

Indonesia

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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.

(a) Telecoms and Internet

Mobile cellular business remains the largest telecoms industry in Indonesia. The telecoms sector in Indonesia is one of the world's most crowded cellular telecoms markets, due to the country's large population, the vast archipelago and the current affordable price in the technology devices market. Nowadays, because of the geographic challenges, there is an increasing demand for mobile data services rather than fixed line subscribers. There are approximately 278 million mobile subscribers in Indonesia, leaving only 11 million fixed line subscribers. Further, nearly 85% of the Indonesian population own mobile phones while 43% carry smartphones. This leads to the domination of mobile operators in the Internet Service Providers ("ISP") sector, meaning that most of the approximately 53 million internet users in Indonesia are utilising their mobile phones to gain internet access. Meanwhile, fixed line ISPs are aiming for corporate and residential customers, and apartment buildings. Said ISPs are currently focusing on enhancing their infrastructure by building fibre-optic networks of varying sizes and capacities in several of the largest cities in Indonesia.

Telkomsel, Indosat Ooredoo and XL Axiata are three major operators for mobile subscribers in Indonesia, which dominate 80% of the telecoms market. Whilst Telkomsel is primarily owned by a public listed state-owned telecoms company, namely PT Telekomunikasi Indonesia Tbk (Telkom), the other two major operators are controlled by foreign telecoms companies. Axiata (a Malaysia-based telecoms company) owns 66.4% of XL Axiata's shares, whilst Ooredoo (a Qatar-based telecoms company) owns 65% of Indosat Ooredoo's shares. In respect of annual revenue, Telkomsel has the largest annual revenue among its competitors. In 2017, Telkomsel had IDR 93.2 trillion in annual revenue, while Indosat Ooredoo had IDR 29.9 trillion and XL Axiata had IDR 22.9 trillion.

(b) Audio-Visual Media Distribution

The rise of online digital advertising does not hold back the domineering control of the television sector in the media landscape of Indonesia. With a total audience of almost 240 million people, the television sector is held by many large and diversified media groups, the most significant of which are Media Nusantara Citra (MNC) Group and Trans Corp.

Subscription-based television services are also penetrating the market in numerous major cities in Indonesia, along with their bundled ISP services for residential customers. MNC Group, First Media Group, and recently Telkom are, among others, the big players for bundled cable television-ISP services in Indonesia. However, compared to the annual revenue for the ISP service providers through mobile services, the bundled cable television-ISP service providers are still far behind. For instance, the subsidiaries of First Media Group and MNC group for this particular sector, respectively PT Link Net Tbk and PT MNC Sky Vision Tbk, only reached IDR 3.3 trillion and 2.6 trillion respectively for their 2017 annual revenues.

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.

(a) Telecoms and Internet

- Law No. 36 of 1999 on Telecommunication ("Telecoms Law").
- Law No. 11 of 2008 on the Information and Electronic Transaction, as lastly amended by Law No. 19 of 2016 ("EIT Law").
- Government Regulation No. 24 of 2018 on the Online Single Submission ("GR 24/2018").
- Government Regulation No. 52 of 2000 on Telecommunications Operations dated 11 July 2000 ("GR 52/2000").
- Government Regulation No. 82 of 2012 on Electronic System and Transaction Operations.
- Ministry of Communications and Informatics ("MCI") Regulation No. 7 of 2018 on Electronic Integrated Business Licensing Services in the Communications and Informatics Sector ("MCI Regulation 7/2018").
- MCI Regulation No. 01/PER/M.Kominfo/01/2010 on the Provision of Telecommunication Networks, as lastly amended by MCI Regulation No. 7 of 2015 ("MCI Regulation 01/2010").
- MCI Decree No. KM 21 of 2001 on the Provision of Telecommunications Services as lastly amended by MCI Regulation No. 8 of 2015 ("MCI Regulation 21/2001").
- MCI Regulation No. 8/PER/M.Kominfo/02/2006 on Interconnection ("MCI Regulation 8/2006").
- MCI Regulation No. 19 of 2014 on the Handling of Negative Contents in the Internet Website ("MCI Regulation 19/2014").
- MCI Regulation No. 36 of 2014 on the Registration Procedure of Electronic System Operators ("MCI Regulation 36/2014").

- MCI Regulation No. 20 of 2016 on Individual Data Protection in Electronic System (“**MCI Regulation 20/2016**”).
 - MCI Circular Letter No. 3 of 2016 on the Provision of Application and/or Content Services through Internet (Over the Top) (“**MCI Circular Letter 3/2016**”).
 - MCI Regulation No. 8 of 2017 on Provision of Internet Telephone Services for Public Purposes (VoIP) (“**MCI Regulation 8/2017**”).
- (b) Audio-Visual Media Distribution**
- Law No. 32 of 2002 on Broadcasting (“**Broadcasting Law**”).
 - Government Regulation No. 24 of 2018 on the Online Single Submission (“**GR 24/2018**”).
 - MCI Regulation No. 7 of 2018 on Electronic Integrated Business Licensing Services in the Communications and Informatics Sector (“**MCI Regulation 7/2018**”).
 - MCI Regulation No. 18 of 2016 on the Procedures and Requirements for Broadcasting Licenses (“**MCI Regulation 18/2016**”).
 - MCI Regulation No. 41 of 2012 on Provision of Broadcasting by Subscription Broadcasters through Satellite, Cable and Terrestrial (“**MCI Regulation 41/2012**”).
 - MCI Regulation No. 18 of 2016 on the Procedures and Requirements for Broadcasting Operations (“**MCI Regulation 18/2016**”).
 - MCI Regulation No. 6 of 2017 on Provisions of Internet Protocol Television (“**MCI Regulation 6/2017**”).

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.

- (a) Telecoms**
- Minister of Communication and Informatics (*Kementerian Komunikasi dan Informatika* (“**MCI**”), Directorate General for Operation of Post and Telecommunication.
 - MCI, Directorate General for Operation of Post and Telecommunication.
 - MCI, Directorate General for Informatics Application.
 - Indonesian Telecommunication Regulatory Authority (*Badan Regulasi Telekomunikasi Indonesia* (“**BRTI**”).
- (b) Audio-Visual Media Distribution**
- MCI, Directorate General for Operation of Post and Telecommunication.
 - Indonesian Broadcasting Committee (*Komisi Penyiaran Indonesia* (“**KPI**”).

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?

- (a) Telecoms and Internet**
- Most of the telecoms sectors, including fixed and mobile telecommunications network providers, telecommunications services providers, and ISP providers are restricted to 67% foreign ownership.
- (b) Audio-Visual Media Distribution**
- Companies in the Private Broadcasting Channel (“**PBC**”) and subscription broadcaster sectors can only be initiated by local citizens or Indonesian-owned legal entities. Foreign investors may

only participate in the PBC and subscription broadcaster sectors by means of capital injection, with a 20% foreign shares ownership restriction.

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?

Indonesia has been a member of the World Trade Organization (“**WTO**”) since 1994 and entered the WTO Basic Telecommunication Agreement in 1997. The Indonesian government has opened up the telecommunications industry to even more than the agreed 35% of foreign ownership. See question 1.4 above for details on the foreign ownership restriction in the telecommunications industry.

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

By virtue of the Telecoms Law, GR 52/2000, MCI Regulation 01/2010 and MCI Regulation 21/2001, the following are the classifications of telecoms operations under the said laws and regulations:

1. The Operation of Telecoms Networks, which consist of:
 - a. Fixed Telecommunications Networks, which consist of:
 - (i) fixed local networks;
 - (ii) fixed long-distance networks;
 - (iii) fixed international networks; and
 - (iv) fixed closed networks.
 - b. Mobile Telecommunications Networks, which consist of:
 - (i) mobile terrestrial networks;
 - (ii) mobile cellular networks; and
 - (iii) mobile satellite networks.
2. The Provision of Telecoms Services, which, among others, consists of:
 - a. Basic Telephony Services, which are provided by:
 - (i) fixed local network operators (telephone, facsimile, telex, telegraph and data);
 - (ii) fixed long-distance network operators (telephone, facsimile, telex, telegraph and data);
 - (iii) fixed international network operators (telephone, facsimile, telex, telegraph and data);
 - (iv) mobile cellular network operators (telephone, facsimile and data);
 - (v) mobile satellite network operators; and
 - (vi) radio trunking operators (local telephony).
 - b. Value Added Telephony Services, which, among others, consist of:
 - (i) premium calls;
 - (ii) calling cards;
 - (iii) virtual private phone numbers;
 - (iv) public telephone recordings;
 - (v) store and forwards; and
 - (vi) call centres.

- c. Multimedia Services, which, among others, consist of:
 - (i) internet service providers;
 - (ii) internet interconnection services (NAP);
 - (iii) internet protocol television (IPTV); and
 - (iv) data communication system services.
- 3. Special Telecoms Operations, which consist of:
 - a. Special Telecommunications for Internal Use;
 - b. Special Telecommunications for National Defence; and
 - c. Broadcasting.

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

Generally, the regulatory and competition law authority in Indonesia is the Commission for the Supervision of Business Competition (*Komisi Pengawas Persaingan Usaha*/"KPPU"). KPPU is an independent governmental body established pursuant to Law No. 5 of 1999, regarding Prohibition on Monopolistic Practices and Unfair Business Competition ("Anti-Monopoly Law"). KPPU rules over business competition in any field in Indonesia. Furthermore, KPPU's members are inaugurated by the President, with approval from the House of Representatives.

Specifically for the telecoms sector, the competition supervisory duty is conducted mutually by KPPU and BRTI (as mentioned in question 1.3 above). As a semi-independent regulatory body, BRTI runs its tasks and functions through the Committee of Telecommunication Regulation, consisting of seven members. Public participation is manifested through the appointment of five public figures as members of the committee, with two members from the government.

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

In accordance with Law No. 5 of 1985 regarding the State Administrative Court as lastly amended by Law No. 9 of 2004 ("State Administrative Court Law"), the decision of the national regulatory authority shall be considered as a state administrative decision, thus is able to be appealed at the State Administrative Court.

According to Article 1 number 3 of the State Administrative Court Law, a state administrative decision is defined as a written decision issued by a state administration agency, containing state administration legal actions based on the applicable laws and regulations. Further, such decision must be concrete, individual, and final in character, and has legal consequences for a specific person or legal entity. Examples of state administrative decisions are (i) licences/permits, and (ii) ministerial decrees on legal statuses, rights and obligations for a certain legal entity.

Licences and Authorisations

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

In general, telecoms licences for commercial use are issued in four stages, which are:

- (i) Business Identification Number (*Nomor Induk Berusaha* or "NIB")

Following the issuance of GR 24/2018 and MCI Regulation 7/2018, generally, all companies in Indonesia will require an NIB in order to be able to obtain further business and operational licences through the Online Single Submission ("OSS") system. The OSS system is an online system which will integrate all information and licensing processes from various government institutions in Indonesia, including several licences relevant to the postal, telecoms, and broadcasting sectors, and the usage of radio frequency spectrum.

The government developed this system in order to be able to eliminate the complicated licensing procedure and lengthy timeline usually experienced in the previous regime.

- (ii) **Business Licence**

The Business Licence is issued by the OSS system on behalf of the ministry (i.e., Ministry of Communications and Informatics) after obtaining an NIB. The issuance of a Business Licence is conducted on a commitment basis.

- (iii) **Fit and Proper Test**

Serving as one of the commitments required for the issuance of an Operational/Commercial Licence, the fit and proper test is a technical inspection conducted by either a team composed by MCI, or accredited assessment institutions, whichever is deemed fit.

- (iv) **Operational/Commercial Licence**

The Telecoms Operational Licence shall be in the form of a contract between the relevant telecoms network/services provider with MCI, consisting of operational rights, obligations, sanctions and a report. This contract will be subject to an evaluation every five years.

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

The main requirements for both the telecoms networks and telecoms services sectors in obtaining telecommunication licences are as follows:

- (i) obtaining an NIB;
- (ii) obtaining a Business Licence, and
- (iii) operating/obtaining a Commercial Licence,

from the OSS system by committing to fulfill all of the commitments, including providing a business plan that includes scope of the development area, services to be built (roll-out plan), and commitment to not change the shareholding structure before fulfilling at least 50% of the development responsibility of the total commitment to develop during the 5 (five)-year period.

Accordingly, the timeframe for fulfilments of commitments through the OSS System for telecoms are different depending on the services which are at the latest:

- (i) 1 (one) year from the issuance of a Telecommunication Network Operator Licence.
- (ii) 6 (six) months from the issuance of a Telecommunication Service Operator Licence.
- (iii) 1 (one) year from the issuance of a Special Telecommunication Operator for Legal Entity Licence.

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?

Currently there are no individual authorisations established in Indonesia with regard to telecoms business activities.

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?

Construction of telecommunication infrastructure in certain areas, particularly in less-developed cities, may be considered as a development for public interest, hence granting the Indonesian government with the authority to acquire land by giving proper compensation to the relevant land owners. There are two regulations which are relevant for public and private land acquisition for public interest, namely:

- (i) Law No. 2 of 2012 on Land Procurement for Development for Public Interest and its implementing regulations.
- (ii) Presidential Regulation No. 71 of 2012, as lastly amended with the Presidential Regulation No. 148 of 2015.

Access and Interconnection

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

Under Telecoms Law, it is clearly mandated that every telecoms network operator shall provide interconnection, based on demand, to any other operator. The interconnection is further regulated under MCI Regulation 8/2006, which also contains the provision regarding interconnection dispute settlement. Pursuant to Annex V of MCI Regulation 8/2006, disputes related to interconnection issues may be resolved by means of mediation or arbitration, without prejudice to the relevant parties' rights in seeking a resolution through the Indonesian District Court. In mediation, the mediator team shall be established by BRTI. Meanwhile, in arbitration, the arbitral tribunal members shall consist of one or more arbitrators appointed by BRTI.

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

Operators are required to submit interconnection tariffs offers, which include the Interconnection Offer Document (*Dokumen Penawaran Interkoneksi* ("DPI")) to be reviewed by BRTI. An operator's DPI with an operating revenue of 25% or more from the total revenue of the entire operators in its particular service sector is required to be approved by BRTI.

All operators are also required to publish their DPI and other supporting documents from the interconnection contract for all interested parties, and it is advisable to publish these documents on the operator's website.

2.11 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?

Interconnection tariffs are decided on a cost-based basis by considering the economic value (supply and demand), and are subject to the standard formulation provided by the government. The bases of interconnection tariff calculations are transparency and fairness, as the calculation result shall be included in the DPI. Operators are then required to submit the DPI to be reviewed and approved by BRTI.

In calculating the interconnection tariff, references shall be given to the: (i) cost allocation and reporting manual; and (ii) guidelines and calculation formula software for interconnection tariffs, as determined by the Directorate General for Operation of Post and Telecommunication.

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

In several lines of telecoms business, MCI requires the operator and/or telecoms service provider to conduct accounting separation, e.g., interconnection services. However, the operators are not subject to any sectoral regulations to undertake any functional separation and/or legal separation.

2.13 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'?

There is no specific regulation regarding high-speed broadband networks, nor any incentives or regulatory holidays for this matter.

Price and Consumer Regulation

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

Pursuant to the Telecoms Law, telecoms network operators have the right to determine the tariff, and they are not subject to any price control or retail tariffs. The government only determines the formula to calculate the tariff.

2.15 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 Telecoms Law stipulates that in providing its services, each telecoms operator is required to protect its customers' rights, among others, quality of services ("QoS"), tariffs and compensation. In relation thereto, MCI has set up several regulations on QoS for certain telecoms services.

Further, in the event that the provision of electronic communications services is considered as public services, the relevant electronic system operator shall be subject to a mandatory registration with the MCI. Based on MCI Regulation 36/2014, provision of the following services shall be considered as public services and are subject to registration:

- a. web portals, websites, or online applications via the internet that are used to facilitate the offering and/or trading of goods and/or services;
- b. electronic systems that contain payment facility and/or other financial transactions online, by means of communication data or the internet;
- c. electronic systems used to process electronic information that contain or require the deposit of funds or other similar forms of funds;
- d. electronic systems used to process, administer, or store data related to facilities that are associated with customer data for public-serving operational activity on financial transactions and trading activity; and

- e. electronic systems used for the delivery of payable digital material through data networks, either by means of download via a web portal/website, email transmission, or other application to the user device.

Numbering

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

Telephone numbers and network identifying codes are allocated by MCI through the Directorate General for Operation of Post and Telecommunication. Procedures for allocation and designation of numbers are stipulated under MCI Decree No. 4 of 2001 on the National Fundamental Technical Plan 2000, as lastly amended by MCI Regulation No. 17 of 2014 and MCI Regulation 7/2018. Usage and arrangement of such numbers shall be further carried out by the respective operators.

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

Upon obtaining the allocated numbers, operators are obligated to submit a report on the usage of the telephone numbers every six months.

2.18 Are there any obligations requiring number portability?

Number portability, including local number portability and mobile portability, is not applicable for both individual and enterprise customers in Indonesia.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

MCI, Directorate General for Resources and Postal and Informatics Devices.

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.?

Based on MCI Regulation No. 4 of 2015 on the Operational Requirements and Licensing Procedures for the Use of Radio Frequency Spectrum (“**MCI Regulation 4/2015**”), every usage of the radio spectrum in Indonesia is required to obtain a usage of radio frequency spectrum licence. There are three types of licence for the usage of radio frequency spectrum, namely:

- Radio Frequency Band Licence (*Izin Penggunaan Pita Radio* (“**IPFR**”), for the usage of radio spectrum in the form of radio frequency band;
- Radio Station Licence (*Izin Stasiun Radio* (“**ISR**”), for the usage of radio spectrum in the form of a radio frequency channel; and
- Class Licence (*Izin Kelas*), granted to individuals and/or legal entities to operate a telecoms device which uses the radio frequency spectrum.

The holder of the above licences is required to pay the Rights of Frequency Radio Spectrum Fee (*Biaya Hak Penggunaan Frekuensi Radio* or “**BHP**”).

The procedure to determine the candidates entitled to use radio spectrum is based on the selection mechanism, evaluation mechanism and on a “first-come, first-served” basis.

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

No, every usage of spectrum must first obtain the related licences.

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

According to MCI Regulation 4/2015, only an IPFR and an ISR are payable with licence fees in the form of a Right of Frequency Radio Spectrum Fee (*Biaya Hak Penggunaan Frekuensi Radio* (“**BHP**”). The BHP must be fully paid in advance via bank transfer with a host-to-host payment gateway on an annual basis.

The amount of BHP for an IPFR shall be determined by the following mechanisms:

- selection process mechanism, by taking into account the public’s purchasing power and reasonableness;
- adjustment of selection result mechanism, for the usage of radio frequency spectrum on the same radio frequency band; or
- calculation mechanism, in accordance with the formula determined by MCI.

Meanwhile, the amount of BHP for an ISR shall only be determined by the calculation mechanism, in accordance with the formula determined by MCI.

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

In the event that the change of control of the licensee results in the change of (i) the name of the licensee, (ii) the person in charge in the legal entity holding the ISR (only for ISRs), and/or (iii) the domicile of the licensee; then the licensee must submit the change of licensee data.

The change of licensee data shall be submitted to MCI in the case of an IPFR, or the Directorate General of Resources and Postal and Informatics Devices in the case of an ISR.

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

No, spectrum licences are not able to be assigned, traded or sub-licensed.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework for cybersecurity.

There is no specific law or regulation for cybersecurity in Indonesia. The main reference for cybersecurity in Indonesia still refers to the EIT Law, which serves as the principal policy for electronic information in Indonesia.

Nevertheless, based on the President of the Republic of Indonesia Decree No. 53 of 2017 on Cyber Body and National Encryption Agency (*Badan Siber dan Sandi Negara* (“BSSN”)), a non-ministerial agency which is directly responsible to the President through MCI for cybersecurity issues was established. The main role of the BSSN is to effectively and efficiently implement cybersecurity in Indonesia, and it shall carry out the function of drafting and implementing technical policy in the fields of identification, detection, protection, countermeasures, control, monitoring, evaluation, control of e-commerce protection, coding, screening, cyber diplomacy, cyber crisis management centres, cyber contact centres, information centres, mitigation support, vulnerability recovery, incidents and/or cyber attacks.

Additionally, provisions regarding data protection are also scattered throughout several ministerial regulations. For instance, MCI Regulation 20/2016 requires all electronic system operators in Indonesia to store all personal data in its possession in an encrypted form, although there is no further stipulation on the encryption mechanism to be implemented. Further, MCI Regulation 4/2016 requires electronic system operators for public services that utilise strategic or high-level electronic systems to employ SNI ISO/IEC 27001 as their standard of information safety management system.

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.

Lawful interception is permitted and applicable in Indonesia, provided that such interception is conducted by an authorised law enforcer for the purpose of law supremacy and national security. The legal bases for lawful interception are scattered throughout several laws and regulations. Among others, the following are regulations which authorise lawful interception:

- the EIT Law;
- Law No. 30 of 2002 on the Corruption Eradication Commission;
- Law No. 35 of 2009 on Narcotics;
- MCI Regulation No. 11/PER/M.Kominfo/020/2006 on Information Obtained through Confidential Interception;
- MCI Regulation No 8/2014 on Technical Requirements for Lawful Tapping Tools and Equipment for Internet Protocol-Based Information on Implementation of Cellular Mobile Networks and Wireless Local Fixed Networks with Limited Mobility; and
- Eradication of Terrorism Law No. 5 Year 2018.

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?

The Telecoms Law and GR 52/2000 permit the telecoms service provider, for the purpose of criminal proceedings, to record any information delivered or received by it, as well as providing any necessary information upon the following conditions:

- Written request from the Attorney General and/or Head of the Indonesian Police Force for certain criminal acts with five years or more imprisonment, a life sentence, or the death penalty.
- Request from the lawful investigator for certain criminal acts pursuant to the prevailing laws and regulations.

The Telecoms Law and GR 52/2000 expressly state that any kind of information may be recorded and disclosed for criminal proceedings purposes. Accordingly, this interception covers all types of communications facilitated by the relevant telecoms service provider.

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

Since the telecoms service provider must cooperate for criminal proceedings purposes, the lawful authority may cooperate with the network operators or ISPs to intercept the communications for a particular individual.

Lawful interception and tapping may be conducted by an authorised law enforcer for the purpose of law supremacy, national security, and criminal investigation, with a written request from the Attorney General and/or Head of the Indonesian Police Force for certain criminal acts. The technical requirements for tapping and data interception are regulated under MCI Regulation No 8/2014.

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

MCI Regulation 20/2016 requires all electronic system operators in Indonesia to store all personal data in their possession in an encrypted form. However, the Regulation does not further stipulate the encryption mechanism that needs to be implemented.

With the obligation of the service providers to cooperate with the state under the Telecoms Law and GR 52/2000, the telecoms service provider must cooperate during criminal proceedings by providing the state with any encryption keys required, in order to provide any necessary information in an encrypted form.

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

Should there be no statute that specifically governs it, MCI Regulation 20/2016 sets out that the retention period for personal data shall be at least 5 (five) years. By the time a personal data owner is no longer considered as a user, the electronic system operator is obliged to store the relevant personal data starting from the last date of the personal data owner considered as a user.

In particular for telecoms and internet operators, GR 52/2000 requires them to maintain and store a customer data record (“CDR”) or details of the telecommunication usage. Storage of the CDR shall be kept for a period of at least three months.

5 Distribution of Audio-Visual Media

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

Media sectors, including the distribution of audio-visual media in Indonesia such as radio and television broadcasts, are regulated under Broadcasting Law. The Broadcasting Law divides broadcasters into public broadcasters (“PubBC”), PBC, community broadcasters and subscription broadcasters. The broadcasting sector is under the auspices of the KPI, an independent body whose responsibility is to regulate and provide recommendations in the area of broadcasting.

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.

In general, as provided in the Broadcasting Law as well as EIT Law, both content broadcast via traditional media (e.g., television and radio) and digital media (e.g., internet or other digital platforms) shall not violate the limitations provided by laws (e.g., advertisements for alcoholic beverages and cigarettes) or in conflict with public order, morality, religion or the customs in Indonesia. However, in the area of broadcasting, there are several provisions concerning the minimum local content required to be aired. For example, broadcast content of PBC and PuBC television must contain at least 60% domestic programs. The KPI also issued the Broadcasting Behaviour Guidelines and Broadcasting Programs Standard (“P3SPS”) in order to guide broadcasting behaviour.

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

MCI Regulation 18/2016 sets out that in order to conduct its broadcasting activities, a company must obtain a broadcasting licence. A broadcasting licence for radio shall be granted for five years, while television broadcasting licences shall be granted for 10 years; both licences are extendable. The broadcasting licence will be issued to the broadcaster immediately after the application. Nonetheless, the broadcaster must fulfil all of the commitments, including receiving worthiness recommendation from the KPI and approval from a joint meeting forum with the Government and the KPI.

The fulfilment of commitments must be conducted within six months following the issuance of a broadcasting licence for radio, and within one year following the issuance of a broadcasting licence for television. Failure to fulfil the commitments within the time period will be subject to an administrative sanction, i.e., the revocation of a broadcasting licence.

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

No, a broadcasting licence is not assignable.

The change of control on a PBC is restricted for a maximum of 20% of shares of foreign capital. See question 1.4 above for details on PBC foreign ownership restriction.

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?

Generally, the content shown in these networks are not under the responsibility of telecoms operators and/or ISPs. However, MCI Regulation 19/2014 requires telecoms operators and/or ISPs to block all of the IPs/URLs contained in the TRUST+Positif List, which is a list compiled by MCI, Directorate General of Informatics Applications of websites with negative content (pornography, racism, etc.). Accordingly, telecoms operators and/or ISPs are only liable for the IPs/URLs contained in the TRUST+Positif List.

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?

Not without an instruction from the MCI, as telecoms operators and/or ISPs are only under obligations to block IPs/URLs contained in the TRUST+Positif List. However, content owners may report a domain or URL containing any rights infringement to the MCI, hence the relevant domain or URL may be included in the TRUST+Positif List.

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?

No, currently there are no net neutrality requirements applicable in Indonesia. Telecoms operators and/or ISPs are granted the rights to 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? Are consumer VPN services regulated or blocked?

Yes, telecoms operators and/or ISPs are under obligations to block access to certain sites as per the the TRUST+Positif List. Currently, there are no regulations regarding customer access to VPN services.



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Enrico Iskandar is a founding partner of Bagus Enrico & Partners, a firm which advises companies in corporate and commercial transactions, with an emphasis on mergers and acquisitions, corporate restructurings, property, hotels and real estate, technology, media and telecommunications.

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As part of the recognition of his representation for multinational clients in information technology, telecommunication and media, Enrico's team has been recognised by the *Asia Pacific Legal 500 2017* and *2018* editions as Indonesia's **1st Tier** law firm in **IT & Telecoms**. He has also been selected in the **2013, 2014, 2015, 2016, 2017** and **2018** editions of *Who's Who Legal*, as a leading individual in **Information Technology**, and in the **2014** and **2015** editions on the same publication, as a leading individual in **Telecoms & Media**.



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Bimo also regularly advises the firm's clients within a wide spectrum of corporate and commercial matters on various sectors, namely, mergers and acquisitions, property, hotels and real estate, and employment, as well as advising various mainstream corporate clients.

In the TMT sector, Bimo's recent representations include advising a major US-based technology company in the preparation of a global unified warranty template for the sales of its hardware products, assisting a UK-based technology company in advising a global privacy policy for the potential roll-out of its intelligent household appliance, and regulatory requirements for the provision of IPVPN services licensing in Indonesia.



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Bagus Enrico & Partners ("**BE Partners**") is one of Indonesia's leading corporate and commercial law firms. Founded by professionals who are recognised for their experience in handling various notable transactions in Indonesia, BE Partners continues its growth with an equal commitment to its reputation as a "boutique practice [which] focuses on client service", and provides its domestic and international clients with high-quality advice, which is commercially focused and personally delivered.

BE Partners has received recognition from the main legal market reviewers. Some of the most international and respected reviewers have placed BE Partners' team as comprising Indonesia's leading professionals in various practices. BE Partners' reputation in diverse aspects of Indonesian law, especially in relation to corporate/commercial law, banking, finance and insurance, mergers and acquisitions, IT, media and telecommunications, energy and resources, property, hotels and real estate, as well as infrastructure, is outstanding.