



**GUIDE TO
TELECOMMUNICATIONS
AND MEDIA**

JPM

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If you have any queries regarding the issues raised or other legal topics, please get in touch with your usual contact at JPM Jankovic Popovic Mitic.

I INTRODUCTION

General information on telecommunications and media market

Today's society is an information society in which telecommunications and media are taking part in all spheres of life, not just in economics and production.

Telecommunications market is displaying a continuous technological and economic growth thanks to the intense development of technology and competition.

Pursuant to the latest official Review of the market of electronic telecommunications and postal services for 2016 published on the website of Serbian Regulatory Agency, the overall income on electronic telecommunications market in Serbia in 2016 amounts approximately EUR 1.54 billion, . Income from electronic communications in 2016 represented 4.51% of GDP, and investments in electronic communications sector in 2016 were EUR 262.5 million, which is 4.9% less than in 2015. In the investment structure the highest share have the investments in the mobile telephony segment and distribution of media content amounting to EUR 90.4 milion i.e. EUR 70.6 milion being 61.3 % of the total investments in 2016.

Development of the telecommunications market in Serbia was aided by establishing a legal framework in this area. From 2010 onwards, Law on Electronic Communications, harmonized with EU regulations, Strategy for Development of Information Society in the Republic of Serbia through to 2020, Strategy for the Development of Electronic Communications in the Republic of Serbia from 2010 to 2020, and Strategy for Switchover from Analogue to Digital Broadcasting of Radio and Television Programs in the Republic of Serbia were adopted, all for the purpose of defining the main direction and development goals of electronic communication in the Republic of Serbia. The process of digitization, which formally began in 2006, at the conference RRC-06 in Geneva, was successfully completed in 2015, enabling better television signal to every household in Serbia.

The entities in charge of the overall operation of the telecommunications and media market are: the Serbian Government, the Ministry of Trade, Tourism and Telecommunications and the Ministry of Culture and Information, as well as the Republic Agency for Electronic Communications - RATEL and the Regulatory Authority of Electronic Media - the Regulator.

Media business is one of the most profitable industries in modern market economies. The advancement of technology, commercialization of media capital and increase in the number of media companies, coupled with possibilities of generating substantial profits make this industry an important part of the global market.

Serbia demonstrates good results in the domain of media and telecommunications, given that it is on 55th of a total of 176 countries listed in the International Telecommunication Union's ICT Development Index (IDI), depending on the ranking criterion. Further, RATEL has the observer status in the Body of European Regulators for Electronic Communications, which enables constant access to information in the media and telecommunications domain and direct exchange of information.

II ELECTRONIC COMMUNICATIONS

If you are present in electronic communication market, that means that you are in one of the following businesses - construction or installation, maintenance, using and granting the use of public communication infrastructure, or providing publicly available electronic communication services.

The prerequisite for all of these businesses is to hold the necessary license, which means meeting legal and technical requirements.

The law differentiates between general and special licenses, while some activities also require holding a license to use numbering resources, or a radio frequency.

It should be pointed out that RATEL maintains an up-to-date database on all operators and license holders, and all details relating to granted licenses (type, validity period, special conditions for issuing).

General license

In order to conduct the business activity of electronic communication, it is sufficient, as a rule, to hold a general license, although certain activities require a special license, which will be discussed in more detail later on.

General licenses are issued to everyone who meets the general requirements for conducting one of the specified activities.

The requirements inter alia include the following:

- Notifying RATEL in writing of the start, changes, and termination of the electronic communications activities no later than 15 days in advance;
- Paying respective fee;
- Constructing or installing, use and maintenance, and joint use of electronic communication infrastructure;
- Controlling exposure of the population to electromagnetic fields caused by electronic communication networks, accompanying facilities and electronic communication equipment;
- Fulfilling technical and other conditions;
- Enabling access to numbering to end users;
- Obligation to broadcast media content of general interest;
- Protection of personal data and privacy in the domain of electronic communication.

A holder of a general license for conducting certain electronic communication activities - an operator, enjoys all the rights necessary for conducting of these activities, including easement rights, right to negotiate interconnection with other domestic or foreign operators, and the possibility to be appointed as a universal service provider or a provider of certain services, over the whole territory of the Republic of Serbia, or part of its territory.

Special licenses

Special licenses are issued for the following activities:

1. Retail access to the public telephone network at a fixed location;
2. Wholesale call origination on the public telephone network provided at a fixed location;
3. Wholesale call termination on individual public telephone networks;
4. Wholesale (physical) network infrastructure access (including shared and full unbundled access) at a fixed location;
5. Wholesale broadband access;
6. Wholesale leased lines;
7. Wholesale call termination on mobile networks;
8. Retail media content distribution; and
9. Retail publicly available telephone services provided at a fixed location.

All of these activities are subject to prior regulation, as these are markets where protection of competition becomes an issue, i.e. where there is insufficient number of participants for the market to be competitive.

By applying the applicable EU recommendations, RATEL determines the relevant markets subjected to the above regulation, based on analysis conducted at least once every three years. Relevant markets are all those markets with structural, regulatory and other more permanent obstacles that prevent new entries; where it is not possible to ensure development of effective competition without such regulation and in which seen deficiencies cannot be rectified merely by implementing regulations relating to protection of competition.

If RATEL determines by its analysis that there is no effective competition on the relevant market, the operators active in that market, besides holding a special license, can be designated as operators with significant market power, which imposes special obligations on them, such as non-discriminatory behavior, unbundling of accounting, price control, possibility of selection and pre-selection of operators, and so forth.

Numbering

Numbering is a set of rules that determine addressing of users in a telephone network. Numbering applies special rules in order to harmonize international prefixes, followed by prefixes and numbers for various areas within one country. Each number which meets this structure, country code, area code and subscriber number is a fully-qualified number. In other cases numbers are geographical or virtual and as such must have numbers for forwarding or translating to qualified numbers.

In modern networks virtual numbers are frequently given names, and are known to users. Numbers used for forwarding are frequently called addresses and are often unknown to users. Before forwarding the name it has to be turned into an address.

Addresses and numbers are limited resources, and are allocated and managed in accordance with the numbering plan, which is brought by RATEL.

The right to use numbering resources is acquired based on a license to use numbering resources, which is issued by decision rendered by RATEL at the operator's request. The request is submitted in a prescribed form with obligatory data on the operator, the type of service the request is applying for, the purpose of and need for the numbering, the period of use and so forth.



Licenses to use numbering resources are issued for a period not longer than ten years. Licenses may be extended, under stipulated conditions for issuing of new license; application for extension of a license is to be submitted 30 to 90 days before expiry of the current license.

The Agency maintains an up-to-date database on use of numbering which includes data on:

- allocated numbering, with the relevant data on terms of allocation and use,
- geographic area of use, and
- operators the numbering has been allocated to.

A holder of a license to use numbering resources may assign use of its numbering to a third party that intends to use such assigned numbering for commercial purposes, but only by obtaining prior consent from RATEL.

A license may be revoked if it is found that:

- the license was issued on the grounds of incorrect data,
- numbering is not being used in compliance with the purpose and type of license,
- license holder has ceased to exist,
- the operator has failed to rectify deficiencies in performance of duties found by inspectors,
- revoking granted numbering resources is necessary in order to effect harmonization with changes to the numbering plan,
- the operator is not paying the fee, and/or
- there are other existing reasons to revoke the license.

Operators are obliged to enable subscribers to transfer their number if they change operators. The operator providing the number and the operator receiving the number are obliged to cooperate with one another and with RATEL in the procedure for transferring the number in the interest of subscriber protection.

Radio frequency spectrum

Radio frequency spectrum is a range of radio frequencies defined by its border frequencies.

Like numbering, radio frequency spectrum is also a limited resource, which managing is based on principles of rationality, cost effectiveness, publicity and non-discrimination, and includes:

- planning the use of radio frequencies in accordance with relevant international agreements and recommendations, the interests of citizens, the economy, security and national defense,
- allocation of radio frequencies based on purpose and distribution plans,
- coordinating the use of radio frequencies, and
- controlling the radio frequency spectrum.

Radio frequencies are used either on the grounds of individual licenses, or under a general authorization regime or for special purposes.

RATEL determines the list of frequencies that may be used based on individual licenses, or under a general authorization regime, hence interested persons when applying for use have to apply for an individual license or apply under a general authorization regime, depending on which frequency they wish to use.

Use of radio frequencies based on individual licenses

The right to use a radio frequency is acquired based on an individual license to use a radio frequency, when the plan of designated purposes specifies issuance of individual licenses within a specific radio frequency band. Such individual licenses are issued by decision rendered by RATEL, based on a submitted application for allocation of an individual license.

Individual licenses may be issued to foreign diplomatic/consular missions and foreign legal entities. A license to use a radio frequency spectrum may also be issued based on a public bid procedure, when the limited availability of radio frequencies within a specific radio frequency band necessitates such manner of issuing individual licenses.

Individual licenses are issued for no longer than ten years. Licenses may be extended, under stipulated conditions for issuing of new licenses. Applications to extend a license are submitted to RATEL 30 to 90 days before expiry of the current license.

The right to use a radio frequency granted by individual license may not be assigned, leased out or otherwise transferred to another, except in the case of licensed operators changing their status (amalgamation, merger, division), but even then prior consent for transfer of the license is to be obtained from RATEL.

Operators may hold temporary licenses with the right of temporary use of a radio frequency, for the purpose of market/technical analysis of products and services, research or design, as well as for the purpose of sporting, cultural, entertainment or other events of limited duration, which are issued by a RATEL decision and remain valid for up to 60 days.

RATEL may revoke a license if it is found that:

- the license was issued on the grounds of incorrect data, or incorrect documents,
- the radio frequency is not being used in compliance with the plan of designated purpose, allocation plan or issued license,
- the license holder is not paying the fee,
- a prohibition of conducting electronic communication activities was pronounced against the license holder,
- the operator has ceased to exist, without a legal successor, as well as for other reasons.

Use of radio frequencies under a general authorization regime

If there is danger of interference or in the case of harmonized radio frequency bands, and particularly if it is in accordance with relevant international agreements and recommendations, radio frequencies are used under a general authorization regime.

Every person is entitled to use radio frequencies that are used under a general authorization regime according to the plan of designated purpose.

Use of radio frequencies for special purposes

Defense and security authorities, as well as emergency services, use radio frequencies within bands that are designated solely for that purpose, without the obligation to first obtain a license for use of such radio frequency, and in accordance with the terms of use specified by the plan of designated purpose.

RATEL only has to be notified of starting and ceasing the use of such radio frequencies and of the volume and manner of use, or disuse of radio frequencies for these purposes.

Distribution of media content via radio frequency

If a radio frequency is being used for distribution and broadcasting of media content, RATEL cooperates with the Regulatory Authority of Electronic Media.

Fees

Apart from the already mentioned obligations, anyone conducting one of the electronic communication activities has to pay the necessary fee. There are fees for:

use of numbering resources,
use of radio frequencies,
conducting electronic communication activities, and
providing services within the competency of the Agency.

Payment of the fees is mandatory; otherwise the license may be revoked. The amount of the fee is determined by RATEL with the Government's consent.

III MEDIA

After several months of public discussions have taken place, the media domain in Serbia has been regulated by a set of laws: the Law on Public Information and Media and the Law on Electronic Media, which have fully replaced the Law on Broadcasting, Law on Public Information and certain provisions of Law on Advertising, rendering them no longer valid. The Law on Public Media Services has also been enacted with the set of media laws, as an entirely new law which comprehensively regulates the manner of operation, activities, rights and obligations of public media services, which had been previously only partially regulated by the Law on Broadcasting.

Media are defined as means of public information, which, by way of words, images of sound convey editorially shaped information, ideas and opinions and other content, intended for public distribution and undetermined number of consumers.

Media can be:

- daily papers and periodicals,
- radio and television programme,
- all electronic editions of such media, and
- independent electronic editions, but as editorially shaped web pages and portals,

which are registered in the Register of Media. Media do not have the status of legal entities, and a media publisher may be any person or legal entity, including foreign persons and legal entities, provided they are registered to conduct a media activity.

Publishing basic data on the media in the form of an impressum, an abbreviated impressum, or identification, is mandatory for all media. The data includes the name, head office, address and registration number of the media and personal information of editor-in-chief, as well as all editors of features or separate editions.

All media have to be recorded in the Register maintained by the Business Registers Agency.

Television and becoming a broadcaster

The conditions and manner of licensing for broadcasting radio programmes are determined by the Law on Electronic Communications, as already explained, while all other matters are regulated by the media laws.

The condition for broadcasting radio and television programmes is holding an authorization from the Regulatory Authority of Electronic Media – the Regulator. The Regulator conducts the procedure for issuing authorizations and licenses for broadcasting radio and television programmes, in addition to maintaining the Register of Media Services.

Therefore, if you wish to broadcast a specific radio and/or television program intended for undetermined number of consumers, by way of terrestrial broadcasting stations, cable distribution systems, satellite radio communications or by some other appropriate manner, before starting to conduct the activity, you first need to obtain authorization for providing media services, which is issued by the Regulator.

Before we discuss how authorization for conducting media activities is obtained from the Regulator, first let us note the legal classification of types of media services.



According to media services are to be provided, media services can be:

- linear (traditional television broadcast, i.e. watching the programme according to a broadcast schedule) and
- on-demand, i.e. non-linear services,

while according to content they can be:

- general, which include informational, educational, cultural, scientific, sports and other content,
- specialized, which essentially include content of the same theme (sports, cultural, musical, educational and the like), and
- programmes entirely dedicated to advertising and sale of goods and services.

Difference between authorization and license

As already mentioned, a broadcaster must have a license or authorization to provide media services, issued by the Regulator. The Regulator issues licenses and authorizations upon request submitted by broadcasters, or by way of a public bid procedure. According to the current legislation, authorizations and licenses are not necessary for broadcasters that operate over the global information web, i.e. for web casting, live streaming etc., as well as for rebroadcasts, in compliance with the European convention on cross-border television.

If the broadcaster wishes to broadcast non-linear media services, i.e. media services on demand, this is done based on authorization from the Regulator; in all other cases the Regulator issues licenses.

Licenses for broadcasting programmes may be held by persons or legal entities; the only legal restriction is that the status of broadcaster may not be granted to:

- Republic of Serbia, autonomous province or local self-government,
- a company, institution or other legal entity whose assets are publicly-owned, in whole or in part, or
- political parties.

Licenses are issued upon request or by way of a public bidding procedure, they remain valid for eight years, and may be extended for the same period of time upon expiration of the initial term. Licenses issued upon request may be extended unlimited number of times, while licenses issued by way of a public bid procedure may be prolonged only once.

Public bid procedures are conducted in accordance with the Strategy for the development of the media service of radio and audiovisual media services in the Republic of Serbia, while announcements of such public bid procedures are published in the Official Gazette of the Republic of Serbia, in order for participation in the public bidding to be available to all interested parties under equal conditions.

When applying to take part in the bid, it is necessary to submit documents required by law which prove that the conditions for conducting broadcasting activities have been met, and a deposit needs to be paid in the amount of three monthly fees for the granted right to provide media services. Of course, deposits will be returned to persons whose application is rejected or to whom a license was not granted.

The Regulator enacts detailed rules regulating minimum requirements that broadcasters have to meet in order to obtain a license or authorization. The requirements are technical, organizational and programme-related.

In the territory of the Republic of Serbia, media services may be provided by institutions of the public media service, in compliance with a special law, as well as commercial providers and civil sector media service providers.

All media service providers, regardless of classification, have to ensure free, truthful, objective, full and timely information, contribute to general cultural and educational level of the population, provide quality programmes with regard to the technical aspect, observe human rights and prohibition of hate speech, protect the rights of disabled persons, copyrights and related rights.

Broadcasters have to observe specific rules in providing media services by audiovisual commercial communication, sponsorship and product placements (TV sales).

Fee

All broadcasters have to pay the fee for providing media services, for the entire duration of broadcasting the content. The amount of the fee is determined by the Regulator, considering actual costs of regulation, according to the principle of proportionality, taking various criteria into consideration. Serbian Government gives consent to the Regulator with respect to the determined fee amount.

The fee is determined annually, and paid monthly, in a proportionate amount, except at issuance of license when the fee is paid in one installment for the year in which the license is issued. Public service and civil sector media service providers do not have to pay a fee for providing media services.

Public media services

Before the adoption of the new Law on Public Media Services this matter was regulated by the Law on Broadcasting, by several principle articles. The new Law regulates the founding and operation of public media institutions, as follows:

- Public service of the Republic, "Radio televizija Srbije" (RTS), and
- Public service of the Province, "Radio televizija Vojvodine" (RTV).

Institutions of the public media service are independent and unaffiliated legal entities that enable public interest in the domain of public information to be realized. Their core business activity is producing radio, television and multimedia content, broadcasting it, and publishing electronic editions.

The Law specifies basic principles for conducting public media service activities, their autonomy, editorial independence, and the relationship towards the public in context of promoting and observing the public interest. As such, they have special programme-related obligations, mandatory use of the Serbian language and Cyrillic script (the Law specified certain exceptions), special rules relating to independent production and advertising.

Media concentration – protection of media pluralism

Media pluralism is impeded in cases of merging of founders' rights or control over two or more electronic media publishers, or mutual cross-acquisition of shares, at least one electronic media is participating. The Regulator investigates whether media pluralism has been impeded either ex officio or following a report by a stakeholder.

If the Regulator finds that there have been irregularities, the relevant broadcaster has six months to rectify them, under threat of losing their license. In the interest of protecting media pluralism, it is also mandatory to report changes in ownership structure of shares in the initial capital of license holders.

Distribution, impressum, editor-in-chief

The Law on Public Information and Media defines that public information is realized through the media. All media are legally guaranteed freedom of public information, free of censorship, discrimination or prohibition of free information flow.

The Law also provides for protection of the public interest in public information, by impartial, truthful, timely and full informing of all Serbian citizens, preserving cultural identity, informing of disabled persons, improving media and journalistic professionalism.

The Law provides for freedom of distribution of media content, both domestic and foreign. It could be possible for a competent court of law to institute a prohibition of distribution of a specific piece of information, at the proposal of the public prosecutor, if it finds this to be necessary in order to prevent a call for violent disruption of constitutional order and so forth.

Every public media must have an editor-in-chief, who must have a place of residence in the Republic of Serbia. Public media can also have editors-in-chief for individual editions, features, or programming units, who are each responsible for the content they are in charge of.

Special rights and obligations in public information broadcasting

Publishers are obliged to retain one copy of media, in the case of newspapers for a period of 60 days from the date of publishing, while in the case of radio and television recordings for 30 days from the date of broadcasting. The retained copies must be made available for review or a copy must be delivered at the request of a court of law or other competent authority or stakeholder.

In media we quite frequently encounter blatant violations of sensitive matters: the presumption of innocence and information relating to criminal acts. Namely, in publishing information the media are bound by the prohibition of violation of the presumption of innocence, in order to protect human dignity, as well as reputation and impartiality of the court or other competent authority.

There is also a prohibition of hate speech, and particular care must be taken that the content of media and the manner of distribution do not harm moral, intellectual, emotional or social development of minors.

Personal information

Specific information relating to private life and personal data of a person may not be published without the explicit consent of the person the information refers to, except in exceptional cases when consent is not needed. A person to whom information that could harm his rights or interests personally refers, is entitled to request from the editor-in-chief to print that person's reply free of charge, in which the person may announce that the information is untrue, incomplete or inaccurately printed. If the person's request to print a reply or correction is not complied with, the person may then turn to a court of law and file a lawsuit demanding to be permitted the reply or correction. Procedures in such cases are urgent.

Court protection may also be sought when published information violates the presumption of innocence, prohibition of hate speech, protection of minors, right to privacy, right to dignity.

A person to whom untrue, incomplete or inaccurately published information refers to is entitled to seek compensation of suffered material and non-material damages, regardless of other legal remedies at such person's disposal. The damages are compensated by a publisher, or a reporter who wrote disputed information, if proven to be at fault for the damages.

Advertising

All public media are obliged to comply with Law on Advertising. Advertiser, commissioning an advertisement, has to submit to a broadcaster of the advertisement – the public media a filled-out form, so-called declaration containing data on the advertisement, the producer and the advertiser.

The Law also prescribes specific rules relating to the manner of advertising, duration, frequency of advertising, as well as to broadcasting in special cases. The Law also lists prohibited and punishable forms of advertising (false advertising, comparing advertisers, and advertising pornographic content, advertising the use of force, tobacco, alcoholic drinks and so forth).

Both the advertiser and the public media, as the broadcaster of the advertisement, are accountable for violation of the Law, and can be charged with infringements and commercial offences.

The advertiser is obliged to retain the broadcast advertisement and all accompanying data for no less than 30 days from the date of the last broadcast, and to enable the advertisement, declaration and records relating thereto to be reviewed by stakeholders (all persons whose rights or interests are endangered or violated by the advertisement).

Interested parties may seek protection of their rights by filing a lawsuit and the advertiser and producer of the advertisement will be jointly liable for any damages determined in the court procedure, while the broadcaster will be liable only if the proper declaration is lacking.

Any person whose rights or interests might be violated by the advertisement may propose that the court order the temporary measure of prohibition of broadcasting of the advertisement, in compliance with the law governing enforcement procedures.

Provisions of the Law on Electronic Media related to audiovisual commercial communication, sponsorship, product placement, television advertising and teleshopping ceased to exist after implementation of amendments to the Law on Advertising in 2016.

Media privatization

The Law on Public Information in Media also provides for privatization of media founded by the Republic of Serbia or an autonomous province, as well as of media directly or indirectly founded by an institution, company or other legal entity publicly-owned in full or for the most part, or in full or for the most part financed from public revenues.

The procedure for privatization of media is to be conducted in compliance with the Law on Privatization, and privatized media are obliged to continue to produce media content for five years from the date of concluding the sale of capital agreement (completed privatization).

According to the publicly available data on 01 February 2018 in the Media Registry held with the Serbian Business Registers Agency 2.034 media were registered, which is for 250 media higher than in 2016.

The National Assembly of the Republic of Serbia has rendered authentic interpretation of Article 142 of the Law on Public Information and Media in 2016, with respect to defining transfer of media publisher's capital to the employees free of charge. According to the authentic interpretation, in the process of transfer of media publisher's capital to the employees free of charge, the employees exercise the right on transfer of capital for which no public call for sale was published, i.e. the employees exercise the right on transfer of capital that was not sold, in such a manner that transfer of capital is executed in its entirety, without limitations related to the total nominal value for each full year of service during the employment period, for maximum period of 35 years of employment with that media publisher.

Conclusion

Ongoing development of telecommunications/media market in Serbia, as well as frequent registration of new media will inevitably lead to further amendments of the governing legal framework. Bearing in mind the mentioned issues, the ability of legislature and media to keep up with the ever-expanding telecommunications/media field is likely to be faced with certain challenges.

Correct, precise, high-quality legal advice will be of crucial importance to both existing and newly incorporated media, with the aim of bringing business operations in full compliance with the applicable legal framework.

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