

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) Telecommunication

According to the Indonesia Central Agency on Statistics (*Badan Pusat Statistik Indonesia* or “BPS”), 66.48% of Indonesia’s population has access to the internet using a telecommunication provider, with the spreading area across the archipelago, especially in urban areas (i.e., Jakarta), and it will keep getting bigger due to the advances in information technology.

As of the second quarter of 2023, the Indonesia telecommunication leaders are PT Telkom Indonesia Tbk (“**TLKM**”), PT Indosat Tbk (“**ISAT**”), and PT XL Axiata Tbk (“**EXCL**”), which the details are described in the table below:

Provider	Quarter 4 of 2022	Quarter 1 of 2023
TLKM	IDR 71.98 trillion	IDR 73.47 trillion
ISAT	IDR 22.52 trillion	IDR 24.67 trillion
EXCL	IDR 14.07 trillion	IDR 15.76 trillion

(b) Audio-visual media distribution

In November 2022, the Government of Indonesia ruled the authority to move analogue broadcasting into digital broadcasting. This statement significantly affects audio-visual distribution. In Indonesia, audio-visual distribution is dominated by private broadcasting, especially in visual distribution through television. As of the first quarter of 2023, there are several market leaders in the sector of Audio-Visual, such as:

Provider	Audience Shares	Revenue
Media Nusantara Citra (“ MNC ”)	Audience shares of MNC are the biggest amongst their competitors, which is 43.8%	The revenue of MNC in Q1 of 2023 was IDR 677 billion
Surya Citra Media (“ SCM ”)	Audience shares of SCTV, one of the subsidiaries of SCM, is 13.9%	The revenue of SCM in Q1 of 2023 was IDR 1,529.3 billion

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, regulation of social media or artificial intelligence (please list the draft legislation and policy papers).

Category	Regulation
Telecoms, including Internet	<ul style="list-style-type: none"> ■ Law No. 36 of 1999 on Telecommunication, as lastly amended by Law No. 6 of 2023 on the enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (“Telecommunication Law”); ■ Law No. 11 of 2008 on the Information and Electronic Transaction, as lastly amended by Law No. 19 of 2016 (“EIT Law”); ■ Law No. 27 of 2022 on Personal Data Protection (“PDP Law”); ■ Government Regulation (“GR”) No. 52 of 2000 on Telecommunications Operation, as lastly amended by GR No. 46 of 2021 (“GR 52/2000”); ■ GR No. 53 of 2000 on the Use of Radio Frequency Spectrum and Satellite Orbit, as lastly amended by the GR 46 of 2021 (“GR 53/2000”); ■ GR No. 71 of 2019 on Electronic System and Transaction Operation (“GR 71/2019”); ■ GR No. 5 of 2021 on the Implementation of Risk-Based Business Licensing (“GR 5/2021”); ■ GR No. 46 of 2021 on Post, Telecommunication and Broadcasting (“GR 46/2021”); ■ Ministry of Communication and Informatics (“MoCI”) Regulation No. 20 of 2016 on Protection of Personal Data in Electronic Systems (“MoCIR 20/2016”); ■ MoCI Regulation No. 7 of 2018 on Electronically Integrated Business Licensing Service in the Field of Communications and Informatics, as partially revoked by MoCI Regulation No. 6 of 2021 (“MoCIR 7/2018”); ■ MoCI Regulation No. 14/2018 on the Fundamental Technical Plan of National Telecommunications (“MoCIR 14/2018”); ■ MoCI Regulation No. 10 of 2019 on Technical Requirements for Internet Protocol Telecommunication Equipment and/or Devices; ■ MoCI Regulation No. 13 of 2019 on Telecommunications Service Providers as lastly amended by MoCI Regulation No. 14 of 2021 (“MoCIR 13/2019”); and ■ MoCI Regulation 5 of 2021 on the Implementation of Telecommunication (“MoCIR 5/2021”).
Audio-Visual Media Distribution	<ul style="list-style-type: none"> ■ Law No 32 of 2002 on Broadcasting as lastly amended by Law No. 6 of 2023 on the enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (“Broadcasting Law”); ■ GR 5/2021; ■ GR 46/2021; ■ MoCI Regulation No. 7 of 2018 on Electronically Integrated Business Licensing Service in the Field of Communications and Informatics, as lastly amended by MoCI Regulation No. 6 of 2021 (“MoCIR 7/2018”); and ■ MoCI Regulation No. 6 of 2021 on Implementation of Broadcasting, as lastly amended by MoCI Regulation No. 11 of 2021 (“MoCIR 11/2021”).
Social Media or Artificial Intelligence (“ AI ”)	<ul style="list-style-type: none"> ■ EIT Law; ■ PDP Law; and ■ GR 71/2019.

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; (b) audio-visual media distribution sectors; (c) social media platforms; and (d) artificial intelligence in your jurisdiction.

Please refer to the below tables on the relevant Government agencies with authorities on the various sub-sectors of telecommunications in Indonesia:

Telecoms, including internet	Audio-Visual	Social media platforms	AI
(i) MoCI; (ii) Directorate General for Operation of Post and Informatics (“ DGoPI ”); (iii) Directorate General for Informatics Application (“ DGoIA ”); (iv) Directorate of Telecommunication (“ DoT ”); and (v) National Cyber and Crypto Agency (<i>Badan Siber dan Sandi Negara</i> or “ BSSN ”).	(i) MoCI; (ii) DGoPI; (iii) DGoIA; (iv) Directorate of Broadcasting (“ DoB ”); and (v) Indonesia Broadcasting Committee (<i>Komisi Penyiaran Indonesia</i> or “ KPI ”).	(i) DGoPI; and (ii) DGoIA.	There is no specific government agency that supervises AI. However, under the EIT Law, the AI shall be classified as an Electronic Agent, and as such it is generally supervised by MoCI and DGoIA.

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?

Under the current regulatory regime, most business activities are now open for 100% foreign investments in Indonesia. However, there are several business sectors that are closed for investment (i.e., gambling, fishing of certain endangered species, coral utilisation, chemical weapons) or limited to the Indonesian Government (i.e., service activities for the purpose of defence and security that are strategic and cannot be carried out or cooperated with other parties). Under the prevailing regulatory framework, the sectors of telecoms which include the internet and audio-visual are currently open to foreign investment. Although the audio-visual sector is open to foreign investment, there are a few criteria for which foreign investment is allowed in the audio-visual sectors based on the President Regulation (“PR”) No. 10 of 2021 on the Investment Business Field as lastly amended by PR No. 49 of 2021 (“PR 10/2021”).

(a) Telecoms, including Internet:

All business activities in Internet sectors such as Voice over and Internet Protocol (“VoIP”) and Satellite Telecommunication Activity are permitted for foreign investment to hold 100% ownership.

(b) Audio-visual media distribution:

In activities such as private broadcasting and subscription broadcasting, it is not permitted for foreign investment to hold 100% of ownership. The domestic capital is allowed to hold 100% of stakes for the purpose of establishment, and the foreign capital can be a maximum of 20% for the purpose of business expansion and/or development.

2 Telecoms

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

Indonesia became a member of the World Trade Organization (“WTO”) on 1 January 1995, concurrently with its establishment. Under the General Agreement on Trade in Services (“GATS”), the commitment made by the Indonesian Government is to allow foreign investments having 100% share ownership of an Indonesian company in order to expand its operations in Indonesia.

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

MoCI is responsible for supervising and regulating the telecommunication networks and services in Indonesia. Telecommunication Law provides the MoCI with the powers to set policy, regulation, supervision and control of the telecommunications industry. MoCI has assigned its authority to the Directorate General of Postal Operations and Information Technology (“DGPI”) and the DoT.

The DoT is the relevant sub-government agency responsible for formulating and implementing policies, developing norms, standards, procedures and criteria, providing technical guidance

and supervision, as well as monitoring, evaluating, and reporting in the field of technical standardisation and security of telecommunications and information numbering, and licensing services, improving accessibility and connectivity of telecommunications and special telecommunications.

Please note that there are three main regulations governing the overall provision of telecom services and networks in Indonesia:

- (a) GR 52/2000;
- (b) MoCIR 5/2021; and
- (c) MoCI 13/2019.

2.3 Who are the regulatory and competition law authorities in your jurisdiction? How are their roles differentiated? Are they independent from the government? Which regulator is responsible for social media platforms? What statutory basis do they have?

The Business Competition Supervisory Commission (known as *Komisi Pengawas Persaingan Usaha* or “KPPU”) was established to supervise the implementation of Law No. 5 of 1999 on the Prohibition on Monopolistic Practices and Unfair Business Competition as last amended by Law No. 6 of 2023 on the enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (“**Competition Law**”). The establishment of KPPU was based on Article 34 of the Competition Law, which instructs that the structure, duties and functions of the commission shall be determined through a Presidential Decree (*Keputusan Presiden*). Accordingly, the President of Indonesia issued President Decree No. 75 of 1999 on KPPU as the basis for the establishment of KPPU for monitoring and supervision purposes towards the Competition Law.

Furthermore, KPPU is made up of nine Commissioners, including a Chairman and Vice Chairman. These Commissioners are elected by the House of Representatives (*Dewan Perwakilan Rakyat* or “DPR”) upon recommendation from the President for a five-year term, which is renewable once. The KPPU is responsible for enforcing competition laws, providing guidance on competition policy and reviewing mergers and acquisitions. In carrying out these duties, KPPU can receive complaints, conduct research and investigations, summon relevant parties for investigation, request assistance from police investigators, make decisions and impose penalties.

Indonesia does not have a special authority to supervise social media activity; however, MoCI has the authority to supervise any inappropriate content on social media such as pornography and betting content. MoCI also has the authorisation to terminate any electronic system that displays pornography and betting content or any other contents that contravenes with the prevailing laws and regulations.

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

The short answer is “yes”, decisions made by the national regulatory authority, such as those by the MoCI, can be appealed. Pursuant to the State Administrative Court Law, which is based on Law No. 5 of 1986 on the State Administrative Court, as amended by Law No. 51 of 2009 and supplemented by Constitutional Court Decision No. 43/PUU-XII/2015, (“**Administrative Court Law**”), any Government institution’s decisions, including MoCI’s decisions, are considered state administrative decisions (Article 1 (9) of Administrative Court Law).

2.5 What types of general and individual authorisations are used in your jurisdiction? Please highlight those telecom-based authorisations needed for the installation and/or maintenance of infrastructure?

All telecommunication business activities are subject to certain licensing requirement before commencing their business operation in Indonesia. The licensing requirements are stipulated under GR 5/2021 and MoCIR 3/2021.

Please note that, under Article 8 of GR 5/2021, the Government imposes the categories of business licences based on its “risks” (High, Medium (Medium to High/Medium to Low) or Low-risk levels), determined based on: (i) the level of hazard of each business activity and/or utilisation and management resources based on the identified business activities; and (ii) the risk potential of such hazard (i.e., almost impossible, unlikely, likely or almost certain to happen), including, determination of risk level and scale of the business.

Notwithstanding any of the risk classifications, all businesses must obtain the Business Identification Number (“NIB”) and additionally other licences depending on the “risk-level” of the business activity. In the telecommunication sectors, each line of business falls within a different risk classification depending on the form of entity (i.e., local investment company or foreign investment company) and the specific telecom sector activities it is performing.

Additionally, any telecommunication device must obtain type approval certification (*sertifikasi alat dan perangkat telekomunikasi*) before being used in Indonesia. This certification requirement would be applicable to any infrastructure or devices operated by the telecom business actor.

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

Please note that GR 5/2021 establishes that every activity enshrined in the respective Indonesia Classification Business Field (*Klasifikasi Baku Lapangan Usaha Indonesia* or “KBLI”) shall be further differentiated under its “risk categorisation” which affects the required licence to conduct business activity:

- (a) low risk: any KBLI that categorised as a low risk only requires the NIB;
- (b) medium risk: medium risk shall be further differentiated into “medium-low” and “medium-high” risks. In addition to the NIB, a company is required to obtain the Standard Certificate (*Sertifikat Standar* or “SS”). However, under the medium-high risk, the SS is approved after fulfilling the verification process from the relevant ministry and Indonesia Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or “BKPM”). On the other hand, medium-low risk is not required to conduct verification, rather, the SS is automatically issued once the relevant company has conveyed the letter of statement of standard fulfilment to the Online Single Submission (“OSS”); and
- (c) high risk: in addition to the NIB, a high-risk activity is required to obtain a licence for the relevant activity. Please note that the verification process must be conducted to finally obtain the letter.

For instance, KBLI 61913 (i.e., Internet Telephony for Public Purposes (*Internet Teleponi untuk Keperluan Publik* or “ITKP”)) is categorised as “high-risk”, which requires the ITKP licence in addition to the NIB.

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?

Indonesia’s prevailing regulations do not recognise individual authorisation for telecoms businesses. However, certifications for an individual or professional are provided by the relevant institution, such as the data protection officer as part of its qualifications and credentials in a particular subject.

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

As mentioned in question 2.6. above, VoIP is recognised as ITKP activity. To operate ITKP services in Indonesia, business actors must obtain the NIB and ITKP licences that can be applied for through the OSS system.

An applicant for a ITKP operating licence is subject to the requirement to meet the minimum network configuration as provided in Directorate General of Post and Informatics No. 1 of 2021 on the Technical Provisions on the Telecommunication Service Implementation (“DGoPI Regulation 1/2021”). In meeting the minimum network configuration, any business actor may also cooperate with a third-party telecommunication equipment provider.

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?

Under Law No. 2 of 2012 on Land Procurement for Development for Public Interest, as lastly amended by GR No. 2 of 2022 in Lieu of Job Creation into Law (“Law 2/2012”), the project of the Government’s telecommunication and IT network can be established on certain land through land acquisition for a public interest project (Article 10 of Law 2/2012).

Furthermore, GR No. 19 of 2021 on the Implementation of Land Procurement for Public-Interest Developments as lastly amended by GR No. 39 of 2023 (“GR 19/2021”) provides further provisions for land acquisition in Indonesia, specifying eligible entities for such purposes. GR 19/2021 simplifies the process for smaller-scale projects, allows private licensed surveyors’ involvement in data collection and establishes a compensation framework, including appraiser-determined compensation that can be appealed to the courts and offers various compensation forms. In certain situations, compensation can be deposited to local District Courts.

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

The Telecommunication Law requires every telecom network operator to provide interconnection upon request by other operators (Article 25 of the Telecommunication Law).

The regulations governing the dispute resolution on interconnection are regulated under MoCIR 5/2021; the dispute resolution process for interconnection-related issues must be settled through mediation. The application for a mediation

process can be submitted by both parties through the DGPI (*Direktorat Jenderal Penyelenggaraan Pos dan Informatika*) as well as a Mediator in the mediation process.

Once the mediation leads to a successful resolution, the agreement reached between the disputing parties must be recorded in writing, and it holds final and binding status. This agreement can also be registered in the District Court.

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

All parties involved who have signed the Interconnection Contract, along with any relevant addendum, are required to submit a report to the DGPI (Article 126 (1) of MoCI Reg. 5/2021). However, the regulation is silent on the requirement to publish the standard interconnection contract in public.

Furthermore, Article 126 (2) of MoCI Reg. 5/2021 indicates that the required report essentially reflects the content of provisions or clauses outlined in the Interconnection Contract. This includes provisions such as the parties' rights and obligations, an agreed-upon list of interconnection services and their applicable costs, as well as specifying all points of interconnection, encompassing volume, location, capacity and other specifications (Appendix II of MoCI Reg. 5/2021).

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?

According to Article 103 (1) and (2) of MoCI Reg. 5/2021, the interconnection fee can be determined based on economic considerations, which vary according to demand capacities and traffic volume committed by the telecommunication service providers that are requesting such interconnection services. In other words, there are no rigid cost or pricing regulations specifically addressing interconnection fees for all types of telecom services. In essence, the Indonesian Government adopts a more flexible approach to pricing arrangements for interconnection services.

Such flexible approach is also restated under Article 89 (2) of MoCI Reg. 5/2021. When interconnection is requested by another telecom provider, the telecom network provider is obligated to provide interconnection services to other telecom network providers in a transparent and non-discriminatory manner. As such, the interconnection pricing can be subject to commercial negotiations among the parties involved in the Interconnection Contract.

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

Separation requirements apply for telecom operators, particularly accounting separation. In light of such separation requirement, the telecom operator is required to:

- (a) pay the Telecommunications Operation Rights Fees (*Biaya Hak Penyelenggaraan Telekomunikasi* or “**Telecoms BHP**”) and contribute to the Universal Service Obligation (“**USO**”). In such context, the telecoms operator is required to separate the gross revenue from the revenue that is not accounted as gross revenue, and such separation is required to be recorded within a dedicated account. (Article 192 (2) of MoCIR 5/2021);

- (b) submit the regulatory financial report to the DGPI. In this context, the telecom operator is required to separate their assets, revenue and cost provided that the service provided by the telecom operator is different from the licence provided to such operator. (Appendix 2 of MoCIR 5/2021);
- (c) pay the usage fee, subject to the network rental service that obliged the telecom operator to do so. To be able to calculate the correct amount of the usage fee, the telecom operator is required to conduct accounting separation according to the activities and services provided using a cost allocation process and take into account the cost-determining factors. (Appendix IV Chapter II of MoCIR 5/2021); and
- (d) calculate the valid amount of the telecoms service operation tariffs. In this context, the telecom operator is required to conduct accounting separation according to the activities and services provided using a cost-allocation process and take into account the cost-determining factors. (Appendix V Chapter I of MoCIR 5/2021.)

The above separation would allow the DGPI to evaluate the telecom operator's performance and to decide whether any action is required in accordance with the result of the evaluation (Appendix V Chapter II of MoCIR 5/2021). Nevertheless, there are no specific regulations that mandate operators to conduct functional and/or legal separation.

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'?

(a) High-speed Broadband Networks

In the Indonesian jurisdiction, high-speed broadband networks primarily fall under the telecommunications regulatory framework. High-speed broadband networks can be defined in a manner similar to Internet Service Providers (“**ISPs**”). ISPs are described as entities that offer internet services to customers, facilitating their connection to the public internet network. Specifically, ISPs can be categorised as one of the forms of multimedia service operations (Article 7(1a) of MoCIR 13/2019).

To be able to operate as an ISP, an operator must satisfy the OSS business licensing requirement to obtain an Operations Licence (Article 35 of MoCIR 13/2019).

For an ISP to be able to provide internet access globally to end-consumers, it must also legally operate as a Network Access Point (*Layanan Gerbang Akses Internet* or “**NAP**”). Hence, several obligations must be fulfilled by an ISP as a NAP operator, detailed as follows:

- (i) providing telecommunication tools and/or equipment in providing Internet Access Gateway Services (NAP);
- (ii) obtaining a telecommunication network operation licence for the operation of a closed fixed network;
- (iii) having a dedicated internet protocol address; and
- (iv) fulfilment of a service commitment.

(Article 30 of MoCIR 13/2019.)

(b) Passive Infrastructure

The provision of passive infrastructure is typically relevant within the context of telecom network provision. Passive infrastructure can take the form of various components, such as ducts, towers, poles, manholes/handholes and more (Article 20 (2) of MoCI Reg. 5/2021). Passive infrastructure can be established through

a passive infrastructure utilisation contract between the telecoms provider and the passive infrastructure provider. This contract should be conducted in a fair, reasonable and non-discriminatory manner (Article 21 and 22 of MoCI Reg. 5/2021).

The provisions of such a contract encompass the rights and obligations of the telecommunications operator and passive infrastructure provider, tariffs for the utilisation of passive infrastructure, utilisation of passive infrastructure capacity, the duration of cooperation and dispute resolution mechanisms (Article 22 of MoCI Reg. 5/2021).

(c) Cable TV, Copper, and Fibre Networks

Indonesia is currently moving towards digital-based television broadcasting via terrestrial broadcasting, which can be defined as free-to-air broadcasting using digital technology transmitted terrestrially through multiplexing infrastructure and received by receiving devices (Article 1 (10) of MoCI Reg. 6/2021). According to Article 3 (2) MoCI Reg. 6/2021, television broadcasting can be operated by a private entity that provides television broadcasting commercially with and without subscription (respectively, *Lembaga Penyiaran Swasta* and *Lembaga Penyiaran Berlangganan*). To be able to legally provide their broadcasting service, these television broadcasters must satisfy all the business licence requirements to obtain a Broadcasting Operation licence (*Izin Penyelenggaraan Penyiaran*) (Article 4 (2) of MoCI Reg. 6/2021).

On the other hand, regulations on the installation and connection of fibre-optic cables primarily pertain to telecom operations, especially when a telecom network operator intends to provide international telecommunications transmission services. According to Article 13 of MoCI Reg. 5/2021, the provision of international telecommunications transmission facilities is performed through the International Telecommunication Transmission Service (*Sistem Komunikasi Kabel Laut* or “**SKKL**”). It can be undertaken by International Fixed Network Connection Providers and/or Closed Fixed Network Providers. These providers are required to establish a cable landing station (“**CLS**”) or rent from a Telecommunication Provider that already possesses a CLS.

In the event of foreign telecom network operators seeking to provide international telecommunications transmission services through SKKL directly to Indonesia, they must collaborate with International Fixed Network Connection Providers and/or Closed Fixed Network Providers (Article 14 of MoCIR 5/2021).

As of the first quarter of 2023, there is no specific provision that allows telecom operators to take advantage of any regulatory holidays, fiscal incentives or any other equivalent incentives in terms of conducting telecom operations that closely correlates with those various channels mentioned above.

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

In the overall landscape of telecom operations, guidance on retail price control is regulated under MoCI Reg. 5/2021. Based on Article 49 of MCI Reg. 5/2021, telecom operators are permitted to establish their own retail pricing, and adhere to the pricing formula outlined by the MoCI.

However, it is essential to note that telecom operators are prohibited from implementing tariffs that could undermine consumer protection, fair competition or the continuity of services to the public (Article 48 of MoCIR 5/2021). In other words, any telecom operator could determine its retail pricing appropriately, with full consideration of the principles of consumer protection and fair competition.

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?

It is mandatory for telecom operators to make payments for the Telecoms BHP and make contributions to the USO (Article 187 of MoCI Reg. 5/2021). These payments are based on a specified percentage of their gross revenue from telecommunications operations, along with other possible contributions. The payable Telecoms BHP is set at 0.5% of the gross revenue generated from telecommunications operations. Additionally, the contribution to the USO is determined at 1.25% of the gross revenue of telecommunications operations (Article 188 of MCI Reg. 5/2021).

In addition to the above, when offering telecom services or managing their networks, telecom operators are obligated to adhere to consumer protection and fair competition principles, which should be integrated into their operations. Furthermore, telecom operators should also consider the following obligations:

- (a) development and/or service provision obligations (Chapter III of MoCIR 5/2021);
- (b) quality of service obligation (Chapter IV of MoCIR 5/2021); and
- (c) consumer protection obligation (Article 48 of MoCIR 5/2021).

Moreover, if an electronic communication service is delivered through an electronic system operated by the telecom operator, the consumer protection aspect becomes even more crucial, especially when such customer communication involves the transmission of personal data among telecom operators or within the same operator’s network. In such scenarios, it is imperative for telecom operators to incorporate adequate data protection measures, as this requirement aligns with the obligations of the PDP Law.

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

In accordance with Article 23 (2) of the Telecommunication Law, telephone number systems are allocated by the MoCI with the delegation to the DGPI. Furthermore, the regulations on the phone numbering system are outlined in MoCIR 14/2018. According to this regulation, the allocation of telephone numbers can be provided by the DGPI in allocated blocks based on telecom operator’s requests for number block allocations intended for their potential customers. Such request must be submitted to the DGPI (Chapter II, Point (D) of MoCIR 14/2018).

Regarding the allocation of network identification codes, MoCIR 14/2018 refers to such codes as Signalling Point Codes (“**SPC**”), which are used to identify signalling points and the Message Transfer Part (“**MTP**”) processes at each signalling point. SPCs at the national level are represented by a 14-bit binary code, and one of the arrays of such code is considered as network identification. The DGPI allocates this network identification code to requesting telecom operators. Meanwhile, the allocation of signal identification points can be managed by the telecom operators themselves.

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

MoCIR 14/2018 regulates the use of telephone numbers. In particular, Chapter II of Appendix of MoCIR 14/2018 on

the Numbering Plan outlines specific rules for the telecom numbering plan that serve as guidelines for telecom operators on how they shall allocate numbering. These guidelines are detailed as follows:

- (a) numbering based on ITU-T Recommendation E.164;
- (b) numbering based on International Mobile Subscriber Identity (“**IMSI**”);
- (c) numbering based on SPC; and
- (d) numbering based on International Signalling Point Code (“**ISPC**”).

In accordance with question 2.17 above, after a telecom operator obtains a block allocation of numbers, it is mandatory for telecom operator to submit the annual report on the usage of the allocated number block to the DGPI or within a specified timeframe as determined by separate regulations. The DGPI has the discretion to revoke allocated numbers that have been given to a user if it is not used for six consecutive months.

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

Within Chapter VI of Appendix of MoCI Reg. 14/2018 on Signalling Planning, the rules on dynamic calling line identification are recognised as calling line identification (“**CLI**”), which is relevant in terms of customer intent to request the supplementer services provided by the telecom operator. Within such use of supplementer services, the examination of such supplementer use can be carried out during CLI. Other than that, telecom operator can follow the guideline on signalling that might pertain to CLI as provided by the International Telecommunication Union (“**ITU**”) within the guideline of ITU-T I.250 on definition of supplementary services.

2.20 Are there any obligations requiring number portability?

The provision on number portability is not explicitly determined as telecom operation’s obligation (Chapter II of Appendix of MoCIR 14/2018). Rather, it only elaborates that number portability is a customer feature closely related to a multi-provider environment. Number portability allows telephone customers to switch providers (service provider portability) or relocate within a service area (location portability) while retaining their phone numbers.

Nevertheless, it implicates the obligation imposed on the telecom operator that receives the number portability request from its customer to redirect (re-route) the call to such specific number to the new provider. To that end, it will impose additional obligation to the telecom operator that receives the number portability request and the telecom operator that receives the redirection of such redirected number. Further, the implementation of number portability is carried out gradually and regulated by separate MoCI Regulation other than MoCIR 14/2018.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

In Indonesia, the Telecommunication Law governs the radio spectrum and according to MoCIR 7/2021, the authority to supervise spectrum utilisation lies with the Directorate General of Resources and Equipment of Post and Information Technology (“**DGoREPI**”) of MoCI.

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.?

According to Article 2 of MoCIR 7/2021, the utilisation of radio is granted through license application, subject to further assessment to determine the purposes and objectives of the utilisations.

There are three types of different licences of radio spectrum utilisation licences:

- (a) Radio Frequency Band Licences (*Izin Pita Frekuensi Radio* or “**IPFR**”).
Based on Article 12 of MoCIR 7/2021, IPFRs can be granted through: (i) a selection process; (ii) a change from an ISR (see b below) licence to become an IPFR licence; (iii) evaluation; and (iv) transfer of the right to use the radio frequency spectrum.
- (b) Radio Station Licences (*Izin Stasiun Radio* or “**ISR**”).
Based on Article 32 of MoCIR 7/2021, an ISR licence is issued for operating transmitter and/or receiver devices on specific radio frequency channels that is carried out based on the result of technical analysis consisting of: (i) a band utilisation plan; (ii) a channelling plan; (iii) efficiency of radio frequency spectrum utilisation; and (iv) availability of radio frequency channels.
- (c) Class Licences (*Izin Kelas*).
Any business actor that operates a telecoms device with radio frequency spectrum is required to obtain a Class Licence (Article 76 of MoCIR 7/2021).

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?

The short answer is “no”, the applicable licences are mandatory for the utilisation of radio spectrum. Furthermore, the applicable penalties or sanctions for those who do not comply with a mandatory Radio Frequency Spectrum licence are in the form of (i) a written warning, (ii) administrative fines, and (iii) an imposition of police force (Article 138 of MoCIR 7/2021).

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

Under MoCIR 7/2021, there are two types of radio spectrum utilisation fees depending on the type of licences: (i) Rights of Frequency Radio Spectrum (“*Biaya Hak Penggunaan Frekuensi Radio*” or “**BHP**”) IPFR, and (ii) BHP ISR fee.

The calculation of these two types of radio spectrum utilisation fees are different depending on which type is applicable. According to Article 88 of MoCIR 7/2021, the BHP IPFR is calculated based on the (i) selection mechanism, or (ii) calculation mechanism using a calculation formula.

The calculation of BHP ISR is calculated based on the Bandwidth Base Price and Base Price of Transmit Power, which are as follows:

$$\text{BHP ISR} = \frac{(\text{Bandwidth Base Price} \times 1b \times b) + (\text{Base Price of Transmit Power} \times 1p \times p)}{2}$$

2

(Article 115 of MoCIR 7/2021.)

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

In the event of a change of control in the licensee, the ISR licence holder does not have the obligation to report and/or obtain prior approval from MoCI; however, for a IPFR licence holder, they will need to obtain approval from MoCI in respect of a change of control.

In addition, the change of control of the spectrum licence is conducted under several conditions, such as:

- Change of control of the entire Radio Frequency Band or a portion of the Radio Frequency Band listed in the IPFR.
- The change does not affect the validity period of the IPFR.
- Transfer of the obligations of the Radio Frequency Band. (Article 15 of MoCI Reg 7/2021.)

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

Yes, the spectrum licences are able to be assigned, traded or sub-licensed. Furthermore, according to the Article 16 (4) of MoCIR 7/2021, the objective of the transfer of rights to use the radio frequency spectrum are:

- optimisation of service quality improvement;
- improving the performance of the telecommunication;
- cost efficiency of telecommunication infrastructure development;
- providing the new telecommunication services;
- providing more affordable telecommunication services; and/or
- fulfilling the needs of national interest.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework for cybersecurity. Are there any specific requirements in relation to telecoms operators?

The bill related to cyber security has not yet been ratified into Law, hence, cyber security is still subject to the EIT Law which became the main policy in regard to electronic information in Indonesia.

Furthermore, the Indonesian Government issued the PDP Law, which is a major progression for the protection of personal data, where the PDP Law serves as the umbrella law for the application and implementation of personal data protection in Indonesia. The PDP Law provides more significant, stringent and integrated protection compared to previously scattered regulations, which were supervised by several authorities. The PDP Law applies to (a) any person (including individuals and corporations), (b) public entities, and (c) international organisations residing in Indonesia, or in a foreign jurisdiction if any legal impact occurred within the territory of Indonesia and/or if the subject of the personal data is an Indonesian citizen.

BSSN, Indonesia's authority on cyber security, promulgated its own regulation, BSSN Regulation No. 8 of 2020 on Security Systems in the Operation of Electronic Systems ("**BSSN Reg. 8/2020**"). Under this regulation, the obligation to apply SNI ISO/IEC 27001 also prevails to those electronic system providers in the private sector (Article 4 of BSSN Reg. 8/2020).

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.

- (1) Law No. 8 of 1981 on the Code of Criminal Procedure ("**CCP**");
- (2) Law No. 5 of 1997 on Psychotropics as lastly amended by GR No. 2 of 2022 in Lieu of Job Creation as Law ("**Law No. 5/1997**");
- (3) Telecommunication Law;
- (4) Law No. 30 of 2002 on Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* or "**KPK**"), as last amended by law No. 19 of 2019 ("**KPK Law**");
- (5) Law No. 16 of 2004 on the Attorney of the Republic of Indonesia, as last amended by Law No. 11 of 2021 ("**Law 16/2004**");
- (6) Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes;
- (7) Law No. 35 of 2009 on Narcotics, as lastly amended by Law No. 6 of 2023 on the enactment of Government Regulation in Lieu of Laws No. 2 of 2022 on Job Creation into Law ("**Narcotics Law**");
- (8) Law No. 8 of 2010 on the Countermeasure and Eradication of Money Laundering ("**AML Law**");
- (9) Law No. 17 of 2011 on State Intelligence ("**Law 17/2011**").
- (10) Law No. 5 of 2018 on Eradication of Terrorism ("**Law 5/2018**");
- (11) PR No. 90 of 2012 on State Intelligence Agency, as lastly amended by PR No. 79 of 2020 ("**PR 90/2012**");
- (12) KPK Regulation No. 7 of 2015 on Lawful Interception Audits of the KPK ("**KPK 7/2015**"); and
- (13) MoCI Regulation No. 8 of 2014 on Technical Requirements for Lawful Tapping Tools and Equipment for Internet Protocol Based Information on Implementation of Cellular Mobile Network and Wireless Local Fixed Network with Limited Mobility ("**MoCIR 8/2014**").

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?

Any service provider is required to record and keep confidential any information due to the user's utilisation of telecoms service (Article 18 Telecommunication Law and Article 16 of GR 52/2000). This kind of record covers all of the forms of communication since the Telecommunication Law governs all of the communication in Indonesia. Such records can only be delivered to the relevant user based on the user's request (Article 41 of Telecommunication Law). It is important to note that any persons are prohibited from intercepting any form of information (Article 40 of Telecommunication Law).

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

For evidentiary and legal enforcement purposes, service providers can provide the record from their network on necessary information to the state attorney and police based on written request (Article 42(2) of Telecommunication Law).

Please note that criminal sanctions will be imposed on service providers that are not willing to comply with such order from the Police and state attorney. The applicable sanction would be: (i) a maximum of two years imprisonment; and (ii) fines of up to IDR 200 million.

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

For data encryption, any electronic system is required to store any personal data in the form of data encryption. However, any prevailing laws and regulations in Indonesia are silent on further provisions in regard to data encryption. The obligation for electronic systems to provide electronic data for the purpose of criminal enforcement is regulated under MoCI 5/2020. In this matter, any electronic system should be granted access to law enforcement authorities (i.e., police, state attorney and judge) within five days of the written request from the authorities (Article 37 of MoCI 5/2020).

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

There is no specific regulation regarding cyber security requirements for communication service providers, cloud or social media platforms. However, any sector such as commercial banks, financial services and crypto assets futures exchanges are required to own a disaster recovery plan and to place a data centre and/or disaster recovery centre within Indonesia when operating an electronic system based on OJK Regulation and Commodity Futures Trading Regulatory Agency /*Badan Pengawas Perdagangan Berjangka Komoditi* (“**Bappebti**”) Regulation respectively.

Additionally, system providers must apply SNI ISO/IEC 27001 as an information security management system standard set by BSN which explains the guidelines and conditions for creating, implementing, carrying out, managing risks, and documenting the Information Security Management System.

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

Any electronic system operator is required to store its personal data for at least five years. After the five-year period has elapsed, the personal data may be erased unless the data is still used or utilised in line with the initial purpose of its obtainment and collection (Article 15 (3) of MoCIR 20/2016). For the sector telecommunications service provider, providers are obliged to store their customer data as long as the customer is still actively subscribing to telecommunications services, and if the customer is no longer actively subscribing, the provider is obliged to keep the Customer’s data for at least three months from the date of customer inactivity. (Article 168 of MoCIR 5/2021.)

5 Distribution of Audio-Visual Media

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

Based on the Broadcasting Law, broadcasting activities in Indonesia can be conducted by:

- (a) **Broadcaster (private or public):** The public broadcaster is established by the state, which is independent, neutral and provides services for the benefit of the community. Otherwise, the private broadcaster is a commercial broadcasting institution in the form of an Indonesian legal entity whose line of business is to provide radio or television broadcasting services.
- (b) **Community Broadcaster:** A community broadcaster is established by a certain community, independent and non-commercial, with low broadcast power, limited area coverage, and to serve the interests of its people.
- (c) **Subscription-based Broadcaster:** A subscription-based broadcaster is to provide subscription broadcasting services.

Under the Broadcasting Law, such entities are subject to prevailing regulations in performing their duties, functions and responsibilities. The implementation of broadcasting activities supervised by DGoPI of MoCI and (*Komisi Penyiaran Indonesia* or “**KPI**”) as an independent state institution.

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.

Generally, the content distributed via digital media (internet and social media) and traditional media (television and radio) is prohibited from display products such as (i) gambling, (ii) sexual services or contents, (iii) Category C liquor (with alcohol content), and (iv) firearms, weapons and ammunition. These prohibited products are also regulated under the KPI guideline on Broadcasting Behaviour Guidelines and Broadcasting Programmes Standard.

Advertisement and promotion of tobacco products may only be displayed through electronic media, print media or outdoor media. Advertising this product on electronic media may only be performed from 9:30pm to 5am local time.

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

Any broadcaster, including TV and Radio, must obtain a broadcasting operation licence prior to conducting broadcasting activities. Upon the submission process, the prospective broadcaster must carry out the broadcasting operation feasibility test and operation certificate. A broadcasting licence is granted for 10 years subject to the fulfilment of commitments as provided by laws and regulations, and the licences are extendable (Article 70 of GR 46/2021).

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

It is not possible to assign the broadcasting licence to the other party. Please bear in mind that since the foreign entity is only able to hold a maximum of 20% shares of the broadcasting entity, it is not possible for any foreign entity to be a controlling shareholder of the broadcasting institution in Indonesia (Article 17 (2) of Broadcasting Law).

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?

Indonesia prevailing regulations are silent on the liability for Telecommunications operators and/or ISPs with regard to displaying prohibited content transmitted in their service.

Please note that electronic system operators such as social media and e-commerce can be released from legal responsibility regarding prohibited information or content transmitted or distributed through its Electronic System, so long as the prohibited content is user-generated content. However, the electronic system operator should make all the necessary actions to avoid the display or transmission of prohibited content by taking all the necessary actions to take down any prohibited content or information transmitted in its electronic system (Article 11 of MoCI 5/2020). The prohibited content or information in the electronic system includes: (i) gambling, (ii) sexual services or contents, and (iii) terrorism ("**Prohibited Contents**").

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?

Any individuals or persons in Indonesia may submit a request to terminate any content or documents within the electronic system to MoCI or any relevant Ministry (Article 15 of MoCI 5/2020). This illegal content that can be reported includes, but is not limited to, content that violates copyrights and prohibited content (*see question 6.1. above*). Once the relevant Ministry receives the application, MoCI would order the relevant electronic system to take down the reported content. If necessary, MoCI is also able to order the ISP to block the access on the relevant URL (Article 11 (8) and (9) of MoCI 5/2020).

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?

Net neutrality is not regulated in Indonesia. A telecoms operator and/or ISP may only terminate any URL or domain if such URL has been blocked by MoCI (*see question 6.4 below*).

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?

Telecoms operators and/or ISPs are required to terminate any electronic system, including social media, e-commerce, etc., ordered by MoCI, as the access blocking can only be carried out by MoCI. In other words, once MoCI has blocked a particular URL, any operator and/or ISP must terminate such URL accordingly (Article 18 of MoCI 5/2020).

Currently, the Government has not yet regulated VPN services in Indonesia.

6.5 Is there any regulation applicable to companies that act as 'intermediaries' or 'platforms' in their role of connecting consumers with goods, services, content, or are there any proposals for such regulation? Include any proposals or legislation regulating social media platforms in relation to online content or safety.

E-commerce platforms are regulated under the Ministry of Trade ("**MoT**"). Any e-commerce platform operated by a foreign or local operator is classified as a trading operator through electronic systems (*Penyelenggara Perdagangan Melalui Sistem Elektronik* or "**PPMSE**") (Article 1 (9) of MoT Regulation No 31 of 2023 on Business License, Advertising, Development and Supervision of Business Trading through Electronic Systems ("**MoT Reg 31/2023**"). PPMSE would be subject to an E-Commerce Licence (*Surat Izin Usaha Perdagangan Melalui Sistem Elektronik* or "**SIUPMSE**").

Social media platforms are currently considered Electronic System Operators and subject to obtaining an ESO Registration Certificate from MoCI.



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Audria has acted for various clients of major technology companies, venture capital firms, early-to-late-stage start-ups, Indonesian and Southeast Asian unicorns, telecommunication companies, payment system providers, as well as fintech and multinational companies in various sectors. She is recognised as one of Indonesia's Future Legal Leaders by *Asia Business Law Journal* ("ABLJ") in 2022, which has identified the 50 up-and-coming lawyers in Indonesia according to an extensive survey by the in-house counsels and Indonesia-focused partners at international law firms.

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Nusantara Legal Partnership ("NLP") is a premier boutique law firm based in Jakarta, Indonesia. Established in 2018, we thrive on providing in-depth advisory and representation in a comprehensive range of legal services tailored to each client's across all industry sectors.

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- technology, media & telecommunication;
- labour, employment & industrial relations;
- property & real estate;
- insurance;

- pharmaceutical;
- intellectual property; and
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