

MONTENEGRO: The new Electronic Communications Law

The new Montenegrin Law on Electronic Communications¹ aligns the Montenegrin regulatory framework with the 2009 European Regulatory Framework for Electronic Communications

The Law on Electronic Communications came into force on 7 August 2013. It draws upon the EU regulatory framework for electronic communications set up in 2009, in particular the Directive 2009/140/EC (amending the Framework, Authorisation and Access directives) and the Directive 2009/136 (amending the Universal Service Directive, the Processing of Personal Data and Protection of Privacy in the Electronic Communications Sector directives and the Regulation on Cooperation Between National Authorities Responsible for Enforcement of Consumer Protection Laws).

Status and competencies of the regulatory body

The Montenegrin Parliament is declared the founder of the Agency for Electronic Communications and Postal Services (EKIP). The Law further insulates EKIP from the executive branch by explicitly vesting this regulator with the authority to enact by-laws. Furthermore, EKIP's decisions can no longer be appealed to the Ministry but are final and subject only to judicial review by the Administrative Court. EKIP may at its discretion grant suspension of enforcement pending judicial review, upon the motion of the operator.

EKIP participates in the procedure of preparation of the planning documentation relevant to electronic communications infrastructure.

Obligations of SMP operators

In line with the 2002 EU regulatory framework, even under the previous legislation EKIP was authorized to impose a number of commitments on significant market power (SMP) operators. The new Law leaves these powers intact, except that EKIP is no longer authorized to order SMP operator to provide a minimum set of leased lines. In addition to the existing powers, EKIP is now vested also with the power to order, subject to a prior opinion of the Government, a functional separation of a vertically integrated SMP operator's wholesale access operation, if other measures are not sufficient to ensure effective competition.

Any spin-off of local access network into a separate entity with change of control, or creation of a separate business unit for supply of access services to retailers has to be notified to the regulator 90 days in advance, with the aim to enable the regulator to timely assess the effects of the transaction and decide on the future access regime.

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Universal service

According to the new Law, the obligation to reimburse the Universal service provider for the costs of Universal services lies upon the operators whose share in the total revenues generated in the electronic communications sector exceeds 2%.

Universal service provider has a new obligation to submit quarterly reports to the regulator and to notify the regulator 60 days in advance of its intention to spin-off and change control over its access network. In that case, EKIP is entitled to withdraw from such operator its status of Universal service provider.

Protection of users

In addition to a sample customer contract, operators' general terms and conditions of service also have to be submitted to EKIP for approval.

The new Law introduces several measures for protection of users. Damages required from a subscriber in the event of early contract termination by the subscriber cannot exceed the lower of the amount of monthly subscription for the remainder of the contract term and the difference between full fee and the discounted fee paid by the subscriber up until the date of contract termination. Furthermore, the contract with users has to specify minimum speed of broadband Internet access, which, for fixed networks operators, cannot be lower than 50% of the maximum available speed. Finally, the operators are charged with the duty to notify subscribers of any increase of traffic consumption above the average consumption of that subscriber in the past period.

Penalties

The new Law introduces hefty fines for major misdemeanors (e.g. breach of the obligation to effect functional separation of wholesale from other activities, unlawful interception of communications and data retention) which range from 1% to 10% of the operator's annual turnover in the year preceding the year when the misdemeanor is committed. This provision is not in line with the Montenegrin Law on Misdemeanors, which allows fines in such range only for competition infringements. Accordingly, the new fines will likely remain a paper tiger until the Law on Misdemeanors is amended.

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