



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

Published by Global Legal Group with contributions from:

Alain Bensoussan Avocats Selas

Attorneys at law Borenium Ltd

Balčiūnas ir Grajauskas

Chajec, Don-Siemion & Zyto sp.k. – Legal Advisors

Cugia Cuomo & Associati

Davies Ward Phillips & Vineberg LLP

DLA Interjuris Abogados, S.C.

Dr. Norbert Wiesinger, Law Offices

Esguerra Barrera Arriaga S.A.

Heuking Kühn Lüer Wojtek

Hogan Lovells (CIS)

King & Wood Mallesons

Kromann Reumert

Langlet, Carpio & Asociados

Matheson

Melchior, Micheletti & Amendoeira Advogados

Mkono & Co Advocates

Mori Hamada & Matsumoto

NautaDutilh N.V.

Olswang LLP

Schoenherr

Sébastien Fanti law firm

Shay & Partners

Sociedade Rebelo de Sousa & Advogados Associados, RL

Squire Sanders

SyCip Salazar Hernandez & Gatmaitan Law Offices

Tilleke & Gibbins

Udo Udoma & Belo-Osagie

Vasil Kasil & Partners

Webb Henderson LLP

Wigley & Company

Wilkinson Barker Knauer, LLP

GLG

Global Legal Group

Contributing Editor

Rob Bratby, Olswang LLP

Account Managers

Beth Bassett, Maksim Dolgusev, Robert Hopgood, Dror Levy, Maria Lopez, Mahmoud Nedjai, Florjan Osmani, Oliver Smith, Rory Smith

Sales Support Manager

Toni Wyatt

Sub Editors

Beatriz Arroyo
Fiona Canning
Nicholas Catlin

Senior Editors

Suzie Kidd
Penny Smale

Group Consulting Editor

Alan Falach

Group Publisher

Richard Firth

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Information Press Ltd
September 2013

Copyright © 2013

Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-908070-73-9

ISSN 2050-7607

Strategic Partners



General Chapters:

1	An Overview of the EU Regulatory Framework - Dr. Christoph Enaux & Blanca Escribano, Olswang LLP	1
2	To Share or Not to Share? Differences in Regulatory Approaches and Industry Attitudes Towards Mobile Network Sharing in the United States and Europe - Robert E. Stup, Jr. & Cathal Flynn, Squire Sanders	10

Country Question and Answer Chapters:

3	Australia	King & Wood Mallesons: Renae Lattey & Neil Carabine	17
4	Austria	Dr. Norbert Wiesinger, Law Offices: Dr. Norbert Wiesinger	26
5	Bosnia & Herzegovina	Moravčević Vojnović i Partneri in cooperation with Schoenherr: Matija Vojnović & Miljan Mimić	32
6	Brazil	Melchior, Micheletti & Amendoeira Advogados: Silvia Regina Barbuy Melchior	39
7	Canada	Davies Ward Phillips & Vineberg LLP: George Addy & Elisa Kearney	49
8	China	King & Wood Mallesons: Rui Wang	56
9	Colombia	Esguerra Barrera Arriaga S.A.: Natalia Barrera Silva	64
10	Denmark	Kromann Reumert: Torben Waage & Julie Bak-Larsen	70
11	Finland	Attorneys at law Borenius Ltd: Jukka Airaksinen & Henriikka Piekkala	77
12	France	Alain Bensoussan Avocats Selas: Frédéric Forster & Edouard Lemoalle	84
13	Germany	Heuking Kühn Lüer Wojtek: Dr. Dirk Stolz & Gerhard Deiters	93
14	Ireland	Matheson: Helen Kelly & Nina Cummins	101
15	Italy	Cugia Cuomo & Associati: Fabrizio Cugia di Sant'Orsola & Silvia Giampaolo	108
16	Japan	Mori Hamada & Matsumoto: Hiromi Hayashi & Akira Marumo	118
17	Lithuania	Balčiūnas ir Grajauskas: Tomas Ivanauskas & Dominykas Užkurnys	126
18	Macedonia	Moravčević Vojnović i Partneri in cooperation with Schoenherr: Slaven Moravčević & Andrea Radonjanin	135
19	Mexico	Langlet, Carpio & Asociados: Enrique Ochoa de G. Argüelles & Esteban Cardoso González	141
20	Montenegro	Moravčević Vojnović i Partneri in cooperation with Schoenherr: Slaven Moravčević & Jelena Bezarević Pajić	148
21	Netherlands	NautaDutilh N.V.: Piet Sippens Groenewegen & Paul M. Waszink	155
22	New Zealand	Wigley & Company: Michael Wigley	163
23	Nigeria	Udo Udoma & Belo-Osagie: Olajumoke Lambo & Godson Ogheneochuko	169
24	Philippines	SyCip Salazar Hernandez & Gatmaitan Law Offices: Rose Marie M. King-Dominguez & Ruben P. Acebedo II	176
25	Poland	Chajec, Don-Siemion & Zyto sp.k. – Legal Advisors: Andrzej Abramczuk & Mariusz Busiło	183
26	Portugal	Sociedade Rebelo de Sousa & Advogados Associados, RL: Octávio Castelo Paulo & Luís Neto Galvão	190
27	Russia	Hogan Lovells (CIS): Natalia Gulyaeva & Julia Gurieva	198
28	Serbia	Moravčević Vojnović i Partneri in cooperation with Schoenherr: Matija Vojnović & Luka Lopičić	205

Continued Overleaf ➔

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

GLG

Global Legal Group

29	Singapore	Webb Henderson LLP: Anisha Travis & Jessica Gurevich	212
30	Switzerland	Sébastien Fanti: Sébastien Fanti	220
31	Taiwan	Shay & Partners: Arthur Shay & David Yeh	227
32	Tanzania	Mkono & Co Advocates: Nimrod Mkono & Kamanga Wilbert Kapinga	234
33	Thailand	Tilleke & Gibbins: David Duncan & Kasma Visitkitjakarn	241
34	Ukraine	Vasil Kisil & Partners: Anna Babych & Oksana Krasnokutska	249
35	United Kingdom	Olswang LLP: Purvi Parekh & John Enser	257
36	USA	Wilkinson Barker Knauer, LLP: Bryan N. Tramont & Natalie G. Roisman	266
37	Venezuela	DLA Interjuris Abogados, S.C.: Manuel I Pulido Azpurua & Anadaniella Sucre de Pró-Ríquez	274

Bosnia & Herzegovina

Moravčević Vojnović i Partneri
in cooperation with Schoenherr

Matija Vojnović



Miljan Mimić



1 Overview

- 1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in Bosnia and Herzegovina, 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 Bosnia and Herzegovina are generally liberal, and open to both competition and foreign investment.

According to the latest available data, the market share of each service sector in the telecommunications market of Bosnia and Herzegovina is as follows: (i) mobile communications 53%; (ii) fixed communications 30%; (iii) internet services 10%; (iv) cable television distribution 6%; and (v) data transfer 1%.

The three most important companies on the telecommunications market of Bosnia and Herzegovina are the incumbent fixed and mobile telephony operators: (i) Telekom Srpske a.d. Banja Luka, controlled by foreign investor, Telekom Srbija; (ii) BH Telekom d.d. Sarajevo; and (iii) HT d.o.o. Mostar. They are also the market leaders in the internet and audio-visual media distribution services sectors (due to the penetration of IPTV service).

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

The telecoms, audio-visual media distribution, and internet sectors in Bosnia and Herzegovina are regulated by a single legislative act at country level, Communications Act (Official Gazette of Bosnia and Herzegovina, nos. 31/03, 75/06, 32/10 and 98/12) [*Zakon o komunikacijama*] ("CA"). Its provisions are complemented through numerous by-laws. In addition, The Public Radio-Television System Act of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, nos. 78/05, 35/09 and 32/10) [*Zakon o javnom radiotelevizijskom sistemu Bosne i Hercegovine*] outlines the principles and regulations concerning public broadcasters in Bosnia and Herzegovina (one on the country level, and three broadcasters on the entity level).

- 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 Bosnia and Herzegovina.**

The main regulatory body is the Communications Regulatory Agency of Bosnia and Herzegovina ("CRA"), established pursuant to the CA. In addition, The Council of Ministers of Bosnia and Herzegovina [*Vijeće ministara*], along with the Ministry of Transport and Communications [*Ministarstvo komunikacija i transporta*], is responsible for developing and adopting communications policies, and for drafting secondary legislation to implement the CA.

- 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 Bosnia and Herzegovina?**

The CA and its by-laws do not restrict foreign ownership or investment in the telecoms, audio-visual media distribution, and internet sectors in Bosnia and Herzegovina.

2 Telecoms

General

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

No, Bosnia and Herzegovina is not a member of WTO. The WTO working party for Bosnia and Herzegovina was established in 1999, and the country currently holds observer status. At the latest working party meeting, a goal was set to accelerate negotiations in order to facilitate Bosnia and Herzegovina's membership to WTO by the end of 2013.

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

The provision of communication services in Bosnia and Herzegovina is subject to a licensing regime. Operators are

required to apply to the CRA for a licence. The CRA is responsible for regulating broadcasting and public telecommunications networks and services, including: licensing, tariffs, interconnection, and defining the basic conditions for the provision of common national and international communications facilities; planning, coordinating, allocating and assigning the use of the radio frequency spectrum; and management of the numbering plan and assignment of numbering resources to telecommunications operators.

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

The regulatory body in the field of electronic communications is the CRA, whilst the general authority for the protection of competition rests with the Competition Council of Bosnia and Herzegovina [*Konkurencijsko vijeće BiH*] (“**Competition Council**”). Both the CRA and the Competition Council are independent regulatory bodies.

The CA 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 application of these provisions is supervised and controlled by the CRA; however, general competition protection procedures in Bosnia and Herzegovina come under the remit of the Competition Council and thus cooperation between these two agencies is a necessity.

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

Decisions of the CRA are final, but may be challenged by initiating an administrative dispute before the Court of Bosnia and Herzegovina, in accordance with the Administrative Dispute Resolution Act (Official Gazette of Bosnia and Herzegovina, nos. 19/02, 88/07, 83/08 and 74/10) [*Zakon o upravnim sporovima*].

Licences and Authorisations

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

The following individual authorisations are used in Bosnia and Herzegovina: (i) GSM licences; (ii) UTM licences; (iii) fixed telephony licences; (iv) network licences; (v) internet service - ISP licences; and (vi) fixed telephone services licences.

2.6 Please summarise the main requirements of Bosnia and Herzegovina’s general authorisation.

Authorisations are distributed in Bosnia and Herzegovina on an individual level for each segment of telecommunication services.

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

A **GSM licence** allows for the installation, operation and maintenance of a GSM mobile network. Generally, the licence

duration is 15 years, with a 10-year extension option. Any transfer of the licence is subject to CRA approval; any change in the licence holder’s ownership structure must be immediately notified to the CRA for evaluation and approval.

A **UMTS licence** allows for the installation, operation and maintenance of a UMTS mobile network. Generally, the licence duration is 15 years, with a 10-year extension option. Any transfer of the licence is subject to CRA approval; any change in the licence holder’s ownership structure must be immediately notified to the CRA for evaluation and approval.

A **fixed telephony licence** allows for the installation, operation and maintenance of a fixed public network. Generally, the licence duration is 15 years, with a 10-year extension option. Any transfer of the licence is subject to CRA approval. A change in the licence holder’s ownership structure of more than 10% of the shares must be immediately notified to the CRA. Transfer of more than 51% of the licensee’s shares shall be deemed as a transfer of the licence and will be subject to CRA approval.

A **network licence** allows for the installation, operation and maintenance of a public telecommunications network. Generally, the licence duration is determined on case-by-case basis. Transfer of the licence is not permitted, save in case of status changes or transfer of more than 51% shares in the licence holder, when transfer of the licence rights may be allowed by the CRA.

An **internet services licence** allows for the provision of internet services. The licence duration is determined on a case-by-case basis. Transfer of the licence is not permitted, except in cases of universal succession.

Fixed telephony services allows for the provision of fixed public telephony services, either using privately-owned equipment, or by leasing the equipment from other licenced telecommunication operators. Generally, the licence duration is 10 years. Any transfer of the licence is subject to CRA approval.

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?

Operators are entitled to request a right of way (*pravo prolaza*) or right to use land or other real property owned by another person (easement) (*službenost*). In addition, real property can be expropriated if the construction of an electronic communications network and installation of the corresponding equipment is determined to be in the public interest. However, please note that real property legislation is not centralised in Bosnia and Herzegovina – there are three principal jurisdictions: the Federation of Bosnia and Herzegovina (“**Federation of BiH**”); the Republic of Srpska (“**RS**”); and Brčko District, with somewhat differing real estate regulations.

Access and Interconnection

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

Interconnection is primarily regulated by the CA and CRA rule no. 51/2010. The CA mandates that any telecommunications operator operating a public telecommunications network is obliged to make an interconnection offer to other operators at their request. All

parties concerned shall aim to enable and improve communication among users of different public telecommunications networks. The CRA may order operators to prepare and publish a referent interconnection offer, containing deadlines, terms and prices.

2.10 How are interconnection or access disputes resolved?

If an agreement on interconnection cannot be reached between telecommunications operators operating public telecommunications networks within six weeks of receipt of the request, each of the parties involved in the interconnection may apply to the CRA for mediation.

The CRA shall, within six weeks or, exceptionally, within a period not exceeding 10 weeks of receipt of the request, hear the parties to the interconnection request and decide on the modalities, and terms and conditions of interconnection in accordance with European practice, and render a decision which shall supersede the contract between the interconnection parties.

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

SMP operators are required to: (a) publish their reference interconnection offer which contains prices, terms and conditions of interconnection and which should be approved by the CRA; (b) conclude interconnection agreements based on the terms available in the reference interconnection offer on a non-discriminatory and equal basis; and (c) submit all interconnection charges to the CRA for approval.

All interconnection agreements must be registered with the CRA.

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?

Interconnection charges for SMP operators must be non-discriminatory. The CRA may set the charges and conditions for SMP operators in order to avoid discriminatory policies.

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

SMP operators must keep interconnection-related activity items separate in their financial reports.

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 legal framework for local loop access is set out in CRA Rule no. 35/2008, which provides that SMP operators are obliged to offer a service of unbundled access to the local loop and related facilities. The general terms of access are as follows:

- 1) SMP operators enable unbundled access to the local loop and related facilities on the basis of the following principles: objectivity; transparency; non-discrimination; and cost orientation.
- 2) In order to satisfy demands of the beneficiary, SMP operators are not required to change, upgrade or enhance their existing access networks or to construct new telecommunications infrastructure for the purpose of using collocation space.

- 3) SMP operators are not responsible for the content of the communications carried over the unbundled local loop or the quality of the services the beneficiary provides throughout the unbundled local loop.
- 4) Regulations on lawful interception are fully applicable to the unbundled local loop.
- 5) SMP operators and service beneficiaries are obliged to mutually cooperate for the purpose of identifying and repairing equipment failure, and to ensure mutually unhindered operation.
- 6) A subscriber who signed a contract with a local loop service beneficiary for the provision of telecommunication services over an unbundled local loop cannot sign a contract for the provision of the same services with another operator within four months of signing the initial contract.

The CRA retains regulatory control over the local loop unbundling process. SMP operators are required to submit a reference offer for the service to the CRA, which is subject to CRA approval. The CRA also has dispute resolution authority in this respect.

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 CA apply in this respect. Neither the CA, nor the respective 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?

SMP operators need to obtain CRA approval for retail prices in respect of the following telecommunications services: (a) voice telephony service via a fixed or mobile network; and (b) provision of leased lines. In the case of a telecommunications operator with no significant market power, the tariffs shall be notified to the CRA prior to their application. The tariffs shall be uniform within a tariff zone.

The CRA has rebalanced SMP operator prices in the fixed-line market capping prices for all types of services: international and domestic calling minutes; and subscription fees, including monthly subscription fees. Full-cost rebalancing was not applied.

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

Operators are required to publish their GTCs, tariffs and subscription agreement templates, as well as to maintain transparent billing and service quality, whilst complying with applicable standards. Operators must notify their subscribers in advance of any unilateral change in service terms. The CA and the respective by-laws also set forth a procedure and timelines for filing and

resolving complaints to operators regarding billing and service quality.

In addition, the newly introduced CRA Rule no. 69/2013 regulates in detail the conditions for the provision of services to end users, wherein a number of consumer rights are guaranteed, including unrestricted access, the right to technical support, transparency, change of service operator, etc. Service quality standards and privacy issues are addressed also.

Numbering

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

The CRA allocates telephone numbers and network identifying codes based on operators' requests and in accordance with the numbering plan. The allocation follows objective and non-discriminatory principles, in particular, the principle of equal opportunities.

In drafting the numbering plans, the CRA takes international regulations into account, particularly with regard to their structure. It undertakes adequate measures in order to ensure the availability of an adequate number of addresses. Space is left in numbering plans, whenever technically possible, for new national and international services and for number portability.

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, have been allocated by the CRA. In addition, the CRA has enacted numeration plans, decisions and by-laws.

2.20 Are there any obligations requiring number portability?

In January 2008 and again in May 2012, the CRA adopted by-laws regulating fixed-line and mobile number portability. However, mobile number portability between telecommunication operators in Bosnia and Herzegovina is not yet operational, due to several deadline extensions and technical issues. Since July 2012, the regulatory framework and majority of technical requirements have been in place, and ready for the service to commence. However, one of the operators, JP Hrvatske telekomunikacije d.d. Mostar, has not fulfilled the technical requirements in time, which caused the service roll-out delay. However, as of 1 January 2013, this service is available to customers.

Number porting in fixed telephony has been operational since September 2011.

Under the regulatory framework in place, operators must enable subscribers (users) to switch from one service operator to another while retaining their existing number, except in certain cases. Mobile number porting can be completed in one business day and the price for this service shall not exceed BAM 30 (EUR 15).

By-laws governing fixed and mobile telephone numbers provide for an 'All Call Query' method in routing a call towards the ported number when the call originates from a fixed network; for the purpose of proper routing to the ported number on a mobile telephone network, the operators of the mobile telephone networks that originate the call will use the shortest possible route towards the telephone network hosting the ported number (direct call routing in line with specifications of the European Standard Institute ETSI TS 123 066).

3 Radio Spectrum

3.1 What authority regulates spectrum use?

The CRA, in co-ordination with the Council of Ministers of Bosnia and Herzegovina, manages the frequency spectrum in compliance with international agreements. The CRA adopts and publishes a plan allocating radio frequency bands, wherein it defines the radio frequencies or radio frequency bands intended for individual radio-communications and individual groups of users. In addition, the CRA prepares a frequency usage plan on the basis of the frequency allocation plan. The frequency usage plan contains the division of the frequency ranges into frequency usages and specifications for these frequency usages. The use of radio frequencies is subject to CRA authorisation.

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

Radio frequencies are typically awarded by means of a permit issued by the CRA. Generally, the permits are awarded based on individual requests; however, the CRA may decide to award certain permits in alternative ways (e.g. through a public tender, due to limited availability of certain frequencies).

The assignment of frequencies shall be non-discriminatory, in accordance with the frequency usage plan and based on objective criteria set up by the CRA. The CRA shall decide on the application within six weeks, unless special circumstances, such as incompleteness of the documentation, require that a longer period is needed.

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

Spectrum permits distinguish between mobile, fixed and satellite usage. There are no exceptions for the use of spectrum.

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

CRA rule no. 48/2009 regulates the fees payable for radio frequency licences, and provides a formula for calculation. There are two principal fees: (a) a one-off administrative fee for application; and (b) an annual fee, which is calculated using the given formula and coefficients. The annual fee is payable either in one instalment, two instalments or four instalments, depending on the calculated value.

In addition, a special annual fee is also payable to the budget of Bosnia and Herzegovina. This fee is calculated based on the formula provided in the Decision on State Contribution for Usage of Radio Frequency Spectrum [*Odluka o državnom doprinosu za korišćenje radiofrekventnog spektra*].

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

There are no provisions regulating a change of control over the licensee; however, licences are generally granted for a period of five years, meaning that a change of control may affect licence renewal.

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

The applicable regulations do not provide for assignment, trading or sub-licensing of the spectrum licences.

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 state's access to private data is generally governed by criminal procedure legislation in various parts of Bosnia and Herzegovina, namely:

- i. Article 72a of the Criminal Procedure Act of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, nos. 36/03, 26/04, 63/04, 48/05, 46/06, 76/06, 32/07, 53/07, 76/07, 15/08, 58/2008, 12/09, 16/09 and 93/09) [*Zakon o krivičnom postupku BiH*].
- ii. Article 137 of the Criminal Procedure Act of the Republic of Srpska (Official Gazette of the Republic of Srpska, no. 53/2012) [*Zakon o krivičnom postupku RS*].
- iii. Article 86a of the Criminal Procedure Act of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, nos. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10 and 8/13) [*Zakon o krivičnom postupku FBiH*].
- iv. Article 72a of the Criminal Procedure Act of Brčko District (Official Gazette of Brčko District, nos. 44/10 and 9/13) [*Zakon o krivičnom postupku Brčko Distrikta*].

In addition, the majority of general data privacy rules are contained within the Personal Data Protection Act (Official Gazette of Bosnia and Herzegovina, nos. 49/06, 76/11 and 89/11), and the rules governing access by the Bosnian civilian intelligence agency is provided in the Intelligence-Security Agency Act of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, nos. 12/04, 20/04, 56/06 and 12/09).

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?

There are no specialised provisions. Operators must retain certain call data for customer billing purposes – individual customer call data can be retained and processed to the extent necessary for customer billing purposes for a time period in which claims may be contested or collected from the customers.

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

In regular court criminal proceedings, one of the competent courts in Bosnia and Herzegovina may, subject to a request from authorised persons, order a telecommunication operator to provide necessary data on customers suspected of committing a criminal act or aiding the perpetrator, provided that such data may be used as evidence or as an information source in the criminal proceedings. In case of emergency, a prosecutor may order a telecommunication operator to provide such data even in the absence of a court order,

but data collected in this manner must be sealed until a valid court order has been obtained.

The civilian intelligence agency, the Intelligence-Security Agency of Bosnia and Herzegovina may intercept the communications of individuals only if proper authorisation for the particular case has been granted by the President of the Court of Bosnia and Herzegovina.

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 no special provisions regarding encryption in this regard.

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

Operators must retain certain call data for customer billing purposes – individual customer call data can be retained and processed to the extent necessary for customer billing purposes for a time period in which claims may be contested or collected from the customers.

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in Bosnia and Herzegovina?

The distribution of audio-visual media is regulated in general by the CA, and primarily by CRA rule no. 56/2011 on Licences for the Distribution of Audio-visual Media Services and Radio Media Services and radio media services (Official Gazette of Bosnia and Herzegovina, no. 98/11) [*Pravilo 56/11 o dozvolama za distribuciju audiovizuelnih medijskih usluga i medijskih usluga radija*] (“Distribution Rule”).

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

The Distribution Rule and other relevant CA by-laws acknowledge the distinction between both linear and non-linear content (video-on-demand service is defined as a non-linear media service), and between content distributed over different platforms (over a licensed telecommunications network or directly via satellite). However, there are no distinctions in the licensing regime, since the distribution of audio-visual media services is defined as a unified programme package, requiring only a single licence.

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

The Distribution Rule provides for only one type of distribution licence for the distribution of audio-visual media. The non-exclusive licence encompasses the provision of both linear and non-linear media services, either over a licensed telecommunications network or via satellite. The licence is valid for one year, and may be extended.

The key obligations include: (i) the duty to distribute the public broadcasting services of Bosnia and Herzegovina (three in total), free-of-charge; (ii) the obligation to maintain permanent offer for distribution on a non-commercial basis to all providers of audio-visual media broadcasting services in the distributor's area; (iii) the

prohibition of discrimination; and (iv) the prohibition of the modification of audio-visual media services being distributed.

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

A licence may be transferred to another entity only subject to prior written CRA approval, and such approval may be issued only where the transfer is necessary to transfer equipment and existing customers.

CRA approval is not necessary in case of change of legal form or change of name of the licensee – such changes are only notified to CRA.

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 regulations provided under the CA also cover internet services. Therefore, the general authorisation regime is also applicable to conveyance services over the internet. The provision of internet services shall be subject to a licence until the telecommunications market is fully liberalised, as determined by the Council of Ministers' sector policy.

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?

There is no published court practice in this respect.

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?

Internet service providers are not under obligation to assist content owners whose rights may have been infringed by file-sharing or other activities. However, pursuant to the regulations and wording of the licence, internet service providers must comply with an order(s) of the competent authority to eliminate any content from their servers which is deemed harmful, illegal, offensive, or which violates protected copyrights.

In addition, internet service providers may define and draft their own user policy as a service application precondition for users. This policy cannot be discriminatory or restrictive.

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 CA 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 the type of content. Net neutrality legislation has not yet been implemented.

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

The competent authority may order the operator/provider to remove from its servers any content determined to be prohibited, offensive, harmful, or in violation of protected intellectual property rights.

6.6 How are 'voice over IP' services regulated?

There is no separate regulation of VoIP services in the CA or by laws.



Matija Vojnović

Moravčević Vojnović i Partneri
in cooperation with Schoenherr
Francuska 27
11000 Belgrade
Serbia

Tel: +381 11 3202 600
Fax: +381 11 3202 610
Email: m.vojnovic@schoenherr.rs
URL: www.schoenherr.rs;
www.schoenherr.eu

Matija Vojnović is a partner with Moravčević Vojnović i Partneri in cooperation with Schoenherr specialising in M&A, projects, finance, and capital markets. As head of the corporate/M&A team, Matija acts as the first point of contact for international clients. He is frequently engaged in Serbia, Montenegro, and Bosnia in different sectors and regulated industries, including energy, infrastructure, insurance, financial services, telecommunications, IT, media, and pharmaceutical industry. Matija holds degrees from the University of Belgrade, Faculty of Law (LL.B. 2001) and Central European University, Budapest/Hungary (LL.M. in International Business Law, 2003).



Miljan Mimić

Moravčević Vojnović i Partneri
in cooperation with Schoenherr
Francuska 27
11000 Belgrade
Serbia

Tel: +381 11 3202 600
Fax: +381 11 3202 610
Email: m.mimic@schoenherr.rs
URL: www.schoenherr.rs;
www.schoenherr.eu

Miljan Mimić is an attorney at law with Moravčević Vojnović i Partneri in cooperation with Schoenherr. Miljan specialises in corporate/M&A and is also engaged in dispute resolution, IP and investment law. Miljan is a member of the firm's Bosnia and Herzegovina country desk. Miljan is part of the team that facilitates international clients with their market entry and provides full-service transaction support in implementation of their investments. Miljan graduated in 2008 from the Faculty of Law, University of Novi Sad.

moravčević vojnović and partners

in cooperation with schoenherr

Moravčević Vojnović i Partneri in cooperation with Schoenherr has been active on the Serbian market since 2002. The firm's practice is client-orientated, with specialised practice groups that provide industry-focused services to meet the demand of a competitive, developing and rapidly changing marketplace. The firm's client list includes leading companies, financial institutions, organisations and governments. The Belgrade office, via its specialised country desks, acts as a hub for Bosnia-Herzegovina, Macedonia, and Montenegro.

Schoenherr is a leading corporate law firm in Central and Eastern Europe, operating through offices in Belgrade, Bratislava, Brussels, Bucharest, Budapest, Istanbul, Kyiv, Ljubljana, Prague, Sofia, Vienna, Warsaw and Zagreb.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Commodities and Trade Law
- Competition Litigation
- Corporate Governance
- Corporate Recovery & Insolvency
- Corporate Tax
- Dominance
- Employment & Labour Law
- Enforcement of Competition Law
- Environment & Climate Change Law
- Insurance & Reinsurance
- International Arbitration
- Lending and Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Patents
- PFI / PPP Projects
- Pharmaceutical Advertising
- Private Client
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media and Internet
- Trade Marks



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk