Italy


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1 Overview

1.1 Please describe the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction, in particular by reference to each sector's: (i) annual revenue; and (ii) 3–5 most significant market participants.

According to the last Annual Report of the Italian Communications Authority ("**AGCom**"), in the past year, the total revenue in the sectors of telecoms, media and postal services represented the 2.93% of the Italian GDP (-0.18% compared to 2018). In particular:

a) The total revenue of the telecom sector amounted to less than €30 billion , -4.4% of the revenue registered in 2018, mainly due to a contraction in the mobile network services (-7.3%), while the fixed network suffered smaller reductions (-1.7%). The main operators in fixed electronic services are Telecom Italia S.p.a. and Fastweb S.p.a., while the main players in mobile services are TIM S.p.a., WindTre S.p.a. and Vodafone S.p.a.

b) In 2019, the media market (including television, radio and internet services) registered an overall revenue of €15,443 billion (2.4% lower than in 2018). The main operators are Sky Italia, Rai and Mediaset.

1.2 List the most important legislation which applies to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction and any significant legislation on the horizon such as the regulation of online harms or artificial intelligence (please list the draft legislation and policy papers).

The communication sector is governed by Legislative Decree n. 259/2003 (also called "Electronic Communications Code" – "**ECC**") which implemented EU directives on electronic communications network and services. It contains general regulatory principles about telecoms, internet broadcasting and online services.

The other main pieces of legislation regulating telecom services are:

- Reg. 2016/679 ("General Data Protection Regulation" – "**GDPR**"), implemented in Italy by Decree n. 101/2018, which amended the Legislative Decree n. 196/2003 (the "Italian Data Protection Code" – "**IDPC**").
- Law n. 249/1997 which established the Italian Communications Authority.
- Legislative Decree n. 70/2003 (the "**E-commerce Decree**") governing the Internet Service Provider liability, which implemented EU Directive 200/31/CE.
- The audio-visual media sector is governed by Legislative Decree n. 177/2005 ("Consolidated Law on Radio and Audio-visual Media Services" – "**AVMS Code**"), which provides rules concerning radio and television broadcasting.

The other main pieces of legislation regulating media are:

- EU Directive 2010/13 ("**AVMS Directive**").
- EU Directive 2018/1808 concerning the provision of audiovisual media services ("**Audiovisual Media Services Directive**") in view of changing market realities.
- Law n. 21/2012, which provides rules on the Government's special powers –so-called "**Golden Powers**" – (as veto or the power to impose certain conditions) over corporate operations in such fields considered as strategic, including communications. Then, Decree n. 22/2019 included broadband electronic communications services based on 5G technology in these strategic fields and Decree n. 105/2019 included in the media sector. Decree n. 23/2020 (issued in the pandemic context) included also media pluralism sector in those subject to Foreign Direct Investment ("**FDI**" or "**Golden Powers**").

Telecoms and audio-visual sectors are also governed by Law n. 287/1990, as amended by Law n. 124/2017 (Italian Antitrust Law, "**IAL**"), and by legislative Decree n. 206/2005, consumer protection law (the "**Consumer 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, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.

The main regulators in telecoms and audio-visual media distribution sectors are:

- The Ministry of Economic Development (Communication Department –"**MiSE**"), which exercises its powers over authorisations, spectrum and frequencies allocation and communication services obligations. It has also supervisory and sanctioning powers.
- AGCom is the independent authority, which regulates (adopting secondary legislation) and supervises electronic communication, broadcasting and publishing markets. AGCom has the double task of ensuring fair competition between market operators and protecting consumers, jointly with the Italian Competition Authority.
- The Italian Competition Authority ("**AGCM**"), which is the independent authority dealing with competition and consumer protection.
- The Italian Data Protection Authority ("**IDPA**").

- The Ministry of Cultural Heritage and Activities and Tourism ("**MIBAC**") which promotes the use of media for cultural purposes.

1.4 In relation to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors: (i) have they been liberalised?; and (ii) are they open to foreign investment including in relation to the supply of telecoms equipment? Are there any upper limits?

The telecoms sector has been liberalised and the general authorisation regime applies; in order to offer electronic communication services (pursuant to Art. 25 ECC) operators shall file to MiSE a declaration, stating the intention to start supplying networks or electronic communication services.

Furthermore, the audio-visual media services sector has been liberalised: authorisations for terrestrial cable and digital services are issued at a national level by MiSE and at a local level by the regional competent bodies (Arts. 16, 18, 21 AVMS Code).

AGCom issues authorisations for the provision of linear media services and media services via satellite or other means of electronic communication.

Both in telecoms and media sectors, under reciprocity conditions, authorisations are open also to operators residing outside of the EU/EEA, but the Ministry of Economic Development may apply restrictions if justified by national security or defence issues. Pursuant to Golden Power regulation, any acquisition of assets in telecoms/media sectors must be notified to the Italian Government, which may forbid or impose conditions on the acquisition if it could give rise to harm national interests.

2 Telecoms

General

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

Italy is a member of the World Trade Organization ("**WTO**"). It is part of the GATS as an EU Member State and has implemented the WTO's telecoms reference paper.

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

The telecoms services sector is regulated by the ECC and AGCom issues resolutions as secondary legislation ruling the offering of electronic communication services and network.

MiSE has a key role in issuing authorisations and in allocating the spectrum.

Data Protection Authority issues resolutions addressed to operators, containing the rules for the storage, processing and use of personal data information.

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

AGCom is an authority independent from the Government that regulates and supervises electronic communication, broadcasting, publishing and audio-visual media markets. AGCom has also the power to impose sanctions in case of infringement occurred in its sector-specific legal framework and it also exercises its control in order to prevent the creation of dominant positions in the telecom and media sector for the protection of pluralism.

AGCM is an independent authority and it acts in order to protect competition and consumers. AGCM has investigative and sanctioning powers against anti-competitive practices, abuse of dominant position and unfair commercial practices also in the telecom sectors. The AGCM is also in charge for national merger control. AGCM is in charge for the application of the EU and national antitrust provisions.

Both authorities are independent from the Government and cooperate with each other. AGCM must request to AGCom a non-binding opinion in case of consumer protection investigations (e.g. misleading advertising) which may affect telecom and/or media markets.

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

Undertakings may appeal the decisions of the AGCOM and AGCM before the TAR of Latium ("First Instance Administrative Court" – "**TAR**") within 60 days from notification of the final decision. AGCom and AGCM decisions can also be appealed before the President of the Republic (*Ricorso Straordinario al Presidente della Repubblica* – "**PR**") within 120 days from notification of the final decision.

The TAR and PR decisions can be appealed before the Second Instance Administrative Court (*Consiglio di Stato* – "**CdS**"). Judgments issued by the CdS can be appealed, in a few rare circumstances, before the Supreme Court (*Corte di Cassazione*) under Art. 110 of the Administrative Procedural Code ("**CPA**"), and before the CdS under Art. 106 CPA and Art. 396 of the Italian Civil Procedural Code (*revocazione*).

The final statements of the AGCM and AGCom may be appealed by entities which have a legal interest to do so.

Licences and Authorisations

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

In the telecoms sector, a general authorisation regime applies. Pursuant to Art. 25 ECC, an operator who wants to provide electronic communication services or networks in Italy, must file a request to MiSE containing the technical information of the services to be provided and the information about the applicant.

Once the request has been notified to MiSE, the applicant may immediately start its activity. The MiSE, within 60 days from the notification of the request, shall verify if necessary conditions and requirements provided by the law are met by the applicant. If MiSE finds that the requirements are not met, it could deny the authorisation and forbid (with a reasoned resolution) the applicant to continue its activity. If MiSE does not respond within the 60-day term deadline, the authorisation shall be considered granted (the "**Italian silence-grant mechanism**").

All the authorised operators are required to enrol with the Register of Communication Operators ("**ROC**").

General authorisations have a duration of no more than 20

years, are renewable and could be transferred to third parties after the authorisation's transfer to third parties has been notified to MiSE.

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

The application to MiSE in order to obtain the general authorisation must include: i) general information about the applicant (registered office, contact details, VAT number, information about the legal representative of the company which is applying); ii) a brief description of the network/services with technical details; iii) the starting date of the activity; and iv) a declaration ("*autocertificazione*") by the applicant company's directors that they have not been involved in any criminal charges and they have not been convicted (criminal law infringement).

The general authorisation is subject to: i) the payment of an annual fee provided by law and set out in Annex 10 to the ECC; and ii) the payment of the annual contribution to the AGCom determined as a percentage of the turnover realised by the operator in authorised business.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded. Are there restrictions on the change of control of the licensee?

Pursuant to Art. 25 ECC, general authorisations have a duration of a maximum 20 years, and can be renewed and extended by an MiSE decree and during their duration for a maximum 15-year period, upon the presentation of a detailed technical-financial plan. General authorisations could be transferred to third parties upon prior notification to MiSE indicating the radio frequencies and numbers to be transferred; MiSE, within 60 days from the notification may refuse the authorisation transfer if the transferee does not have the requisites and conditions set out for the granting of the authorisation.

Individual radio frequencies licences for electronic communications may be transferred on a commercial basis to operators already authorised to provide a network with a similar technology (Art. 14 ECC). For more details, please see question 3.6.

The transfer of the radio frequencies licences for electronic communications must be notified to the Government (Golden Power). The Government could block the transfer and/or impose commitments if the radio frequencies are considered strategic for national interests.

2.8 Are there any particular licences or other requirements (for example, in relation to emergency services) in relation to VoIP services?

In 2006, AGCom with Resolution n. 11/06/CIR equated the supply of VoIP services with the traditional phone service. Thus, the general authorisation regime provided for traditional local phone services also applies to VoIP technology telephone services.

VoIP operators shall therefore fulfill the same obligations provided for the other traditional local phone services; for example, they must guarantee: i) the numbers' portability; ii) free access to emergency services; iii) the integrity of the public telephone network; iv) the calling line identification; v) the interconnection between different operators; vi) the protection of personal data and data relating to telephone traffic; and vi) the fulfillment of wiretap requests made by the judicial authority.

Public and Private Works

2.9 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?

Pursuant to Art. 86 of the ECC, the requests for the granting of rights to install telecoms infrastructures on private or public property must be submitted to the local authorities in charge of the managing of the areas where the infrastructure has to be installed (e.g. local municipalities, "Local Authority"). The Local Authority must grant the authorisation through simple, transparent, public and non-discriminatory procedures.

The Local Authority shall adopt the decision (grant or deny of the authorisation) within six months from the submission of the authorisation request.

Pursuant to Art. 88 of the ECC, if the installation of telecommunications infrastructures requires civil engineering works or, in any case, the carrying out of excavations and the occupation of public land, the interested parties are required to submit a filing to the Local Authority, using the request template provided by said authority.

Pursuant to Art. 87bis of the ECC, if the installation work is required for the implementation of mobile broadband network, the operator may start the work after a simple communication to the Local Authority (*Segnalazione Certificata di Inizio Attività* – "**SCIA**")

Access and Interconnection

2.10 How is wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?

Authorised telecoms operators that provide network or electronic communication services to the public have the right to negotiate the interconnection with other authorised operators and, in some cases, to obtain the access or the interconnection to networks located anywhere in Italy as well as in the European Union in order to ensure the interoperability of the telecommunication services within the EU (Arts 26.2, 40 and 41.1 ECC).

AGCom is required to use its regulatory powers in order to facilitate any operator access, interconnection, and interoperability to telecommunication services.

Pursuant to Art. 42 ECC, AGCom may impose operators which control the access to the final users ("**Incumbent**"), to grant access to competing operators to interconnect their respective networks (unbundling local loop) on the basis of fair and non- discriminatory conditions.

Pursuant to Art. 49 of the ECC, AGCom can also impose to the Incumbent to accept reasonable contractual terms and conditions for the requests for access to a competitor ("**Newcomer**"). If the Incumbent denies access to the Newcomer and the AGCom verifies that the refusal to grant access would hinder sustainable competition on the market, damaging end-users, AGCOM could impose access to the Incumbent infrastructure by the Newcomer requiring the access.

Pursuant to Art. 23 of the ECC, in case of disputes between the Incumbent and Newcomer with regard to access of infrastructure, AGCom, if required by at least one of the parties of the dispute, issues a reasoned binding decision resolving the dispute within four months from the parties' request.

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

Operators with a significant market power ("**SMP**") must respect the principles of transparency and non-discrimination. An operator is considered as an SMP, when either individually or jointly with others, it holds a dominant position in the market, therefore of such economic strength to behave independently from competitors, customers and consumers.

Pursuant to the "transparency obligation" set out in Art. 46 of the ECC, AGCom may oblige SMPs to disclose accounting information, technical specifications, network characteristics, terms and conditions for supply and use and prices, also of B2B access and interconnection services offered to third parties.

Pursuant to Art. 19 of the ECC, AGCom shall define the relevant markets in accordance with competition law principles and it shall require AGCM's opinion in order to periodically analyse the relevant markets and to identify the SMPs.

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?

Pursuant to Art. 50 of the ECC, AGCom can impose price controls or criteria for setting prices (i.e. cost-oriented prices) on SMPs, through specific resolutions, as far as market analysis reveals that the absence of competition would mean that the operator concerned could keep prices at an excessive high level or compress prices in damage of the final users (e.g. an SMP imposes a wholesale price higher than the price charged to its final customers for the same service).

The AGCom has used its regulatory power aimed at imposing to SMP criteria for the definition of terms and conditions for access and interconnection to a fixed and/or mobile network.

In 2010, with Resolution n. 499/10/CONS, AGCom has completely revisited the price test system, originally introduced by Resolution 152/02/CONS, modernising it and developing its field of application to avoid margin squeeze problems.

With Resolution n. 718/08/CONS, through which the proposal for commitments submitted by an SMP (Telecom Italia S.p.A. – "**TI**") was approved at the completion of an AGCOM in-depth investigation against TI (resolution n. 351/08/CONS) – TI agreed to implement commitments aimed at pursuing the scope of non-discrimination; it also agreed to implement a monitoring system and to create an internal division responsible for providing access and/or interconnection services.

Here, some other AGCom Resolutions: i) Resolution 152/02/CONS Measures aimed at guaranteeing the full application of the principle of equally internal and external treatment by SMP in fixed telephony; ii) Resolution 718/08/CONS Approval of the commitment proposal presented by the TI concerning access to fixed-line network (See also Resolution 731/09 / CONS); and iii) Resolution 499/10/CONS (regulation of the price test methodology for access to fixed-line network owned by an SMP (See also Resolution 600/11/CONS).

With regard to access to the mobile network, AGCom in several resolutions (resolution n. 667/08/CONS and 621/11/CONS,) stated that the four (now three) main operators in the mobile services (H3G, Telecom Italia, Vodafone, and Wind) have significant market power in voice call termination traffic on their mobile network. Therefore, AGCom imposed on the four operators price control obligations (access/interconnection to other mobile operators).

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

Pursuant to Art. 48 of the ECC, AGCom may impose accounting separation in relation to particular activities carried out in the interconnection or access fields. In particular, AGCom may impose to the vertically integrated company to make public prices and wholesale prices in compliance with the obligation of non-discrimination.

Pursuant to Art. 50*bis* ECC, if AGCom notes that the appropriate measures and obligation already imposed on the SMP were ineffective and that there are persistent competition problems or market failures in relation to the wholesale supply of certain access products (i.e. deriving from possible duplication of investments in ultra-broadband infrastructures), the AGCom may impose on SMPs vertically integrated the obligation of functional separation.

AGCom does not have the power to impose any form of legal separation to SMPs.

2.14 Describe the regulation applicable to high-speed broadband networks. On what terms are passive infrastructure (ducts and poles), copper networks, cable TV and/or fibre networks required to be made available? Are there any incentives or 'regulatory holidays'?

Pursuant to Decree n. 33/2016, each infrastructure manager and each network operator may offer access to its own infrastructure to other network operators in order to install high-speed networks (Art. 3).

Where network operators submit written application for the installation of high-speed networks, infrastructure managers and network operators must grant access. Access can be denied only in these cases:

i) the physical infrastructure is objectively unsuitable for hosting the elements of high-speed electronic communication networks;
ii) space unavailability to house the high-speed network;
iii) the high-speed could determine or increase the risk for safety and security of the net;
iv) there are alternative means to physical infrastructure available on fair and reasonable conditions.

The Italian law provides tax credits and other tax incentives for the implementation of high-speed broadband network infrastructures. Italian regulation also provides simplifications for the procedure authorisations for the implementation of said infrastructures.

Price and Consumer Regulation

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

AGCOM, with resolution n. 121/17/CONS of 15 March 2017, imposed on operators offering fixed and/or mobile network services (electronic communication to end consumers) to adopt "... transparent, comparable, adequate and updated information on current prices regarding access and use of the services provided ...".

Art. 19-*quinquiesdecies*, Law 4 December 2017, n. 172, states that payment of electronic communication services (with the

exception of non-renewable contracts with a duration of less than one month and other promotional non-renewable offers) has to be proposed to consumers with an instalment on a monthly basis only.

The AGCom is in charge of i) ascertaining the violation of these obligations, and ii) imposing sanctions and restitution obligations in favour of consumers.

2.16 Is the provision of electronic communications services to consumers subject to any special rules (such as universal service) and if so, in what principal respects?

The ECC identifies those services to be made available to consumers as universal service obligation:

i) pursuant to Art. 54 ECC, fixed connection to a public communication network must be guaranteed to end consumers by at least one operator;
ii) pursuant to Art. 56 ECC, operators must make available public pay telephones;
iii) pursuant to Art. 57 ECC, AGCom shall adopt specific measures in order to ensure that disabled users could enjoy universal services at an equivalent level to that granted to the other users and at an affordable price;
iv) pursuant to Art. 58 ECC, AGCom may designate one or more operators ("**Designated operators**") which shall guarantee the universal services on the whole national territory while respecting the principle of objectivity, transparency, non-discrimination and proportionality (Telecom Italia S.p.a. is actually responsible for providing the universal service in Italy); and
v) pursuant to Art. 59 ECC, AGCom monitors the universal services prices evolution and it may impose to Designated Operators to adopt different tariff levels in order to guarantee that all consumers (i.e. also low income consumers) could have access to the network.

If, on the basis of the net cost calculation, AGCom finds that the Designated Operator is subject to an unfair burden, it will decide to share the universal services net cost between the other telecom providers (Art. 62 ECC).

Consumers have also the right to number portability, therefore they have the right to change operator while keeping their number.

Numbering

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

Law n. 249/97 and ECC entrusted AGCom with the task of identifying the criteria for defining the national numbering plan for telecommunication network and services, which shall be inspired by principles of objectivity, transparency, non-discrimination, fairness and timeliness.

AGCom determines which numbers shall be assigned to the different services (the national telephone numbering plan is organised by services, i.e. the first digit number provides a first classification of the service), while MiSE assigns national numbering resources.

The National Numbering Plan has been issued by AGCom with Resolution n. 8/15/CIR as modified by Resolution n. 17/17/CIR.

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

All authorised operators must ensure access to emergency phone numbers. The National Numbering Plan regulates emergency numbers, free and premium services and VoIP services.

2.19 Are there any special rules relating to dynamic calling line identification presentation?

Where presentation of calling or connected line identification is available, the provider of a publicly available electronic communications service shall inform subscribers and users of the existence of such service.

The Italian Data Protection Code provides that if the calling line identification presentation is available, the provider shall ensure: i) that the calling user has the possibility, free of charge and using simple means, to eliminate the presentation of calling line identification on a per-call basis; and ii) that the called subscriber has the possibility, free of charge and using simple means, to prevent presentation of identification of incoming calls and of connected line identification to the calling user (Art. 125 IDPC).

2.20 Are there any obligations requiring number portability?

AGCom ensures that all users could change operator while keeping their own numbers. AGCom guarantees that portability's tariff is cost-oriented and that any portability charges do not disincentive users to change the service provider (Art. 80 ECC).

3 Radio Spectrum

3.1 What authority regulates spectrum use?

Pursuant to Art. 14 of the ECC, MiSE and AGCom ensure the efficient management of radio frequencies and spectrum use; in particular, MiSE provides for national distribution plan, which divides radio spectrum into frequency bands, while AGCom regulates the spectrum use and radio frequencies assignment plans, which assigns frequencies to the radio stations. The final allocation of frequencies is made by MiSE.

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

When radio frequency can be used in a shared way, without the risk of interference (or in any case, a very low risk) and therefore it is possible to guarantee the quality of the service, general authorisation is sufficient to use these frequencies.

When, considering the number of potential users, the shared use of radio frequencies by all potential users is not possible (e.g. in order to avoid harmful interference or to ensure the technical quality of the service), individual rights may be granted upon the request to MiSE (Art. 27 of the ECC).

Since resources are scarce, AGCom, in order to ensure efficiency in the use of radio frequency, may limit the number of rights of use to be granted for radio frequencies (Art. 29 of the

ECC). If individual rights of use are limited, they are assigned through open, objective, transparent, non-discriminatory and proportionate competitive procedures (auctions) carried out by AGCom.

3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions? Are there penalties for the unauthorised use of spectrum? If so, what are they?

Pursuant to Art. 99.5 and 105 of the ECC, licence-exempt use of spectrum could be made only for usage of equipment that uses collective frequencies for very short connections with short range as, for example, motion detection and alarm systems, aids for disabled people and radio toys.

Pursuant to Art. 98 of the ECC, in case of unauthorised installation or supply of radioelectric services, MiSE imposes fines from €50,000 to €2.5 million, if the fact does not constitute a criminal offence (in the latter case, the criminal law sanction can be imposed). If the violation concerns the installation of sound or TV broadcasting systems, these conducts give rise to a criminal offence that is punished with the imprisonment from one to three years (the penalty is reduced by half in case of local broadcasting).

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

Pursuant to Annex 10 of the ECC, operators with a general authorisation for the use of radio frequency spectrum must pay an annual administrative fee determined on the basis of the catchment area of the potential radio listeners.

Operators providing services on the basis of individual right licences must pay a fee determined on the basis of the radio bandwidth extension used.

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

Pursuant to Decree 21/2012 ("Golden Power Law" as integrated and modified by Decree 23/2020), undertakings must notify within 10 days to the President of the Council of Ministers any agreement which determines change of control of an operator in the telecom sector (considered as a strategic sector). The President has 45 days to impose its veto or to impose specific conditions on the notified change of control transaction (the "**Transaction**"). The silence-grant mechanism applies to this procedure, then if the 45-day term expires without Government intervention, the Transaction has to be considered as cleared.

When the change of control is due to a merger operation, if the total turnover achieved at national level by all the operators involved in the operation is more than €504 million and the total turnover achieved individually at national level by at least two of the operators involved is more than €31 million, the undertakings involved must notify the merger to the AGCM (Law. n. 287/1990 as integrated by AGCM Resolution n. 28177/2020).

The change of control must be also communicated to the ROC.

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

Operators holding individual rights of radio frequencies use can transfer or rent those frequencies to other undertakings.

MiSE and AGCom have the power to forbid the transfer or rent of any individual rights of use of radio frequencies that have been originally achieved by the transferor or by the lessor for free (Art. 14*ter* of the ECC).

The rights of use of frequencies in bands with limited availability can be transferred on a commercial basis only to entities that already own authorisation for the use of radio frequencies granted by MiSE.

Furthermore, the General Authorisation can be traded (see Art. 25, 8 of the ECC described in question 2.7).

The intention of an operator to transfer the rights of use of the radio frequencies must be notified to MiSE and AGCom.

MiSE shall request to the AGCom with a non-binding opinion and, within 90 days from the notification, MiSE shall communicate its final decision (authorisation to transfer the rights of use or the refusal with the reasoning of the refuse) to the entity requiring the authorisation.

The successor company is required to notify MiSE the transfer of the rights within 60 days.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework for cybersecurity.

The main rules concerning cybersecurity in Italy are:

i) Decree of the President of the Council of Ministers n. 131/2020 containing criteria for identifying the subjects included in the national cyber security perimeter.
ii) Law-Decree n. 22/2019 (Government Control – "**FDI**").
ii) Decree of the President of the Council of Ministers 17 February 2017 issuing guidelines for national cyber protection and cyber security.
iii) Decree n. 65/2018 laying down specific measures for a high common level of security of network and information systems across the EU (which implemented EU Directive n. 2016/1148 "**NIS Directive**").
iv) Reg. 2019/881 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU).
v) Decree n. 105/2019 adopted in order to ensure a high security level of networks and information/IT systems of the public administrations, as well as public and private bodies, through the establishment of a national cyber security perimeter.
vi) GDPR and the Italian Data Protection Code.
vii) The ECC (Legislative Decree n. 259/2003).

4.2 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.

Pursuant to Art. 96 ECC, requests for wiretapping (which must be authorised by a court order) or information made by the competent judicial authorities are mandatory for telecoms operators.

Pursuant to Art. 132 IDPC, telephone traffic data shall be retained by the provider for 24 months as from the date of the communication with a view to detecting and suppressing criminal offences, whereas electronic communications traffic data, except for the contents of communications, shall be retained by the provider for 12 months as from the date of the communication.

Pursuant to Art. 55.7 of the ECC, telecoms operators are required to make available the lists of their users (identified through an identity document) to the Data Processing Centre of the MiSE, and the judicial authority (criminal prosecutor) may access, for justice purposes, to these lists.

4.3 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?

Pursuant to Art. 96 of the ECC, operators must comply with requests for wiretapping made by the judicial authorities for justice purposes (criminal prosecutor).

When it is necessary to obtain information concerning the prevention of crime and the prosecutor in charge of criminal offence (*Procuratore della Repubblica*) considers that the suspicions of a criminal offence violation underlying the preventive interception activity are well founded, it authorises the wire-tap for a maximum of 40 days extendable only once for 20 days (Art. 226 Implementing Provisions to the Italian Criminal Procedure Code). The Public Prosecutor may authorise through the same procedure, the telephone and telematics communications' tracing, as well as the acquisition of external data or any other useful information owned by the telecoms operator.

Interception requirements include traditional calls, SMS, the communication flow relating to IT or telematics systems (Art. 266*bis* Italian Criminal Procedure Code "**ICPC**"), emails and VoIP calls.

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

Pursuant to Art. 132.3 of the IDPC, the attorney of a person investigated for a criminal offence may request a telecom operator for access to data concerning incoming telephone calls of his/her client if such information could be essential for the defence of his/her client.

Also, the attorneys of the parties injured by a crime and/or requiring restoration for the damages allegedly provoked by a crime (*persona offesa dal reato – parte civile*) may request access to data concerning incoming telephone calls of the accused person to a telecom operator, if the public prosecutor authorises such a request.

The interception of telephone conversations or communication is allowed only in proceedings relating to very serious crimes listed in Art. 266 of the ICPC (as crimes against the public administration punished with no less than five years' imprisonment, including crimes relating to drugs, arms etc.).

In the case of crimes listed by Art. 266 of the ICPC, if there is good reason to believe that the criminal activity is taking place, environmental conversation interceptions are allowed and it can be done also by installing a software (*captatore informatico*) on a mobile device. For this kind of interception, the Public Prosecutor must ask the judge to authorise it and the judge could give its authorisation with a reasoned decree where there are serious indications of crime and evidence that the interception is absolutely essential for the investigations (Art. 267 of the ICPC).

In particularly urgent cases, when there is well-founded reason to believe that the delay could cause serious damage to the investigations, the public prosecutor orders the interception with a reasoned decree, which must be communicated immediately and in any case no later than 24 hours to the judge. The judge decides within 48 hours and, if the decree of the public prosecutor is not validated within the deadline, the interception cannot be continued and the interceptions already achieved cannot be used (Art. 267.2 of the ICPC).

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

Pursuant to Art. 2septies of the IDPC, genetic data, biometric data and data relating to health must be processed adopting serious safeguards measures, including encryption and pseudonymisation techniques.

Pursuant to Art. 132ter IDPC and the Resolution of the Italian Data Protection Authority n. 356/2013, data controllers must prevent the exchange of information between the Judicial Authority and the electronic service providers through unreliable communications networks, by adopting safe protocols through encryption keys, which ensure the communication parties' identification and data protection. In case of reasoned decree of the Judicial Authority, operators must provide encryption keys.

The General Resolution, issued on 17 January 2008 by the Italian Data Protection Authority, about telephone and telematics traffic data security, provides that the processing of telephone and electronic traffic data only by operators using an IT strong authentication system, consisting in the simultaneous use of at least two different authentication technologies. Traffic data processed for justice purposes must be protected with encryption systems in order to avoid the risk of accidental acquisition or alteration deriving from maintenance operations of IT equipment (in particular to minimise the risk of undue access to databases).

4.6 Are there any specific cybersecurity requirements on telecoms or cloud providers? (If so, please list the relevant legislation.)

In 2016, the EU adopted Directive 2016/1148 (also called the "**NIS Directive**") concerning measures for a frequent level of security of network and information systems across the Union, which was implemented in Italy by Legislative Decree n. 65/2018.

Pursuant to Art. 14 Decree 65/2018, the digital services providers ("**DSP**") shall adopt appropriate measures in order to ensure network and information system's security and they should take into account: i) systems and installations security; ii) the handling of accidents; iii) the business continuity; iv) monitoring, auditing and testing activity; and v) compliance with the international security standards. DSPs must notify to the Interministerial Committee for the Security of the Republic ("**CISR**") and to the NIS competent authority any accident with an impact on the online market, online search engines and cloud computing services.

In 2017 and 2018, Italy streamlined and strengthened its cybersecurity structure in order to boost its cyber capabilities. The Security Intelligence Department ("**DIS**") has a key role in the Italian cybersecurity governance.

Law n. 133/2019 ("**Cybersecurity Law**") contains provisions on national cybersecurity in order to guarantee the highest level of security of networks, information systems, information technology services for the public administration and private entities.

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

Telephone traffic data shall be retained by the provider for 24 months as from the date of the communication in order to detect

and suppress criminal offences; whereas electronic communications traffic data (except for the contents of communications), shall be retained by the provider for 12 months (Art. 132 of the IDPC). The data related to unsuccessful calls shall be retained for 30 days.

5 Distribution of Audio-Visual Media

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

The distribution of audio-visual media is regulated by: i) Decree n. 177/2005 (the Consolidated Text on Radio and Audiovisual Media Services – "**AVMS Code**") which sets out the rules for the broadcasting system; and ii) AGCom resolutions for sector-specific regulation (Res. n. 606/10/CONS about the provision of linear or radio audio-visual media services and Res. n. 607/10/CONS about the provision of on-demand audio-visual media services).

TV-Radio services are regulated on the basis of principles of pluralism and freedom of expression and opinion, and the access to these services is granted to the users upon non-discrimination criteria.

5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

EU Directive 2010/13 regulated audio-visual media services in order to facilitate the creation of a single information space by applying at least a minimum set of coordinated standards to all audio-visual media services, i.e. to television broadcasting services (linear services) and to on-demand audio-visual services (non-linear services). Italy implemented the Directive by introducing in the AVMS Code the new notion of "audio-visual media services" which now includes television broadcasting (both analogue and digital technology), live streaming, television broadcasting on the internet and video on demand. The rules previously referred to the "television" sector, now therefore refer to the "services of audiovisual media" intended as any type of program or schedule broadcast on networks of electronic communications, regardless of the transmission platform used.

EU Directive 2018/1808 introduced specific rules, applying both to linear and to on-demand media services, in order to ensure that programs which could "seriously harm the physical, mental or moral development of minors" are made available to the public only in such a way as to prevent minors from seeing or listening to them normally by selecting an appropriate time for broadcasting, verification tools or other technical measures proportionate to the potential damage.

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

Pursuant to the AVMS Code, audio-visual services operators must operate under a general authorisation regime (Art. 15 AVMS Code). Authorisations for terrestrial cable and digital services are issued at national level by MiSE and at local level by the regional competent bodies (Arts 16, 18, 21 AVMS Code).

AGCom issues authorisations for the provision of linear media services and media services via satellite or other means of electronic communication (Art. 20 AVMS Code and AGCom Resolution 606/10/CONS); the authorisation has a 12-year duration. The silence-grant mechanism applies to the general authorisation system, then, if the competent authority does not deny the authorisation within the deadline, the authorisation must be considered granted.

The mere notification to MiSE is sufficient for the simultaneous transmission of contents by means of any electronic communication network, which broadcast in clear on terrestrial frequencies.

Providers of non-linear audio-visual media services on the Internet are required to submit a certified start of activity report ("**SCIA**") to AGCom. The registration in the ROC is always required.

In 2018, the Budget Law provided rules for a TV-Radio frequency re-organisation plan, in order to allocate the 700 MHz band (normally used for DDTV broadcasting) to the development of 5G technology. In 2019, the Budget Law established that the granting of rights of use of frequencies, must take place through an "onerous procedure without competitive bids"; each applicant must submit a bid with both technical and economic offer. The final allocation shall be based on the evaluation of the tenders submitted in order to enhance innovation and the quality of the technological infrastructures (Annex A to AGCom Res. n. 232/20/CONS).

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

Pursuant to AGCom resolution n. 606/10/CONS, licences may be transferred to another operator (which must meet the requirements provided by the law) upon formal notification to the competent authority (MiSE or AGCom).

Any change of control of the licence and any assignment of the licence must be notified to AGCom, which, before authorising the transfer, must assess if the transfer may determine the creation of a dominant position or if it could limit the information pluralism.

Pursuant Decree 21/2012 ("Golden Power Law" as integrated and modified by Decree 23/2020), undertakings must notify within 10 days to the President of the Council of Ministers any agreement which determines change of control of an operator in the telecom sector (considered as a strategic sector). The President has 45 days to impose its veto or to impose specific conditions on the notified operation. The silence-grant mechanism applies to this procedure, then if the 45-day term expires without Government intervention, the golden powers are intended as not to be exercised.

Pursuant to Art. 43 of the AVMS Code, AGCom shall adopt appropriate measures in order to prevent the creation of dominant positions. Pursuant to Art. 43.7, the same provider cannot be the owner, neither through subsidiaries companies, of more than 20% of total TV programmes by means of terrestrial technologies (this percentage is calculated on the total number of licensed TV programmes, in both analogue or digital technique). Pursuant to Art. 43.11, telecoms providers which have revenues greater than 40% of the total revenues on the telecom services market, cannot achieve revenues exceeding the 10% of the total revenues on the integrated communication market. The MiSE and the AGCom have the competence to monitor and ensure media plurality. The AGCom may take appropriate measures, including the prohibition of proposed transactions. Also, the antitrust merger control regime is applicable (see question 3.5).

In 2017, the EU Commission approved Vivendi's acquisition of Telecom Italia, but AGCom with Res. n. 178/17/CONS found, after this merger, that Vivendi already had a 28.8% stake

in Mediaset and exceeded the limits within the integrated system of communication set out in Art. 43.11 of the AVMS Code; AGCom, therefore, ordered Vivendi to remove the position in violation of the relevant law within the next 12 months.

In this context, the Italian Government, considering that Vivendi's growing control over TIM could raise risk for national security interests, exercised its Golden Powers. The Government said that telecoms is a strategic sector and the influence exercised by Vivendi on TIM could have led to changes in the organisational and strategic policies and be more relevant to the security and integrity of the networks. The Government, therefore, imposed several commitments such as ensuring the presence on the board of directors of at least one member with exclusive Italian citizenship (Decree 16/10/2017).

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?

Pursuant to Art. 17 of Decree 70/2003 ("**E-commerce Decree**"), the provider is not required to monitor the information it transmits or stores or to actively search for facts or circumstances that indicate illegal activities.

The provider is required to: i) inform the Judicial Authority without delay if it is aware of any alleged illegal activities; and ii) provide without delay to the requesting competent authority the information that allows the identification of the recipients of its services in order to identify and prevent illegal activities.

If the provider does not comply with these provisions, it is civilly responsible.

In the Italian case law, courts presume the provider's knowledge of the illegal activity, when the providers have received specific detailed reporting from third parties (not necessarily public authorities) of such unlawful activity and, in this case, they are required to inform the authority in charge, providing all the information in order to identify the violations. The ISP is also required to adopt the reasonable measures aimed at blocking or preventing the law infringement.

The Italian Court of Caltanissetta (with Order 29/03/2018, case *Teresi vs Facebook Ireland Limited*) and the Court of Naples (Order 3/11/2016, case *Cantone vs Facebook Ireland Limited*) stated that Facebook is a neutral hosting provider, with no active monitoring obligation.

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

In the *Yahoo – RTI Mediaset* case, the Italian Supreme Court stated that, even if Yahoo (as a passive ISP) did not have an active monitoring obligation, it was civilly responsible for copyright violation for not having promptly removed the contents after the report made by Mediaset. The Court stated that the ISP responsibility arises when the provider becomes aware of the violation (*Corte di Cassazione* n. 7708/2019).

In this important decision, the Italian Supreme Court also recognised the distinction between passive and active ISP. The "active" ISP is a provider that also carries out activities that are not purely automatic and passive, such as content indexing, selection, organisation, editing, filtering as well as advertising sales. In this case, the ISP could be liable for any damage caused by its activities or actions performed on its platform.

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

EU Reg. 2015/2120 introduced new rules about net neutrality and AGCom supervises on the application of the Regulation.

In particular, end-users shall have the right to access and distribute information and content, use and provide applications and services, and use terminal equipment of their choice, irrespective of the end-user's or provider's location or the location, origin or destination of the information, content, application or service, via their internet access service.

Net neutrality is regarded as a fundamental principle of the Italian legal framework, according to which any form of electronic communication should be treated in a non-discriminatory way, regardless of the content, application, service, terminal, as well as the sender and recipient. AGCom shall regulate, supervise and enforce in order to guarantee users' right to an open Internet.

AGCom Resolution n. 348/18/CONS provides that operators cannot oblige users to use their Internet access terminal (including modem/router) and users have the right to accept only the supply of the electronic communication service without the provision of the terminal. Where providers offer integrated services as Internet access and/or network connection through offers in combination with the terminal equipment, they shall highlight separately modalities and offer conditions (i.e. installation costs, billing system, terminal costs, etc.).

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

AGCom may ask internet service providers to block the access to sites or contents, which infringe copyright, but the Administrative Supreme Court ruled that AGCom cannot impose administrative fines (*Consiglio di Stato* n. 4993/2019).

AGCom may also order a block of access to websites or contents concerning unauthorised gaming or trading platform and child abuse.

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