

BDK Newsletter

BOJOVIĆ · DAŠIĆ · KOJOVIĆ
Advokati / Attorneys at Law

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Serbia: ICT

Law on Electronic Communications

The Serbian Parliament has recently adopted the Law on Electronic Communications („Law“). The Law follows the wide-spread fashion of providing a single legal framework for all types of electronic communications. It replaces the previous approach of local lawmakers which assumed separate legislative instruments for different types of electronic communication.

Electronic Communications Agency

The Law reforms the existing regulatory body, the Telecommunications Agency, into the Electronic Communications Agency („Agency“). However, the Law does not fully assure independence of Agency from the executive branch. The issue is important given the history of problematic and dubious relations between the Agency's predecessor, the Telecommunications Agency, and the Ministry for Telecommunications and Information Society („Ministry“), which culminated in 2008 in a court dispute over the competence of the Ministry to set aside regulations and decisions rendered by the Agency for Telecommunications. The Ministry ultimately backed down, given that the former Law on Telecommunications a) did not contain a specific clause entitling the Ministry to formally supervise the acts and regulations enacted by the Agency for Telecommunications b) explicitly provided that the Agency for Telecommunications is functionally independent from all other state authorities.

This time around, however, the Ministry did not forget to introduce into the bill a specific clause entitling it to supervise not only the legality but also the expediency of the acts and regulations rendered by the Agency. At the same time, the Law declares functional independence of the Agency from the Ministry and states that the decisions rendered by the Agency are final in administrative proceedings and may only be challenged in judicial proceedings. The battles are still to be witnessed.

Telecommunications

Unlike the previous Law on Telecommunications, which prescribed that the telecommunication activities such as fixed or mobile telephony, could be performed subject to a license, the Law prescribes that activities in the

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electronic communication sector may be performed without any special license but subject to the fulfillment of general technical conditions and payment of prescribed fees, which are still to be determined by the Agency. A temporary exception applies to fixed telephony services, which will remain subject to the licensing regime until 31 December 2011.

However, the abolishment of the requirement for specific activity license does not mean that, for instance, new mobile telecommunication operators will be able to freely appear on the market since the frequency allocation remains subject to specific permits issued in competitive procedure.

Participants with significant market power

The Law contains a chapter on the activities in the electronic communication sector in relation to which it is not possible to secure effective competition without further regulation, and permits the Agency to impose a range of additional obligations (e.g. price control, disclosure of information, separate accounting, etc.) on market participants with significant market power. Currently, such activities include, inter alia, retail access to PTN, wholesale broadband market and wholesale market of leased lines but the list is to be completed by implementing by-laws and updated every three years.

Frequencies

The use of frequencies is subject to the issuance of permit by the Agency except for those parts of the frequency range designated to be available to the general public (e.g. Wi-Fi range). The Law explicitly prohibits assignment or renting the allocated frequencies.

Digitalization

The upcoming digitalization of the terrestrial television and radio signal is also addressed in the Law. The Ministry is supposed to adopt, upon Agency's proposal, the decision that would facilitate the digitalization process. Note that the deadline for finishing the digitalization imposed by the Digitalization Strategy¹ is 4 April 2012.

¹ Strategy for Transfer from Analogue to Digital Broadcast of Radio and Television Program in Republic of Serbia (Strategija za prelazak sa analognog na digitalno emitovanje radio i televizijskog programa u Republici Srbiji, Official Gazette of RoS, n.52/2009)

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Miscellaneous

The Law also contains provisions on universal services, cable networks (technical conditions for performance of this activity are to be set forth in implementing legislation to be adopted by the Agency), collocation, unbundling of the local loop and number portability which are in line with comparable regulatory frameworks existing in the region.

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