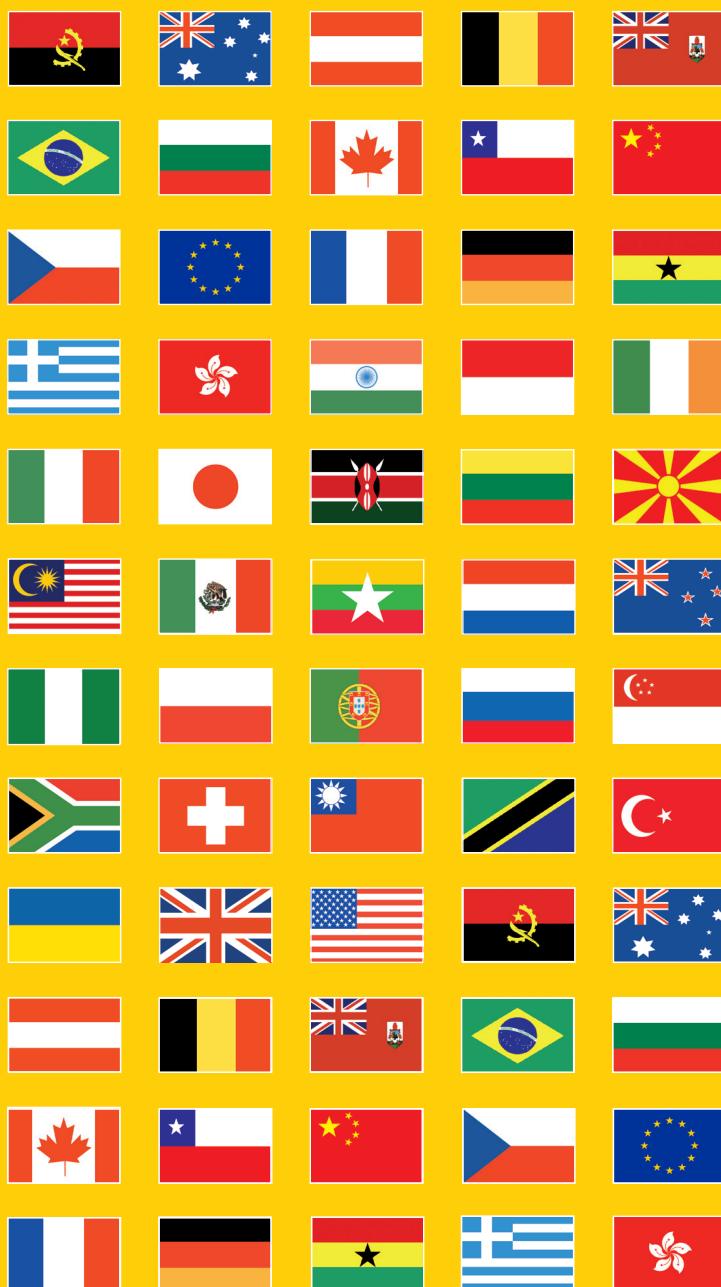


# Telecoms and Media

An overview of regulation in  
43 jurisdictions worldwide

# 2014

Contributing editors: Laurent Garzaniti and Natasha Good



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**Telecoms and Media 2014**

**Contributing editors:  
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Natasha Good  
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*Getting the Deal Through* is delighted to publish the fully revised and updated fifteenth edition of *Telecoms and Media*, a volume in our series of annual reports that provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 43 jurisdictions featured. This year's edition also benefits from an expanded overview section, with two new chapters covering Network Sharing, and Convergence in the US Telecommunications and Media Industry.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at [www.GettingTheDealThrough.com](http://www.GettingTheDealThrough.com).

*Getting the Deal Through* gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. Once again, regulatory agencies have assisted us in the verification of the factual information relating to their jurisdiction and we acknowledge their cooperation on page 14. We would also like to extend special thanks to contributing editors Laurent Garzaniti and Natasha Good of Freshfields Bruckhaus Deringer LLP for their assistance with this volume.

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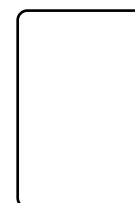
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# India

**Atul Dua, Salman Waris and Arjun Uppal**

Seth Dua & Associates

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## Communications policy

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### 1 Regulatory and institutional structure

Summarise the regulatory framework for the communications sector. Do any foreign ownership restrictions apply to communications services?

The regulatory and policy framework encompassing the communications sector in India comprises a number of statutes, rules, regulations, guidelines etc laid down by the government of India (GoI). The primary statutes regulating the sector and the players include:

- the Indian Telegraph Act, 1885 (the Telegraph Act);
- the Indian Wireless Telegraphy Act, 1933 (the Wireless Act);
- the Telecom Regulatory Authority of India (TRAI) Act, 1997 (the TRAI Act);
- the telecoms policy amended from time to time, the latest being the National Telecom Policy 2012 (the NTP 2012), which was approved in May 2012; and
- the Broadband Policy, 2004.

The Telegraph Act is the primary legislation underlying the regulatory framework for India and prescribing the various powers of the GoI to operate and regulate telecoms services in the country. As per the current structure, the task of granting licences and approvals to telecoms players for providing telecoms services in India has been assigned to the Department of Telecommunications, Ministry of Communications and Information Technology (DoT). The DoT formulates and implements the telecoms licensing regime, under which licences and approvals are granted to corporations to carry out the telecoms services.

The Wireless Act was formulated and implemented to regulate wireless communication and the possession of the concerned wireless telegraphy apparatus. It has been explicitly stated that the possession of any apparatus, appliance, instrument or material used or capable of use in wireless communication requires a licence from the DoT to that effect. A penalty has been prescribed for possession without a licence.

In 1997, the GoI passed the TRAI Act and set up the TRAI as the telecoms and broadcasting regulator with the power to make policy recommendations on related issues. The TRAI Act also provides for the adjudication of disputes between the telecoms licensees or players and the DoT through the Telecom Disputes Settlement and Appellate Tribunal (TDSAT).

The DoT issues telecoms policies that lay down the objectives and focus areas for the growth and development of the sector, the last policy being the NTP 2012. The policies are generally issued for a period of five years, setting out the broad objectives envisaged for that period. The key objectives envisaged by the NTP 2012 include:

- increasing rural teledensity, provisioning of affordable, high quality and high-speed broadband and extending the subscriber base across the rural areas as well;

- creating a 'one nation, one licence' policy across services and service areas;
- achieving 'one nation, full mobile number portability' and working towards 'one nation, free roaming';
- repositioning mobile phones from mere communication devices to an instrument of empowerment combining communication with proof of identity, fully secure financial and other transaction capability etc;
- delivering high quality seamless voice, data, multimedia and broadcasting services on converged networks for enhanced service delivery;
- putting in place a simplified M&A regime in the telecoms service sector ensuring adequate competition;
- provisioning of regular audit of spectrum usage;
- increased adoption of cloud computing;
- optimising delivery of services to consumers irrespective of their devices or locations by fixed-mobile convergence; and
- achieving substantial transition to new Internet Protocol (IPv6) in the country, among a number of other objectives.

Apart from the above-mentioned legislation, the Foreign Direct Investment (FDI) Policy, as amended from time to time lays down the foreign investment and ownership restrictions for the sector. The GoI prescribes the threshold limits of investment, entry routes and other conditions for such investment under the FDI Policy, as amended from time to time. The FDI Policy segregates various services on the basis of foreign investment allowed, regulated and prohibited. Presently, with regard to the foreign investment in entities engaged in the telecoms services, although FDI up to 100 per cent is permitted for most of the telecoms services, certain service-specific conditions and entry restrictions for the investment coming from outside India may apply. The decision to allow 100 per cent FDI in the communications sector was taken recently in 2013. Any amount of investment beyond 49 per cent in the telecoms entity would require prior approval of the GoI.

The regulatory regime for the communications sector is an evolving one, through the concerted efforts of the DoT and the GoI to adapt to the dynamic and rapidly developing sector.

---

### 2 Authorisation/licensing regime

Describe the authorisation or licensing regime.

The licensing regime for the provision of the telecoms sector witnessed a sea-change in 2013 with the introduction and implementation of the 'unified licence regime'. The unified licence regime has been implemented primarily with the objective of 'one nation, one licence', as envisaged under the NTP 2012. It replaces the earlier regime where the players were required to obtain separate licences for different telecoms services in India, such as the internet services, national long-distance (NLD) services, international long-distance (ILD) services and so on.

The unified licence regime, for the first time, allows telecoms operators to offer all telecoms services under one licence, subject to separate service authorisation for the provision of different telecoms services, covered by the unified licence. The unified licence covers within its ambit all the fixed, mobile and satellite services and communication both on wireline and wireless media with full mobility, limited mobility and fixed wireless access. The service authorisations covered by the unified licence are:

- access service;
- internet service;
- national long-distance (NLD) service;
- international long-distance (ILD) service;
- global mobile personal communication by satellite service (GMPCS);
- public mobile radio trunking service (PMRTS);
- very small aperture terminal (VSAT) closed user group (CUG) service;
- INSAT MSS-reporting (MSS-R) service; and
- resale of international private leased circuit (IPLC) service.

The service areas for each of the service authorisations have also been defined. The unified licence is granted for a period of 20 years from the effective date of the licence. The general, operating, monitoring, financial and security conditions for each of the services authorisations have been divided into the general unified licence conditions (applicable irrespective of the service authorisation(s)) and the specific service authorisation related conditions (applicable only if the said authorisation has been granted). Apart from freeing up the spectrum from the licence, the unified licence also bars cross-holding in different telecommunications companies.

With regard to the official fees, the charging heads have been defined separately under the unified licence with different limits for entry fees, net worth, paid-up capital, bank guarantees and processing fees. However, where a licensee is applying for more than one service authorisation, the unified licence sets out the upper limits for such financial implications. The prescribed upper limits are also the amounts applicable in cases of the licensee applying for all the services covered by the unified licence. These have been fixed at 250 million rupees each for the minimum equity and net worth of the licensee company, 150 million rupees for the entry fees and 100,000 rupees for the application processing charges. For the provision of the services, an amount of 2.2 billion rupees has been fixed as the performance bank guarantee and 440 million rupees as the financial bank guarantee. In addition to the above, 8 per cent of the adjusted gross revenue (AGR) shall be annually charged from the service providers as the licence fees. However, it should be noted that AGR has been defined differently for different service authorisations.

In addition to the unified licence, the DoT has also prescribed a registration process for infrastructure provider entities wishing to do business in India. This registration process covers the providers of telecoms infrastructure such as dark fibre, right of way, duct space and tower. The financial requirements for the registration include a small processing fee and does away with the entry fees and bank guarantee. The infrastructure providers engaging in India would have a rather easier entry as they would merely have to register themselves as compared to obtaining a licence.

To provide telecoms services in India, the players would require the unified licence and spectrum would have to be secured separately through the auction process. The auction of the 2G spectrum and the licences awarded in 2008 were quashed by the Supreme Court of India on the grounds of unconstitutionality; however, some of these quashed licences have been re-auctioned and other auctions are currently ongoing. Separately, the auction of 3G and BWA spectrum was held in 2010 and licences were issued. The process of spectrum auction and

allocation has been speeded up by the GoI and there are plans to introduce 4G licences in India.

### 3 Flexibility in spectrum use

Do spectrum licences generally specify the permitted use or is permitted use (fully or partly) unrestricted? Is licensed spectrum tradable or assignable?

The legal regime relating to the spectrum policy is contained under the Telegraph Act and the Wireless Act and the rules and regulations thereunder. The Wireless Planning and Coordination Wing of the DoT (WPC) has been constituted as the regulatory authority responsible for frequency management, including licences. The WPC is divided into a number of departments, one of the most important functions being the formulation and implementation of the National Frequency and Allocation Plans.

Previously, spectrum allocation was linked to the granting of a licence by the DoT; however, as contemplated by the NTP 2012, the unified licence has delinked spectrum from the licence. The Supreme Court of India recently decided that all natural resources, including spectrum, should be granted by way of auction (ie, market-related processes only). However, spectrum can be used only for the purposes for which it was granted.

Presently, trading and re-selling of spectrum is not allowed in India and the unused spectrum must be surrendered to the DoT. However, it is contemplated that spectrum trading may be allowed in the near future and a consultation process has also been initiated by the TRAI and the WPC in the past. This modification is expected to change the dynamics of the industry as the operators would be allowed to buy and sell airwaves according to their needs. The TRAI is expected to announce the final rules relating to the tradable quantity, revenues, technical, legal and regulatory framework shortly. The TRAI is of the view that the radio waves assigned through an auction in or after 2010, will be allowed to be traded.

### 4 Ex-ante regulatory obligations

Which communications markets and segments are subject to ex-ante regulation? What remedies may be imposed?

The basic regime governing the players and their conduct in the market is the licensing regime, which does not impose substantial ex-ante regulations.

The unified licence requires the licensee company to have the minimum prescribed amount of equity and net worth etc, which is the same for all players across the sector. Although the unified licence allows interconnection on the basis of the mutual agreements between the service providers, however, the same shall at all times conform with the orders, regulations and guidelines issued by the TRAI in relation to the interconnection usage charges. The telecoms licensee shall also not discriminate in any manner in the provision of its services.

The unified licence provides for certain guidelines relating to the maintenance of accounts by the licensee and the manner and revenue inclusions for the purpose of computation of adjusted gross revenue in order to determine the annual licence fees payable by such licensee. Also, the unified licence requires the licensee to submit bank guarantees in the nature of a performance bank guarantee of an amount up to 2.2 billion rupees and a financial bank guarantee of an amount up to 440 million rupees. These would have to be kept valid during the existence and validity of the unified licence and the DoT may encash the same upon any breach of the terms and conditions of the unified licence at any time. Besides such steps, the DoT has not prescribed for extant requirements on the telecoms licensees that are in the nature of ex-ante obligations.

## 5 Structural or functional separation

Is there a legal basis for requiring structural or functional separation between an operator's network and service activities? Has structural or functional separation been introduced or is it being contemplated?

The telecommunications regulatory framework in India does not explicitly provide for a structural or functional separation between an operator's network and service activities. Indian statute does not provide for any mandatory separation on the basis of an operator's network and structural activities. Nonetheless, the existing players in the Indian telecommunications industry have increasingly adopted an operational and managerial strategy of outsourcing of the non-core elements of the provisioning of telecoms services in India.

## 6 Universal service obligations and financing

Outline any universal service obligations. How is provision of these services financed?

The universal service obligations (USOs) were introduced in India by the DoT further to the objectives laid down under the National Telecom Policy of 1999. The purpose of implementation of the USOs is to provide access to the telegraph services (such as internet, Voice-over-Internet Protocol (VoIP) and other new technology services) to the populations residing in the rural and other remote areas of India at an affordable price. The new technology services such as VoIP and NGN networks, for which the DoT has not prescribed any specific licence or approval, have now been included within the purview of the unified licence.

To accomplish the USOs, the DoT has set up the Universal Service Obligation Fund (USOF). At the time of its establishment, the primary aim of the USOF was to provide access to only basic telegraph services; however, its ambit was increased to include all types of telegraphic service by the Indian Telegraph (Amendment) Act 2006. The Telegraph Rules, 1951 were also subsequently amended to enable support for mobile services and broadband connectivity in rural and remote areas of the country and to provide subsidy support to eligible operators for operational sustainability of rural wireline household direct exchange lines. The levy for the USOF is included in the annual licence fees of 8 per cent of the AGR levied on all the telecoms licensees and amounts to 5 per cent of the AGR.

The NTP 2012 provides for the utilisation of the USOF towards provisioning of broadband and support for telecoms services, including converged communication services in the commercially unviable rural and remote areas. Besides contributing to the development of the country, the imposition of USOs would also lead to increased use of services of the telecoms licensees and in turn higher revenues.

## 7 Number portability

Describe the number portability regime in your jurisdiction.

The mobile number portability (MNP) regime allowing users to move from one services provider to another, retaining their number, was introduced in India in November 2010 on a pilot basis, before being launched nationwide in January 2011.

The regime allows the subscribers within a telecoms circle to port their mobile number to another services provider with the same circle. As a condition to the unified licence, the licensee would have to ensure that its network is compliant with the MNP rules, regulations and regime laid down and amended from time to time. Certain conditions, such as the payment of dues, submission of proof of identification and address have been laid down under the regime. The subscribers complying with such conditions may port their mobile number on the payment of the requisite fees.

In the course of implementation of the 'one nation, full mobile number portability' objective laid down by the NTP 2012, the TRAI has, in September 2013, recommended to the DoT a pan-India basis MNP, wherein a mobile subscriber would be able to port the number

licensed in one circle to another circle. In such cases, the porting requests may be made from any of the service areas. This would also in turn lead to the abolition of roaming charges for the subscribers.

The MNP regime is in the advanced stages of implementation and is expected to be completely implemented in 2014.

## 8 Customer terms and conditions

Are customer terms and conditions in the communications sector subject to specific rules?

The Indian telecoms regulatory regime does not separately provide specific rules for the customer terms and conditions; however, broad rules on certain issues have been laid down.

The unified licence, besides describing the relation between the telecoms players and the DoT, also stipulates a few outline conditions within which the licensee is to provide its services to the subscribers. The telecoms players have to ensure that the customer terms and conditions are within the purview of the licence granted and also do not violate any specific rules laid down by the DoT and the TRAI.

The DoT and the TRAI have at times in the past regulated certain aspects of telecoms services, such as limiting the number of daily messages that can be sent using the short-messaging service (SMS), regulation of unsolicited commercial communication and the 'do-not-disturb' service, both in the interest of the end-customers.

Thus, broadly speaking, the terms and conditions the telecoms licensees impose in relation to the services rendered to the end-customers must be in line with the licence agreement with the DoT, guidelines and any other relevant regulations laid down by the concerned authorities.

## 9 Net neutrality

Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

With regard to the principles of net neutrality, it must be noted that the regime is currently not in place in India. Hence it would be proper to say that presently, there are no limits on the internet service providers' freedom to control and prioritise the type or source of data. However, there have been consultations initiated on the subject regarding implementation and net neutrality has been contemplated by the NTP 2012 and thus might be introduced in the near future.

## 10 Next-Generation-Access (NGA) networks

Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

The NGA networks are presently not regulated by specific rules or obligations. Nonetheless, the TRAI is working towards defining specific rules and regulations for the development and implementation of NGA networks. Further to providing for a specific set-up for the NGA networks, the TRAI has formed a core committee to advise in this regard and initiated a consultation process.

With a view to increased penetration into India, including the provision of telecoms services in rural and remote areas, the DoT mandated the establishment of the USO Fund in 2002. The Broadband Policy was introduced in India in 2004. Initially, it was mandated that the USO Fund would only be used for providing basic telecoms services to such areas; however, with the expanding telecoms industry and with an eye for modernisation, all sorts of telegraph and telecoms services were brought within the purview of the USOs and the Fund constituted for the same. In 2008, subsidy support was introduced for certain eligible operators to provide for operational sustainability of rural wire-line household DELs. There

have also been initiatives by the telecoms operators to promote broadband use in rural areas.

A regulatory framework specifically for NGA networks can be expected to be established in the near future. In this regard, the TRAI has on certain occasions initiated consultations with regard to a number of issues and frameworks on the implementation of NGA networks in India.

#### 11 Data protection

Is there a specific data protection regime applicable to the communications sector?

There is no specific data protection legislation currently in place in India. However, with specific regard to the newly implemented regime, the unified licence explicitly sets out certain conditions for telecoms licensees to abide by to ensure that the data of end customers and subscribers remains secure.

As a blanket condition under the licence, the licensee is to ensure that all monitoring activities are to be carried out in accordance with any rules framed under the Telegraph Act for ensuring the privacy of voice and data. The Telegraph Act, in case of a public emergency or public safety, empowers the GoI, state government or an authorised government officer to order the non-transmission, interception, detention, or disclosure of messages about a particular subject.

Additionally, in order to provide for an effective system of data protection, the Personal Data Protection Bill, 2006 was introduced in 2006, but has not yet been formulated into a law. Subsequently, however, the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 were brought into effect in 2011 under the provisions of the Information Technology Act, 2000. These rules provide for the implementation of reasonable security practices and procedures to be followed by entities handling the sensitive personal data of individuals. The said rules are applicable to all entities that acquire the sensitive personal data of individuals, irrespective of the nature of business activities.

In the absence of any specific regime protecting the privacy of data in India, the Supreme Court of India has held that the right of privacy is a fundamental right of an individual. The government or any authorised intercepting agency is required to tender adequate grounds for data interception. The Supreme Court has also laid down guidelines for the government and private licensees to protect the privacy of communications in government as well as private telecoms sectors.

Presently, the need for stand-alone legislation on data protection to ensure confidentiality of all information transmitted through computer networks and telephones as per international standards is envisaged and the Ministry of Law and Justice might initiate an appropriate process for introduction of the same.

#### 12 Key trends and expected changes

Summarise the key emerging trends and hot topics in communications regulation in your jurisdiction.

A number of policy initiatives by the GoI and DoT have led to a complete transformation with phenomenal growth in the sector over the last decade and it is poised to grow further. The regulatory framework concerning communications and telecoms in India witnessed an evolution in recent years with the implementation of certain key initiatives, including MNP, USO and introduction of the unified licence, among other things. The country is projected to witness a high penetration of internet, broadband, and mobile subscribers in the near future. These steps were taken in line with the objectives set by the NTP 2012.

The unified licence regime, implemented recently, has simplified the telecoms licence regime and allows all telecoms services to be

offered under one licence. The unified licence allows the sharing of spectrum among the various licences, which was not permitted earlier. The existing licences would also have to necessarily migrate to the unified licence regime upon the expiry of their subsisting licences.

The recent enhancement of the foreign investment limits from 74 per cent to 100 per cent for entities engaged in the telecoms sector is aimed at raising the participation of foreign telecoms entities into India, leading to an overall rapid development and increased capital infusion of the existing players and the market as a whole. A specially created group of the DoT has also cleared the mergers and acquisitions guidelines for the telecommunications sector, which would encourage consolidation in the sector. Once these guidelines are issued it will be interesting to see how they will be reconciled with the existing guidelines on mergers and acquisitions issued by the Competition Commission of India.

The telecoms tower providers' industry has been endowed with the status of infrastructure provider. This will enable the tower providers to make use of the higher limits of external commercial borrowings, lower import duties and the exemptions on excise duty on infrastructure equipment.

The Supreme Court of India has adjudicated certain important cases involving spectrum. Therein previously allotted spectrum was cancelled and a new timeline for the spectrum allocation was laid down, in addition to reiteration of the principle of allotment of natural resources, including spectrum, only through auction process. Foreign entities have also been allowed to participate in the spectrum allotment and allocation process.

The upcoming trends in the sector would further lead to an upscale in the market. Full MNP (across different services areas), higher internet penetration and increased infusion of telecoms services to the rural and remote areas, etc in addition to a number of other objectives defined by the NTP 2012 are the initiatives to watch out for in the future. The GoI is targeting broadband connectivity from 15 million currently to over 600 million in 2020, with voice-connectivity being carried forward to data and emerging technologies including cloud computing.

### Media

#### 13 Regulatory and institutional structure

Summarise the regulatory framework for the media sector in your jurisdiction.

The regulatory regime governing the media sector is contained under the Prasar Bharti Act, 1990 and the Cable Networks Act, 1995. The institutional structures and government bodies regulating the sector include the Ministry of Information and Broadcasting (MIB) and the Prasar Bharti. The said government bodies have been entrusted with the activities of governance through the issue of guidelines, policies and rules and the grant of licences for the broadcasting and electronic media sector. In 2004, broadcasting services and cable services were included within the ambit of telecoms services by the notification of GoI. The TRAI, in addition to the telecoms sector, has also been set up as the regulator for the media and broadcasting industry and the TDSAT has the power to adjudicate on disputes.

#### 14 Ownership restrictions

Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

In India, the latest FDI Policy issued in 2013 lays down the caps, entry routes and other conditions applicable to the foreign investment in-flow into the Indian entities for various sectors, including the media services. The FDI Policy divides media services into the following categories and subcategories:

- Broadcasting services:
  - Broadcasting carriage services:
    - An FDI cap of 74 per cent is permitted for teleports (ie, setting-up of up-linking HUBs/teleports; direct to home; cable networks (multi-system operators (MSOs); undertaking upgradation of networks towards digitalisation and addressability, operating at the national, state or district level); mobile TV; and headend-in-the-sky (HITS) broadcasting services). The entry route for such services is the automatic route up to 49 per cent and the government/approval route over 49 per cent up to 74 per cent.
    - FDI up to 49 per cent completely under the automatic route is permitted for entities engaged in cable networks, including MSOs not undertaking the upgrading of networks and digitalisation and addressability and the local cable operators.
  - Broadcasting content services:
    - Up to 26 per cent FDI through the government/approval route is permitted for the terrestrial broadcasting FM (FM radio) services.
    - Similarly, FDI up to 26 per cent through the government/approval route is also permitted for the services of up-linking of news and current affairs TV channels.
    - FDI up to 100 per cent through the government/approval route is allowed for the services of up-linking of non-news and current affairs TV channels and down-linking of TV channels.
- Print media:
  - FDI and investment by the non-resident Indians, persons of Indian origin and foreign institutional investors up to a total of 26 per cent through the government/approval route is permitted for the services of publishing of newspapers and periodicals dealing with news and current affairs and for the publication of Indian editions of foreign magazines dealing with news and current affairs.
  - Up to 100 per cent FDI through the government/approval route is allowed for the services of publishing and printing of scientific and technical magazines, speciality journals and periodicals.
  - Likewise, for the services of the publication of facsimile edition of foreign newspapers, FDI up to 100 per cent through the government/approval route is permitted.

In addition to the above-mentioned entry routes and sectoral caps, the FDI Policy also imposes a condition that the entity or company receiving the foreign investment shall have to obtain the requisite licence and act in compliance with the conditions of such licence and those specified or notified by the MIB or any other government body from time to time in relation to the provision of such services. Besides these criteria, certain conditions have also been imposed with regard to the key personnel to be deployed by the entity receiving the foreign investment, such as the majority of directors on the board of the company, the chief executive officer, chief security officer and the chief officer in-charge of the technical network operations etc shall be Indian citizens or resident Indian citizens and the compliance of like conditions may require security vetting or clearance on a regular basis by the GoI.

At present there are no umbrella restrictions on cross-ownership of media companies, despite some guidelines for certain licences that forbid entities from controlling more than one broadcasting service in the same market. One such restrictive condition is contained in the guidelines for DTH licences, which states that:

*Broadcasting companies and/or cable network companies shall not be eligible to collectively own more than 20 per cent of the total equity of the DTH applicant company, at any time during the*

*licence period. Similarly, the DTH applicant company shall not have more than 20 per cent equity share in any broadcasting and/or cable network company.' However, in this regard it is pertinent to note that a proposed bill, the Broadcasting Services Regulation Bill, aims to impose certain cross-ownership regulations on media companies in addition to imposing restrictions on accumulation of interests to provide for competition and plurality of views.*

#### 15 Licensing requirements

What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

The Ministry of Information and Broadcasting (MIB) has responsibility for the granting of licences for broadcasting and the regulation broadcasting services thereafter.

Applications for the licence or permission to provide broadcasting services in India have to be made to the MIB in the prescribed manner. Once the MIB grants permission the industry players would have to comply with the conditions prescribed by the Ministry. The tenure of the licence or permits for up-linking non-news and current affairs channels is 10 years, for down-linking five years, for DTH 10 years, for cable TV network operators one year, for HITS broadcasting services 10 years.

Licensees are required to obtain security clearance from the Ministry of Home Affairs for security-related reasons. Additionally, for providing up-linking services, the applicant or licensee is required to obtain an additional clearance for usage of satellites from the Department of Space and from the WPC for obtaining a licence for operating wireless. The multichannel down-linking and distribution of television programmes in the C-band or Ku-band (ie, the HITS broadcasting services, which were introduced into India in 2009) can be provided upon obtaining the HITS licence from the MIB.

With regard to the financial implications of these licences, permits and approvals, the entities obtaining a licence for up-linking, down-linking or DTH must pay the application processing fees, and annual licence fees and royalty payments on spectrum usage that have been prescribed by the WPC from time to time. DTH and HITS licensees are required to pay an additional non-refundable entry fee of 100 million rupees.

#### 16 Foreign programmes and local content requirements

Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

The guidelines laid down by the MIB for the purpose of down-linking of television channels regulate the broadcasting of foreign channels in India. The guidelines do not specify requirements of local content on television channels, but they do stipulate the must-carry obligations for the broadcaster.

Additionally, the service provider down-linking the registered channels shall be obligated to comply with the Programme and Advertising Code prescribed under the Cable Television Networks (Regulation) Act, 1995 in addition to any other codes, standards, guidelines rules or restrictions that have been prescribed by the MIB for regulation of content on television channels from time to time. Content restrictions are also imposed through licensing terms and conditions. Any content offending morality, decency, promoting superstition, defamatory, denigrating India's sovereignty and integrity, affecting national security or in contempt of court, etc, is restricted from being broadcast through any service or medium in India.

Further, no news and current affairs channel shall be permitted to be down-linked if it does not carry any advertisements aimed at Indian viewers, is not designed specifically for Indian audiences, is a standard international channel, and has been permitted to be telecast in the country of its up-linking by the regulatory authority of



that country. These restrictions are applicable to all programmes and to delivery of content via all media including online and over mobile, irrespective of whether produced by an Indian or a foreign producer.

### 17 Advertising

How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

Cable and radio advertisements are regulated by the provisions of the Cable Advertisement Code and the Code for Commercial Advertising over All India Radio respectively. Online advertisements shall be subject to the IT Act, the terms of the ISP guidelines, the licence and other content regulation laws as mentioned earlier.

The Cable Advertisement Code has been framed and implemented under the Cable Network Rules. The Cable Advertisement Code stipulates that advertising must not offend morality, decency and religious sentiments. Additionally, the Cable Advertisement Code provides for a detailed list of restrictions on advertisements to be featured on cable networks. The Code for Commercial Advertising over All India Radio also lays down a similar prohibition on advertising and states that no advertisement shall be permitted that derides any race, caste, colour, creed and nationality, or is against the law of the land, or tends to incite people to crime, cause disorder or violence, or breach of law, or glorifies violence or obscenity, or adversely affects friendly relations with foreign states, or relates to or promotes cigarettes and tobacco products, liquor, wines and other intoxicants etc.

Apart from the above broadcasting media-specific advertisement codes, there are certain other general legislations that lay down the requirements for advertising of specific products, such as the Drugs and Cosmetics Act, 1940; the Pharmacy Act, 1948; the Emblems and Names (Prevention of Improper Use) Act, 1950; the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954; the Prize Competitions Act, 1955; the Copyrights Act, 1957 etc. Further, online advertisements are subject to regulation under the IT Act, the guidelines and licence issued for the internet service provider, apart from the other content regulation laws mentioned earlier.

### 18 Must-carry obligations

Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

The must-carry obligations under the regulatory regime are contained in the Cable TV Networks Act, which stipulates the compulsory retransmission of channels operated by or on behalf of the Parliament, in such manner as the government may provide from time to time. Additionally, the Cable TV Networks Act also requires the transmission and retransmission of at least two Doordarshan terrestrial channels and one regional language channel of the concerned state in the prime band, in satellite mode on frequencies other than those carrying the terrestrial frequencies. The DTH licence stipulates that the DTH licensee is to provide access to various content providers and channels on a non-discriminatory basis. The MIB has also been empowered to specify the names and numbers of channels of Prasar Bharti or any other channel, that is required to be carried mandatorily as part of the Internet Protocol Television (IPTV) services in India.

### 19 Regulation of new media content

Is new media content and its delivery regulated differently from traditional broadcast media? How?

New media content and its delivery are regulated by the same guidelines as applicable for delivery of content under traditional broadcast media.

The delivery of online content through IPTV is regulated by the MIB through the specific Guidelines For Provisioning of Internet Protocol Television (IPTV) Services. The cable operators providing the IPTV services are governed by the Cable Television Networks (Regulation) Act, 1995 and any other laws as may be applicable. The Programme and Advertisements Code is also applicable in cases of IPTV service, thus the content is required to be in conformity with the same. The provisions of the IT Act may also come into play due to the convergence of services with regard to the content being published over the internet. The IT Act provides for penal provisions in case of violations of the provisions of the Act on account of publishing of content prohibited by the Act.

The telecoms licensees providing TV channels through IPTV are required to transmit only such broadcast satellite television channels in exactly the same form and manner as are registered with or permitted by the MIB. However, in such cases, the responsibility to ensure that content is in accordance with the extant laws, rules and regulations shall be that of the broadcaster, and the telecoms licensee will not be held responsible for such violations. Carrying any broadcast satellite television channels that are prohibited either permanently or temporarily or not registered with the MIB is not permitted.

### 20 Digital switchover

When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

India's advancement in broadcasting technology is marked by the introduction and implementation of digital cable television. This proposes to deliver a new freedom to choose in terms of television channels and content. In 2011, the GoI mandated the digitalisation of TV signals, marking a shift from analogue to digital broadcasting.

The transmission was to take place across various cities, divided into phases. The first phase consisting of all the four metro cities was scheduled for and completed by November 2012. The second phase consisted of 38 cities across 15 states and was proposed to be completed by 31 March 2013. With regard to the second phase, the official data released suggests that more than 85 per cent of digitisation had been achieved by April 2013. The deadline for the complete digitisation in the country has been set for March 2015, by which there shall be an absolute shift from the analogue system.

### 21 Digital formats

Does regulation restrict how broadcasters can use their spectrum (multi-channelling, high definition, data services)?

The spectrum use regime prescribes that broadcasters are permitted to use the allotted spectrum for the specific activity for which the spectrum has been granted. Using spectrum for any other purpose is restricted.

### 22 Media plurality

Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?

Media pluralism in India is in the nascent development stages. In order to ensure media pluralism and counter the ills of monopolies, reasonable restrictions need be put in place on ownership in the media sector to strike a balance between ensuring a degree of plurality of media sources and content on the one hand and providing freedom to companies to expand, innovate and invest on the other.

The TRAI has recently initiated consultations on the subject of 'Issues relating to Media Ownership', wherein there were recommendations for a need for necessary safeguards to ensure that

plurality is maintained across the three media segments (print, television and radio) along with guidelines for horizontal and vertical integration under the Guidelines for Mergers and Acquisitions aimed at regulating market power.

The need to regulate arises on three accounts:

- First, dissolution of political control and influence through surrogates over newspapers, TV channels and TV distributions, often employed to propagate political agendas.
- Secondly, entities backed by political parties are either taking over operations of other cable TV operators or driving them out of business using other means, thereby virtually extending their monopoly in the entire region.
- Thirdly, similar influence can also be practised by the corporate sector entities.

The inherent conflict of interests, which arises from uncontrolled ownership in the media sector, gives rise to manifestations such as paid news, propagation of biased analysis and forecasts in the political and corporate arena and irresponsible reporting to create sensationalism, among other things. These are even more lethal when control rests with entities having business and political interests.

Thus, the need to ensure pluralism is great and the concerned agencies and bodies are in the process of taking appropriate measures to achieve this and the evolution of a strong regulatory regime is not too far away.

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### 23 Key trends and expected changes

Provide a summary of key emerging trends and hot topics in media regulation in your country.

The media and broadcasting sector in India witnesses regular growth on account of technological advancement and the implementation of modern day techniques for media content delivery.

India is already in the final stages of digitisation and is preparing to completely do away with the analogue system. IPTV and HITS services are among a number of those services that have been implemented and are gaining mass acceptance of the Indian population. The TRAI is under process of formalisation of final recommendations on cross-media ownership and media plurality, among a number of diverse media-related issues.

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### Regulatory agencies and competition law

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#### 24 Regulatory agencies

Which body or bodies regulate the communications and media sectors? Is the communications regulator separate from the broadcasting or antitrust regulator? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

The Indian communications and media sectors are regulated by the TRAI, which has the functions of governance and regulation of the players engaged in the sector and makes the necessary recommendations to the DoT and GoI regarding the said sectors. However, the TRAI has not been granted adjudicatory power with regards to the disputes that may arise between the telecoms and media players inter se or with the concerned regulators. The TDSAT, constituted under the TRAI Act, has been entrusted with the adjudicatory responsibilities in the telecoms and media industry.

The TDSAT has been empowered to hear and decide upon disputes between the players or licensees and licensor or regulatory body; and between the different players inter se for both the communications and the media sectors. Whereas the DoT is the licensing and regulatory authority for the telecoms sector, the MIB is the authority for the media and broadcasting sector. However, the antitrust authority in India has been constituted in the Competition

Commission of India (CCI). The CCI, apart from being the regulatory body, has also been entrusted with the function of adjudication of antitrust disputes in India.

Under the Indian regulatory framework, there arises no question of conflict of jurisdiction between the TDSAT and the CCI. The CCI has been established under the provisions of the Competition Act, 2002, which also states that any entity that adopts anti-competitive, restrictive trade or other similar activities contemplated by the Competition Act, 2002 would be dealt with under the provisions of the Act and by the CCI, irrespective of the business activities of such entities, be it telecoms, media, broadcasting or any other. However, the TDSAT has been established to deal with instances relating to and in connection with telecoms licences and media regulations and approvals. Additionally the Competition Act, 2002 explicitly states that the provisions of the Act shall have an overriding effect over any other law in force in India.

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#### 25 Appeal procedure

How can decisions of the regulators be challenged and on what bases?

The appellate procedure provides for an appeal against the decisions of the TRAI to the TDSAT. The TRAI Act provides that an appeal may be made before the TDSAT against any direction, decision or order made by the TRAI. Either of the central government, state government or local authority or any person aggrieved by the direction, decision or order of the TRAI may prefer such appeal to the TDSAT. As per the prescription of the TRAI Act, such appeal is required to be made within a period of 30 days of the communication of the concerned direction, decision or order.

Further, an appeal against any order of the TDSAT lies before the Supreme Court of India. However, the decisions or orders of the TDSAT made thereof with the consent of the parties are not appealable. It is pertinent to mention that an appeal can be made to the Supreme Court of India against a decision or order of the TDSAT only if the case involves a substantial question of law or if the appellate decree has been passed ex parte. An appeal is to be filed before the Supreme Court of India within 90 days after the date of such order or decision.

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#### 26 Competition law in the communications and media sectors

Describe the key merger and antitrust decisions in the communications and media sectors adopted over the past year by your antitrust authority.

There have been a number of decisions by the Indian antitrust authority of India – the CCI – concerning the entities engaged in the communications and media sector in India.

There have been decisions of the CCI where various telecoms and media entities have been investigated and examined in order to access whether they are involved in any anti-competitive activities causing an appreciable adverse effect on competition in India.

The CCI has had a number of opportunities to decide on anti-competitive practices carried out by various state associations of exhibitors of films, motion pictures etc, wherein associations have at various instances been found to enjoy such a position in the market of films, motion pictures etc, that by virtue of their position they were able to impose or dictate certain onerous terms and conditions on the entities engaged in the trade in the respective state of operation. These activities enabled them to take decisions to control the market and restrict the services in the market for the producers and distributors. The CCI decisions have specified that such conduct of these associations was anti-competitive in that they limited or controlled the supply and provision of services in India.

In another case concerning the various DTH providers in India, the CCI specifically prescribed that Indian law does not recognise collective abuse of dominance as there is no concept of collective dominance that has evolved in other jurisdictions such as Europe.

As far as mergers and acquisitions are concerned, the CCI has approved mergers and acquisitions in the communications and media sectors involving Microsoft Corporation and Microsoft

International Holdings BV in relation to Nokia; Intel Corporation and Motorola Mobility LLC in for a combinations involving them; iGate Global Solutions Limited and iGate Computer Systems Limited; and Walt Disney Company (Southeast Asia) Pte Limited acquiring UTV Software Communications Limited. In such cases, among a number of other instances, the CCI did not find the merger or acquisition to be anti-competitive.



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