



ICLG

The International Comparative Legal Guide to:

Telecoms, Media and Internet Laws and Regulations 2014

7th Edition

A practical cross-border insight into telecoms, media and internet laws and regulations

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1 Overview

1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in Macedonia, in particular by reference to each sector's: (i) importance (e.g. measured by annual revenue); (ii) 3-5 most important companies; (iii) whether they have been liberalised and are open to competition; and (iv) whether they are open to foreign investment.

The telecoms, audio-visual media distribution and internet infrastructure sectors in Macedonia are in principle liberalised and open to competition and foreign investments.

According to the most recent publicly available data, the market shares of the service sectors in Macedonia's telecommunications market are as follows: (i) mobile telephony 58%; (ii) fixed telephony 31.5%; (iii) internet services 8.4%; and (iv) cable television distribution (without internet) 2.2%.

According to the EC Agency's Report for Q1 2013, the four most important providers active in Macedonia are:

- Makedonski Telekom (part of the Deutsche Telekom group), which holds 64.56% of land lines (slight decline when compared to 2012);
- T-Mobile Skopje (part of the Deutsche Telekom group), which holds 48.76% in the mobile telephony sector (slight decline when compared to 2012);
- ONE-Operator Skopje (formerly Cosmofon, now owned by Telekom Slovenija Group), which holds 23.14% in the mobile telephony sector (slight decline when compared to 2012); and
- VIP Operator Skopje (part of the Austria Telekom group), which holds 28.09% in the mobile telephony sector (increase of nearly 10% when compared to 2012).

1.2 List the most important legislation which applies to the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in Macedonia.

The telecoms, audio-visual media distribution and internet sectors in Macedonia are all regulated under a single law - the Electronic Communications Act (Official Gazette of the Republic of Macedonia, nos. 13/05, 14/07, 55/07, 98/08, 83/10, 13/12, 59/12, 123/12 and 23/2013) (*Закон за електронските комуникации*) ("ECA"), and further regulated by a set of relevant by-laws.

1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in Macedonia.

The main regulatory body for telecoms, audio-visual media distribution and internet sectors is the Electronic Communications Agency (*Агенција за електронски комуникации*) ("EC Agency").

Other bodies which have a role in the regulation of these sectors are the Ministry of Information Society, Ministry of Transport and Communications/Department of Communications, Committee for Information Technology and The Broadcasting Council of the Republic of Macedonia.

1.4 Are there any restrictions on foreign ownership or investment in the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in Macedonia?

The ECA and the relevant by-laws do not restrict foreign ownership or investment in the telecoms, audio-visual media distribution or internet sectors in Macedonia.

2 Telecoms

General

2.1 Is Macedonia a member of the World Trade Organisation? Has Macedonia made commitments under the GATS regarding telecommunications and has Macedonia adopted and implemented the telecoms reference paper?

Yes, the Republic of Macedonia has been a WTO member since 4 April 2003. Macedonia has made a number of specific commitments under the "Notes for Scheduling Basic Telecom Services Commitments (S/GBT/W/2/Rev.1)" and "Market Access Limitations on Spectrum Availability (S/GBT/W/3)", although Macedonia has not scheduled specific commitments under the telecoms reference paper.

2.2 How is the provision of telecoms (or electronic communications) networks or services regulated?

The operation of public electronic communication networks is in principle free and does not require a separate licence, although operators are required to notify the EC Agency prior to

commencing any activity. Furthermore, where the operation of an electronic communication network involves the use of radio frequencies, operators are required to obtain a radio frequency authorisation from the EC Agency.

2.3 Who are the regulatory and competition law authorities in Macedonia? How are their roles differentiated? Are they independent from the government?

The regulatory body in the field of electronic communications is the EC Agency, while the general authority for the protection of competition is the Commission for the Protection of Competition (*Комисија за заштита на конкуренција*) (“**Commission**”). Both the EC Agency and the Commission are fully independent regulatory bodies.

The ECA contains a number of provisions regulating the protection of competition on the electronic communications market, particularly in relation to operators with significant market power (“**SMP operators**”). The supervision and control over the application of these provisions comes under the remit of the EC Agency, which is, however, required to closely cooperate with the Commission on all competition-related matters.

2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

EC Agency decisions are final, but may be challenged by initiating an administrative dispute before the competent court, in accordance with the Administrative Dispute Resolution Act (Official Gazette of the Republic of Macedonia, nos. 62/06 and 150/10) (*Закон за управните спорови*).

Licences and Authorisations

2.5 What types of general and individual authorisations are used in Macedonia?

No particular authorisation is required to operate an electronic communication network, although operators are required to notify the EC Agency and furnish it with the relevant information prior to commencing any electronic communication activities. Within 15 days of receiving a notification, the EC Agency registers the operator and confirms registration.

However, the use of radio frequencies and numbering requires prior authorisation from the EC Agency. For details, please see question 2.6 below.

2.6 Please summarise the main requirements of Macedonia's general authorisation.

Utilisation of radio frequencies requires prior authorisation from the EC Agency and payment of the appropriate annual fee, given that radio frequencies are classified as limited natural resources. The radio frequency authorisation may be issued either:

- a) directly to the interested operator, within 42 days of receiving the operator's application and supporting documentation; or
- b) on the basis of a public tender procedure, if the EC Agency considers that interest in a particular radio frequency band potentially exceeds availability and could hinder its efficient use.

Furthermore, the ECA also requires that prior authorisation be obtained from the EC Agency in relation to numbering. Numbers and series of numbers are allocated to operators in accordance with the Numbering Plan, on the basis of a duly completed application filed by the operator, and payment of the annual fee.

The ECA stipulates that existing concession agreements and licences will cease to be valid within 30 days, and that the EC Agency must issue the existing operators with the relevant authorisations.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded.

Radio frequency authorisations are issued for the allocation of particular radio frequency bands, while numbering authorisations are required for the use of numbers and series of numbers.

Radio frequency authorisations are issued for a period of up to 20 years and may be further extended at the holder's request, if the relevant conditions are met.

The ECA does not limit the duration of numbering authorisations; the duration is normally stated in the authorisation itself.

Both authorisations can be transferred with the EC Agency's prior consent. Prior to the transfer, the EC Agency should verify whether the operator to which the relevant authorisation is to be transferred meets all the conditions laid down in the ECA and the applicable by-laws, and confirm that the proposed transfer will not distort competition on the market.

In addition, where radio frequencies are used for broadcasting, prior consent of the Broadcasting Council must also be obtained.

Public and Private Works

2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

Ownership and other rights to real estate can be restricted, or real estate can be expropriated if it is of particular significance for the construction, operation and maintenance of public communications networks and associated infrastructure.

The expropriation, right of use or easement may be granted to an operator on the basis of a proposal submitted to the authority competent for expropriation of real estate. Furthermore, for the purpose of establishing a right of use and easement, an operator must submit a draft contract to the owner of the real estate, including the amount of compensation required to obtain these rights. If the operator and the property owner are unable to reach an agreement, the operator may request that the authority competent for expropriation render a decision to establish the right of use and easement of the real estate.

Access and Interconnection

2.9 How is network-to-network interconnection and access mandated?

Operators are entitled, and on request, an operator may also be obliged, to negotiate between themselves on interconnection and access, with the aim of providing services and interoperability of services.

Operators of public communication networks are obliged to provide access or interconnection with other operators and must respond to any such request within 10 working days, while the interconnection or access agreement must be concluded within 45 days of receiving a request.

SMP operators must respond to an interconnection or access request at any point of their networks where such interconnection or access is technically possible.

2.10 How are interconnection or access disputes resolved?

If operators fail to reach an interconnection agreement, the EC Agency must, at the request of one of the parties, resolve the dispute in accordance with mediation or arbitration rules provided under the ECA.

2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

All interconnection and access agreements must be registered with the EC Agency and made publicly available in accordance with the ECA.

In addition, the EC Agency may instruct SMP operators to publish specific information related to accounting, technical specifications, network characteristics, terms of use, prices and other information related to interconnection and/or access.

2.12 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

If the EC Agency considers that, according to its market analysis, there is a lack of effective competition, it may order an SMP operator to base its service prices on actual costs and price controls, and request that prices for specific types of interconnection and/or access be cost-oriented and based on the features and capabilities that will be included in the cost accounting systems.

2.13 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

The EC Agency can order an SMP operator to keep separate accounts for each concluded interconnection contract, and to apply cost accounting.

2.14 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

The ECA provides that the EC Agency may order any SMP operator (including cable TV operators) to ensure access to specified network elements and unbundle local loop access.

2.15 How are existing interconnection and access regulatory conditions to be applied to next generation (IP-based) networks? Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

The general rules for interconnection under the ECA apply in this respect. Neither the ECA, nor the relevant by-laws, distinguish between new network technologies, e.g. next-generation networks, and IP-based networks.

To date, no proposals have been put forward to regulate next-generation access.

Price and Consumer Regulation

2.16 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

Operators, in principle, are free to set retail and network prices. However, the EC Agency can impose price control mechanisms on SMP operators.

2.17 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

Yes. Operators and providers of public communications services are required to publish detailed and transparent information on applicable prices and tariffs and on general conditions for access to and use of public communications services. Operators of public communications services are also required to publish comparable, adequate and up-to-date information on the quality of their services.

Further, subscribers must be informed of all proposed changes to the general terms and conditions of their subscription agreements at least 30 days prior to the proposed change, as well as of their right to terminate the agreement without notice or consequences, if they disagree with the proposed change(s).

The ECA also sets forth a strict procedure and timeline for filing and resolving complaints to operators regarding billing and service quality.

Numbering

2.18 How are telephone numbers and network identifying codes allocated and by whom?

The EC Agency allocates telephone numbers and network identifying codes based on operators' requests and in accordance with the Numbering Plan.

2.19 Are there any special rules which govern the use of telephone numbers?

Certain categories of telephone numbers, i.e. priority numbers (police, emergency, etc.) and special tariff numbers, are allocated by the EC Agency. In addition, the EC Agency has passed the Numbering Plan, relevant decisions and by-laws.

2.20 Are there any obligations requiring number portability?

Number portability was introduced by the ECA in 2005 and made practically possible in 2008.

The ECA provides that all operators of public communication networks and services providing (fixed or mobile) public telephone services are obliged to offer the number portability option to their subscribers. Numbers are not portable from fixed to mobile telephony networks and *vice versa*.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

The ECA regulates the radio frequency spectrum, while the EC Agency manages it and adopts the necessary by-laws regulating its use in greater detail and the Radio Frequency Band Allocation Plan and Radio Frequency Assignment Plan. On the other hand, the Ministry of Transport and Communications implements government policy in the field of electronic communications and ensures harmonisation with other regulations that, *inter alia*, govern issues related to electronic communications development.

3.2 How is the use of radio spectrum authorised in Macedonia? What procedures are used to allocate spectrum between candidates - i.e. spectrum auctions, comparative 'beauty parades', etc.?

Radio frequencies are typically awarded on the basis of authorisations issued to operators by the EC Agency. The authorisations may be awarded through a public tender procedure (due to limited availability of certain frequencies) or on individual request (please see question 2.6 above).

3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

Certain radio frequencies may be used without authorisation, in accordance with the Rules on Radio Frequencies Not Requiring Authorisation (*Правилник за радиофреквенции кои можат да се користат без одобрение за користење на радиофреквенции*).

3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

The Rules on Radio Frequency Usage Fees (*Правилник за начинот на пресметка на годишниот надоместок за користење на радиофреквенции*) provide formulas for calculating radio frequency usage fees for:

- fixed phone services;
- mobile services;
- radio broadcast services;
- satellite services;
- airline, radio navigation and inland shipping services; and
- other services.

The following criteria are taken into account when calculating the fees:

- type of service;
- the allocated radio frequency band;

- the width of radio frequency channels;
- type of radio station;
- characteristics of the service area (number of inhabitants, coverage zone, etc.);
- level of development of the area covered by the radio network service;
- height of the antenna; and
- shared use of the frequency.

3.5 What happens to spectrum licences if there is a change of control of the licensee?

The ECA contains a general obligation whereby licensees are required to notify the EC Agency within 20 days of any change to the licensee. Accordingly, the EC Agency monitors only direct changes of shareholders (i.e. those changes that would be recorded in the commercial register). In addition, individual licences may contain specific change of control clauses.

In general, non-compliance with the ECA and the terms and conditions of the particular licence may lead to fines (up to 4% of the total annual revenue) and ultimately revocation of the licence.

3.6 Are spectrum licences able to be assigned, traded or sub-licensed and if so on what conditions?

Radio frequency authorisations cannot be assigned, traded or sub-leased without prior EC Agency permission.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications?

The general framework for the access to private communications is provided under the ECA and the Communications (Interception) Act (Official Gazette of the Republic of Macedonia, nos. 121/06, 110/08 and 116/12) (*Закон за следење на комуникациите*) ("ICA").

4.2 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities? Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

Pursuant to the ECA and ICA, operators are required to maintain call interception (wire-tap) capabilities as classified information and provide adequate protection for all call interception related data. The ECA also imposes certain specific call interception requirements on operators.

4.3 How does the state intercept communications for a particular individual?

Call data and/or interception access is subject to a court order. Certain government authorities may be authorised to access call data and intercept calls.

4.4 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state?

The ECA and the ICA contain no specific rules regarding encryption; thus the general interception rules, as outlined under question 4.3 above, are applicable.

4.5 What call data are telecoms or internet infrastructure operators obliged to retain and for how long?

The ECA provides that operators must retain certain call data for customer billing purposes for the duration of the subscription agreement concluded with the customer and for a period of 1 year after the subscription has been terminated. Retention of data revealing the content of a call is prohibited.

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in Macedonia?

General electronic communications regulation provided under the ECA also covers audio-visual media. Therefore, the general authorisation regime is also applicable to the provision of audio-visual services.

5.2 Is there a distinction between the linear and non-linear content and/or content distributed over different platforms?

The ECA does not distinguish between linear and non-linear content and/or content distributed over different platforms.

5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

General electronic communications regulation provided under the ECA also covers audio-visual media. Therefore, the general authorisation regime (i.e. no particular authorisation/licence, but prior notice to the EC Agency) is also applicable to the provision of audio-visual services.

5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

Please see under question 5.3 above.

6 Internet Infrastructure

6.1 Are conveyance services over the internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the internet at a wholesale (i.e. peering or transit) and/or retail (i.e. broadband access) level? Are internet service providers subject to telecommunications regulation?

General electronic communications regulation provided under the ECA also covers internet services. Therefore, the general authorisation regime is also applicable to conveyance services over the internet.

6.2 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

The Electronic Commerce Act (Official Gazette of the Republic of Macedonia, nos. 133/07 and 17/11) (*Закон за електронска трговија*) states that primary suppliers, and not intermediary providers acting as mere conduits, caches or hosts of information, are liable for online content, provided that the intermediary providers do not initiate the transmission, select the transmission recipient and select or modify the transmitted information.

Service providers are not required to inspect the transmitted data, but they are required to notify the competent authorities if there are grounds for suspicion that the service recipient is acting illegally or providing illicit data.

6.3 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

Not automatically, but the Electronic Commerce Act provides that competent courts may order service providers to eliminate and prevent any activity which results in violation of the applicable regulations, and to undertake other specific measures.

6.4 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any 'net neutrality' requirements?

The ECA generally prohibits any form of discrimination. These general rules do not prevent operators from offering different tariff packages and pricing models, and imposing special requirements concerning content type.

6.5 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content?

The ECA does not require operators and/or service providers to monitor and block sensitive content. As a general rule, they are required to keep all customer communication and related data private and confidential.

However, operators/service providers are, *inter alia*, required to: (i) maintain communication interception capabilities, where the communication data and/or interception access is subject to a court order; (ii) cooperate with the competent authorities with respect to communication monitoring; and (iii) apply appropriate technical and other measures to prevent spamming and frauds connected to the use of electronic communication services. Further, service providers are obliged to notify the competent authorities if there are grounds for suspicion that the service recipient is acting illegally or providing illicit data.

6.6 How are 'voice over IP' services regulated?

Voice over IP services ("VoIP") are also covered by general electronic communications regulation set forth in the ECA. Therefore, the general authorisation regime is also applicable to VoIP.



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