



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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URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Information Press Ltd
September 2013

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ISBN 978-1-908070-73-9

ISSN 2050-7607

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Montenegro



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1 Overview

1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in Montenegro, 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.

In recent years, electronic information and communications accounted for about 5.6% GDP in Montenegro. In May 2013, the fixed telephony market had 169,352 connections, whereas the mobile telephony market had 977,670 users (668,859 prepaid and 308,811 postpaid). The key fixed network operators are Crnogorski Telekom/T-Com (98.20%) and M: Tel (1.80%), while the most important mobile operators are Telenor (38.10%), Crnogorski Telekom/T-Mobile (35.66%) and M: Tel (26.24%).

Regarding the audio-visual media (“AVM”) distribution sector, at the end of the first quarter of 2013, 28.94% of households used only terrestrial (analogous) AVM access, while the remainder of households used one of the alternative AVM distribution platforms also. As of May 2013, the total number of KDS/MMDS/IPTV/DTH platforms in Montenegro was 141,277. RTCG is the main public broadcaster, while the leading commercial broadcasters are: TV Vijesti; TV Prva; TV In; TV Pink; TV MBC; TV Atlas; and 777 TV Lutrija.

Concerning the internet infrastructure, a total number of 86,961 broadband connections was recorded, with the following technology type breakdown: ADSL – 77.44%; WiMAX – 9.07%; WiFi – 3.83%; and KDS – 4.84%. The leading internet provider in Montenegro is Crnogorski Telekom.

The telecoms, AVM and internet sectors in Montenegro are, in principle, liberalised and open to competition and foreign investment.

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

The most important legislation regulating the above specified sectors include (i) the Electronic Communications Act (*Zakon o elektronskim komunikacijama*, Official Gazette of Montenegro, nos. 50/2008, 53/2009, 70/2009, 40/2010, 49/2010, 32/2011 and 40/2011, “ECA”), (ii) Electronic Media Act (*Zakon o elektronskim medijima*, Official Gazette of Montenegro, nos. 46/2010, 40/2011

and 53/2011, “EMA”), (iii) Media Act (*Zakon o medijima*, Official Gazette of Montenegro, nos. 51/2002, 62/2002 and 40/2011, “MA”), (iv) E-Commerce Act (*Zakon o elektronskoj trgovini*, Official Gazette of Montenegro, nos. 80/2004 and 41/2010), (v) Digital Broadcasting Act (*Zakon o digitalnoj radio-difuziji*, Official Gazette of Montenegro, no. 34/2011, “DBA”), and (vi) Public Broadcasting Services Act (*Zakon o javnim radio-difuznim servisima*, Official Gazette of Montenegro, no. 79/2008) and relevant by-laws.

It is worth mentioning that on 18 of April 2013 the Government of the Republic of Montenegro agreed on and drafted a new Electronic Communications Bill which would replace current the ECA, although it is not known when it will be adopted. The new ECA has been created mainly due the EU integration process and the harmonisation of domestic legislation with the EU *acquis communautaire*.

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 Montenegro.

Key regulatory authorities in these sectors are entrusted to the Ministry of Information Society and Telecommunications (“Ministry”), the Agency for Electronic Communications and Postal Services (“EC Agency”) and the Agency for Electronic Media (“EM Agency”).

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 Montenegro?

In principal, there are no rules restricting exclusively foreign ownership interest in Montenegrin telecom and internet service providers. The AVM market is also open to foreign investment. However, AVM authorisations may not be granted to companies with the shareholder(s) registered in the companies where, due to internal regulations, it is not possible to determine the origin of the foundation capital. Furthermore, foreign individuals or legal entities may not participate in the ownership of public broadcasters.

2 Telecoms

General

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

The World Trade Organization approved Montenegro's membership on 29 April 2012. Montenegro has made certain commitments in relation to the telecommunications sector and undertook the obligations contained in the telecoms reference paper in relation to certain basic telecommunication services.

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

The ECA implemented a general authorisation regime, pursuant to which an operator may be any legal or natural entity which avails of the public communications network or provides public communication services and which is registered to carry on telecommunications activities. Prior to commencement, cessation, or change in the regime of the use of public telecommunication networks or the provision of electronic communication services, the respective operator must give written notice to the EC Agency and register with the operators' register kept by the EC Agency.

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

The EC Agency is the key regulatory authority for electronic communications. However, certain powers are also held by the Government and the Ministry.

The principal regulatory body for general antitrust matters is the Agency for the Protection of Competition. Although it is an independent regulatory body, it is accountable for its actions to the Government, which appoints its director. However, certain authorisations aimed at protecting competition on the electronic communication markets are entrusted to the EC Agency. Accordingly, the EC Agency defines the relevant geographical markets for the electronic communications sector, monitors the relevant markets, determines the significant market power operators and adopts measures to prevent any negative effects of a certain operator's significant market power. The ECA stipulates that the Agency must cooperate with the Administration for the Protection of Competition.

Although the EC Agency is formally a separate legal entity, the Ministry is the appellate body for appeals against the EC Agency's decisions.

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

The EC Agency's decisions may be appealed before the Ministry. The Ministry's decision may be challenged before the competent court.

Licences and Authorisations

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

In accordance with the EU 2003 regulatory framework, the ECA provides for a general authorisation regime as a general rule for all categories of electronic communications networks and services. Operators may utilise the electronic communications network or provide electronic communications services simply by notifying the EC Agency. However, services using limited resources (radio-frequencies and numbering/addresses) require an individual authorisation/licence.

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

Operators can operate an electronic communications network and/or provide electronic communications services by notifying the EC Agency before commencing or changing their operations. This notice must contain: (i) the corporate details of the operator; (ii) the description of the network or services including key physical features of the network and equipment, their environmental impact and manner of operation and provision of services; and (iii) the anticipated date for commencement/change/cessation of operation. The EC Agency must register the operator in the register within 7 days of receipt of the notification. For first-time notices to the EC Agency, an operator must pay a one-off registration fee. The EC Agency determines the fee amount, with the Ministry's prior consent.

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

The use of numbering/address and radio frequencies, as categories of state limited resources and assets of public interest, are subject to individual authorisations, i.e. approvals issued by the EC Agency. The allocation of radio-frequencies for broadcasting comes under the remit of the EM Agency.

Depending on the interest in particular radio-frequencies, the EC Agency's approval will be issued in a regular administrative procedure, at an operator's request, or by tender. In principle, the approval is issued for a maximum period of 5 years, with a possibility to extend. However, the EC Agency also issues temporary approvals for use of radio-frequencies needed for certain inspections and testing of radio-communication equipment which are limited to a certain coverage area and a period of 90 days. In addition, temporary approvals are issued for certain extraordinary events for periods not exceeding 60 days and in extraordinary circumstances until such circumstances cease to exist. The approval shall, *inter alia*, contain terms and conditions for the use of a specific radio-frequency. Furthermore, exceptionally, the Ministry prescribes which frequencies may be used without the Agency's approval, and under which conditions.

Depending on the level of interest in and availability of certain numbering/address resources, the EC Agency shall approve the use of a numbering/address by way of a general administrative procedure or tender procedure. The approval is issued within 15 days from the application date in a regular administrative procedure and, in the case of a tender, within 30 days.

The right to use the radio-frequency and numbering/addresses cannot be assigned or transferred to another legal or natural person, without the EC Agency's consent. In order to decide on the matter of assignment, the EC Agency shall firstly determine whether the assignee fulfils all relevant conditions. The EC Agency's approval for use of the radio-frequency may also contain conditions for the transfer of right of use of such radio-frequency.

In addition, a construction permit is required in order to construct the necessary network facilities. Pursuant to the Spatial Development and Construction of Buildings Act (*Zakon o uređenju prostora i izgradnji objekata*, Official Gazette of Montenegro, nos. 51/2008, 40/2010, 34/2011, 40/2011 and 47/2011), local authorities have responsibility for issuing construction permits. However, the construction of certain facilities, such as distribution and transmission networks of 35 KV or more, telecommunications facilities of international and national importance, telecommunications facilities under construction on the territory of two or more municipalities, and radio broadcasting structures, require a construction permit from the Ministry in charge.

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?

The Property Act (*Zakon o svojinsko-pravnim odnosima*, Official Gazette of Montenegro, no. 19/09) prescribes that land owners must allow (with appropriate compensation) electrical, telephone cables, pylons, wires and similar lines to be installed on their land provided that their instalment at other locations would incur disproportional additional costs. Equipment may also be placed on real property owned by another person, providing that such easement is in the public interest. Furthermore, the ECA prescribes that an operator intending to build a public electronic communications network may, in establishing the right to use or easement over the real property, if necessary, also seek the removal, alteration or expansion of existing facilities. In the case of road construction, the ECA prescribes that, at the request of an electronic communications network operator, a developer must indiscriminately and in good faith negotiate the possibility and conditions for constructing electronic telecommunications structures and infrastructure in the zone around the road.

Access and Interconnection

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

According to ECA, operators have the right and duty to negotiate with each other on operator access and interconnection and to publish accurate data relevant for such negotiations. An operator is obliged to respond to an interconnection or operator access request from another operator within 15 days of receipt of such request. Technical and commercial interconnection/access issues between operators are regulated by written agreement. The operators are obliged to furnish the EC Agency with a copy of such agreement for the purpose of registration and to assess whether such agreement complies with the regulations. The EC Agency publishes conditions under which operators may limit interconnection/access to its network. Rulebook on Operator Access and Interconnection (*Pravilnik o operatorskom pristupu i interkonekciji*, Official Gazette of Montenegro, no. 79/09) regulates further interconnection and access.

2.10 How are interconnection or access disputes resolved?

In case an operator's request for access or interconnection is denied by the other operator or the operators fail to reach an agreement, the EC Agency is authorised to resolve the dispute on request. The EC Agency shall resolve any such dispute within 30 days of submission of the request.

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

If the EC Agency has classified an operator as having SMP status, under certain conditions it may order the operator in question to publish a reference interconnection offer. This offer shall contain the list of services unbundled in accordance with the needs of other operators, and conditions thereof, including the prices and discounts or principles for establishing prices.

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?

The EC Agency may order an SMP operator to take measures in relation to price control of certain interconnection or operator access services if it deems that an SMP operator might keep either excessive prices or too low difference among wholesale and retail prices.

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

An SMP operator may be ordered to take measures to keep separate accounts related to the provision of interconnection/operator access services. The EC Agency shall order such measures, in particular, in the case of a vertically integrated operator, and in doing so, the EC Agency may request that the operator make its wholesale or internal accounting prices transparent.

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?

In the case of an SMP fixed network operator, a reference interconnection offer must contain a section for unbundled components of services of copper 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?

Currently, there are no specific rules for interconnection applicable to next generation networks and, therefore, general interconnection rules apply in this respect.

Price and Consumer Regulation

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

The EC Agency may order an SMP operator to take certain measures related to the regulation of retail services, if it determines that the relevant end user services market is not sufficiently competitive. Such measures shall be ordered exceptionally, if all other available measures were or would not be efficient. These measures may prohibit the: 1) calculation of excessive prices; 2) obstruction of entry into market; 3) restriction of competition by setting excessively high or low prices; 4) giving undue advantage to a particular end user; and 5) unreasonable bundling of particular services. When defining specific measures for this purpose, the EC Agency may prescribe one of the following price determination methods: i) retail price capping (price cap regime); ii) individual tariffs regulation method; iii) cost-oriented prices method; and iv) harmonisation of prices with those on comparable markets.

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

The ECA sets out basic principles on consumer protection in the electronic communications sector, which include the right of access, availability and reliability, a detailed bill with a pricing specification in a form that enables cost control, protection of privacy of electronic communications (with certain statutory prescribed exemptions) and rights arising out of other laws regulating consumer protection, unless otherwise prescribed by the ECA. Rulebook on Quality of Electronic Communication Services (*Pravilnik o kvalitetu javnih elektronskih komunikacionih usluga*, Official Gazette of Montenegro, no. 09/12) as well as the Decision on Publishing Methods regarding Prices, Tariffs and General Conditions for the Provision of Electronic Communication Services (*Odluka o načinu objave informacije o cijenama, tarifama i opštim uslovima pružanja javnih elektronskih komunikacionih usluga*, Official Gazette of Montenegro, no. 21/10) contain rules further regulating consumer protection.

Numbering

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

The EC Agency adopts a numbering plan which determines the type, structure, length, allocation and manner of use of the numbers for access to public electronic communications networks and public electronic communications services. It also issues plans on addresses which contain definitions and the structure of codes of the international signalling points, codes of national signalling points, mobile network codes, identification code of the data transfer network and management method. The EC Agency allocates telephone numbers and network identifier codes by way of a general administrative procedure or by tender.

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

All operators of public telephone networks must ensure that users of publicly available telephone services, including users of public pay telephones, are able to call emergency call numbers including

the number 112 free-of-charge. Moreover, if technically feasible, operators must allow free-of-charge incoming call identification and call location for the emergency services. If technically feasible and economically justifiable, operators must provide an option for users outside Montenegro to make calls to non-geographic numbers determined in the numbering plan.

2.20 Are there any obligations requiring number portability?

Public telephone service subscribers, including mobile services subscribers, on request, are entitled to reserve their numbers and retain them: i) in the case of geographic codes, on a specific geographic location; and ii) in the case of non-geographic codes, in any location. Fixed network operators shall enable geographic portability to their subscribers if technically feasible. Mobile network operators must allow number portability for their subscribers when switching operator or service provider. A subscriber cannot request number portability from a network providing services in a fixed location, to a mobile network and vice versa. The Number Portability Rulebook (*Pravilnik o prenosivosti brojeva*, Official Gazette of Montenegro, nos. 89/09, 21/10 and 16/13) further regulates conditions and number portability method.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

The EC Agency is the principal regulatory authority which manages, supervises and controls the use of the radio-frequency spectrum, in accordance with the Radio-frequency Allocation Plan and the Radio-frequency Assignment Plan. The EC Agency is responsible for the allocation of radio-frequencies except for those radio-frequencies intended for broadcasting the allocation of which comes under the remit of the EM Agency. The EM Agency approves the terrestrial broadcasting part of the proposal for the Radio-frequency Assignment Plan.

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

Radio frequencies are considered categories of limited State resources and assets of public interest and the use of radio frequencies is subject to individual authorisations, i.e. approvals issued by the EC Agency. Generally, approval for use of a radio frequency is issued by way of a general administrative procedure. However, in case of enhanced interest in particular, radio frequencies which could exceed the available frequency span and thereby question the efficient use thereof, the EC Agency shall, having requested an opinion thereon from the interested parties, conduct a tender procedure for the allocation of specific radio-frequencies. For radio-frequencies intended for broadcasting and multiplex operators, the EC Agency will only approve the use of the respective radio-frequency to the selected operator, whereas the tender procedure is conducted by the EM Agency.

In principle, approval is issued for a maximum period of 5 years, except for approvals issued for aeronautical and maritime mobile services issued until the cessation of their use. The ECA provides for the possibility of an extension of an approval. The EC Agency also issues certain temporary approvals (please see question 2.7 above).

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

As an exemption and according to the Radio-frequency Allocation Plan and international treaties, the Ministry determines which frequencies and the conditions under which they may be used without the EC Agency's approval. Furthermore, the ECA does not apply to electronic communications networks, radio stations, equipment and radio frequencies which are installed and used exclusively for defence purposes, i.e. the armed forces, police and security services in the international exchange of certain information.

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

Pursuant to the ECA, for use of the radio frequencies spectrum operators must pay:

- (i) A one-off fee, at the time of applying for allocation of a radio-frequency. This fee corresponds to the actual application processing costs for processing and is determined by the EC Agency.
- (ii) An annual regulatory fee, for use of the radio frequency, intended only to cover the supervision and management costs of the radio-frequency spectrum. The Ministry determines the fee calculation methodology, which is outlined in points, and the EC Agency proposes the monetary value of one point. The fee amount is determined by the Government through adoption of the EC Agency's Financial Plan.

Fees from points (i) and (ii) above shall not be paid by amateur radio, emergency services, rescue services and users exempt by international agreement. The fee under point (ii) shall not be paid by broadcasters which pay such fee pursuant to EMA.

- (iii) A radio-frequency spectrum administration fee, which is determined by the Government and may not be higher than 10% of the fee under point (ii).

When radio-frequencies are assigned by public tender, whereby additional fee offered for the use of radio frequencies is one of the criteria for selection of operators, the fee amount achieved at tender shall be deemed as revenue for the State budget.

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

The ECA does not explicitly regulate the effect of the licensee's change of control in relation to its licence. However, the ECA generally requires a licensee to report any change within 30 days of a change being made.

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

The right to use radio frequencies may be assigned to another legal or natural person, only with the EC Agency's consent. In deciding on a transfer, the EC Agency firstly determines whether the assignee fulfils all relevant conditions. In the case of radio-frequencies used for broadcasting, prior approval from the EM Agency must be obtained.

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 ability of the state to obtain access to private communications is governed, *inter alia*, by the Criminal Procedure Code, the National Security Agency Act and the ECA.

The Criminal Procedure Code allows for (in case proof cannot be gathered by any other reasonable means) secret surveillance, gathering/recording of telephone conversations or any other forms of communications if there are grounds of suspicion that a person has (or in complicity with another) or is planning to commit a crime. The National Security Agency Act authorises the Agency to gather, keep, analyse, assess, use, exchange and protect data relating to crimes and potential threats to national/international security, as well as to secretly conducted surveillance of electronic communications. In addition, the ECA contains a chapter on confidential information which states that taping and recording of data from private communications is allowed where duly requested by a competent authority.

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?

The ECA specifically requires operators to ensure, at their own cost, the necessary hardware and software for legal call interception (at the request of a state authority). This covers calls, e-mails and any other form of communication.

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

As a general rule, secret surveillance measures and recording or intercepting private telephone communications or any other means of communicating must be carried out pursuant to an order issued by an investigating judge.

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

There are specific rules regulating the use of encryption, apart from general rules from the ECA and Criminal Procedure Code providing that the state has the right to access private information and communications in specific cases.

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

Operators of public communications networks and services must retain particular data on traffic and location, and relevant data required to identify subscribers and registered users, to the extent to which such data were generated or processed by them, in order to ensure that such data are at the disposal of State bodies according to applicable regulations. The said obligation includes data concerning dropped calls, if such data is generated and processed, in case of telephone services, or logged, in case of internet services.

This obligation does not apply to data revealing the content of electronic communications.

Operators must retain: (i) location and identification data; (ii) data required for identification of destination of a particular communication; (iii) data required for identification of date, time and duration of a communication; (iv) data required for identification of the type of communication; (v) data required for identification of communication equipment of a user or identification of purpose of such equipment; and (vi) data required for identifying location at mobile communication equipment.

Such data must be retained for at least 6 months and not longer than 2 years.

5 Distribution of Audio-Visual Media

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

Key rules regulating the audio-visual media sector are contained in the EMA which incorporates the European Convention on Transfrontier Television, and to a large extent, provisions from the EU Directive on Audiovisual Media Services. Certain matters of this sector are regulated also by the Media Act, the Digital Broadcasting Act, the Public Broadcasting Services Act and the ECA. The principal regulatory body responsible for audio-visual media is the EM Agency which, *inter alia*, issues approvals for providing AVM services, keeps registers of AVM service providers, decides on complaints and objections filed regarding the work of AVM service providers and supervises AVM provider compliance with the EMA. The EM Agency must cooperate with the EC Agency concerning broadcasting radio-frequencies.

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

The EMA differentiates between linear and non-linear (on-demand) AVM services and prescribes that approvals for providing AVM services be issued as approvals for broadcasting and approvals for provision of AVM Services on-demand. It regulates separately the issuance of these two approvals and contains certain separate obligations for these two types of providers. In relation to different platforms used for AVM services distribution, the annual fee for broadcasting/on-demand AVM services is determined by taking into account, *inter alia*, the type of broadcasting platform to be used. A request for broadcasting approval must contain data on the platform to be used.

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

Approvals for the provision of AVM services are issued by the Media Agency and may be issued as (i) broadcasting approval, and (ii) authorisation for on-demand AVM services. Both types of approvals may be issued by way of a general administrative procedure or by tender.

A broadcasting authorisation must contain data on: the authorisation holder; title of the radio or TV programme; programme structure and other programming obligations; type of electronic communication networks for distribution; allocated broadcasting frequencies (when analogues broadcasting systems are used); radio or TV programme identification symbol; deadline for start of

broadcasting; the licence validity; payment terms; and other rights and obligations. Authorisation for on-demand AVM services must contain data on: the licence holder; the name of on-demand AVM service; service zone; programme catalogue; payment conditions; and the validity period.

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

The right to use radio frequencies may be assigned to another legal or natural person, only with the consent of the Council of Electronic Media Agency. In deciding on a transfer, the Agency firstly determines whether the assignee fulfils all relevant conditions. Furthermore, the EC Agency must be notified in relation to the assignment of the respective radio frequency.

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?

The ECA and its by-laws apply to internet service providers also. Currently, there is no regulation which applies to internet service providers specifically.

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 (*Zakon o elektronskoj trgovini*, Official Gazette of Montenegro, nos. 80/2004 and 41/2010) prescribes that an electronic communications service provider shall not be liable for transmitting, providing access to, caching and hosting information, provided that it actually acts as a conduit and specifies certain conditions for exemption of liability (e.g. the provider should not initiate transmission, select the receiver, select or modify the information). However, service providers do not have a general obligation to monitor the information which they transmit or store; they must notify the competent authority if there is reasonable doubt that a receiver is acting illegally or has provided illegal information. Based on the appropriate court or administrative document, providers must present all information necessary for investigating and prosecuting criminals, or protecting third parties. As a general rule, the ECA prescribes that network operators broadcasting and distributing radio and television programmes must, in so far as possible, take measures to prevent the broadcasting of illegal programmes.

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?

No specific obligations are imposed on internet service providers to assist content owners whose rights may have been infringed by file-sharing or other activities.

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?

Currently, there is no explicit requirement protecting 'net neutrality'. Subject to general ECA provisions and competition regulations, operators may be deemed entitled to apply different pricing models depending on the type of traffic. The ECA limits the circumstances under which operators may restrict or limit access to their services.

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

There is no explicit provision providing specifically for this type of obligation.

6.6 How are 'voice over IP' services regulated?

Currently, there are no regulations which apply to 'voice over IP' services specifically.



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