LEXOLOGY
Getting The Deal Through

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The media and telecommunications industries are continually changing and adapting to advancements in technology, consumer information consumption habits, and – quite pertinently – the social and economic environment. As businesses seek to adapt, so too do the laws and regulations in these sectors that aim to remain appropriate, applicable and useful.

Telecoms & Media seeks to provide an assessment of the relevant legal and regulatory environment, setting out each market's regulatory framework as well as the practical implications of how those regulations affect service providers and end users equally. In addition to outlining any significant events over the previous year, *Telecoms & Media*'s responses also emphasise any potential future developments and any proposed plans for change.

Media and telecommunications remain an essential part of consumer lives and, accordingly, these industries are frequently highly regulated and subject to intricate competition law regulations. In addition to these regulatory oversights, *Telecoms & Media* additionally considers laws that are not specific to these industries, like cybersecurity and data protection laws, and how these may affect the media and telecom sectors.

Telecoms & Media seeks to provide a comprehensive overview of a wide range of areas within these industries, from mobile communications to broadband connectivity for telecoms, and newspapers to online video content for media. By avoiding a narrow focus on one or two segments of the industries, this publication provides a more complete understanding of the complex regulatory landscape.

Over the past few years, the covid-19 pandemic has had a significant impact on the telecoms, media and technology (TMT) sector. Indeed, the pandemic acted as a catalyst for the digital transformation of business and society as they sought to adapt to the various challenges and grasp the potential opportunities.

However, in addition to the pandemic, this year has seen the continuation and escalation of the Ukraine crisis. Apart from the clear issues of the humanitarian crisis, the additional economic shock continues to be felt around the world as supply chains are severely disrupted by difficulties in sourcing raw materials for hardware, the effect of economic sanctions is felt, and energy prices increase.

One regulatory response to these pressures has been to pay significantly more attention to ensuring that there is effective competition in the regulated industries. Moreover, the resultant cost of living crisis has increasingly focused regulatory scrutiny on consumer

protection. The increased focus on consumer protection is an important development as it ensures that the rights and interests of consumers are protected in the rapidly evolving world of telecoms and media.

Most obviously, we are seeing these regulatory pressures manifest themselves through the growing number of significant new legislation focusing on digital markets and services – sectors with so many nascent segments that regulators and lawmakers are increasingly seeking opportunities to put in place various forms of ex-ante regulation. Such attempts by regulators to catch up and get ahead of the rapid evolvement of the sector are already showing signs of potentially significant divergence across jurisdictions. As a result, these new approaches in digital regulation and – to varying extents – merger control, promise to bring a number of significant challenges over the next year.

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Summary

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 objectives 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 (namely, infrastructure owners and operators) and other entities that provide services to end users, referred to as carriage service providers (CSPs). The Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) establishes Australia's regime for universal service and other public interest telecommunications services.

The Telecommunications Act includes national security and cybersecurity related obligations. The Telecommunications (Interception and Access) Act 1979 (Cth) regulates the interception of communications as well as who may access stored communications, including for national security and law enforcement purposes. The communications sector is a critical infrastructure sector under the Security of Critical Infrastructure Act 2018 (Cth), although many provisions of that Act have not been activated in relation to that sector given the provisions in the Telecommunications Act and regulations made under that Act.

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 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 and frequency bands. Spectrum licences are required by carriers for mobile telecommunications. These licences are typically auctioned and have terms 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 also be traded.

Class licences allow the operation of commonly used radio equipment on shared frequencies. Generally, any person or entity may make use of a class licence, provided the licence terms are complied with.

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 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 the 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 under the Telecommunications Act 1997 (Cth). 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 Australian government, over late 2022 and early 2023, consulted on the introduction of new sector-specific competition and consumer protection measures similar, for example, to the EU's Digital Markets Act and Digital Services Act. As at May 2023 no announcement has been made regarding the timing for implementation of such measures, if these are to proceed.

The Online Safety Act 2021 (Cth) provides Australia's eSafety Commissioner with powers to regulate abuse and harmful content on online 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?

The Australian government's commitment to the provision of near-universal super-fast broadband services (with a minimum of 25Mbps 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 through the Regional Connectivity Program, which provides funding for communications infrastructure in regional and remote areas of Australia.

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). Carriers and carriage service providers (and certain other communications sector entities) 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 communications that have been, or are 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. In February 2023, following a review of the data retention regime by the Parliamentary Joint Committee on Intelligence and Security, the government announced it would make some reforms to this regime, although these will be minor.

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 11 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. Communications is a critical infrastructure sector, although the provisions of the Act largely do not apply to that sector, given the application of a separate sector-specific legislative regime.

The Act, among other matters, requires entities responsible for critical infrastructure assets to report cybersecurity 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 cybersecurity 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 cybersecurity 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 is *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 unlawful as the relevant decision-maker did not have a valid basis to determine that under-reporting had occurred.

The 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. It is too early to say if this Act will be effective.

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. One 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 was implemented on 1 July 2022. This has data sovereignty but not data localisation requirements. The government is developing a new 2023–2030 Australian Cyber Security Strategy, which may provide for 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 promoting the provision of communications services in regional and remote areas, including through funding initiatives such as the Better Connectivity Plan for Regional and Rural Australia, which will provide A$1.1 billion in government funding for regional and remote communications.

Cybersecurity is also a continuing focus, with the government developing a new 2023–2030 Australian Cyber Security Strategy. Telecommunications companies may also in future be subject to the Security of Critical Infrastructure Act 2018 (Cth), which designates the communications sector as a critical infrastructure sector.

In relation to spectrum, the allocation of mid-band spectrum for wireless broadband (which may be used for 5G services) across Australia is an immediate objective of the ACMA, which allocation will occur by the end of 2023–2024. The government is considering the reallocation of spectrum currently used for broadcasting, but has committed to ensuring this will only occur when a long-term technology roadmap for the broadcasting sector is developed.

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 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 during streamed live sports.

The Australian Communications and Media Authority (ACMA) is the sector-specific regulator. The Australian Competition & Consumer Commission (ACCC) is the primary competition regulator, including for the media sector.

The Minister for Communications has announced an ambitious reform agenda, including implementing Australian content requirements, in some form, for subscription video-on-demand (SVOD) services and a new prominence framework to make Australian TV services easy to find on connected TVs and other devices. Legislation to provide the ACMA with more powers to regulate online disinformation and misinformation will be introduced in 2023.

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 (Cth). 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 holding more than a 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 the 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 (noting tax rebates are available for regional commercial broadcasters until 2023–2024). 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.

Large streaming providers are required to report their level of investment in Australian content to the ACMA. Streaming services are not otherwise subject to any obligations in respect of Australian content, but the government has flagged that it will introduce such obligations, to take effect from 1 July 2024.

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.

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.

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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, which may not be shown at all, and material that should not be made available to children but 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 is 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 during the streaming of live sports 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 – participated in the auction, which raised A$1.9 billion.

There is a focus on a future restack of broadcasting spectrum, although the government has committed to introducing these reforms only following the consideration of longer-term access to free local TV services.

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, in both standard definition and high definition, 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 1/2 to a market rule. 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 1/2 to a market rule prohibits 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.

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 either directly in the quality of journalism or also through a reduction in 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 then-Australian government announced in December 2019 that it would undertake significant staged reform of media regulation, primarily to make it technology or platform-neutral, as recommended in the 2019 Final Report from the ACCC's Digital Platforms Inquiry. During to period to mid-2022, only limited progress was made in progressing those reforms.

Following a change of government in 2022, media regulation reform initiatives recommended by the ACCC, and other reforms, have moved forward. For example, the Australian government has announced that local content obligations, in some form, will be introduced for SVOD services in 2023, to take effect from 1 July 2024.

Prominence is a key issue for television broadcasters (both commercial and national), that 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. The introduction of a mandatory scheme is expected in 2023, following extensive consultation on the appropriate design of that regulation.

In other areas, proposed classification reforms will be introduced in the short term, including to allow more self-classification of content and a mandatory requirement for an R 18+ classification for any online games that contain paid loot boxes, which are considered

to be simulated gambling. The government is also looking at changes to the anti-siphoning scheme, which requires certain live sporting events to be offered to free-to-air television broadcasters before subscription television services providers.

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 Australian Communications and Media Authority (ACMA), the Australian Competition & Consumer Commission (ACCC) and the Office of the eSafety Commissioner.

The ACMA is responsible for regulating communications (internet, telephones and mobile phones), television, radio and certain online 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 (which became Telstra), and the policy aim of promoting an open and competitive telecommunications market. The ACCC's communications sector remit now extends to the National Broadband Network, 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, which may not be shown at all, and material that should not be made available to children but 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 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.

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 late 2022 and early 2023, the Australian government consulted on whether to introduce digital platform services sector-specific regulation recommended by the ACCC to address anticompetitive conduct in relation to digital advertising technology (adtech) services markets and the markets for other digital platform services. These proposed reforms include a new framework for the imposition of mandatory codes on key designated digital platforms. Each code would address specific harms, for example, by prohibiting anti-competitive self-preferencing in particular service markets. The introduction of any such regulatory reform is likely to, among other outcomes, have a significant impact on the adtech services sector, and potentially increase revenues for media companies from online advertising.

There has been no significant merger activity in the media or communications sector over the past 12 months, other than the acquisition by Telstra of a majority interest in Fetch TV, the smaller of the two pay TV service providers in Australia. The ACCC did not oppose that acquisition. In addition, in late 2022, the ACCC blocked a proposed regional network-sharing deal between Telstra and TPG, two of the three Australian mobile network operators. Telstra and TPG have appealed the ACCC's decision to the Australian Competition Tribunal. The hearing will be held in May 2023, with the Tribunal's decision likely to be handed down by the end of 2023.

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Brazil

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Summary

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, as opposed to free-to-air television broadcasting, 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 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 licences. Capacity to bid and enter into agreements with the public authority, and a 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, 4G, and 5G technologies has been granted in bidding procedures. Implementation of 5G technology in Brazil began in 2022.

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 relies on a partnership with Telebrás to provide high-speed connectivity throughout the country, especially to socially vulnerable communities, having benefitted schools, healthcare units, indigenous 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;

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- 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 fibre optic backhaul in 100 per cent of municipalities, villages, isolated urban areas and rural communities by 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 ruled by Anatel's Resolution No. 749/2022, which approved the Regulation of Telecommunications Services Numbering.

According to Anatel's Resolution No. 73/1998, as amended by Anatel's Resolution No. 750/2022, number portability in Brazil is allowed between providers of the same class of

telecommunications services, being applicable to FSTS, personal mobile services (PMS), and multimedia communications services (MCS), if the relevant user remains in the same area. It is not possible to apply for portability between different kinds of services, such as FSTS to PMS.

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 damage 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 conduct.

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 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, 4G, and 5G technologies were held. The largest auction of Anatel's history granted authorisations aimed to expand telecommunications services in Brazil; and as a result, 5G technology deployment began in 2022. Such expansion is also expected to positively impact 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 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.

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; or
- 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; or
- 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.

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All processing agents must also maintain records of the 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 pieces of legislation 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. The Brazilian Central Bank, for example, issued Resolution No. 4658/2021, which provides for cybersecurity policy, in addition to the 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 the 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 the national territory.

Key trends and expected changes

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

Major investments are presently ongoing as a consequence of commitments undertaken by the winning bidders of the largest auction in Brazil's history, held in 2021, which resulted in

authorisations being granted by Anatel for the use of radio frequencies in the 700MHz, 2.3GHz, 3.5GHz and 26GHz bands. This not only resulted in the implementation of 5G technology in 2022, but is also expanding access to communications and services in the country, including with 4G technology.

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 whether 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 deals with SeAC, also allows the transmission of foreign programmes, but imposes that at least three hours and 30 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 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, 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 by 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.

Discussions on media and digital platform regulation, as well as on the duties and responsibilities of users generating a great amount of traffic in telecommunications networks are being

held in Brazil by several interested parties, including public authorities such as Anatel. Bills regarding these subjects are also underway at the National Congress, but it is not possible to estimate whether these bills 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, and is 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.

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.

Subsequent to Anatel's and CADE's approval and subject to the conditions imposed, the sale of mobile assets of Oi SA (which was the fourth largest Brazilian mobile services provider in 2020) to the three major Brazilian telecommunications services providers, TIM SA, Telefônica Brasil SA and Claro SA was carried out in 2022.

Anatel and CADE are also analysing a negotiation whereby Winity intends to make available part of the spectrum in the 700MHz band it acquired in the auction of November 2021 to Vivo, of the Telefónica group, since it might impact market competition and be in noncompliance with the auction's rules, which prevented Vivo from acquiring such radiofrequency.

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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 major statutory instrument setting out the regulatory framework for the provision of electronic communications networks (ECNs) and electronic communications services (ECSs) in Bulgaria is the Electronic Communications Law (ECL). The latter is complemented by a number of other statutory instruments, such as the Electronic Communication Networks and Physical Infrastructure Law (regulating the deployment and use of electronic communications networks), the General Requirements for Provision of Public Electronic Communications (detailing the rights and obligations of electronic communications providers), the Rules on the Minimum Security Requirements for Public Communications Networks and Services and the Methods of Security Risk Management (regulating security measures and incident reporting), as well as the related secondary legislation issued by the Communications Regulation Commission – the regulator in the field. These main pieces of legislation are also supported by numerous sector-specific legislative instruments such as the Personal Data Protection Law, the Technical Requirements to Products Law, the Electronic Commerce Law, the Supply of Digital Content and Digital Services and the Sale of Goods Law, the Consumer Protection Law and the Competition Protection Law. Following the amendments to the ECL that took place in March 2021 and the subsequent amendment to the pertinent secondary legislation, from 15 May 2023, Bulgarian law is, in general, harmonised with Directive (EU) 2018/1972 establishing the European Electronic Communications Code (EECC).

The government policy in the sector is implemented by the Bulgarian government (the Council of Ministers), the National Radio Frequencies Spectrum Council, the Minister of Transport and Communications and the Minister of Electronic Government. The Bulgarian national regulatory authority is the Communications Regulation Commission (CRC). The CRC acts in cooperation and coordination with other authorities such as the Bulgarian Commission for Protection of Competition (which has the primary responsibility for enforcement of fair competition rules), the Council of Electronic Media (the regulator in the area of audio-visual media services) and the Personal Data Protection Commission (which has been entrusted with the regulation and control of the processing of individuals' personal data).

After the promulgation of the Law on the Economic and Financial Relations with Entities Registered in Jurisdictions with Preferential Tax Treatment, their Controlled Entities, and their Beneficial Owners, effective from 1 January 2014, companies registered in a jurisdiction with preferential tax treatment, as well as their controlled entities, are not eligible to acquire ownership participation in electronic communications provider, if the percentage of participation confers 10 per cent or more of the voting rights, as well as to participate (directly or indirectly) in procedures for granting a permit for the provision of electronic communications networks and (or) services unless certain conditions are met.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

Following the transposition of the EECC, public ECNs and (or) ECSs (ECN/S) can be provided freely, after submission of a notification to, registration with, or issuance of a permit for use of scarce resources (eg, frequencies, the position of the geostationary orbit with the corresponding radio frequency spectrum or numbers from the National Numbering Plan) by the CRC.

No notification, registration, or issuance of a permit is required for the provision of a number of independent interpersonal communications services, for access to public ECN through a local radio network of companies, not-for-profit organisations and end users, for which the provision of such access is not part of economic activity, but merely supplements economic activity or for public service that is not dependent on the transfer of signals via such networks. Electronic communications for own use through ECN without the use of a scarce resource are carried out freely, as well.

The notification procedure is straightforward and free of charge. It normally takes about 14 days for the CRC to review the notification and to enter the undertaking with the register of the undertakings that have notified the CRC about their intention to provide ECN/S. The rights and obligations of the electronic communications provider arise from the date of the duly filed notification and are not limited in time. Providers carrying out electronic communications under the notification regime must comply with a set of ongoing compliance obligations and requirements that depend on the type of network or services provided (eg, certain technical, reporting, procedural, data protection, retention, consumer protection, law enforcement obligations, etc). Providers operating under such authorisation have the obligation to inform the regulator within 14 days of any change to the data stated in the notification and may terminate the provision of electronic communications upon submission of a notification to that effect to the CRC.

Provision of ECN/S upon registration is a new administrative regime concerning the use of individual rights over the spectrum designated for use after registration. The relevant spectrum, the use of which is subject to registration, the technical parameters for the operation of the networks, the related registration procedure, and the designated registry kept by the CRC are all set forth in the Rules for Use of Radio Frequency Spectrum Following Registration. The term of use of such resource under registration is up to 20 years. The registration of the entities having the right to use said spectrum is made by the CRC free of charge, following an application with the CRC information portal. The regulator carries out the registration within 20 days following the submission of the application or the correction of the identified inaccuracies and (or) incompleteness.

Where the provision of electronic communications is subject to authorisation for use of the individually allocated scarce resource electronic communications shall be carried out upon the issuance of a permit by the CRC.

The permit for use of individually allocated spectrum shall be awarded either:

- on a competitive basis, where the number of applicants exceeds the number of entities that can obtain permits for the available spectrum; or
- without an auction or tender, in a limited number of cases, including, among others:

    - where the number of applicants is lower or equal to the number of entities that may be granted a permit for the available spectrum;
    - for carrying out electronic communications through the use of analogue ECN for terrestrial analogue radio broadcasting; and
    - for carrying out electronic communications for the entity's own use.

Where the provision of ECN/S requires the use of scarce resource – numbers, the permit shall be granted without auction or tender.

Bulgarian telecommunications law is technology-neutral and therefore the authorisation regimes (notification, registration, permit for use) are based on the use (or not) of a specific scarce resource, rather than based on the type of services (fixed, mobile, satellite) or a particular mobile technology (2G, 3G, 4G). A distinction in spectrum allocation for mobile, fixed and satellite usage is made in the State Policy on Planning and Allocation of the Radio Frequency Spectrum adopted by the Council of Ministers. The National Plan further allocates radio frequency bands, distinguishing between mobile, fixed and satellite usage.

A permit for the use of a scarce resource (irrespective of whether spectrum or numbers) is granted for an initial period of up to 20 years, except for the permit for use of harmonised spectrum for wireless broadband services whose initial term is not less than 15 years with the option for prolongation up to 20 years. Apart from the statutory obligations relevant to all electronic communications providers, the holders of permits for use of an allocated resource must comply with the obligations imposed by the terms and conditions of the permit. The permits can be amended and supplemented under the request of the holder or under a CRC motion and on the grounds provided for by the law (eg, including, among others, changes in the applicable laws, reasons related to the public interest and aiming at efficient use of scarce resources, protection of consumers' interests and ensuring universal service). The CRC may also withdraw the authorisation where the provider fails to comply with the terms of the permit, has committed systematic violations and systematically fails to pay the fees due with regard to the allocated resource, as well as in some other cases explicitly set forth in the law.

Undertakings carrying out electronic communications have to pay:

- an annual fee for the CRC's controlling activities of up to 1.2 per cent (currently 0.2 per cent for undertakings having an annual gross income over 100,000 Bulgarian leva) or zero per cent (for undertakings having an annual gross income below 100,000 Bulgarian leva) over the annual gross income from the provision of ECN/S, value added tax not included and following deductions as provided for by the law; and
- a one-off fee for administrative services.

In addition, undertakings using individually allocated scarce resources have to pay:

- an annual fee for use of such resource (the amount of the annual fee for the use of an individually allocated scarce resource shall be determined on the basis of criteria set

forth by the law, such as territorial coverage of the permit, term of spectrum use (in respect of radio frequencies), availability and economic value of numbers from particular number ranges (in respect of numbers), etc; and
- a one-off fee for granting, amendment or supplement of a permit for use of such resource.

As a stimulus for technical and technological innovations, in April 2023, the Council of Ministers has updated the tariff for the fees collected by the CRC in respect of ECS activities by decreasing a number of fees for use of scarce resource and the issuance of the related permit.

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 may be used freely, after registration or after obtaining a permit. Spectrum registration and spectrum permits grant individual rights for use of spectrum, and these generally specify the permitted use. Spectrum registration is not tradable or assignable.

Bulgarian law allows the transfer of a spectrum permit or part of the rights and obligations pertaining to the permit, for the full or part of the allowed territorial scope, and for the full or part of the allowed use term, as well as the lease of the individually allocated spectrum, after the prior approval of the CRC. The CRC shall issue such approval if the contemplated transfer or lease would not negatively affect competition or lead to changes in the conditions of spectrum use. Specific requirements related to the transfer of a permit are set forth in the secondary legislation adopted by the CRC.

Ex-ante regulatory obligations

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

The ECL contains specific provisions that aim to prevent operators with significant impact on the market to engage in anticompetitive practices. These provisions are enforced by the CRC, whose task, among others, is to define and periodically analyse the relevant markets for network infrastructure and communication services with the aim to determine whether effective competition exists. The CRC conducts the analysis in accordance with the methods and principles of the competition law (namely, effective competition is deemed to be absent if one or more undertakings have significant market power (SMP) in a relevant market). In line with article 63(2) of the EECC, the ECL defines SMP as a position equivalent to dominance (namely, a position of economic strength vesting in a single undertaking (or a group of undertakings) the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers).

In 2022, the CRC completed its fifth round of market analysis of the relevant markets and defined that there are no markets that should be subject to ex-ante regulation. The CRC's reasoning is that the three criteria for the definition of a market as a relevant market subject to ex-ante regulation are not satisfied with respect to any of the telecommunication markets. For clarity, the ECL similarly to the EECC outlines the following three criteria:

- high and non-transitory structural, legal or regulatory barriers for entry on the market;
- a market structure that does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers for entry; and
- competition law alone is insufficient to adequately address the identified market failure.

It should be mentioned that as a result of its fourth market analysis of the relevant markets that took place in 2020, the CRC had defined the market for wholesale call termination on individual public telephone networks provided at a fixed location (market No. 1 of 2014 Market Recommendation) and the market for wholesale voice call termination on individual mobile networks (market No. 2 of 2014 Market Recommendation) as markets that should be subject to ex-ante regulation and had imposed specific measures to be observed by each of the entities active on these market that were considered to have SMP. The measures included, among others, the obligations for the provision of access to and use of essential network elements and facilities, including the provision of internet protocol (IP)-based interconnection, transparency, non-discrimination as well as price restrictions, including cost-oriented pricing for termination of national calls and calls originating from EU or EEA countries.

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 CRC determines that effective competition in a relevant market is deterred by a vertically integrated undertaking with SMP, it may order functional separation, by requiring the activities related to the wholesale provision of access services to be placed in an independently operating company. The separated undertaking must supply wholesale access services to all operators, including related parties, on the same terms and conditions, including prices and timescales.

The functional separation is an extraordinary measure that has not been used to date in Bulgaria, and the law prescribes that it must be applied only where all other measures have failed and there are important and persisting competition problems and (or) distortions in the relevant markets for wholesale access. The CRC may impose this obligation after completing public consultations and subject to authorisation by the European Commission.

If an undertaking with an SMP on one or more relevant markets decides to transfer its local access network assets or a substantial part thereof to a separate legal entity under different ownership, or to establish a separate business entity that provides fully equivalent access services to retail service providers, including to its own retail divisions, the respective undertaking shall notify the CRC on this intention. The CRC shall assess the effect of the intended transaction, together with the commitments offered, where applicable, on the existing regulatory obligations imposed on this undertaking, and on the basis of this analysis, the CRC may impose, maintain, amend, or withdraw obligations and may make obligatory commitments proposed by the undertaking.

Universal service obligations and financing

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

'Universal service' is defined as a set of services with a pre-set quality standard, which must be made available to all customers, regardless of their location in Bulgaria, at a reasonable price. Pursuant to the ECL and Ordinance No. 4 of 21 March 2023 on the conditions and procedure for the provision of the universal service under the ECL (the Ordinance), the universal service obligations include the provision of fixed voice telecommunication services and adequate broadband internet access at a fixed location, which shall support, in any case, a set of services expressly specified under the ECL. The latter include email; search engines; basic online tools for training and education; online newspapers or news; services, related to the online purchase or ordering of books; services, related to job search and job search tools, professional networking communities, online banking and utilisation of electronic administrative services; social media and real-time communication via text messages; and voice and video calls. At the request of a user, these may be limited to the maintenance of voice communications services. It shall be noted that the Ordinance determines the conditions for the provision of and the quality parameters regarding the universal service.

The CRC is the authority with the power to impose universal service obligations on undertakings that provide fixed voice services and broadband access. Further, the CRC may oblige such undertakings to take special measures for persons with disabilities. The conditions, modalities, and means, related to the provision of universal services to persons with disabilities, are outlined under the Ordinance. The CRC shall conduct an evaluation of the need to impose universal service obligations, as well as a review of those already imposed, every three years or upon a change of market circumstances. Currently, the former incumbent operator BTC/Vivacom has the obligation to provide the universal service.

Under the ECL, the undertakings with imposed obligations to provide universal service may request to be compensated for the proven net costs when the universal service provision represents an unfair burden on the said undertakings. The existence of an unfair burden is determined on the basis of the net costs, calculated in accordance with the rules adopted by the CRC (see Rules on Calculating the Net Costs for the Provision of the Universal Service, published in State Gazette issue 32 of 8 April 2023), and the intangible advantages for the undertaking, obtained from the provision of the universal service, provided that the provision results in losses or is offered at prices below a reasonable profit margin. The compensation resources for net costs of universal service provision shall be accumulated in a universal service compensation fund, which is an entity, separate from the CRC.

Number allocation and portability

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

Undertakings providing public ECSs through numbers from the National Numbering Plan have the statutory obligation to provide for number portability, as end users have the right, upon their request, to keep their numbers, regardless of the operator that provides the service, for:

- geographic numbers: upon change of the provider of the service and (or) change of the address within one and the same geographic national destination code; and
- non-geographic numbers: for any location.

In the implementation of the number portability rules, the CRC has issued functional specifications for number portability, containing technical conditions for carrying out the porting, rights and obligations of the operators, procedure, pricing, and expenditure distribution principles. Further to the functional specifications and under the supervision of the CRC, the respective groups of operators using particular types of numbers (for mobile, non-geographic or geographic services) have adopted detailed number portability procedures.

Customer terms and conditions

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

Pursuant to the ECL, undertakings providing ECN/S must offer those to the end users in compliance with the principles of transparency and equal treatment, considering the type of technology used, the categories of end users, the amount of traffic and the means of payment, and must not offer advantages to individual end users or groups of end users for the same services. Following the transposition of the EECC, the information and transparency obligations of ECN/S providers with respect to their customers differentiate between end users and consumers, and the consumer-specific obligations may extend to a specific group of end users – microenterprises, small enterprises and not-for-profit organisations unless the later have explicitly waived such protection. By way of an example, the following obligations apply:

- When providing ECS to consumers, microenterprises, small enterprises and not-for-profit organisations, providers have to make available to the customer:
    - a list of specific information as set out in article 226 of the ECL (namely, providers' identification data, characteristics of the services, minimum level of service quality, etc) on a durable media; and
    - a concise and easily understandable resume of the contract prior to its conclusion in the form provided for by Commission Implementing Regulation (EU) 2019/2243. The information provided shall become an integral part of the contract and cannot be altered unless expressly agreed otherwise.

- When providing ECS to end users (irrespective of whether consumers and irrespective of the size of the company) and the provision of the services is made subject to general terms and conditions, providers have to publish in a clear, comprehensive, and easily accessible machine-readable form the information for the terms and conditions of the services (eg, contact data of the entity, description of the services, including access to emergency services, etc).
- Undertakings providing public interpersonal communications services or internet access services shall publish on their website, provide in a prominent place on their business premises, and in any other appropriate manner up-to-date information on the general terms and conditions of the service, provider's contact details, registered office and address, phone number, email address, and website; description of the services

offered; and dispute resolution mechanisms, including those developed by the provider. Such information must be published in a clear, comprehensive and easily accessible machine-readable form and in a format accessible to disabled users. Further, providers must publish in the comparison tool, provided by the CRC, information about prices and tariffs for services and the quality of service to enable the end users to compare and evaluate different internet access, number-independent, and number-based interpersonal communications services.

- If the internet access or interpersonal communications provider controls at least certain elements of the network directly or by virtue of a service level agreement, the company may be required to publish comprehensive, comparable, reliable, easily accessible and up-to-date information to end users on the service quality, as well as on the measures taken to ensure equality of access for users with disabilities. In addition, the CRC may require the provider to inform consumers if the quality of the services provided depends on external factors such as control of signal transmission or network connectivity.

Customer agreements enter into force seven days after execution unless the consumer has requested explicitly and in writing an immediate entry into force. Within this term, the consumer is entitled to withdraw from the contract without liability or the need to state any grounds. The ECL requires that the initial term of contracts between consumers and ECSs providers (other than providers of machine-to-machine services or the number of independent interpersonal communications services) does not exceed two years and that the undertakings offer consumers the option to enter into a contract of up to one year. The conditions and procedures for contract termination must not hinder the ability of a consumer to change service providers. In addition, since 2012, on expiry of the original fixed term, all end user contracts become of indefinite duration and may be terminated by the customer on one-month notice.

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?

Regulation (EU) 2015/ 2120 (the Regulation) is directly applicable and mandatory in its entirety in all EU member states, including Bulgaria, without transposition in the national legislation being necessary. The Regulation identifies measures concerning open internet access. The CRC has adopted the Position on the Implementation of the Requirements of articles 3 and 4 of Regulation (EU) 2015/2120 by Providers of Internet Access to End Users (the Position). The Position takes into consideration the Guidelines adopted by BEREC to be Applied by the National Regulatory Authorities Concerning the European Net Neutrality Rules (the Guidelines).

With respect to zero-rating, the CRC has stated in its Position that it considers as admissible the applied by providers zero-rating practice where once the data cap is reached the access is blocked or the speed is slowed down for all applications for which the zero-rating is applied. The CRC shall assess the implementation of the applied zero-rating practices for every specific case and consider the relevant deliberations and criteria set out in the Guidelines.

With respect to bandwidth throttling, in principle, the CRC considers as a violation of the obligation of the providers of internet access services to equally treat all traffic agreements or practices where there is technical discrimination, which is expressed in, inter alia, blocking, slowing down, restricting, interfering with, degrading or violating or discriminating access to specific content, or one or more applications. Taking such actions by the providers of internet access services is justified only with a view to certain exceptions set out in the Regulation.

Platform regulation

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

Bulgarian law neither defines nor contains a specific regulation of digital platforms. To the extent digital platforms provide services at a distance, by electronic means, and at the individual request of the recipient of the service, in Bulgaria, they fall under the general regulation of information society services as per the Bulgarian Electronic Commerce Law (the national transposition of the EU E-Commerce Directive). Currently, the latter law applies to online intermediary services as well. Upon entry in application with respect to all entities within the scope of Regulation (EU) 2022/2065 (the Digital Services Act) from February 2024, the few Bulgarian law rules governing online intermediary services will be superseded by the rules of the Digital Services Act.

Further statutory rules may apply in addition to the ones relevant to the information society service. As an example, where a platform provides digital content and digital services to consumers, the consumer protection rules pertinent to digital content and digital services under the Bulgarian Supply of Digital Content and Digital Services and the Sale of Goods Law will apply (the national transposition of the Digital Content Directive). The services of the video-sharing platforms, on the other hand, are regulated under the Law on Radio and Television, which has already been harmonised with the rules of Directive (EU) 2018/1808 (the Revised AVMS Directive).

Since information society services are regulated under the law of the EU member state in which the service provider is established, and as long as most of the prominent digital platforms do not domicile in Bulgaria, there are no noticeable enforcement initiatives of Bulgarian regulators or government authorities. Usually, the enforcement activities of Bulgarian authorities are limited to notice-and-takedown requests or notifying the respective regulator in the country of origin. Due to the specific political circumstances in Bulgaria – with long periods of a dysfunctional parliament and no regularly elected government to focus on a legislative agenda, the upcoming update of the legal regime governing intermediary services seems to remain unnoticed. Nevertheless, the public in Bulgaria eagerly awaits to see the changes that the application of the Digital Services Act will bring, including the potential for more active Bulgarian regulators.

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?

Bulgarian law does not define and rarely uses the term 'next-generation access network'. From a legal perspective, NGA networks are electronic communications networks and, due to the technological neutrality principle, in respect of regulatory regime and construction – they are subject to the same statutory rules as provided for the networks based on other technologies. The deployment of NGA networks, and following the transposition of the EECC – of very high-capacity networks, however, is used by the CRC as one of the relevant criteria, when resolving the price control mechanisms in respect of SMP providers or on the imposition of certain interconnection or access obligations.

The covid-19 pandemic boosted the use of online services as never before and those circumstances prompted the government's financing promoting NGA network penetration. More particularly, the deployment of very high-capacity networks has been envisaged in the Recovery Plan, prepared by the Council of Ministers to provide connectivity in remote and scarcely populated areas where it would be commercially unprofitable to invest (namely, white spots). Although no further details of the funding are available yet, pursuant to the latest version of the Recovery Plan, the total planned resource is up to 632.9 million Bulgarian leva (527.3 million Bulgarian leva on account of the Recovery and Resilience Instrument and 105.6 million Bulgarian leva national co-financing) with an execution period between 2022 and 2026.

State financing has also been envisaged in the draft Law on the State Budget of the Republic of Bulgaria for 2023, which has been proposed by the Council of Ministers, but not yet approved by the Bulgarian Parliament. The Ministry of Transport and Communications has been granted 629.94 million Bulgarian leva to fund policies in the field of communications and digital connectivity.

Data protection

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

The data protection rules applicable in the area of electronic communications are provided for in the ECL. Such rules are specific to the sector and supersede the general rules of the data protection law.

In Bulgaria, the undertakings providing public ECN/S may collect and process customer, location, and traffic data only where such data is directly intended for the provision of ECS. The communication and the related traffic data, location data, and identification data of the user should not be disclosed, unless under the statutory procedures for traffic data disclosure and interception. In the case of a personal data breach, the Bulgarian data protection authority – the Personal Data Protection Commission (PDPC), must be notified within 24 hours of becoming aware of the breach. Where the data breach might adversely affect personal data or the privacy of a customer or another individual, the customer whose data is affected must also be notified without undue delay.

In addition, specific rules in respect of data retention and data disclosure apply in the communications sector. Under the ECL, ECS providers must ensure the capacity to intercept electronic communications in real-time and the capacity for 24-hour surveillance, as well as access in real-time to data related to a specific call. Where such data may not be provided in real-time, they must be provided to the State Agency Technical Operations and to the State Agency for National Security within the shortest possible period after termination of the call. The capacity for interception, 24-hour surveillance, and access to data related to a specific call in real-time shall be implemented solely according to the procedure established by the Law on Special Surveillance Means. Under the rules of the latter piece of legislation, special surveillance means may be used only for the prevention or investigation of severe intentional crimes, provided the necessary data cannot be collected by other means.

Further, Bulgarian legislation provides mandatory retention for a period of six months of the data necessary to:

- trace and identify the source of a communication;
- identify the destination of a communication;
- identify the date, time, and duration of a communication;
- identify the type of communication;
- identify users' communication equipment or what purports to be their equipment; and
- locate the identifier of used mobile phones.

Retention of additional data, including but not limited to data about the contents of the communication, is not allowed. The listed types of data are retained and may be used for the purpose of facilitating the investigation of serious crimes, for national security purposes, and for locating people in emergency situations. At the end of the six-month period, operators and service providers must delete the respective data. They should submit to PDPC monthly reports on the data, destroyed during the preceding month as well as annual statistical reports on the cases of disclosure requested by the competent authorities.

Requests for access to retained data may be made by certain categories of officials working at the police authorities, prosecution authorities, national security authorities and military officials. Authorisation for access is issued by the chairpersons of the regional courts or a judge authorised by the latter.

Following the Court of Justice of the European Union judgment of 17 November 2022 under Case C-350/21, the traffic data retention and disclosure obligations under Bulgarian law seem to be non-compliant with the EU law. In contrast with the said judgment, Bulgarian legislation provides for:

- general and non-selective retention of traffic data, even if limiting retention in time (six months in the case of Bulgaria) and providing for certain safeguards; and
- access by the competent national authorities to lawfully retained traffic data without ensuring that the persons whose data have been accessed have been informed and without those persons having a legal remedy against unlawful access.

Cybersecurity

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

Pursuant to an explicit provision of the Bulgarian Cybersecurity Law (the national transposition of the Network and Information Security Directive), electronic communications providers are explicitly excluded from the scope of the statutory cybersecurity rules, except for three very specific web blocking obligations. This is because they are subject to much stricter network and service security obligations under sector-specific electronic communications regulations.

Under the ECL and as part of their public security obligations, electronic communications providers in Bulgaria are required to take appropriate technical and organisational measures to manage the risk posed to the security of networks and services and to ensure the appropriate level of security corresponding to the assessed risk.

Following the transposition of the EECC, the CRC has the obligation to set forth specific statutory rules on the minimum network security requirements and, the related risk management methods. In compliance with such requirement, on 7 June 2022, the regulator published the Rules on the Minimum Security Requirements for Public Communications Networks and Services and the Methods of Security Risk Management. Pursuant to the said Rules, providers of public ECS/N:

- must make an initial risk assessment, that shall be the basis for determining the level of security, including preparing a complete list of assets that, if compromised or removed, could cause a security incident to the network or service;
- irrespective of the level of security determined as per the risk assessment, depending on the type of the network and the service they must use as a minimum the technical and security measures set forth in Appendix 1 to the Rules; and
- carry out regular security audits, as well as security audits after the occurrence of an incident.

The legislator has provided for a one-year grace period for the network and service security obligations under the Rules to enter into force, and thus the above-listed obligations are applicable from 9 June 2023.

In addition, providers of public ECS/N are obliged to:

- Notify the CRC in writing of any security-related incident having a significant impact on the operation of its network or services (no transition period in respect of the Rules for security incident reporting has been provided for). The Rules set forth qualitative and quantitative criteria for assessing the incident as significant (eg, the number of users affected by the security incident, the particular duration of the security incident, the geographical scope of the area affected by the incident, etc), as well as the standard reporting form. The reporting is done in stages – the initial report should be made within 24 hours after establishing the level of impact of the incident, while the final report should be made immediately after the completion of the actions in relation to the incident.

- Block certain web content. The web blocking obligations are part of the public security obligations of the electronic communications providers; however, they are scattered in a number of sector-specific laws, rather than codified in the ECL. More particularly blocking activities are provided for in respect of illegal gambling, financial and touristic services websites, as well as in relation to counter-terrorism activities and malicious internet traffic. The supervision in respect of such obligations is vested with the respective sector regulator – the National Revenue Agency, the Financial Supervisory Commission, the Ministry of Tourism, the Ministry of Internal Affairs, and the State Agency of National Security.

Following the entry into force of the Revised Network and Information Security Directive, it is expected that in view of its transposition, both the ECL and the Rules on the Minimum-Security Requirements for Public Communications Networks and Services and the Methods of Security Risk Management will be revised to update the electronic communications sector regulations with the new rules concerning 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?

Apart from including large-scale registries of personal data as a privacy impact assessment criterion, currently, there is no specific Bulgarian legislation dealing with big data in particular. Thus, to the extent the concept of big data derives from the large volume of information and the need for its processing and management, in the absence of explicit regulation, the general statutory regime governing the type of data shall apply (eg, data protection: if big data concerns information about identifiable individuals, classified information regulations, where the data involves classified information, etc)

At the beginning of 2022, the PDPC published two non-binding information materials (one addressed to data subjects and one to controllers) clarifying some key issues in the processing of big data under Regulation (EU) 2016/679 (the General Data Protection Regulation) and the related possibility of profiling.

Data localisation

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

Bulgarian electronic communications law does not provide for the statutory obligation to store personal or traffic data locally in Bulgaria. This is unless the respective provider also qualifies as an 'organisational unit' under the Bulgarian Classified Information Protection Law (namely, state bodies, local authorities, legal entities and individuals that create, process, store or provide classified information (information that is a state or official secret, as well as the foreign classified information)). Access to this information is restricted and such organisational units have the obligation to comply with the statutory requirements for the protection of classified information, including storing classified information 'in the organisational unit'.

Key trends and expected changes

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

In 2021, the total volume of the electronic communications market in Bulgaria amounted to 3.148 billion Bulgarian leva (approximately €1.574), continuing the upward trend – the reported growth is 10 per cent compared to the data from 2020 (CRC 2021 Annual Report).

As of 31 December 2021, there are three active mobile operators in Bulgaria – A1 Bulgaria, Yettel Bulgaria, and BTC/Vivacom. While it is expected that the growth of mobile telephony usage will remain stable, the use of fixed-voice telephony is showing a downward trend.

In April 2021, the CRC held an auction for the issuance of three permits for the use of radio spectrum in the 3.6GHz band, with national coverage, for a period of 20 years. As a result of the auction, permits were issued to the three mobile operators participating in the auction – A1 Bulgaria, Yettel Bulgaria and BTC/Vivacom. This was an effective enabler for the launch of 5G networks in Bulgaria, which are now deployed throughout the country.

The market is dominated by the mobile network operators (MNOs), and despite the existing legal framework, no mobile virtual network operators (MVNOs) are currently operating in Bulgaria. Mobile Alternative Communications AD (MAC), a joint venture of five alternative operators, is actively campaigning for the CRC to undertake regulatory actions towards the MNOs to provide access to their networks to the potential MVNOs. As a consequence of the appeal launched by MAC against the CRC resolution approving the results of the public consultations preceding the auction for the award of the three permits for the use of the radio spectrum in the 3.6GHz band in 2021, the Bulgarian Supreme Administrative Court ruled in March 2023 that there were flaws in that procedure. MAC is vowing that such flaws can be remedied through regulatory actions that could effectively lead to the opening up of the market for the MVNOs.

The number of subscribers using fixed high-speed and ultra-high-speed access in this country is expected to increase due to the continuing migration to NGA networks. It is also foreseeable that the upward trend of IP TV will continue, with more and more undertakings expanding their portfolio of services to provide TV content based on the availability of internet access with the corresponding guarantees of the quality of service.

There is a stable tendency toward consolidation, as well as there is a trend related to structural separation. In 2021, A1 Towers spun off from A1 Bulgaria, as such separation of the telecommunication infrastructure portfolio was carried out by Yettel Bulgaria in 2020 (the demerger of CETIN Bulgaria from Telenor Bulgaria), while United Towers Bulgaria was established as a result of the carve-out of BTC/Vivacom tower assets in 2022. Another trend is the investor's interest in telecommunication infrastructure companies. Since March 2022, GIC, an international investment and infrastructure fund based in Singapore, owns 30 per cent of PPF Group, the ultimate owner of CETIN Bulgaria. Further, in April 2023, the single shareholder of United Towers Bulgaria, United Group BV announced that it had reached an agreement to sell 100 per cent of its mobile tower infrastructure unit in Bulgaria, Croatia and Slovenia to TAWAL, a subsidiary of stc Group, Saudi Arabia.

Since the enactment of the amendments to the ECL transposing the EECC, the CRC and the respective relevant Bulgarian ministries amended or issued new legislative instruments to bring the pertinent secondary legislation in line with the amended ECL.

MEDIA

Regulatory and institutional structure

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

Under Bulgarian law, content is regulated separately from the transmission and therefore the rules governing the provision of media services are stipulated in a separate set of legislative acts. Currently, audio-visual media services (both linear – programmes provided at a scheduled time and watched simultaneously by the audience and non-linear or on-demand services) and radio services are regulated as media services under the Law on Radio and Television (LRT) and the related subsidiary legislation. Said law also regulates the services of video-sharing platforms, although such services are explicitly excluded from the statutory definition of media services. Except for a few rules with respect to transparency of ownership and the ultimate beneficial owners set out in various laws, the content and activities of traditional print media, such as newspapers and magazines are not subject to statutory regulation.

In December 2020, the LRT was amended to transpose Directive (EU) 2018/1808 of 14 November 2018 amending Directive 2010/13/EU (AVMS Directive). Following such amendment, the long-awaited Code of Conduct on the Measures for Assessment, Designation and Limitation of Access to Programmes that are Unfavourable or Create a Risk of Physical Harm, Mental, Moral and (or) Social Development of Children (Code of Conduct), regulating child safety in media and video-sharing platform services has been enacted in January 2023.

The regulatory body in audio-visual media services is the Council on Electronic Media (CEM). It is the independent state authority vested with the powers to regulate both audio-visual media services and video-sharing platform services in Bulgaria.

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?

Pursuant to the LRT, providers of audio-visual media services shall be traders (individuals or legal entities) registered under Bulgarian law or legal entities incorporated in another EEA member state. Effective from 1 January 2014, the Law on the Economic and Financial Relations with Entities Registered in Jurisdictions with Preferential Tax Treatment, their Controlled Entities and their Beneficial Owners prohibits any entities registered in a jurisdiction having a preferential tax treatment, as well as their controlled entities to incorporate or acquire a shareholding in an entity that applies for or has been awarded a TV or radio programme licence under the LRT, provided that the shareholding confers 10 or more per

cent of the voting rights. A similar restriction applies to publishers of periodic printed media, however, not to TV and radio operators, whose programmes are not intended for distribution via electronic communications networks for digital terrestrial or analogue broadcasting, as well as to on-demand service providers.

The LRT also lists certain categories of individuals and entities who are prohibited from participating in licensing procedures based on their record as not being financially prudent or such who were refused or prohibited from carrying out broadcasting activities within one year prior to submission of the licence application.

Other than the general rules for concentration under the anti-trust laws (permit holders are required to declare that they do not hold shares in other radio and TV operators exceeding the acceptable threshold under the anti-trust legislation), the separate regulation of transmission and content (the LRT restricts entities to which the Communications Regulation Commission (CRC) has awarded a permit for use of digital terrestrial broadcasting (DTB) spectrum from being a Bulgarian radio and TV operator) and the transparency of ownership and financial sources in the audio-visual media sector, Bulgarian law does not provide for special regulation in relation to the cross-ownership of media companies. The LRT does not, however, allow holders of local or regional programme licences (or related parties) to be issued with a licence with national coverage for the same activity, except when such holders give up the local or regional broadcasting licence. This rule does not apply to holders of a DTB licence.

Licensing requirements

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

Audio-visual media services in Bulgaria are provided under a licence, upon registration or following a notification to CEM.

Radio and TV activity involving programmes transmitted via digital terrestrial or terrestrial analogue networks are carried out based on a licence issued by CEM. Licences for programmes transmitted via terrestrial analogue networks are granted under a tender procedure initiated at the request of the interested party or CEM. In three (if no international spectrum coordination is required) to eight months (if international spectrum coordination is required) CEM coordinates the technical aspects of the broadcasting with the CRC and thereafter opens a tender (depending on the available spectrum). Based on the results of the tender, CEM resolves on the issuance of a licence for radio or television activity and a permit for the use of spectrum by the CRC for the applicant ranked first. Following the entry into force of the said resolution, CEM would issue the respective licence and the CRC the related spectrum permit.

The programmes to be transmitted through DTB networks are also licensed by CEM. Such licences entitle the operator to broadcast using the services of an entity authorised by the CRC for use of DTB spectrum. The procedure for issuance of the licence is initiated upon request of an interested party or by CEM and takes about three or four months. The number of licences so issued is unlimited.

The programme licence granted by CEM, irrespective of whether for transmission via analogue terrestrial networks or DTB networks is personal and may only be transferred with CEM's prior consent and subject to fulfilment by the new licence holder of certain statutory requirements. The licence is granted for a term of up to 20 years and may be extended by CEM upon the request of the operator.

The registration regime is applicable for programmes distributed via satellite and cable, programmes designated for audiences outside Bulgaria but transmitted through terrestrial or satellite networks on the territory of Bulgaria. The registration procedure is rather straightforward – it is initiated by an application and by law would be completed within 14 days. The registered operator has the obligation to notify CEM of any change in the conditions, place, and manner of transmission and programming time within 14 days of its occurrence.

Non-linear (on-demand) services are subject to a notification to CEM. Both the registration and the notification are of unlimited term.

The fees payable for carrying out linear audio-visual activities are calculated in accordance with the Tariff for the Fees for Radio and TV Activity. The fees consist of an initial administrative fee, which covers the costs of issuing the licence or registration, and an annual fee. The latter varies depending on the type of service (radio or TV), the territorial coverage (local, regional or national), and the number of citizens who may take advantage of the licensed or registered service. No annual fee is due for on-demand services and the operator shall pay only the administrative fee for the issuance of a certificate for entry into the public registry of on-demand 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?

Only audio-visual media service providers under the jurisdiction of Bulgaria are subject to authorisation in Bulgaria. Where a foreign service provider is established in an EEA country the activity as an audio-visual media service provider might be carried out based on the freedom of reception principle. Bulgaria may not restrict the service if the provider complies with the Audio-Visual Media Services Directive in the country of origin. Where circumvention of rules occurs, the Bulgarian regulator may restrict certain content, such as incitement to hatred, which may not be banned in the provider's country of origin but violates local laws. Such restrictions must follow a statutory procedure and are only allowed under exceptional circumstances (eg, where the service openly, substantially and grossly violates public order or gives rise to a serious and grave risk of affecting public health, etc).

No quota for local Bulgarian content has been set forth under the LRT. However, the law provides for a mandatory 50 per cent share of European works calculated from the total annual broadcasting time (excluding news, sporting events, TV games, commercials, teletext and teleshopping) that is applicable to TV linear media services. It is further envisaged that at least 12 per cent of such programme time (excluding any reruns) shall be dedicated to European works of independent producers. The quota requirements are not applicable to

programmes designated to the local audience and broadcasted by a single provider that is not part of a national network.

On-demand service providers on the other hand must ensure at least a 30 per cent share of European works in their catalogues, as well as the prominence of those works. The 30 per cent share of European works is based on the total number of titles in the catalogue. Such quota requirements shall not apply to providers that are micro-enterprises as per Recommendation of the European Commission of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, to providers that have an active interest of less than 1 per cent of the total audience of all on-demand services offered in Bulgaria, as well as where it would be impracticable or unduly justified by the nature or theme of the audio-visual media service.

With respect to radio programmes, the applicable law requires only that the creation and broadcasting of European works in radio programmes be encouraged, without setting any minimum reserved for Bulgarian or European works.

Advertising

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

Media advertising is regulated primarily by Chapter 4 of the LRT, which implements the relevant provisions of the AVMS Directive. The rules on media advertising cover audio-visual commercial messages, commercial messages transmitted on the radio, as well as those distributed by the operators of video-sharing platforms under the jurisdiction of Bulgaria. Thus, the operators of such video-sharing platforms also have to comply with the LRT advertising requirements (mainly commercial communication to be clearly identified as such, not to incite discrimination or behaviour that endanger human health and safety, to comply with the restrictions related to advertising of alcoholic beverages, and with the prohibition on advertising of cigarettes, other tobacco and related products, including e-cigarettes and refill containers, to protect children's health and mental well-being, etc). The operators of video-sharing platforms should also introduce appropriate measures that prevent distribution of user-generated content that violates the above-identified advertising requirements.

Apart from the obligations of operators of video-sharing platforms under the jurisdiction of Bulgaria to comply with the LRT's advertising requirements, online advertising is not subject to regulation by the LRT or other codified regulation. However, there are some sector-specific regulations, such as the prohibition on advertising of tobacco and related products via information society services, the general prohibition on direct advertising of alcoholic beverages and the prohibition on online advertising of prescription medicines.

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?

Bulgarian law sets forth two sets of must-carry obligations – for providers of radio and TV programmes distribution networks (cable and satellite) and for DTB network operators. Must-carry obligations for conveying nationwide and regional programmes of the Bulgarian National Television and the Bulgarian National Radio free of charge are imposed on all three types of operators.

In respect of providers of radio and TV programmes distribution networks, the CRC is authorised to impose obligations for the transmission of certain radio and television programmes, if said networks are used by a significant number of end users, including end users with disabilities, as their principal means to receive radio and television programme services. These obligations must be proportional and transparent and shall be imposed only when they are required to achieve objectives of common interest. The radio and television programme services shall be designated by CEM according to the procedure established by the LRT. Providers, having such an obligation, shall determine cost-oriented prices for distribution of such radio and television programmes.

CEM is the competent body to determine through a reasoned decision the type and the profile of the licensed Bulgarian television or radio programmes that shall be mandatorily transmitted over the DTB networks. Pursuant to the LRT, the number of such programmes shall not exceed two programmes for each DTB network. Currently, six commercial TV programmes have must-carry status only applicable to DTB networks. The operators of DTB networks are obliged to transmit these programmes on the basis of cost-orientated prices set up in the contracts between the network operators and the content provider.

Regulation of new media content

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

Following the transposition of the revised AVMS Directive, currently, the LRT also regulates the video-sharing platform services provided by video-sharing platform providers under Bulgarian jurisdiction.

Provision of such video-sharing platform services is subject to a notification to CEM, which notification shall be accompanied by draft general terms and conditions of the service in respect of which the LRT prescribes a minimum content requirement. The notification is thereafter entered into the public registry of video-sharing platforms kept by CEM and the general terms and conditions are coordinated by the authority within 30 days of submission. The providers of video-sharing platforms have the obligation to protect:

- minors from programmes, user-generated videos and commercial communications that may impair their physical, mental, moral and (or) social development; and

- the general public from programmes, user-generated videos and commercial communications containing incitement to violence or hatred directed against a group of individuals or a member of a group based on any discrimination criteria, as well as from content the distribution of which constitutes an activity being a crime under the Bulgarian Penal Code, such as public provocation to commit a terrorist act, child pornography, racism and xenophobia.

In addition, video-sharing platform providers have certain obligations in respect of the commercial communications they are responsible for, such as to comply with the rules of the National Ethical Rules for Advertising and Commercial Communication developed by the National Council for Self-Regulation and to be transparent about commercial communications that are declared by the users when uploading content containing such communications. They must also provide for flagging and reporting mechanisms, systems to rate the content by the uploaders or users, age verification and parental control systems, as well as to set forth in their terms and conditions for use the prohibition for users to share unlawful 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?

Analogue TV broadcasting was switched off on 30 September 2013 and from that date, broadcasting of terrestrial television in Bulgaria is digital only.

The relocation of the frequencies freed up as a result of the digital switchover has been carried out based on the Plan for Implementation of Terrestrial Digital Television Broadcasting (DVB-T) in Bulgaria and several amendments to the Electronic Communications Law and the LRT. The licences for use of the frequencies for DVB-T have been granted on the grounds of the competitive bid procedure; however, from 2022, only one national and one regional multiplex operator is in service, each providing for six programmes. The 782–862MHz band has been designated for mobile wireless broadband applications (the digital dividend) once this band is released from current government use, therefore, such band cannot be used for digital broadcasting.

During the second phase of the digital switchover, the Ministry of Defence had to free up 13 of the 26 channels in the frequency bands 470–574MHz and 574–862MHz used by the ministry. In 2018, the Council of Ministers adopted a National Roadmap for the Implementation of the Republic of Bulgaria's Obligations under Resolution (EU) 2017/899 of 17 May 2017 on the use of the 470–790MHz radio frequency band in the Union. Pursuant to the Roadmap, a resource of 2x20MHz (bands 703–723MHz and 758–778MHz) should be made available. However, the minimum scarce resource required to build a fully operational LTE network is 2x10MHz for a single provider, so a resource of 2x20MHz would only be available to two mobile providers, instead of all the existing operators. Thus, the entire frequency resource used by the Ministry of Defence in the 700MHz band should be released for civilian use.

Digital formats

25 Does regulation restrict how broadcasters can use their spectrum?

Bulgarian telecommunications law is technology neutral and therefore authorisation regimes are based on the use of particularly scarce resources (spectrum), rather than based on the type of particular technology (multi-channelling, high-definition, data services). In principle, the LRT regulates only two types of permits – for programmes transmitted via digital terrestrial networks and for programmes transmitted via terrestrial analogue broadcasting networks. Only TV and radio operators transmitting programmes via terrestrial analogue broadcasting networks' own spectrum permit issued by the CRC in addition to the programme licence granted by CEM. Providers of programmes transmitted via digital terrestrial networks do not have a spectrum licence on their own. Rather, they are using the services of an entity authorised by the CRC for the use of the DTB spectrum (multiplex operators) to broadcast their programmes. Such multiplex operators have the obligation to transmit licensed TV and radio programmes of the type and profile determined by or coordinated with CEM under the rules of the LRT.

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 legal rules or processes for assessing media plurality by competent state bodies or for instructing companies to take steps in that regard. There is a general requirement that when deciding on whether to issue a licence for radio or TV activities, CEM shall evaluate, among others, whether by issuing a licence with favourable conditions for media diversity and pluralism will be created. Additionally, the LRT also prescribes that in exercising its functions, CEM shall protect, among others, the freedom and plurality of speech and information. Thus, in the lack of effective mechanisms, quality journalism and media independence may be affected by the lack of plurality in media owners or economic models.

Key trends and expected changes

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

In 2022, the issues attracting the attention of the media regulator in Bulgaria were very similar to those at the EU level. In its 2022 Annual Report, CEM outlines that the war in Ukraine determined the focus of the regulator in respect of the audio and audio-visual content provided by media service providers. The specific focus of the regulator was to detect misinformation. The covid-19 pandemic also played a role in CEM observation activities in 2022.

The protection of children, as a vulnerable audience, remained a priority of the regulator. CEM has executed focused monitoring of television programmes to detect the absence or presence of adverse content. News, the reporting of violence among children, was also subject to focused monitoring by the regulator.

In the 2022 Annual Report, CEM outlines that the RLT cannot cover the dynamic changes in the sphere of media services provision and calls for the approval of legislative changes to overcome deficits that have already been accumulated.

On 12 January 2023, CEM adopted a Code of Conduct on Measures to Assess, Flag, and Restrict Access to Programmes that are harmful or pose a risk of harm to the physical, mental, moral and (or) social development of children (the Code of Conduct). The Code of Conduct was prepared jointly with the Association of Bulgarian Broadcasters, Bulgarian National Television and Bulgarian National Radio.

Bulgaria has not yet transposed the two directives at the heart of the European Union's copyright reform, Directive (EU) 2019/789 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC and Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. The draft legislation for the transposition of the two EU directives was published for public consultations in September 2021 and is currently submitted for discussion and adoption by the Bulgarian parliament.

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?

State governance in the telecom sector is exercised by the Council of Ministers (namely, the government), the National Radio Frequencies Spectrum Council and the Ministry of Transport and Communications. The Council of Ministers adopts and updates the state policy in the electronic communications sector and the state policy on planning and allocation of the radio frequency spectrum. The latter is drafted by the National Radio Frequencies Spectrum Council, which also maintains the National Plan for Allocation of Radio Frequency Spectrum. The Ministry of Transport and Communications has general oversight over the electronic communications and information society sectors, and its powers include, among others, preparing drafts of secondary legislation acts, representing the country in international organisations, etc.

In addition, broad sector-specific regulatory competence is vested with the Communications Regulation Commission (CRC), which is an independent state agency and a separate legal entity. The CRC is a collective body, consisting of five members, including a chairman and a deputy chairman. The CRC chairman is appointed and released from office by the Council of Ministers. The deputy chairman and two of the members are appointed and released from office by parliament, and one CRC member is appointed and released from office by the President. However, each member of the CRC should be appointed after a competitive

selection procedure. The term of office of all members is five years, and a member may not serve for more than two consecutive terms of office.

The CRC has the power to regulate and monitor the compliance of providers and the provision of electronic communications services (ECSs) and of electronic communications networks (ECNs) with the applicable law. Among others, the CRC has to:

- determine the relevant markets of ECNs and ECSs subject to ex-ante regulation under the Electronic Communications Law (ECL);
- investigate, analyse and evaluate on a regular basis the level of competition in the relevant markets; and
- determine the undertakings with significant market power (SMP) and impose on them, amend or revoke specific obligations aiming to preserve or restore effective competition.

The CRC is also the authority competent to issue, amend, supplement, transfer, suspend, terminate or revoke permits for use of an individually allocated scarce resource. The CRC has the power to resolve disputes between undertakings providing ECSs and review claims submitted by end users in specific cases envisaged in the ECL. The CRC maintains mutual cooperation with the national regulatory authorities of other EU member states and with the European Commission to procure the development of consistent regulatory practices and implementation of the EU law.

Another public authority with specific competence in the media sector is the Council on Electronic Media (CEM). It is an independent state agency and a separate legal entity, comprising five members: three appointed by parliament and two by the President. The term of office for all CEM members is six years. The composition of the authority is renewed every two years within the parliament's quota and every three years within the President's quota. A member of CEM may not serve for more than two terms of office and such terms of office may not be consecutive.

CEM is vested with the power to regulate media services and services provided by video-sharing platforms under Bulgarian jurisdiction. It is charged with the following tasks and competence:

- to supervise the activities of media service providers and operators of video-sharing platforms for compliance with the Law on Radio and Television;
- to issue opinions on draft legislative acts and international treaties in the media services sector;
- to award individual broadcasting licences to radio and TV broadcasters for national and regional programme services, which have the right to be distributed by an undertaking that has been granted an authorisation for the use of a radio frequency spectrum for the provision of electronic communications over networks for digital terrestrial broadcasting (DTB) with national or regional scope; and
- to keep public registers of:

    - radio and TV programme services that are distributed over cable electronic communications networks (ECNs) ECNs, by satellite and over ECNs for DTB;
    - radio and TV programme services that are distributed over existing or new ECNs for analogue terrestrial broadcasting; and

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- on-demand media services;

- undertakings that distribute Bulgarian and foreign programme services; and
- video-sharing platform providers under the jurisdiction of Bulgaria.

Finally, the Commission on Protection of Competition (CPC) is also competent to intervene in the telecoms and media sectors to monitor compliance with the Protection of Competition Act (PCA). The PCA covers all business operations in all sectors of the economy and the presence of sector-specific regulatory requirements does not prevent its application. The PCA comprises the substantive rules on restrictive horizontal and vertical agreements, abuse of dominance and monopoly, merger control, sector inquiries, compliance review of legislation and administrative acts, unfair trading practices, and unfair trading practices in the agricultural and food supply chain. The PCA also constitutes the national competition authority – the CPC – and sets out the rules for antitrust investigations, merger control, sector inquiries, enforcement and imposition of penalties for breaches of competition regulations.

The principal responsibility for enforcement of the competition rules in Bulgaria falls to the CPC. The latter is an independent, specialist state agency, composed of seven members elected by parliament. The tenure for all members is seven years. The tenure of the current panel of the CPC expires in July 2023 and it is expected within this period that parliament elects new members of the CPC.

The CRC and the CPC must act in coordination and cooperation. Mergers and joint ventures in the telecoms and media sectors that meet the relevant national thresholds are reviewed by the CPC. The CRC is competent to review and authorise the transfer of a permit for the use of an individually allocated scarce resource or one or more of the rights and obligations related to such permit applying its special statutes. In theory, the CRC should have exclusive jurisdiction to monitor compliance with the ECL and to regulate SMP, but in practice abuse of SMP may fall within the purview of the PCA and thus should be also investigated and sanctioned by the CPC.

There are some mechanisms aiming to ensure consistency in the application of the different regimes and to avoid the conflicting exercise of jurisdiction. First, there is a cooperation agreement between the CPC and CRC, where, under the regulators, they inform one another of the draft decisions they intend to take and assist each other in the course of their investigations. Second, the ECL contains specific provisions regarding cooperation between the CRC and the CPC, especially with respect to ex-ante market review. The CRC is obliged to consult the CPC when adopting a methodology for the terms and procedure of relevant markets definition, analysis and assessment, and criteria for designating undertakings with SMP (the currently effective version adopted by CRC Decision No. 2076 of 23 October 2012, promulgated in State Gazette No. 89 of 13 November 2012, in force from 13 November 2012, last amended as per State Gazette issue No. 2 of 7 January 2022).

Appeal procedure

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

The decisions of the national regulators (namely, the CRC, CEM and the CPC) qualify as administrative acts (general or individual) and are subject to appeal before Administrative Court

Sofia-district (ACSD) pursuant to the rules and procedures set forth in the Administrative Procedure Code. The grounds on which a general or individual administrative act can be challenged are as follows:

- lack of competency of the issuing authority;
- failure to comply with the formal requirements set out by law;
- a material violation of the administrative procedure rules;
- non-compliance with substantive legal rules; and
- non-compliance with the purposes of the law.

The ACSD reviews the appeal in a panel of one judge and can affirm the respective regulator's decision, affirm and revise in part the administrative decision (eg, revise the amount of the sanctions imposed) or quash the decision and return the case to the authority for de novo proceedings.

The judgment of ACSD is subject to further appeal on points of law before the Supreme Administrative Court (SAC) acting in a panel of three justices (a chamber). The chamber focuses primarily on the quality of the preceding judicial review, but it would also analyse the underlying administrative act. If it quashes the judgment of the first instance court, it must decide the case on the merits, unless a manifest breach of procedural rules was committed or additional facts need to be established, for which written evidence is not sufficient. In the latter case, proceedings must be remanded back to the first instance court. SAC judgment is final and is not subject to further appeal.

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 major mergers and acquisitions that took place in the telecoms and media sectors in recent years was the acquisition of the former incumbent BTC/Vivacom by United Group, a leading multi-play telecoms and media provider in South East Europe that took place in 2020. United Group is a majority-owned subsidiary of BC Partners, a leading alternative investment firm with assets under management across the private equity, private debt, and real estate segments. Soon after this acquisition, United Group also acquired Nova Broadcasting Group EOOD, one of the two largest media groups in Bulgaria that include a TV and radio services operator, internet operator, newspaper and magazine publishers, etc. United Group continued its expansion in Bulgaria by acquiring a couple of national and local newspaper publishers. After these three significant deals, United Group started an expansion of BTC's operations and during 2021 BTC/Vivacom acquired several local Internet and TV operators with a presence in different regions of the country. All transactions were unconditionally cleared by the CPC on the basis of finding that none of the transactions led to a combined national share of BTC on the market for the retail provision of fixed broadband data transfer services and the market for TV broadcasting in excess of 40 per cent. All clearance decisions (three in total) were appealed by one of BTC/Vivacom's competitors on the Bulgarian market – Yettel Bulgaria. After long court proceedings and several appeals, two of the clearance decisions issued by the CPC were confirmed by the Supreme Administrative Court, and one was returned to the CPC for a new evaluation. The reasoning of the court with respect to the

latter case was that the CPC did not take into account all evidence and statements collected during the merger proceedings and did not initiate an in-depth investigation, although, on the basis of the collected information, it should have done so (pursuant to the PCA, the authority should initiate an in-depth investigation in the case a proposed transaction creates serious concerns that if it is implemented the effective competition on the relevant market shall be significantly impeded). It should be mentioned that one of the motives of the court was that BTC/Vivacom notified several acquisitions within a short period, but the CPC evaluated each one of them in isolation without taking into account the combined effect of all transactions on the relevant markets. As of the date hereof, all transactions are implemented (due to the preliminary implementation granted by the CPC). It should be noted that, at the beginning of 2022, BTC notified one more acquisition of regional internet and TV operator, but after a long Phase I investigation, and having in mind the above-identified court proceedings, the CPC started Phase II investigation. Both in-depth investigations are still pending.

Also, in December 2022, the CPC, on the basis of complaints filed by A1 Bulgaria and Yettel Bulgaria, started an investigation for unnotified concentration with respect to the acquisition of Bulsatcom EAD, one of the biggest TV operators in Bulgaria. This company was acquired in September 2022 by a Bulgarian natural person (via a special-purpose vehicle). Pursuant to the publicly available information, the complainants allege that there is evidence (a disclosure in United Group's financial statement that the respective natural person has received a loan from United Group for the purpose of acquiring Bulsatcom EAD) that this natural person is related to BTC/Vivacom. The complainants allege that through this acquisition, BTC/Vivacom has achieved indirect control over the strategic business behaviour of Bulstacom EAD. An additional argument of the complainant is that under the conditions of the loan agreement, BTC/Vivacom and the natural person have agreed for Bulsatcom to transfer to BTC its optical and mobile networks. This transfer was already publicly announced and now it is subject to merger clearance by the CPC. The CPC's investigation is still pending.

There were no significant antitrust investigations in the telecoms and media sectors in recent years.

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Summary

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 2021, Egypt was named as one of the top 17 African countries with Tech Ecosystem in the, according to the *African Tech Ecosystems of the future 2021/2022* 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.

Despite international and local crises faced by the country over the years, including revolutions, the covid-19 pandemic, the war in Ukraine, inflation, devaluation of the Egyptian pound and the threat of potential recession, Egypt has maintained strong liquidity and a strong financial status, as a result of FDI.

The telecom sector in Egypt is mainly governed by Telecommunication Regulation Law No. 10/2003 (the Telecoms Law). 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 Data Protection Law).

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 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

Main service	Sub-service
Cellular	Mobile services
	Bulk SMS (one to many)
	Value-added service (VAS)
	Wireless trunk
Satellite services	Nilesat
	Very-small-aperture terminal (VSAT)
	Global mobile personal communications 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.

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Service	Applicable fees and security
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 Telecoms 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.

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 service 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.

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 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 Telecoms 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 Arabic 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.

The Telecom Law was amended at the end of 2022, to extend the prohibition of the importation, manufacturing, assembling telecommunication equipment without a permit, to also possessing, using, operating or installing or marketing any telecommunication equipment until after obtaining a permit from the relevant authorities, being NTRA and national security authorities and increasing the penalty for the violation of such requirement to a financial penalty between 2 million Egyptian pounds and 5 million Egyptian pounds.

Further, it is worth noting that 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. In 2022, it was reported that 5G trials were supposed to be held in Egypt that mainly focused on the NAC.

Moreover, 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, planned to launch Hybrid African Ring Path by 2023, which is a new subsea system that will encircle the African continent. The system will connect Africa's eastern and western bounds to Europe, spanning South Africa, Italy and France along the continent's east coast, and to Portugal along its west coast. Highly reliable terrestrial routes will connect the cable landing points within South Africa, Europe and Egypt, forming a complete ring around the

continent. It is worth noting that, the 2Africa cable had already made landing at Telecom Egypt's cable landing station in Ras Ghareb on the eastern coast of Egypt in November 2022, and the latest landing of 2Africa cable was in Port Said, at the northern end of the Suez Canal on Egypt's Mediterranean coast in April 2023.

Further, in January 2023, Telecom Egypt also announced in connection with Huawei Technologies, the world's leading provider of information and communication technology, infrastructure and smart devices, the activation of the first eco-friendly wireless network tower made of fibre-reinforced polymer. This deal has resulted in Telecom Egypt being the first telecom operator in Africa to activate and install such a tower. This green tower emits less CO2 and is more environmentally friendly while contributing to improving the signal quality in comparison to standard antennas.

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 Investment Law);
- 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 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.

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 the 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:

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 Telecommunication Regulation Law No. 10/2003 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.

However, it is worth noting that, SCoM is currently drafting new legislation that would require social media platforms to obtain a licence to access mobile users in Egypt, as announced by the head of the SCoM Karam Gabr in January 2023.

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, as amended (the Antitrust Law), the Egyptian Competition Authority (ECA) is the competent regulator for antitrust. However, there has been a dispute between the ECA 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 Telecommunication Regulation Law No. 10/2003 and, given that the Media Law was just issued, we are not sure if there will be a dispute between the ECA and the SCoM as there has been between the ECA 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.

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 December 2022, Antitrust Law No. 3 of 2005 has been amended by Antitrust Law No. 175 of 2022, whereby these amendments have replaced the post-notification regime of notifying certain transactions to the ECA within 30 days after entering into the transaction, to a pre-merger control system, whereby the ECA is given the authority to review and approve proposed mergers and acquisitions prior to entering into the transaction.

The new pre-merger control requires pre-approval from the ECA for transactions that constitute 'economic concentration' between the contracting parties (namely, a change in control or material influence of a person resulting from a merger, acquisition or joint venture).

It is worth noting that the ECA has announced and confirmed in a press release that the application of the new amendments to the Antitrust Law is now subject to the issuance of the Executive Regulations. It was also confirmed in this press release that the old post-merger notification regime should be applicable until the issuance of the Executive Regulations of the amended Anti-trust Law. However, it is worth noting that the ECA does not have the constitutional power to postpone the application of the said new amendments in contradiction with the explicit provisions thereof.

In September 2021, the NTRA and the 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.

Moreover, 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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Summary

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) 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;
- 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;
- 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;
- Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union (recast);
- Regulation (EU) 2022/2065 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act);
- Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (DMA);
- Regulation (EU) 2022/868 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act);
- Directive (EU) 2022/2555 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No. 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS2 Directive);
- Regulation (EU) 2022/2554 on digital operational resilience for the financial sector and amending Regulations (EC) No. 1060/2009, (EU) No. 648/2012, (EU) No. 600/2014, (EU) No. 909/2014 and (EU) 2016/1011 (DORA);
- Directive (EU) 2022/2556 amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 as regards digital operational resilience for the financial sector (DORA).
- Directive (EU) 2022/2557 on the resilience of critical entities and repealing Council Directive 2008/114/EC (Critical Entities Resilience Directive).

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.

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

> *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 communication services except number-independent interpersonal communications services.

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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 headed by Thierry Breton; and
- the Directorate-General for Competition 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.

BEREC has so far issued 11 guidelines on:

- Intra-EU Communications (update);
- Minimum Criteria for a Reference Offer;
- General Authorisation Notifications;
- Network Termination Point;
- Geographical Surveys of Network Deployments;
- Numbering Resources for non-ECN/non-ECS;
- Quality of Service;
- Public Warning Systems;
- Very High Capacity Networks;
- Symmetric Access Obligations; and
- Co-Investment Criteria.

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 Court of Justice of the European Union (CJEU) 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.

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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, 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;
- 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 for the Commission to consider for future reflections on the general authorisation regime, in the light of the challenges reported by the stakeholders and of the BEREC's own experience.

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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 on the duration of the 'general authorisation'. However, when individual rights to the 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.

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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.

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 DMA 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 see the DMA, which entered into force on 1 November 2022).

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.*

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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.

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

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way and on the regulatory steps needed if member states plan to use satellite solutions for universal service. The draft report on satellite connectivity for universal service was launched on 14 June 2022 for public consultation until 15 August, 2022. In its Work Programme for 2023, BEREC advertises that it would understand and identify regulatory challenges that may arise as regards the development of new satellite networks and services, and explore the potential impacts on the communications market in this context.

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 providers.

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.

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 would 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. This Net Neutrality Regulatory Assessment Methodology has been published on 15 June 2022. It is intended to provide guidance to NRAs in relation to the monitoring and supervision of the net neutrality provisions of Regulation (EU) 2015/2120 (Open Internet Regulation), and the possible implementation of net neutrality measurement tools on an optional basis. In the 2023 work stream, BEREC monitored the implementation of the Open Internet provisions among NRAs for the period 1 May 2022 to 30 April 2023.

The Open Internet Regulation 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 practice 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

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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 practice 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 practice 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. BEREC has revised and updated its Open Internet Guidelines in the light of recent rulings of the CJEU. The new guidelines published on 9 June 2022 reflect the CJEU's ruling that zero-tariff offers are incompatible with the obligation of equal treatment of traffic in the Open Internet Regulation.

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 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

DMA), which will introduce further rules for large platforms service providers (including social media, search engines and operating systems) designated as gatekeepers. Under the DMA, 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 DMA is expected to enter into force in late 2022 or early 2023. The DMA Regulation entered into force on 1 November 2023 and is applicable from 2 May 2023. By 3 July 2023, potential gatekeepers must provide the European Commission with information on their number of users to allow the European Commission to identify them. Gatekeepers identified will have to comply by 6 March 2024 at the latest.

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 DSA was finally adopted on 19 October 2022. The DSA regulates the obligations of online intermediary services providers to counter illegal content, while promoting traceability and effective safeguards for users.The DSA is directly applicable across the European Union and will be fully applicable 15 months after its entry into force, from 17 February 2024. However, the large digital platforms and search engine had until 17 February 2023 to inform the European Commission of the number of their monthly active users. After their designation as by the European Commission, large digital platforms and search engine with more than 45 million users will have four months, until 25 August 2023, to comply with all the rules of the DSA. On 19 April 2023, the European Commission issued its first designation decisions under the DSA for 19 digital actors.

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

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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.

On 23 February 2023, the European Commission published a package to make deployment and utilisation of digital infrastructure, including electronic communications networks, more efficient. The package includes a proposed to the European Parliament and the Council of the European Union a draft regulation on measures to reduce the cost of deploying the gigabit electronic communications network, the Gigabit Infrastructure Act, which will replace and repeal Directive 2014/61/EU. The new rules, which are aligned with those of the EECC that entered into force in 2020, will, once adopted, be directly applicable in all EU member states. The European Commission has submitted a draft Recommendation on the regulatory promotion of gigabit connectivity to the BEREC for opinion on 23 February 2023. This Recommendation will replace the 2010 Recommendation on regulated access to the NGA and the 2013 Recommendation on consistent non-discrimination obligations and costing methodologies. The European Commission also launched a consultation on the potential developments of the connectivity sector of and its infrastructure. The aim is to review the connectivity sector through consultation and gather views on the changing technological and market landscape and how it may affect the sector for electronic communications.

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.

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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 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

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are some points of contention regarding the current text of the Regulation. To date, the ePrivacy Regulation is still not in force.

In October 2022, the European data protection authorities established a list of topics requiring harmonisation of national laws to ensure better implementation of the GDPR in the European Union. This list is part of the actions included in the EPDS Vienna Declaration on law enforcement cooperation and has been sent to the European Commission for consideration. The list addresses, among others, investigative powers of data protection authorities, practical implementation of the cooperation procedure at national level, status and rights of parties to administrative proceedings, procedural deadlines, requirements for the admissibility or rejection of complaints by data protection authorities.

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 cyberattacks 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 cyberattacks; 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, cyberattacks. The proposal sets out new initiatives, inter alia:

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- 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

The European Union Agency for Cybersecurity (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 grants a permanent mandate for ENISA and introduces 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.

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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 and requires EU member states to adopt a national strategy on the security of network and information systems defining the strategic objectives and appropriate regulatory measures to achieve and maintain a high level of security of network and information systems.

On 13 September 2017, the European 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.

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 European Commission published its proposal for a directive on security of network and information systems (NIS2 Directive). The NIS2 Directive was designed to update the current NIS Directive and extend its scope to strengthen European cooperation on cybersecurity. Indeed, although NIS1 significantly improved the EU level of cyber resilience, its review has revealed shortcomings that prevent it from responding effectively to current and emerging cyber security challenges. On 12 May 2022, the European Parliament and the Council reached an agreement on the NIS2 Directive. It was published in the Official Journal on 27 December 2022, and entered into force 20 days after publication, on 16 January 2023. It replaces and repeals NIS1.

The NIS2 Directive reiterates the objectives of NIS1 and takes into account the evolving cyber threats to strengthen the cybersecurity requirements and enhance cooperation between EU member states.

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The NIS2 Directive extends the scope of the current NIS Directive. While NIS1 addressed the energy, transport, banking and financial institutions, health and water sectors, NIS2 Directive significantly expands the list of sectors covered and make a new distinction between:

Sectors of highly criticality:

- health;
- drinking water;
- waste water;
- digital infrastructure;
- ICT services management;
- public administration;
- space; and
- Other critical sectors: postal and courier services;
- waste management;
- manufacturing, production and distribution of chemicals;
- food;
- manufacturing;
- digital services providers; and
- research.

The NIS2 Directive also abolished the former distinction established by NIS1 between operators of essential services and digital service providers. Entities would be classified based on their importance, and divided into two categories: essential and important entities, according to the importance of the sectors in which they operate. These entities are subjected to different supervisory regime, with an ex ante and (or) ex post supervision depending on the whether the entity is essential or important.

Under the former NIS Directive, EU member states were responsible for determining which entities were considered to be operators of essential services. The NIS2 Directive introduces a size-cap rule provides that all public as well as private medium-sized and large entities operating in the sectors it covers are automatically considered to be 'essential' or 'important' entities if they met the following criteria:

- employ more than 250 persons;
- have an annual turnover of more than €50 million; or
- have an annual balance sheet of more than €43 million.

The Directive also leaves it to each EU member state to establish a list of further essential and important entities as well as entities providing domain name registration services by 17 April 2025. EU member states could decide that the requirements of NIS2 would apply to public administration at national level. This list will have to be regularly reviewed, at least every two years.

The NIS2 Directive imposes stricter cybersecurity obligations and requires EU member states to ensure that essential and important entities within its scope take appropriate technical, operational and organisational measures to manage the risks related to the security of networks and information systems.

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Under NIS1, 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.

NIS2 expands the existing incident reporting requirements under the current NIS to require that essential and important entities must notify any significant security incident to the competent national NIS authority or one of the EU member states' CSIRTs. In particular, the NIS2 Directive introduces notification phases and deadlines. Entities are required to submit an early warning within 24 hours of becoming aware of the significant incident, and an incident notification without undue delay and in any event within 72 hours of becoming aware of the significant incident. The NIS2 Directive also formally creates the European Cyber Crisis Liaison Organisation Network, EU-CyCLONe, to support the coordinated management of large-scale cybersecurity incidents.

EU member states now have 21 months, until 17 October 2024, to transpose the NIS2 Directive into national law. The NIS2 Directive repeals and replace NIS Directive, with effect from 18 October 2024.

On 16 January 2023, Regulation (EU) 2022/2554 on Digital Operational Resilience for the financial sector (DORA) came into force, which strengthens the management of cyber threats in the EU and completes the application of NIS2 in the financial sector. The DORA Regulation addresses the digital operational resilience of the financial sector and aims to harmonise and strengthen the rules on the ICT-related risk management for EU financial entities.

DORA introduces new requirements which can be categorised in five key pillars:

- ICT risk management;
- ICT-related incidents management, classification and reporting;
- digital operational resilience testing;
- managing of ICT third-party risk; and
- information sharing arrangements in relation to cyber-threats between financial institutions.

DORA also introduces a new supervisory framework for critical third-party IT service providers as well as new binding obligations for contractual agreements between third-party ICT service providers and financial entities. Each critical third-party IT service provider will be monitored by a supervisory authority, which will assess whether the service provider has adequate arrangements in place to control ICT-related risks that may impact financial institutions. The European Supervisory Authorities will develop Regulatory Technical Standards to further specify the DORA requirements. DORA and related Directive (EU) 2022/2556 will

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apply on 17 January 2025 and the Directive will have to be transposed into national law by EU member states by this date.

Along with NIS2 and DORA, another EU legislative instrument aiming to strengthen cybersecurity in the EU entered into force on 16 January 2023, the Critical Entities Resilience Directive (EU) 2022/2556 (CER Directive). It replaces the European Critical Infrastructure Directive 2008/114/EC of 8 December 2008. The CER Directive focuses on strengthening the physical resilience of organisations that provide essential services to a range of threats (natural hazards, terrorists attacks, insider threats, sabotage) and covers 11 sectors:

- energy;
- transport;
- banking;
- financial markets infrastructures;
- health;
- drinking water;
- wastewater;
- digital infrastructure;
- public administration;
- space; and
- food.

To achieve a high level of resilience, EU member states are required to adopt a national strategy and carry out regular risk assessments to identify entities that are considered critical. Critical entities will need to identify the relevant risks that may significantly disrupt the provision of essential services, take appropriate measures to ensure their resilience and notify disruptive incidents to the competent authorities. EU member states have 21 months to transpose the Directive into national law.

On 15 September 2022, the European Commission proposed a regulation on horizontal cybersecurity requirements for products with digital elements and amending Regulation (EU) 2019/1020 (EU Cyber Resilience Act). The proposal aims to address gaps in EU law that does not cover mandatory requirements for the security of products with digital elements. Once adopted, the Cyber Resilience Act would apply to all products with digital elements whose intended and reasonably foreseeable use includes a direct or indirect logical or physical data connection to a device or network.

On 18 April 2023, the European Commission proposed a regulation on the EU Cyber Solidarity Act laying down measures to strengthen solidarity and capacities in the Union to detect, prepare for and respond to significant and large-scale cybersecurity threats and incidents. It aims to make Europe more resilient and responsive to cyber threats, while strengthening the existing cooperation mechanism. The European Commission proposes the establishment of a European Cyber Shield, a pan-European infrastructure composed of national and cross-border Security Operations Centres across the EU tasked with detecting and acting on cyber threats. The actions proposed under the Cyber Solidarity Act cover situational awareness, information sharing, as well as support for preparedness and response to cyber incidents. The Regulation would also establish the Cybersecurity Incident Review Mechanism to assess and review specific or large-scale cybersecurity incidents. The EU Cyber Solidarity Act also creates an EU Cybersecurity Reserve, consisting of incident

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response services from private service providers – 'trusted providers' – on request of EU member states, EU institutions, bodies and agencies, to help them address significant or large-scale cybersecurity incidents.

On 18 April 2023, the European Commission proposed an amendment to the Cybersecurity Act that set up a framework for the establishment of European cybersecurity certification schemes for 'managed security services'. The purpose of this amendment is to ensure an adequate level of cybersecurity for ICT products, ICT services and ICT processes in the Union. Once adopted, it will enable the future adoption of European certification schemes for covering areas such as incident response, penetration testing, security audits and consultancy.

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 context, it suggested setting up a €2.5 billion big data PPP, creating a network to help individuals build 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 European 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 European Commission's proposed Regulation on European data governance in December 2021. The Regulation has been validated in a plenary vote of the European Parliament, and in the European Council on 16 May 2022 following EU Parliament approval. It entered into force on 23 June 2022 and, following a 15-month grace period, will be applicable as from September 2023.

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On 23 February 2022, the European 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 proposed regulation has been approved and adopted by the European Parliament on 14 March 2023 and final trilogue negotiations have started on the final version of the Data Act. The first trilogue took place on 29 March 2023 and a second trilogue is expected in May 2023.

On 21 April 2021, the European Commission proposed the first draft of the Artificial Intelligence Act (AIA) which establishes a common horizontal regulatory framework for artificial intelligence systems within the EU internal market. It provides for the implementation of a compliance approach, based on the adoption of data governance throughout the life cycle of a product or service based on artificial intelligence. It includes a specific section on data governance and introduces data pre-processing obligations. The AIA has been adopted in the European Parliament's committee on 11 May 2023 and the text still needs to be voted on in the plenary session in June, after which negotiations will continue at the European Council level.

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.*

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The Building European Data Economy initiative, part of the Digital Single Market strategy, aims at fostering the best possible use of the potential 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. The new European roaming rules introduced by the Regulation came into force on 1 July 2022.

On 30 September 2022, BEREC published guidelines on the application of article 3 of Regulation (EU) 2022/612 on roaming on public mobile communications networks within the (Wholesale Roaming Guidelines), and on 12 December 2022, BEREC publishes guidelines on Regulation (EU) 2022/612 and Implementing Regulation (EU) 2016/2286 (Retail Roaming Guidelines).

On 18 November 2022, the European Commission issued the Proposal for a Regulation laying down measures for a high level of public sector interoperability across the EU (Interoperable Europe Act). The objective of the proposal is to promote the cross-border operability of network and information system used to provide or manage public service by introducing a cooperation framework for public administrations across the European Union.

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 currently does not cover audiovisual content (eg, e-books, online music, software and video games). On 20 November 2020, the Commission published a 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.

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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: the 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.

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 light 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 Regulation (EU) No. 833/2014, as amended, broadcasting licences or authorisation, transmission and distribution arrangements with certain media outlets, such as 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 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 qualifies 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 light 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 Regulation (EU) No. 833/2014, as amended, it is prohibited for operators to broadcast or to enable, facilitate or otherwise contribute to broadcast, any content by certain media outlets, such as 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.

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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 Court of Justice of the European Union, economic considerations would not be considered general-interest obligations.

The rules for must-carry obligations must be transparent, proportional 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 proportional 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 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 16 November 2022, Regulation (EU) 2022/2065 on a Single Market For Digital Services (Digital Services Act) (DSA), entered into force, 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. The DSA will be directly applicable across the European Union and will apply from 17 February 2024.

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 (among others):

- intermediary services offering network infrastructure;
- hosting services such as cloud computing and web hosting services; and
- online platforms bringing together sellers and consumers such as online marketplaces and social media platforms.

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 cybersecurity) vulnerabilities and defectiveness in such products, however, is not included. Warranty obligations for

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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 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 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.

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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.

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. EU 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.

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 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.

Key trends and expected changes

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

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 proposed Regulation builds on and complements relevant EU law, including Regulation (EU) 2016/679 (General Data Protection Regulation) and the DSA.

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 policies 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.*

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, if 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

In the course of the past year, EU authorities have been rather active in the regulatory sphere affecting competition law. The most important new pieces of related legislation that also particularly impact the telecommunications and media sectors are:

- Regulation (EU) 2022/1925 (the Digital Markets Act) (DMA);
- the Foreign Subsidies Regulation; and
- the proposal for a Regulation on standard essential patents.

The DMA entered into force on 12 October 2022, and its rules generally will start applying on 2 May 2023.

The DMA is a novel form of regulation that is specifically intended to promote the contestability and fairness of digital platform markets in addition to and alongside competition law enforcement. The DMA imposes a series of behavioural obligations on gatekeepers. Gatekeepers are large digital companies exceeding certain turnover and (or) user thresholds that operate at least one of the legally specified platform services, which include search engines, video platforms and advertising networks. Due to the high thresholds of the DMA, the total number of gatekeepers is expected to be low and will for the most part apply to the largest tech companies such as Google, Meta and Amazon. Some of the obligations gatekeepers will need to adhere to are particularly relevant to telecommunications and media companies that depend on these tech companies. For instance, a gatekeeper supplying online advertising services is obligated to provide, upon request and free of charge, each of its customers who are publishers with certain daily information concerning the advertisement displayed on the publisher's inventory. A gatekeeper also has to grant publishers access to its performance measuring tools and data necessary for publishers to carry out their own verification of the advertisement inventory.

Regulation (EU) 2022/2560 (Foreign Subsidies Regulation) (FSR), entered into force on 12 January 2023, the bulk of its rules applying as of 12 July 2023. The FSR has been designed to address perceived imbalances between EU and non-EU companies with respect to their possibility to obtain and use of governmental subsidies. While companies in the European

Union can only access subsidies under the strict EU state aid regime, non-EU players may be granted economic contributions by their governments far more liberally and may thereby overcome their EU competitors in the EU's open internal market with greater ease. The core of the new FSR regulation is a novel test under which potential distortions in the internal market caused by (broadly defined) financial contributions from non-EU states are assessed. The FSR introduces three new tools that will be enforced by the Commission:

- review of concentrations;
- adjustment of public procurement procedures; and
- a general review mechanism in all other market situations, in which the Commission can start investigations on its own initiative.

The FSR applies to all economic activities in the European Union. For telecommunications and media companies, the most relevant tool will likely be the one relating to concentrations. This new review mechanism is set to affect mergers and acquisitions activity by establishing an additional layer of regulatory review in addition to merger control and foreign direct investment screenings. This tool obligates companies to notify to the Commission of concentrations involving subsidies granted by a non-EU country to one of the parties in the past three years where:

- the subsidy's value exceeds €50 million; and
- at least one of the parties generates an aggregate turnover in the European Union of at least €500 million.

Such concentrations can be prohibited under the above-mentioned test if the Commission considers them to distort the internal market. As a consequence, in the near future, EU companies must take heed of any non-EU state grants companies they desire to merge with have received.

In recent years, the Commission has been eyeing patent licensing practices as part of its standard essential patents (SEPs) initiative. SEPs are patents covering features of technical standards, such as the cellular standard 5G or the High Efficiency Video Coding video compression standard. A SEP must necessarily be used or infringed by companies wishing to implement such standards in their products. The implementer of a standard needs to seek licenses from all SEP holders. SEP licensing negotiations between patent holders and implementers are often criticised for their lack of transparency and the unequal access to relevant information among the parties. Even though SEP holders are obliged to offer licenses to SEP on fair reasonable and non-discriminatory (FRAND) terms under competition law, SEP licensing discussions often lead to high-profile patent litigation, namely, in the mobile phone industry, which is now broadening into the internet of things space. The Commission published its proposal for a Regulation on standard essential patents on 27 April 2023. The primary function of the proposed regulation appears to be the creation of a competence centre for SEPs within the European Union Intellectual Property Office (EUIPO). Among other things, this competence centre would be tasked with maintaining a SEP register, conducting essentiality checks of SEPs and administering aggregate and individual determinations of FRAND royalty rates for SEPs. Under the proposed regulation, SEP owners would be required to register their SEPs to the competence centre and could lose their patent enforcement rights if they fail to do so. SEPs that have been found invalid will be removed from the SEP register. The proposed SEP Regulation was met with criticism

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both by SEP holders and implementers who objected to having licensing rates set by a third party such as the EUIPO's competence centre. It remains to be seen in which form, if any, the draft regulation will evolve in the legislative procedure.

The Commission also published its proposal on the Data Act in early 2022 that shall introduce rules on who can use and access data generated in the European Union across all economic sectors. 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.

Key merger and antitrust decisions

While there have been no particular standout mergers or acquisitions in the telecommunications or media sectors in the European Union in the past year, the following high-profile transactions that have been cleared or are still being reviewed by the Commission were among the more notable.

In 2022, plans were announced to merge Orange's Spanish business with MásMóvil. It appears that the Commission is reviewing the case as a four-to-three merger, a type of merger that has faced resistance in the past. Consequently, the Commission opened an in-depth review in April 2023.

Vivendi planned to takeover Lagardère, a deal that would combine the two largest publishing groups in France. The transaction was notified to the Commission in 2022 but subsequently referred to an in-depth review. Vivendi offered remedies in the form of a divesture of its publishing house Editis early in the proceeding. However, the Commission has yet to be convinced and the parties have offered additional remedies; the outcome remains to be seen.

In the general merger control field, the General Court of the European Union upheld the Commission decision to accept a merger referral based on article 22 of the EU Merger Control Regulation in the case of Illumina's proposed acquisition of Grail (*Illumina, Inc v European Commission*, Case T-227/21). The referral was based on an approach announced by the Commission already in 2020 that national competition authorities can refer a case to the Commission even if the transaction in question does not meet national merger control or EU thresholds. The General Court confirmed the Commission's position.

The General Court of the European Union upheld the fine of €28 million imposed by the Commission on Canon for gun-jumping in 2019. The General Court (*Canon Inc v European Commission*, Case T-609/19) confirmed that a concentration is deemed to have been implemented as soon as the parties carry out an operation contributing to a lasting change in the control of the target, which encompasses also a partial implementation of a concentration. The General Court confirmed the Commission's extended approach to enforcing gun-jumping rules.

In the antitrust sphere decisions issued by the Commission or the EU courts in the past year once again concerned the activities of Big Tech.

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In September 2022, the General Court of the European Union confirmed in large part the Commission's decision in the Google Android case (*Google and Alphabet v Commission (Google Android)*, Case T-604/18). The Commission challenged three types of restrictions as an abuse of a dominant position:

- the requirement to pre-install Google's general search and its browser Chrome;
- anti-fragmentation agreements (namely, operating licences necessary for the pre-installation of the Google Search and Play Store apps could be obtained by manufacturers only if they undertook not to sell devices running versions of the Android operating system not approved by Google); and
- 'revenue share agreements', under which a share of Google's advertising revenue to the manufacturers of mobile devices and the mobile network operators was subject to their undertaking not to pre-install a competing general search service on a predefined portfolio of devices.

In particular, with regard to the latter challenge, the General Court had some doubts with the Commission's approach but also in relation to procedural issues such as information gathering by the Commission.

The Commission voiced concerns over Amazon's use of non-public data of its marketplace sellers. It stated that Amazon distorted fair competition on its platform and prevented effective competition through the use of such data. Also, the Commission held that Amazon's rules and criteria for the Buy Box (namely, the pre-selected seller for a particular product on Amazon's marketplace) and its subscription service Prime unduly favour Amazon's own retail business, as well as marketplace sellers that use Amazon's logistics and delivery services. The Commission made commitments offered by Amazon binding: Amazon will not be able to use independent sellers' non-public data and will have to treat all sellers on Buy Box equally when ranking offers to be selected as winners of this box. With regard to Prime, Amazon undertakes to set fair conditions and criteria for the qualification of marketplace sellers and Amazon offers, and grants sellers freedom regarding their selection of delivery solutions.

In the Qualcomm case (*Qualcomm v Commission (Qualcomm – exclusivity payments)*, Case T-235/18), the General Court of the European Union overturned the Commission's decision imposing a fine of nearly €1 billion on Qualcomm for exclusionary practices. The Commission alleged that agreements concluded between Apple and Qualcomm were an abuse of a dominant position as they reduced Apple's incentive to switch to other suppliers. The General Court's criticism of the Commission's approach to exclusivity dealings (similar to the Intel case (*Intel Corporation Inc v European Commission*, Case T-286/09) and the Google Android case illustrated above) highlights that the Commission will have to demonstrate that rivals are excluded because of anticompetitive behaviour and not because they are less efficient than the dominant undertaking. In this regard, it remains to be seen how the Commission changes its enforcement approach to dominance rules and exclusivity deals.

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Summary

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 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 that 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) are subject to a general authorisation.

In the media sector, the liberalisation of the market in Greece and the transition from 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 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 20–38) 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 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 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.

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 the 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 700MHz, 2GHz, 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.

In May 2022, a radio frequency right in the 410–430MHz band was granted through an auction to the OTE group, which was the only participant in the process.

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 2Mbps, 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.

In April 2023, the EETT decided on the deregulation of termination to individual fixed networks markets, while in February 2022 the EETT decided on the new regulation of the wholesale local access provided at a fixed location and wholesale central access provided at a fixed location for mass-market products.

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).

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).

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 long-run average incremental cost plus (LRIC+) model. Until the development of the bottom-up model in 2020, the EETT defined temporary wholesale prices using the retail minus methodology. In April 2023, EETT adopted the Next-Generation-Access (NGA) bottom-up LRIC+ model and defined cost-oriented prices for Layer 2 Wholesale Access Products.

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.

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 an 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.

Ministerial Decision No. 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 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 10Mbps and upload speed of 1Mbps and with a real download speed of no less than 4Mbps and at least 30GB 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 designated 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 GB volume; and
- the charge to the end user may not exceed €27 per month including value added tax and fees.

The designated 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 value added tax 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 value added tax.

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. In November 2022, the EETT completed the process of designating a universal service provider, in which only one provider, NOVA, participated. The audit of the process by the Court of Audit is pending and then NOVA will be appointed as a universal service provider.

Also, according to Ministerial Decision No. 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 10Mbps and at least 30GB 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 value added tax.

OTE SA, the only designated universal service provider until 2017, 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.

OTE SA and NOVA, both designated universal service providers from 2017, have already applied for compensation concerning the net cost of the universal service obligation for the years 2017 to 2019.

In February 2023, the EETT issued its decision for the net cost of universal service for the years 2017 to 2019, which stipulates the following net cost amounts for NOVA and OTE:

- NOVA: €2,348,938.63 for 2017; €767,180.67 for 2018; and €1,289,568.02 for 2019; and
- OTE: €2,107,565 for 2017; €1,893,526 for 2018; and €2,239,790 for 2019.

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

The EETT's rules on both fixed and mobile numbers' portability entered into force in June 2018, intending to resolve inadequacies of the former framework. Under these 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 price lists.

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 fifth round of market analysis referring to the markets for wholesale fixed local access and wholesale central access provided at a fixed location for mass-market products, the EETT found once more that the fixed incumbent OTE holds an SMP position in these markets.

In the context of regulation of fixed wholesale local access market, prices for local-loop unbundling access, virtual access products, access to physical infrastructure and ancillary facilities such as co-location are regulated based on cost orientation. Further, the EETT maintains OTE's obligation to provide access for the deployment of NGA networks based on very high-speed digital subscriber line 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. The new vectoring procedure shall apply only to areas where the operators do not intend to deploy fibre in the rolling five-year time window. Wholesale price is cost-oriented and defined by the EETT through a bottom-up LRIC+ model. For that purpose, EETT is planning to update the bottom-up LRIC+ model, which was deployed in 2020, and define new wholesale cost-oriented prices.

In addition, the new regulation of fixed wholesale local access market:

- withdraws the price squeeze test for retail offers over OTE's fibre-to-the-home network until FTTH penetration reaches 30 per cent;
- three years after the issuance of the regulation, OTE's wholesale price regulation (cost orientation) obligation is withdrawn in centres where fibre optic infrastructure has been developed by other providers and 80 per cent of active subscribers with fibre optic network are covered, provided that OTE's provision of access to physical infrastructure is operational; and
- defines detailed rules and the procedure to be followed for the copper switch-off.

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.

With regard to interception, specific legislation exists (article 19 of the Greek Constitution, Law No. 5002/2022, Law No. 2225/1994 (as in force today), Presidential Decree No. 47/2005, article 255 of the Code of Criminal Procedure, Law No. 3471/2006, Law No. 3674/2008, Law No. 3917/2011 and the Regulation on General Authorisations as in force), which 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.

In addition, with regard to 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 every communication unless otherwise specifically requested by the public prosecutor. Operators and service providers are not compensated. 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.

Finally, as regards 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.

The legal and regulatory framework that governs cybersecurity issues mainly consists of Law No. 4577/2018, which entered into force in December 2018 transposing into Greek law the NIS Directive No. 2016/1148/EU of the European Parliament and of the Council of 06/07/2016 (OJ L 194), establishing measures to achieve a high level of security of network and information systems. Ministerial Decision No. 1027/2019 issued by the Minister of Digital Governance, specifies the implementation and the procedures provided under Law No. 4577/2018.

The above-mentioned law, inter alia, sets specific obligations for 'basic services operators', namely all public or private entities (of the kind referred to in Annex I), including regarding digital infrastructure: internet traffic exchange points (IXP); domain name system (DNS) service providers; and Top-Level Domain Names Registry (TLD), that meet specific criteria, to adopt cybersecurity measures. The criteria are as follows:

- the entity should be providing a service essential for the maintenance of critical social or economic activities;
- the provision of this service should be based on network and information systems; and
- it should be causing a serious disruption to the provision of the service in question as defined in article 5 by any event.

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.

In addition, Law No. 4961/2022 contains provisions on information and network security in its chapter C. According to article 19, each central government entity shall prepare and maintain a risk analysis plan and an information and communication systems security policy. In addition, according to article 21, a digital infrastructure, system or subsystem or service of a central government body is classified as crucial if, as a minimum, the following criteria are met:

- the entity provides a service essential for the maintenance of crucial social or economic activities of the country; and
- in the event of an incident, the provision of that service is severely disrupted.

Finally, provisions of the GDPR and the relevant Greek Law No. 4624/2019 apply that require data controllers and processors to ensure the implementation of appropriate organisational and technical measures to ensure the protection of personal data. Law No. 2121/1993, the Greek Copyright Act, as in force, is also relevant.

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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?

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.

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 1Gbps 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;
- amendment of the Regulation on General Authorisations; and
- nationwide use of parcel lockers.

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

Finally, in December 2022, Law No. 5002/2022 was published, aiming, inter alia, to modernise the procedure for lifting the confidentiality of communications and to protect the confidentiality of communications from interception software

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. Licences for digital terrestrial free-to-air 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) licences 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 as 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. 3959/2011 (the Greek Competition Law).

Law No. 4779/2021, which transposed amended Directive 2018/1808/EU (the Audiovisual Media Services Directive) into the Greek legal order, regulates audiovisual media, in all its forms of promotion and reproduction; namely, traditional television, custom-made audiovisual 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, which 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 licences, and in January 2019, the ESR published a new tender document (1/2019) for two licences 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. 3959/2011 (Greek Competition Law). The detection of concentration of control in the area of information media takes place in accordance with the provisions of Law No. 3592/2007 and the provisions of Law No. 3959/2011, while the detection of a concentration of control in non-information media takes place exclusively in accordance with the provisions of Law No. 3959/2011.

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 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.

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, licences for digital terrestrial free-to-air TV are granted by way of public auction and the licensing process for content providers starts with the publication of the relevant notice by the National Council for Radio and Television. 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 licences to be auctioned and on the starting price for each category of auctioned licences.

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 over 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. Licences for digital terrestrial free-to-air 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. Licences 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 licences 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 is prohibited.

Online advertising is regulated by general provisions in the legislation concerning e-commerce (Presidential Decree 131/2003) and consumer protection (Law No. 2251/1994). In addition, the Consumer Code of Conduct for E-Commerce adopted by Ministerial Decision No. 31619/2017 provides in article 3C certain recommendations to digital businesses that display advertising messages. 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.

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 Minister of Digital Governance and the Minister, to whom the responsibilities of the General Secretariat of Communication and Information have been assigned, by joint decision, may impose reasonable 'must carry' obligations for the transmission of specified radio and television broadcast channels and related complementary services, in particular, accessibility services to enable appropriate access for end-users with disabilities and data supporting connected television services and EPGs, on undertakings under their jurisdiction providing electronic communications networks and services used for the distribution of radio or television broadcast channels to the public, where a significant number of end-users of such networks and services use them as their principal means to receive radio and television broadcast channels. Such obligations shall be imposed only where they are necessary to meet general interest objectives as clearly defined by each EU member state and shall be proportionate and transparent. Such ministerial decision has not been issued to date. Network providers are, however, obliged to offer their services to any licensed content provider requesting them to do so.

Regulation of new media content

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

Law No. 4779/2021, which transposed the EU Audiovisual Media Services Directive, Directive 2010/13/EU, as amended in 2018 by Directive (EU) 2018/1808, covers traditional TV broadcasters and video-on-demand services. In the updated rules the scope of application has been extended to also cover video-sharing platforms. More specifically, the specific obligations of video-sharing platforms, subject to the jurisdiction of Greece, are set out in article 32 of Law No. 4779/2021. The National Council for Radio and Television is appointed to monitor the compliance of providers. Articles 2 and 11–14 of Presidential Decree 131/2003 also apply to video-sharing platform providers.

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 completed on 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?

According to article 15, paragraph 2 of the Greek Constitution, radio and television are under the direct control of the State. The supervision and the imposition of administrative sanctions are the exclusive competence of the National Broadcasting Council for Radio and Television (ESR), which is an independent authority, as provided by law. The direct control of the State, which shall also take the form of a prior authorisation regime, shall be aimed at the objective and equal transmission of information and news, as well as the products of speech and art, at ensuring the quality of programmes required by the social mission of radio and television broadcasting and the cultural development of the country, as well as respect for the dignity of the human being and the protection of childhood and youth. The

principle of pluralism in broadcasting is expressed in the requirement for objective and equal transmission of information and news.

Plurality is divided into external (a wide range of stations) and internal (referring to the programmes of each station). External plurality was sought to be ensured by article 14(9) of the Constitution and the corresponding legislation, by placing restrictions on the ownership of broadcasting stations (eg, by setting ownership percentages in one or more stations) and by providing for incompatibility between business activity in the media sector and participation in a company that undertakes public sector works and supplies.

Internal plurality requires the station to refrain from one-sided and persistent broadcasting of specific opinions, not to conceal facts of general social interest, to give political forces and social organisations the opportunity to be heard, etc.

According to Law No. 2863/2000, which regulates the relevant aspects of the functioning of the ESR, it is stipulated that the ESR is responsible for ensuring political and cultural plurality and pluralism in the mass media. In addition to its supervisory powers, it is also responsible for checking restrictions and incompatibilities regarding the ownership of private media.

According to the Code of Ethics for News-Journalism-Political Broadcasting, ratified by Presidential Decree 77/2003, radio and television must recognise and respect the expression of different opinions and protect their freedom of broadcasting. Different opinions must be presented in a timely manner and on equal terms. In addition, news reports should be accurate, objective and as pluralistic as possible. This obligation prevails over any business and economic interest, even if indirect, of the broadcaster or television station in general. Also, the presentation of political issues during election periods must be clear and moderate to avoid stirring up political passions and in any case to ensure the principles of equality, pluralism and respect for democratic procedures.

In addition, Law No. 4779/2021 provides that 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, and following an opinion by the ESR, may measures may be taken to ensure the appropriate promotion of audiovisual media services of general interest, in particular services that promote pluralism, freedom of speech and cultural diversity. This presidential decree has not yet been issued.

The ESR is competent to impose administrative sanctions in the case of violations. It imposes fines or other administrative sanctions in cases of infringement of the law and in serious cases it may revoke the broadcasting licence.

Key trends and expected changes

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

The Digital Services Act, which entered into force on 16 November 2022, will be enforced through a pan-EU supervisory architecture. According to the Regulation, EU member states shall designate one or more competent authorities as responsible for the supervision of

intermediary service providers and the enforcement of the Regulation. EU member states shall designate one of the competent authorities as their digital services coordinator. The digital service coordinator shall be responsible for all matters relating to the supervision and enforcement of this Regulation in that EU member state, unless the EU member state concerned has delegated specific tasks or areas to other competent authorities. The digital services coordinator shall in any case be responsible for ensuring coordination at the national level in relation to those issues and for contributing to the effective and consistent supervision and enforcement of this Regulation throughout the European Union. EU member states shall designate the digital service coordinators by 17 February 2024.

It is therefore expected that a legislative act will be adopted empowering the competent authority responsible for the supervision of intermediary service providers and the enforcement of this Regulation.

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:

- the National Commission for Telecommunications and Post (EETT): the national regulatory authority that supervises and regulates the electronic communications and postal services market. Additionally, the EETT is responsible for frequency allocation and spectrum management. The EETT 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): the body 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 (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.

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. Decisions of the Administrative Court of Appeal can be appealed before the Council of State only concerning the appropriate application of law and procedural rules.

With regard to the Hellenic Competition Commission, where an appeal is filed against a decision imposing a fine, the Administrative Court of Appeal of Athens may, by a reasoned judgment, following an appellant's petition, order the suspension of part of the fine.

Specifically in the case of the EETT, against the regulatory administrative decisions of the EETT, a petition for annulment is filed before the Council of State. Against EETT's decisions, by which sanctions are imposed, an appeal is brought before the Athens Administrative Court of Appeal. Against the other individual administrative decisions of the EETT, a petition for annulment is filed before the Administrative Court of Appeal of Athens.

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 EU 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).

Regarding antitrust developments, in January 2022, Law No. 4886/2022 introduced a new prohibition on Law No. 3959/2011 (the Greek Competition Act). In particular, according to article 1A of Law No. 3959/2011:

> *It is prohibited for an undertaking to propose, coerce, motivate or in any way invite another undertaking to participate in an agreement between undertakings or in decisions of associations of undertakings or in concerted practices aimed at preventing, restricting or distorting competition in the Greek Territory and which consist in:*
>
> *a) directly or indirectly fixing purchase or selling prices on a market, or*

b) limiting or controlling production, supply, technological development, or investments, or

c) sharing markets or sources of supply.

Also, an undertaking is prohibited from disclosing price, discount, supply or credit information about products or services it supplies or is supplied where:

a) the disclosure restricts effective competition in the Greek Territory, and

b) does not constitute a normal business practice.

It is noted, however, that the above prohibitions do not apply to undertakings with a total turnover of less than €50 million and with less than 250 employees.

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 (articles 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 phone base stations in Greece, of which more than 5,200 sites are in its portfolio.

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Summary

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 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 2002–2023. 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 the European Union 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 course of two years, on 22 December 2021, the DECC published draft legislation, which has since been signed into law (but not yet in effect at the time of writing), and is as follows:

- the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (the Act); and
- the European Union (Electronic Communications Code) Regulations 2022.

The Regulations were commenced on 5 March 2023, the date of enactment of the Act. The Act has not yet been commenced (namely, put into force).

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 2023 (EU Screening Regulation).

The Screening of Third Country Transactions Bill (the Bill) was published by the government on 2 August 2022. The Bill is designed to implement the EU Screening Regulation and ensure all EU member states have the legal tools to screen investments by non-EU or EEA undertakings and individuals of certain key infrastructure assets with an Irish nexus, in particular concerning foreign investments into critical utilities and infrastructure sectors, high-tech and personal data focussed businesses, and media businesses.

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 portal (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 (namely, 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.

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 700MHz, 1.4GHz, 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 700MHz duplex, 2.1GHz, 2.3GHz and 2.6GHz bands. In June 2021, ComReg awarded a 2.1GHz 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 264/2021): 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 265/2021): these regulations give effect to ComReg's decisions for the liberalisation of existing 2.1GHz rights of use, and the grant of interim 2.1GHz rights of use to Three Ireland in respect of the Multi Band Spectrum Award.

ComReg (following consent of the Minister for Environment, Climate and Communications) also adopted the following regulations in September 2022: the Wireless Telegraphy (Liberalised Use and Related Licences in the 700 Mhz Duplex, 2.1 GHz, 2.3 GHz and 2.6 GHz Bands (Amendment) Regulations 2022 (SI 483/2022). These Regulations prescribe matters in relation to the amendment of the commencement date of MBSA2 Liberalised Use Licences granted in the 2.1GHz Band under previous 2021 Regulations.

Multi Band Spectrum Award 2022

On 14 December 2022, the main stage of the Multi Band Spectrum Award (MBSA2) process concluded with the identification of four winning bidders paying about €448 million to the state for the issue of long-term spectrum rights, until 13 February 2042, in the 70 MHz, 2.1GHz, 2.3GHz and 2.6GHz bands (see for reference Document 22/105). The four winning bidders were Imagine, Eir, Three and Vodafone.

On 12 January 2023, the specific frequency locations to be assigned to each of the winning bidders were determined (see for reference Document 23/06).

On 19 January 2023, following the submission of complete applications, an MBSA2 Liberalised Use Licence was issued to each winning bidder with a commencement date of 20 January 2023.

Since 2 April 2023, all MBSA2 spectrum rights have commenced:

- spectrum rights in the 2.3GHz and 2.6GHz bands commenced on 20 January 2023; and
- spectrum rights in the 700MHz and 2.1GHz bands commenced between 26 January 2023 and 2 April 2023.

The MBSA2 spectrum rights are ideal for the provision of new 5G services, as well as the advancement of other fixed and mobile wireless broadband services, such as 4G (long-term evolution) or fixed-wireless access services.

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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?

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 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 or 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.

Removal of ex-ante regulation from Relevant Termination Markets

In February 2023, pursuant to Regulation 27(1) of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (SI 333/2011), ComReg consulted the CCPC with respect to ComReg's proposed draft measures arising from its Response Consultation and Decision that analyses the wholesale markets for Fixed Voice Call Termination and Mobile Voice Call Termination markets (together, the Relevant Termination Markets) in the state.

On the basis of the facts and analysis presented by ComReg, the CCPC did not object to ComReg's:

- conclusion that the Relevant Termination Markets are no longer susceptible to ex-ante regulation; and
- decision to withdraw all existing significant market power designations and obligations in respect of these markets.

The CCPC did also not object to ComReg's proposal to impose a six-month sunset period on Eir in respect of the withdrawal of the existing SMP-based interconnection obligations to provide certainty to other service providers and allow them time to make alternative operational interconnection arrangements should they be required.

The removal of ex-ante regulation where same is no longer applicable or warranted is a continuing area of focus for ComReg. In its Electronic Communications Strategy Statement: 2023 – 2025, it notes that:

> *the more densely populated regions of Ireland have benefited from investment in networks driven by competitive forces, resulting in these areas being well-served by ECN. In some of these well-served areas. competitive forces may be strong enough such that ex-ante regulatory intervention is no longer required.*

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 2002–2022 as a remedy in cases entailing an abuse of dominance contrary to section 5 of the Competition Acts 2002–2022.

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 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 (the 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 the 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

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- 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 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 commencement 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.

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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 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 of 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).

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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.

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.

More recently, in August 2022, following an inquiry by ComReg, Vodafone has undertaken a review of its billing system to determine whether its customers were charged for services beyond the cancellation of their contracts, which are termed 'post cancellation charges'.

In February 2023, the Dublin District Court heard a case taken by ComReg against Kaleyra UK Ltd in relation to 22 counts of charging customers for premium-rate services in circumstances where they were not requested by the customer. Kaleyra pleaded guilty to 22 counts brought against it. The Dublin District Court applied the Probation of Offenders Act 1907 and required Kaleyra to make charitable donations in the total amount of €5,000, in addition to ComReg's costs.

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 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.

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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?

The Telecom Single Market Regulation, effective in 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; and
- 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 the 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 (as amended by the Online Safety and Media Regulation Act 2022 (OSMR Act)), 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 and 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.

The OSMR Act transposes 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. On 22 February 2023, the NBI agreed its targets for the current project year – and with that, NBI is committed to delivering a cumulative target of reaching 185,000 premises by the end of January 2024. Current Chief Executive Officer Peter Hendrick noted when agreeing the 2023 targets that:

> *The public can be reassured there is solid progress and real momentum in the rollout of this project now. Ultimately the NBP will make fibre broadband available to over 560,000 homes, farms and businesses. Nearly 120,000 premises are ready to connect to the network and we have over 30,000 live connections today.*
>
> *By the end of this year, the proportion of the overall rollout where connections will be available will increase to over one-third, as 76,000 further premises will be passed by the NBI fibre network. The number of premises where the fibre build will be completed will almost double over the course of 2023.*

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.

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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. To preserve the Communications (Retention of Data) Act 2011 from being struck down as invalid, in July 2022, the Communications (Retention of Data) Amendment Act 2022 was adopted to amend the 2011 Act. The Communications (Retention of Data) (Amendment) Act 2022 has not yet been commenced, and its primary purpose is to enable the Irish police force to access communications traffic and location data for criminal justice purposes.

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 their services and report incidents. It 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 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 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.

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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 given statutory footing in the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (not yet commenced).

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?

On 1 November 2022, the Digital Markets Act (DMA), came into force thereby starting a six-month transition period before the DMA becomes enforceable. 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.

Until the introduction of the DMA, the debate in relation to the legal challenges raised by big data has focused solely on the application of general data protection rules to each new way in which personal data are collected, stored, used and analysed, and these rules will remain relevant going forward.

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 to 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:

[T]he 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 personal data it processes.

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, alteration 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 (namely, 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 2023 – 2025, 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:

- connectivity, network rollout and new technologies: the deployment of high-speed ECN is playing an increasingly important role across the country over the period covered by ComReg's strategy, enabling innovation and further digitalisation across different sectors of Irish society. ComReg further notes that 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;
- consumer experience: ComReg notes that it has a role to protect consumers' rights and to prevent operators from exploiting consumers in the ECS markets. ComReg further notes that it closely monitors the experience of consumers, including the experience of consumers who engage with their service provider to sign-up for services, raise queries or resolve complaints. This work informs its overall view of the consumer experience, as well as provides context to ComReg's ECS Strategy Statement;
- the evolution of adjacent and related markets: in its Strategy Statement, ComReg notes that as markets relevant to the regulation of ECN or 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. As such, ComReg monitors developments in the wider value chain, namely, input markets, complementary markets, and downstream markets; and
- the future of regulation in the sector: the final key trend relates to the range of developments in regulation that will arise during the period covered by ComReg's strategy statement. Several legislative changes and developments are anticipated to take place over the coming years that will likely impact ComReg's role and mandate, concerning the following areas:

    - ComReg's 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 (the Broadcasting Act) (as amended by the Online Safety and Media Regulation Act 2022 (the OSMR Act), which dissolved the previous regulatory entity, the Broadcasting Authority of Ireland (the BAI) and has since established in its place a content regulator, Coimisiún na Meán (the Media Commission). The Broadcasting Act 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 were modernised and changed with the introduction of the OSMR Act, which commenced on 15 March 2023.

Among numerous things, the OSMR Act established a new regulator, the Media Commission, a multi-person Media Commission to which Ireland's first Online Safety Commissioner has been appointed (Niamh Hodnett). The Media Commission replaces the BAI and is responsible for overseeing updated regulations for broadcasting and video-on-demand services and the new regulatory framework for online safety created by the OSMR Act. Within its structure, the Media Commission has a chairperson and separate commissioners overseeing broadcast media, on-demand media and online safety. The OSMR Act also provides for additional powers for the Media Commission in relation to compliance and enforcement, including the power to impose administrative financial sanctions. In March of this year, the BAI was fully dissolved and the Media Commission became operational.

The OSMR Act creates extensive provisions for online safety and sets out a definition for harmful online content. This transposes requirements under the revised Audiovisual and Media Service Directive (AVMSD (2018 Directive)) with regard to video-sharing platforms. However, the OSMR Act also provides for 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 Media Commission is set out in the Broadcasting Act, which requires the Media Commission, 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 Media Commission has also issued an ownership and control policy, setting out the regulatory approach that the Media Commission will take and the rules that will be enforced regarding ownership and control of broadcasting services. The policy will be used by the Media Commission 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.

Licensing requirements

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

The Media Commission 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 Media Commission 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 Media Commission 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 EU works created by producers who are independent of broadcasters, or reserve 10 per cent of their programming budget for EU 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 EU works; however, quotas for EU works are not imposed on non-linear audiovisual services.

In transposing the revised AVMSD (2018 Directive), the OSMR Act implements a new 30 per cent quota for EU works in the catalogues of video-on-demand services, alongside a content production levy and content production scheme to support the creation of EU works, including independent Irish productions. This translates 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 EU content in their catalogues, and is regulated across the European Union 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 is 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 Media Commission 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 Media Commission 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 Media Commission'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. Since implementation of

the OSMR Act, certain parts of the Broadcasting Act apply to broadcast services that are provided through the internet and non-linear services.

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 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 changed following the implementation of the OSMR Act and the creation of the new regulator, the Media Commission. The Media Commission is tasked with the responsibility of overseeing updated regulations for broadcasting and video-on-demand services. This updates how television broadcasting services and video-on-demand services are regulated and ensures 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 creates 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 has 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 also has 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 also has 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 800MHz 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 3.6GHz spectrum band in 2017, following a lengthy consultation process on a service and technology-neutral basis (namely, 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 2002–2022 (the Competition Acts) provide for special additional rules for 'media mergers' (namely, 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 Media Commission 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 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 (now known as the Media Commission) published two new documents:

- the Media Plurality Policy, which sets out how the Media Commission 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 Media Commission takes and will take to promote and support media plurality in Ireland; and
- the Ownership and Control Policy, which will be used by the Media Commission to assess requests for changes to the ownership and control of existing broadcasting services. The policy provides guidance and rules for the Media Commission 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 the European Union as traditional media outlets need to consolidate to ensure continued survival in a difficult environment. In 2022 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 over the course of the past year was the enactment of the OSMR Act (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 significantly impacted 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.

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 Coimisiún na Meán (the Media Commission) 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 2002–2022 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 Media Commission are each parties 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 Media Commission may be challenged by way of judicial review in the High Court. Also, a decision by the Media Commission to terminate or suspend a contract made under Part 6 or Part 8 of the Broadcasting Act 2009 (the Broadcasting Act) (as amended by the Online Safety and Media Regulation Act 2022) 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 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 2022 and 2021 respectively, 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 2022, the average clearance timeframe for media mergers was of 17.8 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;

- 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 2020 clearance of the Reach Publishing Group and Independent Star Limited merger;
- the 2021 clearance of the Bauer Media Audio Holding GmbH and Communicorp Group Limited merger; and
- the 2022 clearance of Viaplay Group UK Limited's acquisition of FreeSports Limited and Premier Broadcasting Limited.

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 this year upon commencement of the Competition (Amendment) Act 2022, which was signed into law in December 2022. The Competition (Amendment) Act 2022 will transpose much-anticipated Directive (EU) 2019/1 (ECN+ Directive) into Irish law.

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Summary

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 (the 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's SIDFORS platform.

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 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.

The 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 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.

On 1 November 2022, the EU Digital Markets Act (the DMA) came into force. It regulates the activities of major digital platforms in the EU market and it applies to gatekeepers, namely, companies offering online intermediation services (including search engines, social networks, messaging and video sharing).

The DMA introduces an ex-ante approach whereby specific and circumscribed obligations are imposed on the operators of platforms qualified as gatekeepers.

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 the European Union.

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 (article 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-ter 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.

With Resolution No. 86/21/CIR, the Authority introduced new verification obligations for the operator involved in the portability procedure to avoid the risk of fraud with SIM card

replacement (called SIM Swap) against consumers. Such obligations came into force on 14 November 2022.

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 EU 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 network traffic.

EU Directive 2019/2161 (Omnibus Directive) has been implemented in Italy on 18 March 2023 with the Legislative Decree No. 26/2023, which entered into force on 2 April 2023, introducing new consumer protection measures in the Consumer Code including, inter alia, higher penalties for companies and widening the cases of unfair commercial practices. In particular, with specific reference to e-commerce, the legislation introduced by Legislative Decree No. 26/2023 imposes the obligation to:

- clearly indicate, in marketplaces, the entity – professional or private – that offers products for sale, bearing in mind that, in the case of private individuals, consumer protection rules will not apply;
- to inform about the main parameters governing the classification of products, whenever the possibility of searching for products offered by different professionals is offered (this obligation, however, does not apply to providers of online search engines); and
- to ensure the reliability of product reviews.

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' guidelines, the Authority published the 2022 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 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).

Moreover, the Italian Competition Law (Law No. 118/2022) introduced a new provision specifically referred to digital platforms consisting in a relative presumption of economic dependence in the event that an enterprise uses the intermediation services provided by a digital platform that plays a decisive role in reaching end users or suppliers, including in terms of network effects or data availability.

In addition, 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.

On 27 October 2022, the DMA was published in the EU's Official Gazette. The DMA regulates the activities of major digital platforms in the EU market, and It applies to gatekeepers, namely, companies offering online intermediation services (including search engines, social networks, messaging and video sharing). Eligible gatekeepers are suppliers that:

- have a size that has an impact on the internal market (assessed on the basis of turnover and capitalisation thresholds);
- are in control of important access for business users to end consumers; and
- have an established and durable position.

The designation as gatekeepers is made by the EU Commission, following a notification from the companies concerned, or acting ex officio. Under the DMA, specific and circumscribed obligations are imposed on the operators of platforms qualified as gatekeepers.

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.

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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. 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).

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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, or 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.

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With a decision dated 9 March 2023, the Data Protection Authority approved the Code of Conduct for telemarketing and teleselling activities (the Code) promoted by associations of principals, call centres, telemarketers, list providers and consumer associations. The Code will become effective once the accreditation phase of the Monitoring Body (MoB) has been completed and is subsequently published in the Italian Official Gazette. The MoB is an independent body charged with verifying adherents' compliance with the Code of Conduct and with handling the resolution of complaints.

The companies that adhere to the Code will undertake to adopt specific measures to guarantee the correctness and legitimacy of data processing carried out throughout the telemarketing chain, such as the collection of specific consents for individual purposes (marketing, profiling, etc), giving specific and precise information to the persons contacted on the purposes for which their data are used, and ensuring the full exercise of the rights provided for by the privacy legislation.

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 the 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 armour around such operators, both private and public entities, to shield Italy from possible attacks and an ensuing national crisis (preventing attacks 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.

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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.

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 information and communication technology (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:

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- 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.

On 27 December 2022, Directive (EU) 2022/2555 (the NIS2 Directive), which updates and succeeds the NIS Directive, was published in the EU's Official Gazette.

The main innovation of the NIS2 Directive is its wide area of application, which is extended to companies operating in further sectors such, inter alia:

- cloud computing;
- data centres;
- content delivery network providers;
- electronic communication services; and
- electronic communication networks.

The companies concerned shall implement an appropriate risk assessment process for the management of potentially malicious cyber events.

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The NIS2 Directive also envisages new stringent reporting requirements in the event of a cyber incident to be fulfilled by notifying the CSIRT of all incidents likely to cause impacts of a 'significant' nature.

Differently from the past, where reporting had to be done 'without undue delay' (see the NIS Directive), the NIS2 Directive provides for a more circumscribed, comprehensive and timely reporting process. In this sense, it provides for:

- an early warning period of within 24 hours from the knowledge of the incident (the sending of the 'early warning');
- a notification within 72 hours of knowledge of the incident, updating – if necessary – the information in the early warning; and
- a final report within one month from the transmission of the notification, completing the reporting process.

From a sanctioning point of view, the NIS2 Directive finally empowers EU member states to lay down rules on sanctions in their national implementing legislation. These penalties must be 'effective, proportionate and dissuasive' and may be up to €10 million or a maximum of at least 2 per cent of the total annual worldwide company's turnover.

When a breach of the above-mentioned requirements is established, the NIS2 Directive also provides that the competent authorities have the power to suspend the company's business activity.

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.

Moreover, as a general principle, 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.

Further, 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.

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, which 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. Further,

the metaverse represents a marketplace as various types of trade takes place within such dimension and is the 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, note that the Omnibus Directive has been recently implemented in Italy with Legislative Decree No. 26/2023, which entered into force on 2 April 2023 and which it provides for certain relevant amendments and integration to the Italian Consumer Code, in particular providing – among other changes – for new information requirements on distance contracts, new conducts that could amount to misleading omission or practice, new sanction regime and also specific additional information requirements for contract concluded on online marketplaces.

Recently, within the context of artificial intelligence (AI), the Authority took measures against ChatGPT (the AI platform of OpenAI). Specifically, on 30 March 2023, the Authority has ordered, with immediate effect, the temporary limitation on the processing of Italian users' data. The Authority highlighted the lack of:

- information to users and data subjects;
- legal basis for the mass collection and processing of personal data to train the algorithms of ChatGPT; and
- age verification that exposes children to receiving inappropriate answers (even if the service is aimed at users above 13 years of age).

The Authority also flagged that the information made available by ChatGPT was sometimes inaccurate. The Authority required OpenAI to provide within 20 days the evidence of the measures taken to implement what is requested and to provide any information deemed useful to justify the above violations, failing which OpenAI might be fined up to €20 million or up to 4 per cent of its annual global turnover.

Thereafter, on 13 April 2023, the European Data Protection Board (EDPB) launched a dedicated task force on ChatGPT 'to foster cooperation and to exchange information on possible enforcement actions conducted by data protection authorities'.

On 28 April 2023, in the formal press release of the Authority, the latter announced that OpenAI sent it a letter describing the measures implemented to comply with the order issued by the Authority on 11 April 2023. In particular, OpenAI expanded the information to European users and non-users, it amended and clarified several mechanisms and deployed amenable solutions to enable users and non-users to exercise their rights. Based on these improvements, OpenAI reinstated access to ChatGPT for Italian users. The Authority acknowledges the improvements taken by OpenAI to reconcile technological advancements with respect for the right of individuals and the Authority hopes that OpenAI will continue its efforts to comply with GDPR provisions. In any case, the Authority confirms that its investigation continues also with the task force set up by the EDPB.

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 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 the Italian 5G plan (for which €2,020 million of National Recovery and Resilience Plan resources have been allocated). Further, with Resolution No. 67/22/CONS of 3 March 2022, the Communications Regulator (AGCOM) adopted the 'Guidelines to identify the conditions of wholesale access to ultra-broadband networks receiving public contribution – integration for 5G networks', which 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 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.

On 13 December 2022, the EU Commission published the draft of the adequacy decision for the EU–US Data Privacy Framework (DPF), which is meant to replace the Privacy Shield invalidated by the *Schrems II* decision. Such proposal follows Executive Order 14086 signed by US President Biden on 7 October 2022.

Further, on 14 February 2023, the EU Committee on Civil Liberties, Justice and Home Affairs (LIBE) published the draft motion for a resolution on the DPF in which it recommended the EU Commission to not adopt the DPF (as it is). Indeed, according to the LIBE, the DPF fails to create equivalence in the level of protection, and meaningful reforms need to be in place.

Subsequently, on 28 February 2023, the EDPB published Opinion 5/2023. The EDPB welcomes the improvements in the DPF compared to the Privacy Shield but, in the meantime, the EDPB

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expresses its recommendations and concerns regarding the level of protection provided by the DPF. Note that such Opinion and its recommendation is non-binding for the EU Commission.

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. 208/2021 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. 208/2021 is 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. 208/2021 applies to audiovisual and radio media service providers and radio concessionaires operating in Italy, which are those that:

- 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 are 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. 208/2021 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 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 v Autorità 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 Treaty on the Functioning of the European Union.

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, within 15 days from the deed transferring ownership or from the conclusion of the preliminary agreement between the parties of such context that constitute indications of a position of significant market power potentially detrimental to pluralism. The Authority is in charge of issuing the authorisation for the transaction.

A further restriction concerns the acquisition by EU and non-EU parties of participation in media companies. Indeed, the golden power discipline also applies to such transactions (namely, foreign direct investment). The golden power regulation (Law Decree No. 21/2012) is a set of rules according to which the Italian government may exercise some veto rights in relation to certain corporate resolutions and (or) to share purchase agreements in specific economic sectors or for assets of specific sectors.

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.

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.

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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. EU Directive 2019/2161 (Omnibus Directive) has been recently implemented in Italy with the Legislative Decree No. 26/2023, which entered into force on 2 April 2023 and which provides for certain relevant amendments and integration to the Consumer Code, in particular providing – among other changes – for new information requirements on distance contracts, new conducts that could amount to misleading omission or practice, new sanction regime and also specific additional information requirements for the contract concluded on online marketplaces.

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 content 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, and improvement of the relationship between the 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 EU 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 video-sharing platform services. Pursuant to article 41, paragraph 7 of Decree No. 208/2021, the supervisory authority (the Communications Regulator (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.

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 had 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. This procedure has been completed on 21 December 2022 through the permanent switch-off of the Mpeg-2 video encoding system.

Subsequently, the switchover to the new digital terrestrial television would get underway with the second phase during 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 media plurality, forbidding the creation or maintenance of positions against 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.

On September 2022, the European Commission adopted a European Media Freedom Act proposal, a novel set of rules to protect media pluralism and independence in the European Union. The proposed Regulation includes, among others, safeguards against political interference in editorial decisions and against surveillance.

Key trends and expected changes

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

The EU Digital Services Act (DSA) has been approved and published in the Official Journal of the European Union on 27 October 2022. The DSA aims to protect users online and to ensure 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 the European Union, 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.

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 in the European Union is seemingly becoming a reality. On September 2022, the EU Commission adopted the European Media Freedom Act proposal, a novel set of rules to protect media pluralism and independence in the European Union. The proposal includes, among others, safeguards measures against political interference in editorial decisions and against surveillance as well as measures aimed at implementing transparency of media ownership and of the allocation of state advertising. It also sets out measures to protect the independence of editors and disclose conflicts of interest. It is now for the European Parliament and the EU member states to discuss the EU Commission's proposal for a regulation under the ordinary legislative procedure. Once adopted, it will be directly applicable across the European Union.

The Italian legislator seems to show greater awareness of the importance of the digital market. Indeed, the Italian Competition Law (Law No. 118/2022) incorporated the Authority's proposal, contained in its report 'AS1730 – Proposals for competition reform for the purposes of the annual law for the market and competition year 2021' of 22 March 2021, to make 'the provisions relating to the abuse of economic dependence more appropriate and effective with respect to the characteristics and, in particular, the power of intermediation of large digital platforms'.

A relative presumption is introduced, namely, one that can be overcome by providing adequate proof to the contrary, of the existence of economic dependence on a digital platform by a company using its intermediation services, when said digital platform 'plays a decisive role in reaching end users and (or) suppliers, also in terms of network effects and (or) data availability'.

Some practices that may constitute an abuse of economic dependence on the part of digital platforms are then indicated, by way of a non-exhaustive list, such as:

- providing insufficient information or data regarding the scope or quality of the service provided;
- requesting undue unilateral services not justified by the nature or content of the activity performed;
- adopting practices that inhibit or hinder the use of a different provider for the same service, including through the application of unilateral conditions or additional costs not provided for in the contractual agreements or existing licences.

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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 the AGCM at the end of the procedure head towards reducing barriers to customer acquisition in the wholesale fixed telecommunications market and favouring full infrastructure competition.

On 4 April 2023, the Authority started an investigation against Meta to ascertain an alleged abusive use of economic dependence in the negotiation with Società Italiana Autori ed Editori (SIAE) of the licence agreement for the use of music rights on its platforms. On 21 April 2023, the Authority considered that the conditions for adopting the precautionary measures were met having identified SIAE's economic dependence on Meta on the basis of the presumption provided for digital platforms, by article 9 of Law No. 192/1998. Therefore, the Authority ordered Meta to resume negotiations immediately, maintaining a conduct inspired by the canons of good faith and fairness, and to provide all the necessary information to allow SIAE to restore the balance in its commercial relationship with Meta.

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Summary

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, foreign governments, foreign corporations, 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 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 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 2.4GHz-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 other business operators' information acquired concerning 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 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 wired broadband will be deemed a universal service under the amended Telecommunications Business Act, which will take effect on 16 June 2023. The amended Act establishes a fund derived from universal services fees collected from broadband service providers and distributes 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 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 came 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 were designated as Specified Digital Platforms at the time of the enforcement, but the government expanded the subject of these regulations to large-scale digital advertising platforms in October 2022.

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.

Wired broadband will be deemed a universal service under the amended Telecommunications Business Act, which will take effect on 16 June 2023. The amended Act establishes a fund derived from universal services fees collected from broadband service providers and distributes the contributions to support the maintenance of broadband networks in under-populated 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 the telecommunications business, such as communication history, usage details, caller information, location information and non-payer information.

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Also, the Telecommunications Business Act stipulates the prohibition of censorship of communications and secrecy of communications during the handling of telecommunications carriers.

Moreover, the following new regulations regarding data protection will be introduced under the amended Telecommunications Business Act, which will take effect on June 16, 2023:

- 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 from the users' devices, 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 and is currently coming into effect in a phased manner. 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 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.

Moreover, under the amended Telecommunications Business Act, which will take effect on 16 June 2023, large-scale telecommunications service providers (including search engine operators and social media providers) must develop internal rules and publish data processing policies, which contain information about applicable foreign systems affecting proper handling of user information.

Key trends and expected changes

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

The amended Telecommunications Business Act will take effect on 16 June 2023.

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 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 from the users' devices, 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 amended Radio Act took effect on 1 October 2022.

The main points of the amendment are as follows:

- to accelerate frequency reallocation, the authority of the Radio Regulatory Council is enhanced;

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- 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 Provider Liability Limitation Act 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 came into force in October 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 of the following entities may not obtain approval for a basic broadcasting service:

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).

As to requirement (5), not only the direct ownership but also the indirect ownership may be taken into account for certain types of broadcasting.

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.

On 3 June 2022, the amendment to the Broadcasting Act, which reinforced the monitoring system for foreign ownership of broadcasters was passed. Among other things, the amendment includes that:

- an applicant for a broadcasting service licence must declare certain items regarding the foreign ownership disqualification, including the amount of shares of such applicant held by foreign entities, in its application;
- a broadcaster must notify regulators of any changes in certain items regarding the foreign ownership disqualification, including the amount of shares of such applicant held by foreign entities; and
- the regulatory authority may give a broadcaster who has breached the foreign ownership restriction an opportunity to cure such breach 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.

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 (Media Plurality Ordinance), 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.

On 10 March 2023, the Media Plurality Ordinance was amended and certain restrictions of media plurality including, among others, the maximum number of prefectures where one broadcasting holding company broadcasts were removed.

Key trends and expected changes

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

On 3 June 2022, the amendment to the Broadcast Act (2022 Amendment) was passed and it includes, among other things:

- an applicant for a broadcasting service or radio station licence must declare certain items regarding the foreign ownership disqualification, including the amount of shares of such applicant held by foreign entities, in its application;
- a broadcaster must notify regulators of any changes in certain items regarding the foreign ownership disqualification, including the amount of shares of such broadcaster held by foreign entities; and
- the regulatory authority may give a broadcaster who has breached the foreign ownership restriction an opportunity to cure such breach before revoking its licence, depending on the circumstances.

The 2022 Amendment also provides the legal grounds that the Japanese public broadcaster called NHK can collect extra fees from households that do not pay viewing fees without reasonable grounds.

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On 3 March 2023, a bill for amendment to the Broadcasting Act was submitted to the Diet. While the bill is under discussion from April 2023, it proposes certain matters to facilitate the effective operation by broadcasters including, among others, sharing of relaying facilities by different terrestrial broadcasters.

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 23 December 2022. 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 takeover bid, and NTT DOCOMO has become a wholly owned subsidiary of NTT.

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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Summary

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 regulatory framework for telecommunications in Malta is based primarily on the following primary and secondary legislation:

- the Malta Communications Authority Act (Chapter 418, Laws of Malta);
- the Electronic Communications (Regulation) Act (ECRA) (Chapter 399, Laws of Malta);
- the Electronic Communications Networks and Services (General) Regulations (ECNSR) (Chapter 399.48, Laws of Malta);
- the Data Protection Act (Chapter 586, Laws of Malta);
- the Processing of Personal Data (Electronic Communications Sector) Regulations (SL 586.01, Laws of Malta); and
- the Electronic Commerce Act (Chapter 426, Laws of Malta).

This is not an exhaustive list of legislation and there are various other main and subsidiary laws that directly or indirectly affect parts of the sector. Additionally, the Malta Communications Authority (MCA) regularly issues consultation documents, decision documents, guidelines and directives that further regulate this sector in Malta.

Authorisation/licensing regime

2 Describe the authorisation or licensing regime.

In terms of the ECRA, undertakings wishing to provide electronic communications are required to notify the MCA to obtain a general authorisation to provide such services.

Malta's current telecommunications authorisation system is divided into three main categories, namely authorisations for the provision of networks and (or) services, spectrum licensing and licensing for use of radio communications equipment.

Any undertaking that provides in Malta, or intends to provide in Malta, an electronic communications service (and network if relevant) is required to formally notify the MCA on the official Notification Form. Once the MCA acknowledges the undertaking's submission of notification, the undertaking concerned is deemed to be authorised to provide an electronic communications network or service subject to the conditions established in the ECNSR. Administrative charges are specified therein.

Rights of use of radio frequencies are granted by the MCA either under a general authorisation or under an individual licence, depending on the frequency band. When individual licences have been granted, this has been done either by auction or by beauty contests.

An undertaking can also be required to obtain authorisations to provide other specialised services in terms of other subsidiary legislation enacted under ECRA. Such legislation includes, among others:

- the General Authorisations (Radiocommunications Apparatus) Regulations (Subsidiary Legislation 399.40);
- the Authorisation of Frequency Use (Provision of 2GHz Mobile Satellite Services) Regulations (Subsidiary Legislation 399.44); and
- the Radiocommunications (Amateur Station Licence) Regulations (Subsidiary Legislation 399.46).

There are no restrictions on foreign companies commencing operations in the Maltese telecommunications market and in fact, all of the larger telecoms players in Malta have material or controlling foreign interests.

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 types of technology used for electronic communications services may be used in the radio frequency bands declared available in the frequency plan in accordance with EU law, provided that restrictions may be imposed where necessary to avoid harmful interference, to ensure technical quality of service, and to safeguard the efficient use of spectrum, among other reasons provided for under ECRA. In accordance with ECRA, radio spectrum for the provision of electronic communications services is assigned on a service-neutral basis.

An undertaking may transfer or lease the individual rights to use radio frequencies in the bands identified in the national frequency plan that may be transferred or leased to other undertakings in accordance with the conditions attached to such rights of use of radio frequencies, provided that conditions attached to individual rights to use radio frequencies shall continue to apply after the transfer or lease, unless otherwise specified by the MCA.

In such cases, the licensed transferring undertaking shall notify the MCA of its intention to transfer rights to use radio frequencies, as well as the effective transfer thereof to the MCA. The undertaking shall also make such intention public.

Ex-ante regulatory obligations

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

The latest version of the Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex-ante regulation published in December 2020 (the Recommendation) lists two markets in which ex-ante regulation might be warranted, namely:

- wholesale local access provided at a fixed location; and
- wholesale dedicated capacity.

In a decision on 'wholesale local access provided at a fixed location' dated 18 December 2018, the MCA determined that ex-ante regulatory intervention is required in Malta in the said wholesale market and accordingly chose to maintain the following regulatory obligations of

access to (and) use of specific facilities, non-discrimination, transparency and price control. The MCA has also mandated the cost accounting obligation on two operators in Malta, namely GO plc and Melita plc.

With regard to the MCA's analysis of the 'wholesale market for the provision of dedicated capacity in Malta', a consultation document was issued on 30 September 2022 wherein the MCA considered no undertaking enjoys significant market power in the wholesale market for the provision of dedicated capacity in Malta and accordingly, that the relevant market is effectively competitive and expected to remain structurally so within the coming five-year period. Thus, the MCA is of the opinion that it is not justifiable to maintain regulatory obligations and is proposing to withdraw such obligations. The withdrawal of such obligations does not affect other obligations that may have been imposed on undertaking under other decision documents.

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 ECNSR provides for the possibility of requiring vertically integrated undertakings to situate activities relating to the wholesale provision of relevant access products in an autonomously functioning business entity in the event that other measures have failed to resolve persisting competition problems or market failures identified by the MCA. This separate entity is to supply access products and services to all undertakings, including to other business entities within the parent company on the same timescales, terms and conditions.

When the MCA decides to impose this type of obligation, it must first present a proposal to the European Commission, and such a proposal should include all the requisite information that ultimately will enable the European Commission to reach a decision. Once such a decision is reached, the MCA shall undertake to carry out a fully-fledged analysis of the different markets related to the access network.

Universal service obligations and financing

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

The MCA is empowered to establish universal service obligations to ensure that an adequate broadband internet access service and voice communications services at the specified quality, including the underlying connection, at a fixed location are made available at affordable prices to all consumers in Malta, in the light of national conditions and independently of geographic location. The MCA is also required to ensure the continuation of the availability and affordability of existing universal services when justified according to the national circumstances.

On 28 April 2023, the MCA issued a decision notice titled the Universal Service Obligations On Electronic Communications Services updated the universal service regime in Malta in respect of the following universal service obligations:

- provision of voice communications services at a fixed location;
- provision of reduced tariff options;
- provision of other specific measures for vulnerable users;
- control of expenditure by users; and
- the comprehensive electronic directory.

The decision notice also states that providers responsible for the provision of all or part of the universal service obligations may submit a claim for compensation in relation to any unfair burden they claim to have suffered because of providing each respective universal service obligation. This will subsequently be evaluated by the MCA to determine whether a burden in fact exists in this regard.

Number allocation and portability

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

Number allocation in Malta is contemplated under the ECNSR and within several documents published by the MCA itself, particularly the National Numbering Plan, which provides the necessary framework that outlines the award of rights of use, as well as the conditions for the use of numbering resources. The MCA is responsible for establishing procedures to guarantee that the allocation of numbers is carried out in an objective, transparent, non-discriminatory, equitable and well-timed manner. Moreover, the National Numbering Plan includes a list of the available numbering ranges and the requisites and standards that apply to them. If these ranges are made available, a prospective applicant can apply for numbers by either submitting an application for new numbers or number blocks or by submitting an application for additional numbers or number blocks. The MCA may also revoke, suspend or change number use, in certain instances.

With regard to number portability, on 15 November 2022, the MCA published a decision notice updating its previous decision on Number Portability In Malta. The decision notice makes reference to Regulation 94(5) of the ECNSR, which states that end-users subscribed to voice communications services with numbers from the national numbering plan may request that they retain their numbers, independently of the undertaking providing the service. The right applies:

- in the case of geographic numbers, at a specific location; and
- in the case of non-geographic numbers, at any location.

Thus, the requirement for provider portability applies to numbers assigned for fixed voice communications services, mobile voice communications services and special tariffs, namely freephone numbers and premium rate numbers. The right does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks, 'service portability'. It should also be noted that in the case of machine-to-machine or inter-net-of-things (M2M/IoT) connectivity services and other non-interpersonal communications services (non-ICS), which benefit from a solely dedicated E.164 national numbering range with the prefix '4', there is no obligation to provide number portability for numbers from this range as this could, in some cases, constitute service portability. Nonetheless, numbers from the '4' range may be ported out, to another provider of M2M/IoT connectivity service or

other non-ICS, subject to a voluntary agreement between the donor and recipient operators. The MCA did not impose location portability as a requirement but encourages providers of fixed voice communications services to provide subscribers with this facility where possible. The MCA has published a number of other decisions that define the requirements associated with number portability and various related processes.

Customer terms and conditions

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

To safeguard the interests of customers, the MCA, which is in charge of regulating the electronic communications industry in Malta, has adopted a number of laws, regulations and guidelines. By way of example, the MCA has established rules on its website for the minimal details that must be included in contracts for electronic communications services, such as broadband, telephone and television services, and are required to be disclosed to customers. The rules stipulate that contracts must be drafted in simple, straightforward language and that customers must be given details about costs, fees and service levels. Moreover, subscribers must be given at least 30 days prior notice of the undertaking's intention to modify the contractual terms and in such circumstances, a subscriber may dissolve from the contract without incurring a penalty. Additionally, undertakings must offer consumer contracts of 12 months and cannot offer consumer contracts exceeding 24 months. The MCA has also produced guidelines for the minimum terms and conditions for electronic communications services, including clauses about invoicing, payment, termination and dispute resolution.

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?

EU Regulation (EU) 2015/2120 (Roaming Regulation) laying down measures concerning open internet access entered into force on 15 June 2017. The Roaming Regulation was accompanied by a set of guidelines published by the Body of European Regulators for Electronic Communications that aim to guide national regulatory authorities when it comes to implementing these rules. The Roaming Regulation permits the use of 'reasonable traffic management practices' to avoid an 'impending network congestion'. Nevertheless, the guidelines clarify that, although the monitoring of generic content, such as the internet protocol packet header, is allowed, the monitoring of specific content (such as the information provided by the user) is prohibited.

The Roaming Regulation provides that specialised services, that is, 'services other than internet access services which are optimised for specific content, applications or services, or a combination thereof' fall outside the scope of the Roaming Regulation and thus users of specialised services are not protected by the open internet rules as provided in the Roaming Regulation.

Zero rating remains a thorny issue under the Roaming Regulation, as, although some forms of zero-rating are allowed, others are prohibited. Zero rating is prohibited when it is applied to specific applications or services. Once a data cap is reached, and all applications are throttled, the zero-rated applications must also be throttled, otherwise, this would be an infringement of the Regulation. On the other hand, zero-rating may be applied to an entire category of applications without being in contravention of the Roaming Regulation. Therefore, the latter form of zero rating is allowed.

With regard to bandwidth throttling, the Roaming Regulation holds that bar the exception of reasonable traffic management, blocking, slowing down, altering, restricting, interfering with, degrading or discriminating between specific content, applications or services, or specific categories thereof, are all prohibited.

It is pertinent to note that within the Roaming Regulation – concerning open internet access, amending the directive on universal service and users' rights relating to electronic communications networks and amending the roaming regulation – was implemented into the MCA Act through Act XVIII of 2016. The MCA also took the opportunity to publish a 'Report on the Malta Communications Authority's work on the implementation of the EU Net Neutrality Regulation'.

Platform regulation

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

Legislation in relation to digital platforms will come into effect through the EU's Digital Services Act and the Digital Market Act, which will be directly applicable across the European Union.

Regulation 2019/1150 on promoting fairness and transparency for business users of online intermediation services (Platform to Business Regulation) has been implemented through the Online Intermediation Services for Business Users (Enforcement Measures) Regulations (Chapter 399.49) that:

- put into place enforcement tools whereby a business user can seek redress before the Civil Court if there is non-compliance by the provider of an online intermediation service with certain obligations onerous on any such provider as stated in Platform to Business Regulation; and
- enables a designated organisation, association or public body to apply to the Civil Court to stop or prohibit non-compliance with certain articles of the Platform to Business Regulation by a provider of an online intermediation service or a provider of an online search engine.

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?

Broadband access forms part of the Universal Service Obligations. In accordance with the MCA's decision notice on 'Broadband as a Universal Service Ensuring the availability of an adequate broadband internet access service, including the underlying connection, at a fixed location', an adequate broadband internet access service, including the underlying connection, at a fixed location must be provided throughout Malta with all the following functional characteristics:

- download sync speed of at least 30Mbps;
- an upload sync speed of at least 1.5Mbps;
- latency, which is capable of allowing the end-user to make and receive voice calls over the connection effectively; and
- an unlimited data usage cap.

The ECNSR states that the minimum set of services that the adequate broadband internet access service must be capable of supporting are:

- electronic address;
- search engines enabling search and finding of all types of information;
- basic training and education online tools;
- online newspapers or news;
- buying or ordering goods or services online;
- job searching and job searching tools;
- professional networking;
- internet banking;
- e-government service use;
- social media and instant messaging; and
- calls and video calls (standard quality).

A designated operator is required to offer the broadband internet access service, including the underlying connection, at a fixed location at prices that are uniform throughout Malta and are to services offered to its non-Universal service obligations (USO) end-users, unless the MCA has determined that there is clear justification for not doing so. A designated operator is required to offer the same level of quality of service to premises connected under the USO as it does to premises connected to the rest of Malta.

Data protection

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

In addition to the protection provided in the Data Protection Act and the EU General Data Protection Regulations (GDPR), it is pertinent to note the additional protections afforded through the provisions of the Processing of Data (Electronic Communications Sector)

Regulations (SL 586.01). The Processing of Data (Electronic Communications Sector) Regulations (SL 586.01) regulate data protection in the electronic communications sector. Thus, for instance, Regulation 20 establishes that services providers must retain certain categories of data necessary to:

- trace and identify the source of a communication;
- identify the destination of a communication;
- identify the date, time and duration of a communication;
- identify the type of communication;
- identify users' communication equipment or what purports to be their equipment; and
- identify the location of mobile communication equipment.

Cybersecurity

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

First, the Maltese Criminal Code criminalises unlawful access to, or use of, information, particularly using computers or other devices. Actions including the unlawful use of a computer or other device or equipment to access any data, unauthorised activities that hinder access to any data as well as unlawful disclosure of data or passwords and the misuse of hardware may all result in a criminal offence. The Information and Data Protection Commissioner is the authority empowered to regulate and enforce cybersecurity aspects of the processing of personal data whereas the MCA is charged with the responsibility of enforcing the security of Malta's public communication networks.

Additionally, Maltese legal instruments dealing with various aspects of cybersecurity include the following:

- the Processing of Personal Data (Electronic Communications Sector) Regulations (SL 586.01);
- the Electronic Communications Act (Chapter 399, namely article 48)
- the Electronic Communications Networks and Services (General) Regulations (SL 399.28); and
- the Council of Europe Cybercrime Convention, to which Malta has been a signatory since 2001, and was ratified in April 2012.

The Malta Financial Services Authority has suggested Cybersecurity Guidance Notes, which might be thought of as a minimal set of best practices and risk management guidelines to be followed to successfully reduce cyber risks.

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 Malta, the processing of personal data, especially big data, is governed by the GDPR. Individuals have several rights under the GDPR, including the right to view their personal

data, the right to have inaccurate data corrected, the right to object to processing, and the right to have their personal data erased. Additionally, the GDPR mandates that organisations obtain explicit consent before collecting or processing any personal data.

The processing of personal data in Malta is governed by the Data Protection Act (Chapter 586 of the Laws of Malta). The Data Protection Act and the GDPR have both been actively enforced in Malta by the Office of the Data Protection Commissioner. The office has the authority to look into and punish businesses that disobey data protection laws, and it has imposed fines for noncompliance. Overall, Malta has created a solid legal system and enforcement apparatus to handle the legal issues brought on by big data.

Data localisation

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

The Processing of Data (Electronic Communications Sector) Regulations (SL 586.01) regulate data protection in the electronic communications sector. Thus, for instance, Regulation 20 establishes that services providers must retain categories of data necessary to:

- trace and identify the source of a communication;
- identify the destination of a communication; identify the date, time and duration of a communication;
- identify the type of communication;
- identify users' communication equipment or what purports to be their equipment; and
- identify the location of mobile communication equipment.

In terms of Regulation 18, a service provider of publicly available electronic communications services or of a public communications network is bound to retain the data referred to, to the extent that the data is generated or processed by such providers in the process of providing the communications services concerned.

There are currently no other generally applicable laws or regulations that require data to be stored locally. Having said this, regulated activities such as financial services or remote gaming could be subject to significantly more stringent data storage policies including specific locations for such data to be stored or replicated to be accessible to the relevant regulators.

Key trends and expected changes

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

Within the communications sector in Malta, changing consumer and business needs continue to drive demand for a better quality of service, greater reliability and security, faster speeds and additional bandwidth on both fixed and wireless electronic communications networks. In its Annual Plan 2022, the MCA has stated that it will continue to:

> *facilitate the deployment of very high-capacity fixed and wireless broadband networks by providing the necessary support and guidance to sector players and other institutional players. Such support and guidance will address areas related to the sharing and re-use of existing physical infrastructure, co-investment, and access to in-building physical infrastructure.*

The MCA has also declared that it will 'work with other competent authorities to further facilitate the deployment of very high-capacity networks, including fibre and 5G networks'. The Annual Plan also refers to the recently set up Utilities Services Coordinating Committee, which is 'one of the ideal vehicles in terms of setting out the related policies for infrastructure access', a very pertinent topic in relation to the Maltese market at the current time. The MCA has also declared that they will 'continue to closely monitor and ensure compliance by the operators with net neutrality principles, taking utmost account of BEREC guidelines'. The MCA shall continue to ensure that 'operators take appropriate measures to ensure the integrity and security of their networks and services in line with the established technical guidelines issued by ENISA'. Finally, the MCA also declares that it will:

> *continue to work closely with the Ministry for Home Affairs, National Security and Local Enforcement, the Critical Information Infrastructure Protection Unit within the Critical Infrastructure Protection Directorate, the Office of the Information and Data Protection Commission, Malta Security Services and the police on matters related to cyber-security.*

MEDIA

Regulatory and institutional structure

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

The key laws in Malta's regulatory framework for the media sector focus around:

- the Broadcasting Act (Chapter 350, Laws of Malta);
- the Electronic Communications (Regulation) Act; and
- the Media and Defamation Act (Chapter 579, Laws of Malta), formerly the Press Act.

These key pieces of legislation are enforced through the Broadcasting Authority (BA). The Broadcasting Act governs radio and television broadcasting and calls for government-issued licenses for broadcasters. It also lays out guidelines for content, such as requirements for fairness, impartiality, and accuracy. The Maltese Constitution additionally protects freedom of speech and the press, subject to certain restrictions for the protection of national security, public order and morality, and to guarantee truthful and impartial reporting. The Constitution also guarantees the right to access information held by public authorities. Overall, the media in Malta enjoys a high degree of freedom but is subject to regulation to ensure that content is accurate, fair, and balanced.

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 article 10(5) of the Broadcasting Act, a licence for any broadcasting service may only be awarded to a company regularly incorporated in Malta in accordance with the Companies Act. With regard to the cross-ownership of media, there are currently no rules in place to limit the extent of media ownership by one owner. Nevertheless, the Broadcasting Act imposes some restrictions on the private industry with regard to media concentration. Indeed, Professor Aquilina, formerly the chief executive of the BA, states that:

> *Media concentration rules exist, nevertheless, only for radio and television services and not for other media such as the press and the new media.*

It is pertinent to note that both of the largest cable TV providers in Malta are owned and controlled by foreign interests.

Licensing requirements

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

The BA is in charge of regulating all broadcasting content on radio and TV that originates from the Maltese islands and it has also been designated as the authority in charge of broadcasting licensing in accordance with article 3 of the Broadcasting Act. Further, the same Act provides that a broadcasting licence may be granted to an applicant under such terms, conditions and limitations as the BA may deem fit. Indeed, every licence granted by the BA shall include all such provisions that the BA may deem necessary or expedient. In light of this, the First Schedule to the Broadcasting Act shall apply to such licences.

Currently, the BA is authorised to issue the following types of licences.

A licence for nationwide radio and TV broadcasting services

With respect to this type of licence, all frequencies have been assigned. Nevertheless, television channels on the Cable Network and on the Digital Aerial Network are still available. Therefore, a prospective broadcasting station must first reach out to two service providers, namely, Melita and GO plc. After the latter service providers assign a new channel in their line-up, the applicant may submit an application with the BA. Applications for a nationwide sound broadcasting licence must be accompanied by a non-refundable application fee of €5,823. Moreover, the annual licence fee payable to the BA for a nationwide sound broadcasting licence will be €11,646.

A licence for digital radio broadcasting service

Currently, the licensed digital radio broadcasting service provider is Digi B Network Limited. After the BA issued a public call for applications and auction, Digi B Network acquired the right of use of digital audio broadcasting spectrum for use throughout the Maltese islands. Therefore, a prospective applicant must first be assigned a new channel by the aforementioned service provider, and then he or she may apply for a broadcasting licence from the BA. Simultaneously with the submission of the application, the applicant should also pay a fee of €1,160. An annual licence fee is also applicable. Last, unless a licence is lawfully terminated or abridged, the validity period of such a licence shall be up to a maximum of four years and additionally, it is renewable every four years. To this end, a fee of €3,000 is due upon each renewal of an application, based on the current fee tariff.

A licence for community radio stations

This particular licence caters for the needs of a particular community or locality and has a limited range of reception. Before submitting an application for a broadcasting licence with the BA, the prospective licence must first reach out to the Malta Communications Authority (MCA) to obtain frequency allocation. Applications for a community sound broadcasting licence (including for one-off events) must be accompanied by a non-refundable application fee of €116. Moreover, the annual fee payable to the BA for a community sound broadcasting licence is €349 and for licences payable to the BA for community sound broadcasting services for one-off events it is €116 per event.

A licence for nationwide television teleshopping broadcasting service

Before a prospective applicant submits his or her application with the BA, he or she must first approach both Melita and GO, the two incumbent cable TV distribution networks on the island, to obtain the necessary arrangements for the provision of a new teleshopping channel.

A licence for a satellite television broadcasting service

To obtain approval for this kind of broadcasting service, a prospective applicant must first submit an application for a Satellite Earth Station Licence with the MCA, as it is charged with the authority to license satellite uplink services. The applicable licence fees are as follows:

- for each station, for the transmission of communications, depending on the radio frequency bandwidth:
    - stations using up to 10MHz radio frequency bandwidth, per 1MHz radio frequency bandwidth, per annum fee is €650; and
    - stations using more than 10MHz radio frequency bandwidth, per annum fee is 6,500; and
- each station, for the transmission of communications, used for any event:
    - of 30 days or part thereof, per 1MHz radio frequency bandwidth, the fee is €110; and

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- exceeding 30 days or part thereof, monthly fee, per 1MHz radio frequency bandwidth, the fee is €110.

As soon as the uplink services are duly approved by the MCA, the prospective applicant may then submit to obtain a licence for a satellite television broadcasting service.

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?

With respect to the broadcasting of foreign-produced programmes, there are no specific regulations in place and there are no rules relating to the minimum amount of local content. Nevertheless, in terms of the Broadcasting Act, in relation to both television and sound broadcasts other than advertisements, the BA has the power to scrutinise the programme schedules.

Further, the same Act provides that the BA may give instructions:

- as to the exclusion of any from a programme schedule;
- as to the inclusion in, or in a particular part of, a programme schedule of items of a particular category; or
- as to the inclusion in a particular part of a programme schedule of a particular item.

The BA is only bound to approve a programme schedule once it is satisfied that it conforms to its own instructions. Therefore, in light of the above, the BA holds ultimate control in relation to both local and foreign-produced programmes.

Advertising

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

The Broadcasting Act regulates media advertising together with the relevant subsidiary legislation. Article 16K of the aforementioned Act provides the rules applicable to audiovisual commercial communications. The Broadcasting Act requires that all such communication is readily identifiable. Audiovisual commercial communication is also deemed illegal when it:

- causes prejudice to the right for respect for human dignity;
- includes subliminal techniques and when it spreads misleading information;
- includes or promotes any form of discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- encourages behaviour detrimental to the health or safety of the individual;
- encourages behaviour grossly harmful to the protection of the environment;
- promotes tobacco products and cigarettes;
- promotes alcoholic beverages in such a way as to target minors or to stimulate immoderate consumption of such beverages by adults;

- serves as an advertisement of medicinal products and medical treatment available only on prescription in the member state within whose jurisdiction the media service provider falls;
- causes physical or moral detriment to minors;
- directly encourages minors to buy or hire a product or service by abusing their inexperience or innocence;
- strongly urges minors to persuade their parents or others to purchase the advertised goods or services; and
- exploits the special trust minors place in parents, teachers or other persons, or when it unreasonably includes the presence of minors in dangerous situations.

With regard to advertising online, Maltese law does not directly regulate advertising that occurs over the internet in general or through social media. Nevertheless, a number of laws apply in more general terms. For instance, advertising of goods and services must be consistent with the relevant European directives regarding consumer protection and that consequently have been transposed into Maltese law, specifically under the Consumer Affairs Act and the eCommerce Act. Thus, for instance, the advertising of tobacco products is prohibited, and standards of practice are applicable to the advertising of gambling, alcohol and tattoos. Further, reference should also be made to the local provisions on misleading and comparative advertising. Essentially, the legislation that implemented the Directive regarding misleading and comparative advertising is the Consumer Affairs Act, where Act XXVI of 2000 (the Consumer Affairs (Amendment) Act) saw the introduction of article 48 dealing with misleading advertisements, article 49 dealing with comparative advertising and article 50 dealing with allowable comparative 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?

Must-carry obligations are regulated by Regulation 49 of the Electronic Communications Networks and Services (General) Regulations (ECNSR), which provides that the MCA may impose 'must carry' obligations for the transmission of specified radio and television broadcast channels and complementary services, principally accessibility services to enable suitable access for disabled end-users, on undertakings providing electronic communications networks used for the distribution of radio or television broadcasts channels to the public where a significant number of end users of such networks use them as the principal means to receive radio and television broadcasts. However, such obligations shall only be compulsory where they are required to meet clearly expressed general interest objectives and shall be proportionate and transparent.

With regard to financing, the same regulation goes on to state that the MCA may determine, in a proportionate and transparent manner, the appropriate remuneration, if any, in respect of measures taken in accordance with the above-mentioned provision. Further, in 2011, the MCA published its guidelines on 'must-carry obligations', which provide the framework for determining how must-carry obligations should be imposed on a pay-TV operator. Specifically, Guideline 4 addresses remuneration matters:

When determining whether remuneration for the retransmission of the General Interest TV channels should be provided, the MCA will need to satisfy itself that any remuneration provided can be justified.

Regulation of new media content

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

The Malta Broadcasting Authority (MBA) is responsible for overseeing conventional broadcast media in Malta, including radio and television, in accordance with the Broadcasting Act. The MBA has imposed rigorous content rules on traditional broadcast media, including requirements for programming, advertising, and political material.

There is no sector-specific legislation to regulate new media content within the sphere of Maltese media law. New media content is thus regulated through a patchwork of existing laws that generally regulate consumer protection, privacy, and intellectual property as well as technical regulations on topics like network security and interoperability.

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?

Digital switchover was completed on 31 October 2011 with the switching off of the analogue broadcasts. Consequently, the switchover freed up space for more radio frequencies that could then be utilised for long-term evolution (LTE) networks in competition with the current LTE network.

After the switchover, the MCA's main goal was to coordinate spectrum to simplify the effective provision of mobile services in the 790–862MHz frequency band, which is often referred to as the 800MHz band, with the ultimate aim of making the most of the digital dividend for Malta.

Individual rights-of-use of radio spectrum in the 800MHz and 2.5GHz bands were issued in April 2018. Melita Ltd, Vodafone Malta Ltd and GO plc were awarded the right to use additional radio spectrum for wireless broadband services. This additional spectrum enables superfast mobile broadband services and enhanced indoor coverage for the benefit of consumers and businesses in Malta. Through spectrum licence awards, the MCA aims to promote strong competition and creates more value for consumers, leading to faster mobile broadband speeds, lower prices, greater innovation, new investment and better indoor coverage.

This change was a significant turning point in the growth of the Maltese broadcasting industry because it gave viewers access to new digital services including electronic programme guides, interactive material, and high-definition television as well as higher quality of audio and video.

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Digital formats

25 Does regulation restrict how broadcasters can use their spectrum?

Regulation 76 of the ECNSR states that the MCA may attach one or more of the following conditions to each individual authorisation it issued, in accordance with Part B of the 7th Schedule of the same regulations:

- obligation to provide a service or to use a type of technology for which the rights of use for the frequency has been granted, including, where appropriate, coverage and quality requirements;
- effective and efficient use of frequencies in conformity with the EU Framework Directive;
- technical and operational conditions necessary for the avoidance of harmful interference and for the limitation of exposure of the general public to electromagnetic fields, where such conditions are different from those included in the general authorisation;
- maximum duration in conformity with article 5 of the Authorisation Directive, subject to any changes in the national frequency plan;
- transfer of rights at the initiative of the right holder and conditions for such transfer in conformity with the EU Framework Directive;
- usage fees in accordance with the same ECNSR;
- any commitments that the undertaking, obtaining the usage right, has made in the course of a competitive or comparative selection procedure;
- obligations under relevant international agreements relating to the use of frequencies; and
- obligations specific to an experimental use of radio frequencies.

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?

With respect to media plurality, article 11 of the Broadcasting Act provides that when issuing broadcasting licences, the BA shall be guided by the principles of freedom of expression and pluralism; these shall be the basic principles that regulate the provision of broadcasting services in Malta. Therefore, the BA does not have a particular process to assess media plurality, but it simply conforms to its own principles of pluralism.

Nevertheless, after a thorough analysis of article 15 of the Broadcasting Act, one may deduce that the Act empowers the BA to give any person providing, or responsible for the provision of, any sound or television broadcasting service in Malta such directions as the BA may deem necessary or expedient. Therefore, although the law only briefly considers the principle of media plurality, the Broadcasting Act is still given leeway to give directions on this principle as it deems fit.

Key trends and expected changes

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

Following the European Commission's adoption of the European Media Freedom Act in 2022, which implements a number of rules to protect media pluralism and independence in the European Union, it is envisaged that Malta will benefit from the new safeguards implemented therein, especially those against political interference in editorial decisions and those against surveillance. The European Media Freedom Act promotes independence and stable funding of public service media the transparency of media ownership and state advertising. The Act should address certain questions and issues that may arise in relation to government funding of the media.

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 (BA) is in charge of all broadcasting stations and ensures their compliance with legal and licence obligations, including matters relating to public or political controversy (namely, the media sector). The communications sector is ruled by the Malta Communications Authority (MCA), which is responsible for the regulation of communication services in Malta.

The communications regulator (namely, the MCA) is a separate and distinct body from both the BA and the Malta Competition and Consumer Affairs Authority, the latter being the one responsible for antitrust regulations and ensuring 'the consistent application of competition and sectoral regulation'.

Appeal procedure

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

With regard to the MCA, an aggrieved individual or undertaking may file an application with the Administrative Review Tribunal (which replaced the former Communications Appeals Board). This tribunal is competent to review administrative acts of the public administration on points of law and points of fact. Moreover, unless any provision of the law does not provide for any time limit for the filing of an action for review by the tribunal, an action to review administrative acts is to be filed within a period of six months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier.

On the other hand, if a broadcasting licence is refused or suspended by the BA, an appeal may be filed before the Court of Appeal within 15 days from the date that the decision of the BA is served.

With respect to competition and consumer affairs, appeals from the decision of the Director General (Competition) and Director General (Consumer Affairs) may be heard before the Competition and Consumer Appeals Tribunal.

Competition law developments

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

Mergers and acquisitions have been relatively active in the technology sector, albeit not specifically in the telecommunications or media sectors. 6PM, a leader in health solutions acquired Compunet, while the Alert Group, an information and communications technology services company, bought Enterprise Solutions, an IT consultancy and solutions provider specialising in business and commerce systems. Malta has also partnered with Microsoft to create the Microsoft Innovation Center to focus on and promote technologies such as cloud computing, and to provide facilities to help tech start-ups to develop their products and to commercialise their ideas with a vision for Malta to become a centre for app development in the coming years.

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Summary

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 Federal Telecommunications and Broadcasting Law and the Law for the Public Broadcasting System of the Mexican State currently in force were published in the Official Mexican Gazette.

Any provisions in the Law on General Communications that conflict with those in the Federal Telecommunications and Broadcasting Law are no longer in effect.

The issuance of the telecommunications and broadcasting legal framework in force 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, for the purpose of regulating and promoting 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 is the authority in terms of antitrust matters in the broadcasting and telecommunications sectors, for which it shall exercise the powers, set forth 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, titleholding 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 sole licence, licence to use, enjoy or exploit frequency bands of the radio spectrum, authorisation 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 term has expired and, according to the FTI, all requirements have been met the sole licence shall be granted.

On 25 November 2013, the Mexican government published its National Digital Strategy action plan with the purpose of providing 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 for 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.

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 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 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.

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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 granted.

According to the Federal Telecommunications and Broadcasting Law, current licensees may obtain authorisation from the FTI 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 Mexican pesos;
- licence to use, enjoy or exploit the radio spectrum for a determined use or for the occupation and exploitation of orbital resources, 38,977.87 Mexican pesos, and for its renewal, 16,497.59 Mexican pesos;
- authorisation to exploit landing rights, 11,958.20 Mexican pesos, and for its renewal, 6,778.50 Mexican pesos;
- authorisation to incorporate and operate or exploit a telecommunications service provider without licensee status, 7,708.39 Mexican pesos, and for its renewal, 4,236.54 Mexican pesos;
- authorisation to install, operate or exploit earth stations to transmit satellite signals, 4,605.63 Mexican pesos, and for its renewal, 3,529.54 Mexican pesos;
- migrating to a sole licence, 14,827.88 Mexican pesos; and
- authorisation to provide an additional service to those indicated in the original licence that uses the radio spectrum, 24,621.33 Mexican pesos, and that do not use the radio spectrum, 9,002.26 Mexican 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 sets forth 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, and functional or structural separation of such agents.

The FTI shall define economic agents who have, directly or indirectly, a 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, pursuant to the procedure established in the Federal Competition Law.

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 are 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 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.

For the purposes of promoting 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.

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 of 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 must 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, pursuant to the provisions set forth 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 funds 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 representatives of the federal government.

In connection with the foregoing, the productive subsidiary of the Federal Electricity Commission titled CFE Telecommunications and Internet for All was incorporated on 2 August 2018, with the purpose of providing 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 Telecommunications and Internet for All is not-for-profit and its objective is to reach remote and marginalised communities.

In 2020, to provide high-quality internet access throughout 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, with 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 at 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 five million users of different rural communities in Mexico have been provided with connectivity. By 2023, all municipalities would be expected to be connected to the internet through this programme.

The Ministry of Infrastructure, Communications and Transportation published the 2023 Public Sites Connectivity Programme. This programme identifies priority sites to be connected to the internet through CFE Telecommunications and Internet for All; the priority public sites are related to education, health, social development, rural development and work sectors. From a universe of 70,776 sites submitted for consideration by the federal and state governments, 5,088 have been identified as a priority, compared to the 24,814 sites that were identified as a priority in 2022. The 2023 Public Sites Connectivity Programme recognises the Smart Villages, Sustainable Wellbeing programme, 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. By November 2022, 67 Smart Villages, from the 75 Smart Villages set as a goal for 2022, had been installed across 15 different states. 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 productive population comprised of 50 per cent women or indigenous people.

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 plan sets forth 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 sets forth 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.

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 set forth in the standard 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, pursuant to the Data Protection Law, agreements shall comply with provisions thereof and customers shall be afforded the rights thereunder.

Customers under the Federal Consumer Protection Law are entitled to file claims with the Consumer Protection Agency, which will be subject to a conciliation mechanism before such agency.

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 the net neutrality mentioned above, 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 by means of 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 with respect to 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 (R3D)* and *Observacom*, pursuant to which it ordered the FTI 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, among others, crowdfunding and electronic payment fund services provided by financial technology companies or institutions.

Further, there is a bill in the Mexican Congress, seeking 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, which propose to regulate the content for underage persons and to protect the free speech right for the content creator. However, the discussion of such bill has been postponed.

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 set forth 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
- 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 internet protocol addresses of persons visiting their website from EU 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.

The legislative power has accelerated the process to pass cybersecurity laws, which would create a National Cybersecurity Agency. The new law was expected to be enacted in December 2022; however, to date, the cybersecurity law has not been passed.

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. However, certain regulated sectors such as banks, may require regulatory approval to receive data management services if the service provider is located outside of Mexico.

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 the 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 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 by 2 per cent and those covering at least 20 per cent of their programmes with national independent production may increase advertising time by 5 per cent.

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.

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 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, which propose to regulate the content for underage persons and to protect the free speech right for the content creators. The discussion of this bill has been postponed and no date for discussion has been set.

Although nowadays there is no specific regulation regarding new media content; the right to information, expression and to receive content through public broadcasting services and pay television 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 occurred on 31 December 2015. Original licensees to use the 700MHz 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 the shared public telecommunications network known as Red Compartida.

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 Advanced Television Systems Committee (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.

Key trends and expected changes

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

The FTI has been recognised by the International Telecommunications Union as a fifth-generation 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.

During the first months of 2023, Teléfonos de México (Telmex) ceased to have more than 50 per cent of the market share in the fixed telecommunications sector. The Union of Telephone Operators of the Mexican Republic requested that the FTI stop considering Telmex as a preponderant economic agent and therefore stop applying the asymmetric regulation to which it was subject since 2014. The matter is expected to be reviewed soon by the FTI.

On 21 March 2018, shared public telecommunications network Red Compartida started operations with more than 30 per cent coverage in the country. After a long bankruptcy process, which has now ended, the operator of the Red Compartida will continue to develop the project.

After one year of the launching of the 5G network in Mexico, three of the largest telecommunications companies offer this type of technology in the country: Telcel, AT&T and Telefonica. By December 2022, Telcel, Mexico's largest telecommunications company, operated its 5G network in 18 cities across Mexico; AT&T in 30 cities and Telefonica in five cities. It is expected that during 2023, approximately 16 million people will use the 5G network across Mexico. The 5G network, in addition to providing faster internet connection speeds, provides power savings, cost reductions and mass connectivity support.

In April 2022, the Mexican Supreme Court declared unconstitutional the amendment to the Federal Telecommunications and Broadcasting Law ordering the creation of a registry that intended to record the biometric data of mobile service users. Pursuant to such amendment, telecommunications carriers such as America Móvil, AT&T and others were obliged to collect customers' data, including biometric data, and make the corresponding filings with the FTI. The Supreme Court's unanimous decision was based on the argument that the creation of the biometric data registry did not justify the violation of privacy and human rights.

It is likely that 2023 could bring significant mergers and acquisitions activity to the telecom and IT sectors. Particularly, as a result of the interaction of telecom and digital services with other relevant industries, including the financial sector. New and more complex investments, consolidations and combinations involving institutional investors, private equity funds, corporations and entrepreneurs, including in the financial, technological and telecoms industries, are likely to occur.

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 federal 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.

The FTI is expected to revise the Regulatory Preponderance Framework that is applicable to América Móvil. The current framework became effective in 2014. A public referendum took place on 15 February 2023 to compile information and opinions to analyse the antitrust impact imposed on America Móvil.

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Summary

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 2003 (NCA) and the Wireless Telegraphy Act 1966 (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 900MHz and 1,800MHz bands to Mobile Telecommunications Limited (now Ntel), Econet Wireless Nigeria 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. An 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 3.5GHz 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.

In 2022, NCC a bid to deepen the penetration of communications services in Nigeria issued the License Framework For the Establishment of Mobile Virtual Network Operators (MVNOs) in Nigeria. The MVNO licence is a five-tier classification that has distinctive services to be offered by the players in different tiers and may be implemented in any of the following ways:

- tier 1 virtual operators: these are operators who are able to offer services to their customers without owning any switching or intelligent network infrastructure. They also do not control any numbering resources. They rely on the host licensee to provide wholesale capacity to enable them deliver products and services to customers;

- tier 2 simple facilities virtual operator: these are operators who do not have core switching and interconnect capabilities but can set up their own intelligent network (IN) to provide IN services to customers;
- tier 3 core facilities virtual operator: these are operators who rely on the host licensee to provide radio access capacity at wholesale to deliver products and services to customers. They also own and manage core network elements (switching and interconnections). Revenue generation stems from both outbound and inbound calls that give it full control over its tariff structure;
- tier 4 virtual aggregator or enabler: these are operators who are responsible for purchasing bulk capacity from a licensed network operator, and reselling it to multiple MVNOs, therefore streamlining the process of negotiating capacity agreements with said network operators. In underserved and unserved areas, it is permissible for these operators to provide core telecommunications services to customers by entering into a 'shared rural coverage agreement' with a licensed spectrum owner; and
- tier 5 unified virtual operator: these are operators who are eligible to provide any of the services under tiers 1–4.

Tier 1–4 entrants are expected to pay 5 per cent of the license fee as non-refundable administrative charges, while tier 5 entrants are to pay 50 million naira in non-refundable administrative fees prior to negotiations with the Mobile Network Operators (MNOs). MNOs are not eligible to apply for the MVNO licence.

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		
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, internet 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;

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- 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.

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.

Last, both the FCCPC and NCC have powers under the Merger Review Regulations 2020 and the Competition Practice Regulations respectively, to impose structural or functional separation between an operator's network and service activities in reviewing mergers that have been identified to present competition concerns within an identified relevant telecommunications market. As of the time of this writing, this power is yet to be exercised with respect to a telecommunications market.

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 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 obligations 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 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 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 servers;
- 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.

The Federal Government through the Ministry of Communications and Digital Economy and the NCC have implemented several frameworks to harness and deploy Fifth Generation (5G) technologies for the national good. One of these is the award of 3.5GHz spectrum licence to MTN Communications Nigeria Plc and Mafab Communications Limited. To this end, both awardees have commercially launched 5G services in Nigeria. To consolidate on this, NCC has issued another information memorandum for a proposed auction of the remaining two lots of 100MHz in the GHz spectrum band to support the deployment of 5G in Nigeria. To be eligible to bid at this auction, the applicant does not have to be a licensed network operator in Nigeria, as a UASL will be issued to the successful bidder. The reserve price, which is the minimum price for one lot of 100MHz time division duplex for a 10-year licence tenure fixed at US$273,600,000 or its equivalent in naira at the prevailing Central Bank of Nigeria rates at the time of the auction. As of the time of this writing, the NCC is yet to set a date for this auction but we expect that this would be happening within the second quarter of 2023.

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
	Cable TV	10 million
Category B (any location in all other states)	Radio	15 million
	Open TV	11.25 million
	Cable TV	7.5 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
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. 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 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 amendment to the 6th edition of the BC (the amendment) 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 amendment 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 and the Advertising Regulatory Council Act 2022 (the ARCON Act). Under the ARCON Act, an advertisement in any medium directed at or targeting the Nigerian market must be submitted for approval by the Advertising Standards Panel before exposure.

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 switchover (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. Although the third and final phase of the DSO was supposed to commence in December 2021 and concluded by 8 December 2022, there have been technical hitches that pushed back the implementation of the final phase of the DSO.

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 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.

ARCON, the advertising communications regulator in Nigeria issued a directive on 22 August 2022 banning the use of foreign models and voice-over artists on all forms of Nigerian advertising mediums. While the ARCON Act does not expressly provide that a violation of the directive is an offence, however, section 9(p)–(q) empowers ARCON to sanction and prosecute any person or organisation that violates or infringes any provision of a proclamation issued by ARCON that relates to advertising, advertisement and marketing communications in Nigeria. However, at the time of this writing, no steps have been taken by ARCON to enforce the directive, and as such no specific penalties have been set for any violation.

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.

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 National Communications Act, 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 with 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.

One of the objectives of the amendment is to ensure the maintenance and promotion of efficient market conduct and effective competition in the broadcasting industry. In particular, the amendment seeks to eliminate or prevent an abuse of a dominant position or any form of anti-competitive conduct by broadcasters or licensees or facility providers or equipment suppliers in the broadcasting industry. Accordingly, the amendment, among other things, imposes an obligation on broadcasters to offer at the wholesale level all sports and news content, to ensure the widest possible distribution and viewership of content considered critical to the success and sustainability of new entrants in the pay-TV industry in Nigeria. In *Metro Digital Limited v Multichoice Nigeria Limited & 2 Others* CA/PH/188/2021 (unreported), an appeal against the decision of the Federal High Court that held that Multichoice, a pay-TV provider in Nigeria with exclusive rights to premium contents such as the English Premier League (EPL), news and entertainment, was not legally obligated by the amendment to sub-license rights to any content to Metro Digital Limited (MDL) because the rights were acquired under an existing contract that predates the amendment and in which Multichoice is a sub-licensee with no power and authority to sub-license the contents. On appeal to the Court of Appeal, the court held that Multichoice had failed to establish the existence of any contract, which made it impossible for it to sub-license the requested contents to MDL. The court also made an order that NBC issues a directive to Multichoice to offer the requested contents to MDL. This judgment from the Court of Appeal is notable in that it has confirmed the validity of the amendment, particularly the provision that mandates a broadcaster to offer sports and news programmes and (or) channels to other broadcasters, for retail to residential subscribers in Nigeria upon a reasonable request in writing.

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Summary

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 and the Telecommunications (Dealers) Regulations. The IMDA has also recently replaced the Code of Practice for Competition in the Provision of Telecommunication Services 2012 (TCC) with the Code of Practice for Competition in the Provision of Telecommunication and Media

Services 2022 (Converged Code), a new converged competition code to govern competition and market-related matters in the telecoms and media markets.

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 (the Broadcasting Act).

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 Telecoms Act, Broadcasting Act 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 Radiocommunications Regulations.

FBO licence

A person intending to deploy telecoms infrastructure (generally taken to refer to any transmission facility) or 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 its own would have required an SBO licence, provided that the FBO licensee has already been licensed to provide the service. 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 to each individual FBO licensee depending on the services that the licensee may provide.

The following is a non-exhaustive list of 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 to 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 to 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 annual gross turnover (AGTO): S$80,000; • next S$50 million to 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 on a 5-yearly basis. Annual fee: S$5,000

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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 audiotex 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;
- audiotex services; and
- public chain payphone services.

The provision of certain services, such as audiotex and internet access services, are subject to concurrent telecoms and media licensing requirements. In this respect, audiotex 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)

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 has also published the Spectrum Management Handbook to provide information on spectrum allocations, assignment criteria and application procedures for various radio-communication services. 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

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, three licensees have been designated as PTLs (namely, NetLink Management Pte Ltd (as trustee-manager of NetLink Trust), Singapore Telecommunications Limited and Starhub Ltd). 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 representation of 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 SIMBA. 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 August 2020, the IMDA 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.

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 Converged Code. Under 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 and (or) media 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 or broadcasting services.

In this regard, dominant licensees are subject to a range of ex-ante obligations under 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, among others:

- 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 in accordance with the criteria under section 4.4.5.2 of the Converged Code.

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 Converged Code.

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.

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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 (namely, holding 12 per cent or more) or a 30 per cent controller (namely, 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 Converged Code, the IMDA may require sharing of any infrastructure that it determines is 'critical support infrastructure' or 'essential resource', or where the IMDA concludes that sharing would be in the public interest, in accordance with the principles in the Converged Code.

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, the IMDA has, with a view to ensuring effective open access for downstream operators, instituted a multi-layered industry structure consisting of:

- the network company (NetCo);
- several operating companies (OpCos) including the appointed OpCo; and
- numerous retail service providers.

In this regard, the IMDA issued the Guidelines for Service Provisioning over the NGNBN to provide guidance on the responsibilities of operators in each layer in the provisioning and day-to-day operations of Next Gen NBN services, so that the different layers can interact in a coordinated manner to provide Next Gen NBN services to end-users.

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 from 1 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, whether acting alone or in concert with its associates; 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's terms and conditions.

Section 3 of 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 3.5 of the Converged Code also includes several mandatory contractual provisions that must be included in all FBO licensees' and SBO licensees' end-user service agreements (namely, service contracts with business or residential subscribers). These include provisions relating to:

- billing period;
- 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;

- 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 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 a digital platform constitutes an online communication service, it may be subject to the regulatory framework under the Broadcasting Act and must comply with directions issued by the IMDA and any applicable codes of practice;
- 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 a digital platform is regarded as an internet intermediary (eg, social network, search engine, content aggregator, internet-based messaging service and video-sharing service), it may be subject to directions and obligations under the Protection from Online Falsehoods and Manipulation Act 2019 (POFMA);
- to the extent that a digital platform provides social media services, relevant electronic services or internet access services, it may be subject to directions issued by the Ministry for Home Affairs under the Foreign Interference (Countermeasures) Act 2021; and
- competition issues involving a digital platform may be governed by the general competition law as established under the Competition Act 2004 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 2004 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 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, applications 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.

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.

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 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, and to prevent the loss of any storage medium or device on which personal data is stored.

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 Converged Code, 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.

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.

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.

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The Cybersecurity Act operates 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 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, the IMDA (through its subsidiary, the Singapore Network Information Centre) established a new Singapore SMS Sender ID Registry. With effect from 14 October 2022, that registration with the Singapore SMS Sender ID Registry became mandatory for all organisations that use SMS sender IDs, such that only bona fide organisations can use such sender IDs. From 31 January 2023 onwards, all non-registered sender IDs will be marked as 'Likely-SCAM' as a default for a transition period of around six months. Thereafter, messages with such non-registered sender IDs will be blocked and not delivered to end-users. Additionally, telecom operators will implement SMS anti-scam filtering solutions within their mobile networks to filter and block such messages before they reach the public.

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 the IMDA to strengthen consumer protection in telecommunication and media services, as part of the 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 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 two-and-a-half 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, the IMDA will also make available data on consumer complaints received by telecom service providers and their performance in handling complaints.

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 20 July 2022, the IMDA and Economic Development Board launched a pilot Data Centre – Call for Application Exercise to facilitate the building of new data centre capacity and allow for the calibrated and environmentally sustainable growth of data centres in Singapore.

Applicants were required to provide proposals on how they intended to run the most resource-efficient data centre that is best in class. Some requirements included having to obtain platinum certification for the data centre under the Building Construction Academy and the IMDA's Green Mark for New Data Centre criteria, having a power usage effectiveness of 1.3 or better and providing proposals on how it will best achieve sustainability goals through renewable energy and plans to invest in innovative energy pathways to offset the carbon emissions footprint. The call for applications closed on 21 November 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, 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 (not yet in force).

Most of the changes under the Amendment Act came into effect on 1 February 2021. On 1 October 2022, the provisions relating to enhanced financial penalties came into effect. The provisions on data portability have yet to come into effect at the time of writing.

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 1994 (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 1981, Newspaper and Printing Presses Act 1974, the Broadcasting Act and the Undesirable Publications Act 1967 respectively). The Minister for Communications and Information (the Minister) may further specify in the Gazette any other medium of communication of information, entertainment or other matter to the public 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 1967 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 chief executive officer of a broadcasting company and at least 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 the Code of Practice for Competition in the Provision of Telecommunication and Media Services 2022 (the Converged Code).

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). Section 10 of the Converged Code details the IMDA's regulation of such consolidation activities.

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;
- audiotext, videotext and teletext services;
- video-on-demand services;
- broadcast data services; and
- computer online services.

Licence fees that have been published by the IMDA as payable for the following broadcasting services include:

- 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 S$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. As a rough guide, new applications are generally processed within the following timeframes:

- for local broadcasting licences: approximately 35 working days;
- for a subscription international television service licence: approximately 20 working days; and
- for a TVRO licence: approximately 15 working days.

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:

- audiotext, videotext 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, audiotext service providers, and internet content providers determined to be a political party registered in Singapore providing any programme through the Internet, and ISPs must register with the IMDA within 14 days of commencing the service.

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 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 to 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.

Similarly, all ISPs and internet content providers licensed under the Broadcasting (Class Licence) Notification are required to comply with the Internet Code of Practice, which prohibits any broadcasting service from broadcasting content that is against public interest or order, national harmony or which offends against 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.

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 includes 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 is 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.

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.

Separately, the Undesirable Publications Act 1967 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, by a direction in writing, require a broadcasting licensee to provide for transmission and reception of any broadcasting service that is provided by any other person, and that is specified in its licence or is of a description so specified, notwithstanding any other provisions in the Broadcasting Act stating otherwise.

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.

Sections 11.1.4 and 11.6 of the Converged Code 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 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) optical fibre or asymmetric digital subscriber line.

Under 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.

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.

Social media services

The Broadcasting Act was amended on 1 February 2023 to provide greater regulatory oversight on egregious content on social media services and to regulate providers of online communication services. There are two key parts to the regulatory approach:

- requiring online communication services with significant reach or impact to comply with applicable codes of practice; and
- dealing with egregious content on an online communication service.

In particular, the IMDA may designate an online communication service as a regulated online communication service. This imposes an obligation on the regulated online communication service provider to comply with any codes of practice issued by the IMDA and put in place measures on their services to mitigate the risks of danger to Singapore users from exposure to harmful content and provide accountability to their users on such measures.

The IMDA is also empowered to issue directions to any provider of a social media service to disable access to the egregious content by Singapore end-users or to stop delivery or communication of content to an account or accounts of all Singapore end-users or any particular group of end-users comprising one or more Singapore end-users. The IMDA may also direct the provider of an internet access service to block access by Singapore end-users to the social media service if an online communication service provider fails to comply with the IMDA's direction.

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 since 1 January 2019.

In June 2012, the then Media Development Authority (now the 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 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) and bilateral levels (namely, 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 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.

New laws to address harmful online content

On 1 February 2023, the Broadcasting Act was amended to allow for the regulation of egregious content on social media services and providers of online communication services. This represents a paradigm shift in Singapore's content regulation landscape evincing Singapore's adoption of a tougher stance against the rising prevalence of harmful online content. For more information on this, please refer to paragraph 2.7.6.

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 Infocomm Development Authority and the Media Development Authority. 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 2004, 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.

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, the Code of Practice for Competition in the Provision of Telecommunication and Media Services 2022 (Converged Code), to govern competition and market-related matters in both the telecoms and media markets, which took 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 Telecommunications Act 1999, 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 or anything contained in a code of practice may appeal to the Minister, who may confirm, vary or reverse the same. Under section 59 of the Broadcasting Act 1994 (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.

Prior to 2 May 2022, competition and market-related matters in the telecoms and media sectors were governed separately by two different codes of practice, namely, the Code of Practice for Competition in the Provision of Telecommunication Services 2012 (TCC) and the Code of Practice for Market Conduct in the Provision of Media Services (MCC).

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.

On 18 April 2022, the IMDA issued the Converged Code to govern competition and market-related matters in both the telecoms and media markets, which has superseded the TCC and the MMCC respectively when it took effect on 2 May 2022.

It is expected that there will be updates to existing guidelines such as the Telecom Consolidation and Tender Offer Guidelines and the Reclassification and Exemption Guidelines, as they are to be brought in alignment with the Converged Code.

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Summary

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 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 restriction is exempted for a foreign investor that is incorporated in a country that has entered into a free trade agreement with South Korea and partially exempted for a foreign investor that is incorporated in an Organisation for Economic Co-operation and Development member country (in this case, the foreign ownership restriction still applies for acquisition of shares of certain CTS providers such as those that own critical telecom facilities used for national security or satellite operators).

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. 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 as a VATS provider.

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 messenger service providers that use a CTS network. These businesses must register with the MSIT, even though they are, strictly speaking, VATS providers.

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 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. If the report is found to be incomplete or certain required documents are not submitted, the MSIT may issue a supplementation

order. Moreover, the MSIT reserves the right to reject reports from CTS providers who hold a dominant position in the market, as identified by the MSIT, if their terms and conditions have the potential to harm user interests or impede fair competition.

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 actually 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 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. If the report is found to be incomplete or certain required documents are not submitted, the MSIT may issue a supplementation order. Moreover, the MSIT reserves the right to reject reports from CTS providers who hold a dominant position in the market, as identified by the MSIT, if their terms and conditions have the potential to harm user interests or impede fair competition. For instance, if a CTS service provider, through its terms and conditions, offers service fees that are unreasonably high compared with the fees offered by other similar service providers, such terms and conditions of that service provider are likely to be rejected.

Further, the Act on the Regulation of Terms and Conditions, which prescribes general rules regarding terms and conditions to prevent unfair trade practices, concurrently 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 on a lease or a connection to their telecom facilities.

Also, under the TBA, large-scale VATS providers (as determined by user numbers and traffic volume) are required to maintain network quality, such as by optimising traffic routes if it is expected that there will be an increase in traffic volume that may lead to a significant impact on providing stable telecommunications services.

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 the Personal Information Protection Act (PIPA), and in certain respects by the Act on the Promotion of Information and Communications Network Utilisation and Information Protection (the 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.

The 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 regulation of online platforms, as illustrated by the draft legislations proposed by multiple members of the National Assembly, as well as the Korea Fair Trade Commission, the competition authority of South Korea. From April 2023, as many as 14 legislative bills will be presented before the National Assembly, all of which share similar purposes of restraining one-sided or abusive trading practices by online platforms against the vendors that use the platforms. If made into law, this sector-specific regulation will subject online platforms meeting a certain threshold of revenue or transaction value to a variety of requirements (and civil liabilities, in the case of non-fulfilment thereof) 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.

Prospects for legislation are unclear as South Korea's new administration, inaugurated in May 2022, has taken, thus far, a more lenient regulatory enforcement approach, stressing 'autonomous regulation' that prioritises problem-solving mainly through communications among businesses, rather than relying on legal regulations through legislation.

Separately, 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

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 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). In a monitoring campaign against major app market service providers launched in May 2022, the KCC discovered that Google had taken retaliatory measures against a vendor in the app market for it offering an alternative payment method, and opened an official investigation in August 2022, which, to date, remains ongoing.

Several lawmakers proposed an amendment of the TBA (currently pending at the National Assembly), which would allow users to sideload apps from third-party app markets or websites. These bills, likely to be reviewed by the Science, ICT, Broadcasting and Communications Committee during the extraordinary session of the National Assembly, aim to prohibit app market operators from unfairly restricting users from installing and using apps downloaded from third-party app markets or websites.

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?

The 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 the PIPA, regulatory oversight of data protection is vested primarily in the PIPC. The PIPC is in charge of monitoring and policing compliance with the 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, the 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). The CISO may also perform the role of the Chief Privacy Officer (CPO) for personal data protection matters under the 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 security, number of persons within the business that focus on information security, and details on the 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 the PIPA, personal data, defined as 'information regarding a living individual', not only include 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. The 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. The PIPA permits the use of pseudonymised information– without the need for the individual's consent for the purposes of statistics generation, scientific research and public recordkeeping. The 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, the 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 the 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 2022, the PIPC imposed over US$70 million in fines on Google and Meta for their collection of user behavioural data without due consent. While the recently amended PIPA modifies, and largely eases, the framework surrounding transfers of personal data

overseas, adding several bases for transfers besides the data subject's opt-in consent, it also empowers the PIPC to issue a binding order to suspend an ongoing overseas transfer of personal data if such transfer is either:

- non-compliant with specific PIPA requirements; or
- to a transferee, or to a country, whose personal data protection standards are so inadequate as to likely cause harm to the data subject.

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, the recent amendment to the TBA that took effect in December 2022, has tightened the existing local representative requirement. The amendment 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, subsidiary or other 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. The PIPC is preparing new guidelines regarding personalised online ads, whose release is anticipated to take place before the end of 2023. Further, under the amended PIPA, data subjects will have the right to refuse fully automated decision-making using their personal data that 'has a significant impact on their rights or obligations'. Separately, data subjects will also have a right to require explanations on the result of automated decisions so rendered. This will take effect in March 2024.

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 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 submission of relevant information, and impose revenue-based administrative penalties for non-compliance compliance (which may also be concurrently subject to criminal punishment). In a monitoring campaign against major app market service providers launched in May 2022, the KCC discovered that Google had taken retaliatory measures against a vendor in the app market for it offering an alternative payment method, and opened an official investigation in August 2022, which remains ongoing.

Several lawmakers proposed an amendment of the TBA (currently pending at the National Assembly), which would allow users to sideload apps from third-party app markets or websites. These bills, likely to be reviewed by the Science, ICT, Broadcasting and Communications Committee during the extraordinary session of the National Assembly, aim to prohibit app market operators from unfairly restricting users from installing and using apps downloaded from third-party app markets or websites.

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.

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 circulation of IFM on their services. These measures include adoption of a 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, showing 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 social networking service platform businesses, are complying with the amendment.

In the latter half of 2022, major domestic VATS providers experienced service disruptions resulting from data centre fires, causing harm to their users. As a response to these incidents, relevant laws (namely, the Framework Act on Broadcasting Communications Development, TBA and the IT Network Act) have been amended, with the changes to take effect from July 2023. These amendments, primarily focusing on enhancing certain obligations of data centre operators and VATS providers of a certain size, include notably, obligations to establish a communication disaster plan that needs to include physical and technical protective measures such as duplication of servers or power supply devices, to submit annual reports to the MSIT on the implementation status of such safety measures, as well as to submit an incident report to the MSIT in the case of service interruptions for a certain period of time, including recovery measures.

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 and the Internet Multimedia Broadcasting Services Act (the 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 (eg, 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 (the IT Network Act).

The regulatory bodies that administer the media sector are the Korea Communications Commission (KCC) and the Ministry of Science and ICT (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 other PPs, including 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. It is noteworthy, however, that to actively respond to changes in the broadcasting industry environment and bring new vitality to the paid broadcasting market, the Enforcement Decree of the Broadcast Act has been amended to significantly ease restrictions on the concurrent ownership and operation of a broadcasting business, specifically:

    - the number of PPs that a TBO may concurrently own and operate has been increased;
    - provisions restricting:

        - SBOs from holding shares in or concurrently operating another SBO; and
        - SOs and SBOs from holding shares in or concurrently operating PPs have been removed; and

    - the market share cap for PPs has been raised to 49 per cent;

- 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, the maximum permitted percentages 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.

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, there has been a movement to amend the Broadcast Act or IPTV Act to ease this obligation by requiring a report in the case of an intra-affiliate merger involving a broadcasting service operator.

Through a recent amendment to the Broadcast Act and IPTV Act, should any TBO, SO, SBO or IPTV operator intend to operate its service through a combination of broadcast transmission methods between:

1 a terrestrial broadcasting service, cable TV broadcasting service and satellite broadcasting service; or
2 any of the services listed in (1) and the IPTV service, the regulation has been relaxed to permit such operators to engage in such combined business through submitting a report to the MSIT (in the past, prior approval was required).

Likewise, the regulation has been relaxed so that pay television service operators (namely, SOs, SBOs and IPTV operators) are required to merely report (namely, in lieu of prior approval) their service terms and conditions 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 IPTV content provider do not apply to value-added telecommunications services providers, TBOs and PPs, and for SOs and SBOs, the exemption from the approval requirements are 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 of 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 (excluding SBOs engaging in digital multimedia broadcasting) and IPTV operators must offer as part of their basic package offerings public interest channels, religious channels and channels for the welfare of persons with disabilities as designated by the KCC. In

addition, these operators are legally required to include specialised programming for news reports channels and retransmit certain TBO broadcasts, namely, the Korean Broadcasting System 1 channel and the Educational Broadcasting System channel. Last, SOs must also carry at least one regional channel that produces, arranges and transmits local information, broadcast programme guides and public announcements. Fee arrangements for transmission or retransmission will be negotiated between the relevant operators.

Moreover, prior approval from the MSIT is required for:

- an SO's retransmission of terrestrial broadcasts of a TBO that is licensed outside of the SO's broadcasting zone; or
- an SBO's retransmission of terrestrial broadcasts outside of the TBO's broadcasting zone.

Regulation of new media content

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

Although the dichotomy between new media and traditional broadcast media is gradually fading TBOs are still 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 700MHz 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 completed; it was reported that SOs finally terminated the provision of their analogue service on 28 February 2022.

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 audience share (referring to the percentage of hours tuned to a specific broadcasting channel, out of total viewing hours of total television broadcasting) 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 on 2 February 2023, the KCC plans to:

- drive digital and media innovation growth by:
    - promoting legislation of an integrated media framework act to improve regulatory consistency between new and traditional media;
    - increasing financial and other support for media content growth; and
    - relaxing existing regulations on the organisation of broadcasting channels, etc;
- increase media accountability by:
    - bolstering the content and competitiveness of public and regional channels;
    - ensuring fair media access by marginalised groups; and
    - enhancing disaster broadcasting operating systems, etc; and
- strengthen regulatory protection afforded to digital users and establish guidelines and rules for the digital and media space.

Overall, when it comes to the media sector specifically, the general trend appears to be deregulation.

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 Ministry of Science and ICT (MSIT) and the Korea Communications Commission (KCC).

Communications sector

- the MSIT is in charge of supervising the communications business (the Telecommunications Business Act (TBA), the Act on the Promotion of Information and Communications Network Utilisation and Information Protection and the Protection of Communications Secrets Act); and
- the KCC is a competent agency with jurisdiction over the prevention of illegally filmed materials circulation on the Internet and authority to investigate and sanction communications operators' violations of the TBA and to formulate and implement policies to protect communications service users.

Media (broadcasting) sector

- the MSIT is in charge of licensing 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, cable TV 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; and
- the KCC is in charge of licensing terrestrial broadcasting operators, PPs operating general programming or specialised programmes for news reports and supervising the broadcasting industry.

Competition

The main antitrust regulator is the Korea Fair Trade Commission (KFTC), which has the authority to enforce the Monopoly Regulation and Fair Trade Act (MRFTA). Once the KCC issues corrective measures or imposes 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 broadcasting sector under the MRFTA. On the other hand, 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 arises, it is generally addressed through discourse and cooperation among the relevant authorities.

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, for example, the refusal of a permit; 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 thereof, an administrative lawsuit may be filed in the Korean Administrative Court in respect of the action or omission 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 (Master Plan) announced by the KFTC in January 2021 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 the 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 the metaverse and non-fungible tokens;
- webtoon service; and
- trading of intellectual property rights.

The KFTC's recent investigations and sanctions in respect of the 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.

Separate from the draft legislations currently pending at the National Assembly that aim to regulate online platforms, the KFTC, from January 2023, has announced a sub-regulation that authorises the KFTC to bring an abuse of market dominance charges specific to online platform operators (including online platform intermediary service providers, online search engines, social networking service providers, video streaming service providers, OS operators and online advertisement service providers). This new regulation provides a more detailed interpretation of the existing regulations on the abuse of market dominance practices under the MRFTA, by providing more guidance to identifying the relevant market related to the online platform operator at issue, assessing its market dominant position and determining its anti-competitive behaviours.

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Summary

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 2023.

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, 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.

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.

The universal licence services shall in principle be self-financing without any financial compensation from the state. 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 services 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.

On 19 May 2017, ComCom awarded the universal licence to Swisscom for the period 2018 to 2022 (ie, five years). Since the current licence would have expired at the end of 2022, but the legal framework governing the universal licence was in revision, such licence was extended on 19 May 2022 for one year until the end of 2023. On 16 December 2022, the Federal Council approved the revision of the OTS regulating the universal licence. As a major change, the universal service will include a transmission rate of 80 megabits per second (Mbps) as from 2024. According to well informed sources, ComCom is likely to award the universal licence to Swisscom directly since no other telecommunication service provider is interested in such licence.

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.

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 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. The new data protection law will come into force on 1 September 2023.

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 (NCSC).

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 NCSC, which is intended to be the central reporting office for cyberattacks. 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 and revealed broad support for a reporting obligation. The Federal Council submitted a respective propoposal on mandatory reporting of cyberattachts on critical infrastrustructure to the Parliament on 2 December 2022. The legal basis for the reporting obligation shall be included in the new Federal Act on Information Security. In order to make reporting as simple as possible, the NCSC shall provide an electronic reporting form.

On 5 April 2023, the Federal Council and the Cantons approved the third national cyberstrategy (third NCS). The third NCS sets out the objectives and measures by which the federal government and the Cantons as well as the business community and universities shall counter cyberthreats. A steering committee shall be established to plan and coordinate the implementation of the strategy. As from 2024, the NCSC will be converted into a federal office and transferred from the Federal Department of Finance FDF to the Federal Department of Defence, Civil Protection and Sports DDPS.

Under the TCA, 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. 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 new law will enter into force on 1 September 2023.

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.

Major key trends are 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). Other key trends 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 cybersecurity. With regard to data and cybersecurity, the draft proposal of the Federal Council includes the introduction of a reporting obligation for cyberattacks on critical infrastructures.

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 2023, 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 14 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.

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 suited to 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 17 June 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, 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 and public funding.

Another hot topic concerns the support of Swiss film productions. On 15 May 2022, the Swiss electorate body approved the amendment to the Federal Act on Film Production and Film Culture. With this amendment, international streaming services must invest four per cent of the revenue generated in Switzerland in local filmmaking, an obligation that prior to the amendment only concerned domestic television broadcasters. Streaming services 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 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 held 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 a related note, the Federal Administrative Tribunal confirmed in its ruling dated 10 May 2022, relating to the first sports-in-pay-TV case, the decision of the COMCO that Swisscom Group abused its dominant position in the live broadcasting of Swiss football and ice hockey games. 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, the COMCO provisionally prohibited Swisscom from pursuing its network expansion until the conclusion of the investigation unless it could ensure Layer 1 access. The precautionary measure of the COMCO was confirmed by both the Federal Administrative Tribunal and the Federal Supreme Court.

Regarding legislative changes, the Swiss Cartel Act is currently under partial revision. 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.

* *The information in this chapter is accurate as at June 2022.*

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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) and the Ministry of Digital Affairs (MoDA). The NCC 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 MoDA was established in 2022 and certain matters related to the telecommunications sector that had been under the jurisdiction of the NCC (mainly matters related to frequencies, telecommunication numbers, information security, and the obligations for universal services and equal access), were then transferred from the NCC to the MoDA. 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.

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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 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 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 number 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 telecommunications services are subject to separate use licenses granted by the MoDA. 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 2.4GHz 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 MoDA is permitted to transfer such frequency to others or share the use of such frequency with others, both of which are subject to prior approval by the MoDA.

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 significant market power (SMP), namely, 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 SMPs 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.

In May of 2023, the NCC chose the following SMPs in five designated telecommunications service markets:

- fixed-line voice retailing: Chunghwa Telecom Co, Ltd;
- fixed-line broadband retailing: Chunghwa Telecom Co, Ltd;
- fixed-line wholesale services: Chunghwa Telecom Co, Ltd;
- fixed-line call termination services: Chunghwa Telecom Co, Ltd, Taiwan Fixed Network Co, Ltd, New Century InfoComm Tech Co, Ltd, and Asia Pacific Telecom Co, Ltd; and
- mobile call termination services: Chunghwa Telecom Co, Ltd, Taiwan Mobile Co, Ltd, Far EasTone Telecommunications Co, Ltd, Taiwan Star Telecom Corporation Limited, and Asia Pacific Telecom Co, Ltd.

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.

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, internet access services in uneconomic areas, and internet access offered to local schools and public libraries at a discount.

The MoDA 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 MoDA and that contribute to the fund in amounts and manners set by the MoDA.

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 MoDA in Taiwan. The numbers are allocated by the MoDA to registered telecommunications service providers via applications made under the MoDA'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 MoDA are not tradable or transferable.

Number portability is mandatory, but the MoDA has discretion in setting the applicable time frames. Currently, mobile phone number portability, local landline number portability, and 080 toll-free phone number portability, is mandatory.

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 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 adoption of 5G mobile networks 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 and to public telecommunications network operators that provide internet access services and that have more than 3,000 users. The said guidelines for personal data protection require that the registered telecommunications service providers and regulated public telecommunications network operators establish protocols for personal data protection in compliance with the standards set by the NCC and necessary methods after business termination.

Such guidelines also require registered telecommunications service providers and regulated public telecommunications network operators 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 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.

The MoDA officially released the regulations governing the use of frequency for next-generation fixed-satellite communications services (mainly referring to low earth orbit (LEO) satellite services) in November of 2022. The regulations were released following discussions held over many months involving consultations with industry and the public and marked the launch of Taiwan's licensing process for next-generation satellite communication service providers.

Satellite communications service provider applicants are required to build up satellite communication networks and local gateways and to apply for frequency-use permits for frequency use by local gateways and user terminals. The frequencies released for these next-generation satellite communication services are 10.7–12.7GHz, 13.75–14.5GHz, 17.7–20.2GHz, and 27.5–30.0GHz, which represent the frequency ranges established by the International Telecommunication Union (ITU) for LEO satellite services. The MoDA has jurisdiction over frequency-use permits and the NCC has jurisdiction over the building up and operation of satellite communications networks and local gateways. As a result, a satellite communications service provider applicant must first apply to the MoDA for a frequency-use permit, and then apply to the NCC for setting up its local gateway and network. The regulatory framework for next-generation satellite communication services is highly regulated and similar to the regulatory scheme applicable to local mobile carriers.

Only those Taiwan-incorporated companies limited by shares and having paid-in capital of at least NT$300 million (roughly US$10 million) qualify to apply for frequency-use permits for fixed-satellite communication services and to offer next-generation satellite communication services within the territory of Taiwan. A foreign investment cap also applies to satellite communications service provider applicants, which means that the direct foreign shareholding of such satellite communications service provider applicant shall not exceed 49 per cent, and the total foreign shareholding (including direct and indirect) shall not exceed 60 per cent, and no direct or indirect shareholding by mainland China persons is allowed for service provider applicants.

The satellite system (which owns ITU-registered satellites) that the satellite communications service provider applicant uses shall comply with Taiwan's national security interests, which means that Taiwan's national security authority will have full discretion in determining whether such satellite system complies with Taiwan's national security interests, and the applicant shall also submit an affidavit attesting to its compliance with Taiwan's national security considerations.

The user terminals for satellite communication services are subject to a type approval and a satellite communication service provider is obliged to register all of its user terminals for satellite communications services used by its subscribers with antennae of three metres or less in diameter. The import of such user terminals into Taiwan is subject to an import permit.

Applications for frequency-use permits for fixed-satellite communication services will be open in March and September of every year.

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, with legislation including:

- 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 18 May 2022) 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.

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 well-being 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 released a draft of proposed new legislation, the Digital Intermediary Service Act, or DISA, in late June of 2022, which aims to regulate a broad range of internet service providers, including internet access service providers, caching service providers, and data storage service providers. The DISA draft proposes to apply to digital intermediary service providers that either have a business presence in Taiwan, have a significant number of users within the territory of Taiwan or target Taiwan as a primary market.

Any offshore digital intermediary service provider that is subject to the proposed DISA but that does not have a business office within Taiwan would need to designate a local agent, who would then need to act on behalf of the offshore Digital Intermediary Service Provider as required by the DISA. Designation of a local agent would be subject to a reporting requirement with the NCC.

Following the NCC's release of the DISA draft, service providers that are to be regulated, as well as other stakeholders, civic groups, media experts and industry specialists and the civic society, expressed strong concerns about and opposition to said draft. Most concerns

revolve around the impediments to free speech online and the development of the digital and online service industry. The NCC ultimately dropped the draft in early September of 2022 and currently has no plan to revisit this legislation.

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 a 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 2023.

To reconcile the regulatory gaps applicable to cable television versus OTT TV, and to facilitate fair competition within the cable television industry, the NCC also announced, in February of 2023, that it expected to amend all of Taiwan's existing main broadcasting legislations (namely, the Radio and Television Broadcasting Law, the Cable Radio and Television Broadcasting Law, and the Satellite Radio and Television Broadcasting Law in 2023).

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) and the Ministry of Digital Affairs (MoDA) are the government agencies overseeing the telecom industry and the NCC is the regulator for the broadcasting sector. The NCC and the MoDA make policy decisions, initiate most of the telecom and broadcasting-related legislation, and have 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 provides that any merger or acquisition made between or among two or more registered telecommunication service providers that have been allocated frequencies by the MoDA or where the business to be merged or transferred represents one-quarter or more share of a telecommunication service market specified by the NCC, is subject to prior approval from the MoDA (in cases where the transaction involves registered telecommunications service providers that have been allocated frequencies by the MoDA) or the NCC.

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 MoDA or NCC and the TFTC for mergers or acquisitions within the telecom and media sector. The MoDA or 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. Any objection to a decision of the MoDA should be appealed to the Administrative Appeals Commission of the Executive Yuan (the Cabinet) if a decision of the MoDA is considered to be unlawful or improper. A decision by the Administrative Appeals Commission of the Executive Yuan may be further appealed to the High Administrative Court for judicial review. Any objection to a decision of the Administration for Digital Industries, MoDA, or of the Administration for Cyber Security, MoDA, should be appealed to the Administrative Appeals Commission of the MoDA, if their decision is considered to be unlawful or improper. A decision of the Administrative Appeals Commission of the MoDA may be appealed to the High Administrative Court. A decision of the High Administrative Court may be appealed to the Supreme Administrative 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.

On 18 January 2023, after a year-long review, the NCC approved two mobile carrier mergers: one between Taiwan's second-largest mobile service provider, Taiwan Mobile, and Taiwan's fourth-largest mobile service provider, Taiwan Star Telecom (Taiwan Star), and another between Taiwan's third-largest mobile service provider, Far EasTone Telecommunications (FET), and Taiwan's fifth-largest mobile service provider, Asia Pacific Telecom (APT).

The NCC was of the view that the two mergers would foster improvement in the quality of mobile communication services, increase investment in Taiwan's telecommunications infrastructure, expand base stations in remote areas, and lead to advancements in 5G commercial applications, all of which would benefit both subscribers, the mobile communications industry, and the public in general.

However, the NCC was concerned that the mergers would result in both FET and Taiwan Mobile holding spectrum in excess of local caps in certain bands as set forth by Taiwan's legislation governing radio frequencies (namely, the Regulations Governing the Use of Radio Frequencies). As such, both FET and Taiwan Mobile are required to relinquish excess spectrum either by:

- returning the excess spectrum to the government; or
- trading or exchanging the excess spectrum with rival mobile operators (namely, other mobile carriers that are not subsidiaries, associated entities, or business partners) by June 2024 (this was the main stipulation from the NCC for its approval of the mergers).

If FET or Taiwan Mobile does not complete the above-mentioned relinquishment of excess spectrum, they will be subject to administrative fines of not less than NT$500,000 but not more than NT$5 million as well as being forbidden from using the said excess spectrum.

Taiwan Mobile has considered that the requirement imposed by the NCC to divest excess spectrum was in violation of the relevant laws, and chose, on 17 March 2023, to appeal the decisions to the Taipei High Administrative Court.

Both merger deals still require merger clearance from the TFTC.

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Summary

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 (USO): 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 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 with 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 2.1GHz band (3G). The 2.1GHz band refers to a range of spectrum between 1,920MHz–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 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, the similarity of cost structure or the 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;
- 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 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 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 direct marketing businesses 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 was 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 Personal Data Protection Act 2019 (PDPA) has been fully implemented since 1 June 2022, and it is important to note that compliance with the PDPA is mandatory for all business sectors, including the TMT sector. The implementation of the PDPA has been a contentious issue, as it has necessitated significant changes to business operations, particularly in terms of customer engagement. While the PDPA's provisions bear similarity to those of other data privacy laws in various jurisdictions, such as the GDPR, there remain certain provisions within the PDPA that require further clarification, as they are currently pending notification by the Personal Data Protection Commission (PDPC).

Most recently, guidelines have been established outlining the criteria and methodology for reporting data breaches under the PDPA. These guidelines prescribe the steps to be taken, as well as the details to be included in a data breach notification, along with the deadline for submitting such a notice to the Office of the PDPC. However, several other notifications, such as the criteria and methodology for transferring personal data to foreign countries, have yet to be established under the PDPA. This lack of guidance could prove challenging for businesses with respect to data transfer practices. It is expected that further ancillary laws will be enacted in 2023 to address emerging issues relating to new technologies and to provide additional clarity on outstanding provisions within the PDPA.

Recently, the PDPC announced the Notification on the Criteria and Procedures for Handling Personal Data Breaches (Notification) on 15 December 2022. In particular, the Notification provides a definition of 'personal data breach' under the PDPA, and points out three categories of personal data breaches, namely confidentiality breaches, integrity breaches, and availability breaches. In addition, the Notification describes the actions that a data controller shall take when suspecting that a personal data breach has occurred, and the factors that must be taken into consideration when conducting a breach assessment.

To elaborate, if there is a breach of personal data, the data controller must inform the PDPC about the breach, unless it is unlikely to pose a risk to an individual's rights and freedoms. The PDPA requires that personal data breaches be reported to the PDPC promptly and, if possible, within 72 hours of becoming aware of the breach. However, the data controller can ask the PDPC to exempt them from the obligation to report the breach within the specified time frame if they have a valid reason. The data controller must still report the breach as soon as possible and no later than 15 days after becoming aware of the incident.

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 with 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
- 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 cyber threat characteristics to provide instructions on how to accurately define the level of cyber threats.

There are two central cybersecurity regulatory authorities organised by the Cyber Act, as follows.

National Cyber Security Committee

The National Cyber Security Committee (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 (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 (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 the 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.

After the NBTC acknowledged the merger between TRUE and DTAC, two of the biggest telecommunications operators in Thailand, in October 2022, and specifically stated that TRUE and DTAC must keep the brands separate for three years, to maintain consumers' freedom of choice. Currently, the two companies have been successfully merged since 1 March 2023 with a market capitalisation of approximately 2.94 trillion Thai Baht.

This merger may have a tremendous impact on Thailand's telecommunications market, as there were previously three big competitors in the market and soon there will be two. As a controversial topic in Thailand, there were concerns and criticisms that the service fee will rise considerably, and that the telecommunications market will be monopolised. Nonetheless, the NBTC indicated that certain measures would be implemented, such as pricing control, supporting smaller-scale operators to compete in the market, regulating the quality of service, spectrum utilisation and infrastructure sharing, and a digital divide.

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 of 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;
- 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);

- 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 the 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 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.

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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?

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 8am and 6pm. 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 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;
- 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 174–230MHz) 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.

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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.

The Notification regarding Notice and Takedown Policy 2022 has recently been notified under the Computer-Related Crime Act 2007 and its amendment (CCA). The purpose of this update is to revoke the previous notice and takedown policy, issued in 2020, and to replace it with an up-to-date policy that effectively addresses the issue of illegal dissemination of computer data through computer systems or internet networks. The main characteristic of the new Notice and Takedown Policy is as follows:

- operators of websites and social media platforms are required to provide a notice and takedown policy that includes the contact information of the operator or its representative;
- any individual can report to the police, along with evidence, if the website and social media operators are found to be in violation of the CCA and any individual can file a report attached to the notice issued by the police to the internet service provider;
- if an individual files such a report, the internet service provider is required to remove the computer data within 24 hours and a dispute process for deletion is not provided; and
- a competent officer from the Ministry of Digital Economy and Society has the authority to order internet service providers to stop the dissemination and use of computer data that violates the CCA. If the internet service provider fails to comply with the instructions, it will be considered as cooperating, supporting, or consenting to the offence and may face a criminal penalty.

These main characteristics differ from the previous notice and takedown, especially the final point, as the competent officer was previously not authorised to directly instruct operators to take content down.

Nonetheless, this Notice and Takedown Policy has been criticized as being contrary to the presumption of innocence (until proven guilty), which is assured by the Constitution of

Thailand. However, despite these concerns, the new Notice and Takedown Policy will be enforced in mid-2023.

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 Telecommunications Commission (NBTC) regulates the media and telecom sectors, an independent 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 a 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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Summary

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.

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 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 cybersecurity 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.

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.

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 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 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.

* *The information in this chapter is accurate as at June 2022.*

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Summary

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 force 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), which was formed in February 2023 and is the partial replacement to the Department of Digital, Culture, Media and Sport (DDCMS),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.

Ofcom's 2023–24 Plan of Work focuses on promoting competition and investment in new networks and digital infrastructure, supporting the UK government's commitment to safeguarding telecoms customers, monitoring and enforcing security requirements to ensure network resilience and security, and reviewing regulation of the sector and whether changes are required in light of market developments.

This plan of work largely mirrors the UK government's plans, as set out in the Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services, which include focus on:

- world-class digital infrastructure;
- furthering the interests of telecoms consumers; and
- secure and resilient telecoms infrastructure.

In July 2020, the then DDCMS announced a ban on the purchase by UK operators of Huawei 5G equipment after 31 December 2020 and a requirement that all Huawei equipment be removed from 5G networks by the end of 2027. These decisions were placed on a legal footing by way of the Telecommunications (Security) Act 2021 (TSA 2021), which came into effect on 1 October 2022. TSA 2021 replaced sections of the CA 2003 and provides for a duty to take security measures, allowing for the UK government to prohibit or restrict communications providers from using goods, services or facilities on national security grounds. There are also new duties on the provider to inform users of a security compromise.

Ofcom published a statement on the procedures it expects to follow in carrying out its monitoring and enforcement activities under the CA 2003, as amended by TSA 2021. The statement contains general guidance about which security compromises providers would be expected to report to Ofcom and how to do so.

The National Security and Investment Act 2021 (NSIA 2021), which came into effect on 4 January 2022, reformed the UK government's ability to scrutinise foreign investment in, among other things, 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 NSIA 2021) then NSIA 2021 may apply, granting the Cabinet Office (acting through the Investment Security Unit) powers to scrutinise and review the transaction if one of the 'mandatory filing' trigger events occurs where a threshold of 25, 50 or 75 per cent of votes or shares in a qualifying entity is hit or passed through, or where there is the acquisition of voting shares that prevent the passage of a resolution governing the affairs of the qualifying entity. A voluntary NSIA 2021 filing is also potentially required where material influence is acquired over a qualifying entity, or control acquired of a qualifying asset. A telecoms service provider could fall within the definition of a qualifying entity if it is carrying on activities in the United Kingdom or supplying goods and services to the United Kingdom. If NSIA 2021 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 EU'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

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 17 June 2022, while an unofficial consolidated version of the General Conditions was published on 3 April 2023.

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. The new switching process was put in place on 3 April 2023 and primarily affects 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, which was subsequently updated on

10 November 2022, 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 0.0794 per cent of relevant turnover for the year ending 31 December 2021. 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 2023–2024 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.

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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 900MHz and 1800MHz frequency bands, which closed on 3 August 2018 and for UK Broadband's 3.4GHz 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.

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 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. Since then, Ofcom has published an open letter to industry about the way in which it dealt with concerns associated with Openreach's fibre build. The concerns related to decisions to include certain exchange areas within Openreach's build plan that 'overbuild' the networks of other providers, and concerns about the way in which Openreach has shared information on its broader build plans. Ofcom has since addressed these concerns.

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 10Mbps 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 £54 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 £54 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 providers. 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 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 an 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. A revised guide was subsequently adopted in September 2022. Four key areas were revised to include additional good practice measures. These areas were:

- engagement with customers and proactively emphasising the support providers offer;
- strengthening links to the free debt advice sector;
- measures taken by providers to effect payment; and
- social tariffs. In essence, communications providers should assist those who are facing financial hardship in a more proactive way.

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 internet service provider (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 were published in October 2022. The

improvements proposed include more clarity in Ofcom guidance to enable ISPs to innovate and manage their networks more efficiently, improving consumer outcomes as a result, as well as setting out Ofcom's views on the possibility of allowing ISPs to charge content providers for the traffic they carry. Ofcom invited responses to their consultation and expects to publish its statement in autumn 2023. 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.

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 which will be legislated for in the Digital Markets, Competition and Consumers Bill (DMCC) which has been published in draft law. The Bill is unlikely to come into effect before the second half of 2024.

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. Next steps were outlined in June 2022 under the Digital Strategy, a cross-government strategy which sets out the government's agenda for digital policy. The strategy focuses on a number of key areas, including reforming and improving skills and talent provision for the digital economy.

The UK government also introduced new legislation for online safety through the Online Safety Bill, which looks to bring in a new regulatory regime to combat illegal and harmful content online. Companies that are within scope of the Bill will need to put in place systems and processes to ensure user safety.

In April 2023, the DMCC bill was published. The DMCC is a piece of UK legislation that aims to promote free and fair competition among businesses, both online and offline, while also protecting consumers from unfair practices. The bill reinforces the principles that guide the CMA, which is responsible for enforcing competition and consumer protection laws in the United Kingdom. It is likely to come into effect in the second half of 2024.

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 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 (which may increase the likelihood of an adequacy decision from the European Commission);
- exercising derogations to the GDPR in certain areas;
- 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. The final text is still not agreed and therefore 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

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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, from 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 2022. There was further guidance on resilience requirements issued by Ofcom in March 2022.

Ofcom has also been given the responsibility of making sure the UK's telecoms networks are safe and secure, following the introduction of the Telecoms Security Act. The new duties came into force on 1 October 2022 and provide Ofcom with the power to monitor and enforce how providers comply with the new rules, including fines and enforcing interim steps to address security gaps.

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).

Digital service providers in the United Kingdom must, if they wish to offer services within the European Union, 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.

On 30 November 2022, the government confirmed that it would strengthen the NIS regulations to protect essential and digital services against sophisticated cyber attacks. Changes have been promised but only when parliamentary time allows. Other changes will include requirements to improve cyber incident reporting to regulators, such as Ofcom and the ICO.

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. In April 2023, the DMCC Bill was published. The DMCC is a piece of UK legislation that aims to promote free and fair competition among businesses, both online and offline, while also protecting consumers from unfair practices. The bill reinforces the principles that guide the CMA, which is responsible for enforcing competition and consumer protection laws in the United Kingdom. It is likely to come into effect in the second half of 2024.

The Plan for Digital Regulation includes plans for a review of the National Data Strategy. 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 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 require 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.

Relaxation of net neutrality laws

Ofcom recently consulted on net neutrality and open internet rules and is looking to present its proposals in autumn 2023. Ofcom's proposals have been made with the view that the relevant rules should not restrict ISPs' ability to innovate, develop new services and manage their networks in a way that could impact consumers in a negative way. Ofcom is also proposing that the government should consider changing the law on net neutrality, stating that it does not think that ISPs should need to be allowed to charge content providers for carrying traffic.

Cloud services market probe

Ofcom has published its interim market study report on cloud services, requesting feedback from stakeholders by 17 May 2023. The interim report found that the biggest public cloud computing service providers are limiting competition by market features that make it difficult for customers to switch and use multiple providers. As a result, Ofcom is proposing to refer the cloud market to the Competition and Markets Authority for investigation. A final report and decision is due to be published in October 2023.

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 3.6–3.8GHz 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 the 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.

A year later, in March 2023, Ofcom announced that it would make millimetre wave (mmWave) spectrum across the 26GHz and 40GHz bands available for new mobile technology, including 5G services. This could deliver larger wireless data capacity and speeds, improving services across the United Kingdom. Ofcom is inviting responses to their consolation on proposals for the design of the auction for the licences and how they will coordinate users of this spectrum, until 22 May 2023.

Mobile roaming

Since Brexit, UK mobile device users have been outside the EU roaming regime, which caps prices charged between roaming providers and prohibits roaming providers from imposing a surcharge on customers at the retail level for any regulated roaming calls. Under the Free Trade Agreement between the United Kingdom, Norway, Liechtenstein and Ireland, the parties (excluding Liechtenstein) agreed to cap wholesale call and data charges, among other measures designed to reduce charges being passed down to the retail customer. The Trade (Mobile Roaming) Regulations 2023 were introduced in 2023 to put these changes into place.

Ofcom Communications Market Report

Ofcom's annual statistical survey of developments in the communications sector was published in July 2022. 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:

- use of traditional communications services seen in 2020 has reversed, with less time spent watching TV;
- revenues across broadcast TV and radio have increased in 2021;
- the demand for mobile data continues to grow;
- radio listening remains high, with 90 per cent of the UK population doing so; and
- advertising contributed 68 per cent of estimated total UK online revenues in 2021

Ofcom's Proposed Plan of Work 2023/24

Ofcom's Proposed Plan of Work for 2023/24 focuses on the following telecommunications and media topics:

- world-class digital infrastructure;

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- furthering the interests of telecoms consumers;
- secure and resilient telecoms infrastructure;
- fast and reliable internet connections and services for everyone, everywhere;
- high-quality media and protection for audiences across the United Kingdom;
- living a safer life online, with platforms incentivised to reduce harms and keep consumers safe; and
- enabling wireless services in the wider economy.

This Plan follows a consultation in December 2022 to gain feedback on the proposed plan.

Foreign direct investment in the communications sector

The UK's first national security and investment regime, NSIA 2021, came into force in the United Kingdom on 4 January 2022. NSIA 2021 gives the UK government new powers to review investments and intervene in transactions that may give rise to a national security risk. NSIA 2021 introduces a mandatory notification regime that will apply to certain transactions involving entities that carry on activities in one of 17 'sensitive sectors', as well as a voluntary regime for other transactions that might raise national security concerns.

'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:

    - 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 Cabinet Office may:

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- 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 were transposed into UK law in advance of the end of the Brexit transition period (namely, 31 December 2020) are 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
- digital additional service licences.

Ofcom also has a duty to ensure that any licence holder is a 'fit and proper person', although there is no further guidance on this in the legislation. In the licence change of control form, Ofcom asks whether any of the new directors, shareholders, members or other relevant individuals have criminal convictions or if they have been declared bankrupt. However, the form notes that this will 'not necessarily prevent' someone from holding a licence. In addition to the above, it is worth noting that the UK's first national security and investment regime, NSIA 2021, came into force in the United Kingdom on 4 January 2022. NSIA 2021 gives the UK government new powers to review investments and intervene in transactions that may give rise to a national security risk. NSIA 2021 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 and will end on 31 December 2027. 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. The BBC must also comply with an operating licence which is set by Ofcom – the most recent licence came into effect in April 2023.

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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 700MHz band for mobile data use by 1 May 2020 (note that the 700MHz DTT Clearance Programme was completed on 20 August 2020). The UK government announced its intention to privatise Channel 4 in April 2022, but these plans were scrapped in January 2023 and it will remain publicly owned. Channel 4's licence is up for renewal again in 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). Ofcom published a report in 2022 in anticipation of a new licensing round for the Channel 3 and Channel 5 services. In March 2023, the Secretary of State for Culture, Media and Sport responded to the report and said they would not oppose the renewal of the licences for a further 10 years.

Digital television programme services

Other than those provided by Channels 3, 4 or 5, digital television programme services (DTPS) licences cover the provision of television programme 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.

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). There are no equivalent foreign restrictions for online and mobile content.

Ofcom also has 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. The BBC's licence (which is also set by Ofcom) also contains quotas to broadcast local and regional programmes.

In March 2023, the government published the Draft Media Bill, 11 months after its white paper detailing its vision for the broadcasting sector. This Bill aims to give domestic public service broadcasters a more flexible remit for the programmes they produce and show by replacing the 'purposes' and 'objectives' from CA 2003.

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.

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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 closed on 1 June 2022.

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 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 need to be overhauled for the digital age. For example, Ofcom recommended that there should be a revised set of public service media objectives and reiterated its call for legislation to secure prominence for live and on-demand public service content. This is something that the government have addressed in the draft Media Bill published in March 2023.

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. In 2022, the government announced that the TV licence fee was to be frozen at £159 until 2024 before rising in line with inflation for the next four years.

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 Digital, Culture, Media and Sport (DDCMS), 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 Audiovisual Media Services Directive.

In March 2022, the UK government introduced the Online Safety Bill, based on its consultation on the Online Harms White Paper. This applies to providers including search engines, messaging services, websites and online forums and captures not only services based in the United Kingdom but those based elsewhere that target UK users.

The bill introduces a host of new duties, including obligations to prevent fraudulent advertising, remove illegal and harmful content quickly and implement and enforce age limits, as well as creating new criminal offences. The provisions are wide-ranging, but focus on protecting users (in particular children) from online harm.

Ofcom is also granted new responsibilities as the independent regulator for online harms. Under the 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. Despite this, the DDCMS announced in October 2021 that the digital switchover had been put on pause until at least 2030.

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 public interest test for media mergers: 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 (eg, where there is a merger between a newspaper and a Channel 3 or 5 licence holder). The Secretary of State may intervene where the merger involves entities from outside the European Economic Area. 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 public interest test for media mergers framework.

Key trends and expected changes

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

Draft Media Bill

The Department for Culture, Media and Sport published the draft Media Bill on 29 March 2023, based on the 2022 white paper 'Up next – the government's vision for the broadcasting sector'. The bill aims to modernise the CA 2003 and promote UK PSBs and UK radio.

The bill consists of seven parts, which include provisions around radio licensing and regulation, increased quotas to ensure VOD is accessible to those with disabilities and requirements for smart-speaker platforms to give listeners access to UK radio stations.

The draft Media Bill introduces provisions to extend the 'prominence' regime – which guarantees a prime spot for PSB channels on electronic programme guides (EPGs) – to VOD services. The current regime is governed by Ofcom's code of practice on EPGs and the CA 2003 and applies to EPG providers who must comply with the code as part of their broadcasting licence. The new rules proposed by the draft Media Bill would extend this to VOD services like smart TVs and streaming sticks, ensuring that PSB content is available and easy to access across online services.

Another aim of the bill was to update the regulatory framework for PSBs and make it more flexible. The government has indicated that it wants PSBs to be able to compete with newer forms of media, so the bill provides greater freedom on how to fulfil the public service remit laid out in the CA 2003. This has been done by updating certain quotas to include VOD as well as linear programming, and streamlining purposes and objectives.

While plans to privatise Channel 4 have been scrapped, the bill introduces new rules for the broadcaster. The bill imposes a new duty on the Channel 4 board to consider its long-term sustainability and secure its ability to meet costs, which must also be included in its annual report to be laid before Parliament. The bill also removes restrictions on Channel 4's involvement in content production – its current status as a 'publisher-broadcaster' limits the channel to content from third parties, but the draft bill would allow Channel 4 to produce its own content in-house.

If implemented, the bill would also give Ofcom new powers to regulate VOD (eg Netflix, Amazon Prime or Disney+), including VOD providers that are based outside of the United Kingdom. This extends Ofcom's jurisdiction and could have significant impacts on providers who will be regulated by both the European Union and the United Kingdom simultaneously. Ofcom will need to create and enforce a new code to regulate VOD services to the same standards as traditional linear broadcasting, to level the playing field between the two. Ofcom will also gain new accompanying enforcement powers, which would enable them to impose fines of up to £250,000 or 5 per cent of qualifying revenue worldwide.

Digital rights review

In November 2022, DDCMS announced it would be reviewing whether digital rights should be included in the listed events regime. This regime, which is governed by the Broadcasting Act 1996, aims to make certain sporting events of national interest accessible to the British public. Designated events include the Grand National, the FA Cup Final and Wimbledon tennis. Under these rules, PSBs are guaranteed the right to show such events as broadcasters are prevented from acquiring exclusive rights without the prior consent of Ofcom.

The current review considers whether the rules should apply to broadcasters' digital platforms (namely, streaming and on-demand) as well as broadcast TV. DCMS guidance notes that the current legal framework was established in 1996 when only 4 per cent of UK households had access to the internet, a figure that has now reached 95 per cent. The government also references changing viewing habits and the rising competition of global media platforms, as well as the importance of balancing accessibility with the ability of rights holders to negotiate agreements in the best interest of the sport.

Online Safety Bill

The new Online Safety Bill continues its way through the parliamentary process, with Ofcom as the designated regulator to enforce the bill in the United Kingdom. This imposes new duties around social media, online advertising, messaging and search services. Provisions include new communications offences and obligations to prevent fraudulent advertising as well as protections for news publisher content.

While the bill is expected to receive Royal Assent during 2023, it is likely to come into force later. Ofcom is required to publish a number of codes of practice and the Secretary of State must make secondary legislation before the bill can take effect.

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 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.

In addition to enforcing the competition law prohibitions, Ofcom also has investigative powers over markets by conducting market studies, with the ability to make references to the CMA for an in-depth market investigation, under the Enterprise Act 2002 (EA 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 10 May 2023) identifies the need to ensure effective competition in the regulated sectors given the background of the cost of living crisis. The report highlights significant developments in competition law enforcement, the increasing use of market studies, and market reviews in the regulated sectors, as well as the focus on digital markets and the intersection of competition policy with environmental sustainability.

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 2002) and can decide whether it should take 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

Viasat and Inmarsat

Viasat and Inmarsat are two satellite communications firms that supply global businesses with satellite connectivity for services like internet, email, and video calling, including for use in aircraft. The CMA conducted an initial investigation (Phase 1) and identified competition concerns, leading to a Phase 2 inquiry.

The CMA's Phase 2 provisional findings indicate that while Viasat and Inmarsat compete closely in the aviation sector, particularly in onboard Wi-Fi connections, the merger does not substantially reduce competition for services on flights used by UK customers. The investigation also revealed that the satellite sector is rapidly expanding due to increased demand for connectivity, driven by growing internet usage by businesses and consumers at home and while travelling, while new players are entering the market and gaining presence, launching additional satellites and securing contracts with airlines. On 9 May, the CMA announced its final decision approving the merger. It will publish the final report as soon as practical. The statutory deadline is 25 May 2023.

Meta/Giphy

In November 2022, the CMA reissued its statement that Meta Platforms (owner of Facebook) needs to divest the GIF platform, Giphy Inc, due to competition concerns, which will lead to the unwinding of the US$315 million takeover. More specifically, the CMA found the merger would negatively impact the display advertising market, and that Giphy's advertising services had the potential to compete with those of Meta, and would have encouraged greater innovation from Meta and other market players. This decision confirms the CMA's increased appetite for reviewing Big Tech acquisitions. The CMA's decision also highlights its ability to take jurisdiction over a transaction and impose significant global remedies, even in foreign-to-foreign deals.

Microsoft/Activision

In April 2023, the CMA blocked Microsoft's acquisition of Activision. This was following Microsoft submitting a remedy proposal to the CMA, outlining requirements governing which games must be offered by Microsoft to what platforms and on what conditions over a 10-year period. However, the CMA found that Microsoft's proposal did not sufficiently cover different cloud gaming service business models, was not open to providers who might wish to offer versions of games on PC operating systems other than Windows, and would standardize the terms and conditions on which games are available.

The CMA concluded that accepting Microsoft's remedy would require ongoing regulatory oversight, which could limit the dynamism and creativity of competition in the market. Accordingly, the CMA blocked the merger, citing concerns about the harm it could cause to competition and innovation in the UK cloud gaming market. The decision underscores the importance of regulatory scrutiny in rapidly evolving markets. The CMA decision illustrates significant divergence from the approach of the European Commission, which said that Microsoft had addressed their concerns on competition issues, and allowed the deal to progress.

CMA BskyB merger remedy undertakings review

The CMA is conducting a review of merger undertakings made by British Sky Broadcasting Group plc in 2001, regarding the transaction in which BskyB increased its shareholding of British Interactive Broadcasting Holdings Ltd. This review comes in response to a request from Sky UK Ltd, asking the CMA to review the undertakings. The CMA had previously invited comments on whether to launch the review, but no responses were received. The purpose of the review is to assess whether any changes in circumstances warrant modifying, replacing, or releasing the undertakings given by Sky in 2001. It is important to note that this review will solely focus on the merger undertakings and will not address any other aspects related to Sky's business. On 16 May 2023, the CMA released its provisional decision that the undertakings were no longer relevant and as such they should be released.

Markets

Ofcom review of mid-contract price rises

In February 2023, Ofcom launched a review to examine whether mid-contract price rises linked to inflation give phone and broadband customers sufficient certainty and clarity about

what they can expect to pay. The regulator is concerned that many consumers are unsure about future price rises specified in contracts based on inflation and that the unpredictability of inflation rates makes it difficult for them to know what an inflation-linked price rise will equate to in pounds and pence when they enter a contract. Ofcom's preliminary research found that around a third of mobile and broadband customers do not know whether their provider can increase their price. Among those who do know their provider can increase their price, around half do not know how this would be calculated, and nearly half of all customers do not know what consumer price inflation and retail price inflation measure. Ofcom will specifically focus on the practice of in-contract price rises linked to inflation and percentage changes, which several telecoms firms introduced in 2021. The regulator expects to publish its initial findings later in the year.

Ofcom review of the One Touch Switch process

In April 2023, Ofcom launched an industry-wide enforcement programme after the broadband industry failed to meet the deadline for implementing the One Touch Switch process, which would allow customers to switch broadband and landline providers easily and quickly. The new rules require providers to compensate customers if they are left without service for more than one working day and not to charge any notice-period charges beyond the switch date. Providers' failure to meet the deadline led to customer frustration and enforcement action by Ofcom. Since 2019, the new switching process has been under discussion and was due to be implemented by April 2023, but providers failed to meet the deadline. Ofcom had been closely monitoring the progress of the industry and putting pressure on providers to meet their requirements.

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 final report was published on 10 June 2022 setting out the CMA's findings and the range of potential interventions that could address them. The CMA has decided to consult on a market investigation reference into the supply of mobile browsers and mobile browser engines, and the distribution of cloud gaming services through app stores on mobile devices.

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 September 2022, the CMA published the final report where it identified the relevant market as the supply of communications network services for public safety and determined that Airwave Solutions and Motorola now possess considerable market power and the competitive dynamics meant that there was an adverse effect on competition (AEC) in the market for communications network services for public safety.

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Given the limited potential for remedies due to criticality of the Airwave Network and the Home Office's dependence on it, the CMA has decided on two main actions. First, a charge control will be imposed on the price for Airwave Network services to mitigate the detrimental effects on customers. This control will limit the price to a level that would apply in a competitive market and will be in effect until December 2029, subject to a review in 2026. Second, the CMA recommends that the Home Office develop and implement a plan for competitive pricing arrangements or regulatory measures for the supply of communications network services by the end of 2029.

BT compliance with the clear and simple information requirement

In January 2023, Ofcom launched an investigation into BT's compliance with the requirement to provide customers with clear and simple contract information before signing up for a new deal. Telecoms providers are now required to provide customers with a summary of the main contract terms, including price, length of the contract, and early termination terms, since June 2022. Customers with disabilities can also request documents in an accessible format. Ofcom suspects that BT subsidiaries EE and Plusnet may have failed to comply with these requirements, and the investigation will consider if BT has breached the regulator's rules as a result of suspected breaches by each of these subsidiaries. The investigation is ongoing, and further updates will be provided as more information is gathered.

Ofcom proposes to refer UK cloud market for investigation

Ofcom is halfway through its investigation into the UK cloud services market and is considering referring the market to the CMA for a more in-depth examination. The preliminary findings of the study have identified certain features and practices that hinder customer switching and the use of multiple cloud suppliers. Ofcom has expressed particular concerns regarding Amazon and Microsoft due to their dominant market positions. Cloud computing has become vital for various businesses, including telecoms companies, broadcasters, and public sector organizations. It enables remote access to services such as software, storage, and networking through data centres worldwide.

The study, launched under the Enterprise Act 2002 in October, aims to evaluate the functionality of the UK cloud infrastructure services market. The investigation has revealed that Amazon Web Services (AWS) and Microsoft are the leading cloud infrastructure providers in the United Kingdom, with Google as their closest competitor. While competition has brought benefits like innovative products and discounts, certain aspects of the market raise concerns. To address these issues, Ofcom proposes referring the cloud infrastructure market to the CMA for a comprehensive market investigation. This step underscores the significance of cloud computing for UK consumers and businesses and acknowledges the substantial concerns identified.

CMA opens investigation into cloud gaming and mobile browsers market

In November 2022, the CMA initiated an in-depth investigation into competition within the cloud gaming and mobile browser markets in the United Kingdom. This decision follows a year-long study conducted by the CMA into mobile ecosystems, where it identified Apple and Google as gatekeepers with control over operating systems, app stores, and web browsers.

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Concerns were raised by other businesses regarding their ability to offer competing services and innovate.

The CMA will examine whether there are any features in the cloud gaming and mobile browser markets that negatively impact competition. Subsequently, there has been a market investigation reference. However, Apple applied for review under section 179 of EA 2002 of the CMA's decision to make a market investigation reference. The CAT found in Apple's favour. The CMA will not progress the investigation, until the appeal they made on 13 April 2023 has been heard (if permission to appeal is granted).

Antitrust

Ofcom fines Sepura £1.5 million for breaking competition law

Ofcom has imposed a fine of £1.5 million on Sepura for violating competition law by exchanging commercially sensitive information with Motorola during a procurement process. The penalty follows an investigation into a text message exchange between senior employees of both companies on 5 September 2018, which pertained to a tender process for devices and related services used by the emergency services' communications network. Considering the seriousness of the infringement, Ofcom decided to impose a financial penalty of £1.5 million on Sepura for breaching competition law. Under the leniency policy of the CMA, Motorola received immunity from fines as the first company to come forward about the anti-competitive agreement.

Supreme Court rejects Royal Mail appeal against Ofcom fine for competition law breach

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 had sought permission to appeal the judgment to the Supreme Court. However, the UK Supreme Court has rejected Royal Mail's request to appeal.

CMA draft environmental sustainability guidelines

On 28 February 2023, the CMA released a draft of its guidance on applying antitrust law to sustainability agreements, aiming to assure companies of compliance with competition law while they pursue sustainability goals. These guidelines will affect the telecoms and media sectors, as well as others. The guidance defines 'environmental sustainability agreements' (ESAs) as 'agreements or concerted practices between competitors and potential competitors which are aimed at preventing, reducing or mitigating the adverse impact that economic activities have on environmental sustainability or assessing the impact of their activities on environmental sustainability'. The CMA has focused increasingly on environmental issues,

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including the promotion of environmental sustainability, and the guidance reflects its wider focus on supporting environmental, social and governance policy. The guidance identifies some types of ESAs that are unlikely to infringe the prohibition on anti-competitive agreements under Chapter I of the Competition Act 1998 (Chapter I Prohibition).

Regulatory

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 – 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. On 27 April 2023, the DRCF published its key outputs across the 2022–2023 time period. It highlighted the CMA-Ofcom joint statement on 'Online safety and competition in digital markets', the publishing of the DRCF Terms of Reference, and the ICO-Ofcom joint statement on interaction between 'Online safety and data protection regimes'.

The DRCF also published its '2023/24 workplan', which set out the organisation's key areas of focus for 2023–2024. These are to increase promote competition and data protection, increase online safety and support effective governance of algorithmic systems.

The Digital Markets, Competition and Consumers Bill

In April 2023, the Digital Markets, Competition and Consumers (DMCC) Bill was published in draft form. The DMCC Bill is a piece of UK legislation that aims to promote free and fair competition among businesses, both online and offline, while also protecting consumers from unfair practices. The Bill is likely to come into effect in the second half of 2024. There are three primary areas of focus for the legislation.

First is consumer protection. The Bill empowers the CMA to take enforcement action against businesses that use unfair practices to deceive consumers, such as fake reviews, subscription traps, and pressure selling. It also allows the CMA to determine when consumer law has been violated, rather than having to take each case to court, which speeds up the process of protecting consumers and ensuring that fair-dealing businesses are not at a disadvantage. The bill also includes provisions that allow the CMA to fine businesses that break the law up to 10 per cent of their global turnover.

The second is digital markets. The Bill establishes a new regime overseen by the Digital Markets Unit (DMU) within the CMA, which is designed to hold digital firms accountable for their actions and prevent firms with strategic market status from using their size and power to limit digital innovation or market access. The DMU will use a proportionate approach to regulate digital firms, enabling all businesses to compete fairly in digital markets.

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Finally, the DMCC Bill aims to promote competition in the economy more broadly. It gives the CMA stronger investigative and enforcement powers, which allows it to conduct faster and more flexible competition investigations, and identify and stop unlawful anti-competitive conduct more quickly.

The UK government published updated National Security and Investment Act 2021 guidance

The UK government has continued to provide guidance on the application of the National Security and Investment Act 2021, which imposes mandatory and voluntary notification requirements for certain types of acquisitions that are deemed to raise national security concerns.

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Product Recall
Project Finance
Public M&A
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Public-Private Partnerships
Rail Transport
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
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