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The International Comparative Legal Guide to: Telecommunication Laws and Regulations 2011

A practical insight to cross-border
telecommunication laws and regulations

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1 Framework

1.1 When did Italy first liberalise telecommunications networks and/or services?

The dawn of liberalisation in Italy happened in 1990 with the recognition of administrative titles for the offering of VAS services in the market (the definition of VAS at the time included a roster of services, such as non-real time voice telephony). The full liberalisation package cornerstone is *Law No. 249 of 31st July, 1997* and *Presidential Decree No. 318 of 19th September, 1997* which introduced the National Regulatory Authority for electronic communications (AGCOM) and fully liberalised the offering of telecommunications networks and services. Specific mention must be made to Legislative Decree no. 259 of August 1, 2003 (the Electronic Communications Code, “the Code”), which contains the general regulatory principles and Legislative Decree no. 196 of June 30, 2003 on privacy (“Data Protection Code”).

1.2 Has Italy fully implemented the EU 2003 regulatory framework? If Italy has not fully implemented the new regulatory framework, have proceedings been brought against Italy by the European Commission and if so, for which contraventions?

Yes. Italy has fully implemented the EU 2003 regulatory framework and is currently adopting the new Telecoms Regulatory Package review provisions adopted in November 2009 and due to be implemented within June 2011 by each EU Member State.

Italy has also adopted the new provisions on markets identified by Commission Recommendation no. 2007/879/EC of 17 December 2007 on relevant product and services markets within the electronic communications sector.

1.3 Please give an overview of the different laws and regulations governing the operation of electronic communications networks and the provision of electronic communication services.

The operation of electronic communications networks and services are governed by the Code and are subject to the prior release of a general authorisation in favour of the operator. Sector-specific regulation applies, *inter alia*, with reference to data security, privacy, safety, online authentication and content provisioning.

The Code addressed general regulation on: i) authorisation regime; ii) spectrum trading, site sharing and mobile operators' general rights; iii) development of broadband services and offering of

converging services; and iv) interoperability between networks and electronic communication services. Particular asymmetrical regulation applies to operators notified as having significant market power with regards also to local and bit stream access, USO and termination rates. In addition, a series of regulations apply to the offering of specific services, such as VOIP, MVNO and ISP. The Data Protection Code (Legislative Decree No. 196 of June 30, 2003) applies to the processing of personal data in connection with the provision of publicly accessible electronic communication services on public communication networks.

1.4 Please describe the regulatory framework, in terms of regulatory authorities and associated agencies, e.g. national competition authority (where different).

The AGCOM (NRA set up in 1997, headquartered in Naples) is responsible for sector-specific regulation in the field of offering of communication services and networks. It is fully autonomous and independent, retaining also its own budget and organisational structure. Its two internal Commissions have specific competence on content provisioning and network services, and it is vested also with competition concurrent responsibility, shared with the Antitrust Authority. The latter (AGCM) was introduced in 1990 and holds a general responsibility on antitrust, competition and fair trade regulation. On communications matters, the two Agencies cooperate and consult together, AGCOM generally by means of expression of non-binding opinions. With respect to privacy, data storage and interception, the regulation of the Privacy Authority (*Garante per la protezione dei dati personali*) also applies.

AGCOM is separated and independent from the Ministry of Economic Development (since May 2008, encompassing the prerogatives of the former Communications Ministry), and an agreement among the Ministry and AGCOM assures the joint (or, as the case may be, singular) execution of most tasks related to the technical field, such as the allocation of frequencies or codes.

1.5 Which principal aspects of electronic communications regulation fall under the supervision of the national regulatory authority for electronic communications?

AGCOM retains a very broad range of competences in the field of communications, encompassing both traditional telecommunications as well as broadcasting and content transmission. In this respect, it regulates the provisioning of services in electronic communications and related issues and oversees the offering of services in the market by ensuring *inter alia* the enforcement of security and safety regulation application, along with protection of consumers. It also sets obligations on operators having significant market power and

holds jurisdiction in the settlement of disputes among operators.

1.6 In order to be properly authorised to provide electronic communications networks and services, is a registration, declaration or notification required and if so to whom and for which purposes? What rules or conditions, if any, may be attached to a registration, declaration or notification?

In order to be properly authorised to provide electronic communications networks and/or services, an authorisation is required following the successful completion of an administrative procedure or a declaration must be submitted to the Ministry of Communications prior to the starting of the services, clarifying in any case a set of compulsory issues required by law. Following the approval of the request, a registration in the official communications operators' Register (ROC) is required.

1.7 Are any network operators or service providers subject to rules governing their operations over and above rules and conditions governing authorisations and imposing SMP obligations, for example under competition law?

AGCOM also retains sector-specific antitrust responsibilities, to be exercised jointly with the Antitrust Authority, and periodically reviews market conditions and updates the list of operators retaining SMP in specific relevant markets, imposing in most cases service-specific asymmetric obligations such as cost alignment of reverse charges, unbundling services obligations, site sharing, etc. With respect to network apparatus, homologation of terminal or transmission equipment is subject to the respect of national and EU technical specifications, but may also rely on reciprocal recognition of titles in case such rulings may apply.

Service providers must comply to sector-specific regulation governing offering of services, processing and storage of personal data, contribution to Universal Service fund, safety and interoperability of networks, user protection, authentication of subscribers and privacy.

A number of limitations are set on SMP operators, in most areas related to the offering of services. In this respect, the tender for WiMax services excluded third generation mobile operators from the assignment of new frequency bands 2x21 MHz, and currently all mobile operators are notified as having SMP on their respective terminating networks.

1.8 Which (SMP) markets have been notified to the European Commission under Article 7 of the Framework Directive?

In 2008, AGCOM finalised a second cycle of analysis with regard to the product and service markets identified in the Annex to the Commission Recommendation no. 2007/879/EC of 17 December 2007, on relevant product and services markets within the electronic communications sector.

On November 26, 2008, AGCOM issued Resolution no. 667/08/CONS on voice call termination on individual mobile networks (market no. 7) and on February 13, 2009, issued Resolution no. 65/09/CONS on market of voice call access and on individual mobile networks.

On June 10, 2009, Resolution no. 314/09/CONS was issued setting out the rules pertaining to markets nos. 1, 4 and 5 related to the access to the public telephone network at a fixed location for residential and non-residential customers, wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location and wholesale broadband access.

On January 15, 2010, the NRA adopted Resolution no. 2/10/CONS on wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity (market no. 6) and wholesale trunk segments of leased lines (former market no. 14 of the first roster of markets defined by European Commission Recommendation no. 2003/311/EC of 11 February 2003).

On April 28, 2010, AGCOM issued the Resolution no. 179/10/CONS related to the markets of call origination on the public telephone network provided at a fixed location and call termination on individual public telephone networks provided at a fixed location (markets no. 2 and 3), and on July 1, 2010, AGCOM adopted the Resolution no. 284/10/CONS related to publicly available local, national and fixed-to-mobile telephone services provided at fixed locations for residential and non-residential users (markets no. 3 and no. 5 of the European Commission Recommendation no. 2003/311/EC of 11 February 2003), which modified the Resolution no. 642/06/CONS.

2 Licensing

2.1 If a licence or other authorisation is required to install or operate electronic communications networks or provide services over them, please briefly describe the process and timescales and costs.

Under Article 25 of the Code the provision of electronic communications networks and services are subject to the release of a general authorisation. The undertaking concerned must submit a declaration to the Ministry of Economic Development and may provisionally exercise the activity upon filing of the application. The declaration must state the intention to commence the provision of electronic communication networks or services and the submission of the minimal information required to allow a scrutiny of operator's capacities and representative figures. Under Annex no. 9 of the Code, the undertaking must describe the type of network involved, services offered and apparatuses employed and their location.

The Ministry can deny the authorisation or request clarifications within 60 days from the application. Silence-acceptance is applied, in case, within such span of time, the Ministry does not react.

Operators retain a right to provide electronic communications networks and services in the relevant market (regional or national) and may request the installation of facilities where authorised locally. Operators may negotiate interconnection and obtain access to or interconnection from other providers of publicly available communications networks and services covered by a general authorisation. Likewise, they are subject to contribute (or designated to provide directly) to universal service.

2.2 What other requirements, permits or approvals must be met or obtained before networks may be installed or operated and services provided?

The release, allocation and/or use of scarce resources (frequencies, numbering) is subject to specific procedures and approvals.

Installation or deployment of networks implies the favourable release of rights of use, permits and relevant approvals from local municipalities or territorially competent authorities.

2.3 May licences or other authorisations be transferred and if so under what conditions?

Under Article 25, para. 8 of the Code, the assignment of a general

authorisation must be previously notified to the Ministry. The Ministry can deny the assignment within 60 days from the service of the notification. Silence-acceptance is applied, in case, within such span of time, the Ministry does not react.

2.4 What is the usual or typical stated duration of licences or other authorisations?

The general authorisation lasts 20 years and can be renewed.

Under Article no. 1 bis of Law Decree of January 31, 2007, converted into Law no. 40/2007, before the expiration date, a general authorisation may be extended for a maximum of another 15 years by means of a Ministry Decree. The duration of the WiMax licences, assigned on February 1, 2008, is also 15 years.

3 Public and Private Works

3.1 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

Yes, in particular Article 86 of the Code deals with access to public and private land in order to install network facilities and/or telecommunications infrastructure. In addition, the Law no. 69 of June, 18, 2009 set out specific rules concerning the development of large band communication networks.

3.2 Is there a specific planning or zoning regime that applies to the installation of network infrastructure?

Local authorities develop local zoning planning, within which generally specific areas for repeaters or installations are depicted and localised. Such zoning regime is drafted with particular attention to radiowave exposure, electromagnetic density and sensitive areas (schools, historical sites, hospitals, etc.).

3.3 Are there any rules requiring established operators to share their infrastructure, e.g. masts, sites, ducts or cables (i.e. dark fibre)? Are there any proposals to mandate 'passive access' to such basic infrastructure?

Site sharing was first introduced in Italy within the framework of the release of third generation mobile licences, in view of optimising investments and avoiding infrastructure bottlenecks between operators. Since then a series of regulations (such as the reference interconnection offer for access and termination fixed line segments) have been introduced in order to ensure the possibility of cooperation among enterprises in the sharing of capacities. In general, in case undertakings are deprived of access to viable infrastructure alternatives and sensitive issues may arise with respect to the need to protect environment, public health, public security or meet zone planning objectives, AGCOM may also impose the sharing of facilities or properties (including physical co-location) to an undertaking operating an electronic communications network, or take measures which tend to facilitate the coordination and common use of public works.

Such sharing or coordination arrangements may include rules for apportioning the costs of the facilities or property sharing.

4 Access and Interconnection

4.1 Is network-to-network interconnection and access mandated, and what are the criteria for qualifying for the benefits of interconnection?

Operators of public communications networks have a right and, when requested by other undertakings so authorised, an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision, interconnection and interoperability of services. A reference interconnection offer is submitted by incumbent Telecom Italia for approval by the AGCOM, particularly on the interconnection costs.

On October 30, 2007, the 2008 Reference Offer was issued, with novelties on collection, termination and transit services and tariffs for calls on the fixed public telephony market (markets nos. 8, 9 and 10), taking into account the provisions set out by Resolution no. 417/06/CONS. In August 4, 2009, AGCOM published the Resolution no. 27/08/CIR, approving the 2008 Reference Interconnection Offer.

4.2 How are interconnection or access disputes resolved? Does the national regulatory have jurisdiction to adjudicate and impose a legally binding solution?

In the event of a dispute arising in connection with interconnection and access obligations between undertakings, AGCOM can, at the request of either party, issue a binding Resolution to resolve the dispute in the shortest possible time frame and in any case within four months from the filing, unless parties choose a different mechanism of solution. In case an award is issued by AGCOM, it retains legal binding effect. In case of a negative solution, parties may file an ordinary proceeding before competent Courts. New rules and procedures now apply since 2008 as an effect of Resolution no. 352/08/Cons.

4.3 Are any operators required to publish their standard interconnection contracts and/or prices?

Yes, they are.

Telecom Italia S.p.A, the ex-incumbent telecom operator, which has been notified as having SMP in many markets, is required to publish, on a yearly basis, its standard interconnection agreements and prices, in accordance with the resolutions issued by AGCOM.

4.4 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

Yes, there are charges for interconnection and network access subject to price and cost regulation. In particular, AGCOM has provided price and cost regulation in a number of different markets, such as the markets of call origination on the public telephone network provided at a fixed location and call termination on individual public telephone networks provided at a fixed location, and the markets of wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity and wholesale trunk segments of leased lines.

In general, prices are required to be based on the model developed by AGCOM for the evaluation of forward-looking long-run incremental costs (BU-LRIC).

4.5 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

- a) Telecom Italia is subject to accounting separation under the resolutions issued by AGCOM, since it has been notified as the operator having SMP in many markets, such as the markets of call origination on the public telephone network provided at a fixed location and call termination on individual public telephone networks provided at a fixed location.
- b) No operator is subject to functional separation. In particular, AGCOM has not imposed to Telecom Italia S.p.A, the incumbent telecom operator, to set up a functional separate business unit to operate its electronic communication network. However, in February 2008, Telecom Italia set up "Open Access", which is a business division of the company that aims at managing and developing the Telecom Italia fixed access network.
- c) AGCOM has not imposed to any operators to sever parts of their business into separate legal entities.

4.6 How are existing interconnection and access regulatory conditions to be applied to next generation (IP-based) networks?

The discussion regarding IP-based NGNs is at an early stage, as far as AGCOM is concerned. In this sense, no institutional comments have been made on the regulatory side of the issue. In any event, as of today, despite the NGNs developing plans of some major OLOs on the market (still on paper), facilities-based competition is not yet a reality in Italy, thus no form of regulatory forbearance seems to be adoptable by AGCOM in updating and adapting the existing interconnection and access regulatory conditions to IP-based NGNs. Obviously, this scenario is subject to change if and when OLOs in the Italian market will gather the necessary resources to deploy an alternative network.

Moreover, it is reasonable to expect that the development of networks based on the "neutral" Internet Protocol would most likely result in a service- (rather than technology-) oriented definition of the "new" relevant markets and that an anchor pricing strategy (based on existing traditional services) as well as a risk sharing policy between accessing OLOs and the incumbent (or network owners in general) will be adopted by AGCOM.

4.7 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

Telecom Italia, owner of fixed communication networks, has been notified as the operator which has SMP in the wholesale local access market. Therefore, the latter is required to provide metallic path facilities on the basis of fully unbundled local loops or shared access. However, AGCOM issued many resolutions that require Telecom Italia to apply cost-oriented charges.

4.8 Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed?

On NGNs, AGCOM is now evaluating the measures related to the development of the Next Generation Networks and has anticipated that such measures shall aim to implement the switch-off model and involve Telecom Italia in the new infrastructure development.

5 Price and Consumer Regulation

5.1 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

Retail and wholesale price controls are imposed only to those operators notified as having SMP irrespective of the service provided, and in this respect AGCOM has set out the maximum termination prices on termination on the networks of SMP and notified operators in a series of provisions (such as Resolution nos. 417/06/CONS, 251/08/CONS and 407/08/CONS).

5.2 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

Sector-specific regulation provides a set of rules with respect to the different services offered to consumers. Recent examples are: i) Resolution no. 699/09/CONS of November 3, 2009, on new obligations pertaining to block of automated attendant services; ii) Resolution no. 201/08/CONS of May 9, 2008, on amendment of the numbering plan; iii) measures on the transparency of telephone bills, selective call blocking and user safeguards; and iv) Resolution no. 353/08/CONS of June 25, 2008, on transfer of mobile services credits.

Fundamental quality of service obligations on operators (such as the adoption of a Service Chart or compulsory compliance to QoS standards) have existed since the dawn of liberalisation.

6 Numbering

6.1 How are telephone numbers and network identifying codes allocated and by whom?

The national numbering plan enacted by AGCOM regulates numbers and codes that may be used in the provision of electronic communications services. Telephone numbers and network identifying codes are allocated, if available, by the Ministry of Communications, which is the entity releasing the relevant authorisations. The new numbering plan has been adopted in May 14, 2008 (Resolution no. 26/08/CIR).

6.2 Are there any special rules which govern the use of telephone numbers?

A series of rulings apply. In general, the use of geographical or non-geographical numbering as well as Carrier Pre-Selection and Selection codes, emergency numbers, toll free and premium services are all regulated and imposed on operators within the policies of the national numbering plan (likewise the allocation of specific codes for specific services, such as VOIP).

6.3 How are telephone numbers made available for network use and how are such numbers activated for use by customers?

Network operators requesting numbering resources may identify compatibility within the numbering plan available at the Ministry website, and may submit an application to the same Ministry in order to obtain rights of use. Customers can request operators to release and activate numbers for the provision of electronic communications services within the roster of eventual numbers

allocated to such operator (alternatively the operator should file a specific request for the available golden number). Also Internet Service Providers, Content Providers and VOIP operators may request the right to use numbers for specific services (i.e. toll free, customer service, etc.).

6.4 What are the basic rules applicable to the 'porting' (i.e. transfer) of telephone numbers (fixed and mobile)?

Resolution no. 4/99/CIR of the AGCOM provides the basic rules for the provision of number portability between operators. It obliges authorised operators to use geographic and non-geographic numbering to provide the Service Provider Portability. Resolution no. 41/09/CIR sets out new provisions concerning the Service Provider Portability of geographic numbers.

Resolution no. 12/01/CIR and no. 19/01/CIR (as amended by the Resolution no. 17/06/CIR) sets the technical solutions, timetable and obligations for implementing mobile number portability.

The regulation for the provisions of MNP service includes both the portability relating to the service provider and the portability relating to the system used and, in particular, to the transition and migration from TACS frequencies to GSM and from GSM to UMTS.

On November 26, 2008, AGCOM issued Resolution no. 78/08/CIR, which introduced the amendments on mobile number portability.

7 Submarine Cables

7.1 What are the main rules governing the bringing into Italy's territorial waters, and the landing, of submarine cables? Are there any special authorisations required or fees to be paid with respect to submarine cables?

In addition to the general principles of the Code, the landing of submarine cables is regulated by Law no. 160 of 5 May 1989 which requests concessions for the use of State property. Such concessions are to be paid by the operator requesting the relevant rights.

Pursuant to Article 109 of Law no. 152 of April 3, 2006, the Ministry of the Environment releases the general authorisations required for the landing of all submarine cables.

Submarine cables must in any case ensure interconnection to the general public switched network, and the relevant apparatus and infrastructure must be homologated or ETSI certified. This implies a separate procedure, dealt directly by the Ministry.

On a side issue, it may be worth noting that the Ministry believes that any offering of communications services on board of Italian flagged ships should be authorised under Article 25 of the Code, regardless of where the ship may be positioned (international or domestic waters). In this respect, the equipment apparatus installed on board of vessels must be authorised under Article 183 of the Italian Communications Code, by means of one of the three State concessionaires (Telemar, ITS Servizi Radiomarittimi and Arimar).

8 Radio Frequency Spectrum

8.1 Is the use of radio frequency spectrum specifically regulated and if so, by which authority?

Italy has adopted and recently renewed a National Frequency Plan, and in general, the use of radio frequency or broadcasting spectrum

is regulated by the principles contained in the Code, which lays down the general applicable principles recognised in favour of operators. A lengthy discussion is currently underway with respect to the reallocation of broadcasting frequencies, recently generated by the turn off of analogue frequencies in broadcasting (so-called "digital dividend").

As frequencies are a scarce resource, an efficiency principle is ensured in the allocation of frequencies. Spectrum allocation is granted by means of public comparative procedures, in accordance with transparency and non-discriminatory criteria. Re-farming of frequencies is currently under debate.

Pursuant to Article 14 of the Code, the Ministry of Economic Development (former Communications Ministry) and AGCOM are the Italian authorities involved in efficient allocation of frequencies, availability and use of the radio frequency spectrum.

According to the Code, the Ministry must establish national frequency allocation plans and must harmonise the use of frequencies, whereas AGCOM is called to define the national frequency assignments to operators in accordance with objective, transparent, non-discriminatory and proportionate criteria.

8.2 How is the use of radio frequency spectrum authorised in Italy? What procedures are used to allocate spectrum between candidates - i.e. spectrum auctions, comparative 'beauty parades', etc.?

The Code states that the Ministry is allowed to grant individual rights to use radio frequency spectrum to each authorised undertaking.

Since resources are scarce and efficiency is required, spectrum rights are granted by means of public comparative procedures, in respect of transparency and non-discriminatory criteria (Article 27 of the Code).

8.3 Are distinctions made between mobile, fixed and satellite usage in the grant of spectrum rights?

Yes, they are.

In 2008, the Ministry issued the new National Plan of Frequency Allocation (Ministry Decree of November 13, 2008), which provides an overview of national utilisation of the frequency spectrum and distinguishes between civil, non-civil or shared bands.

8.4 How is the installation of satellite earth stations and their use for up-linking and down-linking regulated?

Under the Code, the installation of satellite uplink or downlink earth stations requires a general authorisation for the provision of electronic communication networks. The undertaking is required to pay annual fees the amount of which depends on the number of earth stations installed. The annual fee ranges from a minimum of €2,220 for 10 earth stations up to a maximum of €11,100 for over 100 earth stations.

8.5 Can the use of spectrum be made licence-exempt? If so, under what conditions?

Licence exemption may apply only for use of liberalised frequencies (for instance WiFi or RFID). All other individual usage of frequencies by operators implies the issuing of a related right of use. The eventual free use of frequencies does not, in itself, obviously avoid compliance of other applicable regulation (e.g.

authentication in the offering of ISP services by means of liberalised frequencies, etc.).

8.6 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

Undertakings which install and provide public communication networks and/or provide electronic communication services through rights to use the radio frequency spectrum, must correspond related annual fees.

The calculation of the annual fees is dependent on the frequency band bandwidth extension recognised to operators.

8.7 Are spectrum licences able to be traded or sub-licensed and if so on what conditions?

Spectrum rights can be traded and transferred to other operators, holders of the general authorisation or equivalent licence for the provision of network through equivalent technology.

The undertaking's intention to transfer rights to use radio frequencies is to be previously notified to the Ministry and AGCOM, for the relevant approval. Aside information to the Antitrust Authority is also required for competition purposes.

9 Data Retention and Interception

9.1 Are operators obliged to retain any call data? If so who is obliged to retain what and for how long? Are there any data protection (privacy rules) applicable specifically to telecommunications?

The collection and use of personal data in Italy is fundamentally governed by the Data Protection Code (Legislative Decree No. 196 of June 30, 2003, hereinafter also referred to as "the Code"), entered into force on January 1, 2004. Under Section no. 132 of the Code, telephone traffic data shall be retained by the provider for twenty-four months as from the date of the communication with a view to detect and suppress criminal offences, whereas electronic communications traffic data, except for the contents of communications, shall be retained by the provider for twelve months as from the date of the communication, for the same purposes.

Moreover, it is important to underline that operators shall have to comply with the Decision of the Italian Data Protection Authority, titled "Security In Telephone And Internet Traffic Data" of 2008, which requires the provider of electronic communication services to take specific measures and arrangements, such as strong authentication techniques etc., to safeguard data subjects in connection with the processing of the telephone and Internet traffic data.

9.2 Are operators obliged to maintain call interception (wire-tap) capabilities?

Yes, operators are requested to assure the possibility for public agents to intercept and retrieve in real time communications which are originated or serviced in their networks.

9.3 What is the process for authorities obtaining access to retained call data and/or intercepting calls? Who can obtain access and what controls are in place?

The fundamental principles of wiretapping are to be found in

Articles no. 266-271 of the Criminal Procedure Code, which authorise legalised interception and wiretapping only by means of Court orders, with stringent justification principles evidencing the purposes of such legal proceedings. Courts are requested to constantly monitor the storage recordings and transcriptions, which must be destroyed if not used in judicial proceedings. It is also important to indicate that on September 22, 2006 the Italian Parliament issued Law Decree No. 259 (the "Decree") on new provisions on interception. This Decree aims at preventing the practice and use of any data retrieved by means of illegal wiretapping, and modifies a number of former provisions on data protection and use of unauthorised information.

10 The Internet

10.1 Are conveyance services over the internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the internet at a wholesale (i.e. peering or transit) and/or retail (i.e. broadband access) level? Are internet service providers subject to telecommunications regulation?

The offering of services over the Internet is governed by the general rules of the Code.

Under Law no. 59/2002, Internet Service Providers can have access to the Reference Interconnection Offer (the wholesale offer) defined by the incumbent operator, Telecom Italia S.p.A, notified as having significant market power.

With reference to services over the Internet, it is worth noting that on March 31, 2006, AGCOM issued Resolution no. 11/06/CIR governing the supply of VoIP services.

10.2 Is there any immunity (e.g. 'mere conduit' or 'common carrier') defence available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

Under article no. 14 of the Italian Legislative Decree 70/2003, the internet service provider that exclusively supplies the access to a communication network is not liable for the information transmitted. Therefore, under Italian jurisprudence, it cannot be considered responsible for the illegal activities performed by the users of a website. The internet service provider is not liable for the provision of communication networks to third parties, which performed illegal activities on a website, if the provider does not select or modify the information contained in the transmission.

Under article 17 of the Italian Legislative Decree 70/2003, implementing Directive 2000/31/EC, service providers are not obliged to monitor the information which they transmit or store, nor to seek facts or circumstances indicating illegal activity. However, they must promptly: *i*) inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service; and *ii*) communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

10.3 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

No, they are not.

However, there are several bills actually under examination by the Italian Parliament dealing with the regulation of online content as well as with the legal download of copyrighted material (for instance, S-1757/2009 regarding copyrighted material, CRMs and prospective EU uniformed legal download framework, S-1611/2009 [Italian Senate draft for C-1415] regarding anti-terrorist and anti-criminal wiretapping regulation), however none of them seems to contain innovative dispositions concerning a contraction or extensions of the liability of service providers for online content.

10.4 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any 'net neutrality' requirements?

Italian ISPs are definitely able to differentially charge and/or block different types of traffic on their networks. Notwithstanding the European discipline on the matter, "net neutrality" under the relevant Italian regulation still represents more a "general principle" than a specific "requirement" for operators. The National Competition Authority (AGCM), in an attempt to fill in the regulatory gaps on traffic shaping/control/monitoring issues, although not entering into any technology and TLC specific reasoning, remarked on several occasions that operators applying QoS measures on their networks should be highly transparent with consumers in representing their traffic policies, so for the latter to be adequately informed in their market choices (competition oriented principle).

In fact, however, Italian ISPs do block/limit/queue P2P and similar traffic on their networks, as a general rule, apparently in a USO Directive compatible fashion. This behaviour still didn't encounter a definitive censorship by AGCOM and seems not to be in contrast with any actual regulatory requirement.

10.5 How are 'voice over IP' services regulated?

In 2006, AGCOM issued the Resolution no. 11/06/CIR, setting forth "Regulations on the supply of VoIP (Voice over Internet Protocol) services, and supplement to the National Numbering Plan".

This resolution is a significant milestone towards the development of telecommunications services, as it lends full dignity to VoIP-based services, to be broken down into:

- *nomadic voice communications services* (with unlimited nomadism allowed), enabling users to make and receive multimedia voice calls from any network access point, also a wireless one, at national and international level. For the provision of these services the resolution lays down so-called "light", low-impact regulations; and
- *publicly Available Telephone Services (PATS) at fixed locations* (with nomadism allowed only within the originating telephone district) by which conventional telephone services beginning with "0" can either be repeated or increased by new functions by using the VoIP technology. For the provision of these services, Resolution no. 11/06/CIR lays down the same regulations currently in force for conventional telephone services.

Nomadic voice communications services are allocated a set of numbers beginning with the code "5" and purposely introduced in the National Numbering Plan by the above resolution.

10.6 Are there any rules to prevent, restrict or otherwise govern Internet or email communications, in particular, marketing and advertising communications?

The Internet or email communications fall within the means of

expression of speech, opinion and thought, as such protected by a roster of provisions within the framework of general individual constitutional rights.

Legislative Decree no. 70/2003 implementing Directive no. 2000/31/EC on electronic commerce lays down, with respect to the obligations on operators, that information society service providers may not be made subject to requirements which may limit offering of services by means of electronic transmissions.

Under Article 25 of the Code, ISPs are required only to have the general authorisation in order to provide internet access, and in this respect mere conduit, hosting and caching limitations of responsibility apply to ISP or other communications operators with respect to content or use of the electronic transmission.

In fact, ISPs do not have a general obligation to monitor the transmitted information (rather the contrary), nor do they retain a general obligation to actively seek facts or circumstances indicating eventual illegal activities. However, ISPs are required promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service, and to provide to the competent authorities, upon request, information enabling the identification of recipients of their services with whom they have storage agreements.

Privacy and protection of e-mail communications are also regulated by the Data Protection Code and the Digital Administration Code.

Personal data, including email addresses, must be processed in accordance with data subject's rights, fundamental freedom, and dignity, particularly with regard to confidentiality, personal identity and the right to personal data.

The data subject should give his/her consent to the use of her/his email.

ISPs, which undertake unsolicited commercial communications by electronic mail, shall ensure that such commercial communications shall be identifiable clearly and unambiguously as such as soon as it is received by the recipient. In addition, service providers are required to consult regularly and respect the opt-out registers in which natural persons not wishing to receive such commercial communications can register themselves, aside assuring such individual right in favour of recipients in any direct communication.

Moreover, the use of automated calling systems without human intervention for the purposes of direct marketing or sending advertising materials, or else for carrying out market surveys or interactive business communication shall only be allowed with the subscriber's consent. Such provisions also apply to electronic communications performed by email, facsimile, MMS or SMS type messages or other means.

11 USO

11.1 Is there a concept of universal service obligation; if so how is this defined, regulated and funded?

The Code does not define "universal service obligation" but only "universal service", as a roster of services subject to constant definition and updating. However, the Code provides the universal service obligations (Articles 53 to 65), as a burden on all authorised operators.

Under Article 53 of the Code, electronic communication services must be made available at the quality specified to all end-users in their territory, independently of geographical location, and, in the light of specific national conditions, at an affordable price. In addition, AGCOM determines the most efficient and appropriate

approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality.

Pursuant to the provision of access at a fixed location, Article 54 of the Code sets out that all reasonable requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location are met by at least one undertaking.

AGCOM may designate one or more undertakings to guarantee the provision of universal service as identified in Articles 54, 55, 56, 57 and 59 of the Code, so that the whole of the national territory can be covered.

Finally, with regard to the financing of universal service obligations, the Code provides that where, on the basis of the net cost calculation referred to in Article 62, AGCOM find that an undertaking is subject to an unfair burden, it shall decide, upon request from a designated undertaking, to share the net cost of universal service obligations between providers of electronic communications networks and services.

On July 2, 2008, AGCOM issued Resolution no. 153/08/CSP, setting the new universal service quality goals for 2008.

12 Foreign Ownership Rules

12.1 Are there any rules restricting direct or indirect foreign ownership interests in electronic communications companies whether in fixed, mobile, satellite or other wireless operations?

A general provision of the Code sets out that undertakings, which are not EU or SEE nationals, could be subject to restrictions

established by administrative rules and regulations aiming to prevent the supply of electronic communications networks and services, in case national security and defence purposes apply.

At the moment of privatisation, Telecom Italia's articles of association were modified prior to the privatisation in order to insert a "golden share regulation" in favour of the Treasury pursuant to a Decree of February 11, 2000 (on general strategic State participations, not limited to Telecom Italia). Strangely enough, the issue was not invoked when Telefonica d'España acquired a fundamental stake in Telecom Italia's holding company in 2007.

13 Future Plans

13.1 Are there any imminent and significant changes to the legal and regulatory regime for electronic communications?

The most important changes will occur within the next months with the implementation of the New EU Telecoms Package, due to be adopted within June of 2011. In the meanwhile, on NGNs, AGCOM is now evaluating the measures related to the development of the Next Generation Networks and has anticipated that such measures shall aim to implement the switch-off model and involve Telecom Italia in the new infrastructure development (the former incumbent retains a substantial monopoly on the access segment, and in order to avoid payment of access charges considered vexatious a number of fixed line operators has presented to AGCOM an alternative fixed FTTH network infrastructure, to which for the moment Telecom Italia declares indifference).



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STUDIO LEGALE

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