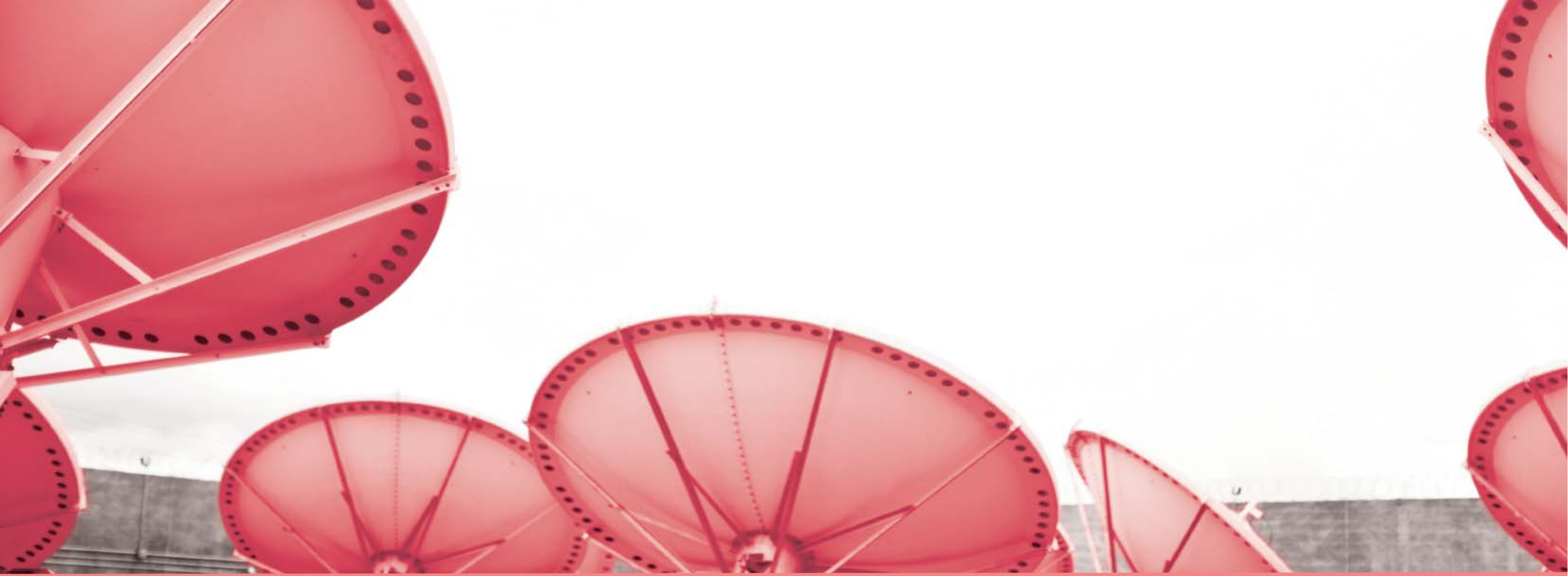

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The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2015

8th Edition

A practical cross-border insight into telecoms, media and internet laws and regulations

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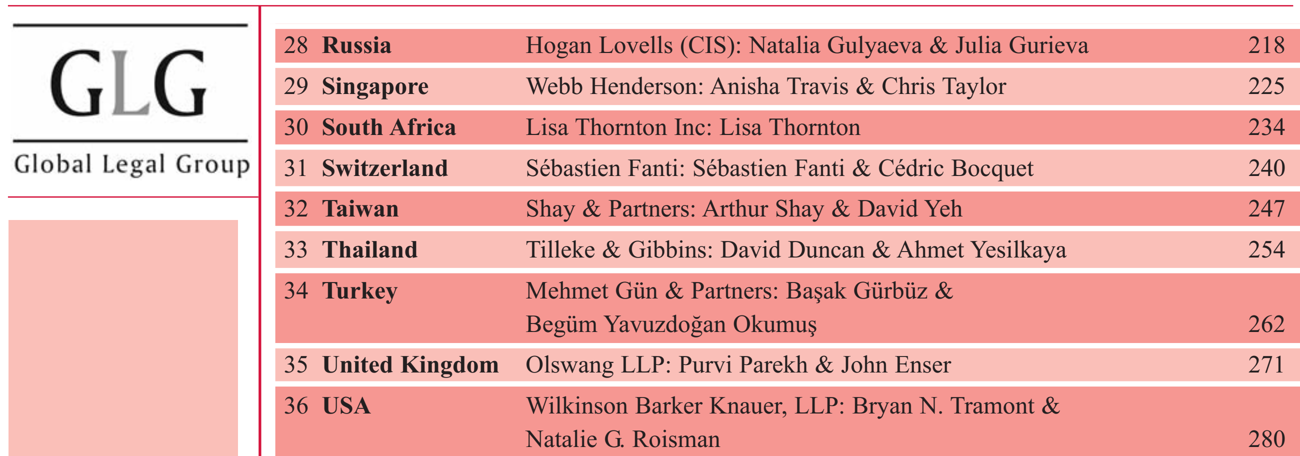

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EDITORIAL

Welcome to the eighth edition of *The International Comparative Legal Guide to: Telecoms, Media & Internet Laws & Regulations*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of telecoms, media and internet laws and regulations.

It is divided into two main sections:

Two general chapters. These chapters provide overviews of the EU regulatory framework and of the different approaches and attitudes towards mobile network consolidation in the United States and Europe.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 34 jurisdictions.

All chapters are written by leading telecoms, media and internet lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Rob Bratby of Olswang LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Overview

1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in Italy, in particular by reference to each sector's: (i) importance (e.g. measured by annual revenue); (ii) 3-5 most important companies; (iii) whether they have been liberalised and are open to competition; and (iv) whether they are open to foreign investment.

The 2014 Annual Report of the Italian Communications Regulatory Authority (AGCOM), issued on 14 July, 2014, pointed out that the electronic communication sector's contribution to the growth rate of GDP was about 4% in 2013. In addition, in 2013, the annual revenue from the electronic communication service reached €56.1 billion; telecommunications reached €34.5 billion; radio and TV €8.6 billion; media and Internet €6.1 billion; and the postal service €6.9 billion. The 2014 Annual Report indicated a general trend in line with preceding years in the general communications market, with a slight fall of the operators' revenues compared to 2013.

A) Compared to 2012, direct fixed access lines decreased by about 730,000 (-1.2 million in the last two years), slightly higher compared to the previous year (about -450,000). In 2013, Telecom Italia's market share further decreased by 1.5%, to 63.1%. Basically, Fastweb took advantage (+1.0%), reaching Vodafone's market share (-0.2%). Wind's market share remained stable as compared both on a yearly and quarterly basis. Tiscali showed a slight increase on an annual basis (+0.2%).

Referring to the new entrants in the fixed access line market, the 2014 Annual Report showed that on a yearly basis, the number of access lines grew by about 70,000 (230,000 in the previous year). The growth of Full LLU lines (+90,000 on a yearly basis) matched with a reduction of WLR lines (about 130,000). In 2013, excluding WiMax growth, there was a reduction of overall OLO access lines (-30,000), compared with the increase of 120,000 recorded in 2012. With respect to the access lines indicator, Wind ranked at the first place (36.6%), but experienced a decline year-over-year (YoY), compared to Vodafone, by 1.7%. In the meantime, Fastweb's market share increased on a yearly basis (+1.6%). The increase of WiMax access lines, which equals FTTH lines, represented the overall increase of access line on a yearly basis. Linkem represented over the 56% of the specific segment followed by Aria (38%).

Moreover, in 2013, the mobile market was essentially mature. As witnessed by the operations of NPM (3.5 million requests per quarter on average), new customers could be acquired only by other operators. This encouraged a "price war". In 2013, the customer base decreased by more than 1 million, and in the meantime showed a reduction compared with the previous quarter (-680,000). The "only voice" SIM decreased by some 8.4 million (-12.9 million YoY). The number of residential lines decreased (1,700), business lines increased about 650,000. In the meantime, the number of prepaid lines decreased by 1.8 million, while the number of postpaid lines increased by 800,000. On an annual basis, the market shares of Telecom and Vodafone decreased both in favour of H3G (+0.3%), and, by a greater extent, in favour of Wind (+1.0%). Voice traffic (150 billion minutes) increased by 8.6%, while SMS usage continued to decline (76.7 billion, a more than 20% reduction on an annual basis).

Instead, in 2013, the MVNO subscribers continued to grow (+740,000 YoY), and the total lines reached 5.2 million (about 5.4% of the total mobile customer base). Poste Mobile's market share reached about 54.2% (2.8% of the overall mobile market). Coop Italia's market share has grown by more than 2% (9.3% at year-end). From the beginning of the year 2013, the market growth was concentrated on Poste Mobile and Fastweb (more than 70%). Voice traffic and SMS increased respectively by about 9.6% and 13.3%.

B) The same 2014 Annual Report of AGCOM pointed out that in 2013, the total media sector (including both advertising and online services revenues) registered a decrease in the income (-7%). Payless television services experienced an overall decrease in revenues of -6%, whereas pay television registered a decrease in revenues of -2%. Over 90% of the total resources in the broadcasting sector were registered between oligopolistic Mediaset, Rai and 21st Century Fox/Sky Italia. La7, owned by Cairo Communication, underwent an inverse trend with growth in the advertising component, to sum up a share of 1.7% of the general revenues in the field. Discovery purchased Switchover Media, increasing the number of channels and general revenues up to 1.6% compared to 2012. In 2013, 17% of Italian adults were tablet and smartphone owners, and had access to broadband media services.

C) Retail Broadband access line market growth was about 220,000 (160,000 in 2012). During 2013, the number of DSL lines remained essentially stable (50,000), while the overall growth was largely represented by WiMax's (103,000) lines increase. Despite the success of fibre lines increases in 2013, Telecom Italia's market share reduced on a yearly basis by 1.6%, falling to 49.8%. Fastweb's share grew by 1.1%, as other smaller companies, largely represented by WiMax operators (+0.8%) benefitted from the results of TI. The market shares of Vodafone and Wind, compared to 2012, remained extremely stable (respectively, +0.1% and -0.4%).

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Regarding Mobile broadband, in 2013, SIMs that created broadband data traffic exceeded 39.5 million (+23.3% YoY). The dedicated "connect card" reached about 8 million (+1.8% compared to 2012). In 2013, data traffic grew by 32.7% (*vs* a corresponding +34.3% last year).

1.2 List the most important legislation which applies to the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in Italy.

The general regulatory framework stems from the implementation of the EU 2002 regulatory framework, adopted by means of Legislative Decree No. 259 of 1 August, 2003 (the Electronic Communications Code, hereinafter "the Code"), entered into force in September 2003.

The Code contains the general regulatory principles which apply to the offering of telecoms, Internet, broadcasting and online services in general, and is amended by virtue of new provisions which may apply or are enacted (for instance, the recent adoption of the EU Directives 2009/136/EC and 2009/140/EC affecting the offering of communications services by means of Legislative Decrees Nos. 69 and 70 of 28 May, 2012).

Radio and broadcasting services have been reformed by Legislative Decree No. 177 of 31 July, 2005 (so-called "Radio-Television Consolidation Act"), amended by Legislative Decree No. 44 of 15 March, 2010 enacting Directive 2007/65/EC.

The offering of Internet services in the territory falls within the general rules set up by the Code, as with all electronic communications services. A general authorisation issued by the Ministry of Economic Development – Communications Department is required for the offering of Internet services (e.g. ISP, WISP, and VoIP). With Decision No. 11/06/CIR, AGCOM (*Autorità per le Garanzie nelle Comunicazioni*) has allocated specific numbering ranges related to VoIP services, introducing dedicated resources for the offering of nomadic VoIP services.

Privacy regulation holds a particular importance in the offering of services. A set of specific rules apply in the different services and relevant use and processing of data. This sector-specific privacy regulation, highly stringent and pervasive, stems principally from Legislative Decree No. 196 of 30 June, 2003 ("Data Protection Code").

1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in Italy.

The Ministry of Economic Development – Communications Department plays a fundamental role in the general obligations which apply to the offering of communications services, also in the issuing of new licences (DTT, WiMax, and LTE, etc.) and in spectrum allocation and analogue switch off and use of digital dividend.

AGCOM, the national NRA, is responsible for sector-specific regulation in the field of offering of electronic communication services, *inter alia*, in the definition of interconnection obligations, USO services, definition of related costs, access to services obligations, transparency policies in the use of networks, unbundling and identification of *ex ante* competitive remedies applicable to SMP operators.

It is fully autonomous and independent, retaining its own budget and organisational structure (regionally organised through local bodies, CORECOM), and holds a concurrent responsibility with the Antitrust Authority (AGCM) on competition matters involving the specific market. A recent Government Decree has reduced the number of Commissioners in AGCOM from the initial nine members to the current five, the Chair of which is nominated by the Government whilst the rest by Parliament.

Concurrent competition responsibility is shared with AGCM, which retains a sterling role on antitrust matters and fair trade regulation in general. Regarding communications matters, the two Agencies cooperate and consult together, and AGCOM also holds jurisdiction in alternative dispute resolutions among operators. Such cooperation and coordination has been further enhanced and clarified in many respects by recent Legislative Decree No. 69 of 28 May, 2012, enacted also in light of EC Regulation 2006/2004 on cooperation among national authorities involved in consumer protection.

The Data Protection Authority (*Garante per la protezione dei dati personali*) is competent on use, storage and security obligations on operators in the storage, processing and use of personal data information. Industry bodies (the major of which is Assintel, national organisation of ICT industries) are very active in pressurising the Government and Parliament on the issues at stake.

1.4 Are there any restrictions on foreign ownership or investment in the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in Italy?

The release of a general authorisation necessary for the offering of electronic communications services in Italy requires evidence of a stable organisation in the country, or within countries participating to the European Economic Area or WTO in general. Under reciprocity conditions, authorisations may be released to operators residing elsewhere. Audio-visual media distribution does not require the release of an authorisation title by the Ministry.

2 Telecoms

General

2.1 Is Italy a member of the World Trade Organisation? Has Italy made commitments under the GATS regarding telecommunications and has Italy adopted and implemented the telecoms reference paper?

Italy has been a WTO member since 1 January, 1995, and follows the commitments under the GATS/GATT on the liberalisation of the telecommunications market (Geneva, 1997).

Italy is also active in facilitating trade in the field of telecommunications services. This includes enabling and avoiding obstacles in the establishment of new telecoms companies, foreign direct investment in existing companies and cross-border transmission of telecoms services. In addition, Italy committed to extend competition in basic telecommunications (e.g. fixed and mobile telephony, real-time data transmission, and the sale of leased-circuit capacity), to ensure the interconnection, to define the universal service obligations of operators with significant market power, to set out the licensing and authorisations criteria, to create an independent National Communications Regulatory Authority, and to define the procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, in compliance with the Telecommunications Reference Paper.

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With respect to the "*World Conference on International Telecommunications*" (WCIT) held in Dubai on 14, December, 2012, Italy, in accordance with the common EU position, did not undersign the proposed revised Treaty of the International Telecommunications Regulations (ITRs), sharing the interpretation by which the final text appeared to possibly threaten the future of the Open Internet and Internet freedom of expression.

2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?

The operation of electronic communications networks and services is governed by the Code and is subject to the prior release of a general authorisation in favour of the operator under Article No. 25 of the Code. All authorised operators must also be enrolled in the Registry of Communication Operators (hereinafter "ROC") and are subject to regulatory obligations according to the type of delivered services, such as sector specific privacy regulation, data retention obligations (falling specifically on general traffic and transmission data), interception and security. An authorised operator is also subject to the definition of its general obligations via a Charter of Services.

On 28 May, 2012, the Government enacted Legislative Decrees Nos. 69 and 70 respectively, enforcing the principles of EU Directives 2009/136/EC on the treatment of personal data and privacy protection in communications services (modifying the Data Protection Code in that respect) and 2009/140/EC on network and services offering communications services (modifying the Code with relevant provisions).

The Code addresses general regulation on most aspects related to the provision of both network and services such as: i) authorisation regimes; ii) spectrum trading, site sharing and mobile operators' general rights; iii) development of broadband services and offering of converging services; iv) numbering regulation and spectrum refarming; and v) 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 bitstream access, USO and termination rates. In addition, a series of regulations apply to the offering of services, such as VoIP, MVNO and ISP.

2.3 Who are the regulatory and competition law authorities in Italy? How are their roles differentiated? Are they independent from the government?

AGCOM is the regulatory authority, whilst AGCM (*Autorità Garante per la Concorrenza e il Mercato*) is the antitrust and fair trade national authority. Both are independent from the Government; a recent Government Decree has reduced the number of Commissioners in AGCOM from the initial nine members to the current five, the Chair of which is indicated by the Government and the rest by Parliament.

The two authorities have separate responsibilities, AGCOM being responsible for sector-specific regulation in the field of offering of electronic communication services and AGCM being responsible for general antitrust and fair trade practices. Yet cooperation among them is very stringent and common in the adoption of policies and regulation in the field, in particular, with instances: affecting the identification of relevant markets and significant market power; adoption of competitive measures, such as the definition of the *ex ante* remedies; advertising; and general transparency obligations in offering of services.

In matters, which may determine an alteration of the level playing field, the Ministry of Economic Development (Communications Department) requires an opinion from AGCM (e.g. in spectrum trading, or in the issuing of tenders for the release and allotment of new frequencies, such as in the LTE official tender).

2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

Under Article No. 14 of Legislative Decree No. 104/2010 (known as the "Code of the administrative procedure"), disputes relating to the resolutions of Italian Regulatory Communications Authority can be appealed before the Regional Administrative Court of Lazio, which is based in Rome.

Licences and Authorisations

2.5 What types of general and individual authorisations are used in Italy?

Article 25 of the Code establishes that the provision of electronic communications networks and services in Italy are subject to the release of a general authorisation in favour of the operator. The undertaking concerned must submit a series of information also pertaining to the legal representatives of the company, and may provisionally exercise the activity upon filing of the application. The Ministry can deny the authorisation or request clarifications within 60 days from the application. Silence-acceptance is applied in cases where, within such span of time, the Ministry does not react.

Authorised operators may provide electronic communications networks and services in regional or national markets according to the released titles and may request the installation of facilities or cabling rights of way wherever authorised locally. Operators are required to negotiate interconnection and obtain access to, or interconnection from, other providers of publicly available communications networks and services covered by a general authorisation. All operators are due to contribute (or are designated to provide directly) to the costs related to the universal service obligation, and in case numbering resources (let alone frequencies) are requested, separate fees apply.

A specific authorisation is required for enterprises willing to perform installation and maintenance services.

2.6 Please summarise the main requirements of Italy's general authorisation.

Operators requesting the release of a general authorisation must describe the services to be delivered, providing to the Ministry a minimal set of information on the legal representatives of the relevant entity and related facilities, offices, number of personnel involved and eventual interconnected wholesale operators involved in the delivery or transport of signals. Under Annex No. 9 of the Code, the undertaking must describe the type of network involved, services offered and apparatuses employed and their relevant location. As the case may be, operators are also required to provide a copy of the interconnection or other agreements stipulated with other operators in order to provide their services (with respect to virtual operators, the type of arrangements undergone with other operators providing facilities or technologies).

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General authorisations are subject to the payment of annual administrative fees (according to Annex No. 10 of the Code) and to an annual contribution in favour of the AGCOM (calculated as a percentage of the net turnover of the undertaking). The adoption of a charter of services is also required, as the setting up of privacy and transmission security policies under the Data Protection Code.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded.

Individual authorisations are referred to the provision of networks and services detailed in the request filed by the operator with the competent Ministry. Duration may change according to the type of authorisations (generally 20 or 15 years), yet all are renewable. These administrative titles are transferable as well, provided that notice of such transfer is given to the Ministry beforehand, in which case, the latter may oppose the transfer within 60 days of receipt of said notice.

Public and Private Works

2.8 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?

Articles Nos. 86 and 89 of the Code deal with the provisions and setting up of rights of way and access to public and private land in order to install network facilities and/or telecommunications infrastructure. In addition, two separate provisions (Article No. 2 of Law No. 133/08 and Law No. 69/2009) set out specific rulings related to the use, sharing and hosting of digital broadband networks.

A resolution of AGCOM dated November 2011 (Resolution No. 622/11/CONS, concerning the "*Regulation on electronic communication network installation rights for backbone connections and infrastructure sharing*"), has set the general framework on the installation of backbone networks and the guidelines relevant to the rights of way and access to laid infrastructures. Such a Resolution envisages also the adoption of measures aimed at encouraging joint investments between operators and promoting innovation in the development of networks and services, including broadband coverage in view of eliminating digital divide.

Resolution No. 1/12/CONS of AGCOM sets the regulation on Next Generation Access Networks – (NGAN), and encourages operators to expand progressively proprietary infrastructures and to thus progress in the scale of investments (in application of the "investment ladder" principle), recognising also the existing differences in the different geographic areas of the country (yet not expressly indicating the existence of geographical relevant markets). This last Resolution sets the general principle of remuneration of the investment risk by means of a risk premium, and is designed to promote joint investment initiatives and foster sharing of business risks among operators.

Access and Interconnection

2.9 How is network-to-network interconnection and access mandated?

Operators of public communications networks have a right and, when requested by other authorised undertakings, 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 yearly by incumbent Telecom Italia for approval by the AGCOM, and particular emphasis is posed on interconnection costs, ULL, WLR and costs of ancillary services referred to (the matter of which is currently under heavy debate by OLOs, challenging the flat costs imposed by Telecom Italia and approved by AGCOM in 2011 on repairing costs borne by the incumbent for fixed line management intervention). Interconnection and access negotiations among operators is heavily influenced by transparency, non-discrimination and the cost-orientation of services. Operators retaining SMP in fixed line call termination on individual public telephone networks at fixed locations have been required to apply price caps since 2006.

Fixed access line markets are regulated by Resolution No. 314/09/CONS of 10 June 2009 e n. 731/09/CONS of 16 December 2009, as emended and integrated, and by Resolution No. 1/12/cons of 11 January 2012, on NGA networks.

2.10 How are interconnection or access disputes resolved?

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 timeframe 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 a legal binding effect. In case of a negative solution, parties may file an ordinary proceeding before competent courts. Relevant procedures date back to 2008 as an effect of Resolution No. 352/08/CONS.

2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

The yearly Reference Interconnection Offer refers to Telecom Italia, former incumbent, and specific obligations are set on such operator with reference to cost orientation on former markets 8, 9 and 10, on all of which SMP has been identified. By virtue of Decision No. 417/06/CONS of AGCOM, alternative fixed line operators identified as having SMP in the market of call termination on individual public networks provided at fixed locations, are also obliged to apply standard price cap cost oriented termination prices, progressively to be reduced under the bottom up LRIC model approved in 2008 (Decision No. 251/08/CONS). Mobile operators alike have set termination prices on the mobile termination segment, being notified (Decision No. 621/11/CONS of 17 November, 2011) as having SMP in the relevant market. Mobile operators are also subject to obligations of transparency and maximum termination charges.

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2.12 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?

In particular cases, charges for interconnection and network access may be subject to price and cost regulation, albeit the general principle of Article 40 of the Code states that a general principle is free of negotiation among operators on interconnection or access agreements. 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. Under resolutions 746/13/CONS and n. 747/13/CONS, AGCOM introduced new principles referring to the definition of costs related to the unbundling services and prices for bitstream and WLR services. In cases in which price regulation applies, prices are required to be based on the principle of maintenance of economic space in the supply of unbundling service, instead of the cost-oriented model.

Regarding the prices for interconnection services on fixed line, AGCOM issued resolution 668/13/CONS of 28 November 2013, which defined a model based on long-running incremental costs (BU-LRIC). The said “BU-LRIC” model must take into account the indications contained in the Recommendation 2009/396/EC of the European Commission of 7 May, 2009 on the regulation of the termination tariffs on fixed and mobile networks.

Further to termination services on mobile network, AGCOM adopted Resolution No. 503/13/CONS of 5 November 2013, in order to start the procedure to determine the prices for termination vocal services on mobile networks of H3G in accordance with the judgments of the Administrative Court of Appeal (*Consiglio di Stato*).

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

Operators, such as Telecom Italia, notified as having SMP in relevant markets (see question 2.11 above) have been subject to accounting separation as an ancillary obligation, in particular, in 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. For the time being, no OLO has been requested to functionally separate its activities, aside from the 2008 separation in Telecom Italia of the “Open Access” network division, responsible for management and development of its wholesale fixed access network. Open Access is chaired by five independent board members required to monitor the performance of a series of undertakings by Telecom Italia, specifically in end-to-end quality of access services, offering of co-location services, SLA performance and service levels.

In October 2013, AGCOM adopted Resolution No. 563/13/CONS, in order to comply with sentence 1645/13, 1837/13 and n. 1856/13 issued by the Administrative Court of Appeal (*Consiglio di Stato*) related to prices for fixed line wholesale services of Telecom Italia for 2010-2012. Under those sentences, the Administrative Court of Appeal censored how AGCOM defined the economic conditions for unbundling services of Telecom Italia.

2.14 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?

By means of Decision Nos. 4/06/CONS and 34/06/CONS, Telecom Italia has been notified as retaining SMP in the wholesale local access market and required to provide ULL and share relevant ducts and capacities under the conditions to be published in the Reference Interconnection Offer. Local loop unbundled access in favour of operators is done on cost-oriented principles, and price control and progressive reduction of the same is a matter of consistent control by AGCOM. Following the review process of markets Nos. 1, 4 and 5 and the issuing of EU Commission Recommendation 2007/879/EC, metallic path facilities inclusive of full unbundling on xDSL lines and sub-loop unbundling shared access in ducts and dark fibre has been imposed on Telecom Italia.

Currently, there are no significant cable TV operators in the Italian market.

2.15 How are existing interconnection and access regulatory conditions to be applied to next-generation (IP-based) networks? 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? Are there any requirements to share passive infrastructure such as ducts or poles?

AGCOM has imposed regulatory obligations on Telecom Italia concerning NGA, following the SMP notification. Such obligations, including unbundled access to network infrastructure (primary and secondary ducts, cables and dark fibre capacities; see question 2.14 above), also affect next-generation IP signal transmission systems (FTTx). Aside from providing bitstream access services, Telecom Italia is compelled to inform on timing related to eventual migration of signal transportation infrastructure to NGA networks, all obligations further deepened and confirmed by AGCOM Decision 1/12/CONS of January 2012.

No regulatory holiday has ever been proposed to date, but sharing of capacities and an obligation to share passive infrastructures between operators (both public concessionaires, as well as private operators) is much debated. Also, PPP with public entities and the setting up of an alternative national aggregated network provider participated by OLOs, reiterates in public debates, a possible means to incentivise investments in new infrastructure.

The general debate stems from Communications Ministry Decree No. 198 of 4 September, 2002, which contains the first incentive measures aimed at assisting operators in deploying new and alternative communications networks. The main objectives of the Decree were, *inter alia*, (i) to assist competition in assuring alternative transport and termination communications and certainty of right with regards to the issuing of related administrative procedures, and (ii) to ensure the application of competitive and non-discriminatory principles in the release of local and national authorisations for deployment of networks.

The following regulation adopted by AGCOM, in particular, Decision No. 731/09/CONS on the identification of regulatory obligations of SMPs specified the general transparency, non-discriminatory and fair principles which apply to common use of infrastructure. Decision No. 622/11/CONS on capacity and site

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co-location further clarifies the need for a national infrastructure register for common investment and use purposes, and more than that the roster of individual rights of operators on access to dark fibre and infrastructure for the setting up of alternative digital networks for backhauling and/or transport of signals.

Price and Consumer Regulation

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

Intervention by AGCOM on this matter is possible only if anti-competitive practices are performed, or operators are notified as SMPs in the relevant markets and thus subject to price control mechanisms. Retail and wholesale price controls are imposed only to those operators notified as having SMP in the related service provided. AGCOM has set out a series of obligations on SMPs (including mobile termination and roaming services), such as Decision Nos. 417/06/CONS, 251/08/CONS and 407/08/CONS).

Operators must publish retail tariffs applied, and notify any modification to AGCOM's Consumers Division. Also, all advertising must include an indication of VAT where applicable.

2.17 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 include: i) Decision No. 35/10/CIR of 10 June, 2010, on number portability; ii) Decision No. 699/09/CONS of 3 November, 2009, on new obligations pertaining to block of automated attendant services; iii) Decision No. 201/08/CONS of 9 May, 2008, on amendment of the numbering plan; iv) measures on the transparency of telephone bills, selective call blocking and user safeguards; and v) Decision No. 353/08/CONS of 25 June, 2008, on transfer of mobile services credits.

Consumer protection is a fundamental part of general regulation in the field, and aside from the compulsory publication of Service Charts by operators, stringent regulation applies to the safety and security of services, transparency and termination of agreements.

Numbering

2.18 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 Numbering Plan was recently emended by Resolution No. 52/12/CIR of 3 May, 2012.

On 20 June 2013, AGCOM issued Resolution No. 42/13/CIR on "Standards for the testing of alphanumeric indicators for the identification of caller in SMS/MMS messaging services used for business", which allows the use of "Alias".

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

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, with the allocation of specific codes for specific services, such as VoIP).

2.20 Are there any obligations requiring number portability?

Fixed and mobile operators must provide portability to customers.

Fixed number portability obligations, introduced in 1999 (Decision 4/99/CIR) have been modified with respect to the timing of execution and adoption of procedures and compulsory exchange of requests, among operators. In 2010, AGCOM finalised the regulatory framework setting the set of standards regarding activation and migration of number procedures pursuant to Resolution No. 274/07/CONS and of the so-called "pure" number portability (NP) envisaged by Resolution No. 35/10/CIR, which became fully operative on 7 February, 2011. Under the standing regulatory framework, customers wishing to change operator must contact the new operator and provide the user transfer code, which must be offered by all operators on a transparent basis. The portability is then managed between operators (according to the different phases of activation, migration or pure number portability) following also the type of the customer's network configuration and related services.

MNP service has been available in Italy since 2002, albeit a significant innovation has been introduced in the measures adopted under Resolution No. 78/08/CIR with effect from November 2009. Resolution No. 147/11/CIR has further improved relevant regulation, ensuring continuity of customer ancillary services and reducing activation timing.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

The Communications Department of the Ministry of Economic Development and AGCOM are jointly involved in the efficient allocation of frequencies as scarce resources, implementing national measures along with international policies of ITU, BEREC and/or GSMA.

The Ministry establishes national frequency allocation plans and is focused also in the adoption of harmonising measures in 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.

Resolution No. 541/08/CONS of 17 September, 2008 has introduced procedures for the allocation and use of the 900 MHz and 2,100 MHz frequency bands, also envisaging the reorganisation of the general spectrum and reframing of frequencies in light of concurrent media and converging services. Radio spectrum reorganisation is still pending as this chapter goes to print, following the switch off of analogue TV frequencies, allotment of 900 MHz and 1,800 MHz spectrums for 3G broadband systems and set up and tenders for UMTS, LTE and WiMax bandwidths.

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

The Ministry may grant individual rights for the use of radio frequency spectrums to authorise undertakings active in the field of mobile or satellite services. Given the scarce resource, efficiency in the use of frequencies is required, and spectrum rights are ensured to award winners of public comparative tender procedures, in respect of a general obligation of transparency, competitiveness and objective non-discriminatory criteria (Article 27 of the Code).

AGCOM may thus limit, for an efficiency principle, the number of operators entitled to use and benefit from portions of spectrum; for instance, the last grant awarding use of 2x5 MHz blocks on the 2,100 MHz band in favour of 3G operators has been limited in number, as well as the offering of 2x5 MHz block release in the 900 MHz band for the release of UMTS services on 800, 1,800, 2,000 and 2,600 MHz bands.

Under Resolution No. 282/11/CONS, AGCOM defined the procedures for the allocation of digital dividend spectrum related to 800 MHz band and other frequencies available (1,800, 2,000 and 2,600 MHz) for mobile broadband systems, issuing the guidelines for the refarming of 1,800 MHz band. In 2013, AGCOM carried out the rollout phase of the 4G-LTE services and the spectrum refarming at 1,800 MHz band.

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

It depends on the type of frequencies involved in the related services. The offering of services on liberalised frequencies (such as WiFi or RFID) does not require the prior issuing of an authorisation for spectrum use, yet the eventual free use of liberalised frequencies does not in itself imply non-applicability of sector-specific regulation.

All other individual usage of frequencies follows the general need of prior release of the relevant administrative title related to the right of use.

3.4 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 by exploiting rights to use portions of the frequency spectrum must correspond with related annual fees (Annex No. 10 of the Code). The calculation of the annual fees is dependent on the frequency bandwidth extension recognised to operators.

3.5 What happens to spectrum licences if there is a change of control of the licensee?

Authorised operators retaining individual rights in the use of radio may transfer or lease to other authorised operators the rights of use of radio frequencies, following the general obligations and transfer procedures entailed in the spectrum licence.

In case of change of control, under Article No. 14 *ter*, paragraph 2 of the Code, the conditions and obligations imposed in the use of radio frequencies shall continue to apply, yet operators are required to inform the Ministry on the new corporate standing and must provide evidence of the operative and financial implications of the change in control operation.

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

Radio frequency spectrum trading is permitted under Article 14 *ter* of the Code, and in general terms, transfer of related rights in favour of comparable operators or providers is consented. A prior notification to AGCOM and the Ministry is still required.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

Management, storage and/or use of personal data in Italy is governed by the stringent regulation contained in the Data Protection Code (Legislative Decree No. 196 of 30 June 2003, "DPC"), which entered into force in 2004. The DPC applies also to the processing of personal data in connection with the provision of publicly accessible electronic communication services on public communication networks. Under Section No. 122 of the DPC related to the electronic communications service, it is prohibited to use an electronic communications network to gain access to information stored in the terminal equipment of a subscriber or user to store information or monitor operations performed by such users. The DPC also sets out that traffic data shall be erased or made anonymous when no longer necessary for the purpose of transmitting the electronic communication. According to Italian regulation, the provider must ensure that personal data is processed lawfully and fairly.

The DPC defines personal data as any information related to natural or legal persons, or bodies or associations, that may enable the subject of that information to be identified or matched to the data, either directly or indirectly by reference to any other stringent information (such as in the profiling exercises), including the use of a personal identification number. The DPC ensures that personal data must be processed, stored and secured respecting individual privacy rights, fundamental freedoms and dignity, in particular with regard to confidentiality, personal identity and the right to a correct and secure processing of personal data. Sections 31 and 123 of the Data Protection Code set the limited timeframe within which an electronic communications operator is required to store data on communications for judicial use, and ensures the correct security measures to be adopted in processing such data.

Security measures required by the DPC on electronic systems imply, *inter alia*, the adoption of authentication credentials or "strong authentication" systems requiring credentials to be set up providing an identification code associated with a reserved password, or an exclusive authentication measure, or a biometric characteristic; a description and diagrams of the information system utilised, i.e. the logical and functional architecture of the system, the input/output fluxes on traffic data, to and from other electronic systems, and the eventual description of the subjects having

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legitimate access to the systems; the adoption of cautionary measures in order to ensure secrecy of communications and diligent custody of credentials for authentication; the ID code, if utilised; the deactivation of credentials in case of loss of qualities to access the service; the official set up of instructions on safety principles (access, treatment sessions, etc.); and in general, preventive written measures specifying the modalities with which the data subject may access the data, the adoption of anti-intrusive measures and periodical review principles.

Operators are subject also to interception duties, in case of adequate court orders or requests by public order institutions. Such interception principles also impose the destruction of recordings, and sanctions may be imposed on illicit use or dissemination of retrieved data, with particular emphasis on illegally recorded phone calls, use of traffic data and sensitive information collected by means of unauthorised interceptions (a judgment is still pending before a national Criminal Court on the dissemination of illicit data by means of a "parallel" interception structure retrieved within Telecom Italia). The Interior Minister or Police entities may require interception or tracking information on traffic, and storage obligations (within a set timing) are imposed on operators.

Violation of requirements triggers sanctions under the DPC as possible violations of the Criminal Code (e.g. Section 326 of such Code), regarded as a most serious offence.

4.2 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

Under Section 28 of the Communications Code, operators holding a general authorisation for the provision of electronic communications networks must ensure feasibility of interception of managed communications, in case of relevant order or authoritative provision affecting their systems.

The fundamental principles of wiretapping are to be found in Article Nos. 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 proceedings. Courts are requested to constantly monitor the storage recordings and transcriptions, which must be destroyed if not used in the relevant judicial proceedings. On 22 September, 2006 the Italian Parliament issued Law Decree No. 259 (the "Decree") on new provisions on interception, aimed at preventing the practice and use of any data retrieved by means of illegal wiretapping. The Decree modifies a number of former provisions on data protection and use of unauthorised information, and on a practical basis, operators are requested to assure the possibility for public agents to intercept and retrieve in real time communications which are originated or serviced in managed networks.

The Decree further strengthens the interception principles, and sanctions all illicit use or dissemination of retrieved data, with particular emphasis on illegally recorded phone calls, use of traffic data and sensitive information collected by means of unauthorised interceptions. Courts have been requested to order the immediate destruction of documents and records referring to illegally acquired data and contents of conversations, reporting the modalities and interested individuals without mentioning the content of the communications involved. The possession or use of illegal information is interpreted as a crime, which may be punished with imprisonment from a minimum of six months to a maximum of six years, which may be increased in case of involvement of public officials.

4.3 How does the state intercept communications for a particular individual?

As mentioned, interception must be expressly authorised by means of court orders, with stringent justification principles evidencing the purposes of such legal proceedings. A general public administration balance amount (lately largely criticised by public opinion given the high costs) is allocated each year in view of the interception services provided by operators on a compulsory basis.

4.4 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

Operators are required to comply with the Decision of the Italian Data Protection Authority, titled "*Security In Telephone And Internet Traffic Data*" of 17 January, 2008, which requires the provider of electronic communication services to take specific measures and arrangements, such as strong authentication techniques, and encryption-based technical measures to safeguard data subjects in connection with the processing of telephone and Internet traffic data. Such Decision of 2008 sets out that traffic data that are only processed for justice-related purposes must be protected with the help of encryption technology. Under general DPC provisions, encryption keys must be provided to defence counsels in criminal allegations in case of a reasoned order issued by a public prosecutor.

In addition, operators must comply with the following decisions of the Italian Data Protection Authority:

- "*Implementing Measures with Regard to the Notification of Personal Data Breaches*" of 4 April, 2013, which specifies the content of the "security and personal data breach Plan", required by Article No. 32 *bis* of DPC, taking account of the Recommendations of ENISA (the European Network and Information Security Agency) and the obligation of data breaches notification to the Data Protection Authority; and
- "*Measures and arrangements applying to the controllers of processing operations performed with the help of electronic tools in view of committing the task of system administrator*" of 27 November, 2008, which sets out measures and arrangements to be implemented by all the controllers of processing operations concerning personal data that fall within the scope of application of the DPC and are carried out with the help of electronic tools.

4.5 What call data are telecoms or internet infrastructure operators obliged to retain and for how long?

Data retention is regulated by Article Nos. 123 and 132 of the Data Protection Code.

Under Article No. 123, telephone and traffic data must be retained and stored for a period of six months for the purpose of payment.

Article No. 132 of the Data Protection Code, which was emended in compliance with the Data Retention Directive No. 2006/24, provides that telephone traffic data must be retained and stored by the provider for 24 months as from the date of the communication for judiciary purposes, whereas electronic

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communications traffic data, except for the contents of communications, must be retained by the provider for 12 months as from the date of the communication, for the same purposes. The data related to unsuccessful calls that are processed on a provisional basis by the providers of publicly available electronic communications services or a public communications network shall be retained for 30 days.

However, Article No. 132 of the Data Protection Code should be emended soon, taking into account that on 8 April, 2014, the Court of Justice of the European Union declared invalid the Data Retention Directive No. 2006/24 (Judgment in Joined Cases C-293/12 and C-594/12, *Digital Rights Ireland* and *Seitlinger and Others*).

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in Italy?

The distribution of audio-visual media is governed by Legislative Decree No. 177 of 31 July, 2005 (so-called "Radio-Television Consolidation Act"), as amended by Legislative Decree No. 44 of 15 March, 2010 (also known as *Decreto Romani*), which lays down the general principles for the provision of audio-visual and radio media services, in accordance with Directives No. 2007/65/EC, and No. 2010/13/EU. In particular, Legislative Decree No. 44/2010, issued in adoption of Directives on audio-visual media services, introduced new rules governing authorisations and general provisions on advertising, European works promotion obligations, freedom of the press, corrections and the protection of minors, including linear and non-linear (i.e. on-demand) services. The Consolidation Act defines an audio-visual media service as a service which is under the editorial responsibility of a media service provider, the principal purpose of which is the provision of programmes, in order to inform, entertain or educate the general public by electronic communications networks. Such an audio-visual media service is either a television broadcast or an on-demand audio-visual media service.

5.2 Is there a distinction between the linear and non-linear content and/or content distributed over different platforms?

Under the Consolidation Act, audio-visual media services include: (i) television broadcasting – defined as an audio-visual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule, specifically analogue and digital television, live streaming, webcasting and near-video-on-demand; and (ii) on-demand audio-visual media service – defined as an audio-visual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider (i.e. non-linear services, also referred to as "on demand").

5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

Under the Consolidation Act, the authorisation for the provision of audio-visual content and data by digital broadcasting on terrestrial frequencies is issued by the Ministry of Economic Development (Communications Department), under the rules laid down by AGCOM. With Resolution No. 353/11/CONS of 23 June, 2011, AGCOM has adopted the new regulation on terrestrial television broadcasting in digital technology, which regulates the supply of linear audio-visual media services, including the broadcasting of digital radio contents, associated interactive services or conditioned access services and network operators, on terrestrial television frequencies in digital mode. This new regulation replaces the preceding regulation (i.e. Resolution No. 435/01/CONS), taking into account also the new EU policies adopted in the meantime.

The provision of satellite audio-visual media or radio broadcasting services is subject to authorisation by AGCOM, under the principles of Resolution No. 127/00/CONS of 1 March, 2000. Likewise, the Consolidation Act of the audio-visual and radio media services rule that "*the performance of linear audio-visual or radio services on other electronic communication means*" and "*the supply of audio-visual services on request*" are both subject to the prior release of an authorisation issued by AGCOM.

Further to the authorisation for the provision of audio-visual media services or linear radio broadcasting on the Internet, Resolution No. 606/10/CONS states that the authorisations are valid for a period of 12 years from the date of issuance and may be renewed for additional 12-year periods. The amount of the fee payable for the issuance or renewal of an authorisation amounts to €500 for audio-visual services and €250 for radio broadcasting.

Pursuant to the provision of on-demand audio-visual services, resolution No. 607/10/CONS lays down that the authorisations are valid for 12 years from the date of submission of the certified report and may be renewed. The amount of the fee payable for the issuance or renewal of the authorisation amounts to €500.

AGCOM reserves the right to revise this amount in accordance with the development of the market.

Audio-visual media service providers are required: to guarantee the freedom and pluralism of media and television; to protect the freedom of expression of each individual, including freedom to hold opinions and to receive information and ideas regardless of frontiers, objectivity, thoroughness, fairness and impartiality of the information; to protect copyright and intellectual property rights; to guarantee the openness to different opinions and political, social, cultural and religious beliefs; to preserve the ethnic and cultural, artistic and environmental heritage, respecting civil rights and human dignity; and to promote the protection of children, as guaranteed by national, European and international regulatory framework.

However, the Electronic Communications Code regulates the procedures to get the rights to the temporary use of television frequencies by the authorised operators.

5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

Radio-television companies must submit a request to AGCOM for the transfer of licences and/or authorisations. AGCOM in that respect assesses, case-by-case, whether assignees retain the subjective and objective requisites inherent to the services to be provided, pursuant to Article No. 1, paragraph 6, letter c), and No. 13 of Law No. 249 of 31 July, 1997. In particular, assignment may not be authorised in case the operation may result in a violation of the antitrust thresholds set on concentrations in the media sector, as per Article No. 23 and No.

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24 of the Consolidation Act and of the regulatory provisions introduced by the following Resolution Nos. 646/06/CONS, 78/98 and 353/11/CONS.

In itself, the Electronic Communications Code (Article No. 14, paragraphs 4 and 5) regulates the procedure for the transfer of rights for temporary use of television frequencies by operators holding the legitimate availability in case of networks operating in analogue technology. Yet again, AGCOM scrutinises in line with the Antitrust Authority, the eventual implications of the transfer with respect to competition and market distortion.

6 Internet Infrastructure

6.1 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

Under Article 14 of Italian Legislative Decree No. 70/2003, online service providers are not liable for the mere provision of access to communications networks to third parties who perform illegal activities on the Internet, provided that said operator does not select or modify the information contained in the transmission.

In this regard, the Civil Court of Catania, Section IV, in its decision of 29 June, 2004, No. 2286, laid down that an Internet service provider can only be held liable for illegal transmission of original works protected by the intellectual property right on a website when it is aware of alleged illegal activities undertaken on that website and it neglects to proceed in order to remove the intellectual property works protected by copyright. In addition, the Supreme Court of Cassation, with its decision of 9 January, 2007, No. 149, stated that the free diffusion of intellectual property works protected by copyright on a website does not breach the intellectual property right law when the online service provider does not aim to make a profit. Moreover, the Civil Court of Rome, in 2007, set out that online service providers have to remove intellectual property works protected by copyright being illegally published by a user of the website and to prevent that user from accessing the website.

6.2 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?

Under Article 17 of Italian Legislative Decree No. 70/2003, implementing Directive 2000/31/EC, service providers are not obliged to monitor the information which they transmit or store; nor may they 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.

Nevertheless, the Civil Court of Rome, Section IX, under an ordinance of 9 February, 2007 on file sharing, ordered an ISP to provide the competent authority with the personal data, such as the IP address of the user that downloaded intellectual property works protected by copyright. However, in 2008 the Court of Rome, in a special section of industrial and intellectual property, laid down that the violation of intellectual property by means of "file sharing" is not necessarily a crime. Therefore, it does not justify the adoption of rules affecting the privacy of Internet users.

On 12 December, 2013, the Italian Communication Regulatory Authority (AGCOM) issued the Regulation about copyright protection in electronic communications networks. The Regulation aims to encourage an effective legal offer of contents and to promote users' access to such content. In addition, it states procedures for the establishment and termination of violation of copyright and related rights, carried out on electronic communications networks. The Regulation does not apply to end users of digital content, and it does not impact peer-to-peer applications. The measures aim to protect the freedom "of the network", because the procedure does not provide any measure of inhibition of access to Internet sites. In addition to measures of notice and takedown, under principles set out by Legislative Decree No. 70/2003, the Regulation states that AGCOM may act at the request of a party in order to protect the copyright.

On 20 June, 2014, the Italian Communication Regulatory Authority, for the first time, applied the principles set out by the Court of Justice of the European Union, in case C-466/12 (*Svensson* case). In its judgment of 13 February, 2014, the Court of Justice stated that the owner of a website may, without the authorisation of the copyright holders, redirect internet users, via hyperlinks, to protected works available on a freely accessible basis on another site. Hence, the Italian Communication Regulatory Authority closed the proceeding, taking into account that Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May, 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, must be interpreted as meaning that the provision on a website of clickable links to works freely available on another website does not constitute an 'act of communication to the public', as referred to in that provision.

6.3 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?

No, they are not. The Italian regulatory framework does not allow Internet service providers to differently charge and block different types of traffic over their networks.

6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content?

Under the Italian Legislative Decree, the Internet service provider and an Internet search engine operator (the Supreme Court of Cassation Sez. III, 05-04-2012, n. 55259) are exclusively liable for illegal information transmitted when they are aware of alleged illegal activities undertaken on a website.

In this regard, the Civil Court of Catania, Section IV, decision of 29 June, 2004, No. 2286, set out that an online service provider may not be considered liable for the storage of user-uploaded information on condition that: (a) the provider does not have actual knowledge of illegal activity and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity is apparent; or (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or disable access to the infringing content. The Court of Milan (judgment 9 September,

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2011) stated that a web hosting provider can be considered liable for copyright infringement, if a third party should inform it about the illegal activity and the provider does not act to remove the pirated/illegal contents.

On 3 February, 2014, the Italian Supreme Court of Cassation published the reasons for the judgment no. 5107/2014 (*Google vs Vividown*), which confirmed the sentence of 21 December, 2013, issued by the Milan Court of Appeal that acquitted Google's managers, who were charged of unlawful data processing, punished by the Italian Code for the protection of personal data (article no.167) for the publishing of a video showing an autistic boy being bullied by his classmates that was uploaded to the Google Video platform in summer 2006. The Supreme Court of Cassation pointed out that, under the Italian Data Protection Code and the Legislative Decree no. 70/2003 (E-Commerce Decree), an Internet hosting provider does not have any general obligation of supervision of the data upload by a third party on a website and does not have to give any information to the uploader concerning the Italian privacy regulatory framework. In addition, the Court of Cassation stated that Google can be qualified as Internet search engine service provider, according to the Opinion of the Advocate General, issued in case law C-131/12 of the Court of Justice of the European Union. Therefore, the Supreme Court of Cassation stated that the controller of the data upload to Google Video is exclusively the uploader of that video, who has the sole responsibility for the violations of the rules set out by the Italian Data Protection Code.

6.5 How are 'voice over IP' services regulated?

The provision of voice electronic communication services over Internet Protocol (VoIP) is regulated by Decision 11/O6/CIR of AGCOM (thereafter amended), which differentiates between VoIP calls to numbers starting with 0 and VoIP calls to numerations starting with "5". The latter calls fall in the class of nomadic voice communications services with distinctive functions, uses and technical characteristics. For the provision of VoIP services, operators need to apply for a general authorisation by the Ministry of Economic Development (Communications Department) under Article 25 of the Code. The annual administrative fee for the provision of nomadic voice services (numerations starting with "5") is approx. €600. Instead, the annual administrative fee for the provision of VoIP services under numerations starting with "0" varies depending on the territorial coverage of the service.

Resolution No. 128/11/CIR of the AGCOM has finalised on its part the details of the regulatory framework applicable to technical specifications (protocols and standards of reference) for IP interconnection, IP interconnection architecture (number of delivery points at national level) and migration duties regarding TDM (*Time-division multiplexing*) IP interconnection architecture. On 8 January 2013, this resolution was implemented by Technical Protocol ST769, issued by the Ministry of Economic Department (MISE).

On 28 November 2013, instead, AGCOM published Resolution no. 668/13/CONS, which adopted the bottom-up LRIC cost model to define prices for fixed line interconnection services for the years 2013-2015. This resolution stated the same termination rates incurred by operators having SMP, regardless of the technology implemented for the interconnection (TDM or VoIP/IP) from 1 July, 2013.

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