

THE TECHNOLOGY,
MEDIA AND
TELECOMMUNICATIONS
REVIEW

NINTH EDITION

Editor
John P Janka

THE LAWREVIEWS

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MEDIA AND
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PREFACE

This fully updated ninth edition of *The Technology, Media and Telecommunications Review* provides an overview of evolving legal constructs in 26 jurisdictions around the world. It is intended as a business-focused framework rather than a legal treatise, and provides a general overview for those interested in evolving law and policy in the rapidly changing TMT sector.

Broadband connectivity (regardless of the technology used) continues to drive law and policy in this sector. Next-generation wireless connectivity will be provided by a network of networks, with multiple technologies – both wired and wireless, using licensed and unlicensed spectrum – playing an integral role in delivering service to the end user. By way of example, free WiFi service in homes and businesses today carries the majority of the data that is transmitted to smartphones and wireless tablets that also rely on paid service from a wireless carrier. And wireless carriers otherwise rely on a variety of technologies to ultimately connect the customer to the internet or someone on the other end of the phone.

The disruptive effect of new technologies and new ways of connecting people and devices creates challenges around the world as regulators both seek to facilitate digital inclusion by encouraging the deployment of state-of-the-art communications infrastructure to all citizens, and also seek to use the limited radio spectrum more intensively than before. At the same time, technological innovation makes it commercially practical to use large segments of ‘higher’ parts of the radio spectrum for the first time. Moreover, the global nature of TMT companies requires them to engage on these issues in different ways than before.

A host of new demands, such as the developing internet of things, the need for broadband service to aeroplanes, vessels, motor vehicles and trains, and the general desire for faster and better mobile broadband service no matter where we go, all create pressures on the existing spectrum environment. Regulators are being forced to both ‘refarm’ existing spectrum bands and rewrite their licensing rules, so that new services and technologies can access spectrum previously set aside for other purposes that either never developed or no longer have the same spectrum needs. Regulators also are being forced to seek means for coexistence in the same spectrum between different services in ways previously not contemplated.

Many important issues are being studied as part of the preparation for the next World Radio-communication Conference (WRC) of the International Telecommunication Union (ITU), to be held in 2019. No doubt, this conference will lead to changes in some long-standing radio spectrum allocations. And the conference also may include some political spectrum allocations that are based on pressures brought by well-heeled industries, rather than logic or sound policy. Indeed, these pressures already exist around the world in decisions being made by national regulators outside of and before the WRC.

Legacy terrestrial telecommunications networks designed primarily for voice are being upgraded to support the broadband applications of tomorrow. As a result, many governments

are investing in or subsidising broadband networks to ensure that their citizens can participate in the global economy, and have universal access to the vital information, entertainment and educational services now delivered over broadband. Many governments are re-evaluating how to regulate broadband providers, whose networks have become essential to almost every citizen. However, many policymakers still have not solved the problem caused when their incumbent service providers fail to extend service to all of their citizens for business reasons – because those businesses deem ‘unprofitable’ those who are the hardest to serve. Curiously, policymakers sometimes exacerbate this failure by resorting to spectrum auctions to award the right to provide service in a given frequency band to the highest bidder, failing to require service availability to everyone in the auctioned area, and then making the auction winner the gatekeeper for anyone else who wants to use the same spectrum. Too often, decisions are based (explicitly or implicitly) on expected auction revenues, which consumers end up paying for in the end through higher costs of service. Far too infrequently do policymakers factor in the benefits of ensuring ubiquitous connectivity: new jobs, economic growth, security, social inclusion, and improvements in healthcare, education and food production, to name a few. Indeed, treating spectrum as a property right rather than as the valuable public resource it is often leads to perverse results in the marketplace.

Convergence, vertical integration and consolidation can also lead to increased focus on competition and, in some cases, to changes in the government bodies responsible for monitoring and managing competition in the TMT sector. Similarly, many global companies now are able to focus their regulatory activities outside their traditional home, and in jurisdictions that provide the most accommodating terms and conditions.

Changes in the TMT ecosystem, including increased opportunities to distribute video content over broadband networks, have led to policy focuses on issues such as network neutrality: the goal of providing some type of stability for the provision of the important communications services on which almost everyone relies, while also addressing the opportunities for mischief that can arise when market forces work unchecked. While the stated goals of that policy focus may be laudable, the way in which resulting law and regulation are implemented has profound effects on the balance of power in the sector, and also raises important questions about who should bear the burden of expanding broadband networks to accommodate capacity strains created by content providers and to facilitate their new businesses.

The following chapters describe these types of developments around the world, as well as the liberalisation of foreign ownership restrictions, efforts to ensure consumer privacy and data protection, and measures to ensure national security and facilitate law enforcement. Many tensions exist among the policy goals that underlie the resulting changes in law. Moreover, cultural and political considerations often drive different responses at the national and the regional level, even though the global TMT marketplace creates a common set of issues.

I thank all of the contributors for their insightful contributions to this publication, and I hope you will find this global survey a useful starting point in your review and analysis of these fascinating developments in the TMT sector.

John P Janka

Latham & Watkins LLP

Washington, DC

November 2018

LATVIA

Andris Tauriņš and Madara Meļņika¹

I OVERVIEW

ICT is one of the driving forces of the Latvian economy. In 2016, 603 companies with 31,801 employees² contributed to 4.1 per cent of national GDP,³ while in the first part of 2018 the export of computer and IT services generated €223 million in revenue.

With a focus on the safety of the informational space, internet development, data protection and the effectiveness of the regulatory institutions, in 2018 the Parliament, Cabinet of Ministers and regulatory organisations adopted many documents addressing the requirements of the sector. For the period running from 2018 to 2022, the National Media Strategy for the Electronic Media Sector envisages the withdrawal of public media from the advertising market and promoting the impartiality and accuracy of the news. Another important long-term project is Cabinet of Ministers Order No. 102 'On the Electronic Communications Sector Policy Plan 2018–2020', signed on 12 March 2018, which outlines the actions necessary to reach the goals of the EC communication 5G for Europe – An Action Plan.

In comparison to the situation 10 years ago, the players in the Latvian ICT field are now clear. However, 2017 and 2018 have seen significant mergers in the TMT sector, which trend raises questions about the future of competition in this sector.

II REGULATION

i The regulators

The field is mainly regulated by two institutions: the Public Utilities Commission and the National Electronic Mass Media Council. Likewise, the state stock company Electronic Communications Office (ECO) plays an important role.

Electronic communications

The Public Utilities Commission (Regulator)⁴ is an autonomous body that, *inter alia*, regulates business activities in the electronic communications sector and protects users' rights

1 Andris Tauriņš is a senior associate and Madara Meļņika is an associate at Sorainen.

2 Data available at http://data1.csb.gov.lv/pxweb/lv/zin/zin__ikt_sektors/ITG230.px/table/tableViewLayout1/?rxid=a39c3f49-e95e-43e7-b4f0-dce111b48ba1.

3 Data available at http://data1.csb.gov.lv/pxweb/lv/zin/zin__ikt_sektors/ITG300.px/table/tableViewLayout1/?rxid=a39c3f49-e95e-43e7-b4f0-dce111b48ba1.

4 See <https://www.sprk.gov.lv/>.

from a technological perspective. The Regulator's actions are based on the Law On Regulators of Public Utilities⁵ (LORPU), which came into force in 2001, as well as other legal acts covering specific regulated sectors.

In the field of electronic communications, the Regulator monitors the services provided by electronic communications companies, including voice telephony, transmission of data and electronic messages, leased lines, internet access, broadcasting of radio and TV programmes, and access to networks, infrastructure and interconnections.⁶ To do this, the Regulator assigns usage rights (licences) of scarce resources: RF spectrum and numbering.⁷ Additionally, it registers ECS providers, evaluates draft tariffs submitted by providers,⁸ acts as an out-of-court body to resolve disputes where providers are involved⁹ and carries out other tasks provided by law.

However, in accordance with the Electronic Communications Law¹⁰ (ECL), ECO is mainly responsible for the administration of the RF spectrum and numbering resources.¹¹ ECO provides electromagnetic compatibility, assigns RFs for the operation of radio equipment, and undertakes other tasks as provided by law.¹²

Media

The other main regulator, the National Electronic Mass Media Council (NEMMC),¹³ is also an autonomous institution. It analyses the legality of the content of electronic mass media.

On the basis of the Electronic Mass Media Law¹⁴ (EMML), the NEMMC, *inter alia*, maintains a register of the issued broadcasting and retransmission permits, analyses suggestions and complaints submitted by consumers regarding the operations of the electronic mass media, monitors the electronic mass media, and approves the list of the television programmes distributed to end users via digital terrestrial broadcasting free of charge.¹⁵ Additionally, it develops and approves the National Development Strategy of the Electronic Mass Media Sector.¹⁶

The NEMMC has considerable powers regarding the public electronic mass media. Upon consultation with the public electronic mass media, it develops and approves annual plans for programmes.¹⁷ Additionally, it develops and approves the statutes of the public electronic mass media,¹⁸ determines the allocation of the state budget subsidy and the

5 Law on Regulators of Public Utilities of 19 October 2000, last amended on 22 November 2017.

6 Section 4 of the Decision of the Council of the Public Utilities Commission of 30 November 2017 No. 1/32. Regulations on the registration of electronic communications merchants and the list of electronic communications networks and services.

7 Article 9(1(4)) of the LORPU.

8 Article 19(2) of the LORPU.

9 Article 32(1) of the LORPU.

10 Electronic Communications Law of 28 October 2004, last amended on 3 May 2018.

11 Article 4(2) of the ECL.

12 Article Section 6(1) of the ECL.

13 See <https://NEPLPadome.lv>.

14 Electronic Mass Media Law of 12 July 2007, last amended on 20 June 2018.

15 Article 60(1) of the EMML.

16 Article 60(3) of the EMML.

17 Article 62(1) of the EMML.

18 Article 62(4) of the EMML.

resources granted in the annual Budget,¹⁹ and appoints and dismisses the boards²⁰ of the public electronic mass media. Finally, it can also make decisions regarding the termination of the activities of the public electronic mass media, and the reorganisation thereof, and make changes in equity capital.²¹

ii Regulated activities

As stated in the LORPU, licences must be issued only to providers of public utilities that are specifically named by the Cabinet of Ministers or the Regulator. The operations of providers of public utilities must be regulated, but the special laws and regulations of the regulated sectors do not provide for licensing or other registration, and such operators can start providing public utilities if they are registered on the register of providers of public utilities.²²

Electronic communications

Providers of ECSs do not need a licence, but only a general authorisation.²³ This regulation follows the Access Directive.²⁴

In accordance with Decision of the Council of the Public Utilities Commission No. 1/32 'Regulations on the registration of electronic communications merchants and the list of electronic communications networks and services' of 30 November 2017 (Regulations on Registration), providers must send a notification prior to the provision of:

- a* a fixed ECN;
- b* a mobile ECN;
- c* voice telephony services;
- d* public data and electronic message services;
- e* leased line services;
- f* public internet access services;
- g* access services; and
- h* interconnection services.

On the basis of the notification, a general authorisation is issued, and the rules thereunder must be followed by providers. All registered providers are recorded in a public register²⁵ available on the website of the Regulator.²⁶

RF spectrum can be utilised for radio equipment operations after the receipt of a RF assignment use permit from ECO or in accordance with a common RF assignment use permit.²⁷

19 Article 62(3) of the EMML.

20 Article 62(5) of the EMML.

21 Article 62(7) of the EMML.

22 Article 181(1) of the LORPU.

23 Article 32 and following of the ECL.

24 Access Directive (2002/19/EC).

25 Article 18.1(3) of the LORPU.

26 Available at <https://www.sprk.gov.lv/lapas/komersantu-pakalpojumi67>.

27 Article 50 of the ECL.

Broadcasting and retransmission

Broadcasting rights are granted on the basis of an application. If an electronic media operator requires a RF resource, the broadcasting rights are awarded on a competitive basis.²⁸ The basic criteria for evaluation are the creative, financial and technical provisions of a broadcast's concept and the amount of the state language used during the broadcasting period.²⁹

Upon payment of a state fee, a broadcasting permit is issued to the winner of the tender for 10 years. Upon expiry, a new broadcasting permit is issued to the electronic media operator without a competition if there has been no court judgment regarding violations of the ECL during the previous year.³⁰

The retransmission and distribution of programmes on public ECNs requires the consent of the holder of the retransmitted programmes and the permission of the NEMMC.³¹

iii Ownership and market access restrictions

Generally, Latvian law does not distinguish between Latvian nationals and foreigners with regard to investments.

However, a connection to a specific country, if supplemented by other factors, can be one reason to deny market access. For example, in 2015 the Register of Enterprises of Latvia refused to register the Russian state news agency Russia Today in the register of Latvian representative offices because 'the application did not comply with the Constitution of Latvia and other regulatory enactments'.³²

The market can only be accessed if the service provider has a permission or relevant licence. Competition is also restricted due to the limited nature of the radio spectrum. Additionally, mergers and acquisitions are stringently controlled to avoid market concentration and abuse of dominance.

iv Transfers of control and assignments

In Latvia, the licences are issued on an individual basis. The Regulation Regarding the Licensing of Public Utilities states that the service provider is not entitled to transfer the licence to other persons.³³ Likewise, permissions and rights to broadcast³⁴ cannot be transferred.

However, companies can merge, and the general Latvian merger control framework applies to the TMT sector. The provisions on market participant mergers can be found in the Competition Law.

The Competition Council must be notified about every merger. Within the meaning of the Competition Law, mergers are considered to be transactions that result in the acquisition of influence in another undertaking, or even only the assets of a company or the right to use them.³⁵

28 Article 15(4) of the EMLL.

29 Article 17(1) of the EMLL.

30 Article 18(6) of the EMLL.

31 Article 19(1) of the EMLL.

32 Information available at https://www.diena.lv/raksts/pasaule/krievija/darbu-latvija-sakusi-krievijas-propagandas-medija-_sputnik_-versija-latviesu-valoda-14129824.

33 Clause 16 of the Cabinet of Ministers Regulation No. 664 Regulations Regarding the Licensing of Public Utilities of 30 August 2005.

34 Article 15(2) of the EMLL.

35 Article 15(1) of the Competition Law of 4 October 2001, last amended on 5 October 2017.

Notification is required prior to a merger if the total turnover of the merger participants in the previous financial year in the territory of Latvia constituted at least €30 million, and the turnover of at least two of the merger participants in the previous financial year in the territory of Latvia constituted at least €1.5 million each.³⁶ Additionally, within 12 months from a merger's implementation, the Competition Council is entitled to request that the participants submit a notification on an already implemented merger that does not conform to the above-mentioned provisions in the following circumstances: in the relevant market, the aggregate market share of the participants exceeds 40 per cent and there is a suspicion that the merger might result in or strengthen a dominant position, or competition in the relevant market might be notably reduced.³⁷

Mergers that create or strengthen a dominant position, or that may significantly reduce competition in any relevant market, are prohibited. However, such mergers can be permitted if the Competition Council imposes binding provisions on the relevant market participants, thus preventing negative consequences.³⁸

If a notification has not been given in the cases specified in the law on or an unlawful merger has occurred, the Competition Council can impose a fine on the new market participant or on the acquirer of a decisive influence. The fine amounts up to 3 per cent of the participant's or acquirer's net turnover in the last financial year.³⁹

During 2017, politicians and specialists in the field debated on the possible merger of mobile telecommunications operator Latvijas mobilais telefons (LMT) and Lattelecom, a telecommunications, technology and entertainment company that provides internet and electricity services. In November 2017, the government decided that the merger would not take place,⁴⁰ and a memorandum of mutual understanding on the further development of these companies was signed in July 2018.⁴¹ Nevertheless, some players in the field still believe that the merger of these companies is inevitable.⁴²

Another topic of considerable discussion is the merger of public media companies.⁴³

III TELECOMMUNICATIONS AND INTERNET ACCESS

i Internet and internet protocol regulation

The ECL, adopted on 28 October 2004, regulates, *inter alia*, both traditional telephony services and the internet and IP-based services. In addition, the Regulations on Registration regulate all types of electronic communications.

Specific regulations cover, for example, rules regarding public internet access service providers storing data and the liability exemption regime.

36 Article 15(2) of the Competition Law.

37 Article 15(21) of the Competition Law.

38 Article 16(3) of the Competition Law.

39 Article 17(1) of the Competition Law.

40 Information available at <https://www.lsm.lv/raksts/zinas/ekonomika/valdiba-noraida-lattelecom-un-lmt-apvienosanu-telia-so-lemumu-sauc-par-kaitigu.a256510/>.

41 Information available at <https://www.lsm.lv/raksts/zinas/ekonomika/akcionari-vienojas-par-lmt-un-lattelecom-sadarbibu.a285174/>.

42 Information available at <https://bnn.lv/i-baltcom-i-nakotne-lmt-i-lattelecom-i-apvienosana-ir-nezibegama-293481>.

43 Information available at <http://www.delfi.lv/bizness/uznemumi/roke-butu-bistami-apvienot-sabiedriskos-medijus.d?id=49341615>.

ii Universal service

The regulations regarding universal services obligations⁴⁴ have been implemented in Latvia through the ECL⁴⁵ and the 17 November 2016 Decision of the Council of the Public Utilities Commission No. 1/24 ‘Provisions on universal service in the electronic communications sector’.

These Provisions state the duty of the universal service provider to provide access to a public ECN for voice telephony calls and the transmission of fax and data messages at data rates that are sufficient to provide internet access all over Latvia.⁴⁶ Currently, Lattelecom is the official provider of the universal service. Its tasks also include the duty to provide special services to persons with disabilities, such as discounts on such subscribers’ telephone lines, domestic calls, installation fees for broadband internet access services and subscription fees for broadband internet access services.

In accordance with the Next Generation Broadband Electronic Communications Network Development Strategy for 2013 to 2020, broadband coverage is being improved in the rural regions of Latvia. This means that the quality of the universal service will also be raised. Additionally, free internet, which is directly financed by the state budget, has already been available in all libraries, including those in the rural regions, for more than 10 years.⁴⁷

iii Restrictions on the provision of service

Restrictions on tariffs

Tariffs are strictly controlled by the Regulator.

Article 20 of the LORPU states that tariffs are to be set to the extent that payments made by users cover the economically justified costs of public services and ensure the profitability of public services, unless special laws on the field provide for other tariff setting principles. If factors affecting tariffs (such as profitability) change, the Regulator may propose a tariff review. The Regulator may apply tariff regulation measures to ECS who have a significant market power.⁴⁸

Prerequisites for providing services

To receive permission to provide services, providers must comply with the general rules regarding the electronic communications field.⁴⁹ These general rules include, for example, data protection requirements, the duty to carry out any planned scheduled maintenance at the lowest possible hourly load and the duty to protect the ECN from unauthorised access. They can be seen as general restrictions on the provision of service, especially as in cases of repeated violations the Regulator can suspend the activities of a violating provider for a period up to five years.⁵⁰

44 Directives No. 2002/22/EC and 2009/136/EC.

45 The last amendments in the relevant chapter were made on 13 June 2016.

46 Section 4 of the Provisions on universal service in the electronic communications sector.

47 Information available at <https://www.lsm.lv/raksts/zinas/latvija/bezmaksas-internets-lauku-bibliotekas-valstij-izmaksa-ap-400-000-eiro-gada.a194874/>.

48 Article 60(2) of the ECL.

49 Decision of the Council of Public Utilities Commission of 4 June 2015 No.1/8 General licence terms in the electronic communications sector.

50 Article 33(3) of the ECL.

Theoretically, service providers are free to choose which services they provide. However, the ECL regulates the minimal content of contracts between providers and users.⁵¹ There are also some norms in the general rules that apply specifically to service provision: for example, providers must comply with the restrictions on the transmission of illegal content specified in regulatory enactments.⁵² Providers must also not facilitate access to information on the internet the distribution of which is prohibited in accordance with regulatory enactments.⁵³ Specific obligations and duties, such as those regarding transparency, equal treatment, accounting separation, tariff regulation and cost accounting, can be imposed by the Regulator upon ECS providers with significant market power.

Rights and duties of providers

ECS providers who provide public data and electronic message transmission or public internet access services with temporary storage of transmitted information, provided that the information is not stored longer than necessary for its transmission, are responsible for the content transmitted if such provider proposes the transmission of information, chooses the transmitted information recipient, and chooses or converts the broadcast information.⁵⁴

All other ECS providers are not obliged to monitor the transmitted information or search for circumstances indicating the transmission of illegal content.⁵⁵

The exact terms and conditions of the provision of ECSs depend on a contract concluded between the user and the provider. Nevertheless, the general licence terms state the cases when the provider has the right to suspend provision of the service:

- a* the end user uses unauthorised access to the operator's ECN;
- b* the end user, without the consent of the ECS provider, uses the end user connection for business in the electronic communications sector;
- c* the end user does not comply with the terms of use of the services; and
- d* in cases of usage contrary to those specified in the contract between the user and the provider on the use of the ECSs, the rules for the use of ECSs or regulatory enactments.⁵⁶

End-users and subscribers have equal rights to receive ECSs, and they have the right to choose several ECS providers simultaneously.⁵⁷ The ECL also specifically provides that a service provider who offers digital television and digital radio services must ensure that the services provided do not limit subscribers' rights to a free choice of service supplier, and interoperability with other ECS providers' services.⁵⁸ Owners of private ECNs have a duty to ensure the interoperability of their network if such private network is connected to the public ECN.⁵⁹ Additionally, the Regulator has the right to fairly, proportionally and with equal treatment impose obligations regarding access and interconnections upon ECS providers to

51 Article 22(3) of the ECL.

52 Section 18 of the General licence terms in the electronic communications sector.

53 Section 19 of the General licence terms in the electronic communications sector.

54 Section 20 of the General licence terms in the electronic communications sector.

55 Section 21 of the General licence terms in the electronic communications sector.

56 Section 17 of the General licence terms in the electronic communications sector.

57 Articles 23(1) and 23(2) of the ECL.

58 Article 67(1) of the ECL.

59 Article 26 of the ECL.

ensure the access necessary to end users.⁶⁰ The Regulator has the same right regarding the obligation on public ECN operators to ensure access to application software interfaces and electronic programme guides.⁶¹

iv Security

Decisions on the basis of national security

On 28 June 2018, amendments to the Electronic Media Act (EMA) were adopted to strengthen Latvia's information space.⁶² The general rules for creating media programmes were amended with the addition of the principles of neutrality and accuracy, and the imposition of a prohibition on presenting facts in informative documentaries and news in a deliberately misleading way. Additionally, the law requires media owners to disclose the true beneficiaries of electronic media in order to ensure transparency.⁶³ The functions of the NEMMC have also been widened regarding the prohibition on hate-inciting television programmes.

The NEMMC generally also plays an active part in the field of security. For example, on 16 May 2018, together with the European Commission it discussed restricting the freedom of reception of Rossija RTR, a television programme, in the territory of Latvia owing to content that allegedly incited hatred.⁶⁴ Following a recurrence of the violation in August 2018, the NEMMC considered a full prohibition on the reception of this programme.⁶⁵ Additionally, the NEMMC criticised the state media regarding the purchase of materials (photographs, etc.) from the Russian 'propaganda agency', Sputnik.⁶⁶ However, both Latvian Radio and Latvian Television have rejected those accusations, noting that their use of the photographs is insignificant or the only way to show some events in Russia.⁶⁷

Cybersecurity

The Law on the Security of Information Technologies (LSIT) was adopted in 2010. It sets out the most important requirements for the security of information technologies for state and local government institutions and private legal entities.⁶⁸ The law imposes some obligations on the providers of private entities that provide critical infrastructure, such as the duty to monitor and eliminate security loopholes.

On the basis of the LSIT, the Information Technology Security Incident Response Institution, CERT.LV,⁶⁹ was established in 2011. Its main tasks are to maintain information on IT security threats, provide support in the case of IT security incidents, advise government

60 Article 36(1) of the ECL.

61 Article 36(2) of the ECL.

62 Information available at <https://lvportals.lv/skaidrojumi/295915-steidzami-grozot-likumu-cer-stiprinat-latvijas-informativo-telpu-2018>.

63 Information available at <http://www.saeima.lv/lv/aktualitates/saeimas-zinas/26937-saeima-konceptuali-atbalsta-likuma-grozijumus-latvijas-informativas-telpas-stiprinasanai>.

64 Information available at <https://NEMMCadome.lv/lv/sakums/padome/padomes-sedes/sedes-sadalas/NEMMC-ar-eiropas-komisiju-apspriez-%E2%80%9CROSSija-rtt-%E2%80%9D-ierobezosanu.html>.

65 Information available at <https://NEMMCadome.lv/lv/sakums/padome/padomes-sedes/sedes-sadalas/informacija-par-NEMMC-2018.gada-30.augusta-sedi.html>.

66 Information available at https://www.diena.lv/raksts/latvija/zinas/NEMMC-parmet-sabiedriskajiem-medijiem-_sputnik_-bilzu-izmantosanu-14194625.

67 Ibid.

68 Law on the Security of Information Technologies of 28 October 2010, last amended on 15 June 2017.

69 See: <https://cert.lv/en/about-us>.

institutions and organise informative and educational activities. CERT.LV is also in charge of security throughout the Latvian electronic information space and under the TLD.lv top level domain.

The National Guard Cyber Defence Unit, established in 2013, and the Military Information Technology Security Incident Recovery Team (MilCERT), established in 2016, also have a key role in ensuring cybersecurity. Additionally, on the basis of the National Security Concept, the National Information Technology Security Board was established on 28 May 2018 by appointing representatives from various ministries, the State Revenue Service, the Bank of Latvia, CERT.LV, MilCERT and other institutions.⁷⁰

In addition to aforementioned regulations, the Latvian Cybersecurity Strategy for 2014 to 2018 Guidelines were adopted by the Cabinet of Ministers. However, only the summary of the Guidelines is publicly available. Due to their secrecy, it is possible that some cybersecurity developments have been introduced without the public's knowledge. It can be assumed that the Guidelines for the following years will be adopted at the beginning of 2019.

All of these activities are specifically important due to serious suspicions that the Parliamentary elections of 2018 might be subject to a cyberattack.⁷¹

Article 9 of the LSIT states the duties of ECS providers, such as:

- a* ensuring the integrity of the network;
- b* drawing up an action plan for ensuring the continuous operation of the network, indicating therein the technical and organisational measures implemented to appropriately manage the risks posed to the security of the network and the provision of services;
- c* informing the relevant institutions regarding breaches of security or integrity that have had a significant impact on the operation of the ECN or the provision of services;
- d* upon the request of the relevant institutions, organising a security audit to be carried out by a qualified body governed by public law if essential breaches of security and integrity have been detected; and
- e* upon the request of the relevant institutions, disconnecting an end user from the ECN for a short period of time if such end user significantly endangers the rights of other users or the information system, or the security of the ECN.

To implement Directive 2016/1148,⁷² the Cabinet of Ministers supported a draft law on amendments to the LSIT on 3 May 2018.⁷³ The draft law stipulates the obligation of basic service providers and digital service providers to comply with certain IT security requirements and to report security incidents. Certain tasks are set for CERT.LV, the Digital Safety Monitoring Committee, the Ministry of Defence and ministries monitoring individual sectors.

In 2018, one of the most popular cyberattacks, the DDoS, was directed against several objects at once: the national news agency LETA,⁷⁴ the State Revenue Service, the e-health

70 Prime Minister Order No. 146 of 28 May 2017 On the National Information Technology Security Board.

71 Information available at <https://www.lsm.lv/raksts/zinas/latvija/drosibas-policija-bridina-pirms-velesanam-uzmanities-no-kiberuzbrukumiem.a271799/>.

72 Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union.

73 Information available at http://tap.mk.gov.lv/doc/2018_05/AiMLik_230318_ITDL.605.docx.

74 Information available at <https://www.lsm.lv/raksts/zinas/latvija/noticis-kiberuzbrukums-zinu-agenturai-leta.a264633/>.

system and the government.⁷⁵ Systems against such attacks provided by the State Radio and Television Centre⁷⁶ and the Digital Economic Development Centre (DEAC)⁷⁷ are becoming more and more popular.

Criminal law measures

Unauthorised access to automated data processing systems is prohibited by Article 241 of the Latvian Criminal Code,⁷⁸ while Article 243 stipulates liability for interference with the operation of automated data processing systems and illegal actions with information included in such systems. The Criminal Code also prohibits illegal operations with devices that could influence automated data processing systems,⁷⁹ violation of the safety provisions of information systems⁸⁰ and other TMT-connected crimes.

IV SPECTRUM POLICY

i Development

For many years, a fee for the usage of spectrum existed. An important change was its revocation in 2014. The respective amendments were made due to the fact that the ECL provided (and still provides) that ECO collects a fee for provided public paid services, including a monthly payment for the provision of the electromagnetic compatibility of radio equipment.⁸¹ The Parliament concluded that, practically, the charge for an electromagnetic compatibility service is, in fact, a fee for use of the RF spectrum. Additionally, ECS providers must pay a state fee for the regulation of public utilities.⁸²

The procedures for granting the spectrum use rights are set out in the 16 June 2011 Decision No. 1/7 of the Board of the Public Utilities Commission 'Regulations Regarding the Rights of Use of the Radio Frequency Spectrum' (Regulations on the Spectrum Use), which were last amended on 6 August 2018. These amendments, *inter alia*, widened the list of cases when the Regulator can refuse to grant the rights to use RFs and set new regulations for the evaluation of applications. These were the first amendments to the Decision since 2013.

From 2021, the spectrum in the 700MHz frequency bands will be used solely for the provision of 5G services in Latvia.

ii Flexible spectrum use

An ECS provider cannot transfer the right to use the RF spectrum if it has not paid for the acquisition of this right.⁸³ All other limitations in law apply regarding the transfer of the

75 Information available at <https://www.lsm.lv/raksts/zinas/latvija/kiberuzbrukumi-tikusi-versti-ari-pret-vid-un-valdibu.a265890/>.

76 See <https://www.lvrta.lv/aizsardz299ba-pret-ddos-uzbrukumiem.html>.

77 See <https://www.deac.eu/solutions/data-security-solutions/ddos-protection-mitigation-service/ddos-protection-mitigation-service/en/>.

78 Latvian Criminal Code of 17 June 1998, last amended on 26 April 2018.

79 Articles 244 and 2441 of the Latvian Criminal Code.

80 Article 245 of the Latvian Criminal Code.

81 Articles 6(1(2)) and 6(4) of the ECL.

82 Article 12 of the ECL.

83 Article 47(31) of the ECL.

right to use numbering. Thus, it can be presumed that the flexible transfer of the use of radio spectrum is generally encouraged. This encouragement is proven also by the Regulator's duty to ensure that RFs are used efficiently to promote competition and the harmonised transfer of RFs. The Regulator assesses the necessity of transferring the right of use of the RFs taking into account the competition.⁸⁴

Additionally, commercial activities without a Regulator's permit for the right to use the RF spectrum can be carried in RF spectrums or channels for which a sharing RF allocation use permit has been specified.⁸⁵

However, no specific developments to enable new uses of spectrum (terrestrial use of satellite spectrum, mobile use of spectrum previously licensed for fixed use, etc.) have been observed.

Broadband and next-generation mobile spectrum use

In 2016, 4G coverage reached 91 per cent of households in Latvia.⁸⁶ Similarly, a large part of internet coverage in Latvia is ultrafast broadband (88 per cent of households), in which regard Latvia, as recognised in the Digital Economy and Society Index, stands far above the EU average.⁸⁷ Latvia is also named as one of the top OECD countries for mobile data usage.⁸⁸

However, in 2012 there still were 363 white territories that needed the development of the optical network.⁸⁹ Thus, and in line with the Europa 2020 strategy, in 2014 Latvia adopted the Next Generation Broadband Electronic Communications Network Development Strategy for 2013–2020.⁹⁰ It was amended in 2016⁹¹ and will be valid until 2020.

In accordance with the strategy, broadband coverage will be improved for the rural regions of Latvia with the help of state aid through the development of next-generation ECNs. Private providers have to deliver the last-mile connection. Within this project, between 2012 and 2015 a 1,800km-long optical line with more than 177 access points was developed.⁹² It is planned that this project will allow 83,000 new households to access the internet. The long-term NGA aims are 100 per cent coverage with 30Mbps and 50 per cent household penetration with 100Mbps by 2020.⁹³

84 Article 47(61) of the ECL.

85 Article 47(51) of the ECL.

86 Digital Economy and Society Index (DESI) 2017 Country Report – Latvia.

87 Digital Economy and Society Index (DESI) 2018 Country Report – Latvia, available at http://ec.europa.eu/information_society/newsroom/image/document/2018-20/lv-desi_2018-_country-profile_eng_198F439E-C4CC-EB8B-9F0F9C5926DB70D8_52231.pdf.

88 Information available at <http://www.oecd.org/sti/broadband/broadband-statistics-update.htm>.

89 Information available at <https://nra.lv/latvija/200232-jaunie-platjoslas-interneta-tarifi-komersantiem-izdevigaki.htm>.

90 Cabinet of Ministers Order No. 589 of 7 December 2012 The Next Generation Broadband Electronic Communications Network Development Strategy for 2013–2020.

91 Cabinet of Ministers Order No. 453 of 16 August 2016 Amendments to the Next Generation Broadband Electronic Communications Network Development Strategy for 2013–2020.

92 Information available at <https://nra.lv/latvija/200232-jaunie-platjoslas-interneta-tarifi-komersantiem-izdevigaki.htm>, also the material prepared by the Ministry of Transport: [http://www.sam.gov.lv/images/modules/items/DOC/item_3178_Balts_peleks_melns_final_\(2\).doc](http://www.sam.gov.lv/images/modules/items/DOC/item_3178_Balts_peleks_melns_final_(2).doc).

93 Cabinet of Ministers Order No. 102 of 12 March 2018 On the Electronic Communications Sector Policy Plan 2018–2020.

On 12 March 2018, the Cabinet of Ministers signed Order No. 102 'On the Electronic Communications Sector Policy Plan 2018–2020'. The Order, *inter alia*, confirms Latvia's readiness to reach the goals noted in the EC communication 5G for Europe – An Action Plan. The tasks include the release and reprogramming of the 700MHz band for mobile communications. An informative report on this issue, which outlines plans for the release of the 700MHz band from January 2022, was reviewed by the government in August 2018.⁹⁴ The implementation of this project will take place two years later than demanded by the EU, as Lattelecom has the right to provide pay-TV services in the band until 31 December 2021.⁹⁵

Guidelines for the introduction of 5G will also be developed during 2018. Operators have already actively set up suitable base stations:⁹⁶ for example, in August 2018, LMT had more than 100 of them.⁹⁷ Thus, the Baltic and Scandinavian countries could be among the first when it comes to 5G internet being accessible for commercial use.

Finally, in September 2018, Riga hosted 5G Techritory, a worldwide forum on the implementation of 5G broadband in the Baltic sea region.⁹⁸

Spectrum auctions and fees

The right to use radio spectrum bands is acquired via auctions. Since 2009, nine auctions have taken place, and only one of them ended without result.⁹⁹ In August and September 2018, an auction took place for the allocation of rights for use of the 3,550MHz–3,600MHz spectrum band.¹⁰⁰

There are also auctions to sell radio spectrum bands that can be used for 5G services.¹⁰¹ For example, on 27 November 2017, LMT acquired two 5G bands for €500,000.¹⁰²

Since 2014, no spectrum fee exists.¹⁰³ It does not seem likely that any fee will be created again, as the monthly payment for provision of electromagnetic compatibility of radio equipment, collected by the ECO, fulfils the same goal. Licensed operators also contribute to the financing of the universal services.

94 Information available at <https://www.mk.gov.lv/lv/aktualitates/valdiba-skata-informativo-zinojumu-par-radiofrekvencu-joslas-atbrivosanu-5g-mobilo>.

95 Information available at <http://www.sam.gov.lv/sm/content/?cat=433>.

96 Information available at <https://skaties.lv/zinas/zinatne-un-tehnologijas/tehnologijas/nakamgad-latvijasaks-darboties-supertrais-5g-mobilais-tikls/>.

97 Information available at <https://www.lsm.lv/raksts/dzive--stils/tehnologijas-un-zinatne/lmt-5g-tikls-latvija-nakama-gada-jautajums.a289574/>.

98 Information available at <http://www.vases.lv/lv/news/latvija-norisinasies-vel-nebijis-starptautiska-meroga-ikt-forums-5g-techritory>.

99 Information available at <https://www.sprk.gov.lv/jaunums/regulators-partrauc-izsoli-par-radiofrekvencu-spektra-joslas-lietosanas-tiesibu-pieskirsanu-izsole-tiks-turpinata-10-septembri>.

100 Ibid.

101 Information available at <https://www.tvnet.lv/4541462/lmt-norekinajies-par-pern-izsole-iegadatajam-5g-frekvencu-joslam>.

102 Ibid.

103 Amendments in the Law on Taxes and Duties of 19 December 2013.

V MEDIA

i Restrictions on the provision of service

Network operators and content providers are regulated separately. While network operators are mainly regulated by the Regulator in accordance with the ECL, content providers are governed by the NEMMC in line with the EMA.

Many restrictions on the provision of service were included in the 2018 amendments to the EMA (see more in Section VI). In addition, the EMA stipulates that the electronic media cannot include in their programmes:

- a* stories highlighting violence;
- b* pornographic material;
- c* encouragement of incitement to hatred or a call to discriminate against a person or group of persons;
- d* a call to war or a military conflict;
- e* an invitation to violently overthrow the state's power or violently change the state machinery, to crush territorial integrity or to commit another crime;
- f* scenes that discredit Latvia's statehood and national symbols.¹⁰⁴

Providers must respect human rights and defend the idea of a democratic and independent Latvia.¹⁰⁵ All television broadcasts in foreign languages, with specific exceptions, must be provided with subtitles in Latvian,¹⁰⁶ while films must have either an audio translation or subtitles.¹⁰⁷ If a public electronic medium creates and distributes television news broadcasts in a foreign language, a summary must be provided in the form of a line in the national language.¹⁰⁸ European audiovisual works must occupy a minimum of 51 per cent of broadcast time, with the exception of news, sports events, games, advertisements and television stores.¹⁰⁹

The retransmission of an electronic media audiovisual programme from another EU Member State or EEA country can be restricted if its provider has unequivocally, seriously and materially violated specific provisions of the EMA at least twice during the previous 12 months.¹¹⁰

ii Internet-delivered video content

Latvian television provides access to many of its programmes on the Latvian Public Media portal.¹¹¹ The same practice is evolving in some other television stations.¹¹² However, here the distribution has not moved from television to the internet: rather, both are offered in parallel to cover Latvians living abroad, as well as people who do not have television at home. Due to the plans on universal services, as well as the accessibility of the internet in libraries, this has a positive impact on consumers.

104 Article 26 of the EMA.

105 Article 24(2) of the EMA.

106 Article 28(4) of the EMA.

107 Article 28(3) of the EMA.

108 Article 28(5) of the EMA.

109 Article 32(1) of the EMA.

110 Article 21.1(1) of the EMA.

111 See: <https://www.lsm.lv/>.

112 See: <https://tvplay.skaties.lv>.

Many smart-television options are also offered to consumers in Latvia. However, neither of the ways of providing internet-delivered video content have any special regulations; only general rules, such as protection of copyrights, apply.

Since 2018, the NEMMC has the rights to limit access to websites that provide audiovisual content illegally (see Section VI).

VI THE YEAR IN REVIEW

In 2017 and 2018, Latvia's ICT policy has undergone several developments.

First, the Law on Electronic Media was amended on 12 July 2017. The amendments stipulate that all TV distribution service providers must increase the number of TV channels included in block programming. Now block programming must include at least four more programmes that are created in Latvia or another EU Member State in the official language of the state.¹¹³

Secondly, on 12 April 2018, the NEMMC unanimously adopted the National Media Strategy for the Electronic Media Sector for 2018 to 2022. The new strategy envisages the creation of a single public media and the creation of prerequisites for the Parliament to decide on the withdrawal of public media from the advertising market. The strategy supports the creation of an electronic media ombudsman, demands the accuracy and impartiality of messages, and specifies a number of other tasks and goals.¹¹⁴

Thirdly, vital amendments to the EMA came into force on 12 July 2018. To provide transparency, the new amendments require the electronic media to disclose their true beneficiaries. The new rules also state that facts and events in broadcasts must be reflected with due accuracy and neutrality.

Most of the policy changes at their core are aimed at strengthening the Latvian information space and thus also actively protect democracy. One of the reasons for this is the publicly available data that states that Russian narratives and messages spread in the Latvian information space are more supported by the part of the audience that regularly uses Russian media.¹¹⁵

Another focus is on the protection of content providers. This goal is reached by the newly acquired right of the NEMMC to restrict access to such websites that retransmit audiovisual programmes without permission. In addition, new state positions have been created for the State Police to fight more successfully against providers of illegal television.¹¹⁶ As a result, in 2017, the State Police examined the activities of 20 cable operators, suspended the operation of two major illegal TV programme streaming services and initiated seven

113 Articles 19(12) and 19(13) of the EML.

114 Information available at <https://NEPLPadome.lv/lv/sakums/padome/padomes-sedes/sedes-sadalas/apstiprina-nozares-attistibas-nacionalo-strategiju-2018.-2022.gadam.html>; https://NEPLPadome.lv/lv/assets/documents/Normativie%20Akti/Strategija/EPL%20strate%CC%84g%CC%A7ija_120418.pdf.

115 Information available at http://www.saeima.lv/petijumi/Krievijas_ietekme_Latvijas_informativaja_telpa_elektroniski.pdf.

116 Information available at <https://www.lsm.lv/raksts/zinas/ekonomika/cina-pret-piratisko-televiziju-uznem-apgriezienus-sakti-vairaki-kriminalprocesi.a240147/>.

criminal proceedings, limiting the amount of households that use illegal content providers from 100,000 to 77,000.¹¹⁷ The Association For Legal Content, which unites the largest ECS providers in Latvia, also notes that there should be liability for users of illegal services.¹¹⁸

Additionally, the amendments to the Regulations on Spectrum Use facilitate and accelerate decisions regarding RFs, thus supporting the activities of both service providers and the Regulator. The same goal is reached by Regulator Decision No. 1/11 of 7 June 2018 on 'Rules for the allocation of radio frequency spectrum usage rights by auction'.

i Mergers, acquisitions and licensing

In 2018, the key TMT field merger was between SIA Bite Latvija, SIA Stream Networks and SIA LATNET SERVISS.¹¹⁹ Bite Latvija is a public mobile operator, while the core business of Stream Networks and the LATNET group is the provision of telecommunications and IT services over the fixed network.

No other important mergers took place in the market in 2018. However, Bite was involved also in the biggest merger of 2017, when Bite Lietuva (the owner of Bite Latvija) gained control over the producers and distributors of the TV programmes SIA TV3 LATVIA and AS Latvijas Neatkarīgā Televīzija; AS VIASAT AS Latvia, a pay-TV operator and distributor; the SIA Star FM radio station; and SIA Smart AD, an agency service provider for advertising in the media.¹²⁰ As the merger could significantly reduce competition in some of the specified markets, the Competition Council allowed it by imposing certain duties on Bite.

ii Sector trends

When analysing sector trends, focus should be directed at the security issues regarding both cybersecurity and the information space. Those issues were highlighted, for example, in discussions regarding the Rossija RTR channel, amendments of the EMA, and many declarations by the Security Police, Central Election Commission and other institutions regarding the Parliamentary elections.

Also noticeable are the disagreements between NEMMC and the public media¹²¹ regarding issues of media independence.

VII CONCLUSIONS AND OUTLOOK

International cooperation is very important for most of Latvia's policy issues, especially on cybersecurity and the fight against fake news, as well as current election issues. Such cooperation should cover states and international institutions as well as social networks. The latter puts these talks within a not-yet-known dimension. However, the Corruption Prevention and Combating Bureau of Latvia has already made the first steps in this field.

117 Information available at <https://skaties.lv/zinas/latvija/sabiedriba/kriminalprocesi-aizturetas-personas-un-reals-sods-cina-pret-tv-piratiem-vainagojusies-ar-rezultatiem/>.

118 Information available at <http://www.delfi.lv/news/national/politics/apsver-iespeju-sodit-nelegala-tv-satura-pateretajus.d?id=49721459>.

119 Decision of the Competition Council No. 6 of 29 March 2018.

120 Decision of the Competition Council No. 22 of 6 October 2017.

121 Information available at <https://NEMMCadome.lv/lv/sakums/padome/padomes-sedes/sedes-sadalas/sputnik-satura-izmantosana-sabiedriskajos-medijos-nav-pielaujama.html>.

Additionally, Latvia must strike a careful balance between protecting its own information space and avoiding accusations about censoring the Russian media.

In the field of media, the actual implementation of a decision that the public media will exit the advertisement market from 2021 is being eagerly discussed. This decision will cost millions from the state budget. In addition, a media ombudsman's council is being developed to better govern questions regarding media ethics and arguments in the field.

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