcasting. On 1 January 2019, the switchover was completed and all

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broadcast free-to-air television programmes are now exclusively shown in digital format.

Digital formats

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

The IMDA's Spectrum Management Handbook explains that planning and channelling of the broadcasting spectrum are carried out at the international level (International Telecommunication Union), regional level (Asia-Pacific Broadcasting Union, ABU) and bilateral levels (ie, border coordination with neighbouring countries). As such, there are only a certain number of channels in each broadcasting band that can be used in Singapore. The usage plans for broadcasting services have already been established. With the advent of digital broadcasting, the IMDA has also planned the spectrum allocations for both digital audio and digital video broadcasting. To provide broadcasting services, a broadcast service licence and a broadcasting station licence are required from the IMDA.

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?

Singapore does not currently have a formal process or framework in place to assess media plurality.

Key trends and expected changes

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

Potential new laws to address harmful online content

During the Budget 2021 debate in the Singapore Parliament on 1 March 2021, it was announced that the Ministry of Home Affairs and the Ministry of Communications and Information are currently reviewing options for the implementation of new laws to address the spread of harmful online content through internet platforms, citing live streaming of mass shootings and voyeuristic materials disseminated without consent as examples of harmful online content that the laws are intended to target. The Singapore government is currently studying the experiences and regulatory models of other countries.

More recently, during the Budget 2022 debate on 4 March 2022, the Minister for Communications and Information announced that new codes of practice will be introduced requiring online platforms to implement systems that ensure online safety. The proposed new codes are expected to cover three areas: child safety, user reporting and platform accountability. The Ministry of Communications and Information is expected to engage with technology companies and launch public consultations on the proposed new codes of practice later this year.

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?

The Info-communications Media Development Authority (IMDA) was officially formed on 1 October 2016 as a converged regulator for the info-communications and media sectors, following the restructuring of the IDA and the MDA. At present, the telecoms and media sectors continue to be governed by separate regulatory frameworks.

Under the existing regulatory framework, competition issues in the telecoms and media sectors may be governed by sector-specific rules as administered by the IMDA.

The Competition Act, which establishes the general competition law and is administered by the Competition and Consumer Commission of Singapore (CCCS), provides that it does not apply insofar as another regulatory authority (other than the CCCS) has jurisdiction in a particular competition matter. Accordingly, the CCCS does not have jurisdiction over competition issues that fall under the purview of the IMDA.

The IMDA has issued the Telecom Competition Code 2012 (TCC), which regulates competition in the provision of telecoms services. Section 10 of the TCC (relating to consolidations and merger control), together with Part 5A of the Telecommunications Act 1999 (the Telecoms Act) at the end of 2011, sets out a merger review framework for the telecoms sector.

Concerning the media sector, the IMDA has issued the Media Market Conduct Code (MMCC), which provides for market conduct and competition rules applicable to the media industry only.

On 19 March 2021, the IMDA concluded its second public consultation on the draft converged competition code governing the telecoms and media sectors, which was published on 5 January 2021. On 18 April 2022, the IMDA issued a new converged competition code to govern competition and market-related matters in both the telecoms and media markets, which will supersede the TCC and the MMCC respectively when it comes into effect on 2 May 2022.

Appeal procedure

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

Under section 89 of the Telecoms Act, any telecoms licensee aggrieved by an IMDA decision or direction, or anything in any code of practice or standard of performance, and certain other aggrieved persons, may request the IMDA to reconsider the matter or appeal to the Minister for Communications and Information (the Minister), who may confirm, modify or reverse the same. Where a reconsideration request and an appeal have been simultaneously filed, the IMDA will reconsider the matter and the appeal to the Minister will be deemed withdrawn.

Under section 68 of the Info-communications Media Development Authority Act 2016 (the IMDA Act), any person aggrieved by any act, direction or decision of the IMDA under Part 7 of the IMDA Act may appeal to the Minister, who may confirm, vary or reverse the same. Under section 59 of the Broadcasting Act, any licensee aggrieved by any decision of the IMDA in its discretion under the Broadcasting Act, or anything contained in any code of practice or direction issued by the IMDA, may appeal to the Minister, who may confirm, vary or reverse the decision or direction, or amend the code of practice.

An aggrieved person who has unsuccessfully appealed to the Minister may also be able to mount a further challenge by commencing an action for judicial review in the courts.

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.

Public consultations on proposed converged competition code for telecommunication and media markets

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Competition and market-related matters in the telecoms and media sectors are currently governed separately by two different codes of practice, namely, the TCC and MMCC.

In line with the IMDA's role as a converged regulator, and against the backdrop of rapid convergence in the telecommunication and media landscapes, the IMDA undertook a comprehensive review of the separate codes of practice governing the telecommunication and media markets, with the aim of merging the two frameworks and develop a harmonised converged competition code for both markets, to ensure that the competition framework for both markets remains relevant.

The IMDA has launched two public consultations on the proposed converged competition code. The first consultation, which ran from 20 February 2019 to 15 May 2019, was to invite comments on the broad policy proposals for the proposed converged competition code, as well as comments on how the digital transformation of industries could affect competition policy in the long term. The second public consultation, which invited comments from 5 January 2021 to 19 March 2021, addressed the responses received in the first public consultation and sought comments on the actual drafting of the proposed converged competition code.

On 18 April 2022, the IMDA issued the new converged competition code to govern competition and market-related matters in both the telecoms and media markets, which will supersede the TCC and the MMCC respectively when it comes into effect on 2 May 2022.

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South Korea

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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?

The basic regulatory framework for the communications sector is set out in the Telecommunications Business Act (TBA) and the Radio Waves Act (RWA). The Ministry of Science and ICT (MSIT) and the Korea Communications Commission (KCC) are the main regulatory bodies that are responsible for enforcing these regulations. The country's data privacy laws underwent significant amendments, passed in February 2020 and effective from August 2020, as part of which relevant rules were further consolidated in the Personal Information Protection Act (PIPA) and enforced primarily by the Personal Information Protection Commission (PIPC).

The requirements for entry into and withdrawal from a telecommunications business are set out in the TBA, and if any telecommunications carrier constructs a network using radio equipment, it must also comply with the requirements set out in the RWA.

Under the TBA, there are two types of telecommunications services:

- core telecommunications services (CTS) are services relating to the transmission of sound, images or other data in an unmodified manner either by using the service provider's own network or by leasing a third party's network. This includes internet connectivity, as well as mobile and landline phones and voice over internet protocols (VoIP); and
- value-added telecommunications services (VATS) are online services using the CTS network, including internet-based services, such as cloud computing services, email, e-commerce platforms and internet search engines.

Foreign ownership restrictions under the TBA apply only to CTS providers in possession of their own networks. Generally, only up to 49 per cent of foreign ownership is permitted in such CTS providers, but such restrictions are eased where the foreign investor is from a certain foreign country that has entered into a free trade agreement with South Korea.

In the mergers and acquisitions context, under the TBA, CTS providers, may, depending on their annual revenue for the previous year, have to obtain prior approval from the MSIT, or at least file a report with the MSIT, if they are the subject of a merger or an acquisition.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

The relevant authorisation and licensing regimes are set out in the TBA.

Under the TBA, all CTS providers must register with the MSIT.

In contrast to CTS providers, VATS providers are only required to submit a report to the MSIT. The reporting process usually takes a few days and is generally considered a mere formality. Additionally, VATS providers with less than 100 million won in capital are exempt even from the reporting requirement. An exception to this exists, however, with respect to peer-to-peer service providers and text-message service providers that use a CTS network. These businesses must register with the MSIT, even though they are, strictly speaking, VATS providers.

Businesses that are not mainly engaged in telecommunications services, but engage in sales (in their own name) of goods or services that incorporate telecommunications-enabled components, such as vehicles with certain built-in telecommunications services, are not required to obtain any licences or registrations, but are required to file a report with the MSIT.

Further, there is no distinction, in the applicability of authorisation or licensing requirements under the TBA, between the different means of communication (fixed, mobile or satellite) or the particular technology applied (eg, 2G, 3G or 4G in the mobile communication context). However, any telecommunications service provider using radio waves (eg, for mobile or satellite services) must also comply with additional requirements under the RWA to have particular radio frequencies assigned for its business.

No fees are payable concerning any authorisation or licence obtained under the TBA.

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?

The use of radio spectrum is regulated by the MSIT, and the relevant MSIT licence would generally specify the permitted use.

A spectrum licence may be transferred or sub-licensed from three years after the original date of issuance. The transferee or sub-licensee must satisfy all the requirements applicable to the original licence holder and obtain prior approval from the MSIT.

Ex-ante regulatory obligations

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

Telecommunications service providers must provide telecommunications services without unjustified discrimination. In this respect, telecommunications service providers are required to file a report with the MSIT on their business status, facilities, users, etc., adding to the transparency of their businesses.

Additionally, CTS providers of a certain revenue level are required to manage separate accounts concerning their telecommunications business and non-telecommunications business, as well as, in relation to

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CTS and VATS, to distinctly set out the assets, expenses and profits of each category.

Further, CTS providers of a certain size of revenue must file a report with the MSIT on the terms and conditions they offer to customers. Moreover, if their subscriber numbers and (or) market shares exceed certain thresholds, such terms and conditions must be approved by the MSIT in advance. As a condition to the approval, the MSIT can require the CTS provider to lower the tariffs it has proposed, if they are deemed excessive in light of the cost of supply, revenue, classification of costs and revenue by service, and their competitive effect in the telecommunications 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?

If the KCC determines that effective competition in a particular telecommunications market is impeded by a dominant service provider's conduct that undermines fair competition or users' interests, the KCC may, after public consultations with the MSIT, order structural or functional separation between network and service activities of that service provider.

However, an order for structural or functional separation is an extraordinary measure that has not been issued to date in South Korea.

Universal service obligations and financing

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

Under the TBA, all CTS providers (except for small-sized operators) are divided into two categories. Either they provide universal services directly or they make contributions to reimburse expenses associated with the provision of universal services by other service providers.

Those service providers that provide universal services must submit a report to the MSIT on the expenses incurred in the process of providing universal services. Subsequently, the MSIT computes the amount of contributions to be paid by those service providers that have chosen to make contributions in lieu of the direct provision of universal services. The specific amount of contribution is determined in proportion to the sales of the service provider opting to make contributions.

Universal services include, among other things:

- the provision of wired phone services;
- the provision of internet services;
- the provision of phone services for emergency calls; and
- the reduction or exemption of service charges to disabled and low-income persons for toll-call services, mobile-phone services and long-term evolution services.

Number allocation and portability

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

The MSIT has the authority to establish and enforce rules on the allocation of phone numbers and mobile-phone numbers. Under the TBA, phone numbers are provided to service providers based on the type of telecommunication service they provide (eg, 070 is allocated to VoIP service providers and 010 to mobile carriers).

Also, under the TBA, telephony service providers are required to provide number portability when customers switch operators, regardless of whether the numbers are assigned geographically or non-geographically.

Customer terms and conditions

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

Yes. Under the TBA, CTS providers of a certain size of revenue must file a report with the MSIT on the terms and conditions they offer to end customers. Moreover, if their subscriber numbers and (or) market shares exceed certain thresholds, such terms and conditions must be approved by the MSIT in advance. This approval is subject to fulfilling certain conditions. For instance, if a CTS service provider offers service fees that are unreasonable compared with wholesale resale prices offered to other service providers that are likely to impede competition or discriminatory terms and conditions against certain users, the terms and conditions of that service provider are less likely to be approved.

Further, the Act on the Regulation of Terms and Conditions, which prescribes general rules regarding terms and conditions to prevent unfair trade practices, also applies to terms and conditions specific to the communications sector.

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?

In principle, the TBA prohibits telecommunications service providers from imposing unreasonable or discriminatory conditions or limitations that would amount to control or prioritisation of the type or source of data delivered. Detailed guidelines on prohibited conditions and limitations are to be codified by the KCC.

Platform regulation

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

Digital platforms are categorised as VATS under the TBA. Data protection aspects, together with requirements on user-facing disclosing and other terms of use, are regulated primarily by PIPA, and in certain respects by the Act on the Promotion of Information and Communications Network Utilisation and Information Protection (IT Network Act).

Under the TBA, to commence business, VATS providers must first file a report with the MSIT, which must include a schematic diagram of the telecoms network to be used, a detailed description of user protection measures and details of technical measures in place to prevent online copyright infringement. VATS providers with less than 100 million won in capital, however, are exempt from this reporting obligation. Upon the filing of the report, a VATS provider must commence business within one year from the filing date and implement technical measures to protect minors as well as measures against viruses and malicious codes. The TBA authorises the MSIT to survey VATS providers in this regard and requests them to submit any documents necessary to prove compliance with these requirements.

Also, the prohibition on control or prioritisation of data delivery applies to VATS providers, although the regulation is not being enforced as the KCC has not published guidelines setting forth the details of the regulation.

PIPA and the IT Network Act regulate digital platforms over various issues including data protection, user protection (such as protection of minors and protection from illegal content) and the security of IT networks.

There have been various efforts to enhance the regulation of online platforms, as illustrated by the draft legislation recently proposed by

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the Korea Fair Trade Commission (KFTC), the competition authority of Korea. This draft legislation (KFTC Platform Bill) aims to restrain one-sided or abusive trade practices by online platforms against the vendors that use the platforms. If made into law, the KFTC Platform Bill will subject online platforms meeting a certain threshold of revenue or transaction value to a variety of requirements concerning fairness and transparency of their contractual terms (eg, exclusivity terms, pricing conditions and product display requirements), prior notice of changed terms, etc). Several lawmakers proposed a bill of similar nature that has been endorsed by the KCC (KCC Platform Bill). The two bills propose a number of similar legal obligations on online platform operators, such as:

- an obligation to give users prior notice when terminating a contract or restricting services;
- transparency obligations, including providing the rankings for search results and disclosing user reviews on the online platform;
- the requirement to implement a complaint-handling system; and
- an obligation to refrain from abusing their superior bargaining position.

The KFTC and the KCC have eventually agreed to move forward with the KFTC Platform Bill and narrow the applicability by applying more stringent revenue or transaction value tests. As a result, the number of companies subject to this new regulation is reduced to 19. Also, measures to prevent conflict between the KFTC, the KCC and the MSIT were also added.

However, despite joint efforts of the KFTC, the KCC and the MSIT, the KFTC Platform Bill and the KCC Platform Bill are both pending in the National Assembly. Prospects for legislation are unclear, as the new administration inaugurated in May 2022 has stated its intention to re-examine the proposed regulations on online platforms. While there is an expectation of a more lenient regulatory enforcement given the conservative tendency of the new administration stressing 'autonomous regulation', there is also an observation that the new administration will take a bifurcated approach by enhancing scrutiny over global enterprises with monopolistic power while easing regulation on domestic large corporations.

In August 2021, an amendment bill to the TBA was passed that prohibits major app market service providers, notably Google or Apple, from coercing app developers to exclusively use certain payment systems to process in-app purchases, unfairly delaying the review of mobile content, or unfairly removing mobile content from the app market, where transactions in mobile content are hosted and mediated. This made South Korea the first country in the world to legally restrict Google's and Apple's in-app payment policies, thereby letting app developers use alternative payment methods and potentially avoiding high commission fee burdens to Google or Apple. In addition, app market service providers will be required to take certain end-user protection measures, such as making a disclosure on the terms and conditions of payment for mobile content, payment cancellation and refunds. The MSIT and the KCC will have the authority to monitor app market service providers' operations and require relevant information, and impose revenue-based administrative penalties for non-compliance (which may also be concurrently subject to criminal punishment).

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?

The Framework Act on Intelligent Informatisation (renamed in December 2020 from the Framework Act on National Informatisation) authorises the MSIT to, after hearing opinions from other government agencies, establish a comprehensive plan for national informatisation every three years. The plan may include plans for the expansion and management of relevant infrastructure and other facilities, support for informatisation of private sectors and procurement and management of funds.

Data protection

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

PIPA serves as a primary data protection statute. Certain data protection provisions under the IT Network Act, such as restrictions on online marketing communications, also apply to the communications sector.

Under PIPA, regulatory oversight of data protection is vested primarily in the PIPC. The PIPC is in charge of monitoring and policing compliance with PIPA, and publishing recommended practices and privacy-policy terms.

Cybersecurity

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

In the data-privacy aspect, PIPA requires data controllers and, if applicable, their data processors to take technical and administrative measures to ensure the protection of personal data.

Such measures include requirements to:

- establish and implement an internal personal data management policy;
- prevent unauthorised access to personal data by controlling access authority and implementing technical measures to control access, such as firewalls or intrusion-protection systems;
- encrypt personal data;
- implement logs of access to personal-data systems and provide measures for preventing fabrication and alteration of such logs;
- utilise security programmes, such as antivirus software;
- store personal data in a safe area; and
- minimise the number of personnel processing users' personal data to the extent possible.

In the information-security aspect, there are a number of requirements for businesses. For CTS providers operating in major metropolitan cities and online service providers that meet a certain revenue or user-size threshold, information security management system certification is required under the IT Network Act. The certification type that is prevalently recommended is the information security management system.

The IT Network Act requires all online service providers to implement a set of technical and administrative measures to ensure information security. These measures include specific requirements on formulating and operating an information security body within the business, establishing and complying with information security and incident response plans, making necessary investments in information security, monitoring networks and servers, and controlling online and on-site facilities access.

The IT Network Act further requires online service providers to designate a director-level person within the business as the chief information security officer (CISO). CISO may also perform the role of the chief privacy officer (CPO) for personal data-protection matters under PIPA.

Last, the Act on Promotion of Information Security Industry was amended in June 2021 (effective from December 2021) to require CTS providers that own line equipment and online service providers of a certain revenue or user size to submit to the MSIT certain security-related information, including the amount of investment in information

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security, number of persons within the business that focus on information security and details on CISO and the CPO.

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?

Under PIPA, personal data, defined as 'information regarding a living individual', not only includes information that identifies or enables identification of an individual (thus, identifiable information) but also information that, while not by itself identifiable, enables identification of an individual when combined with other information. PIPA takes this further by defining the separate case of 'pseudonymised information'.

Pseudonymised information means information that is processed in a manner that makes it impossible to attribute the data subject from the personal data without the use of (or combination with) additional information. PIPA permits the use of pseudonymised information without the need of the individuals' consent for the purposes of statistics generation, scientific research and public recordkeeping. PIPA also allows certain expert organisations, as designated relevant government agencies, to combine pseudonymised information that was collected by different data controllers, for the said purposes. This allows pseudonymised information to be used, even in the absence of consent, to analyse big data to generate statistical information.

On the other hand, PIPA has not specially defined 'anonymised information'. The PIPC's interpretation is that this information refers to information from which an individual cannot be identified just by applying reasonable levels of time, expense and technology. While the definition of anonymised information does not seem to present a clear-cut distinction from pseudonymised information, for the time being, it appears that information classified as anonymised information could be used in big data analysis without being subject to restrictions under PIPA.

Data localisation

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

Financial institutions (along with electronic financial enterprises) are prohibited from storing personal credit information on offshore cloud servers.

Key trends and expected changes

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

Regulators are moving to strengthen monitoring and regulation of foreign online service providers. The PIPC has been actively inspecting data privacy policies and related practices of offshore services, showing considerable alacrity in the role of prime data-privacy regulator role. In November 2020, the PIPC imposed on Facebook approximately US$6 million in fines for data-privacy violations, the largest ever such fines, and referred the case for criminal prosecution.

In the communications sector, the TBA has been newly fitted with an extraterritorial jurisdiction clause, expressly extending TBA provisions to offshore service providers if their services impact users in South Korea. The amendment is noteworthy in potentially justifying expanded enforcement, although the TBA was already interpreted by regulators as encompassing foreign service providers depending on their local effects. Further, there is another amendment bill to the TBA pending at the National Assembly that will, if passed, tighten the existing local representative requirement under the TBA. The amendment bill requires offshore service providers that:

- meet a revenue or user-traffic threshold; and
- own (or otherwise exert a dominant influence on the composition of officers or business operations of) a locally incorporated entity (namely, a subsidiary or another affiliate) to designate such locally incorporated entity as the offshore service provider's local representative.

On 17 December 2021, the European Commission adopted its General Data Protection Regulation adequacy decision for South Korea. The adequacy decision allows free transfers of personal data from the European Economic Area to South Korea.

In light of ever-developing disruptive technologies, the PIPC continues to explore appropriate regulations in relevant industries. At the intersection of data protection and artificial intelligence (AI), amid controversy over personal data processing using AI technology, the PIPC is seeking to introduce new guidelines significantly limiting such data processing. Understandably, given the stakes, service providers have been at some pains, including in liaison with regulators, in their attempts to narrow or moderate the impending draft guidelines. Further, the PIPC is preparing new guidelines regarding personalised online ads, whose release is anticipated to take place before the end of 2022.

In August 2021, an amendment bill to the TBA was passed to prohibit major app market service providers, notably Google or Apple, from coercing app developers to exclusively use certain payment systems to process in-app purchases, unfairly delaying the review of mobile content, or unfairly removing mobile content from the app market, where transactions in mobile content are hosted and mediated. This made South Korea the first country in the world to legally restrict Google's and Apple's in-app payment policies, thereby letting app developers use alternative payment methods and potentially avoid high commission fee burdens. In addition, app market service providers will be required to take certain measures for the protection of end users, such as disclosing in the terms of use items including conditions of payment for mobile content, payment cancellation and refunds. The MSIT and the KCC will have the authority to monitor app market service providers' operations, require the submission of relevant information, and impose revenue-based administrative penalties for non-compliance compliance (which may also be concurrently subject to criminal punishment).

In addition, the August 2021 TBA amendment also authorises the regulator to impose daily monetary fines against a service provider if the service provider refuses to comply with the regulator's requests for information in the course of the regulator's investigations into alleged TBA violations.

Last, the June 2020 TBA amendment also introduced a definition of 'illegally filmed materials' (IFM) and subsequent obligation on online VATS providers that meet a certain revenue or user size threshold to implement technical and administrative measures to prevent the circulation of IFM on their services. These measures include:

- the adoption of filtering technology to screen IFM from the web or app where the services are provided;
- establishing an IFM prevention plan within the business;
- blocking IFM-related keywords from showing up as relevant search words for users and showing them to users before they upload content a statement that uploading of IFM is in violation of the TBA and that the user will be punished accordingly; and
- preparing in place a reporting function for users when they spot IFM on the business's web or app.

The KCC, as the policing agency, is monitoring, more actively in 2022, how VATS providers, mainly SNS platform businesses, are complying with the amendment.

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MEDIA

Regulatory and institutional structure

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

The regulatory framework for the media sector is set out within the Broadcasting Act (Broadcast Act) and the Internet Multimedia Broadcasting Services Act (IPTV Act). The IPTV Act sets out the regulations applicable to internet protocol television (IPTV) operators and IPTV content providers, and the Broadcast Act sets out the regulations applicable to operators of other types of broadcasting platforms, for example:

- satellite broadcasting operators (SBOs);
- system operators (SOs);
- terrestrial broadcasting operators (TBOs);
- broadcasting-related business operators such as relay broadcasting operators (ROs);
- signal transmission network business operators (NOs); and
- programme providers (PPs).

Online media services are generally subject only to the Act on the Promotion of Information and Communications Network Utilisation and Information Protection (IT Network Act).

The regulatory bodies that administer the media sector are the Korea Communications Commission (KCC) and the MSIT. The KCC is in charge of regulations applicable to TBOs and PPs that provide general programming or specialised programming for news reports. The MSIT, on the other hand, is in charge of regulations applicable to SBOs, SOs, IPTV operators, ROs, NOs and PPs providing specialised programmes for live home shopping shows.

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?

In general, there are four main types of ownership restrictions applicable to media services:

- ownership by a specific individual or entity (including its related persons (eg, any family members or relatives, executive officers or affiliate companies);
- ownership between broadcasting business operators;
- ownership by a conglomerate, or an entity operating a daily newspaper or news communications business (including related persons); and
- ownership by foreign entities. Details of restrictions on foreign ownership (namely, maximum permitted percentage of the sum of foreign ownership as applied per type of operator) are as follows:
    - TBO: prohibited;
    - SO: 49 per cent;
    - SBO: 49 per cent;
    - IPTV operator: 49 per cent;
    - IPTV content provider: 20 per cent for those operating general programming or specialised programmes for news reports;
    - 49 per cent for other instances (100 per cent ownership is permitted for indirect investments through an entity owned by the government, an organisation or citizens of a foreign country that is a party to a free trade agreement with South Korea and determined and notified by the MSIT to be eligible);
    - PP: 20 per cent for those operating general programmes;
    - 10 per cent for those operating specialised programmes for news reports;
    - 49 per cent for others (100 per cent ownership is permitted for indirect investments through an entity owned by the government, an organisation or citizens of a foreign country that is a party to a free trade agreement with South Korea and determined and notified by the MSIT to be eligible);
    - RO: 20 per cent; and
    - NO: 49 per cent.

Regulators have signalled that they will move to lower the maximum thresholds for foreign ownership.

Licensing requirements

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

The licensing requirements are set out in the Broadcast Act (for TBOs, SOs, SBOs and PPs) and the IPTV Act (for IPTV operators and IPTV content providers).

Under licensing requirements in the Broadcast Act and the IPTV Act, TBOs must obtain prior approval from the KCC to engage in terrestrial broadcasting activities, and IPTV operators, SOs and SBOs must obtain prior approval from the MSIT concerning their relevant broadcasting activities.

A material change in the broadcasting business (eg, merger or division of the broadcasting service operator, change in broadcasting themes or zones, change in key facilities such as main transmission device, etc) require prior approval or registration from the KCC or the MSIT, as applicable. However, a pre-announced amendment to the Broadcast Act aims to relax this obligation by requiring a report in the case of an intra-affiliate merger involving a broadcasting service operator.

Currently, should any TBO, SO, SBO or IPTV operator intend to operate its service through a combination of broadcast transmission methods between:

1 terrestrial broadcasting service, CATV broadcasting service and satellite broadcasting service; or
2 any of the services listed in (1) and IPTV service, such operator must obtain prior approval from the MSIT.

However, starting from 22 July 2022, a lighter obligation requiring submission of a report to the MSIT in lieu of prior approval will apply.

Likewise, currently, pay television service operators (namely, SOs, SBOs and IPTV operators) must obtain prior approval from the MSIT on their service terms and conditions, including the details of their service rates. However, starting from 22 July 2022, these terms and conditions are to be reported to the MSIT (except for the terms and conditions stipulating rates of:

- the least expensive service provided by the relevant pay television service operator; or
- the combined service of pay television and core telecommunications service, which will still require prior approval of the MSIT).

Among PPs, any PP engaging in general programming or specialised programming of news reports must obtain prior approval from the KCC. Any PP that engages in specialised programming for live home shopping shows must obtain prior approval from the MSIT.

For IPTV content providers, those engaging in specialised news reporting or general programming must obtain prior approval from the KCC, and those engaging in specialised programming for live home shopping shows must obtain prior approval from the MSIT. These approval requirements relating to the service provider's capacity as an

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IPTV content provider do not apply to VATS providers, TBOs and PPs, and for SOs and SBOs, the exemption from the approval requirements is granted in a limited scope for the case the content produced by an SO or SBO is aired via the channels that SO or SBO operates.

All broadcasting operators must make financial contributions to a broadcasting communications development fund on an annual basis.

In terms of the timescale, depending on the nature of the application, the MSIT or the KCC has 30, 60 or 90 days to process an application. However, as the lapse of time for these periods may be interrupted by requests for additional information or supplementation, in practice the application process can take significantly longer.

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?

The Broadcast Act, the Enforcement Decree of the Broadcast Act and the Notice on organising broadcasting programmes set forth obligations for broadcast operators to allocate minimum airtime to domestically produced programme content. The minimum airtime is highest for TBOs, followed by SOs and SBOs, and lowest for PPs. This requirement does not apply to IPTV operators (because IPTV operators are prohibited from operating broadcast channels directly) or to operators of other types of media (eg, online or mobile content, as they are not considered broadcasting services under South Korean law). Also, there is no minimum content requirement concerning airtime for domestically produced popular music.

Advertising

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

Broadcast media commercials in South Korea are largely divided into:

- programme commercials arranged directly before and after a particular programme;
- commercial breaks arranged in the middle of a particular programme;
- spot commercials arranged between programmes; and
- other types of commercials (eg, product placement).

Other types of broadcast media advertising include commercial captions, time signal commercials, virtual commercials and product placements.

In April 2022, a restriction on the quantity of the advertising on television is introduced, in which the sum of advertising time for a TV programme cannot exceed 20 per cent of the total airtime (defined as the time period from the point the start of a TV programme is announced to the point the start of the next TV programme is announced), of that TV programme. Broadly speaking, all broadcast media advertising must clearly distinguish advertising from programmes to avoid any confusion and always display the caption 'commercial' for advertising broadcasts placed before and after any programme mainly viewed by children under the age of 13, so that children can distinguish programmes from commercials.

Laws governing broadcast media advertising, aside from the Broadcast Act, include the Youth Protection Act and the Act on Fair Labelling and Advertising. Also, broadcast media advertising of products such as alcohol and tobacco is subject to restrictions under separate laws, apart from the Broadcast Act.

Online advertising is regulated differently from broadcast media advertising under the IT Network Act. Unlike broadcast media advertising subject to precise regulatory criteria (eg, fairness, objectiveness, profanity and effect), online advertising is currently regulated merely as media content, and for this reason is subject to a lenient general standard of whether it is illegal or otherwise against social norms or social order.

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?

Under the Broadcast Act, the Enforcement Decree of the Broadcast Act and the IPTV Act, SOs, SBOs (except for satellite broadcasting operators providing digital multimedia broadcasting) and IPTV operators must include certain channels provided by public broadcasting stations such as the Korean Broadcasting System 1 channel and the Educational Broadcasting System channel as part of their basic package offerings. Other channels from terrestrial broadcasters, such as the Korean Broadcasting System 2 channel, Seoul Broadcasting System channel and Munhwa Broadcasting Corporation channel, are not classified as must-carry channels. In either case, fee arrangements for retransmission are negotiated among the relevant operators.

Moreover, SO's retransmission of the terrestrial broadcasts of the TBO whose licence is outside the SO's broadcasting zone or SBO's retransmission of the terrestrial broadcasts outside the broadcasting zone of the TBO requires prior approval from the MSIT. However, according to the amendments to the Broadcast Act, which are in the pre-announcement stage, the scope of the above retransmission subject to the approval will be limited to the terrestrial television broadcasts (namely, excluding the terrestrial radio broadcasts and datacasts).

Further, SOs, IPTV operators, and SBOs must include specialised programming for news reports channels. Fee arrangements for this obligation are negotiated among the operators.

Regulation of new media content

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

Although the concept of traditional broadcast media is fading, there are still different regulations.

As TBOs are required under the Broadcast Act to abide by higher standards relating to publicity and public interest compared to other broadcasting operators. The Broadcasting Communication Deliberation Committee, which regulates programmes and media advertising, also applies stricter standards to broadcasts by TBOs.

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?

Only TBOs and SOs traditionally provided analogue broadcasting. TBOs completed the switchover to digital broadcasting on 31 December 2012. The 700 megahertz band frequency previously used by TBOs for analogue broadcasting has been reallocated to the public disaster broadcasting system and ultra-high-definition broadcasting.

The digital conversion for SOs is also almost completed.

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Digital formats

25 Does regulation restrict how broadcasters can use their spectrum?

The MSIT's spectrum allocation system restricts broadcasters' use of their spectrums. The MSIT participates in the KCC's evaluation for the issuance or renewal of a TBO licence by examining whether specific spectrums can be assigned for that TBO within the range of spectrum allocated for broadcasters. Following the recent digital switchover of TBOs, some of the resulting vacant spectrum range was assigned to TBOs' ultra-high-definition broadcasting.

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?

A broadcasting business operator and its related persons cannot have a combined viewership rating above 30 per cent. If this 30 per cent threshold is exceeded, the KCC may issue an order for corrective measures, such as a restriction on expanded ownership of a broadcasting business, restrictions on commercial airtime or a partial transfer of broadcasting hours.

Key trends and expected changes

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

According to the annual vision and key policy tasks announced by the KCC, regulators plan to:

- adopt a horizontally integrated regulatory framework while simplifying regulatory regimes for certain media services (eg, pay television services, Technology-Combined Services, etc) to ease unnecessary regulations in a market-friendly manner;
- provide domestic over-the-top (OTT) service providers with production cost subsidy or tax support, etc, to encourage them to have enough capabilities to compete globally; and
- enact a statute dedicated to regulating online platforms and (or) audiovisual media, with the aim of adapting to a new development of a hybrid media environment that brings together the media, communication and internet, to embrace all types of media products including merged media services such as OTT and video-on-demand services

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?

The agencies with regulatory authority over the communications and media (broadcasting) sectors are the MSIT and the Korea Communications Commission (KCC).

Communications sector

- MSIT: In charge of supervising the communications business (the Telecommunications Business Act (TBA), the IT Network Act and the Protection of Communications Secrets Act); and
- KCC: administrative agency with jurisdiction over the prevention of illegally filmed materials' circulation on the internet and investigation and sanctions of communications operators' violations of the TBA, formulation and implementation of policies to protect communications service users.

Broadcasting sector

- KCC: administrative agency supervising the broadcasting industry; and
- MSIT: in charge of licensing of satellite broadcasting operators, system operators (SOs), relay broadcasting operators, programme providers (PPs) (excluding PPs engaging in general programming or specialised programming of news reports), electric signboard broadcasting operators, CATV music broadcasting operators and signal transmission network business operators (NOs) under the Broadcasting Act; and
- internet protocol television (IPTV) operators and IPTV content providers (excluding IPTV content providers focused on news reporting or general programming) under the IPTV Act.

Competition

The main antitrust regulator is the Korea Fair Trade Commission (KFTC), having the authority to enforce the Monopoly Regulation and Fair Trade Act (MRFTA).

Once the KCC has issued corrective measures or imposed administrative penalties upon communications operators and broadcasting operators on grounds of engaging in acts prohibited under the TBA or the Broadcast Act, the KFTC is not allowed to issue corrective measures or impose administrative penalties under the MRFTA based on the same cause of action. Nevertheless, the KFTC tends to attempt to pursue enforcement in the broadcast sector under the MRFTA. Concerning any violation of regulations by IPTV operators, the KCC may impose administrative penalties upon those IPTV operators only after consulting with the KFTC.

There is no statutory mechanism to avoid conflicting jurisdiction or ensure consistency in regulatory enforcement. When such conflict

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arises, it is generally addressed through conversation among relevant agencies.

Appeal procedure

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

A decision by an administrative agency may be challenged through:

- the Central Administrative Appeals Commission in the case of dispositions and other actions taken by the MSIT, including the refusal of a permit, for example; and
- an administrative appeals commission established under the KCC in the case of dispositions and other actions by the KCC.

In addition to such administrative agency level appeals, or in lieu of them, the dissatisfied parties may file an administrative lawsuit to the court in respect of the action by the MSIT or the KCC.

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.

The three-year Master Plan for Consumer Protection Policy announced by the KFTC in January 2021 (Master Plan) focuses on strengthening consumer protection relating to the digital economy. The Master Plan stresses enhanced monitoring and correction of unfair terms and conditions in the online transactions sector, while pushing for expansion of legal liability of online platform service providers through amendment of the Act on the Consumer Protection in Electronic Commerce.

In particular, the KFTC is reinforcing monitoring and investigation of the following sectors:

- online shopping;
- over-the-top and music streaming services;
- digital content trading market relating to Metaverse and NFT;
- webtoon service; and
- trading of intellectual property rights.

The KFTC's recent investigations and sanctions in respect of digital and new industry sectors are as follows:

- unfair terms and conditions of virtual asset exchanges (July 2021): imposed corrective recommendation to revise:
  - the overbroad indemnity clauses; and
  - clauses allowing arbitrary change and termination of services; and
- Naver's abuse of market dominance (October 2020): imposed corrective measures and penalties against the company's manipulation of search ranking and modification of search algorithm.

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Switzerland

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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?

The telecommunications sector in Switzerland is regulated at the federal level; the main sources of law being:

- the Federal Act on Telecommunications (TCA) of 30 April 1997, with a first partial-revision introduced in 2007, as last amended on 1 July 2021; and
- the Federal Ordinance on Telecommunications Services (OTS) of 9 March 2007, as last amended on 1 January 2022.

The TCA regulates the transmission of information through telecommunications techniques, including the transmission of radio and television programme services. Its main purpose is to ensure that a range of cost-effective, high-quality telecommunications services are available in Switzerland that are competitive both on a national and international level. The OTS contains detailed rules that implement the provisions of the TCA.

Within this regulatory framework, the Federal Communications Commission (ComCom) acts as the independent licensing and market regulatory authority for the communications sector. Its main activities and competencies relate, in particular, to the granting of licences for the use of radio communication frequencies as well as the regulation of the terms of application of number portability and free choice of supplier. ComCom instructs the Federal Office of Communications (OFCOM) concerning the preparation of its business and the implementation of its decisions. Moreover, it has delegated some of its tasks to OFCOM.

Certain foreign ownership restrictions may apply. In the absence of any international commitments to the contrary, ComCom or OFCOM, as the case may be, may prohibit undertakings incorporated under foreign law from using radio frequencies or addressing resources (as defined in the TCA) in Switzerland unless reciprocal rights are granted. Under the same conditions, they can be refused to be granted a licence or can be prohibited from transferring a licence.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

Under the revised TCA that came into force on 1 January 2021, the general notification obligation for telecommunications service providers concerning their telecommunications services has been eliminated. Therefore, to the benefit of telecommunication service providers such as over-the-top services including Voice over Internet Protocol or Internet Protocol (VoIP) television services, the frequency spectrum may be used freely under the TCA within the limits of the applicable regulations. Further, the revised TCA provides for a legal basis for frequency sharing and trading. As an exception, registration is still required where the use of certain addressing elements and radio frequencies require a licence.

Under the applicable regulatory framework, licences are still mandatory for the use of mobile radio frequencies for the provision of telecommunication services and the provision of universal services. Frequency licences are issued either by criteria competition or, more commonly, by frequency auction. Importantly, in the absence of detailed principles for the granting of mobile radio frequency licences, the authorities have considerable discretion in setting the allocation or auction rules respectively. However, the authorities have to exercise their discretion dutifully – that is, in line with the constitutional principles and the legal purpose of the TCA. Importantly, the general rules on public procurement do not apply. Licences are granted only if, having regard to the national frequency allocation plan, enough frequencies are available.

Special rules apply if the broadcaster of a radio programme service is granted a licence under the Federal Act on Radio and Television (RTVA) of 24 March 2006, as last amended on 1 January 2022.

Such licences can be acquired only by a person that has the necessary technical capacities and, if required, the relevant proficiency certificate. Also, such a person has to commit itself to comply with the applicable legislation, in particular, the TCA, the RTVA, their implementing provisions and the licence conditions. Depending on the kind of licence required, eligibility, documentary and procedural requirements vary. Certain foreign ownership restrictions may apply.

Applications and notifications can be submitted online via OFCOM's website.

According to the TCA, licences for radio communication and universal services are of limited duration. In 2012, licences for frequency spectrum were allocated in a public-tender procedure. In early 2019, additional frequencies, particularly for the introduction of the next-generation network 5G, were auctioned. All licences are issued in a technology-neutral manner. The licences allocated in 2012 will expire at the end of 2028 and the licences allocated in 2019 will expire at the end of 2028 or 2033, respectively. The universal service licence for Swisscom was renewed for 2018 to 2022 (ie, five years). However, due to the ongoing revision of the content of the universal service, ComCom is expected to extend such universal service licence for an additional year.

Concerning fees, the licensing authority charges administration and licence fees for radio communication licences. No licence fee is charged on radio licences for the distribution of licenced radio and television programmes under the RTVA. Additionally, the Federal Council may exempt certain governmental and non-governmental organisations from paying the licence fee provided they do not perform telecommunications services and make rational use of the frequency spectrum.

The Federal Ordinance on Telecommunications Fees issued by the Federal Council lays down the radio licence and administrative charges in the field of telecommunications law.

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The timeframes for obtaining a licence or authorisation depend on the telecommunications services to be provided. If a mere registration applies without the granting of a licence, such notification can be effected via the internet within a very short period (ie, within hours).

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?

Radio communication licences do specify the permitted use (eg, radio, television, amateur radio) and different rules on the trading and returning of allocated radio frequency spectrum apply. Under the TCA, frequency sharing and trading are legal subject to the following requirements. Licences can be transferred, in whole or in part. However, such transfers require the prior consent of the licensing authority. The authority may only refuse such consent if either the licence requirements are not complied with or the efficient use of frequencies free from interference is not guaranteed. Further, the licensing authority may permit exceptions from the requirement of consent for individual frequency bands if it is anticipated that the efficient use of frequencies free from interference will be guaranteed and if effective competition is neither eliminated nor seriously restricted. Advance notice must be given to the licensing authority of transfers that do not require consent.

If the licence has been granted by ComCom, the transfer rules as described previously also apply by analogy to the economic transfer of a licence, which occurs in the case of 'acquisition of control', as defined in the Federal Cartel Act.

Where holders of licences granted by ComCom make joint use of components of radio communications networks, they must give advance notice of this to ComCom and the joint use of frequencies requires its prior consent.

There is no specific regulatory framework for the assignment of unused radio spectrum. OFCOM is responsible for the management of the radio spectrum and establishes the National Frequency Allocation Plan that is approved by the Federal Council.

Ex-ante regulatory obligations

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

In principle, the telecommunications regulation in Switzerland is based on ex-post regulation.

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?

No legal basis for a structural separation between an operator's network and service activities exists, and the introduction of such a legal basis is currently not contemplated.

Universal service obligations and financing

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

ComCom awards one or more universal service licences to telecommunications service providers wishing to provide a universal service for the whole population in all parts of Switzerland. In principle, there is no obligation to provide a universal service. However, if no provider applies for a universal service licence, ComCom may appoint one or more providers as a universal service provider. The licence may only be transferred to a third party, whole or in part, with ComCom's approval.

Universal service licences are put out to tender and awarded based on a criteria competition. The Swiss laws on public procurement do not apply. Any person wishing to obtain a universal service licence must:

- have the necessary technical capacities;
- furnish convincing proof that the universal service can be offered, particularly concerning finance and the operation of the service for the entire duration of the licence;
- state what financial compensation will be required for doing so;
- undertake to comply with the applicable legislation, in particular, the TCA and its implementing provisions and the licence conditions; and
- undertake to comply with the applicable labour laws and guarantee customary working conditions.

For universal service licences, the Federal Council decides on quality criteria, periodically reviews the universal service catalogue, and fixes upper limits for the prices of the services of the universal service that apply uniformly for the entire licence area. The universal service criteria are determined based on market developments – that is, on new needs and technological progress.

From 1 January 2020, universal service includes:

- public telephone services;
- access to the internet with a minimum data transmission rate of 10/1 megabits per second (Mbps);
- services for the hearing impaired; and
- directory and operator services for the visually impaired and people with limited mobility.

To date, new technologies such as fibre optic or mobile phone services are not included in the universal service.

On 19 May 2017, ComCom decided that the universal service concerning telecommunications will continue to be provided by Swisscom, and awarded the licence to Swisscom for the period 2018 to 2022 (ie, five years). Since the current licence expires at the end of 2022, the next universal service licence should be awarded by June 2022. However, the content of the next universal service is not yet determined. The respective consultation process that was initiated by the Federal Council on 10 December 2021 ended on 25 March 2022. To maintain a guaranteed universal service until the new provisions come into force, ComCom will extend Swisscom's current universal service licence unchanged. ComCom expects that the next universal service licence will come into force at the beginning of 2024.

If it is shown before the licence is granted that it will not be possible to cover the costs of the provision of the universal service in a given area even with efficient management, the licensee is entitled to financial compensation. The compensation would be financed by levying a fee on all telecommunications service providers. To date, no such compensation has been awarded.

Number allocation and portability

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

The Federal Council shall issue regulations on the management of addressing resources, and, in particular, on:

- their allocation, use, blocking, transfer and withdrawal;
- the issuing of numbering plans;
- the delegation of management to third parties, the termination of the delegated activity and the supervision of the same;
- sub-allocation; and
- number portability.

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OFCOM shall manage the addressing resources that must be managed at the national level. In special cases, OFCOM may delegate the management of certain addressing resources to third parties, in principle by tender.

The numbering scheme under the national numbering plan allows number portability between telecommunications service providers offering the same category of telecommunications services. Within such categories, telecommunications service providers shall ensure number portability.

Telecommunications service providers that are required to ensure number portability must bear their own costs. However, a telecommunications service provider that passes a number to another can demand that the latter contributes to the administrative costs. The costs of transmitting a passed-on number to its destination are to be defined in interconnection agreements between the telecommunications service providers. If there is no agreement, the procedural rules of interconnection apply by analogy. The new telecommunications service providers can pass part of the costs of number portability to the subscriber. To grant fast number portability, donor service providers are required to confirm number-porting applications to the recipient service providers within one working day.

The TCA regulates the management of internet domains separately. In principle, as for addressing resources in general, OFCOM shall manage internet domains if the Swiss Confederation is responsible for their management.

Customer terms and conditions

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

The market for end-customer prices is, in general, not subject to ex ante price regulation. However, there exist few exemptions to this rule. According to the TCA, the Federal Council shall periodically fix upper limits for the prices of the services of the universal service. In the area of international roaming, the Federal Council can issue regulations to avoid disproportionately high end-user tariffs and take measures to promote competition, inter alia, by the setting of price ceilings. The same applies to value-added services to prevent abuses. Effective from July 2021, the Federal Council has included a number of new provisions in the OTS designed to increase price transparency and consumer choice in international roaming.

Accordingly, agreements with end users are not subject to specific telecommunications regulation. However, agreements and the conclusion of such agreements must adhere to mandatory Swiss law. The starting point for any query concerning the conclusion and dissolution of a contract, as well as faults of performances, is the Swiss Code of Obligations (CO). Particularly relevant in a consumer protection context are also:

- article 8 of the Federal Act Against Unfair Competition of 19 December 1986, as last amended on 1 January 2022, which prohibits the use of abusive general terms and conditions; and
- articles 40a et seq of the CO and the Federal Consumer Credit Act, which govern the consumer's right to withdraw from a contract within 14 days under certain conditions.

Also, how prices for telecommunications services and, in particular, value-added services are announced in writing and advertising for such services are set out in the Ordinance on the Disclosure of Prices and specific provisions concerning customer data retention and security apply.

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?

Within the framework of the recent TCA revision, an open internet was a central concern. Since 1 January 2021, network neutrality is regulated by law, with some exceptions.

Providers of internet access must transmit information without making any technical or economic distinction between senders, receivers, content, services, service classes, protocols, applications, programmes or terminals. They may transfer information differently only if this is necessary to:

- comply with a legal requirement or a court ruling;
- ensure the integrity or security of the network or the services provided over it or of the terminals connected;
- comply with an express customer request; or
- to combat temporary and exceptional network congestion; in doing so, equivalent forms of data traffic shall be treated equally.

Further, in the case of special services, it is possible to design offers flexibly to meet the quality requirements of customers and as long as this does not degrade the quality of the internet connection. These are services offered in addition to the internet connection that is transmitted via the same network, for example, internet-based telephony (eg, VoIP) or television services (eg, internet-based TV).

An essential element of the fundamental net neutrality obligation is also that the corresponding providers must inform their customers and the public if they treat information differently during transmission, either technically or economically.

Platform regulation

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

No specific legislation or regulation exists. Even though the Federal Council has, in principle, identified the need for clarification concerning platform regulation in the recent TCA revision, this issue is not specifically addressed in the revised TCA.

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?

Swiss legislation on telecommunications is, as a rule, technology-neutral and does not contain any specific definitions referring to next-generation access networks. Accordingly, these are, in principle, subject to the provisions of the TCA.

There is no federal scheme to promote broadband penetration. Aside from Swiss telecommunications providers, some local authorities actively support the development of broadband networks. For example, the city of Zurich has assigned financial means to its own electric utility to build an area-wide fibre optic network and the responsible department in the canton of Grisons wants to advance the development of ultra-high broadband in its area. Further, because of the rather stagnant expansion of fibre-to-the-home or high-bandwidth networks, respectively, in recent years and the considerable regional disparities of the current network coverage within and between cantons, the canton of Ticino submitted a legislative initiative at the federal level in April 2016. The initiative aims at guaranteeing dense high-speed broadband

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coverage throughout Switzerland and calls on the Swiss Confederation to intervene actively within the framework of its powers in those areas in which the high-speed broadband networks are not being implemented by the telecommunications service providers. In this context, direct financing or a redefinition of the universal service are being considered and proposed as instruments. The deadline for drafting a bill was extended by two years in February 2021, namely, until the summer session of 2023.

Further, the holder of the universal service licence, currently the incumbent operator Swisscom, is, inter alia, obliged to provide a broadband internet connection with at least a 10/1Mbps transmission speed to all households in Switzerland, in addition to the telephone connections.

Data protection

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

According to article 43 of the TCA, telecommunications service providers are subject to a general confidentiality obligation. Thus, they are not allowed to disclose to a third party any information relating to a subscriber's communications or provide anyone else the opportunity to do so. However, the Federal Act on the Surveillance of Post and Telecommunications and its related ordinance set out the rules and procedure concerning the interception of communications and access to consumer communications data by the competent authorities.

Subscribers must be granted access to the data on which invoices are based, in particular, the addressing resources, the times when calls were made and when payments are due. Moreover, anyone requiring this data to trace nuisance calls or unfair mass advertising must be informed of the name and address of the subscribers whose lines were used for such calls.

Under the TCA, telecommunications service providers may process customer location data only for the provision of telecommunications services and for charging purposes. The processing of data for other services requires the prior consent of customers or anonymous processing.

Also, the Federal Act on Data Protection (FADP) of 19 June 1992, as last amended on 1 March 2019, applies. The FADP aims to protect the privacy and the fundamental rights of (natural and legal) persons when their data is processed by private persons or federal bodies.

Anyone who processes personal data must not unlawfully breach the privacy of the data subjects in doing so. In particular, he or she must not process personal data in contradiction to the principles of the FADP, process data pertaining to a person against that person's express wish without justification or disclose sensitive personal data or personality profiles to third parties without justification.

The principles of the FADP are, among others, that personal data may only be processed lawfully, that its processing must be carried out in good faith and must be proportionate and that the purpose of its processing must be evident to the data subject. The Swiss parliament adopted a total revision of the FADP on 25 September 2020. It is planned that the new data protection law will come into force on 1 September 2023. However, the necessary decision by the Federal Council has yet to be made.

Cybersecurity

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

In 2012, the Federal Council approved the 'National strategy for the protection of Switzerland against cyber risks' (NCS), which specifies the various risks that originate from cyberspace, identifies weaknesses and describes how Switzerland is going to proceed in this matter. The NCS is reflected in the Federal Act on the Intelligence Service, allowing the Federal Police to monitor the internet proactively.

In 2018, the Federal Council adopted the new national strategy for the protection of Switzerland against cyber risks (second NCS) for the period 2018 to 2022, containing a total of 28 measures regarding cyber risks. To support the general public and businesses against cyber risks and improve the security of its own systems, on 30 January 2019, the Federal Council decided to set up a competence centre for cybersecurity, the National Cyber Security Centre. The core of the centre is made up of the Reporting and Analysis Centre for Information Assurance and is being designed to take on the following tasks:

- provision of a national contact point for questions on cyber risks and reporting cyber incidents;
- operation of the national Computer Emergency Response Team (GovCERT) as a technical expertise hub;
- operational incident management in the event of serious cyber incidents;
- office of the Federal Cyber Security Delegate;
- federal information and communications technology security unit;
- operation of a pool of experts to support the specialist offices in developing and implementing cybersecurity standards;
- cooperation with scientific and research bodies; and
- international specialist cooperation.

In December 2019, the Federal Council approved the report 'Options for critical infrastructure reporting duties in the case of serious security incidents', which describes the core issues concerning the introduction of reporting duties and describes possible models for their implementation. On 12 January 2022, the Federal Council initiated the consultation on the proposed introduction of a reporting obligation for cyberattacks on critical infrastructures. The proposal creates the legal basis for the reporting obligation and defines the tasks of the National Cybersecurity Centre (NCSC), which is intended to be the central reporting office for cyberattacks. It does not only oblige companies to help protect against cyberattacks. The proposal also defines the Confederation's tasks in supporting the economy and the general public. The NCSC is thus tasked with warning the general public about cyberthreats and raising awareness of cyber risks. The NCSC should also take receipt of reports concerning incidents and vulnerabilities, conduct technical analyses and recommend how those reporting should proceed. The consultation ended on 14 April 2022.

Under the TCA, which came into force on 1 January 2021, telecommunications providers are required to combat cyberattacks, defined exclusively as manipulations through telecommunications transmissions, such as the distribution of malicious software or the impairment of web services (distributed denial-of-service attacks). Physical access and backdoors in hardware and software are not covered. To combat cyberattacks or to protect the installations, telecommunications service providers are authorised to reroute or prevent connections and suppress information. If these precautions defeat their purpose, the Federal Council is also empowered to issue further regulations to protect the security of information and telecommunications infrastructures and services, in particular, concerning the availability and operation of installations or ensuring redundant infrastructures and the reporting of faults.

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?

The FADP and the TCA contain provisions regarding the issue of data protection. The respective provisions, in principle, also apply to big data.

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However, because most databases contain 'anonymised' and, therefore, theoretically not personally identifiable information as regulated in the FADP and the TCA, addressing legal issues with big data remains a legal area with many uncertainties.

The Swiss parliament adopted a total revision of the FADP on 25 September 2020. Changes, in particular, relate to the area of information, documentation and notification obligations, automated decisions and criminal penalties. The adaptation of the implementing provisions in the ordinances to the FADP is ongoing and the new law is not in force to date.

Data localisation

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

The FADP aims to protect the private sphere of (natural and legal) persons regarding data processing carried out in Switzerland. Concerning the transfer of data abroad, strict obligations apply. Certain data transmissions abroad must be announced to the Federal Data Protection and Information Commissioner. Further, sector-specific regulation may stipulate additional requirements or even prohibit the transfer of data abroad.

Key trends and expected changes

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

The spread of the internet has profoundly transformed the telecommunications landscape, including in Switzerland. It has undergone extremely rapid developments in recent years. Against this background, the Federal Council has recognised the need for a revision of the TCA and issued a dispatch in that regard on 6 September 2017. After several deliberations, the Swiss parliament approved the TCA that, largely, entered into force on 1 January 2021. The revised TCA has thus already incorporated some of the latest developments and trends in the Swiss communications regulation.

However, there are a number of key trends that will require further revisions – for example, the growing importance of wireless internet over 5G, implementing difficulties in that regard (construction objections for new antennas threaten to reduce the value of acquired concessions) and new applications (internet of things) may create a need for new regulations. Other key trends to be mentioned are the design of and the access to the fibre infrastructure (a topic that is currently subject to judicial review from a competition-law angle) as well as data and cyber security. With regard to data and cyber security, the consultation of the Federal Council on the proposed introduction of a reporting obligation for cyberattacks on critical infrastructures ended on 14 April 2022.

MEDIA

Regulatory and institutional structure

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

In Switzerland, apart from the communications sector, regulation of the media sector is also dealt with at a federal level, the main sources of law being:

- the Federal Act on Radio and Television (RTVA) of 24 March 2006, as last amended on 1 January 2022; and
- the Federal Ordinance on Radio and Television (RTVO) of 9 March 2007, as last amended on 1 January 2022, and related decrees.

The RTVA regulates the broadcasting, processing, transmission and reception of radio and television programme services.

The broadcasting sector has three main authorities responsible for the granting of licences. The Federal Council is the licensing authority for the Swiss Broadcasting Company (SBC). Concerning other licences, the licensing competence has been delegated to the Federal Department of the Environment, Transport, Energy and Communications (DETEC). The Federal Office of Communications (OFCOM) puts the licences out for tender and consults interested groups.

OFCOM further fulfils all sovereign and regulatory tasks related to the telecommunications and broadcasting (radio and television) sectors. It fulfils an advisory and coordinating function for the public and policymakers. It also guarantees that basic services will be provided in all parts of the country and for all sections of the population.

The Federal Media Commission advises the Federal Council and the Federal Administration concerning media issues. It is operational since August 2013 and currently consists of 15 representatives from various areas of the Swiss media sector.

The RTVA provides for the Independent Complaints Authority for Radio and Television. This authority deals with complaints that relate to the editorial programme and rules on disputes on denied access to a programme.

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?

Certain foreign ownership restrictions may apply. In the absence of any international commitments to the contrary, licences for broadcasting may be refused to natural persons without Swiss citizenship, to companies with foreign control or to Swiss companies with foreign participation unless reciprocal rights to Swiss citizens or Swiss companies are granted.

Also, the licence granted to broadcasters of radio and television programme services may only be transferred with prior approval of the licensing authority. The latter examines whether the licence requirements are also met after the transfer. The economic transfer of the licence (namely, the transfer of more than 20 per cent of the share capital of the voting rights or, where applicable, the participating capital of the licensee) is also deemed to constitute such a transfer.

Concerning cross-ownership, the RTVA provides that – except for the SBC – a media corporation may not receive more than two radio and two television licences. Also, the participation of the SBC in other companies that are broadcasting radio or television programmes requires the approval of DETEC.

Licensing requirements

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

Broadcasters of programme services are, in principle, required to obtain a licence. However, broadcasters that request neither a share of fees nor guaranteed wireless terrestrial distribution can operate their service without a licence upon a mere prior notification to OFCOM. Also, broadcasters of programme services of minor editorial importance (eg, programme services that can only be received by fewer than 1,000 devices at the same time) do not fall under the scope of the RTVA and, hence, need neither a licence nor a registration.

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The Federal Council is the licensing authority for the SBC that is subject to a special licence with an extensive mandate.

Concerning the other licences, the licensing competence has been delegated to DETEC. A broadcaster of a radio programme service that has obtained a licence under the RTVA is not required to apply separately for a licence under the Federal Act on Telecommunications for use of the frequency spectrum. Such licence is deemed to be granted at the same time in parallel. Cable television operators are under a duty to broadcast in the respective coverage area television programme services of broadcasters that have been granted a licence. Licences are awarded by way of public tender. To be awarded a licence, the applicant must:

- be able to fulfil the mandate;
- possess sound financial standing;
- be transparent about its owners;
- guarantee that it complies with the applicable labour laws and customary working conditions, the applicable law and, in particular, the obligations and conditions associated with the licence;
- maintain a separation of editorial and economic activity; and
- have a residence or registered offices in Switzerland.

Except for the SBC, the number of licences a broadcaster and its group companies may acquire is limited to a maximum of two television and two radio licences. In the case of several applicants for one licence, the one that is best able to fulfil the performance mandate shall be preferred. In the case of equivalent candidates, the one that best promotes diversity of opinion and offerings shall be preferred. In practice, DETEC often deems independent applicants that do not belong to a media group that already possesses other broadcasting licences to be better able to fulfil this criterion.

The annual fee for a broadcasting licence amounts to 0.5 per cent of the gross advertising revenue that exceeds 500,000 Swiss francs. Further, administrative charges will incur concerning the radio and television licence as well as the telecommunications licence. These charges are calculated based on time spent. A reduced hourly rate applies to the granting, amending or cancelling of a licence for the broadcasting of a radio or television programme service as well as for the radio communication licence.

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?

Like all programmes, foreign-produced programmes must comply with the minimum requirements for programme service content. In particular, to respect the fundamental rights, they must respect human dignity and be neither discriminatory nor contribute to racial hatred, endanger public morals or glorify or trivialise violence.

Further, broadcasters of a national or regional-language programme service window in a foreign television programme service that broadcasts films may be obliged to spend at least 4 per cent of their gross revenue on the purchase, production or co-production of Swiss films or pay a corresponding support fee not exceeding 4 per cent if they meet certain requirements.

In addition, Broadcasters may be granted a licence for national and language region-specific programmes. These licences may contain obligations concerning the portion of own productions and Swiss productions, in particular, Swiss films.

Local and regional providers of radio and television programme services must primarily consider the particular characteristics of their service area. They must contribute to the forming of opinions on topics of local and regional social life and the promotion of cultural life in the service area. Therefore, the respective licences contain specific obligations regarding local and regional content. Traditional online as well as traditional mobile content providers are in principle not subject to this regime.

Advertising

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

Swiss law provides for both rules on advertising in general and specific rules for advertising in broadcast media.

The Federal Act Against Unfair Competition (UCA) of 19 December 1986, as last amended on 1 January 2022, contains several general provisions on advertising. It provides, in particular, that any advertisement that is deceptive or in any other way infringes the principle of good faith and affects the relationship between competitors or between suppliers and customers is deemed unfair and unlawful. Also, the advertisement industry has installed soft law rules and established the Commission on Integrity in Commercial Communication. Such commission is a respected monitoring organisation that handles complaints from both consumers and competitors. It bases its decision on its own guidelines.

In addition to these general regulations, broadcast media advertising (form and content) is subject to the specific sector regulation as provided in the RTVA and RTVO.

Regarding the form of advertising, it must be clearly separated from the editorial programmes and clearly identifiable as such. In particular, both the beginning and end of an advertising slot must be indicated by a clear visual or acoustic marker. An advertisement that lasts longer than a minute must be clearly identified as such for reasons of transparency.

While surreptitious advertising is always illegal, product placement may be allowed if it fits into the dramaturgy of a programme and is clearly declared as sponsorship.

The broadcasters' regular editorial employees are prohibited from appearing in advertising programmes. Local and regional broadcasters with limited financial resources are exempt from this restriction.

Further, there are scheduling and airtime restrictions for radio and television advertising. Depending on the type of programme (eg, cinematographic film, documentaries, news programmes, programmes with religious content, series or children's programmes), different scheduling restrictions apply. Stricter restrictions apply to the SBC. As regards advertising transmission time, advertising, in general, may not account for more than 20 per cent (namely, 12 minutes) of one hour's transmission time, subject to exemptions for non-licensed radio programme services and non-licensed television programme services that cannot be received outside of Switzerland.

The RTVO contains provisions on the use of new forms of advertising such as split-screen, interactive and virtual advertising (ie, the insertion of advertisements into an existing image through post-production).

In terms of content, the RTVA prohibits advertising for certain groups of products and services on radio and television, including tobacco products, certain alcoholic beverages, therapeutic products and political parties. Advertising is also prohibited if it disparages religious or political beliefs, is misleading or unfair or encourages behaviour that is detrimental to health, the environment or personal safety. Less restrictive rules apply to private broadcasters, in particular, concerning commercial breaks and product placement.

There is no specific regulation for online advertising as traditional online content is, in principle, not covered by the RTVA. Therefore,

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subject to certain exceptions, online advertising is only subject to the general advertising rules of the UCA.

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?

Concerning must-carry obligations, the RTVA distinguishes between broadcasting distribution networks that transmit content via wireless terrestrial broadcasting and wire.

In the case of wireless terrestrial broadcasting, the programme services of the SBC and the programme services of broadcasters that hold a licence with a performance mandate are entitled to access the network. Broadcasters pay the owner of a radio communication licence a cost-based compensation for the broadcasting.

In the case of transmission by wire, in addition to the above-mentioned programme services, the Federal Council has defined the programme services of foreign broadcasters that are to be transmitted by wire because of their special contribution to education, cultural development or free formation of opinion. In addition, OFCOM may, at the request of a broadcaster and under certain conditions, require a telecommunications service provider for a certain period to provide broadcasting by wire of a programme service within a specific area. The RTVO provides for a maximum number of programme services to be broadcast free of charge by wire.

Regulation of new media content

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

No specific rules or regulations exist concerning the provision of traditional online content (websites, newsgroups and blogs, etc). However, general laws such as the UCA, the Federal Criminal Code and the laws that protect intellectual property rights, etc, apply. Online content that meets the legal definition of a programme service (namely, content that is delivered as a continuous sequence of broadcasts that are transmitted at certain times only and addressed to the general public such as Internet Protocol television and streaming media) is, in principle, covered by the RTVA, apart from offerings of minor editorial importance (namely, programme services that can only be received simultaneously by fewer than 1,000 devices) and on-demand content that is also excluded from the RTVA. Consequently, most of today's online content is not regulated. Broadcasts that are subject to the RTVA, however, must abide by the same rules (namely, regarding advertisement) as broadcasts via traditional media. Although no licence is required, the broadcasters must inform OFCOM about their programme service.

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?

From 1 January 2015, must-carry obligations regarding analogue terrestrial television programme services were finally abolished and switched from analogue to digital television broadcasting. No specific timing is required by law for the switchover from analogue to digital broadcasting concerning the broadcasting of radio programme services. However, in spring 2013, the radio industry, together with OFCOM, set up the Digital Migration Working Group, which is made up of representatives of the industry and public authorities. Accordingly, it planned to gradually replace analogue FM reception with digital radio from 2020 onwards with completion by 2024 at the latest. Today, the SBC, and most private radio stations, broadcast their programme services via DAB+ in parallel with FM; some even broadcast exclusively in digital. To establish new broadcasting technologies and, in particular, to alleviate a possible financial burden from such a parallel setup, OFCOM may provide financial help to licensed broadcasters in the case of insufficient resources in the relevant area. The necessary funds are generated by licensing and consumer fees.

Digital formats

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

In Switzerland, no specific rules for digital formats exist. Digital broadcasting is subject to the general rules of Swiss law. Digital formats that meet the legal definition of a programme service (namely, content that is delivered as a continuous sequence of broadcasts that are transmitted at certain times only and addressed to the general public) are, in principle, covered by the RTVA.

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?

Except for the SBC, the number of licences a broadcaster and its group companies may acquire is limited to a maximum of two television and two radio licences.

Also, there are measures against media concentration once a licence has been granted. However, these measures are only applicable if an undertaking abuses its dominant position. In such cases, DETEC consults the Swiss Competition Commission (COMCO). If the COMCO report ascertains that a dominant undertaking jeopardises diversity of opinion and offerings as a result of an abuse of its dominant position, DETEC may demand that the undertaking concerned:

- ensures diversity by measures such as granting broadcasting time for third parties or cooperating with other participants in the market;
- takes measures against corporate journalism, such as issuing editorial statutes to ensure editorial freedom; or
- adapts its business and organisational structure (if the other measures are clearly insufficient).

Key trends and expected changes

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

For some time now, Swiss media companies have faced a challenging time with declining revenues. Among others, this development has mainly been driven by online media or digitalisation, respectively. The consequences are job cuts, the merging of editorial offices and a decline in media diversity, which is particularly evident on a regional level. The covid-19 pandemic aggravated this development. Recent concentrations in the media sector in Switzerland confirm a clear trend towards consolidation in this sector. However, in the referendum held on 13 February 2022, the Swiss electorate body voted against the introduction of a federal law on a package of measures in favour of the media that should have remedied some of the identified concerns.

Further, the role and funding of the public television and radio broadcasters, which (to some extent competes) with the private media sector, is currently debated, in particular regarding online content.

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Another hot topic concerns the support of Swiss film productions. On 15 May 2022, the Swiss electorate body will vote on the amendment to the Federal Act on Film Production and Film Culture. Currently, domestic television broadcasters are obliged to invest four per cent of their turnover in Swiss filmmaking. Thereby, they make an important contribution to local film production. However, films and series are increasingly also offered for download online via streaming. Streaming platforms, which are often globally active, have so far been no investment obligation in Switzerland. The amendment to the Film Act stipulates that streaming services must in future also invest four per cent of the revenue generated in Switzerland in local filmmaking. They can either participate directly in Swiss film and series productions or pay a substitute levy that benefits Swiss film promotion. In addition, 30 per cent of the streaming services' content must consist of films or series produced in Europe.

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?

The authorities regulating the telecommunications sector are the Federal Communications Commission (ComCom) and the Federal Office of Communications (OFCOM). ComCom is the independent licensing and market regulatory authority for the communications sector. Its main activities and competencies relate, in particular, to the granting of licences for the use of radio communication frequencies as well as the regulation of the terms of application of number portability and free choice of supplier. ComCom instructs OFCOM concerning the preparation of its business and the implementation of its decisions. OFCOM itself is part of the Federal Department of the Environment, Transport, Energy and Communications (DETEC) and acts as the supervisory authority in the communications sector. There is no strict line to draw between the competencies of OFCOM and ComCom as the latter has delegated some of its competencies to OFCOM.

The authorities regulating the media sectors are the Federal Council, DETEC and OFCOM. Further, there are the Federal Media Commission with advisory tasks and the Independent Complaints Authority for Radio and Television.

Also, anticompetitive practices and mergers in the telecommunications and media sector are subject to general competition law provisions enforced by the Swiss Competition Commission (COMCO). The cases are prepared and processed by COMCO's Secretariat. In merger notification scenarios, provided that the notification thresholds of the Federal Cartel Act are met, the notifying parties require both clearance from COMCO and approval of the transfer of mobile radio frequency licences by the licensing authority. Moreover, concerning specific questions related to the conditions of competition or the market position respectively, the telecommunications regulators are required to consult with COMCO. Thus, there is close collaboration between the authorities to avoid jurisdictional conflicts, particularly concerning issues such as reviewing price-fixing arrangements, mergers and strategic alliances as well as the behaviour of dominant market players

Appeal procedure

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

In the telecommunications and media sector, the law provides for the following appeal procedures: Decisions of ComCom, OFCOM, DETEC and COMCO as well as, to a limited extent, its interim procedural decisions, can be appealed to the Federal Administrative Tribunal. The scope of judicial reviews is extensive. An appeal can be lodged on the following grounds:

- wrongful application of the law;
- the facts established by the authorities were incomplete or wrong; or
- the decision was unreasonable (a claim that is, however, rarely invoked in practice).

Accordingly, the appeal before the Federal Administrative Tribunal is a full-merits appeal on both the findings of facts and law. However, in practice, the Federal Administrative Tribunal grants the previous instances a significant margin of technical discretion.

Decisions of the Independent Complaints Authority for Radio and Television can be appealed directly to the Federal Supreme Court.

The judgments of the Federal Administrative Tribunal and, to a limited extent, interim procedural decisions may be challenged before the Federal Supreme Court based on law and procedure within 30 days of the notification of the decision. An exception applies to decisions of the Federal Administrative Court regarding publicly tendered licences and disputes regarding access based on interconnection rules. These decisions are final and binding and cannot be appealed to the Federal Supreme Court. In proceedings before the Federal Supreme Court, judicial review is limited to legal claims (namely, the flawed application of the law or a violation of fundamental rights outlined in the Swiss Federal Constitution, the European Convention on Human Rights or other international treaties). The claim that a decision was unreasonable is fully excluded and claims concerning the finding of facts are limited to cases of arbitrariness.

In addition to the possibility of a request for reconsideration from the deciding authority (no actual appeal), regarding decisions by COMCO, the parties involved may at any time during and after appeal procedures request the Federal Council to exceptionally authorise specific behaviour or to clear a blocked merger for compelling public interest reasons. To date, such authorisation has never been granted.

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.

In previous years, COMCO has reviewed a series of concentrations in the telecommunications and media sector, most of them in phase I. In October 2020, COMCO granted unconditional clearance to the acquisition of Sunrise Communications Group Ltd by Liberty Global plc in phase I. The clearance decision mainly relied on the in-depth phase II examination of the contemplated reverse acquisition of certain Liberty Global assets including UPC Switzerland LLC by Sunrise Communications Group Ltd in the previous year. In that examination, COMCO, in particular, assessed and eventually excluded a collective dominant position of Sunrise and Swisscom.

Concerning behavioural cases, with the decision of 16 November 2020, COMCO imposed fines on several suppliers of network components for illegal price-fixing agreements when submitting offers for components used for data transmission via optical fibre by major customers. On 7 September 2021, COMCO found that UPC is dominant

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in the live broadcasting of Swiss ice hockey championship matches on pay TV and that it abused this position by refusing to broadcast these games to Swisscom as a television platform operator. UPC holds extensive exclusive rights to broadcast Swiss ice hockey content on pay TV for the 2017–18 to 2021–22 seasons. These exclusive rights created a dominant position in this market. Consequently, COMCO obliged UPC to offer all requesting television platforms in Switzerland either the raw signal of these championship matches or the transit of the UPC Mysports programme content (containing the relevant ice hockey content) on non-discriminatory terms. On 9 December 2019, the Federal Supreme Court issued a leading case concerning price-squeezing in the Swiss telecommunications market. In this decision, the Federal Supreme Court upheld the decision of the Federal Administrative Tribunal with a fine of about 186 million Swiss francs on Swisscom, the incumbent Swiss telecommunications operator, for a price squeeze in the asymmetric digital subscriber line market. In December 2020, in the wake of initial inquiries undertaken across the industry since February 2020 and the filing by a competitor of a complaint against Swisscom, the competition authorities opened an investigation concerning Swisscom's new fibre network expansion strategy. The COMCO presumed that, in implementing its new network expansion strategy, Swisscom, as a dominant undertaking, is abusing its market position within the meaning of article 7 of the Cartel Act. Therefore, as a precautionary measure, COMCO provisionally prohibited Swisscom from pursuing its network expansion until the conclusion of the investigation unless it could ensure Layer 1 access. In January 2021, Swisscom appealed this ruling to the Federal Administrative Court requesting that the precautionary measure be lifted in its entirety. However, the precautionary measure of the COMCO was confirmed by the Federal Administrative Court. The matter is now pending before the Federal Tribunal.

Regarding legislative changes, the Swiss Cartel Act is currently under partial revision. The consultation on the proposed amendments published by the Federal Council on 24 November 2021 ended on 11 March 2022. The partial revision includes, in particular, the introduction of the significant impediment of an effective-competition (SIEC) test as applied, inter alia, in the European Union.

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Taiwan

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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?

Telecommunication businesses are under the jurisdiction of the National Communications Commission (NCC), which is an independent body composed of seven members nominated by the Premier and then approved by Congress. The NCC performs its function via committees, and all matters handled by the NCC are subject to the decisions made in the committee meetings. A single NCC committee member does not have the authority to exercise power or perform independently. The Telecommunications Management Act is currently the main legislation governing the telecommunications sector. Taiwan's Congress passed the Telecommunications Management Act in June 2019, and it became effective on 1 July 2020, thereby replacing the Telecommunications Act as the main telecommunications legislation in Taiwan. The Telecommunications Management Act releases the franchise and licence requirements that existed for telecommunications service providers under the Telecommunications Act. The Telecommunications Management Act separates telecommunication services from telecommunications networks. The Telecommunications Management Act sets forth a registration scheme for telecommunications service providers, whereby registration is mandatory only for engaging in telecommunication services that use public telecommunications resources or have interconnections with other service providers, and that is optional for engaging in all other types of telecommunications services. The building up and operation of a public telecommunications network (namely, a telecommunications network for the provision of services to customers instead of for use by the network owner itself) by a registered telecommunications service provider or any other person is separately subject to the NCC's prior approval. A registered telecommunications service provider can utilise its own networks or those of others for its services. A public telecommunications network owner could build up said network entirely on its own or in combination with components from others.

Only Taiwanese entities may apply to the NCC to build up a public telecommunications network. A public telecommunications network that uses frequencies and telecommunications numbers may only be built by a Taiwan-incorporated company with limited liability and capital divided by issued shares. The chairman of the board of directors of such a Taiwan-incorporated company must be a Taiwanese citizen, and the company is subject to foreign investment caps, whereby the direct foreign investment in such entity may not exceed 49 per cent of its total capital and where the total of direct and indirect foreign investment cannot exceed 60 per cent of its total capital.

The Telecommunications Management Act gives telecommunications franchisees and licensees under the old Telecommunications Act a period of three years from the Telecommunications Management Act becoming effective to transition over to the new registration scheme, as applicable. Until it has completed such transition, however, a telecommunications franchisee or licensee under the Telecommunications Act remains subject to the provisions outlined under the Telecommunications Act. All the franchises and licenses granted by the NCC under the Telecommunications Act will automatically become invalid at the end of such three-year period. Existing public telecommunications networks built by those franchisees and licensees can apply with the NCC for network build-up approval without going through the necessary network on-site inspection that is required for newly-established networks under the Telecommunications Management Act.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

The Telecommunications Management Act sets forth a registration scheme for those entities providing telecommunications services and a separate approval requirement for the entities building up and operating public telecommunications networks. The registration is mandatory for those service providers that intend to interconnect with other providers and apply for frequency use licenses or telecommunications numbers, while all other telecommunications service providers that are not subject to mandatory registration requirements can choose whether to register or not. Almost all facility-based service providers, including fixed, all generation mobile and satellite communication service providers, are subject to the said mandatory registration requirement. The registration is required for Voice over Internet Protocol (VoIP) service providers regardless of whether the VoIP service providers would apply for telecommunication numbers from the NCC by themselves or acquire the same from other service providers, given that their networks will interconnect with the other public switched telephone networks. Reselling (which includes wholesale and retail sales) services are not subject to the mandatory registration requirements. Submarine cable service providers are not required to register pursuant to the Telecommunications Management Act, but the NCC's practices require them to register.

Only registered telecommunications service providers are subject to the various obligations and compliance requirements outlined by the Telecommunications Management Act. Only local entities, including Taiwan-incorporated companies and the registered Taiwan branch offices of foreign companies, may register with the NCC as telecommunications service providers.

Separately from the telecommunications service provider registration, a registered telecommunications service provider or any person proposing to build up a public telecommunications network is subject to prior approval from the NCC. A public telecommunications network is defined as a telecommunications network established to provide services for communication to the public, where the public means any

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third party other than the network owner itself. As such, a telecommunications network built by an operator that provides services to corporate customers for the latter's internal communications only would still be considered a public telecommunications network, and the building up of such a network would be subject to prior approval from the NCC accordingly. The Telecommunications Management Act broadly defines a telecommunications network as a network consisting of telecommunications infrastructure that transmits and receives communication messages by way of satellite, fixed or mobile networks, or any combination of the same.

The applicant for building up a public telecommunication network in Taiwan must be a Taiwan-incorporated company or the Taiwan branch office registered by a foreign company pursuant to Taiwan's company laws, provided that the applicant for building up a public telecommunication network using frequencies or telecommunication numbers is limited to that incorporated as a company limited by shares pursuant to Taiwan company laws. The chairman of the board of the directors of such a company limited by shares shall be a Taiwan citizen, direct foreign shareholding in such company cannot exceed 49 per cent of its total capital, and combined direct and indirect foreign shareholding in such company shall not exceed 60 per cent of its total capital. Indirect foreign shareholding means foreign shareholding via domestic corporate shareholders of such public telecommunication network operating company.

A public telecommunication network once having been completely built up, is subject to an on-site inspection by the NCC before the network can operate.

A public telecommunications network owner is not necessarily a registered telecommunications service provider, while a registered telecommunications service provider can utilise the networks it builds up itself or provided by others for the provision of its service.

Both the registration and network build-up approval are permanent and without any fixed term. There is a nominal registration fee for registering with the NCC as a telecommunications service provider that is calculated based on the paid-in capital of the service provider and the maximum fee is NT$25,000. The application fee for building up a public telecommunications network ranges from NT$12,000 to NT$1.2 million depending on the types of networks and the numbers of the networks to be built up, and the on-site inspection fee ranges from NT$25,000 to NT$310,000 depending on the type of network.

Spectrum used for the telecommunications services are subject to separate use licenses. Such use licenses may only be granted for use with a specific public telecommunications network and the applicant and licensee must be an NCC-approved public telecommunications network operator.

Public Wi-Fi services that use 2.4 gigahertz (GHz) or 5GHz are exempted from telecommunications service provider registration, public telecommunications network build-up approval, and spectrum use licenses.

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?

A spectrum licence shall always be used exclusively for the specific purpose for which it was granted.

An entity with frequency allocated by the NCC is permitted to transfer such frequency to others or share the use of such frequency with others, both of which are subject to the NCC's prior approval.

Ex-ante regulatory obligations

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

'Ex-ante obligations' is not a term used in the Telecommunications Management Act. Nevertheless, the Telecommunications Management Act provides a regulatory scheme for ensuring effective competition within specific telecommunications service markets. The NCC is authorised by the Telecommunications Management Act to adopt control measures for the dominant market players in the service market designated by the NCC. For such market designation, the NCC shall take into consideration the following factors:

- the development of technologies and services in the market at issue;
- the importance in the overall telecommunications service market;
- the region or range of competition and the demand or supply substitutability in the service market at issue; and
- the structure of competition in the service market at issue.

The NCC subjected the following five telecommunications services markets to such regulatory scheme in April 2022:

- fixed-line voice retailing;
- fixed-line broadband retailing;
- fixed-line wholesale services;
- fixed-line call termination services; and
- mobile call termination services.

The NCC is entitled to further determine the dominant market players in those markets and adopt the following control measures for such dominant market players:

- requiring those dominant market players to disclose information, conditions, procedures and expenses concerning interconnection, network access components and use of their telecommunications infrastructure;
- requiring those dominant market players to ensure the interconnection agreements that they enter into are fair, reasonable and non-discriminatory;
- requiring those dominant market players to provide other service providers with interconnection, network access components, or relevant telecommunications infrastructure, and to outline template agreements for the same for the NCC's approval;
- prohibiting those dominant market players from setting service fees that may cause a cross-subsidy price squeeze or any other abuse of power; and
- requiring those dominant market players to adopt accounting separation among the various services.

Given that the NCC only defined the applicable markets in April 2022, the NCC has not determined any dominant market player yet but is expected to do so soon.

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?

The Telecommunications Management Act adopts a separation of structure and function regime and allows a telecommunications service provider to use the networks established by others but does not make structural and functional separation mandatory.

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Universal service obligations and financing

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

The universal service obligations currently apply to voice-based uneconomic public payphone services, voice-based telephone services in uneconomic areas, and Internet access services in uneconomic areas.

The NCC is authorised by the Telecommunications Management Act to designate one or more registered telecommunications service providers to provide universal services, which are financed by a fund contributed to by those registered telecommunications service providers that have been designated by the NCC and that contribute to the fund in amounts and manners set by the NCC.

Number allocation and portability

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

All telecommunications numbers, including numbering codes, subscriber numbers and identification codes, are administered by the NCC in Taiwan. The numbers are allocated by the NCC to registered telecommunications service providers via applications made under the NCC's regulations. Numbers allocated to registered telecommunications service providers can only be used for those services for which the applicant applied. Numbers allocated by the NCC are not tradable or transferable.

Number portability is mandatory, but the NCC has discretion in setting the applicable time frames. Currently, mobile phone number portability is mandatory, while local landline number portability is only required in certain municipalities.

Customer terms and conditions

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

Only the customer terms and conditions adopted by a registered telecommunications service provider are regulated by the Telecommunications Management Act. Where customers fail to pay for their telecommunications service fees on time, the registered telecommunications service providers are not allowed to suspend their service without first notifying such customers and asking them to make payment during a specified time. A registered telecommunications service provider is not liable to its customers for any damages caused by errors, delays, interruptions, suspensions, or failures in its service due to a failure or breakdown of the telecommunications network, but customers shall be offered a reduction in their service fees as compensation. The customer terms and conditions of registered telecommunications service providers designated by the NCC are subject to prior approval by the NCC.

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?

No.

Platform regulation

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

No.

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?

There are currently no specific regulations governing NGA networks. The Taiwanese government does provide tax incentives for the development of 5G mobile communication-related businesses that meet certain qualifications.

Data protection

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

The Personal Data Protection Act (PDPA) is Taiwan's main legislation governing personal data protection, and it applies to all business sectors, including the telecommunications sector. The PDPA authorises the NCC, as the regulator of telecommunications businesses, to outline regulations specifically for personal data protection matters within the telecommunications sector.

The NCC currently has a set of guidelines applicable to registered telecommunications service providers for information security that include guidelines for personal data protection. The guidelines for personal data protection require the registered telecommunications service providers to establish protocols for personal data protection in compliance with the standards set by the NCC and necessary methods after business termination.

The NCC has proposed to amend such personal data protection guidelines to also apply the same to public telecommunications network operators that provide Internet access services and have more than 3,000 users.

Such proposed amendment would also require registered telecommunications service providers and public telecommunications network operators that provide Internet access services and have more than 3,000 users to notify the NCC of any significant personal data accident (eg, leakage) within one hour after becoming aware of such an accident and provide details (including causes, effects, damages, etc) of such an accident to the NCC within 72 hours of becoming aware of such an accident. If a significant accident is discovered and notified to a registered telecommunications service provider or regulated public telecommunications network operator by the NCC and (or) other government authorities, such registered telecommunications service provider or regulated public telecommunications network operator shall provide details (including causes, effects, damages, etc) of such accident to the NCC within 48 hours of being so informed of such accident by the NCC and (or) other government authorities.

The NCC has also prohibited the transmission of any personal data to mainland China by Taiwan's telecommunications service franchisees and licensees (under the old Telecommunications Act) as well as registered telecommunications service providers and public telecommunications network operators (under the Telecommunications Management Act).

Cybersecurity

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

The Cybersecurity Management Act (CSMA) is the main Taiwanese legislation addressing cybersecurity. Taiwan's general criminal laws also include specific provisions related to cybercrime. The CSMA applies not only to government bodies but also to private companies engaging in the provision of data services and core internet infrastructure operations. The CSMA mainly requires applicable government bodies and

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private companies to establish and implement cybersecurity plans and requires that the government be notified of cybersecurity incidents. The Telecommunications Management Act requires all public telecommunications network operators to integrate detection and protection functions into their networks that are sufficient to ensure communication security. An application for building up a public telecommunications network would need to include the applicant's communication security protection plan for the network.

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?

No.

Data localisation

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

No. However, the NCC prohibits any Taiwanese telecommunications service franchisees and licensees (under the old Telecommunications Act) as well as registered telecommunications service providers or public telecommunications network operators (under the new Telecommunications Management Act) from transmitting any personal data that it has collected to mainland China.

Key trends and expected changes

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

Taiwan released the frequencies of 10.7–12.7 GHz, 13.7–14.5 GHz, 17.7–20.2 GHz and 27.5–30 GHz for next-generation geostationary and non-stationary satellite communications services in March 2022.

The NCC is drafting the legal framework for next-generation satellite services and is expected to finalise such in the third quarter of 2022.

MEDIA

Regulatory and institutional structure

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

The National Communications Commission (NCC) is also the government agency overseeing the broadcasting industry.

- The Radio and Television Broadcasting Law (last amended on 13 June 2018) governs terrestrial broadcasting;
- the Cable Radio and Television Broadcasting Law (last amended on 13 June 2018) governs the cable broadcasting sector; and
- the Satellite Radio and Television Broadcasting Law (last amended on 13 June 2018) governs satellite broadcasting.

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?

The restrictions on foreign ownership for broadcasters are:

- terrestrial broadcasters: no foreign investment is allowed;
- cable broadcasters: total direct and indirect foreign investment shall be less than 60 per cent of the broadcaster's total issued shares. Direct foreign investment shall be less than 20 per cent of the total shares issued; and
- satellite broadcasters: direct foreign investment in a Taiwan-incorporated satellite broadcaster shall be less than 50 per cent of the total issued shares. An offshore satellite broadcaster may offer programmes in Taiwan by setting up a branch office or appointing a distributor, provided that the NCC has granted broadcasting approval.

There are currently no regulations specifically prohibiting or restricting cross-ownership among broadcasters. However, for cable television multiple system operators, relevant cable laws provide that a cable system operated together with its related companies and related cable system operators are prohibited from controlling more than one-third of the total number of subscribers in the country, and cable system operators shall not have more than one-quarter of the channels available on their respective network broadcasting programming produced in-house or provided by affiliates.

Also, cross-ownership among broadcasters is subject to general competition laws.

Licensing requirements

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

All broadcasters broadcasting within the territory of Taiwan via closed broadcasting platforms are subject to licences issued by the NCC. Programmes and content broadcasted via open platforms, such as internet protocol television (IPTV), internet programming services, and mobile content, are currently not regulated. An offshore broadcaster broadcasting into Taiwan via satellite needs to either set up a branch office in Taiwan or appoint a local distributor. An offshore satellite broadcaster licence shall be obtained by the branch office in Taiwan or the local distributor on behalf of the offshore satellite broadcaster.

The term of a licence for a terrestrial broadcaster is nine years. Such a licence is renewable upon the expiry of each nine-year period. A cable broadcasting licence is also valid for nine years. An application for renewal of a cable broadcasting licence must be filed within the six-month period following the beginning of the ninth year of the licence. The duration of the satellite broadcasting licence is six years, provided that the licence term for a local distributor of an offshore satellite broadcaster is limited to the distribution term, with a maximum of six years. An application for renewal of a satellite broadcasting licence must be filed no later than six months before the expiry of the then-applicable licence period.

No franchise fees are imposed on broadcasters. However, licensed cable broadcasters must make annual donations to a government foundation in an amount equal to 1 per cent of business turnover for that year. The subscription fees charged by a cable operator from its subscribers are subject to prior approval by the government authorities.

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?

No regulations restrict the broadcasting of foreign programmes. Locally produced programmes must make up at least 70 per cent of total programming broadcasted by a terrestrial broadcaster. Also, at least 50 per cent of the primetime dramas broadcasted by terrestrial broadcasters must be locally produced.

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Advertising

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

Advertising content must not:

- violate the law;
- jeopardise public policy or adversely affect acceptable social customs;
- adversely affect the physical or mental wellbeing of children or juveniles;
- incite people to commit crimes; or
- spread rumours or false information to mislead the public.

The content of advertisements for certain products and services must receive prior approval from the relevant government agencies if other applicable laws so provide. For example, advertisements for medicines, cosmetics, medical equipment and medical treatments must have the approval of the health authorities.

For terrestrial broadcasters, advertising time must not exceed 15 per cent of total broadcasting hours. For cable broadcasters or satellite broadcasters, advertising time must not exceed one-sixth of the total broadcasting time for each programme. Online advertising is not subject to the same restrictions as IPTV or internet programme services and is not yet regulated in Taiwan.

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?

A cable broadcaster is required to simultaneously retransmit the programmes and advertisements broadcast by licensed terrestrial broadcasters by including those in the cable broadcaster's basic channel service. Cable broadcasters must retransmit such programmes and advertisements in their entirety without any changes to format and content. No fees are payable for such retransmission.

Regulation of new media content

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

Currently, there are no specific rules for broadcasting new media content.

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?

Terrestrial TV digitalisation

The digital switchover for terrestrial television broadcasting was completed on 30 June 2012. The spectrum freed up by such switchover was allocated for 4G mobile phone service franchisees.

Cable TV digitalisation

All of the networks currently operated by domestic cable broadcasters are capable of transmitting digital content. Certain cable operators have begun broadcasting in full digital. The competent authority in charge, the NCC, has adopted the following steps for promoting cable television digitalisation:

- encouraging cable system operators to provide a free set-top box to each user;
- adopting the achieved percentage of cable television digitalisation as the key evaluation point for cable system operator licence renewal;
- combining the achieved percentage of cable television digitalisation and cable television tariff policy for policy consideration;
- opening the cable television tiering system under the achieved percentage of cable television digitalisation; and
- issuing new cable broadcaster licences to only those operators that propose to broadcast in full digital.

To date, digital penetration had reached 100 per cent in Taiwan, with approximately 4.74 million digital TV users.

Digital formats

25 Does regulation restrict how broadcasters can use their spectrum?

The laws do not outline specific restrictions with the exception that the cable broadcasting laws prohibit cable broadcasters from broadcasting home shopping channels in excess of a number specified by the NCC. Also, all of the programming that a cable broadcaster intends to broadcast is subject to the NCC's general review and approval.

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?

New media antimonopoly and divestiture legislation has been proposed by the NCC and is currently being reviewed by Congress. Such proposed legislation aims to regulate mergers or other forms of consolidation among various broadcasters and other media such as newspapers to prevent overconcentration within the media landscape. Briefly, prior approval from the NCC would be required for any merger or other consolidation among specific broadcasters and other media if, after the merger or other consolidation, the viewer ratings for the merged or consolidated broadcaster and media enterprise would meet certain thresholds and such approval would not be granted if the post-merger or post-consolidation viewer ratings would exceed still higher stipulated thresholds.

Key trends and expected changes

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

The NCC proposed to introduce new legislation to regulate Internet services. The proposed new legislation is titled the Digital Communications Services Act (the DCSA), and its purpose is to safeguard freedom of speech on the Internet, facilitate the free flow of information, and ensure online safeguards. The NCC is currently working on the draft of this new legislation and is expected to release it in the middle of or late 2022. According to the NCC, the new legislation is envisioned to contain 11 chapters in total, the key points of which include:

- the maintenance and protection of basic rights;
- safe harbour elements for intermediary digital communication service providers;
- obligations of intermediary digital communication service providers and online platform operators;
- a public-private collaboration framework;
- the establishment of a dedicated agency; and
- relevant penalties.

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Intermediary digital communication service providers that the NCC is proposing to be regulated by the proposed new legislation include:

1 internet access service providers;
2 cache service providers;
3 data storage service providers; and
4 other Internet service providers specified by the proposed new legislation, which is expected to include major internet service providers other than those specified in (1) to (3) above, such as Google and YouTube.

The draft DCSA is expected to require that regulated intermediary service providers disclose information, submit transparency reports, notify relevant agencies, respond to agency requests, justify the removal of user posts or user account suspensions and provide a mechanism for users to challenge such actions.

The NCC also released new draft legislation to regulate offshore and domestic internet programming services (or over-the-top (OTT) services) in July of 2021. The key points of this draft set out that:

- OTT service providers would be subject to registration requirements, which would be mandatory for the service providers specified by the NCC based on the number of subscribers, flow, business, turnover, market position, and other significant public interest metrics;
- offshore OTT service providers subject to mandatory registration requirements shall appoint a local agent and then process its registration with NCC via such agent;
- registered OTT service providers are subject to various information disclosures (to the regulators and public requests);
- the content or programmes provided by registered OTT service providers are subject to grading requirements and should comply with applicable restrictions outlined by Taiwan laws; and
- registered Taiwan telecommunications service providers and public telecommunications network operators are prohibited from providing services to the OTT service providers of mainland China that have not secured prior approval from the Taiwan government to provide their programming services in Taiwan.

This draft encountered strong backlash after being released. The NCC is considering certain changes (which are likely to be significant) to the draft and will release the updated version in the middle of 2022.

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?

The National Communications Commission (NCC) is the government agency overseeing the telecom and broadcasting industry. The NCC makes policy decisions, initiates most of the telecom and broadcasting-related legislation and has primary responsibility for the implementation and enforcement of telecom and broadcasting laws. A separate independent regulator, the Taiwan Fair Trade Commission (TFTC), is the antitrust regulator in Taiwan. Just as for the NCC, the members of the TFTC are nominated by the premier and then approved by Congress.

The Telecommunications Management Act provided that any merger or acquisition made by a registered telecommunication service provider that has been allocated frequencies by the NCC or that holds one-quarter or more of a telecommunication service market specified by the NCC, or any merger or transfer of business between or among registered telecommunication service providers where the business to be merged or transferred represents one-quarter share or more of a telecommunication service market specified by the NCC, is subject to NCC prior approval.

In practice, the NCC also considers any merger or acquisition between or among broadcasters to represent a change to the business plans originally submitted to the NCC by those broadcasters and, thus, any changes to such business plans would require prior approval of the NCC.

Such mergers or acquisitions in the communication and media sectors are subject to prior notification to the TFTC as well, if the market thresholds stipulated by the Fair Trade Law, Taiwan's general competition law, would be met as a result of the merger or acquisition.

No specific law exists for avoiding conflicts in jurisdiction between the NCC and the TFTC for mergers or acquisitions within the telecom and media sector. The NCC and the TFTC have the authority to make their own respective decision on the same proposed transaction. In fact, the TFTC has outlined its own guidelines for its review of cross-sector combination transactions between or among telecommunication and broadcasting industries.

Appeal procedure

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

An objection to the decision by the NCC or the TFTC should be appealed to the High Administrative Court directly because the NCC's or TFTC's decision failed to comply with applicable laws. A decision by the High Administrative Court may be appealed to the Supreme Administrative Court.

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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.

There have been two notable mergers in the telecom industry in Taiwan over the past year. On 30 December 2021, Taiwan's second-largest mobile service provider, Taiwan Mobile, proposed to acquire Taiwan's fourth-largest mobile service provider, Taiwan Star Telecom (T Star), whereby T Star would cease to exist and would be merged into Taiwan Mobile. Also, on 25 February 2022, Far EasTone Telecommunications Co, Taiwan's third-largest mobile service provider, and Taiwan's fifth-largest mobile service provider, Asia Pacific Telecom Co, proposed a merger via a share swap, whereby Far EasTone will be the surviving company post-merger.

Both of these mergers are subject to approval from the NCC and the TFTC. Neither the NCC nor the TFTC has yet to decide on either of these two proposals.

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Thailand

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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?

Legislation that governs the telecommunications sector includes the Act on the Organisation to Assign Radio Frequency and Regulate Broadcasting and Telecommunications Services 2010 (the NBTC Act) and the Telecommunications Business Act 2001 (the Telecommunications Business Act). The NBTC Act establishes the National Broadcasting and Telecommunications Commission (NBTC) as an independent broadcasting and telecommunications business regulator. Subject to supervision by the NBTC, a telecommunications committee regulates telecoms business compliance with the Telecommunications Business Act. The Telecommunications Business Act applies to operators of telecommunications services. Telecommunications 'service' is defined as a service that sends, transmits, or receives signs, letters, figures, pictures, sounds, codes, or anything else made comprehensible by frequency waves, wireless, lighting, electromagnetic systems or any other systems, or other activities prescribed by law to be telecommunications services.

Thailand currently has three types of telecoms licences:

- Type 1 licence: for telecommunications business operators who provide telecommunications services without operating a telecommunications network;
- Type 2 licence: for operators who provide services to a specific group of customers with or without operating a telecommunications network; and
- Type 3 licence: for operators who operate a network providing services to the general public.

Additionally, any operator wishing to issue telephone numbers shall obtain a separate licence from the NBTC, subject to a Telecommunications Numbering Plan issued by the NBTC.

General obligations applicable to licenced operators are:

- Universal Service Obligations: the licensee is required to contribute a percentage of revenue from their telecommunications services to the Broadcasting, Television and Telecommunications Development for Public Benefits Fund;
- access and interconnection of telecommunications networks: telecommunications business operators who own a network must allow other operators to interconnect with and access their networks;
- standard of telecommunications network and equipment: telecommunications networks, equipment and devices used in telecommunications services shall be inspected and certified before use;
- competition: licensed telecommunications business operators shall comply with the rules and regulations prohibiting activities that are harmful to competition as published by the NBTC; and
- contract for telecommunications services: a service contract between a licensee and a user shall be subject to the Telecommunications Committee's prior approval.

However, the NBTC is now stricter, and it takes more time to apply for telecommunications licences (namely, Types 1, 2 and 3 licences). This additional strictness is due to a change of internal policy at the NBTC regarding such applications.

Foreign ownership restrictions

The Foreign Business Act 1999 regulates business where the majority of stakeholders are non-Thai (namely, foreign business operators). Foreign businesses must obtain a foreign business licence from the Ministry of Commerce before operating in Thailand. The foreign business licence is separate from a telecoms licence and generally applies to all business sectors. Foreign telecommunications or media businesses are subject to sector-specific rules of foreign ownership. If there is a conflict between a provision of sectoral rules and general rules, the rules that impose a stricter standard will apply. The Telecommunications Business Act imposes various foreign ownership restrictions per the relevant type of telecoms licence as follows:

- Type 1 licence: no ownership restrictions apply; thus, operators with a Type 1 licence are only subject to the Foreign Business Act, and a foreign business licence is required;
- Type 2 licence: foreign ownership is limited to 49 per cent of the total shares; thus, a Type 2 licence holder may only have up to 49 per cent of its shares held by non-Thai shareholders; and
- Type 3 licence: the restrictions on Type 3 licence holders are the same as for Type 2 licence holders.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

General qualifications of telecommunications business operators

Licence categories for a telecoms business are under Types 1, 2 and 3. In addition, the different categories of licences shall cover various services as indicated in the operator's licence application.

The applicant shall be a juristic person established under Thai law and shall not be bankrupt or a person who has previously had a telecoms licence revoked.

Once a licence is obtained, the licensee must pay an annual licence fee based on its annual revenue and the universal service obligation fee.

Internet service providers

Internet service provider (ISP) licences are categorised into three types, similar to telecommunications business operators. An applicant shall

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be a legal person (a juristic person) established under Thai law that has not previously had a licence revoked for cause. Recently, there has been a consolidation of ISP and telecommunications licences so that ISP licences were revoked and replaced as telecommunications licences. In other words, ISP licences have been consolidated into telecommunications licences. In addition, the duration of Type 1 telecommunications licences will be at least five years but not more than 25 years.

Mobile phone service providers

International mobile telecommunication in the 2.1 gigahertz (GHz) band (3G). The 2.1GHz band refers to a range of spectrum between 1,920 megahertz (MHz)–1,965MHz and 2,110MHz–2,155MHz, which service providers are required to operate per the standards set by the International Telecommunication Union. An authorisation is granted to each applicant by auction conducted by the NBTC.

The applicant shall be a juristic person categorised as a limited company or a public limited company established under Thai law with a majority of Thai shareholders. The auction winner will be licensed to use the 2.1GHz international mobile telecommunications frequency, and a Type 3 licence is issued for at least five years but not more than 25 years.

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?

A licensee shall not use the spectrum for a purpose that differs from the purpose granted under the licence. The authority may revoke a licence if the licensee fails to comply with the licence regarding spectrum use.

A licence to use the spectrum is an exclusive right of the licensee. An assignment is prohibited, whether in whole or in part. However, a licensee may authorise a third party to rent airtime, subject to the rules and regulations prescribed by the NBTC.

Ex-ante regulatory obligations

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

Specific regulations impose oversight on operators under various circumstances in relevant telecommunications markets. The NBTC categorises the relevant markets as follows.

Retail markets consisting of:

- domestic fixed-line telephone services;
- domestic mobile telephone services;
- international telephone services;
- fixed-line internet services; and
- mobile internet services.

Wholesale markets consisting of:

- international internet gateway services;
- international telephone gateway services;
- network interconnection for fixed call termination services;
- network interconnection for mobile call termination services;
- wholesale broadband access services; and
- leased line services.

The NBTC is authorised to identify telecommunications business operators with significant market 'power' (meaning operator capability that may pose a barrier to competition in the relevant market). Accordingly, the NBTC shall assess markets that are non-competitive and have barriers to competition and then identify the operators with significant market power (SMP).

A market shall be deemed as non-competitive if it has:

- a high market concentration (according to the Herfindahl-Hirschman Index as determined by the NBTC);
- a high barrier to new entry; or
- low competition with no potential for improvement.

If a market is deemed to be non-competitive, then the NBTC shall categorise operators in such market as SMP operators as follows:

- operators that have a market share (including the market share of its subsidiaries) of at least 40 per cent; or
- operators that have a market share from 25 per cent to 40 per cent but that the NBTC considers as having SMP, taking into account the following:
  - size of overall business;
  - control over fundamental network facilities;
  - technological advantage (compared to other operators in the same market);
  - bargaining power;
  - access to funding resources;
  - variety of products and services;
  - economies of scale;
  - economies in production;
  - vertical integration of service businesses;
  - a high volume of distribution or sale of products;
  - competency to compete in the market;
  - barriers to business growth; and
  - the capability of new entry by competitors to the market.

If it is impossible to identify only one SMP operator because of market concentration, the similarity of products or services, similarity of cost structure or similarity of market share. In that case, the NBTC may identify more than one operator in the market as an SMP operator.

SMP operators, or any operators with more than 25 per cent market share in any relevant markets, are forbidden from conducting the following activities:

- price discrimination;
- stipulating a fixed fee;
- stipulating service fees or product prices lower than the cost to limit competition;
- stipulating conditions to force other operators to use certain services or to limit choices of services;
- unreasonably restrain from, reduce or limit the provision of services or sale of products;
- stipulating unfair conditions on the provision of services to other operators;
- refusing to provide necessary networks or facilities to other operators;
- bundling services or products to other operators;
- concealing information necessary for using or providing services;
- using information derived from other operators to create a competitive advantage;
- using techniques with the intent to limit the services of other operators;
- entering into agreements or conditions with other operators or other persons with the intent to reduce or limit competition; and
- other activities that the NBTC may stipulate from time to time.

In addition, the NBTC may issue specific measures to impose obligations or stipulate conditions on any individual operators or SMP operators, which may include orders to:

- perform or restrain from activities deemed harmful by the NBTC;
- keep a separate accounting system for some services;
- disclose or report information;
- change cost-calculation formulas;

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- set prices or fees for certain services;
- provide services to other operators;
- separate services;
- cancel or amend terms in service agreements; and
- other measures that the NBTC may stipulate

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 is currently no regulatory framework that requires structural separation. The NBTC has set out a framework for structural separation in the television sector but has not enacted regulation.

As for functional separation, a regulation requires a telecommunications business operator to separate telecoms-related business from non-telecoms-related business for accounting purposes. Therefore, an SMP operator may be further subject to the NBTC's discretionary authority and may be requested to further separate categories of telecommunications business in its accounting.

Universal service obligations and financing

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

The Universal Service Obligations (USO) require service providers to provide certain telecommunications services in rural areas, educational institutions, social assistance agencies and underprivileged citizens. These services will be funded by income allocated by the licensees through USO fees, which licensees must pay annually to the Broadcasting, Television, and Telecommunications Development for Public Benefits Fund.

The obligations imposed may not pose an undue financial burden on a service provider or cause discrimination among service providers. Therefore, the NBTC must notify a service provider of its obligations before submitting a licence application. The current USO fees policies issued by the NBTC charge licensees at the rate of 2.5 per cent of the net income from telecommunications services, plus 7 per cent value added tax.

Number allocation and portability

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

The NBTC is the authority responsible for allocating numbers used for services or service areas under the following rules and regulations:

- use of international access numbers with service codes;
- telecommunication numbering allocation;
- telecommunication numbering plan;
- criteria for the assignment and permission of unique telecommunication numbers; and
- criteria for allocation and administration of telecommunication numbers.

The NBTC prescribes that a service user is entitled to mobile number portability, and service providers are prohibited from acting in any manner that obstructs or impedes the porting of mobile numbers to other service providers.

Customer terms and conditions

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

Telecoms law imposes tariffs, service charges and specific consumer protections on telecommunications business operators. In addition, contracts with consumers for mobile phone services are governed by relevant regulations and consumer protection laws.

The NBTC regulates the content of telecom service contracts and subjects them to be pre-approved by the NBTC before becoming effective. The NBTC also issues notifications regulating the rates of fees for telecommunications services. A telecommunications business operator who wishes to charge more than the maximum rate determined by the NBTC must submit a request to the NBTC for approval. Telecommunications business operators are also required to establish procedures and policies to receive and address consumer complaints.

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?

There are no regulations that impose restrictions on zero-rating or bandwidth throttling. ISPs may allow access to certain services or applications free of charge and can prioritise the type or source of data they deliver.

However, as ISPs are subject to competition law, they must provide services non-discriminatory, allow interconnection with other ISPs, and facilitate equal access to services.

Non-discrimination

Under the Telecommunications Business Act, ISPs shall provide services on equivalence and non-discrimination principles. ISPs are also prohibited from taking any action that may monopolise, reduce or limit competition in the ISP market.

Interconnection

Operators who own their networks must allow other operators to interconnect and access their networks. However, operators may refuse access to their network if the use of the network results in technical problems that may obstruct their business or under any circumstances as prescribed by the NBTC from time to time.

Access

ISPs shall ensure that all users have equal access to telecommunications services.

Platform regulation

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

The Computer Crimes Act 2017 (as amended) (CCA) requires a 'service provider' (defined as a person who provides other persons with access to the internet or the ability to communicate through a computer system) to retain computer traffic data and user identification data in the following manner:

- computer traffic data means data related to computer system-based communications showing sources of origin, starting points, destinations, routes, time, dates, volumes, time periods, types of services, or others related to that computer system's communications. Computer traffic data shall be retained for at least 90 days

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from when such data was first entered into the computer system. The official may order a service provider to retain computer traffic data for longer than 90 days, but not exceeding two years; and

- user identification data, which means information about the service necessary for identifying service users. The service provider shall retain user identification data to the extent that it is required to identify the service user from the beginning of the service provision. Such user identification data must be kept for at least 90 days after such service is terminated.

Law enforcement is authorised to access that data to investigate computer crimes. The CCA imposes criminal liability on any individual that engages in activities that violate the CCA. Additionally, the content on an ISP's platform may be subject to other generally applicable laws.

In addition, the Ministry of Digital Economy and Society requires all service providers, including digital platform providers, to establish digital verification and authentication system using technology that is consistent and in compliance with the Ministry of Digital Economy and Society (MDES) conditions and minimum reliability standards for the verification and authentication of its customers.

E-commerce platforms (online platforms that allow for the sale and purchase of products or services) are considered a direct marketing business and regulated under the Direct Sale and Direct Marketing Act 2002.

Laws concerning intellectual property may apply to specific online activities. However, if a service provider is not responsible for the control or initiation of an infringement, and such service provider used reasonable efforts to comply with law enforcement or rectify such infringement, the service provider shall not be liable for infringement occurring before the issuance of the court order or after the date of such order's expiry.

A Cyber Security Act creates a National Cyber Security Committee with authority to command operators in the private sector to implement procedures to prevent cyber threats. Failure to comply with such orders may be subject to criminal punishment.

In addition, a service provider may be considered a data controller or data processor, or both, under the Personal Data Protection Act BE 2562 (2019) (PDPA) if such service provider obtains any personal data protection of a consumer (eg, name, email address, telephone number, cookies). Notably, the PDPA was initially due to be fully enforced on 27 May 2020; however, based on the Royal Decree on Organisations and Businesses of which Personal Data Controllers are Exempt from Complying with the Personal Data Protection Act No. 1 and 2 (Royal Decree), the enforcement date has been postponed to 1 June 2022. The Royal Decree lists various types of business that qualify for the extension of the enforcement, including businesses in communication, telecommunication, digital, science, technology, banking, education, industrial and commercial industries, among others

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?

In Thailand, NGA networks are referred to as next-generation networks (NGNs). An NBTC notification regarding the specified technical standard for the connection of telecom networks regulates the obligations of NGNs. The notification specifies the minimum standards for connection of the NGN with which the service provider must comply.

Data protection

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

The PDPA was published in the government gazette on 27 May 2019. Therefore, the PDPA would have become effective on 27 May 2020, except for the provisions on collecting, using and disclosing personal data that will be executed one year after publication. On 21 May 2020, however, the Thai government announced that the enforcement of the PDPA would be partially postponed to 1 June 2022, as compliance with PDPA law is complex and, therefore, costly and requires advanced training. Preparations still need to be made now for compliance with the PDPA; however, business owners (as data controllers) need to have security safeguards for personal data as required by the Ministry of Digital Economy and Society. The PDPA regulates data controllers and protects the personal information of data subjects. Therefore, all data controllers who collect or process the personal information of data subjects in Thailand will be required to comply with the PDPA by 1 June 2022 fully.

Once in full effect, the PDPA would limit what companies (under the role of a data controller) may do with people's personal data to the extent that they must inform the data subject of the purpose for the collection, use or disclosure of their personal data and obtain their consent either in writing or by electronic means. Such consent shall not be obtained fraudulently, such as misleading the data subject about how the information will be used. The use or disclosure of personal data in a manner that differs from the purpose that was initially consented to by the data subject is prohibited unless permitted by law, or the personal data controller informs the data subject of the new purpose and obtains their amended consent. A data subject may withdraw their consent at any time unless restricted by law or any agreement that is beneficial to the data subject. If a personal data controller fails to comply with the provisions of the PDPA, the data subject may request to have their personal data deleted, destroyed, temporarily suspended or converted into an anonymous form.

Cybersecurity

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

The Cybersecurity Act BE 2562 (2019) (the Cyber Act) was published on 27 May 2019 to enforce legal safeguards to ensure national security in cyberspace, including a cybersecurity risk assessment plan, to prevent and mitigate cybersecurity threats that may affect the stability of national security and the public interest (eg, economy, healthcare, international relations, government functions).

The Cyber Act is intended to protect Thailand's national security systems from cyber-related threats and crime. The Cyber Act broadly defines 'cyber' as any information or communication from a computer network, a telecommunications network or the internet. It focuses on the safety of government computer systems and provides government entities and officers the authority to carry out the provisions of the Cyber Act. A National Cyber Security Committee created under this Cyber Act will be responsible for all national security matters connected with the government's data and computers.

Cyber threats are categorised into three levels under the Cyber Act as follows:

- non-critical: any threat that may negatively impact the performance of a government computer system;
- critical: any threat to a government computer system related to the national infrastructure, national security, the economy, healthcare, international relations, the functions of government, etc, which may cause damage or impair a government computer system; and

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- crisis: any threat more significant than a critical level event, which may have a widespread impact such as causing the government to lose control of a computer system, an immediate threat to the public that could lead to mass destruction, terrorism, war, the overthrow of the government, etc.

On 11 December 2021, to help determine the severity of cyber risks, the National Cyber Security Committee issued the 'Notification of the Cyber Security Committee Subject: The types of cyber threats and measures to prevent, withstand, evaluate and suppress cyber threats, 2021', to characterise and assess each cyber threat level based on a variety of parameters. To determine the cyber threat level, one must analyse events, which are the situations, repercussions, dangers or trends that may result from cyber threats in various cases, by considering the four variable factors listed below:

- the impact on the equipment or the system;
- the impact on data in the system;
- system recovery tendency; and
- the impact on customers or service users.

All four aforementioned variables should be used for evaluation when defining each level of cyber threat. If the nature of the cyber threat appears to be related to, or likely to be, a cyber threat to some extent, the highest level assessed shall be used as a criterion for determining the level of cyber threats at the moment. In addition, the critical information infrastructure, in collaboration with regulators, may evaluate additional evaluation variables and cyberthreat characteristics to provide instructions on how to accurately define the level of cyberthreats.

There are two central cybersecurity regulatory authorities organised by the Cyber Act, as follows.

National Cyber Security Committee

The National Cyber Security Committee (the NCSC) comprises the Prime Minister of Thailand as the chairman and directors from the government and the private sector that hail from areas that benefit cybersecurity, such as engineering, law and information technology. The NCSC sets out general cybersecurity policies and action plans and minimum standards for computer systems used in both government agencies and critical information infrastructure (the CII) entities, according to the national cybersecurity master plan.

The NCSC also has the authority to determine the levels of cybersecurity threats under the Cyber Act (namely, non-critical, critical and crisis) and the preventive and mitigative measures that should be in place for each of these levels. To enable this, the NCSC is empowered to request information and documents from and access the facilities of private entities, subject to the owner's consent, to analyse and evaluate the impact of the critical cyber threat to determine cybersecurity threat levels and appropriate preventive, mitigative measures.

Cyber Security Regulatory Committee

The Cyber Security Regulatory Committee (the CSRC) consists of the Minister of the MDES as the chairman. Like the NCSC, it has government and private-sector directors from areas that benefit from cybersecurity. The role of the CSRC is to set out codes of practice and minimum standards for cybersecurity in public and private sectors relating to CII operators, including risk assessment and mitigation plans against cyber threats. In addition, the CSRC may order public and private-sector entities to prevent, mitigate or re-evaluate cyber threats in line with prescribed cybersecurity minimum standards.

If a critical level threat is discovered, the CSRC is empowered to perform any action to prevent or mitigate such threat. Further, if judicial permission is granted, the CSRC may access information or seize computer systems, data and related equipment for a maximum of 30 days to prevent and mitigate cyber threats.

In the case of a crisis-level threat, the NCSC shall be in charge to carry out its duties. However, for any crisis-level threat that requires an immediate response, the CSRC is authorised to perform any act warranted as necessary without judicial permission.

In addition to the two aforementioned central regulatory authorities, two other relevant authorities, including the Computer Security Coordination Center and competent regulators responsible for monitoring and acting against cyber threats and regulating minimum cybersecurity requirements for CII operators under their supervision.

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?

Currently, there is no specific legislation for big data. However, suppose such big data is included in the personal data. In that case, the data controller or data processor, or both, of such big data must follow the provision specified in the PDPA. For example, obtaining the data subject's prior consent, informing the purpose of collecting data subject's personal data, informing the period of the retention period to the data subject, etc.

However, the enforcement date of the PDPA has been postponed to 1 June 2022. The various types of businesses that are qualified for the extension of the enforcement include businesses in communication, telecommunication, digital, science, technology, banking, education, industrial and commercial industries, among others.

Data localisation

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

Currently, no specific law or regulation requires data to be stored locally in Thailand. Nevertheless, specific industry-specific regulations require some data to be available or processed within Thailand. The banking industry, for example, is required to process debit card transaction data and make electronic payment system data available in Thailand.

Key trends and expected changes

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

The Ministry of Commerce (the MoC) has proposed the draft ministerial regulation that will classify the telecommunications business as an exempted business to obtain the foreign business licence (the FBL) to the cabinet for their consideration and approval. The telecommunication business in this regard is only for the telecommunications operator that operates the telecommunications without having its own telecommunications network (which is a Type 1 licence operator under the Telecommunications Business Act).

The foreign restriction is not applied to the Type 1 licence, but the Type 1 licence with foreign majority shareholders is required to obtain the FBL under the Foreign Business Act before operating its business in Thailand. The exempt telecommunications business aims to reduce redundancy and support the investment-friendly environment in Thailand. Further, a foreign operator who wants to operate a Type 1 telecommunications licence can apply for permission directly from the NBTC.

The Draft Regulation has already been finalised by the MoC and proposed to the cabinet for its consideration and approval. Currently, such Draft Regulation is being reviewed by the cabinet (subject to review

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by the Council of State). The Draft Regulation is expected to be able to become effective in 2022.

MEDIA

Regulatory and institutional structure

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

The Broadcasting and Television Business Act 2008 regulates the media sector in the following ways:

- licensing requirements: certain types of business (specifically, operating public services or community services) are reserved for government entities and non-profit organisations. Services intended for generating profit are available for operation by the private sector, subject to licensing requirements from the National Broadcasting and Telecommunications Commission (NBTC);
- use of the frequency spectrum: a licence from the NBTC is required to operate a sound broadcasting business or television business that utilises a frequency spectrum. Licences are limited to the frequency assignments stipulated by the NBTC;
- station management: for media businesses, a director (who must be of Thai nationality) will supervise and control programming, programme hosting, and broadcasting, and ensure that the respective station complies with the regulations prescribed by the NBTC;
- prevention of monopoly: the licensee is prohibited from being a stakeholder of another company in the same category of business and from cross-holding a business in sound broadcasting and television using a frequency spectrum over the proportions authorised by the NBTC; and
- TV programmes: TV operators shall comply with the must-carry and must-have rules issued in the NBTC's notifications. Under must-carry rules, free-to-air TV operators are responsible for expenses they incur in providing public broadcasting services. Under must-have rules, free-to-air TV operators must broadcast seven TV programmes, namely:
    - the SEA Games;
    - ASEAN Para Games;
    - the Asian Games;
    - the Asian Para Games;
    - the Olympic Games
    - the Paralympic Games; and
    - the FIFA World Cup Final (other operators that are not free-to-air TV operators are prohibited from broadcasting such must-have programmes); and
    - promotion and control of the professional ethics of licensees, programme producers and mass media professionals: such licensees, programme producers, and mass media professionals have a duty to set ethical standards for the profession and shall apply such standards to self-regulate the industry; and
    - construction of, use and connection to broadcasting network: the NBTC must approve the construction of an entire network. Further, a network owner shall allow licensees to utilise their network per the criteria and procedures prescribed by the NBTC.

In addition to the Broadcasting and Television Business Act 2008, the Film and Video Act 2008 regulates the content of films, videos and their advertising media. A censorship committee of officials will review, approve or censor the content of films, videos and their advertisements and approve other activities relating to film and video, such as the production or distribution of foreign films in Thailand.

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?

The Foreign Business Act 1999 regulates all businesses in which a majority of the shareholders are non-Thai. Foreign businesses are required to obtain a licence from the Ministry of Commerce before operating in Thailand. The Act generally applies to all business sectors.

Foreign media businesses are subject to foreign ownership restrictions. If there is a conflict between sectoral rules and general rules, the rules applying a stricter standard will prevail.

The Broadcasting and Television Business Act 2008 imposes foreign ownership restrictions according to the type of broadcasting licence (eg, radio, TV, etc) as follows:

- a licence to operate public services (where the main objective is to provide public services): this licence is only available to government entities and specific associations, charities, foundations and educational institutions, and not to private-sector operators;
- a licence to operate community services (where the objective of the business is to provide a public service that meets the needs of the community or locality receiving the services): this licence is only available to government entities and specific associations, charities, foundations and educational institutions, and not to private-sector operators; and
- licences to operate business services (where the main objective is to generate profit) are subdivided into three classes: national, regional, and local. Foreign ownership is limited to 25 per cent. The foreign ownership restriction under this sector-specific law applies to the general Foreign Business Act; thus, the holder of such licence may only have up to 25 per cent of its shares held by non-Thai shareholders.

A licensed operator that intends to merge with another licensed operator shall submit a request for permission from the NBTC at least 60 days before the execution of such transaction under the following circumstances:

- register an official corporate registration for a merger that will result in either a licensed operator being dissolved (or a merger that will result in both licensed operators being dissolved and a new legal entity being established);
- enter into a share acquisition agreement wherein a licensed operator acquires all or part of assets of another licensed operator; or
- enter into a share acquisition agreement by which a licensed operator acquires all or part of the shares of another licensed operator to manage, direct or control such licensed operator. Cross-shareholding between two licensed operators requires the prior approval of the NBTC at least 60 days before executing such a transaction.

Licensing requirements

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

General qualifications

An applicant must be of Thai nationality, shall not be on a probationary period restricting the applicant from using the licence and cannot have yet exceeded three years of a licence withdrawal period. The approval process usually takes up to 60 days after submitting all the necessary documents. If approved, the applicant will be granted the right to

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operate under the express terms of the granted licence. In addition, a broadcasting schedule may be allocated to other licensed broadcasters under the condition that the broadcaster complies with the rules and regulations prescribed by the Broadcasting and Television Committee.

Sound broadcasting business or television business using a frequency spectrum

There are three types of licences for this kind of operation:

- a licence to operate public services;
- a licence to operate community services; and
- a licence to operate business services.

A licence to operate public services (where the main objective is to provide public services) is only available to government entities and specific associations, charities, foundations and educational institutions, and not private-sector operators. A licence to operate community services (where the objective of the business is to provide a public service that meets the needs of the community or locality receiving the services) is only available to government entities and specific associations, charities, foundations and educational institutions, and not to private-sector operators.

Licences to operate business services (where the main objective is to generate profit) are subdivided into three classes: national, regional and local. Foreign ownership is limited to 25 per cent. The foreign ownership restriction under this sector-specific law applies to the general Foreign Business Act; thus, the holder of such licence may only have up to 25 per cent of its shares held by non-Thai shareholders. In addition to those ownership restrictions, if the operation is executed at regional and local levels, then the applicant shall have at least one-third of the equity and have stable financial status as determined

by the NBTC and any other qualifications that can guarantee the stability of operations. Additionally, the applicant shall be a state enterprise or a company established under Thai law. The same criteria apply to licences regarding Sound Broadcasting Businesses or Television Businesses that do not utilise a frequency spectrum.

Duration and fee

The Broadcasting and Television Committee will grant a seven-year term for sound broadcasting licensees and a five-year term for television broadcasting licensees. Licences may be renewed 90 days before expiry. Meanwhile, the licensees are obliged to pay annual fees for their respective licences.

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?

Thailand does not have regulations concerning broadcasting foreign-produced programmes or the proportionality between foreign and local content. Nonetheless, licensees of sound broadcasting or television businesses using a frequency spectrum are required to broadcast programmes composed of news or content that is useful to the public as determined by the NBTC, as well as other required programmes at certain specific times, such as the national anthem at 8 am and 6 pm. Additionally, the NBTC may implement additional measures for the benefit of the disabled or underprivileged.

Advertising

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

Duration

According to the Broadcasting and Television Business Act 2008, an advertisement publicised through sound broadcasting or television using a frequency spectrum shall not exceed 12-and-a-half minutes per hour, and the total runtime of advertisements for a whole day shall not exceed an average of 10 minutes per hour.

Advertisements publicised on a non-frequency use spectrum may not exceed six minutes per hour, and the total amount of time for advertisements in a single day shall not exceed an average of five minutes per

hour. Time limits do not restrict online advertisements. However, an operator must ensure that the duration of an advertisement does not affect consumers under the Consumer Protection Act 1979.

Advertising content

The content of advertisements is governed by regulations relevant to the purpose of the advertisement. For example, a cosmetics advertisement would be governed by the Cosmetic Product Act 2015.

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?

Licensed broadcasters must follow the requirements set out by the NBTC regulations, including requirements relating to show ratio, show categorisation, time allocation of the TV show to be broadcast, and the management of advertisements. Broadcasters are categorised into two main types:

- broadcasters that use TV broadcast frequencies; and
- broadcasters that do not use TV broadcast frequencies.

Broadcasters' requirements

Licensed broadcasters are further categorised into types according to the primary purpose of their broadcasting. Each type of broadcasting must include at least the following show ratios:

- public service broadcaster: 70 per cent of the shows must be for the benefit of the public, such as news reports, knowledge-related shows or documentaries;
- local service broadcaster: 70 per cent of the shows must be for the benefit of a specific local jurisdiction, such as within one district or province, and must have at least 50 per cent of the shows produced by the producers from such local jurisdiction; and
- business-oriented broadcaster: 25 per cent of the shows must be for the benefit of the public, such as news reports, knowledge-related shows or documentaries. A business-oriented broadcaster at the provincial level must have self-produced shows account for at least 50 per cent of the total shows.

Types of TV shows can be divided into six categories, and licensed broadcasters must self-rate shows and allocate shows to the proper time slot as set out by the NBTC regulations, as follows:

- Category Por is for children, produced for an audience aged of between three and five years old;
- Category Dor is for children, produced for an audience aged between six and 12 years old;
- Category Tor is a general TV show, for audiences of all ages;
- Category Nor 13 is suitable for an audience whose age is more than 13 years old and must be broadcast between 8.30pm and 5am only;

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- Category Nor 18 is suitable for an audience whose age is more than 18 years old, and must be broadcast between 10pm and 5am only; and
- Category Chor is suitable for adults only and must be broadcast between midnight and 5am only.

In addition, broadcasters that use TV broadcast frequencies must allocate at least 60 minutes between 4pm and 6pm on Monday to Friday and 7am and 9am during the weekends for shows to develop and benefit children. In addition, licensed broadcasters must broadcast the Thai national anthem twice a day – at 8am and 6pm – and they must broadcast the Royal Family's news every day from 7pm to 8.30pm.

Licensed broadcasters must submit to the NBTC overall broadcast schedules, show ratio, and plans of TV shows, including the categorisation and time allocation of the show using the application form provided by the NBTC at least 15 days before the initial operation. After the first year, licensed broadcasters must submit their planned broadcast schedule with the aforementioned information at least once a year to the NBTC for its approval at least 15 days before the broadcasting. If the NBTC finds that the broadcaster is not following the regulations concerning its categorisation and time allocation, then the NBTC shall issue a warning letter asking the broadcaster to revise the schedules and plans of its TV shows before broadcasting. Any change to the approved schedules and plans must be submitted to the NBTC at least seven days before broadcasting. There is no mechanism for financing the costs of the abovementioned obligations.

Broadcasting licensees must broadcast news and warnings to the public in a disaster or emergency case as prescribed by the NBTC. Programmes affecting state security, disrupting public order, containing revolutionary material concerning the overthrow of the government or containing obscenities that are against community standards are prohibited. Licensees are obligated to examine and suspend the broadcasting of programmes that have the aforementioned characteristics.

Regulation of new media content

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

New media is relatively recent and is not as rigidly regulated as traditional broadcast media. However, the government is currently considering policies to regulate new media content.

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?

In 2012, the NBTC promulgated the First Broadcasting Master Plan (2012–2016) (the Plan), delineating that the transition to digital broadcasting transmission falls into one of seven main categories subject to regulation. The Plan established transition policies and planned to switch to digital television broadcasting within one year and switch to digital audio broadcasting transmission within two years. Commencement of digital audio broadcasting and television broadcasting was anticipated at that time to begin within four years. The authorisation to use frequency for digital television services will be granted by auction, while other categories (such as community or public services) will be granted at the discretion of the NBTC.

Policies and plans to switch over from analogue to digital television broadcasting have been completed within the expected period, which was 2015. Currently, digital television is being widely broadcasted in Thailand. In addition, Digital audio broadcasting (at frequency spectrum 174–230 megahertz) is now being tested in several provinces throughout Thailand per the policies and plans issued by the NBTC.

Digital formats

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

No measures restrict how broadcasters can use their spectrum, except a licensee is obligated to comply with the rules and regulations of the respective licence they have been granted.

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?

To evaluate the efficiency of market competition, the Herfindahl-Hirschman Index (HHI) is applied to assess market concentration. The assessment will result in the squared total market share for each licensee. If the value of HHI reflects that market concentration is high, then that will be taken by the NBTC to mean that market competition is inefficient. The NBTC may then roll out specific precautionary measures to prevent any licensee with significant market power from monopolising, restricting, hindering competition or misusing market power. If precautionary measures are imposed on a licensee with dominant market power, such licensee may object, and the NBTC may hold a public hearing on the objection. Likewise, measures set forth by the NBTC are subject to adjustments at its discretion.

Key trends and expected changes

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

A proposal known as over-the-top services (OTT) is also under review by the NBTC. Under this proposal, the scope of what constitutes broadcasting will be determined. Recently, OTT operators were informed that they had to register themselves with the NBTC and that they would be governed by specific rules and regulations regardless of nationality; however, the attempt was heavily criticised by the public and OTT operators as well as by technology-related NGOs, and the NBTC consequently withdrew its requests to OTT operators. No further updates have been issued regarding this matter since such withdrawal by the NBTC.

In addition to licensing requirements, foreign operators may be required to have a local office and an authorised executive in Thailand for tax purposes. Further, the telecommunications business is subject to excise tax in addition to corporate income tax. As a result, an excise tax is imposed on telecommunications operators. Under the current applicable Ministerial Regulation, as published on 16 September 2017, the excise tax rate for the telecommunications business is zero per cent.

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?

The National Broadcasting and Tele-communications Commission (NBTC) regulates the media and telecom sectors, an independent

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organisation established by the Act on the Organisation to Assign Radio Frequency and Regulate Broadcasting and Telecommunications Services 2010. Under the supervision of the NBTC, a Broadcasting Committee regulates media businesses, and a Telecommunications Committee regulates telecommunications businesses.

Under the Trade Competition Act 2017, which became effective in October 2017, the trade competition authority relinquished its authority to regulate specific sectors, including broadcasting and telecommunications businesses. In other words, since the Trade Competition Act 2017 became effective, the broadcasting and telecom sectors that used to be regulated by specific legislation on trade competition have been exempted from complying with general competition laws and are only subject to sectoral regulations on competition.

Appeal procedure

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

A broadcasting or telecoms operator has the right to appeal orders or decisions of the NBTC to the Broadcasting Committee (if the order involves broadcasting business) or to the Telecommunications

Committee (if the order involves a telecoms business) within 15 days of receiving an order or decision.

If the order or decision is upheld, then the appellant has the right to further appeal to the Administrative Court within 90 days from the date the appellant received notice of the appeal decision.

Challenges to the NBTC are limited to having a cause in one of the following:

- the issuance of an order or decision without expressed basis, or not within the authority of a regulatory body;
- the issuance of an order or decision inconsistent with the law, process or procedure;
- the issuance of an order or decision in bad faith;
- abuse of discretion; or
- discrimination

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.

The Trade Competition Act generally regulates antitrust under the Office of Trade Competition Commission (OTCC); the NBTC is authorised to regulate antitrust specifically in the broadcasting and telecommunications sectors. Further, the Trade Competition Act relinquishes the OTCC of its authority to regulate specific business sectors, including broadcasting and telecommunications, which the NBTC will solely regulate.

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Turkey

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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?

The main piece of legislation regulating the communications sector in Turkey is Law No. 5809 on Electronic Communications. The scope of Law No. 5809 is:

- the provision of electronic communications services and the construction and operation of the infrastructure and the associated network systems thereof;
- the manufacture, import, sale, construction and operation of all kinds of electronic communications equipment and systems;
- the planning and assignment of scarce resources including frequency and the regulation; and
- the authorisation, supervision and reconciliation activities relating to said issues.

Also, the communications sector in Turkey is particularly governed by:

- Law No. 5651 on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting;
- Law No. 5070 on Electronic Signature;
- Law No. 6563 on the Regulation of E-Commerce;
- the Regulation on Network and Information Security in the Electronic Communications Sector;
- the Regulation on Processing and Protection of Personal Data in the Electronic Communications Sector;
- the Regulation on Consumer Rights for the Electronic Communications Sector;
- the Regulation on Authorisation in the Electronic Communications Sector;
- the Regulation on the Process of Identity Authentication of Applicants in the Electronic Communications Sector;
- the Regulation on Spectrum Management; and
- the Regulation on Access and Interconnection.

The prepared communiques and rendered decisions are enforced by the Information and Communication Technologies Authority (ICTA), and the general laws such as Capitals Markets Law No. 6362, Turkish Commercial Code No. 6102 and Criminal Procedural Law No. 5271 also govern the communications sector in Turkey.

The Ministry of Transport and Infrastructure (the Ministry) and ICTA are both vested with certain powers and duties under Law No. 5809. ICTA mainly has regulatory and executive powers, whereas the Ministry mainly has policymaking powers.

As per article 5 of Law No. 5809, the Ministry is vested with the following powers and duties:

- setting strategies and policies regarding electronic communications services that are based on scarce resources;
- determining objectives, principles and policies towards the aim of encouraging the development of the electronic communications sector and supporting the transformation into an information society;
- determining policies towards construction and development of electronic communications infrastructure, network and services;
- contributing to the creation of policies;
- representing the state in the international associations and organisations;
- conducting necessary research;
- taking necessary measures and performing coordination to ensure the continuity of electronic communications in the case of natural disasters and extraordinary situations;
- planning electronic communications services in the case of extraordinary situations and during war and performing necessary actions;
- encouraging domestic design and production of electronic communications systems, promoting research, development and training activities relating to the sectors; and
- determination of the amount of the source to be allocated by ICTA that shall not exceed 20 per cent of ICTA's income and allowing this source to be used by making necessary arrangements.

As per article 6 of Law No. 5809, ICTA is mainly vested with the following powers and duties:

- making regulations to create and protect competition and eliminating the practices that are obstructive, disruptive or limitative for competition;
- imposing obligations on operators with significant market power (SMP) in the relevant markets and on other operators when required, taking the necessary measures;
- inspecting breaches of competition and imposing sanctions;
- making necessary arrangements and supervisions pertaining to the rights of subscribers, users, consumers and end users as well as the processing of personal data and protection of privacy, rendering decisions;
- conducting the dispute-resolution procedure between the operators when necessary and taking the necessary measures;
- following developments in the electronic communications sector;
- planning and allocating the frequencies, satellite position and numbering necessary for the provision of electronic communications services and installation and operation of electronic communications networks and infrastructures;
- performing necessary regulations and inspections;
- supervising radio systems and determining the scope of commercial secrets;

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- obtaining information and documentation that are deemed necessary;
- transferring sources that shall not exceed 20 per cent of the income, determining general criteria and implementation procedures and principles regarding tariffs to be imposed;
- approving reference access offers;
- determining provisions and conditions for authorisations and supervising their implementation and conformity;
- conducting frequency planning, assignment and registration procedures;
- ensuring the publication and implementation of the harmonised national standards for all kinds of systems and equipment, and creating technical regulations;
- coordinating the authorisation of institutions that will perform installation, measurement, maintenance and repair activities;
- conducting market analyses to determine the relevant market and operators that have SMP in the relevant market;
- determining all kinds of procedures and principles regarding fees;
- inspecting operators;
- taking necessary measures;
- making regulations prescribed by the legislation;
- inspecting the quality and standards of service for all kinds of electronic communications; and
- enacting by-laws, communiques and other secondary regulations pertaining to the authorisations granted by Law No. 5809.

Although there is no restriction regarding foreign ownership under the communications law, under the Regulation on Authorisation for Electronic Communications Sector, for a company to be granted an authorisation by ICTA in the communications sector, the company has to be duly established as a limited liability or joint-stock company under Turkish Commercial Law No. 6102. Also, a foreign entity or individual can be the sole shareholder of such an authorised company.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

Within the scope of the authorisation regime that came into force with the Electronic Communications Law No. 5809, authorisation is made through notification or granting the right to use. Companies that are willing to provide electronic communications services or construct and operate electronic communications networks or infrastructure should notify ICTA of their intention via the Notification Form drafted by ICTA, before commencing activities. If the companies that have notified ICTA do not need the assignment of scarce resources, such as a number or frequency for electronic communications services or an electronic communications network or infrastructure that they plan to provide or operate, they shall be authorised under the notification to ICTA.

If the company requires the assignment of scarce resources, it shall be authorised upon receiving the right of use from ICTA. ICTA is entitled to decide whether it is necessary to grant a right of use to electronic communications services. ICTA issues the right of use within 30 days upon due application for electronic communications services made via the Right of Use Application Forms, for which the number of rights of use does not need to be limited.

Moreover, with ICTA Decision No. 2021/DK-YED/80, and published in the Official Gazette, dated 1 May 2021, a number of amendments were introduced in the Notification Form and the Application Form for the Right of Usage, such as the increase in number of documents and types of information to be submitted to ICTA. Information requested by ICTA are:

- company details;
- the target audience;
- infrastructure definition and network architecture;
- the satellites to be used;
- the planned time to start the service;
- the connection need between networks; and
- the frequency channels and numbers requested to be allocated.

Certain qualification control periods are foreseen for the operators authorised within the scope of the notification, and authorisation renewal periods of between 12 and six months prior to the expiry of the right to use, are foreseen for the operators authorised within the scope of the unlimited number of usage rights. The authorisations of the operators that cannot meet the criteria for any renewal period or control period will be cancelled. The said criteria are having the necessary number of personnel and qualifications, to have the necessary number of subscribers or net sales performance, to provide services actively and to not violate the relevant articles of the authorisation legislation repeatedly.

The authorisation fees are stipulated under the Regulation on Authorisation for Electronic Communications Sector. As per the Regulation, for the notification process, an administrative fee of 0.35 per cent of the yearly net sales must be paid to ICTA; for the right-of-use process, the specific fee for the relevant resource to be used in the operation must be paid, in addition to the administrative fee. The minimum fees for the right of use are determined by the Board of Ministers upon the proposal of ICTA and the resolution of the Ministry.

There is currently no distinct regulation regarding 4G, 4.5G and 5G mobile services. To be granted a spectrum for 5G mobile services, companies must participate in right-of-use tenders. The tenders regarding 4G and 4.5G have already been realised and finalised, whereas the right-of-use tender regarding 5G mobile services has yet to be realised. However, pursuant to the statement made by the officials of the Ministry of Transport and Infrastructure, the 5G frequency tender is aimed to be completed in 2022, thus making the first signal available to citizens in 2023.

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?

The main piece of legislation regarding spectrum management is the Spectrum Management Regulation (the Regulation) published in Official Gazette No. 27276, dated 2 July 2009. The Regulation determines the procedures and principles of management, allocation, assignment, national and international coordination and registration of radio frequencies assigned, as well as the withdrawal and reassignment of assigned frequencies if necessary, for the efficient and effective use of radio frequencies. The licences generally specify the permitted use of the licensed spectrum under the Regulation. The scope of permitted use is generally determined within the spectrum licences.

As per the Regulation, while managing spectrum allocation, ICTA shall pay attention to providing effective competition, ensuring transparency and avoiding discrimination. The planning is made pursuant to the decisions of organisations such as the International Telecommunication Union, the International Maritime Organisation, the International Civil Aviation Organisation, the European Union and the European Conference of Postal and Telecommunications Administrations, and frequencies are assigned to operators that are subject to authorisation for the duration stated in the certificate of authorisation granted for the right of use.

The trading of licensed radio-frequency spectrum is not prohibited under Turkish legislation. The trading of spectrum licences is not prohibited; however, to transfer spectrum frequency, operators must apply to ICTA for approval. ICTA shall decide for approval upon evaluation

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of the application by taking into consideration of the market and competition conditions of the transferee operator and other related issues. Upon ICTA's approval, a right of use shall be granted to the transferee operator within one month of the date on which the approval is granted.

Ex-ante regulatory obligations

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

Communications markets that are subject to ex-ante regulation are:

- the call transfers on the fixed-network market;
- the call origination on the fixed-network market;
- the call termination on the fixed-network market;
- the fixed-line network access market;
- the fixed-voice telephony services market;
- the wholesale and retail leased-lines market;
- the access and call origination on the mobile-network market;
- the call termination on the mobile-network market; and
- the wholesale local-access and central-access market.

ICTA has the power to make both ex-ante regulations and ex-post regulations. As per article 6 of Law No. 5809 on Electronic Communications, ICTA is vested with the duty of conducting market analyses to determine the relevant market and the operators that have SMP in this relevant market and to inspect the breaches of competition in the electronic communications sector and impose sanctions if necessary.

Sanctions imposed on each of the markets are as follows:

- call transfers on the fixed-network market: there are no sanctions imposed;
- call origination on the fixed-network market: sanctions imposed on operators having SMP are access and interconnection, transparency, publication of reference offer, non-discrimination, tariff control, accounting separation and cost accounting, co-location and infrastructure sharing;
- call termination on the fixed-network market: sanctions imposed on operators having SMP are access and interconnection, transparency, non-discrimination, quality of service, tariff control, accounting separation and cost accounting, co-location and infrastructure sharing. Sanctions imposed on operators that do not have SMP are interconnection, non-discrimination and transparency;
- fixed-line network access market: sanctions imposed on operators having SMP are access, wholesale of leased lines, carrier selection and pre-selection, non-discrimination, transparency, publication of reference offer and tariff control;
- fixed-voice telephony services market: there are no sanctions imposed;
- wholesale and retail leased-lines market: sanctions imposed on wholesale leased lines are access, non-discrimination, transparency, publication of reference offer, tariff control, accounting separation and cost accounting and co-location and infrastructure sharing. Sanctions imposed on retail leased lines are tariff control and accounting separation and cost accounting;
- access and call origination on the mobile-network market: there are no sanctions imposed;
- call termination on the mobile-network market: sanctions imposed on mobile network operators are interconnection, non-discrimination, quality of service, transparency, publication of reference offer, tariff control, accounting separation and cost accounting and co-location. Sanctions imposed on other mobile operators are interconnection, non-discrimination and transparency; and
- wholesale local-access and central-access market: sanctions imposed are access, co-location and infrastructure sharing, tariff control, publication of reference offer, non-discrimination, transparency and accounting separation and cost accounting.

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?

Under article 6 of Law No. 5809 on Electronic Communications, ICTA is vested with inspecting breaches of competition in the electronic communications sector, imposing sanctions and taking the opinion of the Competition Authority on issues regarding breach of competition.

Additionally, as per article 7 of Law No. 5809, the Competition Board, while performing examinations and supervisions and while making any decisions on the electronic communications sector, including decisions about mergers and takeovers, primarily takes into consideration ICTA's view and the regulatory procedures of ICTA.

In the Telecommunication Sector Example in the Review Report on Financial Technologies in Payment Services published by the Competition Authority, it is stated that as a result of the regulations made by ICTA, an obligation for incumbent operators to share their infrastructure with other operators under certain conditions is indicated and in this respect, it is clear that new enterprises will enter to the market, which residents have an alternative channel to reach the customer, with vertical contracts.

Universal service obligations and financing

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

Law No. 5369 on Universal Services stipulates the rules to promote access to telecom services in rural or under-served areas. Accordingly, operators that have a general authorisation, concession and authorisation agreement or a licence in the telecommunications sector are incumbent universal service providers.

Under Law No. 5369, universal services include:

- fixed telephone services;
- public payphone services;
- telephone directory services (printed or directories on electronic media);
- emergency call services;
- internet services;
- passenger transportation services for settlements to which maritime lines are the single option of access; and
- communications services regarding distress and safety at sea.

With the Amending Regulation on the Procedures and Principles Regarding the Collection of Universal Service Income and Expenses, which was published in Official Gazette No. 31585, dated 1 September 2021, mobile broadband, fibre to the home or fibre to the building and other fixed broadband internet services have been included within the scope of the services.

Additionally, the universal service provider operators are obliged to comply with the liabilities stipulated in Article 9 of the Regulation on the Procedures and Principles Regarding the Collection of Universal Service Income and Expenses.

For the financing of universal services provided, Turk Telekomunikasyon AS is obliged to deposit 1 per cent of its annual net sales until the end of April of the following year. Operators, except the ones liable to pay Treasury shares, are obliged to deposit 1 per cent of the annual net sales revenue by the end of June of the following year and operators that also carry out services that do not require payment

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of Treasury shares but are obliged to pay Treasury share due to their activities, are obliged to deposit 1 per cent of the annual net sales revenue, which does not constitute a basis for the Treasury share, to ICTA's account as a universal service contribution until the end of June of the following year. ICTA is obliged to notify the Ministry of Transport and Infrastructure of the 10 per cent of the share paid by the operators liable to pay Treasury share until the end of the following month in which said amount is paid, 20 per cent of the administrative penalties it has applied under the relevant laws by the end of the month following the month of collection and 20 per cent of the amount remaining after all expenditure is met every three months until the 15th day of the following month, before the payment to be made to the general budget in accordance with the Public Financial Management and Control Law No. 5018.

Following the collection of the aforementioned amounts, the net cost incurred owing to the operator's obligations to provide universal services and other expenses incurred within the scope of Law No. 5369 shall be financed by the Ministry.

Number allocation and portability

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

Under Law No. 5809 on Electronic Communications, ICTA is authorised to allocate numbers and to prepare the National Numbering Plan and the National Frequency Plan under the policies of the Ministry. Number allocation and usage principles are specifically regulated under the Numbering Regulation. The purpose of that regulation is to ensure that the numbers used in the electronic communication networks are planned in a national context and are used effectively and efficiently under the stipulated plan.

Number portability is mainly regulated under the Regulation on Number Portability, which was amended under the Regulation on the Amendment of the Regulation on Number Portability published in Official Gazette No. 29546, dated 28 November 2015 and Official Gazette No. 31748, dated 12 February 2022. As per the Regulation on Number Portability, subscribers may change their operator, geographical position and service type without having to change their subscriber number. Operators are under the obligation to provide number portability. With the Amending Regulation, which was published in Official Gazette No. 31748, dated 12 February 2022, additions to the operation of the number porting request process for mobile number portability and criteria for rejection of the number porting were made. Moreover, the recipient operators are obliged to send messages confirming that they have received the number porting request.

Customer terms and conditions

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

The customer terms and conditions between subscribers and operators are subject to the Regulation on Customer Rights in Electronic Communications Sector, which was amended under the Regulation Amending the Regulation on Customer Rights in Electronic Communications Sector (the Amending Regulation) and published in the Official Gazette No. 31723, dated 18 January 2022. The Amending Regulation sets forth new transparency obligations and obligations to inform to be imposed on the operators, alongside new terms to be applicable for subscription agreements concerning the establishment and execution issues.

The Regulation on Customer Rights in Electronic Communications Sector requires operators to be fully transparent and lays the burden of proof on the operator concerning subscriber requests and approvals.

Under the Amending Regulation, operators are obliged to keep the information and documents required for the establishment of the subscription agreement for 30 years after the subscription ends. The operator shall present an easily understandable one-page summary of the contract to the consumer in writing or electronically and shall include contract-related information such as service type, tariff name and monthly fee in this summary. The procedure regarding invoices sent electronically or via short message is also regulated in the Regulation, and the invoice shall be sent via short message if consumers do not prefer a different shipping method.

Pursuant to the Regulation on Customer Rights in Electronic Communications Sector, the customers have the following rights:

- access to services under the same terms with similar customers and benefiting from the services with fair prices without any discrimination;
- entering into agreements with the authorised operators;
- requesting that their information defined pursuant to the relevant legislation be or not be included in publicly available directories;
- benefiting from directory services being free of charge or for a price and being able to register with the directories without any discrimination;
- being informed of the emergency call services and accessing those services free of charge;
- requesting itemised invoices;
- requesting information about the scope of the services to be provided by the operators;
- access to clear, detailed and current information on the tariffs to be applied to the customers and being informed of any change to those tariffs before such change is applied;
- opting out in a simple way or by an original way of application to the service, from all the services under the campaigns or tariffs including value-added services that they opted in through short message service, call centre or internet;
- requesting equal treatment without any discrimination concerning resolving the malfunction problems; and
- receiving services in the standards determined by ICTA or by international institutions.

Last, the subscription agreement between the customer and the operator must be made in writing pursuant to the Regulation on Customer Rights in Electronic Communications Sector or electronically by authentication pursuant to the provisions of the Regulation on the Process of Identity Authentication of Applicants in the Electronic Communications Sector.

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?

There are no regulations regarding net neutrality under Turkish legislation. However, in 2012, to restore net neutrality, ICTA imposed an administrative fine against an internet service provider owing to the internet service provider blocking some websites on its network without any court or competent authority's decision.

Platform regulation

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

There are general and specific laws and regulations that apply to digital platform providers. For instance, Law No. 5809 on Electronic

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Communications includes provisions regarding digital platforms providing services by satellite broadcasting. Also, Law No. 6563 on Regulation of Electronic Commerce regulates the rules and procedures for electronic commerce platforms and digital marketing. Further, Law No. 4054 on the Protection of Competition in Turkey applies to the digital platform markets in Turkey. Moreover, all content published on the internet is subject to Law No. 5651 on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting. Law No. 5651 restricts the publication of content constituting certain types of crime and content violating the rights of third parties. Last, digital platforms are also subject to the laws and regulations on data protection and privacy.

With Law No. 7253 on the Amendment to the Law on Regulation of Publications on the Internet and Combating Crimes Committed through Such Publication, which entered into force following its publication in Official Gazette No. 31202, dated 31 July 2020, some amendments, especially those for the control of social-media networks, have been made in Law No. 5651. The purpose of the amendments regarding social-media networks was shown in the justification of Law No. 7253 as 'the need to impose obligations on social-networking platforms as well as states to take responsibility in combating illegal content'.

In addition to the definitions such as content provider, hosting provider, access provider and collective-use provider, the definition of 'social-network provider' has been added to Law No. 5651. Accordingly, social-network providers are defined as 'real or legal persons that enable users to create, view or share content such as text, images, sounds, locations on the internet for social-interaction purposes'. The definition of the traffic information that the hosting providers are obliged to keep for certain periods regarding the services they provide, internet protocol address, service start-end time, service type, transferred data amount and subscriber credentials, as well as 'port information' (virtual ports that are redirected via the internet or software), has also been added.

In addition to the decision to block access, it is now possible to decide to remove the content.

Social network providers established abroad accessed by more than one million daily users are obliged to appoint at least one legal or natural person as a representative in Turkey to fulfil the requirements of notifications and requests to be sent by official institutions, to respond to applications made by individuals under Law No. 5651 and to ensure that other obligations under Law No. 5651 are fulfilled. If the representative is a natural person, they must be a Turkish citizen. If the social-network provider does not fulfil the obligation to appoint a representative despite the notification made by ICTA, they may be subject to sanctions such as administrative fines of up to 40 million Turkish lira in total, an advertising ban and a reduction of internet traffic bandwidth of up to 90 per cent.

Another obligation for social-network providers that are domestically based or established abroad with more than one million daily users is to take the necessary measures to retain data in Turkey of those users located in Turkey. However, any specific sanction to be applied in the case of a violation of this obligation has not been foreseen.

Last, the social-network provider will be responsible for the compensation of the damages arising from content determined to be illegal by a judge or court decision is notified to the social-network provider and the network provider did not remove the content or block access within 24 hours.

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?

In Turkey, there is no specific regulation in force for NGA networks. However, there are several ICTA board decisions regulating the NGA networks. In ICTA's 2022 plan, it is stipulated that new monitoring stations and vehicles, as well as hardware and software, will be supplied to adapt to new-generation technologies. Besides this, ICTA has also published several public releases indicating that the NGA penetration should be increased. There is also a National Broadband Strategy and Action Plan set out within the coordination of the Ministry of Transport and Infrastructure, which indicates that financial support models will be established for regions where broadband infrastructure is not available and where it is commercially difficult to provide service to support fixed and mobile broadband infrastructure investments.

Data protection

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

Data protection in the electronic communications sector is mainly regulated under Law No. 5809 on Electronic Communications and the Regulation on Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector (the Regulation), published in Official Gazette No. 31324, dated 4 December 2020. Under these specific laws and regulations, operators are obliged to protect subscribers' information and their privacy. Also, communication must not be listened to, recorded, stored, intercepted or tracked without the explicit consent of all the relevant parties to the communication, except in cases where the relevant legislation and judicial decisions so require. In addition, operators are obliged to inform data subjects about the processing of their data within the scope of their previous explicit consent in the third quarter of each year. Otherwise, the data processing activity within the scope of the given consents must be ceased until the notification is made. Moreover, it has been stated that it is essential not to transfer traffic and location data abroad for reasons of national security. Operators are obliged to take necessary technical and administrative measures to ensure the security of the networks and personal data of the subscribers and to keep transaction records regarding access to personal data and other related systems for two years. Besides this, operators are subject to the Law on Personal Data Protection for the general rules, principles and procedures regarding data protection and privacy they process in their data-filing system. However, with the Regulation, in cases of data breach, in addition to the notification to be made to the Personal Data Protection Authority and the data subject, it is also obligatory to notify ICTA of the data breach. According to the provisions of ICTA Administrative Sanctions Regulation, if operators do not fulfil the obligations determined by the Regulation, an administrative fine of 1 per cent to 3 per cent of their net sales in the previous calendar year will be imposed.

Cybersecurity

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

The Council of Ministers' Decision on Conducting, Managing and Coordinating National Cybersecurity Activities (the Decision), which entered into force on 20 October 2012, is one of the important legislative developments regarding cybersecurity in Turkey. Also, the Cybersecurity Board was established under the Decision, the duties of which include approval of policies, strategies and action plans regarding cybersecurity

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and rendering of decisions regarding their implementation nationwide in an effective manner, resolving proposals regarding the determination of critical infrastructure and determining the institutions to be wholly or partially exempt from cybersecurity provisions. In addition, in ICTA's 2022 Business Plan and its Strategic Plan of 2019–2023, there are outputs such as continuing operational activities to ensure national cyber security, participating in national and international exercises, conducting workshops with cyber incident response teams, assessing critical infrastructures expansion and follow-up of detection, developing software on technological measures.

On the other hand, electronic communication sector-specific cybersecurity provisions are regulated with the secondary regulation, the Regulation on Network and Information Security in Electronic Communication Sector. This Regulation, which regulates and underlines technical, administrative, organisational and physical measures to be taken by operators, does not apply to personal data processing and protection.

Under the Regulation on Administrative Sanctions No. 28914, issued by ICTA, any natural or legal entity who fails to comply with the obligations related to network and information security and cybersecurity measures to be determined by ICTA, shall be imposed with an administrative fine of 1,000 to 1 million Turkish lira.

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?

There is no specific regulation regarding big data within the frame of Turkish legislation. However, if big data involves the processing of personal data, personal data-related provisions can be applied for.

If big data does not involve personal data but involves non-personal data (eg, anonymous data, commercial information and trade secrets, etc), non-personal data-related provisions can apply to those processing activities. For instance, it can be said that the Regulation on Network and Information Security in Electronic Communication Sector excludes personal data processing and protection but can apply to big data processing in the electronic communications sector.

Data localisation

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

Under Law No. 5809 on Electronic Communications, data belonging to customers may only be transmitted abroad upon the consent of the customer. The Regulation on Processing of Personal Data and Protection of Privacy in the Electronic Communications Sector (the Regulation), published in the Official Gazette No. 31324, dated 4 December 2020, also stipulates that data transfer to third parties located abroad may only be realised upon the consent of the customer. In this scope, the customer has to be informed regarding the country to which the data is transferred, the scope and period the data will be kept and the relevant legislation and practice in the country.

Additionally, operators are also subject to Law No. 6698 on Personal Data Protection in terms of the general rules, principles and procedures of personal data processing and protection. Therefore, operators, while transferring personal data, must ensure compliance with and fulfilment of the requirements arising from both regulations.

Key trends and expected changes

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

One of the most significant legislative development is Decision No. 2021/DK-YED/80 (the Decision) of ICTA Amending Regulation on Authorisation in the Electronic Communication Sector, which was published in Official Gazette No. 31471, dated 1 May 2021. As per the Decision, the scope of the conditions of authorisation application and obligations of operators, authorisation terms and competency control periods, changes of indirect control of operators, and authorisation cancellation of operators that do not actively provide services were amended.

In addition, at the beginning of 2022, the Regulation Amending the Regulation on Consumer Rights in the Electronic Communications Sector, which made extensive changes regarding the execution, content and implementation of subscription agreements; restriction, suspension and termination of services, and informing consumers, has created a significant legislative development.

Also, the Regulation on the Process of Identity Authentication of Applicants in the Electronic Communications Sector was published and entered into force on 31 December 2021. The Regulation introduces new methods and standards for identity authentication in the electronic communications sector.

Last, the Regulation on Amending the Number Portability Regulation came into force on 12 February 2022. With the amendments, obligations regarding electronic identity authentication in number-porting operations were determined. Moreover, the recipient operators are obliged to send messages confirming they have received the number porting request.

On another note, the TÜRKSAT 6A project, which will be the first domestic communication satellite, was completed, and is planned to be launched into space in 2023, making Turkey become one of 10 countries producing communications satellites in the world.

Last, the Ministry published the National Cybersecurity Strategy and Action Plan for 2020–2023, which has strategic purposes such as ensuring the security of information systems of critical infrastructures operated by the public or private sector, minimising the effects of cyber security incidents, establishing an infrastructure for the determination of strategic cyber security actions for the systems to return to their normal operation as soon as possible after the incidents, and for investigating the crime by the judicial authority and law enforcement more effectively.

MEDIA

Regulatory and institutional structure

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

The key regulations governing the media sector in Turkey constitute:

- the Constitution of the Republic of Turkey (No. 2709);
- international agreements (the European Convention on Transfrontier Television);
- sector-specific Laws (Press Law No. 5187);
- Law No. 4982 on the Right to Obtain Information;
- Radio and Television Law of Turkey (No. 2954);
- Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises;
- Law No. 3093 on Radio and Television Incomes in Turkey;
- Law No. 5651 on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting;
- general laws (Industrial Property Law No. 6769, Turkish Criminal Law No. 5237, Turkish Law No. 6098);

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- regulations (the Advertisement Regulation of Radio and Television Authority of Turkey); and
- directives, communiques, principles and procedures, instructions executing and enforcing and the decisions rendered by the relevant authority.

In 2021, the following developments took place:

- Regulation on the Presentation of Radio, Television and On-Demand Broadcasting on the Internet;
- Radio and Television Supreme Council Regulation on Procedures and Principles for Terrestrial Broadcasting License and Sorting Tender; Regulation on Administrative and Financial Conditions to be Complied By Media Service Provider Organisations and Platform and Infrastructure Operators were amended by the Radio and Television Supreme Council (RTSC). Pursuant to these amendments, which were published in Official Gazette No. 31485, dated 18 May 2021, the signature circular of individuals authorised to represent the company is no longer on the list of documents requested for licence, transmission authorisation and tender applications; and
- the Advertising Board of the Ministry of Trade enacted the Guideline on Commercial Advertising and Unlawful Commercial Practices of Social Media Influencers pursuant to the Consumer Protection Law on 5 May 2021, which regulates the advertising activities of social-media influencers in general.

The RTSC, founded in 1994, is the administratively and financially autonomous and impartial public legal authority for the regulation and supervision of radio, television and on-demand media services. In the field of audiovisual media services, the main function of the RTSC is taking essential precautions for securing freedom of expression and information, diversity of opinion, media pluralism, competition environment for avoiding media concentration and protecting public interests. On the other hand, the Information Technology and Communication Authority (ICTA), the national telecommunications regulatory and inspection authority, may also be intervened and act in some cases in this sector. For instance, under the Right to Information Regulation, ICTA is entitled to impose administrative fines on companies that do not abide by the decisions of the Criminal Court.

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?

Certain restrictions regarding foreign ownership have been stipulated under Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises. For instance, the total direct foreign capital share in a media-service provider shall not exceed 50 per cent of the paid-in capital. Further, a foreign real or legal person can directly become a partner of a maximum of two media-service providers. Although it is important to point out that if foreign real or legal persons hold shares in companies that are shareholders of media-service providers and become an indirect partner of the broadcasters, the chair, the deputy chair and the majority of the board of executives and the general director of the broadcasting enterprises must be citizens of Turkey, and the majority of the votes in the general assemblies of broadcasting enterprises should belong to the real or legal persons holding Turkish citizenship. Last, foreign shareholders shall, by no means, own preference shares, as domestic shareholders do not.

In terms of the cross-ownership of media companies, the same Regulation indicates that a real or legal person can be a partner directly or indirectly of a maximum of four media-service providers holding terrestrial broadcasting licences. However, in the case of partnership in more than one media-service provider, the annual total commercial communication revenue of those media-service providers in which a real or legal person has direct or indirect shares shall not exceed 30 per cent of the total commercial communication revenue of the sector. The real or legal persons whose total commercial communication revenue exceeds this rate shall transfer their shares to media-service providers so that it will be reduced down to the aforesaid rate within a time limit of 90 days given by the RTSC.

Licensing requirements

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

First, it is necessary to define 'broadcasting licence' under Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises. 'Broadcasting licence' means the certificate of permission issued separately for each broadcasting type, technique and network by the RTSC to media-service providers to allow them to broadcast using any kind of technology via cable, satellite, terrestrial and similar networks.

Under Law No. 6112, a broadcasting licence may only be granted to joint-stock companies established under Turkish Commercial Code No. 6102. The scope of the purpose of the joint-stock company has to be exclusively determined, concerning providing radio, television and on-demand broadcast service.

However, political parties, unions, professional associations, cooperatives, associations, societies, foundations, local administrations and companies established by them or of which they are direct or indirect shareholders, stockbroker companies and real or legal persons who are direct or indirect shareholders of these companies are not allowed to apply for a broadcasting licence.

Media service providers shall apply for a separate licence for each broadcasting technique and network to the RTSC to be able to broadcast through cable, satellite, terrestrial and similar networks. It should be clearly indicated in the licence document for which broadcasting technique and network the licence is granted. Enterprises requesting to make a simultaneous broadcast on different networks by different techniques should apply for separate licences for each broadcasting technique and network and must provide a simultaneous broadcast.

As per Law No. 7103 on Amending Tax Laws, Certain Laws and Certain Decree Laws stipulating amendments to Law No.6122, media-service providers and online broadcast platforms that only broadcast content over the internet are also subject to these licensing requirements.

As per online broadcasting, the Regulation on Radio, Television and On-Demand Broadcasts on the Internet (the Regulation) outlines licensing requirements regarding three types of licences, namely:

- the INTERNET-RD broadcast licence for online radio services;
- the INTERNET-TV broadcast licence for online television services; and
- the INTERNET-IBYH broadcast licence for online on-demand broadcast services.

As per the Regulation, online broadcasting licences shall only be granted to joint-stock companies established as per Turkish Commercial Law No. 6102, exclusively established for providing radio, television and on-demand broadcasting services.

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Under the Regulation, online platform operators that provide various radio, television and on-demand broadcasts through their uniform resource locator address or mobile applications must obtain internet broadcast transmission authorisation from the RTSC.

The fees payable for the necessary authorisation are stipulated separately for cable, satellite, and internet broadcasting, in each relevant regulation. These fees are increased by the revaluation rate declared each year by the Ministry of Treasury and Finance, published on the RTSC website, and collected in accordance with prevalent tariffs and article 42 of Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises, implemented as of the beginning of the January each following year.

The term of a broadcasting licence is 10 years, both according to Law No. 6112 and the Regulation, and there are no specific timescale provisions for obtaining authorisation from the RTSC.

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?

Law No. 6112 on Establishment and Broadcasting Services of Radio and Television Enterprises does not prohibit broadcasting in foreign languages; however, broadcasts made in foreign languages shall follow the rules of that preselected language and be supervised by the RTSC. On the other hand, the Regulation on the Procedures and Principles of Media Services stipulates that providing broadcasts in languages and dialects other than Turkish by media-service providers is subject to permission to be issued by the RTSC. Thus, the RTSC permits broadcasting in a foreign language if it finds the media-service provider's application appropriate according to their broadcasting area and technical facilities. However, no permission is required for on-demand media services in languages and dialects other than Turkish.

As per Law No. 6112 on Establishment and Broadcasting Services of Radio and Television Enterprises, broadcasting service providers must comply with the broadcasting service principles stipulated in article 8 of the Law regarding the content of broadcasting services provided, and this provision applies to the content of foreign-produced programmes along with the local-produced programmes. Under the same Law, if television enterprises that conduct general and thematic broadcasts include cartoons in the broadcasts for children, at least 20 per cent of the cartoons, and at least 40 per cent of other children's programmes, shall be productions made in the Turkish language and reflect Turkish culture. There are no further local content quotas for media-service providers.

However, content to be broadcast for television broadcasters holding a national terrestrial broadcasting licence is as follows:

- television broadcasters are obliged to allocate at least 50 per cent of their broadcast time to European works, excluding the time allocated to news, sports events, contests, advertisements, teleshopping and related data broadcasts; and
- they must allocate 10 per cent of their broadcast time or programme budget broadcasts to European works of independent producers, excluding the time allocated to news, sports events, contests, advertisements, teleshopping and related data.

Additionally, as per the Regulation on Radio, Television and On-Demand Broadcasts on the Internet, the broadcasting services of foreign media-service providers and foreign internet broadcasting platform operators under the jurisdiction of a country other than Turkey may be suspended by the RTSC if it is decided by the RTSC that the media-service providers or internet broadcasting platform operators have acted in violation of Law No. 6112 or any international treaties within the scope of the RTSC's authority to which Turkey is a party.

Advertising

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

The main pieces of legislation governing broadcast media advertising are Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises and the Advertisement Regulation of Radio and Television Authority of Turkey.

As per Law No. 6112, advertisements and teleshopping in television and radio broadcasting services must be broadcast in a manner that is easily distinguishable from the rest of the elements of the broadcasting programme services, by way of the use of audio or visual warnings. Broadcast media advertisements are also within the scope of the Regulation on Commercial Advertisements and Unfair Practices (the Regulation) published in Official Gazette No. 29232, dated 10 January 2015. Thus, advertisements and teleshopping must be made in compliance with the Regulation.

Online advertising is subject to the Consumer Protection Law and the Commercial Advertisement Regulation, which are the main legislation concerning advertisement rules. The Advertisement Board regulates the compliance of advertisements in all media, except for specific broadcasting rules that are governed under Law No. 6112. Also, all online broadcasts in Turkey are subject to Law No. 5651 on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting. If the content of an online broadcast, including online advertising, constitutes specific crimes that are listed in this Law, access to this website could either be banned by the Information Technology and Communication Authority or by the court, depending on the type of case and urgency.

On 2 October 2021, the RTSC published an announcement on volume levels of commercial communication broadcasts. Pursuant to the announcement, media-service providers are required to keep the volume levels of their commercial communication broadcasts at a level in compliance with the legislation and take the necessary measures stipulated. Correspondingly, commercial communication broadcasts should be at the same volume level as other broadcasts.

Last, the Advertising Board of the Ministry of Trade published the Guideline on Commercial Advertising and Unlawful Commercial Practices Social Media Influencers on 5 May 2021. The main purpose of the Guideline is to guide all individuals, agencies, organisations and institutions that advertise in relation to commercial advertising and practices of social-media influencers. Pursuant to the Guideline:

- oral, written or visual hidden advertising is strictly prohibited on social media;
- if an Influencer advertises a product or a service from which the influencer received a financial income or receives it free of charge or with a discount, the influencer must disclose this fact using hashtags; and
- any form of advertising must be clearly distinguishable from other types of content.

Accordingly, the Guideline divides social-media communication into four platforms, which are:

- video-sharing platforms;
- photograph and message-sharing platforms;
- podcast-sharing platforms; and
- platforms where the content is available for a limited time.

Advertising rules of these four platforms are separately regulated under the Guideline. The Guideline also regulates the liabilities of advertisers,

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advertising agencies and Influencers separately and each is liable to comply with the Guideline.

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?

There are no regulations regarding must-carry obligations under Turkish legislation.

Regulation of new media content

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

Internet-based on-demand content has been traditionally regulated by Law No. 5651 on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting. However, with the amendments to Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises, media-service providers that make online broadcasting and platform operators that transmit these broadcasts via the internet are required to obtain a licence from the RTSC and online broadcasting activities are subject to supervising and controlling of the RTSC under the same principles applied to TV and radio broadcasts as per Law No. 6112.

Moreover, unlike traditional broadcast media such as radio and television, new media content is regulated under Law No. 5651. Additionally, advertisements made via new media content are also subject to Law No. 5651.

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?

Under Law No. 5651 on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting, companies that obtained the right to a terrestrial digital multiplex capacity allocation in the ranking tender realised under the Regulation regarding Procedures and Principles on Terrestrial Broadcast Licences and the Ranking Tender published in Official Gazette No. 30634, dated 23 December 2018, may, in line with their ranks and the analogue channel capacity, be granted the right to make analogue broadcasts as well as terrestrial digital broadcasts for a period of a maximum of two years. At the end of the two years, analogue broadcasts shall be terminated nationwide. The transition from analogue broadcasting to digital broadcasting has not yet been completed.

Digital formats

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

First, according to Law No. 5809 on Electronic Communications, ICTA is the competent authority for spectrum management, supervision and inspection in Turkey. However, under Law No. 5809, the RTSC is the competent authority regarding the regulation of radio frequencies and television channel broadcasts.

The regulation restricts how broadcasters can use their spectrum. After obtaining the terrestrial broadcast licence, current transmitting facilities must be removed by the private media-service providers or must be transferred to a transmitter procurer and operating company in exchange for a reasonable sum.

Under Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises, the RTSC shall adopt frequency plans concerning television channels and radio frequencies, within the framework of the frequency bands for terrestrial radio and television broadcasts allocated under Law No. 5809. Within the scope of the frequency plans the numbers and types of national, regional and local terrestrial broadcast networks, as well as multiplex numbers for digital broadcasts, shall be determined.

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?

Under Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises, one of the duties of the RTSC is to take essential precautions, in the field of media services, for media pluralism. On the other hand, the maximum number of media-service providers in which a real person or a legal entity may directly or indirectly hold shares is four. Although there is no specific regulation concerning media plurality in Turkey, the RTSC Strategic Plan of 2019–2023 includes a strategic goal of securing the rights and interests of shareholders by developing a pluralistic and competitive environment in the audiovisual media. In this regard, the RTSC has set forth four activities and projects to be done, namely:

- to carry out terrestrial digital television broadcasting ranking tenders;
- to cooperate with relevant institutions regarding the prevention and detection of unauthorised broadcasting and interference problems;
- to cooperate with relevant institutions regarding the detection of practices that hinder or disrupt competition and prevention of concentration; and
- to carry out terrestrial radio broadcasting ranking tenders.

In its latest pilot of Decision No. 2018/14884, dated 27 October 2021, the Constitutional Court evaluated several applications, and decided that freedom of expression and the press, and the right to a fair trial were violated. The Applications are related to access-blocking decisions of news on nationally broadcast news websites. The Constitutional Court decided that the applications were based on a systematic problem in the implementation of the access-blocking measures stipulated under the Internet Law. Accordingly, the Turkish Constitutional Court evaluated Law No. 5651 on the Regulation of Internet Broadcasts and Prevention of Crimes Committed through Such Broadcasts in its decision on freedom of expression and the press.

The Constitutional Court pointed out the relationship between freedom of expression, the press and article 9 of the Internet Law and made recommendations to the Turkish Grand National Assembly for the reformulation of the relevant article. In this regard, the Constitutional Court concluded that article 9 of the Internet Law must include certain guarantees so that the interventions to the freedom of expression and the press are not disproportionate, and it considered that since the judgeships of peace need to make a decision within 24 hours, this prevents the person or body publishing the internet content from being involved in the process. Therefore, the judgeships of peace authorised to review the objections must observe the balance of interests and evaluate the essence of the allegations to compensate for the lack of legal certainty in the later stages of the proceedings.

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Key trends and expected changes

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

A notable piece of legislation currently adopted in Turkish media law is the Guideline on Commercial Advertisement and Unfair Commercial Practices of Social Media Influencers, which was put into force as per the Advertisement Board's decision No. 2021/2 on 4 May 2021. The Guideline aims to guide advertisers, advertisement agencies, media organisations, and all persons, institutions, and establishments involved in commercial advertisement and commercial practices of social-media influencers.

The RTSC published the new List of Major Events on 21 October 2021 to ensure that the national and international events considered of great importance for society are broadcast live or via a recording to the public by television free of charge and without encryption. The RTSC will be able to update the List of Major Events through the same procedure. Additionally, the RTSC published an announcement on 2 October 2021 regarding the change in volume levels when switching to commercial communication broadcasts, such as commercials, from other programmes. Accordingly, media-service providers are required to keep the volume levels of their commercial communication broadcasts at a level in compliance with the legislation and take the necessary measures stipulated.

Under the RTSC Strategic Plan of 2019–2023, five main strategic goals were determined, namely:

- to secure the rights and interests of shareholders by developing a pluralistic and competitive environment in the audiovisual media;
- to carry out audit activities effectively and efficiently to protect the rights and interests of all parties;
- to raise the awareness and tenderness of all shareholders regarding the audiovisual media field;
- to develop national and international policies related to the audiovisual broadcasting sector; and
- to develop institutional resources.

In its latest pilot of Decision No. 2018/14884, dated 27 October 2021, the Constitutional Court drew attention to the problems in the implementation of the access blocking measures stipulated under the Internet Law and made important evaluations regarding the interferences to the freedom of expression and the press. Accordingly, The Turkish Constitutional Court evaluated Law No. 5651 on the Regulation of Internet Broadcasts and Prevention of Crimes Committed through Such Broadcasts in its recent pilot decision on freedom of expression and the press. The Constitutional Court pointed out the relationship between freedom of expression, the press and article 9 of the Internet Law and made recommendations to the Turkish Grand National Assembly for the reformulation of the relevant article.

Some of the relevant expected changes and the steps to be taken accordingly within the media sector are as follows:

- informing the legislative organ about the need for new regulations regarding issues on the establishment of a more effective sanction system and the implementation of joint audits in connection to new technological developments;
- the strengthening of the cooperation among shareholders in the media sector;
- the drafting of more explicit and concrete regulations by the RTSC, an independent and unbiased authority, especially regarding broadcasting principles in areas that are conceived negatively;
- the re-evaluation and revision of the legislative regulations in a manner that enhances the freedom of speech and freedom of information stipulated under the laws;
- the establishment of a more efficient mechanism to enable the consent analysis of the regulatory needs within the media sector and the overcoming of issues regarding regulatory activities;
- conducting studies by ICTA to pave the way for domestic and national productions on new technologies to ensure cybersecurity while it is at the design stage; and
- the draft Türk Telekomünikasyon AŞ Reference Interconnection Offer opened to Public Opinion.

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?

The communications sector is governed by Law No. 5809 on Electronic Communications. Whereas the media sector is mainly governed by Law No. 6112 on the Establishment of Radio and Television Providers and Broadcasting Services, the communications regulator is separate from the broadcasting regulator. The competent authority for the communications sector is the Information Technology and Communication Authority (ICTA) and the Competition Authority, whereas the competent authority for the media sector is the Radio and Television Supreme Council (RTSC). However, concerning online broadcasting, both ICTA and RTSC are vested with certain regulatory powers. Last, the Competition Authority is the main competition and antitrust monitoring authority, and the primary law applied is Competition Law No. 4054.

Besides this, the Advertisement Board, established under the Turkish Ministry of Commerce, is the main authority that is entitled to monitor and supervise advertisements for all media, including broadcasts in Turkey and to determine the related rules and impose fines in the case of violations.

Under article 6/1 of Law No. 5809, one of the powers vested in ICTA is the undertaking of regulations to establish and protect competition and to prevent activities that prevent, distort or restrict competition, and to impose remedies on operators with significant market power and other operators, if necessary. However, under paragraph 2 of the same article, it is stipulated that ICTA, while inspecting competition breaches against the same Law concerning the electronic communications sector, and imposing sanctions, seeks the opinion of the Competition Authority on issues regarding breaches specified by the legislation. Moreover, under Law No. 5809, ICTA is authorised to conduct analysis and investigations and impose sanctions regarding anti-competitive activities and practices, on the condition that the opinion of the Competition Authority is also demanded. However, the provisions of Law No.4054 are reserved.

Under Law No. 6112, one of the powers vested in the RTSC is to take the required precautions in the field of broadcast services to guarantee freedom of expression and information, diversity of opinions, competitive environment reserving the duties and powers of the Competition Authority and pluralism and prevent concentration and protect the public interest. Last, both the RTSC and ICTA must cooperate with the Competition Authority regarding matters relating to competition and anti-competitive practices. There have been cases where cooperation between ICTA and the Competition Authority has been low, and there have been some disputes regarding the respective scopes of the two authorities. ICTA and the Competition Authority signed a cooperation protocol in 2011 and the scope of this protocol was expanded on 22 January 2015. This protocol aims to ensure the cooperation of the two regulatory bodies and avoid conflicts of jurisdiction. However, within the

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scope of article 7 of the protocol, article 6/2 of Law No. 5809 regarding seeking the opinion of the Competition Authority has been emphasised.

Appeal procedure

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

The Radio and Television Supreme Council, the Information and Communication Technologies Authority and the Competition Authority are all independent and impartial administrative authorities and render administrative decisions related to the media sector in Turkey. The decisions are rendered under the aforementioned laws and regulations, and also the administrative laws and regulations, mainly Law No. 2577 on Administrative Procedures. Criminal courts of peace, administrative courts and the Council of State are competent for legal actions to be taken against these administrative decisions.

Decisions rendered by the Board of Advertisement, established under the Ministry of Trade, can also be brought to administrative courts.

In principle, the time to bring an action for nullity is 60 days from the notification of the decision. Under Law No. 2577, an action for nullity against administrative decisions and actions can be brought forward under the following circumstances:

- if the administrative decision is not made by the competent governmental body; or
- if the form, rationale, subject or objective of the administrative decision is against the law.

Administrative court decisions can be appealed before the regional administrative courts within 30 days, starting with notification of the court's decision.

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.

Over the past year, one of the most important decisions rendered by the Competition Board (the Board) was the Decision No. 21-20/248-105, dated 8 April 2021, concerning the investigation on the economic entity consisting of Google Reklamcılık ve Pazarlama Ltd Şti, Google International LLC, Google LLC, Google Ireland Limited and Alphabet Inc (Google). The claim subjected to the investigation concerned that Google abused its dominant position in the general search services market and promoted its local search and accommodation price-comparison services by excluding its competitors. In the decision, the Board decided that Google has violated article 6 of Law No. 4054 on the Protection of Competition (the Law) by giving its local and accommodation services an advantage over its competitors on the general search result web page and complicating the activities of competitors by preventing competing local search websites from entering local unit and disrupting competition in the local search services. Consequently, the Board imposed an administrative fine of over 296 million Turkish lira on Google severally.

Also, Decision No. 21-10/139-57, dated 25 February 2021, regarding the investigation of whether Türk Telekomünikasyon AŞ and TTNET AŞ violated the Law by price squeezing their campaign. As a result of its investigation, the Board decided that Türk Telekomünikasyon AŞ and TTNET AŞ have not engaged in activities that are incompatible with the article 6 of the Law. Consequently, the Board has not imposed any administrative fines on the undertakings.

In addition to the competition infringement decisions, the Board has also rendered numerous merger and acquisition decisions in the past year. In 2021, the Competition Authority has assessed 309 mergers, acquisitions, and privatisations. Some of the most significant decisions with regard to some major acquisition transactions of 2021 are the Decision No. 21-55/774-382, dated 11 November 2021, regarding the acquisition of the operations, business, assets and liabilities of the WarnerMedia division of AT&T, Inc by Discovery, Inc. Further, Board Decision No. 21-58/838-412, dated 2 December 2021, regarding the acquisition of sole control of Mayen Telekomünikasyon Hizmetleri AŞ by Majorel Group Luxembourg SA and Decision No. 21-57/805-400, dated 25 November 2021, regarding the indirect acquisition of joint control of T-Mobile Netherlands Holding BV by mutual funds managed or consulted by Warburg Pincus LLC and Apax Partners LLP.

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United Arab Emirates

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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?

The United Arab Emirates (UAE) consists of seven emirates, each of which operates as its own legal jurisdiction, and laws are made at both a federal and an emirate level. Some emirates have defined areas within them that have been designated as free zones, which typically have separate civil and commercial laws for businesses and individuals in the relevant free zone, although they all remain subject to UAE federal criminal law. Examples of free zones in the UAE include Dubai International Financial Centre, Dubai Creative Clusters Authority and Abu Dhabi Global Markets. For the purposes of this chapter, unless otherwise specified, we focus on the laws and regulations applying at a federal level.

The principal law in the UAE that relates to the communications sector is Federal Law No. 3 of 2003 Regarding the Organisation of the Telecommunications Sector (the Telecoms Law).

The Telecoms Law establishes the Telecoms and Digital Government Regulatory Authority (TDRA) as the regulator of the telecommunications and information technology sector in the UAE. The Telecoms Law establishes a licensing-based regulatory framework for the supply of telecommunications services to customers in the UAE. Article 37 of the Telecoms Law, for instance, provides that individuals and corporate entities may not provide 'telecommunications services' through 'public telecommunications networks' to customers and 'subscribers' without obtaining a licence. Article 37 of the Telecoms Law is complemented by TDRA Resolution No. (6) of 2008 regarding the Licensing Framework (the Licensing Framework). The Licensing Framework provides that 'regulated activities' in the state are licensable by the TDRA. Here, 'regulated activities' means the operation of a 'public telecommunications network' or the provision of 'telecommunication services'.

Telecommunications services are defined in the Telecoms Law as delivering, broadcasting, converting or receiving, through a telecommunications network:

- wire and wireless communications;
- voice, music and other audio material;
- viewable images;
- signals used or transmission (other than public broadcasts);
- signals used to operate and control machinery or equipment;
- activities relating to the interconnection of equipment with a public telecommunications network;
- operating data transmission services, including the internet; and
- any other services approved by the High Committee appointed under the Telecoms Law.

Foreign ownership restrictions that previously applied to onshore companies in the UAE have been eased following amendments under Federal Decree-Law No. 26/2020 to the UAE's Commercial Companies Law (Federal Law No. 2/2015) (which has now been replaced by Federal Decree-Law No. 32/2021 on Commercial Companies). The Departments of Economic Development of Abu Dhabi and Dubai have both released their respective lists of activities that would allow foreigners to establish companies with 100 per cent full ownership.

Cabinet Decision No. 55/2021 on the Determination of the List of Strategic Impact Activities outlines seven categories of activities (eg, education, defence and telecommunications) that are considered to have a strategic impact on the UAE's economy whereby prior approval of the relevant regulatory authority needs to be obtained. Save for fisheries-related services (which require 100 per cent UAE ownership), the specific details of minimum UAE ownership and UAE board representation requirements of these activities are to be decided by the relevant regulatory authority (Strategic Impact List).

Companies established in free zones are exempted from these foreign shareholder restrictions and can be wholly foreign-owned, and several international communications operators have established wholly owned entities in such free zones; however, they cannot offer public telecommunications services in the UAE, which, since 2006, has been a closed duopoly market.

The two providers of public telecommunications services (du and Etisalat) are licensees of the TDRA. The eligibility element of each licence refers to the licensee being a 'UAE juridical entity established and in good standing under the laws of the UAE'.

Other than public telecommunications services, there is scope for non-UAE businesses to actively participate in the broader communications sector, although even international businesses that have procured a specific licence from the TDRA have largely done so through a UAE-incorporated entity as the licensee. Beyond the provision of public telecommunications services in the UAE, there are many businesses offering products and services as part of the wider communications eco-system, and many of these are not subject to foreign ownership restrictions.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

Under the Telecoms Law, the provision, operation or sale of any telecommunications services through a public telecommunications network in the UAE requires a licence from the TDRA.

Currently, only two operators are licensed for public telecommunications in the UAE: du and Etisalat. This follows government policy on the operation of a duopoly in the telecommunications field. We understand the TDRA is not currently considering further licences to break the duopoly.

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The licences granted to du and Etisalat have various features; for example, each is required to filter the content that flows through its networks in line with the priorities of the state. Notable content filtering takes place concerning matters concerning the state, foreign policy and morality issues. The decision as to which content should be filtered is essentially made through private discussions between the TDRA and the mobile operators (regarding TDRA policies on internet access), but there is no practice of publishing details on specific content-level filtering rationale.

In addition to the duopoly policy on fixed and mobile public telecommunications services, the TDRA has issued licences to other UAE entities for specific purposes, such as broadcast satellite transmission, public access mobile radio, mobile satellite and satellite services.

All such licences are issued individually to entities meeting various requirements under the Telecoms Law and under a decision made by the TDRA board. A licence can be categorised as either a class licence or an individual licence. Individual licences refer to whether scarce resources are requested such as spectrum or frequencies; class licences are issued where non-scarce resources are required and where the activities are insignificant enough that less regulatory supervision is required.

The TDRA requires an application form to be completed by a potential licensee, which includes relevant information such as management and shareholding structures, their business operations, including the type of networks and services they intend to provide and funding sources for these business operations.

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?

The Telecoms Law gives the TDRA responsibility for managing and regulating radio spectrum in the UAE. There is no established spectrum trading or leasing practice. The TDRA grants temporary authorisations on an application for up to 90 days and such authorisations are specific to the applicant.

In common with many other jurisdictions, the UAE has its National Frequency Plan. This is issued by the TDRA and provides that certain services can only be provided within certain spectrum bands. In practice, the TDRA is known to have shown some flexibility in certain cases where this would not cause interference. All of the 800, 900 and 1,800 megahertz (MHz) spectrum has been divided between the two mobile operators, which means higher bandwidths can be supported in all frequency bands. Not all of the 2,100MHz band is currently licensed and the 3,500MHz band is licenced for fixed wireless access.

Ex-ante regulatory obligations

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

Under the Telecoms Law, the TDRA does have the power to issue ex-ante regulations and decisions concerning practices, as well as to conduct ex-post investigations. Until 2012, it was not uncommon for the TDRA to publish determinations and decisions concerning telecommunications services publicly, including on their website. Since 2012, it appears the regulator has taken the decision not to publish such determinations and decisions publicly but communicate them only to the relevant entities instead.

The TDRA has a short regulatory policy on ex-ante competition safeguards, which details the various factors it may take into account in assessing competition and dominance in the UAE. The policy provides wide discretion to the TDRA on the factors to be considered and the remedies to be imposed depending on the outcome of an assessment of the level of competition in the relevant 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 is currently no directive that imposes structural or functional separation between an operator's network and its services in the UAE.

Universal service obligations and financing

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

It is the responsibility of the TDRA to oversee the provision of telecommunications services throughout each emirate of the UAE and ensure that they are sufficient to meet public demand across the UAE; however, this has not taken the form of a hard universal service obligation. The TDRA fulfils this obligation via its relationships with the state-backed public telecoms companies who each have references in their licences to financial obligations around universal service obligations; however, these provisions are typically only references back to the general regulatory framework rather than a specific, hard obligation. Etisalat's TDRA licence differs from that of du on the issue of universal service and has a harder obligation that extends to certain services such as dial-up internet services.

The two public telecoms operators, du and Etisalat, have a significant government-ownership interest and have invested heavily in infrastructure and broadband. Given the nature of the duopoly, there are no direct government subsidies.

Number allocation and portability

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

Under the Telecoms Law, the TDRA has the authority to control the allocation of telephone numbers and numbering plans. To this end, the TDRA has released a National Numbering Plan that sets out this approach to number allocation. This includes the numbering regimes used to indicate which emirate the call arose from, as well as reserving certain numbers for the emergency service and premium paid-for calls.

The licensed operators can apply to the TDRA for allocation of a batch of numbers, which is granted based on capacity, future demand, utilisation by the licensee and administrative effort. The TDRA allocates rights to use numbers in continuous blocks of up to 100,000 numbers. The licensed operators are then responsible for allocating the numbers to their subscribers.

At the end of 2013, the UAE implemented a mobile number portability programme. Notwithstanding the mobile virtual network operator or independent branded services, there are only two mobile network operators in the UAE and so the only number portability is between the two. Both networks offer a number porting application form that can be submitted to request a number transfer.

Customer terms and conditions

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

The TDRA is empowered by the Telecoms Law to represent customer interests in the UAE. This encompasses issuing rules or regulations relating to the terms of supply to the customer and includes consumer

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protection regulations, such as key terms that must be included in contracts with customers (eg, restrictions on usage and rights to terminate) and detailed information that must be provided to the customer before the purchase of a service. The TDRA has also issued a consumer protection guide that sets out a customer's rights concerning their service contract, the privacy of information, access to services and several others.

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?

No specific regulations require net neutrality in the UAE. Both of the public telecoms operators have offered plans with zero rating on certain social media applications.

Bandwidth throttling by internet service providers is common. Network traffic that relates to Voice over Internet Protocol (VoIP) services is often blocked or has its capacity reduced to give partial effect to the TDRA's policy on VoIP services, whereby such services (where there is network breakout) are not permitted unless provided by one of either du or Etisalat.

Platform regulation

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

There is no specific legislation or regulation concerning digital platforms.

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?

There are no specific regulations concerning NGA networks. Du and Etisalat are both committed to providing high-speed networks across the UAE, and the UAE has a very high penetration of fibre-to-home connectivity. Given the nature of the public telecommunications duopoly in the UAE, there are no direct government subsidies or financial schemes available.

Data protection

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

The UAE has issued its first federal data protection law in September 2021 (Federal Decree-Law No. 45 of 2021 Regarding the Protection of Data Protection) (the Personal Data Protection Law) that is applicable to all sectors in the UAE, save for free zones like the Dubai International Finance Centre and Abu Dhabi Global Market that have their own data protection regimes. The newly established UAE Data Office will be responsible for regulating the implementation and enforcement of the core data protection concepts such as personal data, controllers, processors, processing, requirements to appoint a data protection officer and subject rights. The new Personal Data Protection Law is conceptually similar to the General Data Protection Regulation (GDPR) and will have extra-territorial effect in that it is applicable to organisations established in and outside of the UAE that process personal data of data subjects within the UAE. Despite its similarities to the GDPR, it is noteworthy that the Personal Data Protection Law does not provide for a 'legitimate interests' basis for processing personal data, and so consent will be required unless an exception (eg, public interest, defending a legal claim) applies. Further, there are slightly more onerous obligations to record personal data and the requirement to notify the UAE Data Office of breaches of personal data 'immediately upon becoming aware of them' (as opposed to the lower threshold of 'without undue delay' under the GDPR).

Although the Personal Data Protection Law came into force on 2 January 2022, it will not be enforced until six months after the publication of relevant implementing regulations. At the time of writing, there has been no indication of when the implementing regulations will be issued.

Cybersecurity

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

Key primary legislation relating to cybercrime includes Federal Decree-Law No. 34/2021 Concerning the Fight Against Rumours and Cybercrime (the Cybercrime Law) (effective 2 January 2022) and the Penal Code.

The new Cybercrime Law specifically deals with activities like:

- hacking (this was previously described as unauthorised access);
- identity theft and fraud;
- crimes that involve computers;
- networks and electronic information;
- impersonation;
- electronic robot;
- cryptocurrency; and
- the spreading of false information.

The Penal Code consists of general provisions prohibiting various criminal acts, some of which will apply to cybercrime.

The Cybercrime Law applies across all sectors, with no exceptions. In practice, it will be of particular relevance to the telecommunications and financial services sectors, as these are typically entrusted with critical data and therefore more likely to be targets of cybercrime. Further, there are specific implications to the banking, medical, media or scientific sectors as aggravated penalties will apply if the harm affects the said sectors. The Cybercrime Law also penalises those who spread rumours and fake news as well as those who perpetuate (namely, republish and recirculate) such information that, among others, provokes public opinion and intimidates and harms the public interest.

From a general cyber security compliance perspective, many of the licensing instruments published by the TDRA relating to emerging technology such as the internet of things emphasise the importance of cyber controls, particularly as regards the active elements of the related radio frequency dependent infrastructure.

The Signals Intelligence Agency (SIA) is the UAE federal authority responsible for the cybersecurity of the UAE. SIA operates under the direction of the UAE Supreme Council for National Security. Government organisations, semi-government organisations and business organisations that are identified as critical infrastructure in the UAE are required to follow SIA compliance guidelines. The primary standard to follow for SIA compliance is the UAE Information Assurance Regulations.

The TDRA has also established the UAE's Computer Emergency Response Team, which was established by statute and has published a wide-ranging information security policy.

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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?

There is no specific federal legislation or regulation in place; however, the emirate of Dubai has introduced the Dubai Law No. 26/2015 (the Dubai Data Law), which provides for local government and private entities to contribute certain non-confidential information relating to the emirate, known as Dubai Data, to a knowledge and database from which such entities can benefit. The intention is to improve integration, harmonisation and efficiency between services and encourage the development of a smart economy through digital transformation.

Data localisation

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

The Personal Data Protection Law will implement restrictions on transfers of personal data whereby it may only be transferred outside the UAE to limited jurisdictions as determined by the UAE Data Office. If the intended jurisdiction is not deemed to have an adequate level of protection, personal data is only allowed to be transferred outside of the UAE if, among others, the transfers are necessary for the performance of a contract with, or in the interest of, the data subject, the transfers are necessary for establishing a legal claim or the express consent of the data subject is obtained and the transfer does not conflict with the security and public interest of the UAE. These concepts are similar to the ones introduced by the GDPR but have additional considerations of national security issues. The implementing regulations are expected to set out the controls and requirements for these exceptions for transferring personal data to jurisdictions that are deemed to not have an adequate level of protection.

Until the Personal Data Protection Law comes into effect, guidance given by regulators on data domiciliation within the UAE in certain key sectors, including telecommunications, will apply (but this does not come in the form of hard law or publicly available guidance). State-owned entities are also expected to abide by certain data domiciliation rules, which are not set out in hard primary legislation. As the Personal Data Protection Law does not apply to certain free zones, entities registered in the Dubai International Financial Centre or Abu Dhabi Global Market have to adhere to their specific regimes around transfers of personal data that impacts those businesses' freedom to outsource or offshore certain functions.

Key trends and expected changes

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

As there is no expectation that the TDRA will permit any additional public telecommunications service providers to enter the UAE market in the near future, key changes in the market dynamics and regulation are likely to result from increased competition between the two operators. The TDRA has stated previously that the intention behind introducing a second licensed operator was that:

> *Competition is the drive for development, where it leads to higher quality services, lower prices and the adoption of latest technologies. It is a race that pumps innovation and progress into the veins of the sector.*

There is an expectation going forwards that the TDRA will be keen to ensure that as much real competition as possible emerges between the operators.

Being considerably newer in its establishment, du has been playing catch-up around the infrastructure and expertise to compete on a truly level playing field with Etisalat. The two providers have often divided regions up geographically rather than compete directly for the same customers, so customers are effectively faced with a service provider with a de facto monopoly. In 2015, the two providers started bitstream access, a method by which the one network could be shared by the two operators, permitting customers more flexibility to choose a provider where the infrastructure previously restricted their choice. Greater ability for customers to switch between the providers has also been encouraged. It is likely that the TDRA will continue to encourage this competition.

The marked perception of increased competition in the mobile market was increased in 2017 when each of du and Etisalat launched mobile services under new brands: du acquired rights to launch a Virgin mobile-branded service and shortly after, Etisalat launched a prepaid service branded SWYP. Neither Virgin Mobile nor SWYP services are regulated independently of their respective MNOs.

Enterprise-focused information and communications technology (ICT) services' growth through operator divisions or subsidiaries is a key area to watch, particularly as these divisions will compete with a large pool of non-operator affiliated entities. As regards the ICT services' growth being experienced by the operators, enterprise adoption of emerging technology will continue to require regulatory guidance from the TDRA, as well as other concerned regulatory bodies in the UAE, to ensure the balance between advancement in technology and risk management is addressed.

The TDRA has been active in terms of regulatory and policy output covering a range of communications areas including Earth Station Regulations, Space Service Regulations and a new Information Assurance Regulation. One of the most significant developments in light of the various Smart City ambitions in the UAE is the Internet of Things Regulatory Policy, which remains largely untested and has a seemingly broad ambit covering internet of things' services.

One of the areas where change is expected is around the move of operations into mobile financial services, fintech verticals focusing on consumer products and services, and the impact of open banking and liberalisation of the financial services sector in the UAE.

The enforcement of the Personal Data Protection Law and its implementing regulations will be a much-anticipated development. Companies will have to be vigilant for the issuance of the implementing regulations by the UAE Data Office as they will then have six months to align and harmonise their internal processes. It will be interesting to see the extent of penalties decided upon via the implementing regulations and their influence on the manner of implementation of the new personal data protection laws of neighbouring Saudi Arabia that are due to come into force in 2023.

MEDIA

Regulatory and institutional structure

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

The principal source of law in relation to the media sector in the United Arab Emirates (UAE) is Federal Law No. 15 of 1980 Concerning Publications and Publishing (the Media Law). The law covers a large number of regulations on the media including ownership, prohibitions on certain types of reporting and defamation.

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Originally under the Media Law, the Ministry of Culture and Information was the national media regulator. In 2006, Cabinet Resolution No. 14/2006 abolished the Ministry and established a new regulator for the media industry, the National Media Council (NMC), which has now been replaced by the Media Regulatory Office (MRO) in 2021 following the merger of the NMC and the Federal Youth Authority. As well as being the regulator, it is tasked to prepare research and foresight studies relating to the media sector and aims to combat false news and unprofessional media practices.

The Media Law is widely considered to be out of date owing to its obvious focus on print (rather than digital) media. In 2009, a draft revision to the Media Law was circulated, but the content was criticised for being overly restrictive, containing heavy penalties for journalists, and still failing to update the law sufficiently for the digital age and it was eventually shelved. In theory, it could still be signed into law at any time, but this is considered unlikely.

In 2010, the Chairman of the NMC Resolution No. 20 of 2010 (the Chairman Resolution) was issued, which stated that all media, including audio, visual and print forms, must comply with the content of the Media Law. This both reiterated the primacy of the Media Law and confirmed its application beyond the printed media the law envisaged.

The Media Law contains restrictions on content that can be published, including:

- criticising the government or rulers of the emirates or the UAE;
- material that could cause harm to the state interests or security;
- criticism of, or disrespect to, Islam;
- criticism of the rulers of any Islamic or friendly foreign state; and
- circulating or promoting subversive ideas.

The UAE has a history of trying to regulate social-media influencers. In March 2018, the Electronic Media Activity Regulation Resolution 2018 (the EMR) was published, which regulates a wide range of digital media activities including websites that sell content and individuals who seek to monetise their social media popularity by way of an annual licence arrangement. National Media Council Circular No. 13/2020 was then issued to further clarify rules on advertisements on social media including the need for the advertisement to use non-confusing language and restrictions on advertising health-related products, drugs and other pharmaceuticals.

There are also relevant provisions relating to media found in the Penal Code, particularly in regard to defamation, and Federal Decree-Law No. 34/2021 Concerning the Fight Against Rumours and Cybercrime (the Cybercrime Law), when considering digital communications.

Across the UAE there are various media-related free zones that have their own civil regimes, while still being subject to the same criminal restrictions as the main jurisdictions. Many national and international media companies are established in these zones.

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 25 of the Media Law and the resolutions by the MRO provide that the owner of a newspaper must:

- be a UAE national;
- be at least 25 years of age;
- be 'fully competent' to run the service;
- be of good character and behaviour;
- not have been convicted of certain offences relating to morality;
- not occupy a public service role; and
- not be employed by any foreign agency.

Many media outlets are owned, in whole or in part, by the government or prominent local families closely aligned with the government.

There are also certain academic and experience qualification requirements for editors-in-chief and standard writers and journalists, although these are typically not enforced in practice.

The EMR set out requirements of applicants for the licensing regime as well as the mandatory appointment of a 'responsible manager' to act as a representative, although breaches of the EMR by an applicant or licensee do not extend to liability on the part of this responsible manager. There is no requirement in the EMR for the responsible manager to be a UAE national.

Licensing requirements

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

Under the Media Law, all newspapers and news agencies are required to hold a licence before they can be published. The resolutions issued by the MRO have made clear that they consider this to apply to all forms of media outlets in the UAE, not just the printed media.

The proposed news media outlet must apply to the MRO, requesting the granting of such a licence. This can be done online via the MRO's website and must include details of the owner and the proposed media outlet brand. Applications must be in Arabic. The MRO will review the application and, if it is in favour of the licence being granted, will support the application in front of the federal government. The federal government must then approve the application and grant the licence.

The Media Law provides for an applicant to deposit a guarantee of 50,000 UAE dirhams for an application for a newspaper and 20,000 UAE dirhams for other media outlets to be paid along with the application. Fines imposed will be removed from this deposit, which must then be topped up to maintain its original level. The MRO can also charge a range of service fees ranging from 500 UAE dirhams to 100,000 UAE dirhams, dependent on the type of licence sought and the activities covered.

The EMR also set out an annual licensing regime for electronic media activities that have variable fees depending on the category of the regulated activity, the most expensive of which being electronic or online accounts and websites, including specialised ones (commercials, advertising, news, etc), which attract a new application processing fee of 15,000 UAE dirhams and the same amount for a renewal.

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?

There are no specific regulations preventing the broadcasting of foreign-produced programmes, providing that they do not contain any content that is not permitted under the Media Law. There are also no official requirements in relation to the minimum amount of local content.

Advertising

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

The Media Law contains several restrictions on advertising similar to those found in many other nations, although unlike in jurisdictions

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that rely largely on self-regulation, advertising standards are enforced by the MRO.

Prohibited advertisements include those that are 'inconsistent with public conduct', a phrase capable of covering a broad range of cultural sensitivities including inappropriate dress or behaviour. It also prohibits adverts that mislead the public, could cause harm to the state or the value of society or contain subversive ideas.

The MRO also issued an official advertising guide in 2018 that consolidates various principles on advertisements in the UAE and protects local religious, cultural and social values and improves the freedom of expression of the media.

The EMR address electronic advertisements, including the use of digital social media and imposes a broad licensing requirement on those involved in such online advertising.

The Telecoms and Digital Government Regulatory Authority (TDRA) Consumer Protection Regulations also contain restrictions on the advertising of products or services regulated under Federal Law No. 3 of 2003 Regarding the Organisation of the Telecommunications Sector. These include the requirement to be able to evidence to the TDRA's satisfaction any statements or claims made in the advertisement, whether direct or implied and restrictions on the form of comparative advertising.

Federal Law No. 15/2020 On Consumer Protection also prohibits misleading advertisement whether it relates to the price or the description of the goods. Further, advertisements related to consumers shall be made in Arabic (including other languages in addition to Arabic).

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?

There are no official must-carry obligations in the UAE. In line with the requirements on the media not to insult or harm the state and for official news reporting to be undertaken through a centralised, state-controlled function, certain state media content will sometimes unofficially be required to be included as part of the schedule. Also, local broadcast media channels will observe mourning content (eg, soft music or recitation of the Koran) in circumstances where there has been a death of a royal or some other nationally observed tragic event.

Regulation of new media content

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

There is no distinction in the Media Law between different types of media content according to their delivery. The Chairman Resolution specifically confirmed the application of the Media Content across different forms of delivery. In July 2017, the UAE Cabinet issued Resolution No. 23 of 2017 concerning media content consolidated content rules and extended these specifically to digital content and then, more recently, the EMR establish a licensing and compliance framework for digital media (including licensure relating to social-media influencers).

On 9 September 2020, the MRO issued National Media Council Circular No. 13/2020, a circular regarding social-media advertisements emphasising the need to obtain prior approval from the Media Licensing Department. This will impact companies, brands, influencers, and anyone who carries out social-media advertising activities on a commercial basis. Further, the circular sheds more light on the regulation of advertising on social media including the need for the product to be authentic and not exaggerated and not cause confusion with other similar names. The identity of the advertisement must be clear and distinctive from other materials presented; for example, phrases like 'paid advertisement' as opposed to 'in collaboration with' should be used to make it clear that the advertisement is commercial or not.

Ultimately, the fundamental principles behind the UAE's regulation of traditional media and the UAE's regulation of new media are not different.

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 broadcasting was completed in 2012 in coordination with other Gulf Cooperation Council states such as Qatar and Saudi Arabia.

The additional radio capacity was allocated to improve mobile telephone services.

Digital formats

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

No regulation restricts how broadcasters are permitted to use their spectrum allocation.

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 official assessment or regulation of media plurality in the UAE. Many media service providers are owned or part-owned by the UAE government or members of prominent local families closely linked to the government.

The MRO oversees the content prepared by the media and any material that is considered to be undesirable is likely to be blocked. Particularly in a commentary in relation to the state, foreign affairs or Islam, journalists are likely to self-censor and a similar position will typically be taken across all media outlets. On controversial or sensitive issues, journalists will often take their lead from the single official government news agency, the Emirates News Agency operated by the MRO, and adopt identical reporting positions.

Key trends and expected changes

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

Notwithstanding the introduction of the EMR, there remains a general expectation that there will at some point be an overhaul of the legal framework surrounding the media in the UAE, in particular, to address digital media and journalist liability. There are no clear indications that this is likely to take place shortly or whether the 2009 draft media law would point to the likely outcome of such overhaul. Another key area to observe will be around the website censorship committee established through the MRO but with representatives from the Ministry of the Interior, the TDRA and the Signals Intelligence Agency.

The rise of social media has also spurred a slew of regulations looking to regulate this area and stop the spread of misinformation. Even the Cybercrime Law that came into force in January 2022 provides more protection against online crimes committed via social media networks and IT platforms. For example, the Cybercrime Law now penalises taking pictures of others without permission and also photographing victims of accidents or disasters and spreading the same. As

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social media becomes more integrated into everyday life, the increased regulatory scrutiny and enforcement of such laws will be one to watch in the coming years.

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?

The communications and media sectors are regulated by the Telecoms and Digital Government Regulatory Authority (TDRA) and the Media Regulatory Office (MRO respectively. Given the convergence in the sector, there is some overlap between these and indeed other United Arab Emirates (UAE) regulators and their respective jurisdictions. As the communication and media sectors include embedded payment propositions for consumer services, the regulatory jurisdiction of financial services regulators (including the Central Bank of the UAE) can also be triggered.

With regard to competition, despite the UAE adopting a competition law framework in the form of the Federal Law No. 4 of 2012 concerning the Regulation of Competition (the Competition Law) several years ago, competition regulation in the UAE is still in its early stages and not as sophisticated as the law may suggest. The Competition Law has technically been in force since 2013; however, the executive regulations (Council of Ministers' Resolution No. 37 of 2014) (the Regulations) were not passed until 2014 and two relevant resolutions, which provided key thresholds and definitions, were not passed until 2016 (the Resolutions).

The Competition Law also provided for a Competition Regulation Committee (the Committee) to be established to oversee general competition law policy in the UAE. Day-to-day enforcement of the Competition Law is the responsibility of the Ministry of Economy, acting through its Competition Department. To date, there have been no officially publicised cases of Competition Law enforcement, although we are aware that the Competition Department has been established and issued views on specific cases that have been brought to it (in particular, with regard to merger-control notifications).

The Competition Law provides that its provisions shall be enforced on all businesses in relation to their economic activities or the effect of their economic activities in the UAE (even where the conduct takes place outside of the UAE). It is as yet unclear how the courts will react to any jurisdictional disputes.

The telecommunications sector is currently specifically excluded from the remit of the Competition Law. Federal Law No. 3 of 2003 Regarding the Organisation of the Telecommunications Sector stipulates that the TDRA shall have the competence to issue regulations, instructions, decisions and rules regulating and ensuring competition in the telecommunications sector. The TDRA includes terms in the licences issued to operators requiring them not to participate in anticompetitive practices.

Appeal procedure

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

Decisions of the Competition Department can be appealed directly to the Minister of Economy within 14 days of the applicant becoming aware of the decision. Such appeals will be considered by the Committee, which will submit recommendations to the Minister within 10 days. The Minister must then respond to the applicant within 30 days of the appeal being filed; if nothing is heard at this time, the decision is deemed to be rejected. After this, the only remaining appeal is to a court of law (which must take place within 60 days of the decision or the deemed decision).

Decisions issued by the MRO may, under Federal Law No. 15 of 1980 Concerning Publications and Publishing (the Media Law), be challenged before the courts within 60 days of the decision that is objected to. In practice, it would be normal to first object to the decision unofficially and discuss the matter directly with the MRO, prior to launching a formal court action.

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.

The key concepts in the Competition Law include a prohibition on anticompetitive agreements, a prohibition on any abuse of a dominant position and merger control. Anticompetitive behaviour is broadly similar to the regimes in jurisdictions with more developed competition-law systems, such as Europe and the United States. The threshold for dominance is defined by the Regulations to be 40 per cent of the relevant market. Mergers or joint ventures of a certain size must be pre-notified to the relevant government ministry at least 30 days before completion.

The Competition Law also provides for the issue of individual exemptions for businesses in relation to particular agreements or practices where this is considered appropriate, which can be obtained by application to the Ministry's Competition Department.

It remains to be seen how the Competition Law will be implemented in practice and whether there will be consistency in approach. Once the Competition Department and Competition Regulation Committee begin to make decisions and recommendations, it is unlikely that these will be available to the public. The Competition Law specifically requires the Competition Department to take steps to maintain the confidentiality of information provided by the parties, which is considered confidential. Accordingly, trends in this context will not be easy to be identified through conventional research; however, as market consolidation and convergence in the sector take effect, the approach taken by authorities will be easier to comment on.

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United Kingdom

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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?

Communications law and regulation in the United Kingdom is principally founded on the Communications Act 2003 (CA 2003). This legislation implemented several EU laws aimed at harmonising, simplifying and increasing the usability of telecoms regimes across all EU member states. CA 2003 also grants authority to the Office of Communications (Ofcom), the UK's national regulatory authority for communications. The Electronic Communications and Wireless Telegraphy (Amendment etc) (EU Exit) Regulations 2019 and the Broadcasting (Amendment) (EU Exit) Regulations 2019 were made on 12 February 2019 and came into on 31 January 2020, both of which amend certain deficiencies within CA 2003. Additionally, the United Kingdom has implemented Directive (EU) 2018/1972 (the European Electronic Communications Code) (EECC) through the Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020, which were made on 2 December 2020 and came into force on 21 December 2020. The EECC replaces the previous EU authorisation directives, but the authorisation regime remains largely unchanged.

The role of Ofcom is to set and enforce regulatory rules in all sectors for which it is responsible and, along with the Competition and Markets Authority (CMA), to promote fair competition across the industry by enforcing competition laws. As part of Ofcom's regulatory principles, Ofcom must take the least intrusive approach to intervention and will only do so where the intervention would be evidence-based, proportionate, consistent and transparent.

Although Ofcom is accountable to Parliament, the Department for Culture, Media and Sport (DCMS) is the UK government department with overall responsibility for developing the telecoms regulatory framework within the United Kingdom. Ofcom is restricted to acting within the powers conferred on it by Parliament.

The Ofcom 2022/2023 Plan of Work focuses on continued investment in high quality and reliable broadband and mobile networks across the United Kingdom, ensuring people and businesses across the country can access key communications services so that no one is left behind, ensuring customers are treated fairly by their providers and tackling scams, managing the UK's spectrum to drive efficiency and support innovation, supporting and developing UK media, protecting audiences from potentially harmful and offensive content, and establishing regulation of video-sharing platforms as it prepares for regulatory responsibilities introduced by the Online Safety Bill.

The UK government has also set out a Statement of Strategic Priorities for telecommunications that are as follows:

- world-class digital infrastructure;
- furthering the interests of telecoms consumers;
- secure and resilient telecoms infrastructure; and
- postal services.

Although there are currently no restrictions on foreign ownership of telecoms services within the United Kingdom, the current UK government pledged to introduce new rules on foreign control for the telecoms industry as part of its general election manifesto in May 2017.

The National Security and Investment Act 2021 (NSI Act), which came into effect on 4 January 2022, reformed the UK government's ability to scrutinise foreign investment in the communications and data infrastructure sectors. If an acquisition of a company falls within communication or data infrastructure (two of the 17 sectors called out in the NSI Act) then the NSI Act will apply, granting the Department for Business, Energy and Industrial Strategy (acting through the Investment Security Unit) powers to scrutinise and review the transaction if one of the trigger events occurs, where a threshold of 25, 50 or 75 per cent of votes or shares in a qualifying entity is hit, acquisition of voting shares that prevent the passage of a resolution governing the affairs of the qualifying entity, the acquisition of material influence over a qualifying entity or the acquisition of a right in relation to a qualifying asset. A telecoms service provider will fall within the definition of a qualifying entity if it is a UK entity, carrying on activities in the United Kingdom or supplying goods and services to the United Kingdom. If the NSI ACT applies, companies must either make a mandatory notification or can make a voluntary notification to the Investment Security Unit. The Secretary of State will review the transaction and can either approve, approve with conditions or prohibit the entities from completing the acquisition.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

The general authorisation regime under CA 2003 makes no distinction between fixed, mobile and satellite networks and services. All electronic communications networks (ECNs), electronic communication services (ECSs) and associated facilities (AFs) fall under the scope of CA 2003, irrespective of the means of transmission. Moreover, under the general authorisation regime, there is no requirement for specific licensing of ECNs, ECSs and AFs, provided they comply with Ofcom's General Conditions.

The broad definition of ECNs to include any transmission system for the conveyance of signals between a transmitter, a medium and a receiver, by use of electrical, magnetic or electromagnetic energy, is in line with the European Union's overarching principle of technology neutrality. Equally widely defined, an ECS is an internet access service that has as its principal feature the conveyance of signals through an ECN, excluding content services (the provision of material such as information or entertainment). Under CA 2003, an AF is a facility, element or

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service that is, or may be, used to enable the provision of an ECN or ECS or other services on that network or service, or supports the provision of such services.

ECNs or ECSs can provide networks or services to the public without the need for prior authorisation from Ofcom where they have complied with the General Conditions of Entitlement (the General Conditions). ECNs or ECSs may, however, need a licence in relation to the particular network or service that they are operating. A revised version of the General Conditions came into force on 1 October 2018, while an unofficial consolidation version of the General Conditions came into force on 17 December 2021.

There are currently 17 General Conditions in force, the majority of which must be complied with by all ECNs and ECSs. The remainder apply in more limited circumstances, such as for public pay telephones. Under CA 2003, Ofcom has the power to amend or revoke any of the General Conditions as appropriate. In the smaller number of cases where an ECN or ECS is subject to specific conditions, Ofcom will notify that provider of the fact that those conditions are to be imposed. The General Conditions apply to ECNs irrespective of whether a provider owns or rents some or all of the network in question. The ECS will generally be the entity with a direct contractual relationship with the end user, or the reseller or other intermediary in the case of a wholesale provider. Ofcom provides further guidelines on which organisations will fall within these categories.

In February 2022, Ofcom issued a statement on changes to the General Conditions to implement its September 2021 decisions that required service providers to operate a 'one touch' process for all UK customers who wish to switch landline and broadband service providers. It is expected that the new switching process will apply from April 2023. This will primarily affect Condition C7.

The implementation of the EECC means that ECSs now expressly include internet access services, interpersonal communications services (differentiated into number-based or number independent) and services consisting wholly or mainly in the conveyance of signals. Number-independent interpersonal communications must not be subject to the General Conditions as they 'do not benefit from the use of public numbering resources and do not participate in a publicly assured interoperable ecosystem'.

Entities using radio spectrum, such as mobile network operators or satellite service providers, will require the grant of a licence from Ofcom under the Wireless Telegraphy Act 2006 (WTA 2006). Each grant will detail the specific frequency, use, fees and duration of the licence. Some services, such as receive-only earth stations, may not fall within the scope of the WTA 2006 licence condition, but still require Ofcom to authorise any such use under a scheme of recognised spectrum access. Operators of set-top boxes that convert signals for viewing will also need an operating licence under the Broadcasting Act 1996. The use of certain frequencies in the radio spectrum for short-range devices, such as alarms and radio frequency identification equipment, is exempt from the need to obtain licences.

Ofcom's approach to spectrum award is to allow the market as much flexibility in how the spectrum is used without assigning it to a particular technology or application. While spectrum licences are most commonly awarded via auction, Ofcom can design these in such a way as to ensure that there is the greatest possible competition within the market. In March 2022, Ofcom released its Spectrum Roadmap to outline the work that Ofcom plans to do to deliver on the strategy to manage the UK's spectrum. There are three key themes:

- network evolution and divergence;
- accelerating innovation and sharing with spectrum 'sandboxes'; and
- better data for better spectrum management.

The UK's latest auction by Ofcom was for spectrum to service 5G in April 2021.

Licence duration

Licences issued by Ofcom under WTA 2006 have varying durations depending on the type of licence granted. The mobile 3G licences granted in 2000 were subject to a fixed term of 20 years. Following the WTA (Directions to Ofcom) Order 2010, and subsequent consultation by Ofcom, mobile licences will continue for an indefinite period but be subject to annual renewal fees. ECNs and ECSs under the general authorisation regime are not subject to licensing requirements and, therefore, there is no set licence duration applicable to the provision of ECNs and ECSs.

Modification of licences

Although ECNs and ECSs will not be subject to any direct licence modification, under CA 2003 Ofcom may impose changes to the General Conditions or specific conditions from time to time. CA 2003 requires that Ofcom publish a notice, outlining the proposed changes and justifying its reasons for these, providing a period for proposals from those providers affected of not less than one month. Variations to significant market power (SMP) conditions are subject to additional requirements, including that Ofcom must consider all representations made to it about the proposal and have regard to every international obligation of the United Kingdom as notified to it by the Secretary of State. Licences under WTA 2006 may be varied by Ofcom providing written notice to the licence holder or publishing a general notice to all holders of a class of licence.

Fees

As a result of the passing of the Digital Economy Act 2017 (DEA 2017), Ofcom is entirely funded through industry fees and charges. Communications service providers (with a revenue of more than £5 million) must pay a fee based on 0.0872 per cent of relevant turnover for the year ending 31 December 2020. Operators that have Code powers under the Electronic Communications Code (conferring benefits such as not having to apply for a street works licence to install certain equipment) must also pay an annual fee to Ofcom. The charge for 2022 to 2023 is £1,000. Operators must also pay a one-off charge of £10,000 for Ofcom's cost of dealing with the application for Code powers.

Radiocommunications

Ofcom has the power under WTA 2006 to set fees concerning wireless telegraphy licences, other than for those awarded by auction. Under WTA 2006, Ofcom can prescribe administered incentive pricing, allowing for fees to be set at above administrative costs to encourage efficient use of the spectrum. Ofcom must set out the fees through published regulations. Ofcom can either update existing regulations or publish new ones. Most recently, the Wireless Telegraphy (Licence Charges) Regulations 2020 came into force on 21 October 2020. Ofcom held consultations on proposed annual licence fees for mobile network operators of 900 megahertz (MHz) and 1800MHz frequency bands, which closed on 3 August 2018 and for UK Broadband's 3.4 gigahertz (GHz) and 3.6GHz spectrum, which closed on 11 February 2019. See Ofcom's website for more details.

Television and radio

Ofcom also charges licence fees for the radio and television sectors. The percentage of annual turnover payable varies according to the turnover of the operator. Further details can be found on Ofcom's website.

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Public Wi-Fi

The Investigatory Powers Act 2016 (IPA 2016) applies to public Wi-Fi providers, which may result in them being required to retain and disclose communications data to authorities.

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?

In its 2022 Spectrum Roadmap Management Strategy statement, Ofcom highlighted the importance of providing as much flexibility as possible in spectrum licence conditions to liberalise the rights of the licensee, allowing that user to re-purpose the use of its spectrum without needing to seek a licence variation.

Ofcom's 2022 statement set out three access licences for the use of spectrum. First is a Technically Assigned licence that allows Ofcom to coordinate the individual assignment of frequencies within the band. This will be granted where various users apply to use the same spectrum and where failure to coordinate licensed users may result in harmful interference. Second are light licenses that are available on request and do not require any assignment or coordination by Ofcom, which will be available where there is limited risk of interference between different users. Finally, there are block assigned licences that provide access to a block of specific spectrum within a geographical area, and licensees then manage spectrum use within the block. These are generally awarded by auction. Defining interference parameters remains an important tool for allowing licence owners to understand how they can use their own network and the possible interference levels they may experience.

Alternatively, there is the licence exemption for radio equipment if its installation or use is not likely to result in undue interference to other radio equipment. A user will not need a licence if their device complies with specified technical parameters, which means that most mass-market consumer devices are licence exempt.

Spectrum trading

Spectrum trading is allowed in the United Kingdom, with the prior consent of Ofcom only required for the trading of mobile licences. The laws governing such trading are:

- WTA 2006;
- the Wireless Telegraphy (Spectrum Trading) Regulations 2012 (the Trading Regulations); and
- the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 (the Mobile Trading Regulations).

The parties to the transfer must notify Ofcom with certain information about the trade before Ofcom can then publish a notice setting out information on the trade and basic details about the licence. For mobile transfers, Ofcom must consent to the transfer, possibly giving further directions to the parties. Certain types of partial transfers are also permissible under the Mobile Trading Regulations, although these may be restricted to limit the number of available licences in the band. Ofcom produced its guidance on spectrum trading in March 2020, which provides further details.

Ex-ante regulatory obligations

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

Ofcom has powers to impose ex-ante regulations on markets where that market is found not to display effective competition. Under these ex-ante regulatory powers, Ofcom may impose certain SMP conditions on a communications provider where that provider is deemed to have SMP such that it can dominate a market, namely, it has a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, consumers and customers. The EECC requires that Ofcom carries out market reviews to establish the level of competition before any SMP regulation can be imposed. If a market is found effectively competitive (namely, no operator has SMP), taking into account changing market conditions, no regulation can be imposed. Ex-ante regulation must be removed when the market has become effectively competitive. In 2002, the European Commission published guidance on how national regulatory authorities (NRAs) should approach imposing SMP conditions on a provider. These were updated in 2018 to reflect the changes to EU competition law generally as well as changes to the telecoms sector.

Under the EU framework, the European Commission identifies the set of markets in which ex-ante regulation may be warranted. In its latest Recommendation on Relevant Markets, adopted on 21 December 2020, only the following markets were identified:

- wholesale local access provided at a fixed location (to ensure access-based competition in the broadband mass market); and
- wholesale dedicated capacity (which is mainly relevant for business use requiring a higher quality of connectivity).

As the UK NRA, Ofcom is required to carry out SMP assessments and review and report on existing SMP determinations every five years. Since 31 December 2020, Ofcom's decision-making concerning SMP markets and related conditions is no longer subject to EU oversight. The current position on SMP markets in the United Kingdom is as follows.

Business connectivity markets

On 28 June 2019, Ofcom published the final statement and concluded that it will continue to regulate what Openreach can charge providers to use their leased-line networks and imposed requirements on Openreach for repairs and installations. Openreach will also be required to give competitors in certain areas physical access to its fibre-optic cables.

Physical infrastructure market

On 28 June 2019, Ofcom decided on regulation that will allow all telecoms providers access to Openreach's network of underground ducts and telegraph poles.

Wholesale fixed telecoms market (Hull)

The Ofcom consultation published in July 2020 setting out regulation plans for five years from April 2021, including proposals to remove regulation from the wholesale fixed analogue exchange line, integrated services digital network 2 and 30, wholesale call origination, and wholesale broadband access markets. Regulation to remedy Kcom's SMP will continue.

Wholesale fixed telecoms market

The Ofcom statement published on 18 March 2021 continues to allow all network operators access to Openreach's network of underground ducts and telegraph poles. Depending on local competition, Openreach may continue to be required to provide wholesale access to its network or be subject to a cost-based charge control. Ofcom did not impose price caps on full-fibre connections provided by Openreach.

Wholesale voice market

The Ofcom statement published on 30 March 2021 states the decision to deregulate wholesale call origination and remove mobile donor conveyance charges price cap, although these continue to be

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required to be set at cost. Regulation and charge controls on mobile call termination and wholesale call termination have been retained. New internet protocol interconnection regulations were introduced.

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?

In 2005, BT gave binding undertakings to Ofcom under the Enterprise Act 2002 (EA 2002) under which it agreed to implement a functional separation of its network division – Openreach – from the rest of the BT group. Organisational boundaries and information barriers comprised the basis of this functional separation, with Openreach obliged to deliver products providing access to the first-mile infrastructure to all communications providers on a non-discriminatory basis.

The status and operation of Openreach was reviewed in 2016 with Ofcom considering proposals, including retaining functional separation with increased independence of Openreach's governance, along with stricter access and quality requirements for Openreach (following several criticisms levelled at BT for abuse of their Openreach monopoly, underinvesting in the UK's broadband infrastructure and charging high prices with correlating poor customer service). Following Ofcom's announcement of its intention to file a formal notification to the European Commission to commence the separation process, in March 2017, BT Group agreed to implement a legal separation of Openreach from the BT group. On 31 October 2018, Ofcom published a notice confirming that BT was released from its EA 2002 undertakings given in respect of Openreach. Ofcom continues to monitor Openreach's strategic independence to ensure that the separation is operating in practice. If Ofcom is not satisfied that it does, a further option would be a structural separation that would see Openreach being completely separated from the BT Group.

Ofcom published its most recent monitoring report on 8 December 2021, where the trend of Openreach becoming more independent has continued. It was reported that Openreach has continued to prepare financial strategies without any undue influence from BT, and Openreach has acquired funding for its strategy without BT's input. Ofcom closely monitored the impact of the covid-19 pandemic on BT and Openreach's relationship but has not seen any evidence that it has significantly changed, noting that Openreach has continued to secure funding despite the challenges BT has faced.

Universal service obligations and financing

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

The law on universal service provision is partly derived from Directive 2009/136/EC (Universal Service Directive), which has now been incorporated into the EECC and was implemented in the United Kingdom on 21 December 2020. Under the Electronic Communications (Universal Service) Order 2003, BT and Kcom, the designated Universal Service Providers in the United Kingdom, must comply with conditions aimed at ensuring the provision of universal service. The obligations include:

- special tariff schemes for low-income customers;
- reasonable geographic access to public phone boxes;
- a connection to the fixed network (including functional internet access); and
- the provision of a text relay service for customers with hearing impairment.

DEA 2017 established a power for the Secretary of State to include a broadband universal service obligation (USO) for a legally binding minimum level of broadband service with a connection of at least 10 megabits per second (Mbps) download speed and upload speeds of at least 1Mpbs by giving each household and business a new legal right to demand an affordable broadband connection up to a reasonable cost threshold. This was implemented through the Electronic Communications (Universal Service) (Broadband) Regulations 2018, which came into force on 4 December 2018. Ofcom designated BT and Kcom (in Hull) as the universal service providers to which broadband conditions are to apply. With the Broadband Delivery UK programme having brought fixed-line superfast broadband to more than 96 per cent of the United Kingdom, the 2018 USO is geared towards achieving the final 4 per cent.

From 20 March 2020, customers have the right to request an affordable broadband connection from BT or Kcom including requesting an upgraded connection should it not reach a download speed of 10Mbps and an upload speed of 1Mbps. If customers only have access to a service that is priced over £48.90 per month, there is the right to request a universal service connection.

The relevant provider will have 30 days from the request to confirm whether the customer is eligible. The customers will be eligible if their property does not already have access to affordable broadband and is not due to be connected by a publicly funded scheme within 12 months. The costs of providing connection will be paid for up to £3,400. If the required work costs more, the customers will have an option to either pay the additional costs or seek an alternative solution outside the universal service. Customers will pay the same price as anyone else on the same package, and this will be no more than £48.90 a month. Most people will get a connection within 12 months, but it may take up to 24 months.

The Electronic Communications (Universal Service) (Costs) Regulations 2020, which came into force on 15 June 2020, set out how universal service providers BT and Kcom will be compensated, including Ofcom rules for assessing the extent of the financial burden associated with the provision of universal services.

Number allocation and portability

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

Under retained EU law, end users have a right to keep their original telephone number when switching communications provider. Under its powers under CA 2003, Ofcom has laid out the conditions for number portability under General Condition B3. Under this condition, an end user's original service provider must provide them with a porting authorisation code in the shortest possible time when requested. The end user may then pass this code to a new provider and the porting must then take place within one business day.

Ofcom has, however, outlined its preferred view that number portability should, in fact, be 'gaining-provider led'. Under this approach, the transfer of a number would be controlled by the new provider, with the consumer only needing to contact this party. Ofcom believes that this would allow for easier and quicker transferring of numbers. Ofcom started a consultation on the mobile switching process (including number portability) in 2016 and in December 2017 published the decision to reform the process for switching mobile provider. In January 2019, further guidance was published relating to requests for switching multi-Sim contracts and accounts. In July 2019, Ofcom introduced new rules under which mobile customers can leave their network by sending a short, free text message without needing to call their existing provider. Ofcom has also banned mobile providers from charging for a notice period that runs after the switch date. Also, if a customer's request to

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port their number is being frustrated, the old provider will be put on notice and will have up to five days to resolve any issues. If it fails to do so, the customer now has the right to trigger the process that will enable their new provider to override this obstacle. The customer will need to submit a complaint on Ofcom's website, which will be assessed by an independent industry panel. See the Ofcom website for more details.

Ofcom's consultation, launched on 3 February 2021, confirmed new switching rules for providers of landline, broadband and mobile services, which will come into force in December 2022. The consultation sets out proposals on the process that residential landline and broadband customers will use to switch from that date and proposes limited changes to the information mobile providers must give residential customers when they want to switch.

Customer terms and conditions

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

As well as any service contracts in the communications sector being subject to the Unfair Terms in Consumer Contracts Regulations 1999 (as 'services' has been determined by Ofcom to include fixed and mobile phones, broadband, and pay-TV services), part C of the General Conditions by Ofcom imposes consumer protection conditions. Condition C1 imposes minimum information provision requirements in consumer contracts, including a maximum initial duration of two years and conditions for termination. One of the matters to be disclosed includes details of prices and tariffs, which is further extrapolated under Condition C2. Under this Condition, all operators must make available clear and up-to-date information on their prices and tariffs, as well as on their standard terms and conditions of access to, and use of, publicly available telephone services.

Condition C4 and CA 2003 further require that dispute resolution mechanisms provided by the communications provider or otherwise are accessible to their domestic and small business customers (namely, businesses with 10 or fewer employees). The two dispute resolution schemes approved by Ofcom for this purpose are the Ombudsman Services and the Communication and Internet Services Adjudication Scheme.

In 2019, Ofcom introduced a series of new rules with a view to increasing fairness for customers. The new protections require providers to:

- provide clear and honest information to prospective broadband customers concerning a minimum guaranteed speed before they commit to a contract;
- compensate broadband and landline customers when they experience difficulties and delays in receiving the service;
- inform customers before their contract comes to end and explain their best available deal (including those available to new customers); and
- allow mobile phone customers to switch provider with a text message.

As part of the Fairness Framework, Ofcom has also launched a review to ensure clearer, fairer deals for customers with bundled mobile airtime and handset contracts and started reviewing broadband pricing practices, examining why some customers pay more than others. Any terms that are deemed to be unfair will not be binding on consumers and Ofcom has a duty to consider any complaint that it receives from a consumer about unfair standard terms and conditions. Under Part 8 of the EA 2002, Ofcom has enforcement powers against sellers and suppliers who breach consumer protection legislations.

In January 2020, Ofcom published a framework outlining how it will determine whether customers are treated fairly by communications service providers. Ofcom will consider the following aspects:

- how providers treat their customers throughout the customer journey;
- who is being harmed;
- the extent of the harm;
- the importance of the service; and
- whether the service depends on risky new investment.

In July 2020, Ofcom published a guide for phone, broadband and pay-TV providers on treating vulnerable consumers fairly. Ofcom will monitor companies' performance, including against its Fairness for Customers commitments. In March 2022, Ofcom published proposals to update this guidance in line with the cost-of-living crisis. It suggests that communications providers should assist those who are facing financial hardship with their phone and broadband bills by emphasising the help and support available, getting in touch with customers in different ways to ensure that all customers are treated fairly and avoid imposing restrictions in contracts for services to force payment.

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 principle of net neutrality was enshrined into law by Regulation (EU) No. 2015/2120 (the 2015 EU Roaming and Open Internet Access Regulation) (the 2015 Regulation) (implemented in the United Kingdom by the Open Internet Access (EU Regulation) Regulations 2016 – necessary for designating Ofcom as the UK national regulatory authority), which prohibits discrimination, interference or paid prioritisation affecting end-user access. It includes transparency rules requiring internet access services to publish information on any traffic management measure that could affect end users (in terms of quality, privacy and data protection), as well as information on fair use policies, actual speeds, data caps and download limits (among others). It further requires Ofcom to monitor and enforce the rules. Ofcom published its latest report on compliance in November 2021 to cover the period from May 2020 to October 2021, finding that fixed and mobile networks have continued to cope well given the increased demands during the covid-19 pandemic; fixed download and upload speeds continue to increase; and Ofcom's monitoring and reporting work in this period has continued to support ongoing ISP compliance with the 2015 Regulation. From this report, Ofcom launched a consultation on whether the annual monitoring report can be improved, and initial findings are expected to be published later in 2022. See the Ofcom website for more details.

The 2015 Regulation now applies as retained EU law, as amended by the Open Internet Access (Amendment etc) (EU Exit) Regulations 2018 to address issues arising from the United Kingdom exiting the European Union and provide for amendments such as removing references to 'national regulatory authority', 'common rules' and requirements for Ofcom to follow requirements set by the European Commission and the Body of European Regulators for Electronic Communications (BEREC). Following Brexit, Ofcom does not need to implement the BEREC guidelines but still considers them in compliance reviews where appropriate.

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Platform regulation

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

While there is, at present, no specific legislation or regulation specifically governing digital platforms in the United Kingdom (although there are plans to introduce such), general authorisation provisions under CA 2003 will apply. Ofcom's remit covers the following platforms:

- digital terrestrial television;
- digital audio broadcasting;
- radio; and
- video-on-demand (VOD) services.

Any other digital platforms are subsequently only subject to general competition law and sector-specific regulations.

The complex nature of digital platforms and the difficulties in understanding their competitive effects has led the UK government and the CMA to take a flexible and case-by-case approach to policing digital platforms.

The CMA published a report of its online platforms study in July 2020, recommending the implementation of a new pro-competition regulatory regime. A Digital Markets Unit (DMU) should be empowered to enforce a code of conduct to govern online platforms with market power and make pro-competitive interventions to tackle sources of market power. The government responded in November 2020, accepting the CMA's findings and commissioning the Digital Markets Taskforce to provide advice on the code of conduct. The DMU was established within the CMA on 7 April 2021 to focus on operationalising and preparing for the new regulatory regime to be legislated by the government later in 2021.

On 9 March 2022, the UK government published its Plan for Digital Regulation, which aims to drive agile regulation, offering clarity and confidence to consumers and businesses. Regulation will be underpinned by three principles:

- actively promoting innovation;
- achieving forward-looking and coherent outcomes; and
- exploiting opportunities and address challenges in the international arena.

The Plan set out a timeline of strategy reviews and consultations that the government intended to undertake across three-, six- and 12-months including areas such as artificial intelligence, cybersecurity, media literacy, innovation and national data. The UK government also intends to bring out new legislation for online safety (which has already been proposed by the Online Harms Bill), digital competition, cyber security and digital imprints in election material.

There is proposed digital competition legislation that will soon be introduced to Parliament. This intends to designate firms that have strategic market status that will be subject to a mandatory code of conduct and pro-competitive interventions. This would formally also set up the DMU and set out its relevant powers and duties. Although it is operating to a degree since April 2021, its exact duties and the regime for which it will be monitoring compliance will be set out in the digital competition legislation.

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?

There is currently no legislation or regulation covering NGA networks in the United Kingdom. Indeed, Ofcom has stated its role is not to provide operators with incentives to make particular investments, but rather to attempt to ensure that the incentives for efficient investment are not distorted as a result of disproportionate regulation.

Pursuant to the undertakings entered into between BT and Ofcom in 2002, BT must allow its competitors access to its virtual unbundled local access points to foster competition over the supply of superfast broadband services to consumers. BT is also required to allow other providers the option of investing in NGA by giving access to its ducts and poles and other physical infrastructures. On 28 June 2019, Ofcom decided to open up BT's infrastructure to improve access to Openreach's underground ducts and poles for competing providers of fibre broadband.

In April 2021, the UK government announced the launch of the £5 billion Project Gigabit, in collaboration with Building Digital UK – now a DCMS executive agency – which, in its first phase, will provide more than 1 million hard-to-reach homes and businesses with next-generation gigabit broadband. In an update published in February 2022, it was reported that nearly two in three UK premises now have access to a gigabit-capable connection.

In January 2020, Ofcom published a four-point plan to support investment in fibre networks, which included:

- setting Openreach's wholesale prices in a manner that encourages competition from new networks and investment by Openreach;
- ensuring that customers can access affordable broadband and preventing Openreach from restraining competition;
- supporting Openreach's investment in rural areas; and
- closing the copper network to cut Openreach's costs of running two parallel networks.

BEREC released a final report, dated 13 June 2019, concerning access to physical infrastructure in the context of market analyses, citing that physical infrastructure (eg, ducts and poles) represent a significant proportion of the investment in NGA networks. The report emphasised the benefits of measures aimed at facilitating greater use of existing physical infrastructure that can reduce the civil engineering works required to deploy new networks, significantly lowering costs. Although following Brexit Ofcom is not required to implement BEREC guidance, it does still have regard for the guidance so, in time, this may see regulatory change around access to physical infrastructure supporting NGA networks.

Data protection

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

Regulation (EU) No. 2016/679 (General Data Protection Regulation) (GDPR) governs data protection in the United Kingdom with effect from 25 May 2018. The GDPR generally imposes more stringent compliance obligations on both data controllers and data processors, alongside more onerous information requirements, to ensure that the personal data of data subjects is afforded an adequate level of protection. The scope of the regulation is also expanded and may, therefore, affect telecoms providers located outside the European Union. The GDPR was implemented into UK law under the European Union (Withdrawal) Act 2018 and the Data Protection Act 2018 (DPA 2018), which received Royal Assent on 23 May 2018 and came into force on 25 May 2018. The purpose of DPA 2018 includes:

- incorporating elements of the GDPR into UK law, meaning that the UK and EU data protection regimes are aligned after Brexit (which may increase the likelihood of an adequacy decision from the European Commission);
- exercising derogations to the GDPR in certain areas;

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- clarifying the role of the Information Commissioner's Office (ICO); and
- consolidating data protection enforcement, by increasing fines and introducing two new criminal offences.

The Withdrawal Act ensured that the effect of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419) (DP Brexit Regulations 2019) would not have effect until the end of the transition period so that UK law did not diverge from EU law. After the transition period, the DP Brexit Regulations 2019 introduced the new UK GDPR and the GPDR will now be known as the EU GDPR in the United Kingdom. These Regulations ensured that the UK data protection framework continued at the end of the transition period and incorporates certain features of the EU GDPR for domestic purposes, such as a wide territorial scope. Several changes include the following:

- the Secretary of State has the power to designate a third country or international organisation as providing an adequate level of protection for personal data under UK GDPR without needing to consult the European Data Protection Board (the ICO will still need to be consulted);
- the Secretary of State may approve standard contractual clauses (SCCs) for transfers of personal data (the ICO has announced that draft UK SCCs will be published for public consultation in the summer of 2021);
- the recognition of existing adequacy decisions (SCCs and Binding Corporate Rules) as adequate protection for international transfers under UK GDPR; and
- the ICO is no longer a party to the EU GDPR consistency mechanisms or the supervisory authority for the purposes of the EU GDPR.

For international transfers of data, the UK GDPR will apply. On 28 June 2021, the European Commission adopted two adequacy decisions, allowing data flows between the United Kingdom and European Union without additional safeguards being required. These decisions are valid for four years from June 2021 and are subject to review by the UK government and the European Commission.

The Court of Justice of the European Union ruling of 16 July 2020 in *Data Protection Commissioner v Facebook Ireland and Maximillian Schrem*s (Case C-311/18) (*Schrems II*) provided further context around international transfers that should be considered. This held that SCCs for the transfer of personal data from EU controllers to processors in third countries are still valid, but subject to additional safeguards where the non-European Economic Area (EEA) data importer cannot guarantee a level of data protection essentially equivalent to that of the EEA. This decision separately held that the adequacy of the decision of protection by the EU–US Privacy Shield was invalid. This ruling has led to many businesses with international trade links conducting an urgent risk review of their data flows to check whether alternative measures must be implemented.

The GDPR is complemented by the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended) (PECR). The PECR (which implemented Directive 2002/58/EC on privacy and electronic communications (ePD) provide for measures such as:

- the safeguarding the security of a service by public ECSs;
- notice requirements, should there be any breaches of security;
- prohibitions on unsolicited or direct marketing communications;
- restrictions on the processing of user identity and location; and
- how long personal data may be held or held without modification.

In 2017, the European Commission published a draft of the ePrivacy Regulation (ePR) to bring the provisions of the existing ePD in line with the GDPR and to take account of technology changes and is intended to replace the ePD. Failure to comply with either of these Regulations could lead to fines being imposed on a business of the higher of 4 per cent of worldwide annual turnover or €20 million. The ePD is still being revised and a new draft was published in February 2020. In its current drafted state, there is a two-year transition period before the draft ePR becomes directly applicable in EU member states and therefore it did not form part of UK law automatically under the European Union (Withdrawal) Act 2018 (the Withdrawal Act). In this case, organisations will need to comply with dual regimes under UK and EU law to the extent that the ePR differs from the UK's PECR, particularly since the ePR is intended to replace the ePD. The UK government may consider introducing equivalent provisions in domestic law for the United Kingdom and it may well be that UK companies will be caught by the extended territorial scope of the EU regime.

IPA 2016 deals with data retention, interception and acquisition. Some of the key changes introduced by this legislation included:

- an extension of government powers to require telecoms operators to retain data about users including their web-browsing history;
- the potential for communications providers to be prevented from implementing end-to-end encryption of user data; and
- an expansion of the types of operators that will be affected by such investigatory powers to include by public and private telecoms operators.

The UK government has, as of 22 July 2020, brought into force all the remaining provisions of CA 2003. IPA 2016 was previously challenged in the courts in November 2018 when a human rights group won the right to a judicial review of Part 4 of IPA 2016, which gives government agencies powers to collect electronic communications and records without reason for suspicion. The government had until 1 November 2018 to amend the legislation. The Data Retention and Acquisition Regulations 2018, which came into force on 31 October 2018, increased the threshold for accessing communications data to serious crime only and imposed a requirement on authorities to consult with an independent Investigatory Powers Commissioner before requesting data. However, in July 2019, the High Court dismissed a human rights group's latest challenge against surveillance laws and held that IPA 2016 includes several safeguards against the possible abuse of power and was therefore not in breach of the Human Rights Act 1998.

Additionally, Ofcom offers guidance as to how communications providers should implement technical and organisational security measures to manage the security risks of public ECNs and ECSs. This guidance was updated in December 2017. There was further guidance on resilience requirements issued by Ofcom in March 2022.

Cybersecurity

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

There is no single piece of legislation or regulation in place concerning cybersecurity or network security in the United Kingdom. It is instead covered by several pieces of legislation, such as CA 2003, the Privacy and Electronic Communications Regulations, the GDPR and the Network and Information Systems Regulations 2018 (the NIS Regulations). The NIS Regulations impose cybersecurity and incident reporting obligations on two classes of operator in the United Kingdom:

- relevant digital service providers; and
- operators of essential services (provided they operate in certain sectors and meet threshold requirements).

Now that the Brexit transition period has been completed, digital service providers will, if they wish to offer services within the European

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Union, need to register with the NIS regulator for the EU member state where they have their main establishment located there.

CA 2003 requires public ECN and ECS providers to take appropriate technical and organisational measures to manage the ECNs and ECSs, the focus of which is to minimise the impact of security breaches on end users and the interconnections of public electronic communications networks. CA 2003 also imposes several notification requirements on these providers. The PEC Regulations similarly impose obligations on public ECSs to ensure that personal data is handled appropriately and subject to appropriate security policies.

Under the UK GDPR, data controllers and data processors must ensure that appropriate technical and security measures are put in place when handling a data subject's personal data. Where transfers are outside of the United Kingdom and are being sent to a country that does not have an adequacy decision given by the UK government, there is a need to have appropriate safeguards in place, and under *Schrems II* this can include requirements for supplementary measures. While supplementary measures can be contractual, there may also be requirements to have additional technical, organisational and security measures in place.

The EECC introduced certain changes that aimed at strengthening the current network security provisions. The government decided it was not appropriate to consult on the implementation of these provisions due to the then-ongoing Telecom Supply Chain Review, which included a review of the legislative framework for the security and resilience of telecoms network and services. As a result of the Review, the government decided to develop a new security framework for telecoms.

On 9 March 2022, the UK government published its Plan for Digital Regulation, which aims to drive agile regulation, offering clarity and confidence to consumers and businesses. Within the Plan, the government set out a timeline of strategy reviews and consultations that the government intended to undertake across three-, six- and 12-months, including cybersecurity. It also stated that it intended to introduce a cybersecurity law in the United Kingdom. There is yet no draft bill, but a consultation on network information systems and cybersecurity regulation is proposed.

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?

While general data protection legislation applies to big data, no particular UK legislation or regulation covers big data specifically. However, several inquiries have been conducted by UK bodies into the benefits and challenges arising from the exponential growth in the use of big data (and its link to the internet of things). In November 2018, the UK government created the Centre for Data Ethics and Innovation, which aims to assist the UK government with identifying and addressing areas where clearer guidelines or regulation concerning data and data-related technologies are needed. In 2019, the ICO appointed a new role of data ethics adviser whose key task is to contribute to ongoing data ethics discussions.

Further, the fallout from Cambridge Analytica harvesting data from Facebook on a large scale has turned the spotlight on big data collection and processing activities and, in November 2018, the ICO produced a report into this subject titled 'Investigation into the use of data analytics in political campaigns'.

In its Furman Report, the Digital Competition Expert Panel recognised the importance of data as a competitive tool in the UK's digital market. Specifically, it saw how digital markets tended towards concentration, with limited degrees of in-market competition, leading to significant barriers to entry because of the accumulation of data by incumbent firms. Some recommendations, therefore, sought to enable greater personal data mobility and systems with open standards. The Panel also encourages policies of data openness in granting access to non-personal or anonymised data to new market participants. The government accepted the recommendations of the Furman Report and announced the establishment of a new Digital Markets Unit on 7 April 2021. This Digital Markets Unit will be a government statutory body that will oversee the new regime for digital markets and monitor compliance with a new enforceable code of conduct to govern the behaviour of platforms funded by digital advertising that are designated as having strategic market status.

The Plan for Digital Regulation includes plans for a review of the National Data Strategy and the government is developing this strategy further to unlock the power of data for the United Kingdom. It intends to work on smart data, transform the use of government data and ensure the security and resilience of data infrastructure. It is planned for 2022 to legislate powers for the government to mandate participation in smart data initiatives.

Data localisation

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

There are no data localisation requirements in the United Kingdom. There are, however, rules in the UK GDPR that requires personal data transferred outside the United Kingdom to be subject to adequate protection, and where it is not subject to an adequacy decision, additional safeguards should be put in place, which, following *Schrems II*, may include supplementary measures, that can be either contractual or technical and organisational.

Key trends and expected changes

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

CA 2003, and much of the regulation surrounding the telecoms market, has its foundations in EU law. Following the UK's departure from the European Union, Ofcom is no longer subject to EU oversight and the considerations that influence its regulation of the market are likely to be more UK-centric as a result. Consequently, a more divergent approach may be seen between the United Kingdom and the European Union over time. For example, aspects such as the general conditions and specific conditions could be altered to better serve the interest of the UK public, rather than having a broader EU focus.

Even following the Brexit transition period, UK telecoms law does not significantly differ from the current regime. This is because the United Kingdom adheres to the World Trade Organization's Basic Agreement and more particularly its Reference Paper, which has been described as EU law 'writ large'. This means that if the United Kingdom falls out of line with the EU regulatory framework, it will also not be in line with the regulatory frameworks of the countries that adhere to the Basic Agreement.

The WTO's General Agreement on Trade in Services (GATS) is now not as relevant as it would have been had a deal not been reached. GATS provides for several basic regulatory provisions such as major suppliers' obligation to interconnect, transparent authorisation regime, independent regulation and procedural rules for allocation of scarce resources.

In December 2020, the United Kingdom and the European Union reached a trade deal that will govern their relationship from the end of the Brexit transition period.

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After the Brexit transition period, UK operators are still able to provide cross-border telecoms services and operate in the European Union. The UK–EU trade agreements permit the United Kingdom:

- to benefit from an obligation to interconnect with major suppliers;
- to permit the provision of telecoms networks and services without prior formal authorisation;
- to agree terms with suppliers to provide networks and services that are transparent;
- procedure rules for allocation of scarce resources; and
- disputes and independent regulation.

The EU regulatory framework on low wholesale voice termination rates will no longer apply to UK service providers for calls between the European Union and the United Kingdom and this may lead to increases in the termination rates for calls and increased retail tariffs for such calls.

The trade agreement does not extend provisions of the EU roaming regulations and simply contains a provision requiring the parties to endeavour to cooperate on promoting transparent and reasonable rates for international roaming. EU mobile operators will no longer be limited in what they can charge UK operators for providing roaming services. This will mean that surcharge-free roaming may no longer be a standard. In its no-deal Brexit technical notice on mobile roaming, the government said that roaming charges will become a commercial matter, which suggests that it does not intend to legislate to require mobile companies to offer surcharge-free roaming. The Mobile Roaming (EU Exit) Regulations 2019, made on 14 March 2019, removed the requirement on UK mobile operators to guarantee surcharge-free roaming for customers in the European Union. It also implemented an obligation on operators to notify customers travelling abroad when they use 80 per cent and 100 per cent of their data allowance and to advise customers on how to avoid inadvertent roaming in border regions.

Brexit could also have an impact on development programmes for 5G, the internet of things and the deployment of broadband networks that benefit from EU funding. The United Kingdom will likely need to enter into a mutual recognition agreement with the European Union to enable the accreditation process for electronic products to remove restrictions for market entry of telecoms equipment. The United Kingdom would also need to become a stand-alone member of the WTO Information Technology Agreement to be able to benefit from zero tariffs on many IT goods.

However, the United Kingdom may benefit from a shortened approval process of state aid initiatives as a result of the European Commission no longer having to assess the compliance of public funding with competition rules.

In light of the European Commission losing its oversight of Ofcom, Broadband Stakeholder Group has called for the third party's supervision (the CMA) to ensure appropriate scrutiny of Ofcom's decisions and its independence from the government.

Although the UK government has stated its commitment to certain areas of current and future EU legislation (eg, the GDPR), the lack of certainty for many areas of the law means that any changes will have to be closely monitored in the future.

The EECC Directive came into force on 20 December 2018, replacing and reforming the Framework Directive (Directive 2002/21/EC), the Authorisation Directive (Directive 2002/20/EC), the Access Directive (Directive 2002/19/EC) and the Universal Service Directive (Directive 2002/22/EC), which were all transposed into UK law through national legislation (mainly the CA 2003 and WTA 2006) and incorporate them into a single document on 21 December 2020. The United Kingdom was required to implement the EECC because the implementation date fell within the Brexit transition period. The government published the draft Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communication Code and EU Exit) Regulations with a focus on the most significant changes introduced by the EECC, such as investment in very high-capacity broadband networks, effective consumer protection and engagement, ensuring efficient spectrum management to support 5G service rollout and expanding the definition of 'electronic communications service' to include interpersonal communications services (such as internet phone and messaging services), which will bring these types of services within the scope of regulation.

Spectrum changes

Spectrum allocation and bandwidth remains a major issue in the UK market both to manage existing capacity and coverage constraints and requirements, but also to prepare for the 5G service rollout. In December 2018, Ofcom proposed to include coverage obligations in its auction rules for the release of 700MHz and 3.6–3.8 GHz spectrum bands. Ofcom's auction for radio spectrum suitable for mobile and 5G connections in the 700MHz and 3.6–3.8GHz bands was held in May 2021. In March 2020, the government announced that it reached an agreement with four mobile network operators on their commitment to the Shared Rural Network plan, which aims to deliver good quality 4G coverage to at least 90 per cent of the United Kingdom over six years. The plan will be supported by government funding of £500 million. In light of these commitments, Ofcom decided to no longer include coverage obligations in their auction in spring 2020. It still, however, proposed to place a 37 per cent cap on the overall spectrum that any one mobile company can hold following the auction.

In January 2020, Ofcom proposed to make additional spectrum available for Wi-Fi in the 6GHz frequency band without the need for a licence and to open extremely high-frequency spectrum, which is vital for developing innovative future services. The consultation was open until 20 March 2020. In December 2020, Ofcom published its consultation on spectrum management strategy for the 2020s. It proposed action in three areas:

- supporting wireless innovation;
- licensing to fit local and national services; and
- promoting spectrum sharing.

Following this, in July 2021, Ofcom released its spectrum management strategy for the 2020s, re-iterating its proposed three areas of focus and setting out the activities it will pursue to achieve these. This includes reviewing emerging demands across different sectors, making spectrum available for new uses, developing automated spectrum management tools and supporting the wide availability of key wireless services.

In March 2022, Ofcom published its Spectrum Roadmap to deliver its strategy and outlining the work it is planning to deliver in three broad areas:

- network evolution and convergence;
- innovation and sharing with spectrum sandboxes; and
- data for better spectrum management.

Ofcom Communications Market Report

Ofcom's annual statistical survey of developments in the communications sector was published in July 2021. The report is now an interactive data portal containing all the major datasets for these markets. Ofcom identified certain key themes in its report, namely:

- the speed of internet connections has increased;
- these faster connections are supporting the use of ever more data;
- the average household spend on telecoms services fell slightly in 2020;
- voice calls made an unexpected comeback in 2020 as people stayed home during the pandemic; and
- the time spent viewing live broadcast television resumed its declining trend after a pandemic-related uptick in 2020.

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Ofcom Proposed Annual Plan 2022/23

The Ofcom Proposed Annual Plan for 2022/23 focuses on:

- investment in strong, secure networks;
- getting everyone connected;
- fairness for customers;
- enabling wireless services in the broader economy;
- supporting and developing UK media;
- serving and protecting audiences; and
- establishing regulation of online safety.

This Annual Plan follows a consultation in December 2021, including a virtual event, to gain feedback on the proposed plan. Ofcom also observed that there has been a renewed focus on trust in what audiences see and hear, noting that two-thirds of UK adults who watch public service broadcasting and subscription streaming services said the former was better at 'providing programmes which reflect UK life and values'. As such, Ofcom emphasised its focus on a strong and sustainable broadcasting sector as part of its plan of work.

Foreign direct investment in the communications sector

The UK's first foreign direct investment regime, the National Security and Investment Act (NSIA), came into force in the United Kingdom on 4 January 2022. The NSIA gives the UK government new powers to review investments and intervene in transactions that may give rise to a national security risk. The NSIA introduces a mandatory notification regime that will apply to certain transactions involving entities that carry on activities in one of 17 'sensitive sectors'.

'Communications' has been listed as one of these sensitive sectors, meaning that acquisitions in this sector may require mandatory notification to the UK government for review. The government guidance on notifiable acquisitions has stated that, as a regulated sector, the CA 2003 has informed the mandatory notification requirements in the communications part of the regulations to provide clarity and consistency across the regulatory frameworks.

- A mandatory notification is legally required where the target of an acquisition:
- is a public electronic communications network or service (PECN/S) with a UK turnover of at least £50 million;
- makes available an 'associated facility' to a PECN/S with a turnover of at least £50 million;
- owns a building where its main purpose is to host active telecommunications equipment;
- owns a submarine cable system with a UK turnover of at least £50 million;
- owns a cable landing station that is used by a PECN/S with a UK turnover of at least £50 million;
- owns a repair or maintenance service for submarine cable systems or cable landing stations that are used by PECN/S with a UK turnover of at least £50 million;
- has a top-level domain name registry, domain name system resolver, authoritative hosting service or internet exchange points subject to certain thresholds;
- provides broadcast infrastructure for either:
    - the BBC;
    - Channel 3 (ITV plc and STV);
    - Channel 4;
    - Channel 5;
    - S4C; or
    - national commercial radio (analogue or digital).

Following a review of the filed notification, the Secretary of State for Business, Energy and Industrial Strategy may:

- approve;
- approve with conditions; or
- outright prohibit or unwind the transaction.

Completing an acquisition that requires mandatory notification without approval (and without 'reasonable excuse') is a criminal offence under the new regime.

MEDIA

Regulatory and institutional structure

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

Broadcasting is regulated by the legislation set out in the above question with additional regulation from the Broadcasting Act 1990 (as amended by the Broadcasting Act 1996 and the Communications Act 2003 (CA 2003)). There have also been some minor changes to the regulatory regime through the Digital Economy Act 2017.

EU Directives that have been transposed into UK law in advance of the end of the Brexit transition period (ie, 31 December 2020) will be effective as UK law. The government has confirmed that Office of Communications (Ofcom) licences will continue to apply after the transition period so that broadcasters can continue to broadcast to the United Kingdom without applying for a new licence. UK broadcasting services available in the European Union may need two types of licences depending on the countries to which they broadcast (one for services receivable in European Convention on Transfrontier Television (ECTT) countries and one for services for non-ECTT countries). Services from countries that have signed and ratified the ECTT need no licence in addition to the licence from their home country. Services from countries that have not signed and ratified the ECTT will need a licence from Ofcom to be received in the United Kingdom.

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?

Restrictions as to who can hold a broadcasting licence and control a broadcaster are set out in both the 1990 and 1996 Broadcasting Acts; these were revised by CA 2003, which relaxed these provisions. If at any point there is a change in control over the licence or the owner of the licence, they must notify Ofcom, which will ensure that no person disqualified from holding the licence has taken control. Ofcom will also undertake a review to ensure that change of control will not negatively affect the programme content. If Ofcom does believe certain aspects of the programming may change, it could vary the licence.

Those who will be disqualified from holding a broadcasting licence will generally fall under two categories:

- religious or political groups; and
- advertising agencies.

Although religious bodies are generally restricted from holding a broadcasting licence, there are exceptions to this rule. They may own licenses for:

- local analogue radio and satellite;
- cable broadcasting;
- local digital sound programme;
- national digital sound programme;
- television restricted service;
- digital programme service; and

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- digital additional service licences.

In addition to the above, it is worth noting that the UK's first foreign direct investment regime, the National Security and Investment Act (NSIA), came into force in the United Kingdom on 4 January 2022. The NSIA gives the UK government new powers to review investments and intervene in transactions that may give rise to a national security risk. The NSIA introduces a mandatory notification regime that will apply to certain transactions involving entities that carry on activities in one of 17 'sensitive sectors'. 'Communications' has been listed as one of these sensitive sectors, meaning that acquisitions in this sector may require mandatory notification to the UK government for review. Following a review of the filed notification, the Secretary of State may:

- approve;
- approve with conditions; or
- outright prohibit or unwind the transaction.

Completing an acquisition that requires mandatory notification without approval (and without 'reasonable excuse') is a criminal offence under the new regime.

Licensing requirements

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

BBC

The main document that regulates the BBC is the founding charter. The revised charter came into force on 1 January 2017. This revised charter made multiple changes to the regulation of the BBC. A unitary board was formed to replace the BBC Trust and BBC Executive. This new board ensures that the BBC's strategy, activity and output are in the public interest. From 2017, the BBC fell under the remit of Ofcom.

Channel 4

The most recent licence for Channel 4 came into effect in January 2015 and was varied in December 2017 following a 2014 spectrum management decision by Ofcom. Channel 4 previously operated on a digital replacement licence that replaced its original analogue broadcasting licence in 2004. The most recent licence keeps things essentially the same, although the 2017 variation provides for the clearance of the 700 megahertz (MHz) band for mobile data use by 1 May 2020 (note that the 700MHz DTT Clearance Programme was completed on 20 August 2020). While the UK government announced in April 2022 that it intends to privatise Channel 4, Channel 4 will have a continued public service broadcasting licence and remit overseen by Ofcom, and that is due to expire at the end of 2024.

Channels 3 and 5

The most recent licences for both Channels 3 and 5 came into effect in January 2015 and were varied in December 2017 following a 2014 spectrum management decision by Ofcom. Channels 3 and 5 previously operated on digital replacement licences, which came into effect in 2004 and replaced the analogue Channel 3 and 5 licences. The current licence includes amendments to the regional programming commitments in Channel 3 licences for English regions; and creates a more localised Channel 3 news service, while also lowering obligations. The 2017 variations also provide for the clearance of the 700MHz band for mobile data use by 1 May 2020 (note that 700MHz DTT Clearance Programme was completed on 20 August 2020).

Digital television programme services

Other than those provided by Channel 3, 4 or 5, digital television programme services (DTPS) licences cover the provision of television programmes services. The broadcasts covered will be in digital form for general reception on a digital television terrestrial multiplex. They will also cover ancillary services such as subtitling.

Digital television additional services

Digital television additional services licences cover television services text and data services including teletext and electronic programme guides. These are not covered by DTPS licences as they are not considered an ancillary service or digital television programme services. They are broadcast in a digital form on a digital television multiplex.

Television licensable content services

A television licensable content services (TLCS) licence covers services broadcast from a satellite, distributed using an electronic communications network (ECN) or electronic communication service made available by a radio multiplex. Its principal purpose must be the provision of television programmes or electronic programme guides or both. The service must also be available for reception by members of the public.

Services such as Channels 3, 4 and 5, covered by the other licences outlined in this section, do not require a TLCS licence. Internet services, pure video-on-demand (VOD) services and two-way services, such as videophone, do not require a TLCS licence.

A new local television licence regime was created as part of the Local Digital Television Programme Services (L-DTPS) Order 2012. An L-DTPS will have sufficient capacity at its location for one standard-definition digital service on the local multiplex. These are operated on Multiplex L with 29 L-DTPS licences awarded.

Under the Broadcasting Act 1990, Ofcom must not grant a licence to any person unless it is satisfied that the person is a 'fit and proper' person to hold it and is not disqualified by statute from holding the licence. The proposed service cannot be contrary to the standards objectives laid out in CA 2003.

The complete Ofcom tariff table is available on its website.

Radio

Under CA 2003, Ofcom has the authority to regulate the following concerning independent radio services:

- analogue sound broadcasting services at a national or local level;
- radio licensable content services (services provided in digital or analogue form, broadcast from a satellite or via an ECN, for use by the public and consisting of sound programmes);
- additional radio services (a service consisting of the sending of signals for transmission by wireless telegraphy using space capacity within signals carrying any sound broadcasting service);
- digital radio multiplex services;
- digital sound and digital additional sound services at both a national and local level (text and data services not intended to be related to programming); and
- radio restricted services (licences intended to cover small-scale community uses).

Fees, duration and permissible content vary depending on the type of licence to be granted. Ofcom suggests that the easiest way to set up a radio service is to start an online radio station. Ofcom currently does not regulate online-only radio services that, therefore, do not require a licence from Ofcom.

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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?

CA 2003 contains a limited number of provisions covering the broadcasting of foreign programmes. Regulations set out in Directive 2010/13/EU (Audiovisual Media Services) (as amended by Directive (EU) 2018/1808 and incorporated into the Broadcasting Code), require that, where practicable, European production (referred to as European Works) should account for over 50 per cent of the transmission hours of each broadcaster established in that market (subject to certain exclusions).

The amending Directive (EU) 2018/1808 provided, among other things, for an increased European Works content quota for on-demand services, raised from 20 per cent to 30 per cent. The United Kingdom was required to fully implement the amending Audiovisual Media Services Directive despite its exit from the European Union, as the date for implementation (19 September 2020) fell before the end of the Brexit transition period. Despite the UK's exit from the European Union, works produced in the United Kingdom are still considered to fulfil the definition of European Works, as European Works are defined by reference to production by ECTT countries, rather than EU member states. As a result, there may not be a significant downturn in demand for UK-produced works, as they will continue to help fulfil European Works quotas post-Brexit.

Also, the Secretary of State maintains powers under CA 2003 to disallow foreign television and radio should it fall foul of provisions in CA 2003 (eg, those that offend against taste or decency). Regarding online and mobile content, there are no equivalent foreign restrictions.

CA 2003 gives Ofcom the power to require local programming to be included in the output of broadcasters where appropriate. An example of this is in Ofcom's inclusion in every Channel 3 licence of a condition requiring a regional channel with programmes targeted at persons living in the area.

Additionally, the Department for Culture, Media and Sport (DCMS) published a broadcasting whitepaper on 28 April 2022. In its press release, the DCMS stated that the plans set out in the white paper will protect British content by giving domestic public service broadcasters a more flexible remit for the programmes they produce and show. The whitepaper proposes measures that would ensure UK public service broadcasters are no longer subject to a set of 'purposes' and 'objectives' from the CA 2003, meaning that their remit will be overhauled and simplified.

Advertising

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

Ofcom's role under CA 2003 is to regulate advertising on broadcast media to ensure advertising rules and standards are met. These rules and standards can be found across several instruments. Primarily, broadcast media must follow the UK Code of Broadcast Advertising (the BCAP Code), which covers misleading advertising, protection of children, harmful and offensive content, a ban on political advertising, and rules on environmental claims, to name but a few. Additional rules are contained in Ofcom's Broadcast Codes, which cover issues such as taste, decency and product placement. Enforcement of the aforementioned rules, while ultimately Ofcom's responsibility, has been largely contracted out to the Advertising Standards Authority and its associated bodies.

One of the key amendments to the Audiovisual Media Services Directive, which were approved by the European Parliament in October 2018, was to introduce new rules concerning the proportion of daily broadcasting time that would be taken up by advertisements. Under the new rules, advertising can take up a maximum of 20 per cent of the daily broadcasting period between 6.00am and 6.00pm, but broadcasters can adjust their advertising slots within this time period so long as they do not exceed the total 20 per cent limit. The new rules also introduce a prime-time window between 6.00pm and midnight, during which advertising will also only be allowed to take up a maximum of 20 per cent of broadcasting time.

Product placement, while allowed in films, series made for television, sports programmes and light entertainment programmes (both foreign and national), is prohibited in news and children's programmes. This was a change brought in during Ofcom's February 2011 change to the Broadcasting Code and includes rules requiring special logos to be shown at the beginning and end of the programme, as well as at the end of each advertising break to signify the use of product placement.

There are strict rules on advertising and product placement in children's television programmes and content available on VOD platforms introduced under the amendment to the Audiovisual Media Services Directive approved in November 2018.

In November 2020, Ofcom published a consultation on proposals for amendments to the Broadcasting Code. Following this, Ofcom released a statement in December 2020, setting out the amendments Ofcom are making in light of stakeholders' responses to the consultation. These amendments include changes to the rules in the Broadcast Code to reflect revised product placement restrictions resulting from the Audiovisual Media Services Regulations.

Online advertising is subject to the CAP Code, which imposes similar standards and rules. The CAP Code also contains the rules that apply to VOD services. While there are some differences between the codes, the BCAP Code states that BCAP works closely with CAP to provide, as is practicable and desirable, a consistent and coordinated approach to standards-setting across non-broadcast and broadcast media. The CAP Code was amended in November 2018 to align with Regulation (EU) No. 2016/679 (General Data Protection Regulation) and provide rules and guidance in respect of the use of data for direct marketing generally and the rules on the transparency and control of data collected and used for the purpose of delivering ads based on web-users' browsing behaviour.

In June 2019, a new rule was added to the CAP Code banning advertisements that contain gender stereotypes in both broadcast and non-broadcast media (including online and social media). Several adverts have since been banned following the introduction of the new rules owing to their containing harmful gender stereotypes, including advertisements for household name brands, such as Mondelez and Volkswagen.

In December 2020, CAP and BCAP issued a statement on the CAP and BCAP Codes following the Brexit transition period. Broadly, the statement outlines the legislative framework created to ensure legal continuity after the end of the transition period and advises advertisers that all EU-derived legislation in force at the end of the transition period remains in force unless it is subsequently appealed.

More recently, on 17 March 2022, the UK government opened a consultation on possible options for reform to the regulatory framework for paid-for online advertising, citing a need for intervention to address harms in online advertising arising from issues with transparency and accountability. The consultation will inform a review that is set to work in conjunction with the measures being introduced through the forthcoming Online Safety Bill and will close on 1 June 2022.

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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?

Under CA 2003, public service broadcasters, including (but not limited to) the BBC, ITV, Channel 4 and Channel 5, must provide public service broadcasting (PSB) channels to all the main distribution platforms. As a result, such channels have a right to be carried on all the main platforms on a free-to-air basis. Ofcom has a responsibility under CA 2003 to review and report on the extent to which the PSBs have fulfilled the purposes of PSB and make recommendations regarding how to maintain and strengthen the quality of PSB in the future, with reviews taking place every five years. The purposes of PSB in the United Kingdom are:

- to provide a variety of programmes on a wide range of subject matters;
- to provide television services that are likely to meet the needs and interests of as many different audiences as practicable (as well as those of the actual available audiences); and
- to maintain high standards in respect of programme content, development and skill, and editorial integrity.

In February 2020, Ofcom published Small Screen: Big Debate, a review of PSB covering 2014 to 2018. It noted that live broadcast viewing has declined over the period due to the increased use of online and on-demand services. In response, the report noted that PSB broadcasters are increasing their online and on-demand services to try and meet the expectations of their audience, but that, despite these efforts, they have not been able to fully recover from the loss of live broadcast viewers, especially among younger generations. Revenue to PSB channels, both in terms of advertising and the BBC licence fee, has fallen by 3.8 per cent and 4 per cent per year, respectively, over the 2014 to 2018 period. In December 2020, Ofcom published a consultation on the findings from its Small Screen: Big Debate review, and issued formal recommendations to the UK government in July 2021. In its recommendations, Ofcom observed that the UK's broadcasting industry is facing great challenges, and that regulation and legislation needs to be overhauled for the digital age. For example, Ofcom recommended that there should be a revised set of public service media objectives and re-iterated its call for legislation to secure prominence for live and on-demand public service content.

Alongside the decline in viewership of PSB channels, the debate concerning the television licence fee has increased. Although the existence of the BBC licence fee is guaranteed until 2027 due to the BBC's Royal Charter, the BBC and the government have formally started negotiations to set the level of the licence fee for 2022 to 2027. These negotiations follow the outcome of a government consultation launched in February 2020 on the decriminalisation of television licence evasion, instead proposing the introduction of an alternative civil enforcement scheme. The consultation period is now closed, and the government published their response to the consultation in January 2021. Most of the responses gave an opinion that opposed decriminalisation. However, the government has set out that it remains concerned that a criminal sanction for television licence evasion is increasingly disproportionate and unfair in a modern PBS system. While no final decision has been taken, the government intends to keep the issue of decriminalisation under active consideration.

Separately, since 1 June 2020, free television licences are no longer automatically granted to the over-75s – instead, only those over 75 in receipt of pension credit are eligible for a free television licence.

Regulation of new media content

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

New media content is regulated under the same broadcast content rules and legislation as broadcast media, so, for example, internet protocol television services simply require the same licences as they would for the same content offline. Following the Audiovisual Media Services Directive, the United Kingdom must regulate VOD content and advertising. Ofcom brought regulation of VOD in-house in January 2016 to ensure the efficient and effective control of regulating VOD programme services. Rules include several minimum content standards, and on-demand services are subject to the UK Code of Non-Broadcast Advertising, Sales Promotion and Digital Marketing. The amendments made to the Audiovisual Media Services Directive in November 2018 extend its scope to video-sharing platforms in addition to VOD providers, such as Netflix and YouTube. A report by Plum Consulting, commissioned by the Department for Culture, Media and Sport, concluded in February 2020 that six video-sharing platforms were, or could potentially be considered to be, under the jurisdiction of Ofcom under the provisions of the amended Directive.

In December 2020, the Department for Culture, Media and Sport published its full response to the consultation on the Online Harms White Paper, which covered online safety and regulation of social media. The White Paper proposed a new statutory duty of care to ensure companies take more responsibility for online user safety and tackle harm. It proposed that companies within the scope of the duty would be social media platforms, file-hosting sites, public discussion forums, messaging services and search engines. Compliance with this duty of care would be overseen by an independent regulator. Following consultation, the full government response confirmed that Ofcom was named to take on this oversight role, in addition to its existing remit. Also, the government proposed developing a new online media literacy strategy.

In May 2021, the UK government published its draft Online Safety Bill, granting Ofcom new responsibilities as the regulator for online harms. Under the draft bill, Ofcom will be given the power to fine companies up to £18 million, or 10 per cent of qualifying revenue, if they fail in their new duty of care.

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 UK digital television switchover commenced in 2008 and was completed in 2012. The 600MHz band was auctioned in 2013 and the remaining freed analogue television channels have yet to be allocated.

Under the Digital Economy Act 2010, the Secretary of State was given the power to nominate the digital switchover for radio broadcasting. The UK government set the following criteria to be met before the switchover could commence:

- digital listening must reach 50 per cent of all radio listening (including via television and digital audio broadcasting (DAB));
- national DAB coverage must be equal to analogue coverage; and
- local DAB reaches 90 per cent of the population.

Ofcom's Communications Market Report, published on 30 September 2020, indicated that DAB radio listening had reached 58 per cent.

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Digital formats

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

Although licences may set out certain restrictions in terms of information requirements and governing codes or guidance, broadcasting licences are not restrictive in terms of how the spectrum may be used.

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?

In its fifth report to the Secretary of State, dated 23 November 2018, Ofcom stated its statutory duty to review, at least every three years, the operation of Parliament's 'media ownership rules' as found under section 391 of CA 2003. Ofcom notes that the rules aim to protect the public interest by promoting plurality and preventing undue influence by any one, or certain types of, media owner.

There are currently four broad media ownership rules that Parliament has put in place in the United Kingdom (and that are set out in Ofcom's November 2018 report to the Secretary of State):

- the national cross-media ownership rule: preventing a newspaper operator with a 20 per cent or more market share of newspaper circulation from holding a Channel 3 licence or a stake in such a licence of more than 20 per cent; and preventing the holder of a Channel 3 licence from holding an interest of 20 per cent or more in a large national newspaper operator;
- the Channel 3 appointed new provider rule: requiring regional Channel 3 licensees to appoint a single news provider among them;
- the Media Public Interest Test: that allows the Secretary of State to intervene in a merger involving a broadcaster or newspaper enterprise, where that merger meets certain value or market share requirements. The Secretary of State may choose to issue an intervention notice triggering a review if a merger might result in harm to the public interest; and
- the Disqualified Persons Restrictions: where certain bodies or persons must first be approved by Ofcom before holding certain kinds of broadcast licence to prevent undue influence over broadcasting services.

Intervention by the Secretary of State on the grounds of public interest under the EA includes the need for accurate presentation of news and free expression of opinion in newspapers, the need for a plurality of persons who control the media and the need for UK-wide broadcasting that is both of high quality and likely to appeal to a variety of tastes and interests. Where a public interest ground applies, the Secretary of State need not assess as to whether there would be a substantial lessening of competition by the merger (as would otherwise be required).

Detailed guidelines from 2004, by the former Department for Trade and Industry, set out those situations where the Secretary of State may intervene in merger situations involving media organisations, including cross-media mergers (where there is a merger between a newspaper and a Channel 3 or 5 licence holder, for example). The Secretary of State may intervene where the merger involves entities from outside the EEA. The policy is not for the Secretary of State to intervene where the mergers are related to satellite and cable television and radio services.

In an exercise of these powers, in June 2019, the Secretary of State issued a Public Interest Intervention Notice concerning the acquisition of shares in Lebedev Holdings Ltd (LHL) and International Digital News and Media (IDNM), resulting in Ofcom being required to investigate the transactions. LHL is the majority shareholder in Evening Standard Limited, which is responsible for the publication of the *Evening Standard* newspaper and related online services, while IDNM is responsible for the running of *The Independent*, the online-only news publisher. The grounds for the issue of this Notice were the need for accurate presentation of news and the need for free expression of opinion. Following its enquiries, Ofcom concluded that a reference to the Competition and Markets Authority was not warranted on either ground.

In line with its statutory obligation to review the operation of the media ownership rules every three years, Ofcom released a statement in November 2021 on the future of media plurality in the United Kingdom following a call for evidence in June 2021. In this statement, Ofcom identified three features of the modern UK media landscape that may present a risk to media plurality, but are not captured under the existing regulatory framework, namely:

- online intermediaries and their algorithms control the prominence given to different news sources and stories;
- the basis on which online intermediaries serve news via their algorithms is not sufficiently transparent; and
- consumers do not always critically engage with the accuracy and partiality of online news.

As such, Ofcom has recommended that Parliament put in place media ownership rules with the objective of promoting plurality, and that the Secretary of State broadens the scope of the existing Media Public Interest Test framework.

Key trends and expected changes

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

Brexit

As with telecoms, broadcasting regulation is founded on EU law. Although the UK government has not brought in any significant divergent measures, the UK's exit from the European Union has caused some changes to broadcasting licence requirements for the United Kingdom and some EU member states (made by the Broadcasting (Amendment) (EU Exit) Regulations 2019). The most significant change to the licensing requirements relates to the country-of-origin principle, which underpins European broadcasting regulation. Under this principle, a broadcaster regulated in one EU member state is not required to apply for an additional licence to be able to transmit in another member state.

Following the end of the Brexit transition period, the United Kingdom is no longer a party to the Audiovisual Media Services Directive and this principle no longer applies. Despite the Audiovisual Media Services Directive having been transposed into UK law, the country-of-origin principle would require reciprocity from other EU member states to continue to operate. However, the ECTT continues to apply. The ECTT was signed by 20 EU member states, as well as the United Kingdom, and allows freedom of reception for services among the signatory states. Therefore, UK broadcasters regulated by Ofcom will continue to be allowed to broadcast in ECTT signatory states, as will ECTT-regulated broadcasters in the United Kingdom. The additional licensing requirements will therefore apply only concerning the EU member states that have not signed the ECTT, which includes the Netherlands and Ireland (although there are separate provisions in the Good Friday Agreement applicable to certain Irish broadcasters). UK broadcasters are now required to apply for additional licences for their service to be made available in these states – the same applies to any service providers from these states wishing to broadcast in the United Kingdom, that will be required to obtain an Ofcom licence.

Although the ECTT may help to mitigate the effect of Brexit on broadcasters to some extent, it cannot be enforced in the same way that the Audiovisual Media Services Directive previously could – while there

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is a standing committee to address disputes, and provision for arbitration in the convention, these methods have seldom been used.

One further limitation of the ECTT that should also be taken into account is its more limited scope – it does not cover online streaming services, which continue to be regulated under the Audiovisual Media Services Directive in EU member states.

Digital services tax

The introduction of a digital services tax (DST), effective from 1 April 2020, was announced in the budget held on 11 March 2020. The DST is levied at 2 per cent on the revenues of companies such as search engines, social media services and online marketplaces that derive value from UK users. The introduction of the DST was intended to remedy the perceived misalignment between the place where company profits are taxed and the place where value is created. The DST is intended to be in place only until an appropriate international solution is in place to better address the issue.

It is anticipated by the UK government that the DST will affect primarily large multinational businesses, as the DST only applies where a group's worldwide revenue from digital activities exceeds £500 million, of which £25 million must derive from UK users. There is, however, a £25 million allowance, and the DST will only be levied on UK-generated revenues over £25 million.

The Exchequer has estimated that the measure will raise £280 million in 2020–2021, rising to £515 million in 2024–2025. However, the impact that the introduction of the DST could have on the UK–US trade deal to be negotiated in the wake of Brexit remains to be seen.

Online Advertising Programme

On 9 March 2022, the UK government announced that its Online Advertising Programme was set to review the regulatory framework of paid-for online advertising. As such, the government opened a consultation on possible options for reform to the regulatory framework for paid-for online advertising, citing a need for intervention to address harms in online advertising arising from issues with transparency and accountability. The consultation will inform a review that is set to work in conjunction with the measures being introduced through the forthcoming Online Safety Bill and will close on 1 June 2022.

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?

The Office of Communications (Ofcom) and the Competition and Markets Authority (CMA) have been the bodies responsible for the regulation of the media and communications sectors in the United Kingdom since 1 April 2014.

Ofcom

Aside from its regulatory functions, Ofcom also has competition law enforcement powers, which it holds concurrently with the CMA. These concurrently held powers allow the CMA and sector-specific regulators in their respective areas to enforce the competition law prohibitions contained in the Competition Act 1998 (CA 1998). In Ofcom's case, these concurrency powers are limited to activities concerned with communications matters.

Communications Act 2003 (CA 2003) sets out Ofcom's principal duty of furthering citizen and consumer interests by regulating communications, protecting consumers from harm and by promoting competition. The Secretary of State retains some powers in certain circumstances – for instance, where a merger may raise public interest questions relating to the plurality of the media or if the Secretary of State considers it is necessary to remove any concurrency functions.

Ofcom's competition law powers cover the prohibitions against anti-competitive agreements and abuse of a dominant position. These powers are derived from the CA 1998. Ofcom also has investigative powers over markets, with the ability to make references to the CMA for an in-depth market investigation under the Enterprise Act 2002.

One of Ofcom's competition law functions under CA 2003 is to 'further the interests of consumers in relevant markets, where appropriate by promoting competition'. Both the Enterprise and Regulatory Reform Act 2013 (ERRA 2013) and the government's 2015 Strategic Steer encourage all the concurrent regulatory authorities to coordinate in the exercise of their general competition powers, rather than their purely sector-specific regulatory powers. To facilitate this, the ERRA 2013 encourages information-sharing between Ofcom, the CMA and the other regulatory bodies. The UK Competition Network and UK Regulator's Network provide the fora within which this improved coordination can take place such that cases may more effectively be resolved.

CMA

The CMA is the overarching UK competition regulatory body, coordinating competition policy and encouraging consistent enforcement between itself and the sector-specific regulators. The CMA's powers include the ability to act on a case after consultation with the sectoral regulators if the CMA believes that the case would be better tackled centrally, and the ability to withdraw a competition case from a sectoral regulator and progress the case itself.

The legal basis on which the concurrency regime is to be operated is set out in the Competition Act 1998 (Concurrency) Regulations 2014. Details of the relationship between Ofcom and the CMA concerning competition law can be found in the 'Memorandum of understanding between the [CMA] and [Ofcom] – concurrent competition powers' (published on 2 February 2016). The memorandum sets out how the concurrency regulations are to be applied to the Ofcom–CMA relationship. Both will endeavour to reach an agreement as to which body will exercise its concurrent competition powers in any given case, which will include taking into consideration the relative expertise and circumstances of the bodies. On an occasion where a decision is not adequately reached within two months, the CMA 'must notify [Ofcom] that it intends to determine which [of the bodies] is to exercise' their concurrent powers. The concurrency regulations expressly prevent the possibility of 'double jeopardy' (where two regulatory bodies review the same case simultaneously) and also provide for rules regarding case transfers between concurrent regulatory bodies.

The CMA's most recent 'Annual report on concurrency' (published on 27 April 2022) identifies the need to ensure effective competition in the regulated sectors given the background of increasing concerns about the cost of living – and in particular the impact on vulnerable consumers – following the economic shocks caused by the global coronavirus (covid-19) pandemic and the Russian invasion of Ukraine.

CMA panel

If it is reasonably believed that certain characteristics or conduct within a communications market may be harmful to competition, either Ofcom or the CMA can bring a cross-market reference to the attention of an impartial CMA panel – consisting of members not involved with the initial investigations. This panel may then investigate (potentially through a Phase 2 enquiry under the EA) and can decide whether it should take

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action to mitigate, prevent or remedy any adverse competition effect or negative impact on consumers – including higher prices, lower quality, reduced variety of goods or services and stifled innovation. Alternatively, it may recommend another body take remedial action or can instead indicate what type of remedial action needs to take place to rectify any issues that are uncovered.

Appeal procedure

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

CA 2003 and the Digital Economy Act 2017 (DEA 2017) outline the appeal mechanisms for Ofcom and CMA decisions concerning electronic communications networks (ECNs), electronic communication services (ECSs) and associated facilities (AFs). Also, CA 2003 offers appeal mechanisms to those wishing to appeal decisions relating to television and radio broadcasting.

ECN, ECS and AF appeal regime

Certain Ofcom decisions may be appealed to the Competition Appeal Tribunal (CAT) on judicial review grounds, namely: illegality, irrationality and unfairness. Decisions taken by the Secretary of State can also be appealed, including decisions concerning networks and spectrum functions, any restrictions or conditions set by regulators on electronic communications, a direction of Ofcom regarding its powers to suspend or restrict electronic communications, or a specific direction under the Secretary of State's powers under the Wireless Telegraphy Act 2006. Under the CAT Rules (2015), where an appeal is made concerning price control matters, the CAT must refer the case to the CMA. The CMA will then deliberate and decide on an outcome under CA 2003.

Schedule 8 of CA 2003 lists certain types of (more legislative type) decisions by the CMA, Ofcom and Secretary of State that are not appealable to the CAT, but rather by way of judicial review to the Administrative Court. These include, inter alia, the instigation of any criminal or civil proceedings, decisions relating to administrative charges orders, the publication of the UK Plan for Frequency Authorisation, recovery of sums payable to Ofcom, giving effect to regulations and imposing penalties.

Before the passage of DEA 2017, the appeal process for appealing Ofcom's decisions was on the merits. It was cumbersome, permitting considerable new evidence and new parties to an appeal. DEA 2017 made substantial alterations to the way an appeal is brought under CA 2003 by attempting to streamline the process of gathering evidence, including the cross-examination of witnesses and experts, and the general treatment of that evidence. The CAT must apply the same principles as would be applied by a court on an application for judicial review. The CAT may dismiss the appeal, or quash the whole or part of the decision to which the appeal relates, remitting the matter back to the decision-maker with a direction to reconsider and make a new decision.

Television and radio broadcasting appeal regime

Owing to the changes enacted by DEA 2017, the appeals process for television and radio broadcasting-related decisions is similar to the ECN, ECS and AF appeal regime. Ofcom must have first complied with its powers under the Broadcasting Act 1990 (BA 1990) and have considered, before exercising its BA 1990 powers for competition purposes, whether there is a more appropriate way of proceeding under CA 1998 concerning some or all of the matters in question. A party affected by an Ofcom decision may appeal to the CAT only that part of the decision relating to Ofcom's competition powers under BA 1990. If a party wishes to appeal any other type of Ofcom decision, this must be done following standard judicial review procedures.

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

Facebook, Inc (now Meta Platforms, Inc) – Giphy, Inc

As an illustration of the CMA's increasing scrutiny of 'big tech', the CMA ordered Meta to unwind its acquisition of Giphy on 30 November 2021. The CMA stated in its decision that the merger would substantially lessen competition between social-media platforms, and that the deal had already removed Giphy as a potential challenger in the display-advertising market. Meta subsequently filed an application to appeal the CMA's decision in December 2021, stating that the CMA's decision was unlawful and should be quashed on six grounds. The hearing in the Competition Appeal Tribunal took place on 25 to 28 April 2022 and judgment is pending.

Cellnex – CK Hutchison UK towers

A Phase 1 investigation was commenced by the CMA on 17 May 2021 into the anticipated acquisition of the passive infrastructure assets of CK Hutchison Networks Europe Investments Sàrl in the United Kingdom by Cellnex UK Limited. On 27 July 2021, the CMA referred the merger to a Phase 2 investigation, and provisionally found in December 2021 that there were competition concerns, namely that the deal would prevent the emergence of an important alternative competitor in the supply of passive infrastructure, leaving mobile networks facing higher prices and more onerous contracts in future contract negotiations. On 8 April 2022, the CMA published its notice to accept final undertakings from the parties. On 12 May 2022, the CMA accepted Cellnex's proposal to sell around 1,000 of its existing telecom-tower sites. This allowed the CMA to clear the acquisition of CK Hutchison's 6,000 passive telecom infrastructure sites in the United Kingdom, subject to the divestment of the existing UK sites that overlapped geographically with the CK Hutchison sites to be acquired.

Revised CMA merger guidance

On 4 January 2022, the CMA published updated merger guidance to take account of the introduction of the national security and investment regime operated by the Department for Business, Energy and Industrial Strategy and related changes to the Enterprise Act 2002. The guidance provides advice and general information on CMA procedures in operating the merger control regime set out in the Enterprise Act 2002, as amended.

National Security and Investment Act 2021

The National Security and Investment Act (NSI Act) came into force on 4 January 2022. The NSI Act provides the UK government with new standalone powers to review investments and to intervene in transactions that may give rise to a national security risk. Transactions subject to mandatory notification will not be able to close until the clearance is granted, and where transactions do not fall within the mandatory regime, there is a parallel voluntary notification system for deals that 'may raise national security concerns'. The government also retains a broad 'call in' power, enabling it to pick out non-notified transactions for review.

While the NSI Act came into force in January 2022, it also has retroactive effect: any transaction entered into from 12 November 2020 onwards is potentially reviewable for up to five years post-completion, reduced to six months if the government has become aware of the transaction. It is also worth noting that there is no minimum threshold for transactions caught by the NSI Act, and the guidance accompanying the NSI Act expressly confirm that in certain circumstances, internal reorganisations or restructuring can constitute a notifiable acquisition.

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Significantly, 'communications' is one of the 'notifiable acquisitions' sectors. This means that, subject to certain criteria, you are legally required to tell the government about acquisitions in this area. As a regulated sector, the mandatory notification requirements are informed by existing legislation (primarily the CA 2003).

Markets

Review of telecoms regulation in Hull

Following consultation in July 2020, Ofcom published its final statement in relation to the review of telecoms regulation in the Hull area in October 2021. This review covers all wholesale voice and broadband and leased-line markets in the Hull area. Ofcom found that while broadband consumers benefit from KCOM's full-fibre network, KCOM has nonetheless retained a near-monopoly at both the wholesale and retail level. In the residential broadband market, this has resulted in less retail choice and higher retail prices than in the rest of the United Kingdom. As such, Ofcom has imposed further regulation to encourage competition in the retail broadband market.

Mobile ecosystems market study

On 15 June 2021, the CMA launched a market study into mobile ecosystems in the United Kingdom. In its statement of scope, the CMA stated that smartphones and tablets now play a fundamental role in the lives of UK citizens, and that consumers today are faced with a binary choice between Apple (iOS) and Google (Android), which hold an effective duopoly in the market. On 14 December 2021 the CMA published its interim report raising concerns that, as suppliers of the two key mobile operating systems in the United Kingdom, Google and Apple can make a number of key decisions that can have significant implications for the products and services that are accessed online. The statutory deadline for the publication of the final report on the study is 14 June 2022.

Mobile radio network services market investigation

On 25 October 2021, the CMA decided to refer the supply of the land mobile radio network services for public safety (and other ancillary services) for a market investigation. In its issues statement published in December 2021, the CMA noted that the policy, fire, rescue and ambulance services personnel operating in the field communicate with each other using a private mobile radio network called Airwave, which is the only such network in operation in Great Britain. As such, the market investigation seeks to assess the composition of the market, and features that are harming competition in the market. The Provisional Decision report will be published in June 2022, and the final report will be published in September 2022.

Ofcom review of postal regulation

In December 2021, Ofcom published a consultation on its review of postal regulation, setting out proposals to support the financial sustainability and efficiency of the universal postal service, promote competition and improve protection for consumers. Ofcom intends to publish its statement on the future regulation of postal services in the summer of 2022.

Voice assistants, smart speakers, wearable tech inquiry

The Department for Culture, Media and Sport (DCMS) Committee announced on 12 May 2022 that it will examine the impacts of the increasing prevalence of smart and connected technology to ensure that it is safe and secure for users. The inquiry will look at how devices (such as smart speakers, virtual assistants and wearable tech) could lead people to access harmful content, or be open to hacking or an infringement on privacy and data protection rights. The DCMS Committee will accept written evidence until 23 June 2022.

Antitrust

Ofcom investigation into the provision of equipment related services in the electronic communications sector

In October 2020, Ofcom issued a Statement of Objections (SO) to Motorola Solutions UK Limited, its ultimate parent company Motorola Solutions Inc, and Sepura Limited. The SO set out Ofcom's provisional view that the parties infringed Chapter I of CA 1998 by exchanging competitively sensitive information relating to their pricing intentions for a procurement exercise run by the Police ICT company in 2018 covering devices, accessories and related services used on the Airwave radio network. The parties have the opportunity to make representations to Ofcom. Ofcom expects to make a final decision on whether there has been a breach of competition law later in 2022.

Royal Mail's abuse of dominance

On 7 May 2021, the Court of Appeal dismissed Royal Mail's second appeal stemming from Ofcom's decision to fine Royal Mail £50 million for abusing its dominant position by discriminating against its only major competitor delivering letters that were also one of Royal Mail's wholesale customers; Whistl (the CAT having previously dismissed an initial appeal in January 2020). At the time, Whistl was competing directly with Royal Mail by delivering 'bulk mail' to addresses in certain parts of the United Kingdom. Royal Mail's wholesale price increases meant that any of Royal Mail's wholesale customers seeking to compete with it by delivering letters in some parts of the country, as Whistl was, would have to pay higher prices in the remaining areas – where it used Royal Mail for delivery. The Court of Appeal dismissed Royal Mail's further appeal concluding that the CAT had not erred in its dismissal of the initial appeal. Royal Mail has sought permission to appeal the judgment to the Supreme court.

Class action filed against Meta filed at Competition Appeal Tribunal over 'excessive' profits from user data

A class-action lawsuit was filed against Meta (formerly Facebook) on 14 January 2022 under the Consumer Rights Act 2015, alleging that Meta abused a dominant position. The claim alleges that Facebook used its market dominance to impose unfair terms and conditions on its UK users, allowing it to exploit their personal data for 'excessive profits'. As such, the class action claims that Facebook should pay its 44 million UK users compensation for the exploitation of their data between 2015 and 2019. On 8 March 2022, the CAT published an application to commence collective proceedings, and on 15 March 2022, the CAT made a reasoned order giving permission for the claim form to be served out of jurisdiction.

Class action against BT for charging unfair prices lodged with the Competition Appeal Tribunal

On 26 January 2021, the Competition Appeal Tribunal (CAT) published an application to commence collective proceedings under the Competition Act 1998 against BT Group PLC. The claim follows an Ofcom review in 2017 finding that BT was the dominant provider of standalone fixed voice services with around 70 per cent market shares, and that insufficient competition in these markets led to customers being materially worse off. The claim alleges that BT charged unfair prices to certain of its customers between 2015 and 2018 in breach of the Chapter II Competition Act 1998 prohibition. The CAT issued a judgment in September 2021 approving the application for a collective proceedings order (CPO) and, in October 2021, denied permission to appeal. In November 2021, the Court of Appeal granted BT permission to appeal against the CAT's CPO judgment that was heard in March 2022. On 6 May 2022, the Court of Appeal dismissed the appeal by BT, which argued that the claim was wrongly allowed to advance to trial on an 'opt-out' basis. This means that the claim is now permitted to proceed on an

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opt-out basis, and as such all eligible class members are automatically included in the claim (and entitled to compensation should the claim succeed) unless they elect to opt out.

CMA accepted legally binding commitments from Google in relation to its privacy sandbox

The CMA accepted commitments proposed by Google to alleviate the competition law concerns raised in relation to its 'privacy sandbox' on 11 February 2022. The CMA launched its investigation into Google's privacy sandbox in January 2021, citing concerns that it would bolster Google's already dominant position in the online advertising market. The privacy sandbox tool is currently being developed to launch in 2023, and is designed to replace tracking, cookie-based targeted advertising in its Chrome web browser. The CMA accepted commitments from Google to remove third-party cookies on Chrome and develop its privacy sandbox tools. The commitments also agreed to include the involvement of the CMA and Information Commissioner's Office in testing processes.

Digital markets strategy

Digital Regulation Cooperation Forum

In July 2020, the CMA, Ofcom and the Information Commissioner's Office (ICO) established the Digital Regulation Cooperation Forum (DRCF) to deliver a step-change in coordination and cooperation between regulators in digital markets. The Financial Conduct Authority (FCA) – initially an observer member - joined as a full member in April 2021. The DRCF is a non-statutory voluntary network – it does not have a decision-making role and does not provide formal advice or direction to members. Rather, the forum aims to achieve coherent, informed and responsive regulation of the UK digital economy; specifically, the organisations believe that the challenges posed by the regulation of online platforms require a greater level of regulatory cooperation. In March 2021, the DRCF published its work plan for 2021 to 2022. The work plan set out the following priorities for the year:

- working together on critical digital issues (including design frameworks, algorithmic processing and end-to-end encryption) to provide coordinated regulatory solutions to improve outcomes for consumers;
- developing joined-up regulatory approaches for delivering coherent regulatory outcomes where different regimes overlap; and
- working collectively to build skills and capabilities to ensure that the DRCF members are equipped for their evolving regulatory roles.

In line with this, the CMA and ICO published a joint statement in May 2021 on the interaction between competition and data protection, flagging synergies between the two policy regimes, and Ofcom and the ICO have also collaborated closely in relation to the Age-Appropriate Design Code and the Video Sharing Platforms regime, to ensure a coherent regulatory approach and make it easier for the industry to understand and comply with regulatory requirements.

In addition, the DRCF announced the launch of its technology horizon scanning programme on 29 November 2021. This aims to provide a coherent view of new and emerging digital markets and technologies informed by three priorities:

- to make it easier for all to be aware of and find the range of DRCF member's digital research;
- to engage with small to medium-sized enterprises, tech start-ups and academia communities; and
- to accelerate its knowledge building in new or developing subject areas.

The DRCF aims to do this by providing an 'always open' line of communication where interested parties can make the DRCF aware of technological developments as and when they arise.

Digital Markets Taskforce and a new regulatory regime for digital markets

On 8 December 2020, the Digital Markets Taskforce (a CMA-led initiative working closely with Ofcom and the ICO), published its advice to the government on the potential design and implementation of pro-competitive measures for unlocking competition in digital markets. The Taskforce set out advice to the government on several proposals to prevent 'powerful digital firms' from 'exploiting their powerful positions' as well as to drive vibrant competition and innovation. Following the proposals, the CMA announced that the Digital Markets Unit (DMU) had been established in shadow form on 7 April 2021 to further the interests of consumers and citizens in digital markets. The CMA's announcement stated that the DMU will oversee a regulatory framework for the most powerful digital firms – those with 'substantial, entrenched market power'– this being the Strategic Market Status (SMS) regime.

Powers for the DMU and the new regulatory regime will require legislation. As such, the DCMS published proposals on 20 July 2021 for a new regulatory regime for digital markets, accompanied by consultation documents. These documents stated a need for a distinct regulatory approach for digital markets due to their fast-changing nature, scale and scope. The consultation sought views from a broad range of interested parties (such as start-ups, charities, technology companies, investors, law firms and civil society organisations) and closed on 1 October 2021. The CMA issued its response welcoming the government proposals on 4 October 2021. The proposed regime will cover certain activities of SMS firms through a mandatory code of conduct, enforcement policies such as 'pro-competitive interventions' and fines, as well as a new mandatory filing regime for specific transactions involving the SMS firms. To aid compliance, the DMU will provide non-binding guidance to individual SMS firms. The DMU could also be given the ability to suspend, block and reverse behaviour that breaches the new mandatory code of conduct, for instance through unfair changes in their algorithms or terms and conditions. On 10 May 2022, the Queen's Speech pledged to create a bill that would bolster the CMA and the DMU's statutory powers to carry out this new proposed regulatory regime. However, this has only been promised in draft form, meaning that final legislation may take considerably longer.

Digital comparison tools

As summarised in the CMA's annual report on concurrency: Ofcom has taken a number of steps to take forward the CMA's recommendations of supporting the development of digital comparison tools (DCTs) in telecoms to enhance competition and consumer choice. In April 2021, Ofcom made changes to its voluntary accreditation scheme for DCTs. These changes will help to ensure the scheme is better able to adapt to a changed digital environment, for example, by allowing new ways of presenting search results where that meets consumer needs. In July 2021, Ofcom provided an update on its initial thinking in respect of data mobility in the retail telecoms and pay-TV markets. This would enable people and small businesses to tell their communications provider to share information about their services easily and securely with third parties of their choice, such as comparison sites. The update summarises the responses to Ofcom's 2020 consultation and outlines its next steps, including continued participation in the government's Smart Data Working Group.

CMA and Ofcom code of conduct advice for platforms and publishers

On 6 May 2021, the DMU (as part of the CMA) published its joint advice with Ofcom setting out how consumers and content providers, including newspapers, could benefit from the proper management of big tech firms. The advice describes how a code of conduct, if legislated, would curb the power of big tech firms so that they would have to agree to fair and reasonable terms for the content they use on their platforms. This

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would form part of the government's new aforementioned proposed pro-competitive digital markets regime applicable to SMS firms.

The ways in which the DMU and Ofcom propose to do this include:

- addressing concerns about the transparency of how algorithms work and which factors are used to determine where different publishers' content appears in searches;
- giving publishers appropriate control over presentation and branding of their content;
- driving improved practices in the sharing of user data between publishers and those platforms that host their content; and
- redressing the imbalance in bargaining power in negotiations between publishers and large platforms by providing a framework for fair financial terms for publishers' content where this is hosted by the largest platforms with significant market power.

Consumer protection

'Loyalty penalty' super-complaint – Ofcom November 2021 review

In September 2018, Citizens Advice submitted a super-complaint to the CMA raising concerns that longstanding customers were paying more than new customers (a 'loyalty penalty') in the following markets: cash savings, home insurance and mortgages (regulated by the FCA), and mobile and broadband (regulated by Ofcom). In December 2018, the CMA published its response to the super-complaint, finding that the loyalty penalty was a significant problem impacting UK consumers. In November 2021, Ofcom published its review of the impact of end-of-contract notifications and pricing commitments by broadband and mobile providers, finding a reduction in the number of out-of-contract customers of over 1 million from 2019 to 2020. However, Ofcom also found that average prices paid by broadband customers had fallen over the same period, and the commitments secured from providers had a positive impact on vulnerable customers.

Online Safety Bill

In May 2021, a draft of the Online Safety Bill was published in response to growing pressure in the United Kingdom to ensure that there is accountability placed on website operators to monitor harmful content (eg, content related to discriminatory material, terrorism, or cyberbullying) posted by users. Ofcom is acting as the designated regulator of the Online Safety Bill, and its chief executive stated on 24 November 2021 that the 'time has come for strong, external oversight' of social media companies as there are currently no statutory obligations on such operators in respect of the content posted by their users.

The Online Safety Bill will apply to:

- 'user-to-user' services, meaning services that host user-generated content that can be accessed by users in the United Kingdom, or services that facilitate public or private online interaction between users, at least one of whom is in the United Kingdom; and
- search-engine services, provided that users in the United Kingdom are affected.

Companies that are in scope will have a duty of care imposed on them to ensure that those who use their services are not exposed to content that is harmful. To meet this duty of care, companies will need to put systems and processes in place to improve user safety, but the severity of such measures will vary depending on different categories of content.

Companies found to be in breach of the Online Safety Bill face possible fines of up to £18 million or 10 per cent of global annual turnover (whichever is higher). Ofcom will also be granted a wide range of enforcement powers, such as the ability to issue technology notices, impose requirements on a provider, and apply to the court for access restriction orders, which impedes UK users' access to a non-compliant regulated service. The Online Safety Bill is still subject to Parliamentary scrutiny, and so may still change before it is finally enacted.

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