

Telecoms & Media 2019

Contributing editors
Alexander Brown and Peter Broadhurst



Publisher

Tom Barnes

tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall

claire.bagnall@lbresearch.com

Senior business development managers

Adam Sargent

adam.sargent@gettingthedealthrough.com

Dan White

dan.white@gettingthedealthrough.com

Published by

Law Business Research Ltd

87 Lancaster Road

London, W11 1QQ, UK

Tel: +44 20 3780 4147

Fax: +44 20 7229 6910

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between March and May 2019. Be advised that this is a developing area.

© Law Business Research Ltd 2019

No photocopying without a CLA licence.

First published 2000

Twentieth edition

ISBN 978-1-83862-118-6

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



Telecoms & Media

2019

Contributing editors**Alexander Brown and Peter Broadhurst**

Simmons & Simmons LLP

Lexology Getting The Deal Through is delighted to publish the twentieth edition of *Telecoms & Media*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Korea.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Alexander Brown and Peter Broadhurst of Simmons & Simmons LLP, for their continued assistance with this volume.



London

May 2019

Reproduced with permission from Law Business Research Ltd

This article was first published in June 2019

For further information please contact editorial@gettingthedealthrough.com

Contents

Introduction	5	Italy	105
Alexander Brown and Peter Broadhurst Simmons & Simmons LLP		Edoardo Tedeschi and Margherita Gnech Simmons & Simmons LLP	
Net neutrality, privacy and VoIP: tension between US federal and state enforcers	6	Japan	113
John Nakahata, Kent Bressie, Adrienne Fowler and Stephanie Weiner Harris, Wiltshire & Grannis LLP		Chie Kasahara Atsumi & Sakai	
Brazil	9	Kenya	120
Maurício Vedovato and Daniela Maria Rosa Nascimento Huck Otranto Camargo		Brian Tororei KT Law Associates	
Chile	15	Korea	128
Alfonso Silva and Eduardo Martin Carey		Kwang Hyun Ryoo, Ji Yeon Park and Juho Yoon Bae, Kim & Lee LLC	
China	27	Malta	135
Jingyuan Shi Simmons & Simmons LLP		Andrew J Zammit and Annabel Hili GVZH Advocates	
Cyprus	35	Mexico	144
Kleopas Stylianou and Nikos Stavrou Tornaritis Law Firm		Julián J Garza C and Paulina Bracamontes B Nader, Hayaux & Goebel, SC	
Czech Republic	41	Nigeria	151
Martin Lukáš and Vladimír Petráček Weinhold Legal		Tamuno Atekebo, Otome Okolo and Chukwuyere E Izuogu Streamsowers & Köhn	
European Union	48	Portugal	160
Christophe Fichet, Christopher Götz, Martin Gramsch, Anne Baudequin and Felix Hänel Simmons & Simmons LLP		Gonçalo Machado Borges, Nuno Peres Alves and Mara Rupia Lopes Morais Leitão, Galvão Teles, Soares da Silva & Associados	
Greece	64	Russia	169
Dina Th Kouvelou and Nikos Th Nikolidakos Nikolidakos & Partners Law Firm		Anastasia Dergacheva, Ksenia Andreeva, Anastasia Kiseleva, Kseniya Lopatkina and Vasilisa Strizh Morgan, Lewis & Bockius LLP	
India	72	Serbia	177
Atul Dua and Anuradha Advaita Legal		Bogdan Ivanišević, Pablo Pérez Laya and Zorana Brujić BDK Advokati	
Indonesia	83	Singapore	185
Agus Ahadi Deradjat, Kevin Omar Sidharta and Mahiswara Timur Ali Budiardjo, Nugroho, Reksodiputro		Chong Kin Lim and Shawn Ting Drew & Napier LLC	
Ireland	94	Switzerland	200
Helen Kelly and Simon Shinkwin Matheson		Marcel Meinhardt, Astrid Waser and Damian Joho Lenz & Staehelin	

Taiwan 207

Robert C Lee
YangMing Partners

Thailand 213

John P Formichella, Naytiwut Jamallsawat and Artima Brikshasri
Blumenthal Richter & Sumet

United Arab Emirates 221

Raza Rizvi
Simmons & Simmons LLP

United Kingdom 227

Alexander Brown and Peter Broadhurst
Simmons & Simmons LLP

United States 240

Kent Bressie, Julie A Veach, Michael Nilsson, Colleen Sechrest,
Paul Caritj and Austin Bonner
Harris, Wiltshire & Grannis LLP

Serbia

Bogdan Ivanišević, Pablo Pérez Laya and Zorana Brujić

BDK Advokati

COMMUNICATIONS POLICY

Regulatory and institutional structure

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

Regulatory framework

The key piece of legislation that regulates the communications sector in Serbia is the Electronic Communications Act (2010, as amended) (ECA) modelled after the EU regulatory framework of 2002.

Institutional structure

The competencies for regulation of electronic communications are divided between the government, the Ministry in charge of telecommunications and information society and the Regulatory Agency for Electronic Communications and Postal Services (RATEL).

The government defines the electronic communications policy, adopts strategic documents and action plans for their implementation, and establishes the principles, goals and priorities for the development of electronic communications in Serbia.

The Ministry supervises the implementation of the ECA and related regulations, represents the Republic of Serbia in international organisations and institutions connected with electronic communications and promotes investment, research and development in the sector. In addition, the Ministry contributes to the harmonisation of the national legislation with the EU regulations.

The RATEL is an organisation functionally and financially independent, which exercises public authorities aimed at effectively implementing the electronic communications policies, promoting competition and protecting consumers' rights. Its main competencies include the adoption of by-laws regulating certain aspects contained in the ECA (eg, provision of universal services, payable fees, radio-frequency usage, etc) and the power to decide on the rights and obligations of the operators and the users of electronic communications.

Foreign ownership restrictions

No restrictions exist in Serbia regarding the foreign ownership of operators of electronic communications.

However, a restriction does exist for the provision of electronic communications services from abroad. Although it is not expressly stated in the ECA, the RATEL interprets that the ECA requires electronic communications operators to have a presence in Serbia and to be registered with the Serbian Agency for Commercial Registers. This means that a foreign entity is not entitled to provide electronic communications services in Serbia from abroad, but needs to do it through an entity incorporated in Serbia.

Authorisation/licensing regime

- 2 | Describe the authorisation or licensing regime.

General authorisation regime

Activities in the electronic communications sector in Serbia are subject to the regime of general authorisation. Under this regime, the conditions for the performance of activities related to electronic communications networks (construction, installation, maintenance, use and rent) and services (provision of telecommunications services and distribution or broadcasting of media content services consisting entirely or mainly of the transmission of signals) are simple. Any entity may commence activities within the electronic communications sector subject to 15-day prior notice to the RATEL. The RATEL enters such notifications into the publicly available registry of electronic communications network and service operators and issues a confirmation of registration upon request. Registration itself does not have a constitutive effect – notification alone is sufficient for the right to perform the notified activity.

As for the content of the notification, it must include:

- the entity's identification details (ie, name, personal ID and tax identification numbers, address of the company and contact details of the company representatives);
- a short description of the networks or services to which the notification refers; and
- the envisaged date of commencement of the electronic communications activities.

Such a regime applies indistinctly, without the ECA distinguishing or establishing different requirements among fixed, mobile and satellite networks and services or between 2/3/4G technologies.

Scarce resources (ie, numbers and radio-frequencies spectrum)

The right to use numbers is subject to a licensing regime. Licences are granted by the RATEL upon request from the operator. The RATEL may reject granting the request if the request is contrary to the numbering plan adopted by the RATEL or if the requested numbering resources are not available. Licences for the use of numbers are issued for maximum periods of 10 years (renewable).

The rights to use radio frequencies are generally granted through individual licences issued by the RATEL, either upon request or following a public bidding procedure. The decisions on granting individual licences for the use of radio frequencies upon request are to be made within 40 days from the day of the receipt of the request. The RATEL may reject a request if the request is not compatible with the relevant allocation and allotment plans, the required radio frequencies are not available, or the use of the particular radio frequencies may have harmful effects on the environment or cause harmful interferences with other radio communications systems. Bidding procedures are used where there is limited availability of radio frequencies within a specified radio-frequency band.

Licences for the use of radio frequencies are issued for a maximum periods of 10 years (renewable).

As an exception to the above, licences are not required for the use of:

- radio frequencies that create minimal danger from interference, or radio-frequency bands the use of which is coordinated in accordance with the relevant international agreements and recommendations – an operator can use these radio frequencies on the basis of a general authorisation; and
- radio frequencies reserved for the exclusive use of the authorities of the Republic of Serbia in charge of defence and security affairs, as well as emergency services.

Payable fees

Performance of electronic communications activities are subject to an annual fee, the amount of which the RATEL determines every year. In any case, the amount of the payable fee cannot exceed 0.5 per cent of the revenues made by the operator during the relevant year.

Separate fees are payable for the use of numbering and radio-frequency spectrum. The payable fees include a one-off fee for the granting of the licence and recurring annual fees that depend on several factors, such as the type of service provided by using the relevant number or spectrum.

Mobile spectrum

The three mobile operators that are currently active in Serbia (ie, mts – Telekom Srbija, Telenor and VIP mobile) have been assigned radio frequencies spectrum by means of bidding procedures. As a way of example, pursuant to two bidding procedures initiated in 2015, these mobile operators were awarded spectrum in the 1710–1785/1805–1880MHz and the 791–821/832–862MHz frequency bands, respectively.

Flexibility in spectrum use

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

Permitted use

The permitted use of the radio frequencies assigned through individual licences is not unrestricted. The licences specify several aspects that restrict such use, including:

- the purpose for which the right of use of radio frequencies has been granted;
- locations or coverage areas;
- the manner ensuring the efficient and reasonable use of radio frequencies;
- technical and operational measures to be applied to avoid harmful interferences, ensure electromagnetic compatibility and limit the exposure of citizens to electromagnetic fields;
- obligations related to the use of assigned radio frequencies resulting from the relevant international agreements; and
- terms and conditions for the experimental use of assigned radio frequencies.

Transferability of the licence

The right of use of radio frequencies granted in the form of an individual licence cannot be renounced, leased or transferred to a third party.

Ex-ante regulatory obligations

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

Markets susceptible to ex-ante regulation are those with structural, regulatory and other lasting barriers that prevent the market entry of

new competitors, where it is impossible to develop effective competition (without such ex-ante regulation) and where provisions for protecting competition are not sufficient to remove the observed market failures. The RATEL has to carry out the identification of these markets at least once every three years, taking into account the EU recommendations pertinent to the analysis of markets and identification of significant market power (SMP).

When the RATEL concludes that there is absence of effective competition on a relevant market, it must designate the operator who, individually or jointly with others, has SMP on that particular market. The RATEL will then impose on the operator at least one of the following obligations:

- public availability of relevant data relating to the interconnection or access services;
- non-discrimination in the provision of interconnection or access services;
- accounting separation;
- provision of access and use by other operators of parts of the network infrastructure and associated facilities;
- price control and cost-based accounting;
- provision of minimum set of leased lines;
- provision of operator selection and operator pre-selection services; and
- offering retail services under certain conditions.

Structural or functional separation

- 5 | 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 ECA does not contain any provisions that can be used as legal basis for requiring functional separation between an operator's network and service activities.

It only foresees the obligation of persons carrying out several economic activities, to perform those related to electronic communications through a separate legal entity; and the possibility to request that operators with SMP keep separate accounting records with respect to their business activities relating to the provision of interconnection or access services.

The remedy of functional separation was introduced in the EU Access Directive in 2009. Serbian authorities are currently working on an update of the ECA, which seeks to harmonise it with the EU regulatory framework of 2009. Therefore, it might be that a functional separation obligation is introduced in Serbia when the new law comes into force.

Universal service obligations and financing

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

Universal service obligations

Universal services are defined as a basic set of electronic communications services of specified quality and scope, available to all citizens of the Republic of Serbia, at affordable prices. These services must include:

- access to public telephone network and to publicly available telephone services at a fixed location, including the service of data transmission that enables functional internet access;
- access to directory enquiry service and access to public telephone directories;
- use of public pay telephones;
- free calls to emergency services; and
- special measures aimed at giving persons with disabilities and socially vulnerable users equal possibilities of access to publicly

available telephone services, including calls to emergency services, directory enquiry service and access to public telephone directories.

The RATEL has to designate, in an objective, transparent and non-discriminatory manner, and seeking to ensure effective and efficient universal service provision, an operator or operators with the obligation to provide all or some of the universal services on the entire or a portion of the Republic of Serbia.

Financing of universal service

Operators with universal service obligations are entitled to reimbursement of the excessive costs (ie, costs that entail an excessive burden) derived from the universal service provision. The excessive costs approved by the RATEL are paid through contributions made by all the operators, in proportion to their respective share in the market.

Number allocation and portability

7 | Describe the number allocation scheme and number portability regime in your jurisdiction.

Number allocation

To ensure a reasonable, equal and effective use of numbers as a scarce resource, the RATEL adopts numbering plans in which it specifies their purpose and ensures the equal availability of numbering resources for all publicly available electronic communications services and operators providing such services.

The right to use numbering resources is given to operators upon request, in the form of licences that include data on:

- the holder of the licence;
- the assigned numbers;
- the duration of the licence, which may not exceed 10 years (renewable);
- the deadline for commencing use of the numbers;
- the purpose for which the right of use has been given;
- the manner in which the efficient and reasonable use of numbers shall be provided; and
- the obligations concerning the use of assigned numbers resulting from relevant international agreements.

The holders of the licences may transfer the right to the assigned numbers to third parties intending to use the assigned numbers for commercial purposes, by means of a written contract approved by the RATEL.

Number portability

(Donor) operators must enable their subscribers, upon request, to keep their assigned numbers when switching to the services of other operators (receiving operators). When such a number porting service is requested, the subscriber must provide data on his or her identity, the number for which the service of number porting is requested and a statement certifying that there are no outstanding debts with the donor operator. The receiving operator is under the obligation to remunerate the costs of the donor operator for the provision of number porting services.

Operators must cooperate with the RATEL and with each other to ensure that the loss of service, during the process of porting, does not exceed one working day, and must refrain from actions aimed at obstructing or preventing the number transfer.

Customer terms and conditions

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

Yes. Operators in Serbia must provide services in a manner that clearly and unambiguously informs users about the terms and conditions of the contract. This entails an obligation to include the following information in the written agreements with the users:

- specification of services, including aspects such as conditions for access and use of services, minimum quality of service provision, measures taken for the prevention of excessive network load, use limitations of terminal equipment, etc;
- provisions on the treatment of personal, traffic and location data;
- information on prices and tariffs;
- validity period of the contract, terms and conditions of renewal, contract cancellation, number portability service fees, etc;
- manner of submitting and resolving complaints; and
- measures that operators must apply for the purpose of maintaining the security and integrity of networks and services, and the control of unlawful content transfer.

In addition, the price lists of services offered by the operators need to include:

- the amount of the one-off connection fee;
- the amount of the monthly fee for access to electronic communications network or service;
- the accounting unit and tariff interval;
- a description of special conditions for access to confidential content or value-added services;
- information on maintenance costs and available service packages;
- information on discounts; and
- other provisions of relevance to a certain service.

The operators have to make publicly available the terms and conditions and the prices of the services offered. Changes to the terms and conditions must be furnished to the RATEL on the day they come into force at the latest.

Operators are obliged to notify the subscribers of any unilateral changes to the contract, at least one month in advance. When the amendments essentially change the terms and conditions of the contract in a manner that is not in favour of the client, he or she might be entitled to cancel the contract without paying any expenses associated with the cancellation.

Net neutrality

9 | 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?

The Serbian regulatory framework for electronic communications does not explicitly address net neutrality, nor does it refer to practices such as zero-rating or bandwidth 'throttling'.

This lack of specific regulation gives some leeway to operators when it comes to the management of traffic. In fact, zero-rating is a common practice in Serbia, where mobile operators usually offer access to some applications that do not count against the user's contracted package of data.

However, the above does not mean that operators have total freedom to control and prioritise the type or source of data that they deliver, because they are still subject to:

- the general objectives and principles foreseen by the ECA, which include the need to enable end-users of public communications

- networks and services to have free access to and distribution of information and to use applications and services of their choice;
- the observance of certain quality parameters set out by the RATEL, which entail the obligation to comply with some minimum standards in the provision of electronic communications services; and
- the competition regulations, which might always be used against those behaviours of the operators deemed as anticompetitive.

Platform regulation

- 10 | Is there specific legislation or regulation in place, and have there been any enforcement initiatives relating to digital platforms?

There is neither specific legislation in place, nor enforcement initiatives, relating to digital platforms.

Next-Generation-Access (NGA) networks

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

No, currently there is no specific regulation of NGA networks. Also, there is no government financial scheme to promote basic broadband or NGA broadband penetration.

Data protection

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

The Serbian Personal Data Protection Act (2008) does not contain a specific data protection regime for the communications sector. However, the ECA contains some special provisions that are applicable in the context of electronic communications. In short:

- location data: operators of public communications might process users' location data with the consent of the users. Persons who granted their consent have to be given the possibility to, using simple means and free of charge, temporarily reject the location data processing for each connection or transmission;
- interception of communications: interception of electronic communications that reveals the content of communications is not permitted without the consent of the user, except for a definite period of time and based on the court decision, if necessary for criminal proceedings or for protecting the security of the Republic of Serbia;
- cookies: use of cookies is allowed on condition that the user concerned is provided with clear and comprehensive information about the purpose of data collection and processing, and is also given an opportunity to refuse such processing;
- data retention: operators of electronic communications must retain (for the period of 12 months after the communication has taken place) traffic data on electronic communications produced or processed by them, for the purpose of use in criminal proceedings and protection of national and public security of the Republic of Serbia. Data must be kept in such a manner that they can be accessed and provided upon issuance of a court order, without delay; and
- breach reporting: operators are obliged to inform the RATEL of any violations that caused infringement of the personal data protection or privacy of subscribers or users. The RATEL is then authorised to inform the public about the infringement or to require the operator to do it itself, when it concludes that publication of such information is in the public interest.

Cybersecurity

- 13 | Is there specific legislation or regulation in place concerning cybersecurity or network security in your jurisdiction?

The ECA does contain some provisions concerning network security. Operators of electronic communications must take adequate technical and organisational measures to ensure the security and integrity of public communications networks and services, confidentiality of communications, and protection of personal, traffic and location data. This includes measures for the prevention and minimisation of the effects of security incidents on users and interconnected networks, and for ensuring the operative continuity of public communications networks and services.

The ECA also demands that subscribers are informed of particular risks related to violation of security and integrity of public communications networks and services, as well as of possible means of protection and implementation costs.

If a violation does occur, the operator must inform the RATEL if the breach had a significant impact on the operation of the networks and services. Moreover, the RATEL will be authorised to inform the public or to require the operator to do it themselves, when it understands that publication of such information is in the public interest.

Big data

- 14 | Is there specific legislation or regulation in place, and have there been any enforcement initiatives in your jurisdiction, addressing the legal challenges raised by big data?

No Serbian legislation or regulation covers big data specifically. Consequently, the general rules under the data protection legislation apply to big data issues.

Data localisation

- 15 | Are there any laws or regulations that require data to be stored locally in the jurisdiction?

Operators of electronic communications in Serbia are obliged to retain certain data in such a manner that they can access it and make it available without delay, upon issuance of a court order. These data refer to data necessary for:

- tracing and identifying the source of a communication;
- identifying the destination of a communication;
- determining the beginning, duration and end of a communication;
- identifying the type of communication;
- identifying users' terminal equipment; and
- identifying the location of the users' mobile terminal equipment.

Although the relevant regulation does not expressly require it, compliance with the obligation to access and make the data available without delay might require or, at least, make convenient, the storage of a copy of this information in Serbia.

Apart from the above, no data localisation requirements exist in Serbia. There are, however, rules in the data protection legislation for the transfer of personal data outside of Serbia.

Transfers of personal data can be freely made when the recipient country is a state party to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (eg, EU countries).

For transfers to the territory of a state that is not a party to the above-mentioned Convention, prior authorisation from the Serbian data protection authority must be obtained.

Key trends and expected changes

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

A new law on electronic communications, aiming to harmonise regulations in Serbia with those of the EU's 2009 regulatory framework, has been in the pipeline for some time. However, no information exists about its current status or expected time of approval.

A new law on data protection will become applicable on 21 August 2019. This new piece of legislation, which was enacted by Serbia's National Assembly on 9 November 2018, mainly replicates the contents of the EU General Data Protection Regulation.

MEDIA

Regulatory and institutional structure

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

Regulatory structure

The principal laws applying to the media sector are the Public Information and Media Act (2014, as amended) and the Electronic Media Act (2014, as amended). The latter adopts most of the provisions from the EU Audio-visual Media Services Directive.

Institutional structure

The body exercising competence over print media is the Ministry of Culture. The Ministry prepares and monitors the enforcement of the laws and regulations, and oversees the work of public companies and institutions in the print media sector.

The Regulatory Authority for Electronic Media (REM) is an independent agency with the authority to supervise the work of electronic media and to enact by-laws. The REM issues licences for the provision of TV and radio services and authorisations for provision of on-demand media services.

The REM manages the registries of electronic media service providers, including on-demand media services providers.

Ownership restrictions

18 | 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?

No foreign ownership restrictions apply to media services, including TV and radio broadcasters (broadcasters). There are, however, some other restrictions regarding ownership (including cross-ownership) and control of media, which are aimed to protect media plurality (see question 26).

Licensing requirements

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

The RATEL issues radio broadcasting licences on request. Provided that the relevant frequency is available and the request is in line with the allocation and the allotment plans (devised by the government and the Ministry of Telecommunications, respectively), the licence will be granted. As an exception to the above, for the granting of radio frequencies of limited availability, the allocation plan may prescribe the need to follow a public bidding process. The RATEL prescribes the criteria that

must be taken into account in the decision-making process. The licence is granted for a maximum period of 10 years.

The REM issues the licences for TV broadcasting pursuant to a process of public bidding. The REM's announcement for the public bidding must contain information about the fee to be paid annually. The applicant must pay a deposit in the amount of three monthly fees.

A licensed broadcaster is obliged to submit to the REM a contract with the operator of at least one electronic communications network, by which it acquires the right to distribute its programmes to the public, within 30 days from the delivery of the licence. The licence owner must begin providing media services within 90 days from the delivery of the licence. Licences are granted for a period of eight years and they can be extended upon request.

Foreign programmes and local content requirements

20 | 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?

All TV broadcasters with national coverage are obliged to ensure that European audio-visual works (works made in EU and Council of Europe members) make up at least 50 per cent of the programming (including European independent production of at least 10 per cent). If the provider does not fulfil this obligation, the TV broadcaster is obliged to increase the share of European works by each year, starting at 20 per cent as a minimum. News, sports events, advertisement and prize contests are not regarded as European works. The media service provider is obliged to ensure that his or her own production partakes of at least 25 per cent of the annual broadcast programme.

On-demand media service providers must support production and access to European audio-visual works, where feasible. This is to be achieved through the service provider's financial contributions for production and through acquisition of rights to European audio-visual works, as well as by placing a special emphasis of such works in their programme catalogue.

Radio and online (including mobile) media service providers are excluded from the scope of this obligation.

Advertising

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

The Advertising Act (2016), which is harmonised with the EU law, includes a section on broadcast media advertising. Pursuant to the relevant provisions, TV and radio advertising must be easily recognisable and clearly and visibly separated by sound, image or space from the other contents. Advertising should not harm the integrity of the programmes. Broadcasting of live action films, television films (excluding live action series and documentary series) and newscasts may be interrupted at any time for the purpose of broadcasting TV advertising, provided that they last 30 minutes or longer.

TV and radio advertising may be broadcasted simultaneously with the ongoing programme, without interrupting its time continuity, with the use of electronic graphics or other technical means (for example, virtual advertising, screen sharing, screen inscriptions, inserters, etc), under the conditions that it does not violate the integrity of the content and that it is separated by sound, image or space from the other contents during their broadcasts. The duration of this TV and radio advertising will be counted in the total advertising time within one hour of the broadcasted programme, as TV and radio advertising cannot take up more than 20 per cent of the broadcast programme. This rule is applied to commercial media service providers only.

Product placement is permitted only during live broadcasts and broadcasts of TV films and series, or sports and entertainment programmes, except if the programmes are intended for children. Programmes that contain product placement must meet all of the following requirements:

- they will not directly encourage the purchase or rental of goods or services;
- their content and their scheduling will in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider; and
- they will not improperly present a product, service, or brand, for example by the use of closeups or emphasis placed verbally on the quality.

The Advertising Act defines online advertising as advertising on the internet presentation, social network, mobile applications, or through other forms of internet communication. The Act applies only if from the content of the advertising message it clearly follows that it is directed at the Serbian recipients and that the goods or services that are advertised can be bought in or delivered to Serbia. Presentation on the person's own internet domain is not considered advertising. There is a safe harbour for internet service providers in relation to online advertising by third parties (users), corresponding to the relevant provisions of the e-commerce directive. All other provisions of the Advertising Act apply accordingly to online advertising, as defined in the Act.

Must-carry obligations

22 | 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?

In accordance with the ECA, the RATEL establishes on REM's request, at least once in every three years, a list of radio or television channels that the operators are obliged to transmit. Only those operators whose electronic communication network is used by a substantial number of end users as the only or primary means of receiving media content fall within the scope of this rule. The operators are obliged, under the Electronic Media Act, to transmit two public TV channels, without remuneration. In addition, RATEL's decision of 10 October 2017 obliged the operators to transmit four commercial TV channels, also without remuneration. On 25 January 2019, in line with REM's decision rendered three days earlier, RATEL repealed the decision of 10 October 2017. The operators are now obliged to transmit only the two public TV channels. There is no mechanism for financing the costs of the must-carry obligation.

Regulation of new media content

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

Yes, to provide certain new media services, the interested party must obtain an authorisation from the REM or be enlisted in the official record. For provision of media-on-demand, both the authorisation and the enlistment are required; for stand-alone internet media outlets the enlistment in the record is sufficient. Providers of the stand-alone internet media service and providers of media-on-demand services must be registered for provision of media services.

The REM may issue a notice or a warning or impose a temporary ban on the broadcasting of the programme content, in response to broadcasting of hate speech or other breach of the content-related obligations, as well as for breach of the conditions contained in the authorisation for the provision of media services.

On-demand media services that can be harmful for the physical or moral development of minors must be provided in a manner where the minors will not see it in usual circumstances (eg, as a protected service with conditional access).

Digital switchover

24 | 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?

The switchover from analogue to digital TV broadcasting occurred on 7 June 2015.

Radio broadcasting is still performed analogously. Under the government's proposed new law on electronic communications of October 2017, the Ministry of Telecommunications should adopt a rulebook governing:

- the manner and timetable of radio switchover;
- requirements and dynamics related to the establishment of a digital broadcasting network;
- requirements for the formation of a multiplex; and
- the extent of the frequencies' scope of use, necessary for effectuating the switchover to digital broadcasting.

The RATEL proposed in September 2017 a draft rulebook on the plan for allocation of frequencies, locations and areas for terrestrial digital audio broadcasting stations in the VHF Band. The rulebook has not been adopted yet.

In the absence of statutory rules, key questions concerning radio switchover remain open, including:

- Will the analogue signal process continue to exist (simulcast) or will it be completely switched off?
- What is the deadline for the switchover?
- Is there an interest in switching to digital broadcasting among radio broadcasters?
- What are the costs?
- Who will be the operator of multiplexes and distributor of radio signals?
- Will there be a sufficient number of receivers?

On 23 November 2018 an experimental digital radio signal of four radio stations in DAB-plus technology started. The Ministry of Telecommunications has announced that it plans to expand the transmission network during the course of 2019.

Digital formats

25 | Does regulation restrict how broadcasters can use their spectrum?

No, there is no obligation to use the spectrum in a specific way.

Media plurality

26 | 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?

The Public Information and Media Act regulates and protects media plurality. To protect such plurality, the law forbids the following acts:

- concentration of founders' or managing rights of two or more publishers of daily newspapers whose aggregate circulation exceeds 50 per cent of the total circulation of daily newspapers sold in Serbia in the calendar year prior to the concentration;
- concentration of founders' or managing rights of two or more broadcasters whose joined share in the viewing and listening

figures exceeds 35 per cent of the total in the covered zone in the calendar year prior to the concentration; and

- acquiring of more than 50 per cent of shares across daily newspaper publishers (publishing information addressed to the general public) that have a circulation of more than 50,000 copies annually and across all types of broadcasters.

Concentration can also be forbidden based on the Competition Act (see question 28).

The Ministry of Culture (for print media) and the REM (if at least one undertaking is an electronic media outlet) are the bodies with the authority to address breaches of media plurality. If the relevant undertaking does not eliminate the causes of breach within six months, the print media outlet has to be deleted from the Media Registry and fined for commercial offence. The managing editor will also be fined for commercial offence. In case the entity holding a licence for provision of media services does not eliminate the causes of breach, the REM will revoke the licence.

Licence holders must inform the REM of any intended changes to their ownership structure. If there is a threat of breach of media plurality, the REM will issue a recommendation on how the change of ownership should be performed. If the licence holder does not abide by the recommendation, its licence will be revoked.

Key trends and expected changes

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

There are no proposed legislative changes in the media sector. The public debate on the strategy on the development of the public information system until 2023 started on 31 January 2019 and ended on 1 March 2019. The working group is preparing the report about the public debate and the final version of the strategy to be adopted by the government.

The REM and the Commission for Protection of Competition have not performed a review of the media market yet. The only market reviews available to date were done by private bodies and show that advertising revenues and consumption of print media are decreasing, that radio and TV revenues and consumption are stable and the revenues and consumption of online advertising are rapidly increasing. According to a study from 2016, which was co-financed by the Ministry of Culture, TV media have the biggest market share of 55 per cent and are most influential by far (online media are second placed with the share of 17 per cent). The advertising market taken as a whole has suffered a decline in recent years. TV viewership is constantly dropping.

Digitalisation of radio broadcasting is one of the pending issues (see question 24).

REGULATORY AGENCIES AND COMPETITION LAW

Regulatory agencies

28 | 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?

Relevant bodies

Media, antitrust and electronic communications in Serbia are handled by three different bodies:

- the RATEL, for electronic communications;
- the REM for media; and
- the Commission for Protection of Competition, for antitrust matters.

Cooperation between the bodies

No special mechanisms are foreseen to avoid conflicting jurisdiction or to ensure consistent application of competition and sectoral regulation. Such a result is sought through the definition of the competencies of each of these bodies in their statutes and with the inclusion of rules seeking cooperation among the agencies in the performance of their activities. In this sense, the ECA expressly foresees that the RATEL must:

- cooperate with agencies and organisations in charge of broadcasting, protection of competition, consumer protection, personal data protection, and with other agencies and organisations on issues relevant for the electronic communications sector;
- cooperate with the authority for protection of competition when it conducts market analysis aimed at identifying markets susceptible to ex-ante regulation;
- if necessary, request the opinion of the competition protection authority when it designates operators with significant market power;
- monitor the radio-frequency spectrum allocated for distribution and broadcasting of media content in cooperation with the relevant broadcasting regulatory authority; and
- cooperate with the broadcasting authority to determine the conditions and methods of use of radio frequencies for media content distribution and broadcasting.

Moreover, and in line with the above, the RATEL and the Commission for Protection of Competition signed a Memorandum of Cooperation on 17 May 2011, which regulates the relations of these two bodies.

The Electronic Media Act prescribes that the REM must:

- cooperate with agencies and organisations in charge of public information, electronic communications, competition protection, consumer protection, personal data protection, protection of equality, and other agencies and organisations, on issues relevant to the media services sector; and
- perform analysis of the relevant media market, in cooperation with competition protection authority, and in accordance with the REM's methodology.

In line with this, the REM and the Commission for Protection of Competition signed a Memorandum of Cooperation on 8 January 2018. The Memorandum provides for a continuous exchange of data, harmonisation of the positions on issues of common interest, and joint participation in activities that contribute to the affirmation of policies implemented by the Commission and the REM.

Appeal procedure

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

RATEL

The RATEL's decisions on the rights and duties of operators and users are final and subject to appeal through judicial proceedings before the administrative court.

The RATEL's decision may be challenged as unlawful before the administrative court if:

- a law, other regulation or general act was not at all or not properly implemented in the decision;
- the decision was passed by an inadequate authority;
- the decision-making procedure was not performed according to the procedural rules;
- the factual situation was incompletely or incorrectly established, or an incorrect conclusion was inferred from the established facts; or

- in the decision made at its discretion, the RATEL overstepped its authorities, or the decision was not adopted in accordance with the purpose of the exercised authority.

The lawsuit must be filed within 30 days from receipt of the RATEL's decision. The filing of a lawsuit does not suspend the execution of the RATEL's decision.

REM

The REM's decisions are also final and subject to appeal through judicial proceedings before the administrative court. The lawsuit must be filed within 30 days from receipt of the REM's decision, and the reasons for challenging the decision are the same as for the RATEL (see above).

If a lawsuit was filed against a decision on issuance of a licence for the provision of media services, imposition of measures, or revocation of a licence, the administrative court cannot resolve the matter on the merits. Instead, the court will specify the deficiencies of its decision and instruct the RATEL to re-examine the issue, in accordance with the court's conclusions.

Competition law developments

30 Describe the main competition law trends and key merger and antitrust decisions in the communications and media sectors in your jurisdiction over the past year.

The Commission for Protection of Competition has in recent years become a prolific agency, with numerous investigations in its track record and prone to use all available legal remedies, including dawn raids. The Commission has also conducted market reviews and fined both private and public companies. The approach by the Commission to the issue of concentration is generally permissible, usually in the form of conditional approvals. In relation to restrictive agreements, the Commission has been reluctant to issue fines, and preferred measures are aimed at eliminating competition infringements instead.

In the past year, there have been around 20 concentrations in the area of telecommunications and media, which the Commission approved in the summary proceedings. Most of the decisions are related to United Group, which owns a significant portfolio of companies active in the telecommunication and media sector in Serbia and in the region.

On 1 March 2019, the Commission rendered a decision to open the investigation phase of the merger clearance procedure in the proposed concentration between Telekom Serbia, majorly state-owned market leader in the telecommunications industry, and Telemark, a local internet provider, distributor of audio-visual content and provider of public voice services in Central Serbia. The Commission has four months (ie, until 1 July 2019) to conduct the market analysis and assess the effects of the proposed concentration. The current practice of the Commission in concentration proceedings is to propose behavioural or structural measures and to negotiate the acceptable measures with the companies, rather than prohibit the concentration.

In October 2018, the Commission exempted a distribution agreement between the public broadcaster RTS and Telekom Serbia from the restrictive agreement prohibition. In the abuse of dominance area, SBB as the largest cable operator in Serbia, has announced an increase in monthly prices in the amount of 100 dinars (approximately €1), beginning as of 1 January 2018. SBB justified the increase by the increase in the number of TV channels offered. The Commission found this explanation unconvincing and in January 2017 started a pre-investigation for abuse of the dominant position. The proceedings are still pending.

The Commission had already established that SBB was abusing its dominant position on two occasions, in 2008 and 2010.



Bogdan Ivanišević

bogdan.ivanisevic@bdkadvokati.com

Pablo Pérez Laya

pablo.laya@bdkadvokati.com

Zorana Brujić

zorana.brujic@bdkadvokati.com

Bulevar kralja Aleksandra 28
11000 Belgrade
Serbia
Tel: +381 11 3284 212
Fax: +381 11 3284 213
www.bdkadvokati.com

Other titles available in this series

Acquisition Finance	Distribution & Agency	Islamic Finance & Markets	Real Estate M&A
Advertising & Marketing	Domains & Domain Names	Joint Ventures	Renewable Energy
Agribusiness	Dominance	Labour & Employment	Restructuring & Insolvency
Air Transport	e-Commerce	Legal Privilege & Professional Secrecy	Right of Publicity
Anti-Corruption Regulation	Electricity Regulation	Licensing	Risk & Compliance Management
Anti-Money Laundering	Energy Disputes	Life Sciences	Securities Finance
Appeals	Enforcement of Foreign Judgments	Litigation Funding	Securities Litigation
Arbitration	Environment & Climate Regulation	Loans & Secured Financing	Shareholder Activism & Engagement
Art Law	Equity Derivatives	M&A Litigation	Ship Finance
Asset Recovery	Executive Compensation & Employee Benefits	Mediation	Shipbuilding
Automotive	Financial Services Compliance	Merger Control	Shipping
Aviation Finance & Leasing	Financial Services Litigation	Mining	Sovereign Immunity
Aviation Liability	Fintech	Oil Regulation	Sports Law
Banking Regulation	Foreign Investment Review	Patents	State Aid
Cartel Regulation	Franchise	Pensions & Retirement Plans	Structured Finance & Securitisation
Class Actions	Fund Management	Pharmaceutical Antitrust	Tax Controversy
Cloud Computing	Gaming	Ports & Terminals	Tax on Inbound Investment
Commercial Contracts	Gas Regulation	Private Antitrust Litigation	Technology M&A
Competition Compliance	Government Investigations	Private Banking & Wealth Management	Telecoms & Media
Complex Commercial Litigation	Government Relations	Private Client	Trade & Customs
Construction	Healthcare Enforcement & Litigation	Private Equity	Trademarks
Copyright	High-Yield Debt	Private M&A	Transfer Pricing
Corporate Governance	Initial Public Offerings	Product Liability	Vertical Agreements
Corporate Immigration	Insurance & Reinsurance	Product Recall	
Corporate Reorganisations	Insurance Litigation	Project Finance	
Cybersecurity	Intellectual Property & Antitrust	Public M&A	
Data Protection & Privacy	Investment Treaty Arbitration	Public Procurement	
Debt Capital Markets		Public-Private Partnerships	
Defence & Security		Rail Transport	
Procurement		Real Estate	
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)