THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

TENTH EDITION

Editor
John P Janka

THE LAWREVIEWS

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PREFACE

As it has since inception, this tenth edition of *The Technology, Media and Telecommunications Review* provides a survey of evolving legal constructs in 21 jurisdictions around the world. It remains a business-focused framework rather than a legal treatise, and strives to provide a general overview for those interested in evolving law and policy in the rapidly changing TMT sector.

More than ever, broadband connectivity goals are the focus of policymakers and are driving law and policy in this sector. New technologies and new ways of connecting people call for decision-makers to move away from old paradigms and embrace new ones. Indeed, facilitating digital inclusion, extending the economic and social benefits of connecting all citizens, and growing local economies by ensuring that affordable connectivity is available, are universal goals that require bold decisions and new approaches.

New expectations of being connected everywhere, and at all times, are driving the development of broadband service on aeroplanes, vessels, motor vehicles and trains, to support the needs of passengers, crew and the airlines themselves as they move to digitise their fleets and transmit the massive amounts of operational data generated by today's aircraft. Accommodating these new mobility services create pressures on the existing spectrum environment. And the different technologies that seek to meet these mobility needs are not always compatible with one another. As a result, regulators (1) sometimes provide more flexibility to allow spectrum to be used to provide a broader range of services, and (2) sometimes 'refarm' existing spectrum bands so that new services and technologies can access spectrum previously set aside for other purposes.

The World Radio-communication Conference (WRC) of the International Telecommunication Union (ITU), being held this month in Sharm-El-Sheikh, will address many of these key issues, and make changes in some long-standing radio spectrum allocations, particularly the 'millimetre-wave' bands that offer the promise of providing untold amounts of capacity and even faster service speeds by a variety of technologies. As with most policy choices, the conference likely will include some political decisions. Indeed, political pressures already exist around the world in decisions being made by national regulators outside of the ITU process.

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, educational, health-related and entertainment services now available over the internet. Many governments are re-evaluating how to regulate broadband providers, whose networks have become essential to daily life. 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. But even this may start to change as the wireless providers who once relished auctions are coming to realise that the price they have to pay via auctions is just too high.

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 undesirable 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 base, 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 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 overview of these fascinating developments in the TMT sector.

John P Janka
Latham & Watkins LLP
Washington, DC
November 2019

LIST OF ABBREVIATIONS

3G	Third-generation (mobile wireless technology)
4G	Fourth-generation (mobile wireless technology)
5G	Fifth-generation (mobile wireless technology)
ADSL	Asymmetric digital subscriber line
AMPS	Advanced mobile phone system
ARPU	Average revenue per user
BIAP	Broadband internet access provider
BWA	Broadband wireless access
CATV	Cable TV
CDMA	Code division multiple access
CMTS	Cellular mobile telephone system
DAB	Digital audio broadcasting
DECT	Digital enhanced cordless telecommunications
DDoS	Distributed denial-of-service
DoS	Denial-of-service
DSL	Digital subscriber line
DTH	Direct-to-home
DTTV	Digital terrestrial TV
DVB	Digital video broadcast
DVB-H	Digital video broadcast – handheld
DVB-T	Digital video broadcast – terrestrial
ECN	Electronic communications network
ECS	Electronic communications service
EDGE	Enhanced data rates for GSM evolution
FAC	Full allocated historical cost
FBO	Facilities-based operator
FCL	Fixed carrier licence
FTNS	Fixed telecommunications network services
FTTB	Fibre to the building
FTTC	Fibre to the curb
FTTH	Fibre to the home
FTTN	Fibre to the node
FTTP	Fibre to the premises
FTT*x*	Fibre to the *x*
FWA	Fixed wireless access

Gb/s	Gigabits per second
GB/s	Gigabytes per second
GSM	Global system for mobile communications
HDTV	High-definition TV
HITS	Headend in the sky
HSPA	High-speed packet access
IaaS	Infrastructure as a service
IAP	Internet access provider
ICP	Internet content provider
ICT	Information and communications technology
IoT	Internet of things
IPTV	Internet protocol TV
IPv6	Internet protocol version 6
ISP	Internet service provider
kb/s	Kilobits per second
kB/s	Kilobytes per second
LAN	Local area network
LRIC	Long-run incremental cost
LTE	Long Term Evolution (4G technology for both GSM and CDMA cellular carriers)
Mb/s	Megabits per second
MB/s	Megabytes per second
MMDS	Multichannel multipoint distribution service
MMS	Multimedia messaging service
MNO	Mobile network operator
MSO	Multi-system operator
M2M	Machine-to-machine
MVNO	Mobile virtual network operator
MWA	Mobile wireless access
NFC	Near field communication
NGA	Next-generation access
NIC	Network information centre
NRA	National regulatory authority
OTT	Over-the-top (providers)
PaaS	Platform as a service
PNETS	Public non-exclusive telecommunications service
PSTN	Public switched telephone network
RF	Radio frequency
SaaS	Software as a service
SBO	Services-based operator
SMS	Short message service
STD–PCOs	Subscriber trunk dialling–public call offices
UAS	Unified access services
UASL	Unified access services licence
UCL	Unified carrier licence
UHF	Ultra-high frequency
UMTS	Universal mobile telecommunications service

USO	Universal service obligation
UWB	Ultra-wideband
VDSL	Very high speed digital subscriber line
VHF	Very high frequency
VOD	Video on demand
VoB	Voice over broadband
VoIP	Voice over internet protocol
W-CDMA	Wideband code division multiple access
WiMAX	Worldwide interoperability for microwave access

Chapter 2

BELARUS

Kirill Laptev and Pavel Lashuk[1]

I OVERVIEW

Building an information society is one of the priorities of the government of the Republic of Belarus. This approach is reflected in the Decision on the Strategy for Collaboration of the CIS States Parties in the Construction and Development of the Information Society for the Period up to 2025 and the Action Plan on its Implementation, adopted on 28 October 2016 in Minsk (CIS Decision). One of the tasks of CIS member states' cooperation in the construction and development of the information society is the provision of services to citizens and organisations using modern information and telecommunication technologies.

The growth in ICT development approach is a result of the adoption of the State Development Programme of the Digital Economy and Information Society for 2016–2020 (State Programme). The goal of the State Programme is to improve the conditions of transformation of human activities under the influence of ICT, including the formation of the digital economy, the development of the information society and the improvement of e-government.

One of the major innovative developments in Belarus took place on 21 December 2017 when the President signed Decree No. 8 'On the Development of the Digital Economy' fixing progressive and unique regulation in the IT sphere on a global scale, as well as developing a regime for High Tech Park (HTP) residents. HTP has been successfully operating for more than a decade, providing a beneficial taxation system to residents specialising in the IT sector.

The Decree also devotes special attention to the development of blockchain technologies and cryptocurrency payments.

Tokens are recognised as a legitimate object of legal relations. Tax privileges are introduced to operations with tokens, including trade in cryptocurrencies and initial coin offerings. Until 2023, individual revenues from mining and operations with tokens are not subject to declaration and taxation depending on the categories of the subject: a resident of the Belarus HTP, an individual or another entity.

Additionally, the special statuses of cryptographic platform operator and cryptocurrency exchange have been introduced. The Decree sets for them a minimum security value to be stored at Belarusian banks of not less than 1 million and 200,000 rubles respectively (approximately US$500,000 and US$100,000).

Among other privileges and benefits, HTP residents use simplified rules of company document control and a simplified system for foreign founders and employees, which

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additionally boosts the development of the ICT sector. Foreign employees and founders of HTP resident companies are entitled to visa-free entry to Belarus for the duration of their temporary stay of 180 days.

II REGULATION

i The regulators

The central management body that is responsible for state regulation, coordination of work and development of the telecommunications sector is the Ministry of Communications and Informatisation of the Republic of Belarus (MinCom).

The MinCom carries out:

a development and implementation of telecommunication development programmes;
b coordination of activities in the field of creation and development of telecommunication networks;
c the long-term planning of the use of the RF spectrum by civil electronic radio facilities;
d establishment of a unified procedure for the interaction of telecommunication networks through the public telecommunication network, as well as monitoring and centralised management of the public telecommunication network;
e the definition of requirements for the construction, numbering, organisational and technical support for the operation of telecommunication networks, their management, to ensure the protection of telecommunication networks from unauthorised access to them and messages transmitted thereon, the use of the RF spectrum, the order of traffic transmission, and the provision of telecommunication services;
f regulation of the activities of telecommunication operators;
g international cooperation in the field of telecommunications, including interaction with international organisations and telecommunications administrations of other states, ensuring the fulfilment of obligations under international treaties of the Republic of Belarus; and
h development and adoption of regulatory legal acts.

The Republican Unitary Enterprise for Telecommunications Supervision 'BelGIE' (BelGIE RUE) is a state agency that falls under the auspices of the MinCom. Among others, BelGIE RUE has the following main objectives:

a ensuring the protection of the RF spectrum and its effective use;
b assignment of RFs or RF channels;
c RF monitoring; and
d state supervision of telecommunications, etc.

In accordance with Edict No. 515 (see details in subsection ii, below), an Operational Analytical Centre under the President of the Republic of Belarus (OAC) was designated as an independent regulator in the field of ICT. The OAC, in the role of an independent regulator, focuses on ensuring the successful operation of the Unified Republican Data Transmission

Network, which is expected to be designed by 2020 (URDTN[2]) and the ICT market in the field of data transmission. It also promotes attraction of investments in the ICT sector and development of the telecommunication services market in terms of providing data and telephony services via IP-protocol and monitors the market for data transmission services and analysis of its condition. In 2019, the Republican Unitary Enterprise 'National Centre for Traffic Exchange' published information on its website on a new service – the URDTN protected segment. In our opinion this new feature will allow any organisation that needs to receive or send information that is subject to limited distribution according to local law, to connect and use the protected URDTN segment to interact with its counterparties.

The State Commission on Radio Frequencies under the Security Council of the Republic of Belarus implements a unified state policy in the area of distribution and use of the RF spectrum.

The leading operator of the Republic in the telecommunication services segment is Beltelecom RUE.

ii Main sources of law

The main legislative acts regulating the TMT sector in Belarus are the following:

a Law of the Republic of Belarus of 19 July 2005 No. 45-Z 'On Telecommunications' (the Telecom Law);

b Law of the Republic of Belarus of 15 December 2003 No. 258-Z 'On Postal Communication' (the Post Law); and

c Law of the Republic of Belarus of 10 November 2008 No. 455-Z 'On Information, Informatisation and Protection of Information' (the Information Law).

In addition, the President of the Republic of Belarus has adopted a number of decrees regulating the TMT sector. In practice, they all have greater legal force than laws, due to the fact that in accordance with the Law of the Republic of Belarus of 17 July 2018 No. 130-Z 'On Normative Legal Acts', in the event of divergence of presidential edict or decree with the law, the law has primacy only when the authority to issue an edict or decree has been granted by law.

Thus, the main regulatory presidential acts in the TMT sector are:

a Edict of the President of the Republic of Belarus of 18 April 2006 No. 240 'On payment for the use of the radio-frequency spectrum';

b Edict of the President of the Republic of Belarus of 1 September 2010 No. 450 'On licensing of certain types of activities' (the Licensing Law);

c Edict of the President of the Republic of Belarus of 1 February 2010 No. 60 'On measures to improve the use of the national segment of the Internet' (Edict No. 60);

d Edict of the President of the Republic of Belarus of 30 September 2010 No. 515 'On certain measures for the development of the data transmission network in the Republic of Belarus' (Edict No. 515);

2 URDTN construction will allow for the centralised management of data transmission networks in Belarus, and create conditions for accelerated economic growth in the field of communications by eliminating administrative barriers. It is also planned that the business sector will be able to use the services of the URDTN.

e Edict of the President of the Republic of Belarus of 15 April 2013 No. 192 'On the allocation, use of the radio-frequency spectrum and introduction of changes and additions to Presidential Decree of 31 July 2006 No. 473';
f Edict of the President of the Republic of Belarus of 23 January 2014 No. 46 'On the use of telecommunication technologies by state bodies and other state organisations'; and
g Edict of the President of the Republic of Belarus of 15 March 2016 No. 98 'On the improvement of the procedure for the transmission of telecommunications messages'.

The media sector is mainly regulated by the Law of the Republic of Belarus of 17 July 2008 No. 427-Z 'On the Mass Media' (the Mass Media Law).

The State Security Committee of the Republic of Belarus and the Ministry of Internal Affairs of the Republic of Belarus, having consistently formed the legal framework for ensuring the safety of critical facilities in Belarus, adopted Joint Resolution No. 24/268, which approved the Regulations on Preventive, Regime and Organisational Measures to prevent terrorist activities and minimisation of their consequences at critical objects of the Republic of Belarus.

As part of the work carried out in this field in the Republic of Belarus, on 25 October 2011 Edict of the President of the Republic of Belarus No. 486 'On some measures to ensure the safety of critical information facilities' was signed, which approves the Regulation on the assignment of information objects to critical and security critical objects of informatisation.

The Regulation defines the notion of a 'critically important object of informatisation', and establishes the procedure for classifying objects of informatisation as critically important and ensuring the security of critical information objects.

iii Regulated activities

Communications

The TMT sector is strictly regulated by numerous state authorities. In this context, according to the Licensing Law the provision of main telecommunication (TCM) services is subject to obtaining a licence. Such licensed activities include:

a public TCM services:
- international telephone communication;
- long-distance (inter-city) telephone communication; and
- local telephone communication;

b data transfer service;
c VoIP;
d IPTV;
e mobile TCM service (except cellular communication);
f TV transmission;
g wireless sound programme broadcasting;
h fixed and mobile satellite TCM services; and
i cellular communication.

The Licensing Law also outlines the following public postage services:

a mail transfer; and
b receipt of a subscription to a printed mass media and printed media delivery.

The Licensing Law expressly outlines the activities that may be conducted without a licence:

a rendering telematic services (except for VoIP and IPTV services);

b receipt of a subscription to a printed mass media carried out directly by a legal entity entrusted with the functions of the editorial office of the given mass media; and
c certain provision of data transmission services via the internet at points of shared use of internet services (e.g., computer clubs, internet cafes, etc.).

The general licence requirements and conditions for the licensee are:
a compliance with the requirements and conditions established by the Post Law and Telecom Law;
b the presence of not less than one specialist in the staff who has duly confirmed professional training and qualifications corresponding to the profile of the services provided;
c the permission of the authorised organisation for the right to use the RF spectrum when providing public telecommunication services using the RF spectrum;
d observance of the terms of the commencement of the provision of services specified in the licence; and
e provision of public telecommunication services using the licensee's telecommunication networks with the permit to connect them to the public telecommunication network and to the unified republican data transmission network (URDTN).

The licence for communication services may be granted after an application has been made or as a result of tender proceedings (e.g., for RF spectrum usage). In any case, the licence is issued by the MinCom for a unlimited period.

Media

There are certain additional authorisations needed to carry out activities in the media sector.

According to the Mass Media Law, the mass media (e.g., printed mass media, TV or radio programmes and channels) is subject to a state registration procedure. It may be distributed from the date of its inclusion in the State Register of Mass Media.

TV and radio broadcasting in Belarus is additionally subject to obtaining a licence, which may be obtained by the editor of the mass media or by a foreign organisation.

A broadcasting licence is required for mass media editors and foreign companies broadcasting a TV channel or a radio channel in Belarus. The licence is not required if the TV and radio broadcasting is carried out by a telecommunications operator without changing the form and content thereof:
a on the basis of a permit to distribute the products of a foreign mass media;
b under a contract with a legal entity entrusted with the functions of the editor of the mass media; or
c if the foreign organisation has a licence in the field of broadcasting.

iv Ownership and market access restrictions

Belarusian law establishes certain ownership restrictions within the TMT sector.

In the TMT sector certain restrictions apply in the foreign participation and investments area. Generally, a mass media editor cannot register its mass media if a foreign state, entity, individual, international entity or individual without citizenship owns 20 per cent or more of its shares.

So as spectrum is considered a rare resource, its management and use is reserved to the state. It is particularly reflected in the application of a tender procedure for obtaining a licence.

According to the Decision of the Operational Analytical Centre under the President of the Republic of Belarus, the Ministry of Communications and Informatisation of the Republic of Belarus of 10 February 2014 No. 1/2 'On approval of the list of telecommunication operators entitled to pass inter-network traffic' only three state-owned entities are authorised for internetwork traffic transmission. Two of them are additionally authorised for international traffic transmission.

The Order of the Operational Analytical Centre under the President of the Republic of Belarus of 6 December 2012 No. 91 'On Approving the List of Telecommunication Operators Eligible to Pass International Traffic and Join Foreign States to Telecommunication Networks' provides that only two telecom operators are entitled to pass international traffic and join foreign states to telecom networks.

v Transfers of control and assignments

As a general rule, communication licences may not be transferred or assigned to third parties. TMT licences may only be granted to legal entities of Belarus.

Mergers and acquisitions of ICT entities are subject to general antitrust legislation requirements.

III TELECOMMUNICATIONS AND INTERNET ACCESS

i Internet and internet protocol regulation

The internet and internet protocol is a developing sphere of Belarusian law. As a result, Belarusian law is structured as technology-neutral and does not provide specific legislation for internet and internet protocol services. Such services are mainly regulated by the general TMT legislation.

ii Universal service

In accordance with the Decree of the President of the Republic of Belarus No. 130 of 19 March 2015 'On the State Non-Budgetary Fund', Belarus has set up a state target budgetary universal service fund. All telecoms operators operating in Belarus transfer 1.5 per cent of their revenues to the State Non-Budgetary Fund. The fund's managers are the MinCom and state bodies that are customers of state programmes (subprogrammes), determined by the President. Funds have a special purpose, in particular, compensation for the capital construction of infrastructure for the provision of universal telecommunication services. Universal telecom services include access services to the fixed telecommunication network using the terminal subscriber unit and the internet at points of shared use.

In accordance with the Order of the MinCom dated 19 October 2006 No. 297, the functions of compulsory provision of universal postal services throughout the territory of Belarus are assigned to the Republican Unitary Enterprise Postal Communication Belpochta (Belpochta RUE).

iii Restrictions on the provision of service

Although telecoms operators are generally free to establish the prices for their services, Belarusian law establishes certain price limits charged to end users. The Ministry of Antimonopoly Regulation and Trade (MART) is the main regulatory authority for the specification of such thresholds. It carries out state price regulation for telecommunication services and postal communication of public service according to the list determined by the Resolution of the Council of Ministers of 17 January 2014 No. 35 'On approval of lists of socially significant goods (services), prices (tariffs) which are regulated by state bodies, and the recognition of certain decisions of the Council of Ministers of the Republic of Belarus as invalid' (Price Regulation List). The Price Regulation List has a tendency to liberalisation through the exclusion of the telecom services state pricing regulation applies for. The granting of access to the internet at points of shared use was excluded in 2017 from the Price Regulation List.

As a general rule, telecoms operators are obliged to provide their services to everyone who applies for them, and may not prefer one person to another in relation to the conclusion of a contract for the provision of the services. Refusal to conclude a contract with an opportunity to provide services at hand is prohibited.

Restrictions on access to internet resources and online media shall be made if:

a owners of the internet resource during the year were issued two or more demands, or, for owners of the online media, two or more written warnings from the Ministry of Information (MinInfo);

b it contains information that is prohibited or restricted from distribution in accordance with the legislative acts of the Republic of Belarus, as well as legally enforceable court decisions (hereinafter, 'information that is prohibited from distribution'); or

c the owners of the internet resource did not comply with the lawful demand of the MinInfo to eliminate violations of the legislation of the Republic of Belarus on the mass media or did not notify MinInfo and did not provide documentary evidence on such elimination.

After the MinInfo decides to restrict access it submits its decision to the BelGIE RUE. Subsequently, BelGIE RUE forms the list of restricted access, which is the ground document to be followed by ISPs in further direct restriction of access procedure.

iv Privacy and data security

The basic confidentiality concept is contained in Article 28 of the Constitution of the Republic of Belarus (Constitution). It provides that everyone has the right to protection from unlawful interference in their private life, including interference with correspondence, telephone and other communications, and protection of their honour and dignity.

Lawful interference is mainly regulated for national security purposes by the Communication Law, the Information Law, the Law of the Republic of Belarus of 15 July 2015 No. 307-Z 'On Investigative and Search Activity', the Code of Criminal Procedure and other legislative acts. According to the mentioned legislation, lawful interference covers a broad scope of measures, including reception, transformation and recording of data and messages received, transmitted, processed, stored in telecommunication networks as well as identification of service receivers.

The Communication Law prescribes network operators' obligations when carrying out investigative and search activity, inter alia:

a to provide information on users of telecom services and on the telecom services rendered to them, as well as other information necessary to fulfil the tasks assigned to investigative bodies;

b to assist in carrying out investigative and search activities and to provide an opportunity to conduct them on TMT networks, to take measures to protect information about organisational and tactical methods for carrying out these activities; and

c to provide access to databases, automated systems, etc.

IV SPECTRUM POLICY

i Development

Regulation of the use of the RF spectrum is the exclusive right of the state. Edict of the President of the Republic of Belarus of 31 July 2006 No. 473 'On the State Commission for Radio Frequencies under the Security Council of the Republic of Belarus' regulates the use of the RF spectrum in Belarus to the State Commission on Radio Frequencies under the Security Council (Commission). The Commission decides on the allocation of RF bands, RF channels and RFs, and organises work on the conversion of the RF spectrum.

Owing to the wide development of modern radio technologies and new RF bands, the government of Belarus amended the procedure for determining the amount of annual, one-time fees and fees for allocating the RF spectrum. The Council of Ministers adopted Resolution No. 853 of 16 November 2017, according to which amendments were made to the amounts of the annual, one-time payments and fees for allocation of the RF spectrum.

The indexes of the commercial value of the K1 RF spectrum, used in calculating the amount of spectrum charges, have been adjusted to create conditions for the successful development of the LTE cellular telecom network in the 2.6GHz band and to encourage the development of the LTE Advanced networks in Belarus.

So the cost index for the spectrum of 2.4835GHz–2.7GHz, where mobile operators operate, has been reduced almost five times – from 5 to 1.1.

ii Flexible spectrum use

Belarusian law does not provide for much flexibility owing to the lack of free space in almost the entire RF range. Hence it is quite heavily regulated.

iii Broadband and next-generation services spectrum use

One of the significant steps in liberalisation of RF spectrum usage was made in 2016. The MinCom, on 29 August 2016, adopted Resolution No. 13, which entered into force on 21 September 2016. With the entry into force of the Resolution, it is possible to use, without registration and permits for the operation of broadband radio access equipment of the IEEE 802.11 group of standards (Wi-Fi technology) both inside buildings and structures and in vehicles, as well as a wide range of low-power devices of GSM, UMTS and LTE technologies, radio stations of seagoing ships that have the right to sail under the Belarus national flag. It is possible to use certain types of satellite subscriber terminals without the need to obtain permits for their operation.

Today in Belarus there is an infrastructure operator called beCloud, which is engaged in the development of LTE networks and allows other companies to operate them to provide services to their subscribers.

iv Spectrum auctions and fees

Belarusian law imposes spectrum usage fees on broadcasters, mobile phone carriers and other businesses that use the RF spectrum. The President of Belarus may stipulate cases when the issuance of licences for the provision of certain components of the licensed services is carried out following the results of a tender for a licence. Pursuant to this, Resolution of the Council of Ministers of the Republic of Belarus No. 1259 of 30 September 2009 establishes the Regulation on the procedure for conducting a tender (competition) for the use of the RF spectrum.

The legislative acts establish both a one-off fee and an annual fee for the use of the RF spectrum.

V MEDIA

i Regulation of media distribution generally

While the Mass Media Law guarantees freedom of opinion, belief and expression to everyone in Belarus, it also establishes certain restrictions on information that may be disseminated through mass media. Among others, the following information is prohibited:

a the calling for the consumption of narcotic drugs, psychotropic substances, their analogues, toxic and other intoxicating substances, and dissemination of information on the methods of its development, production and consumption;

b the calling for and promotion of war, extremist activities, pornography or violence; and

c information, disseminated by the entity without due state registration, if any needed; etc.

Since 1 December 2018 the Mass Media Law has contained a definition of 'internet resource': a website, web page, forum, blog, application for a mobile device, other information resource (its component), located on the global computer network internet, through which mass media is distributed. Unless indicated otherwise, the Mass Media Law applies to internet resources. Internet resources may be registered as online media and, consequently, be treated as mass media under the Mass Media Law.

Certain regulations apply specifically to internet resources. The Mass Media Law provides for a number of duties for internet resource owners, including social network owners, which involve the introduction of additional measures for analysing and monitoring information on such internet resources. In particular, further to the Mass Media Law requirement, the Regulation on the procedure for preliminary identification of users of an internet resource, an online media approved by the Resolution of the Council of Ministers of the Republic of Belarus of 23 November 2018 No. 850 'On approval of the Regulation on the procedure for preliminary identification of users of an internet-resource, an online media' elaborates the requirements of user identification. The owner of the internet resource or online media will identify users when leaving a message in the comments or on the forum via the SMS verification mechanism.

ii Internet-delivered video content

Internet services are available in Belarus, including IPTV channels with programming provided by programme providers. Current legislation does not provide for internet delivered video content (OTT) regulation.

The need for OTT services regulation was discussed during a roundtable in Minsk by representatives of the MinInfo, interested departments, television channels, cable operators and the Telecommunications Industry Union. The chairman of the Telecommunications Industry Union outlined that owing to the absence of regulation, telecommunication operators working in the lawful field faced unfair competition from OTT services. They lead away subscribers – the annual outflow of subscribers is at least 10 per cent. In most cases, OTT services do not pay taxes, they are not registered in the register of distributors, that is, they provide TV programmes without contracts with rights holders, do not pay for related rights, do not make contributions to the National Centre of Intellectual Property, and do not distribute mandatory programmes of the public package.

OTT services are planned to be regulated by government rules and regulations in the future.

VI THE YEAR IN REVIEW

Considering the events of the year, we can say that Belarus is charting a course for the development of its IT infrastructure in many areas.

In spring 2019, modern driverless vehicles were tested at the first '5G' test zone in Belarus. According to the publicly announced information, the technologies used by the standards of New Radio and LTE-Advanced Pro allowed specialists to test driverless vehicle control, as well as the operation of dump trucks in robot mode (project 'Intelligent quarry').

In June 2019, the Draft Law on Personal Data (the Bill on PD) passed first reading by the lower Chamber of Parliament. The Bill on PD is still under review in Parliament and is expected to come in force not earlier than the end of the 2020. Generally, the Bill on PD follows the basic concept of the GDPR, including the main principles of ensuring data privacy, however it is still not very detailed and mostly uses different terminology compared to the GDPR.

In particular, if the Bill on PD enters into force in the wording available now, it will provide for the establishment of a state body ('the Data Protection Authority') specially authorised for regulating personal data protection issues. According to the Bill on PD the Data Protection Authority will be appointed by the President of the Republic of Belarus. It also plans to regulate transfer of personal data abroad from Belarus. In particular, the cross-border transfer of personal data to countries not ensuring sufficient measures of personal data protection will be prohibited subject to a limited number of exceptions (e.g., individual permit of the Data Protection Authority).

In August 2019, the Belarusian mobile telecom operator A1 (from A1 Telekom Austria group) started offering eSIMs to its customers – the first among Belarusian telecom operators. Currently Belarus law does not provide specific regulation of the eSIM solution.

The cryptocurrency activities of HTP residents received full comprehensive legislative support from the regulator. The administration of the HTP together with the National Bank, the Department of Financial Monitoring of the State Control Committee, international experts and other bodies developed documents establishing the requirements for the activities with cryptocurrencies. In particular, HTP checks the reputation of the staff and owners of the company, their financial condition, origin of assets and cybersecurity of the residents who want to work in the field of cryptocurrencies.

VII CONCLUSIONS AND OUTLOOK

The development of TMT in Belarus in increasing frequency comes with a lack of relevant legislation while having progressive legislation in particular spheres. During the process of *post factum* regulation the government is trying to steer a middle course between national interests for TMT infrastructure control and development of the TMT sector by private investors. Depending on the particular approach in different ICT spheres, development of both legislation and the ICT sector itself affects national economy indexes as well as development of the information society. At the same time, Belarus is trying to implement and follow the strategy of front-running rather than pursuing in the field of technology regulation and use.

The 2019 government approach towards formation of law is subject to particular world TMT trends. The data protection, mass media, cryptocurrency and other TMT-related regulations are the primary focus. The business community expects a boost in the development of TMT legislation because of the world technology progress and certain politically sensitive events expected to occur in 2020.

Chapter 5

ESTONIA

Mihkel Miidla, Liisa Maria Kuuskmaa and Oliver Kuusk[1]

I OVERVIEW

Estonia is a strong advocate of technological advancement, and the ICT sector is of major importance to the government. Estonia has become a model for free and open internet access. It is also the EU frontrunner as regards the digital provision of public services and has one of the highest shares (92 per cent) of e-government users in Europe.[2]

Estonia sees ICT as a key to sustained economic growth. The Ministry of Economic Affairs and Communications adopted the Digital Agenda 2020,[3] which focuses on creating an environment that facilitates the use of ICT and the development of smart solutions in Estonia in general. The main goals of the Agenda are, among others:

a the completion of the next-generation broadband network, with the aim of that all residents of Estonia will have access to fast (30Mbit/s or faster) internet by 2020 and that at least 60 per cent of households will be using ultrafast (100Mbit/s or faster) internet daily;

b the continuing development of state information systems and public e-services to ensure up-to-date and citizen-friendly solutions; and

c to continue promoting Estonia as a hub for innovation and the development of the information society, and to establish a global information society think tank in Estonia.

The number of internet and mobile telephone users in Estonia has grown rapidly in the past 20 years. The availability of mobile broadband is very good while fixed broadband is less widespread, below the European average, which is mainly because of limited connectivity in sparsely populated rural areas.[4] For this reason, a non-profit organisation, the Estonian Broadband Development Foundation (ELA SA), was founded in 2009 by the government and major Estonian communication undertakings to develop Estonia's broadband network and build and operate the EstWin high-speed base network. The project is financed mostly from public sources. In 2018, the Foundation started its 12th and last tender to procure the designing and building of approximately 400km of base network. The Foundation has set its goals to finalise the project in 2019 by bringing broadband no further than 1.5km from 98 per cent of households.[5]

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2 https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=59894.

3 https://www.mkm.ee/sites/default/files/digital_agenda_2020_estonia_engf.pdf.

4 https://freedomhouse.org/report/freedom-net/2017/estonia.

5 https://www.elasa.ee/estwin-baasvorgu-rajamine-lopusirgel/.

Separate from the base network project is the government's last mile project. Until 2018, all local municipalities were responsible for mapping out the white areas in their jurisdiction where there is a need for developing the last mile of a high-speed internet network. This approach did not prove to be successful, and in 2018 the Ministry of Economic Affairs and Communications, along with the Estonian Technical Regulatory Authority, initiated the national last mile project, a public competition to find a suitable network builder to bring high-speed internet access to areas where there is no internet access or where the connection is of poor quality and where communications companies would not invest in the next five years (the white area).[6] Elektrilevi (part of the state-owned energy operator) was awarded the subsidy and committed to extend broadband access to the largest possible number of households who still lack high-speed internet. Elektrilevi has initiated plans to connect 15,000 households by the end of 2019 and 200,000 households by the end on 2023.[7]

The fast-developing ICT sector presents some challenges for policymakers, but generally the regulatory landscape in the ICT sector is in quite good shape. As previously mentioned, the ICT sector is of major importance to the state. Estonia experienced several political changes during the past year, but these are unlikely to heavily impact e-governance or other internet use. The government continues with its strategy to market Estonia as an e-state throughout the world.

II REGULATION

i The regulators

The electronic communications and media area is supervised by an independent regulatory authority, the Estonian Consumer Protection and Technical Regulatory Authority (ECTRA), which is sometimes also referred to as the Technical Surveillance Authority (previously the Technical Regulatory Authority).[8] ECTRA supervises the fields of consumer protection, electronic communications, industrial safety and transport. In the field of communications services, the ECTRA is tasked with ensuring a sufficient and timely resource of RFs and telephone numbers for the provision of communications services and performing national surveillance of the field of communications.[9]

Other regulatory bodies that may exercise supervision over electronic communications service (ECS) providers pursuant to their competence include (not exhaustively) the Data Protection Inspectorate, the Competition Authority and the Information System Authority. Sector-specific regulation of the competitive situation on the markets for communications services is carried out mainly by the ECTRA, while the Competition Authority has general authority (e.g., in merger proceedings).

6 https://www.ttja.ee/et/ettevottele-organisatsioonile/lairiba.

7 https://www.elektrilevi.ee/uudised/avaleht/-/newsv2/2018/11/28/elektrilevi-tahab-2019-aastal-kiire-interneti-vorku-uhendada-15-000-kodu-.

8 Website: https://www.ttja.ee/en.

9 https://www.ttja.ee/en/fields-services/communications-services.

ii Main sources of law

ECSs are regulated by the Electronic Communications Act (ECA),[10] in force from 1 January 2005 (as amended), which transposes in Estonia the EU's regulatory framework for electronic communications. On basis of the ECA, numerous regulations of the government have been adopted to regulate certain more technical or detailed issues of the framework. Under the ECA, an ECS means a service that consists wholly or mainly in the transmission or conveyance of signals over the ECN under agreed conditions. Network services are also ECSs.[11]

The ECA provides requirements for public ECNs and publicly available ECSs regarding the use of electronic contact details for direct marketing, the conduct of radiocommunications, and the management of RFs, numbering and apparatus, as well as state supervision over the compliance with these requirements and liability for the violation of these requirements. A publicly available ECS is defined as a service provided by a communications undertaking on the respective communications services market pursuant to the general procedure to all persons, and the persons need not meet any conditions differentiating them from other similar persons. A service is publicly available particularly if provision of the service is continuous and consistent and it is provided essentially under uniform conditions.[12] There appear to be no definite (official) criteria available that would help to determine whether a particular service is considered to be publicly available, as there are no official guidelines or case law. However, under a conservative approach from the viewpoint of notification obligations, it does not matter whether the services are offered either on a wholesale level or on a retail level to end users to be considered as publicly available, but rather if the service is open to a particular group of (similar) customers.

The ECA is not applicable to information society services to the extent these are regulated by the Information Society Services Act (ISSA),[13] which implements Directive 2000/31/EC into Estonian law. Information society services are services provided in the form of economic or professional activities at the direct request of a recipient of the services, without the parties being simultaneously present at the same location, and such services involve the processing, storage or transmission of information by electronic means intended for the digital processing and storage of data. Information society services must be entirely transmitted, conveyed and received by electronic means of communication.[14]

Media services are regulated by the Media Services Act (MSA),[15] in force from 16 January 2011 (as amended). The MSA provides for:

a the procedure and principles for the provision of audiovisual media services and radio services and the requirements for providers of media services;

b the procedure for the issue of activity licences for the provision of television and radio services to legal persons under private law and the procedure for registration of the provision of on-demand audiovisual media services; and

c the principles of protection of a person who has provided information to a person processing information for journalistic purposes.[16]

10 Available in English at https://www.riigiteataja.ee/en/eli/530052018001/consolide.

11 Clause 2 6) of the ECA.

12 Clause 2 68) of the ECA.

13 Available in English at: https://www.riigiteataja.ee/en/eli/ee/513012015001/consolide/current.

14 Clause 2 1) of the ISSA.

15 Available in English at: https://www.riigiteataja.ee/en/eli/ee/511052015002/consolide/current.

16 Section 1 of the MSA.

Estonian public broadcasting is excluded from the scope of the MSA and is regulated by the Estonian Public Broadcasting Act.[17]

iii Regulated activities

Under the ECA, each person has the right to commence the provision of communications services. The provision of communications services is subject to a one-off notification obligation. A notice of economic activities for the provision of communications services must, among other required information, set out a description of the provided communications service and the geographical area of activity. Such notice must be filed via the state portal (www.eesti.ee) or via a notary.[18] If publicly available communications services are provided by an entity from another EU Member State (cross-border service) on a permanent basis in Estonia, then such entity must also file the notice of economic activities to the ECTRA. The current position of the ECTRA is that foreign operators also need to establish a branch or subsidiary in Estonia.

For the provision of certain communications services, it is necessary for service providers to apply for licences. Namely, use of radio spectrum and numbering is subject to a RF authorisation and a numbering authorisation respectively. Activity licences are required for the provision of television and radio services. All licences and authorisations are subject to relevant state fees, the amount of which varies according to the type of the licence or authorisation in question. All the relevant licences and authorisations mentioned above are issued by the ECTRA.

Frequency authorisations for the use of spectrum are allocated according to the Estonian Radio Frequency Allocation Plan,[19] which determines the manner, regime and purpose of using RFs. To receive an authorisation, a standard format application[20] to the ECTRA must be submitted with the relevant information about the applicant (name, residence or seat, date of birth or personal identification code or registry code, contact details) and the frequency itself (which frequency is being applied for, what is its purpose, conditions of use, area of use, etc.). The ECTRA has six weeks from the receipt of a complete application to issue a licence if the use of spectrum does not need international coordination, and eight months if it does. If the use of spectrum is being allocated by way of a public competition or auction, the relevant procedural rules and deadlines are determined by the Minister of Economic Affairs and Infrastructure. The ECTRA has the right to refuse an application on certain grounds, for example if the applicant's activities may be hazardous, there is no free spectrum, the use of spectrum is not in line with the Estonian Radio Frequency Allocation Plan or national or international legislation, or if the use of spectrum is ineffective or may cause radio interference.[21] The frequency authorisation establishes the conditions and requirements for the use of spectrum. Under certain conditions, the conditions may be amended. If the ECTRA has issued a frequency authorisation, the authorisation can be extended by submitting an application not later than one month before the expiry of the authorisation and by paying the relevant state fee.[22]

17 Available in English at: https://www.riigiteataja.ee/en/eli/ee/527062014005/consolide/current

18 Sections 3–4 of the ECA.

19 https://www.riigiteataja.ee/akt/124052013015?leiaKehtiv.

20 https://www.ttja.ee/sites/default/files/content-editors/Sagedushaldus/sagedusloa_taotlus_2016.rtf.

21 Sections 11–14 of the ECA.

22 Sections 11, 15–16 of the ECA.

Upon grant of spectrum licences by way of public competition, the Minister of Economic Affairs and Infrastructure may determine a one-off authorisation charge of up to €1.597 million, a deposit for participation in the competition, or both. The one-off authorisation charge shall be determined as a fixed charge or, in the case of an auction, as a starting price. The deposit must be equal to all participants and must not exceed the one-off authorisation charge. The deposit will be returned after the winner is ascertained.[23]

Authorisations for the use of numbering are allocated according to the Estonian numbering plan,[24] which determines the location of numbers, short numbers, identification codes and access codes in the numbering space, the requirements for the length, use and dialling procedure of numbers, the conditions of use and the services for the provision of which they may be used. A numbering authorisation can be obtained by submitting a standard format application[25] to the ECTRA, containing the information on the applicant (name, residence or seat, date of birth or personal identification code or registry code, contact details), the planned use of the number, etcetera. The ECTRA will issue a numbering authorisation within 10 working days after receipt of a complete application if there are no grounds for refusal. The numbering authorisation sets out the conditions of use of the allocated number. A numbering authorisation is issued for up to one year and can be extended by up to one year at a time. Numbering authorisations can also be granted by way of an auction on certain conditions.[26]

Activity licences for television and radio services are provided on the basis of the MSA. All private broadcasters are required to have an activity licence. Estonian Public Broadcasting, which is a legal person in public law, is not required to apply for an activity licence. Different licences are issued for the provision of free access television services, conditional access television services, satellite television services and radio services. Free access television and radio service licences are issued through a public competition. All the other licences are issued on the basis of an application. For the obtaining of licences, the MSA prescribes necessary requirements on programmes, sustainability of a service and the coverage area of the service, among other conditions. A licence for free access television services is issued for up to 10 years, and the rest of the above-mentioned licences for up to five years.[27]

iv Ownership and market access restrictions

Currently there are no foreign ownership restrictions in the communications sector.

Under the MSA, a television or radio service provider will not be given an activity licence if it holds a dominant influence over the management to the undertaking that has been issued an activity licence for the provision of television and radio service, and the issue of the activity licence may substantially damage competition in the media services market, particularly through the creation or reinforcement of the dominant position in the market.[28] Similarly, aggregate holdings of certain types of spectrum may constitute a dominant position, which would trigger the heightened attention of the ECTRA and the Estonian Competition Authority. When it comes to trading spectrum, the ECTRA has a right to refuse the transfer

23 Subsections 9(2[2])-9(2[4]) of the ECA.

24 https://www.riigiteataja.ee/akt/122102013004?leiaKehtiv.

25 https://www.tja.ee/sites/default/files/content-editors/Numeratsioon/numbriloa_taotlus_06_2018.doc.

26 Sections 33–39 of the ECA.

27 Sections 32–40 of the MSA.

28 Clause 32 3) of the MSA.

or grant of right to use RFs if this distorts competition, and it may, if necessary, coordinate the transfer or grant of frequencies with the Estonian Competition Authority.[29] These rules apply in addition to the general merger control regime under Estonian and European competition law.

In general, Estonian law does not limit market access, except for the limitations specified above.

v Transfers of control and assignments

Mergers and acquisitions are reviewed by the Estonian Competition Authority. The procedure of merger reviews is regulated by Chapter 5 (Control of Concentrations) of the Competition Act.[30] Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings applies in cases of mergers with an EU dimension, but the national merger control is very similar to that of the EU. Estonia has a mandatory filing requirement for qualifying transactions. For a transaction to be qualifying, the relevant turnover thresholds must be exceeded. A merger is notifiable if the total annual turnover in Estonia of all companies concerned is more than €6 million and the total annual turnover in Estonia of each of at least two of the companies concerned is more than €2 million.[31] The companies concerned include those directly involved in the merger, any other associated companies within the same control group and joint ventures. There is a two-phase merger review process, and clearance is required before closing. The length of proceedings is 30 days for a simplified procedure, and will last for four additional months when further investigation is needed. Simplified procedures may end with an approval or a decision to conduct further investigation in Phase II. The latter may conclude with a clearance, a refusal or a conditional clearance.[32]

While the Competition Authority has general authority over merger proceedings, the sector-specific regulation of ECSs markets is conducted by the ECTRA. The Competition Authority used to have wider competences in the communications sector, but now only postal services have remained fully under its regulatory authority. The ECTRA and the Competition Authority are under a legal obligation to cooperate in the area of market regulation and exercise supervision in the communications sector, and, if necessary, exchange appropriate information.[33] This means that when it comes to mergers in the communications sector, the Competition Authority may involve the ECTRA in the merger proceedings. In practice, merely holding a dominant position through an allocated frequency authorisation can be decisive on the outcome of transactions.

As described in subsection iv above, licence transfers may also be subject to competition law concerns. In general, RFs are transferrable or can be granted for use to another person if the Estonian Radio Frequency Allocation Plan allows it, with the RFs for broadcasting being an exception. It is thus necessary to verify the transferability or the permissibility of granting the frequency to the use of another person on a case-by-case basis, based on the Radio Frequency Allocation Plan. The transfer or grant of use must be approved by the ECTRA, who may coordinate with the Competition Authority. The ECTRA has the right to refuse the transfer or grant of the right to use RFs if it distorts competition.[34]

29 Subsection 17(8) of the ECA.

30 Available in English at: https://www.riigiteataja.ee/en/eli/ee/527122017001/consolide/current.

31 Section 21 of the Competition Act.

32 Section 27 of the Competition Act.

33 Subsections 40(4) and 144(1) of the ECA.

34 Section 17 of the ECA.

III TELECOMMUNICATIONS AND INTERNET ACCESS

i Internet and internet protocol regulation

IP-based services are regulated by the ISSA. ECSs and information society services are mutually exclusive; therefore, information society services are excluded from the scope the ECA. However, state supervision over compliance with the requirements provided for in the ISSA is exercised by the ECTRA.

Contrary to the ECA, the ISSA does not contain any registration, authorisation or notification obligations for the service providers. The primary obligation of service providers is to render directly and permanently accessible to recipients of services at least the following information:

a the name of the service provider, its registry code and the name of the corresponding register, the service provider's address and other contact details, including the electronic mail address;

b its registration number if, for operation in the corresponding field of activity, registration in the register of economic activities is required by law, or its activity licence number; and

c if reference is made to the fee charged for the service, information on whether the fee includes taxes and delivery charges.

Information society service providers generally have less obligations compared to communications service providers. An information society service provider is generally not liable for the information transmitted upon mere transmission of information and provision of access to public data communications networks, upon temporary storage of information in cache memory and upon provision of information storage services. There are exceptions to this general rule.[35] Additionally, information society service providers are not obligated to monitor information upon the mere transmission thereof or provision of access thereto, temporary storage thereof in cache memory or storage thereof at the request of the recipient of the service; nor is the service provider obligated to actively seek facts or circumstances indicating illegal activity. However, in certain circumstances information society service providers are obliged to provide information about alleged illegal activities undertaken or information provided by recipients of their services, and to communicate to the competent authorities information enabling the identification of recipients of their service.[36]

ii Universal service

Under the ECA, it is possible to designate universal service providers by way of a public competition, or public procurement if the payable charges exceed the relevant thresholds. When designating universal service providers, it must be taken into account that the end goal is to ensure provision of the service in a cost-effective manner that does not prejudice competition, at an affordable price, and in accordance with the objectives of state organisation in the electronic communications sector, which is to promote competition in the provision of ECSs. A universal service provider may be designated separately for each specified service within a specified territory.[37]

35 Sections 8–10 of the ISSA.

36 Section 11 of the ISSA.

37 Section 73 of the ECA.

The following services can be designated as universal services:

a connection to a communications network in a fixed location enabling telephone services (which enables the making and receiving of calls, the sending and receiving of faxes and the use of data communication services at data rates sufficient to permit functional internet access, taking into account the hardware and software used by most end users);

b public payphone services or other publicly accessible communications services enabling calls; and

c the availability of a universal electronic public number directory and directory enquiry services.[38]

The USO is based on a universal service contract between the communication undertaking and the state, which sets out, inter alia, the obligations, term, charges payable by end users and the territory.[39] The costs related to the performance of the USO are compensated for out of the universal service charge payable by communications undertakings whose turnover for communications services exceeds €383,500 per year. The rate of the universal service charge, established each year by the government, is 0.01 to 1 per cent of the turnover of a communications undertaking with the financing obligation in the preceding financial year. A communications undertaking with the USO is entitled to compensation for the unreasonably burdensome costs related to the performance of the obligation.[40]

Despite the detailed regulation of universal service providers, the competition situation in the markets for communications services is in good shape, all the services that can be designated as universal services are available on the market and no communication undertakings have currently been designated as universal service providers.

iii Restrictions on the provision of service

Obligation to provide access to communications networks and general terms and conditions obligations

The EU directives that require communications undertakings to provide access to their networks have been transposed in national law by the ECA. Generally, communications undertakings are required to enter into a subscription contract with any person who submits an application to this effect. Entry into the contract may only be refused in specified cases, which include:

a the technical impossibility in the requested area or manner to connect terminal equipment to the communications network;

b failure by the applicant to provide information necessary for his or her identification or for communications with him or her, or the address of the location of the connection to the communications network allowing the provision of the requested communications service;

c the provision of incorrect information upon submitting the application or upon entering into a requested subscription contract; or

38 Section 69-70 of the ECA.

39 Subsections 72(3)–72(4) of the ECA.

40 Sections 75, 81–84 of the ECA.

d an applicant has a debt of collectable arrears for the provided communications services or the applicant is subject to bankruptcy proceedings.

If none of these conditions is fulfilled, the communications service provider is obliged to enter into a subscription agreement with the end user and to create a possibility for the end user to commence the use of the ECS within 10 working days after entry into a subscription contract, provided that the end user has performed the obligations assumed by the subscription contract.[41]

A communications service contract entered into with the end user must contain certain mandatory provisions. There is also formalised process with a one-month prior notice requirement for changes to general terms and conditions. The ECA establishes minimum information and mandatory terms that must be regulated in an ECS contract. These include, among others:

a a description of the communications service and possibilities to use other related services;
b charges for the services, including charges payable for maintenance, procedure for settlement of accounts as well as discounts and other price packages;
c quality requirements set for the communications service, including service quality parameters;
d the procedure and time limit for elimination of faults;
e the procedure and time limit for submission of complaints and claims, and the procedure for resolution of disputes;
f the term of the contract and conditions for cancellation and extension of the contract;
g the measures taken by the communications undertaking to ensure security and integrity of communications networks and services; and
h the terms and conditions of a product or communications service intended for end users with special needs.[42]

Some of the above contractual information (e.g., information on charges) and any standard terms used by the electronic communications undertaking must be made public on the website of the electronic communications undertaking or, in the absence thereof, in any other reasonable manner.[43]

Other than the mandatory provisions discussed above, the communications service provider and the end user are free to agree on contract terms.

Net neutrality

Regulation (EU) 2015/2120 laying down measures concerning open internet access is directly applicable in Estonia. Thus, all communications service providers in Estonia are under the obligation to treat all traffic equally, when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.[44] Estonia is a strong supporter of net neutrality, despite not having

41 Sections 93–94 of the ECA.
42 Subsection 96(1) of the ECA. The full list of mandatory terms can also be found therein.
43 Subsection 96(3) of the ECA.
44 Articles 3 and 4 of Regulation (EU) 2015/2120.

adopted any national legal acts or guidelines on net neutrality. The freedom and democracy watchdog Freedom House assesses that there are very few restrictions on internet content and communications in Estonia. There are no indications of any increase of restrictions on content or of self-censorship, and online debate is very active and open. Estonians have access to a wide range of content online, and very few resources are blocked or filtered by the government. Following court rulings on intermediary liability for third-party comments, some Estonian media outlets have modified their policies regarding anonymous commenting on their portals.[45]

Unsolicited phone calls, faxes, emails and texts

Estonia has implemented the e-Privacy Directive[46] with the ECA. The requirements regarding marketing communications are different for legal and natural persons. Under the ECA, the use of electronic contact details of a natural person for direct marketing is allowed only with the person's prior consent (opt-in), while the use of electronic contact details of a legal person for direct marketing is allowed if, upon use of contact details, a clear and distinct opt-out opportunity is given to refuse such use of contact details free of charge and in an easy manner, and the person is allowed to exercise its opt-out right over an ECN.

Regardless of the above, if a communications service provider obtains the electronic contact details of a buyer, who is a natural or legal person, in connection with selling a product or providing a service, such contact details may still be used for direct marketing of its similar products to the buyer if the buyer is given, upon the initial collection of electronic contact details and each time when the buyer's electronic contact details are used for direct marketing, a clear and distinct opt-out opportunity free of charge and in an easy manner; and the buyer is allowed to exercise its right to refuse over an ECN.

It is important to note that the requirements described above do not apply to multiparty voice calls in real time, which have been excluded from the scope the implementation of the e-Privacy Directive in Estonia. Multiparty voice calls in real time are instead regulated in the Law of Obligations Act.[47] Real-time multiparty calls may be used for communicating an offer only if the consumer has not expressly forbidden the use thereof. Thus, real time multiparty voice calls are subject to an opt-out possibility, while offers made to consumers by automated calling systems without human intervention, fax, telephone answering machine, electronic mail, SMS or other means are lawful only with the prior consent of the consumer.[48]

iv Privacy and data security

Cybersecurity regulations

On 9 May 2018, the Estonian parliament passed a new legislative act, the Cybersecurity Act,[49] which entered into force on 23 May 2018. The Cybersecurity Act transposes into Estonian law the Security of Network and Information Systems Directive.[50] The Act

45 https://freedomhouse.org/report/freedom-net/2018/estonia.

46 Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

47 Available in English at: https://www.riigiteataja.ee/en/eli/ee/507022018004/consolide/current.

48 Section 60 of the Law of Obligations Act.

49 Available in English at https://www.riigiteataja.ee/en/eli/523052018003/consolide.

50 EU Directive 2016/1148.

provides requirements for the maintenance of network and information systems essential for the functioning of society and state and local authorities' network and information systems, liability and supervision as well as the bases for the prevention and resolution of cyber incidents. The Act is not applied to micro and small enterprises.[51] The Act includes obligations, among others, for communications undertakings provided for in the ECA that provide cable distribution services consumed by at least 10,000 end users, and broadcasting network service providers upon providing cable distribution services or broadcasting network services. The Act also applies to Estonian Public Broadcasting and information society service providers within the meaning of the ISSA who offer online marketplaces, search engines or provide cloud computing services.[52]

The Cybersecurity Act requires the above-mentioned service providers to apply organisational, physical and information technological security measures for preventing and resolving cyber incidents, and preventing and mitigating any impact on the continuity of the service or the security of the system due to a cyber incident, or any possible impact on the continuity of another dependant service or the security of a system. Service providers are required, inter alia, to prepare a risk assessment and ensure its timeliness, ensure the monitoring of systems for detecting compromising actions and reduce the impact of cyber incidents. The Act also provides for an obligation to notify the Estonian Information System Authority (EISA) of cyber incidents. EISA is also responsible for the state and administrative supervision of compliance with the requirements of the Cybersecurity Act. Similarly, the ECA also includes a requirement to notify EISA immediately of all incidents endangering the security and integrity of the communications network and services that to a significant extent affect the functioning of the communications services or network, and of measures taken to eliminate such incidents.[53]

Under the ECA, a communications undertaking is required to take appropriate technical and organisational measures to manage the risks related to security and integrity of the communications services and network. The measures must be proportionate to the potential emergency situation, must ensure the minimum impact of incidents endangering the security and integrity of users of communications services and related networks, and must ensure continuity of the provided services.[54] A communications undertaking must also guarantee the security of a communications network and prevent third persons from accessing (without legal grounds) the following data: information concerning specific details related to the use of communications services; the content and format of messages transmitted over the communications network; and information concerning the time and manner of transmission of messages.

If a specific hazard exists to a communications service or the security of the communications network, the communications undertaking must immediately inform subscribers of such hazard in a reasonable manner and, unless the hazard can be eliminated by measures taken by the undertaking, also of possible remedies and of any costs related thereto.[55]

51 Subsections 1(1) and 1(3) of the Cybersecurity Act.

52 Clauses 3(1)5), 3(1)10) and Subsection 4(1) of the Cybersecurity Act.

53 Subsection 87^2(2) of the ECA.

54 Subsection 87^2(1) of the ECA.

55 Section 101 of the ECA.

In the summer of 2017, the new Emergency Act[56] entered into force, which includes a list of emergencies that justify the interruption in vital services. Vital services include, among others, phone services, mobile phone services, data transmission services, and digital identification and digital signing.[57] A provider of a vital service is required to, among other things:

a prepare a continuity risk assessment and plan of the vital service provided thereby;

b implement measures that prevent interruptions of the vital service, including reducing the dependency on other vital services, essential contract partners, suppliers and information systems through duplicating technical systems, contracts, staff and other means important to the provision of the service, using alternative solutions, having and stocking necessary resources and other similar actions; and

c ensure the capability to guarantee the continuity and quick restoration of the service provided thereby during an emergency or another similar situation, including in the event of a technical failure or an interruption of the supply or another vital service.[58]

Privacy and personal data protection

On 25 May 2018, the General Data Protection Regulation (GDPR)[59] became applicable. This was of extreme importance in the communications sector, as the general rules set out in the GDPR are applicable in the communications sector. On 15 January 2019, the new Personal Data Protection Act (PDPA)[60] became applicable, replacing the previous pre-GDPR act. The PDPA was followed by the Personal Data Protection Act Implementing Act,[61] which came into force on 15 March 2019. The implementing act amends national legislation to establish legal conformity with the GDPR.

In conformity with the GDPR, the PDPA introduces specific grounds for processing of personal data. These include processing of personal data without the consent of the data subject for journalistic purposes, academic, artistic and literary expression, as well as for scientific and historical research and official statistics. More specifically, personal data may be processed and disclosed in the media for journalistic purposes without the consent of the data subject, in particular disclosed in the media, if there is public interest therefor and this is in accordance with the principles of journalism ethics. Disclosure of personal data must not cause excessive damage to the rights of any data subjects. Furthermore, some of data subjects' rights, such as right of access, right to rectification and right to restriction of processing, inter alia, can be restricted when processing personal data for archiving in public interest.[62] In connection with provision of information society services directly to a child, Estonia has specified that the age at which children can consent is 13 years.[63]

In addition to the GDPR and the Personal Data Protection Act, some data protection requirements are also set out in the ECA. Under the ECA, a communications undertaking is required to maintain the confidentiality of all information that becomes known thereto in

56 https://www.riigiteataja.ee/en/eli/ee/525062018014/consolide/current.

57 Section 36 of the Emergency Act.

58 Subsection 38(3) of the Emergency Act.

59 Regulation (EU) 2016/679.

60 Available in English at https://www.riigiteataja.ee/en/eli/523012019001/consolide/current.

61 https://www.riigiteataja.ee/akt/113032019002.

62 Sections 4-7 of the PDPA.

63 Subsection 8(1) of the PDPA.

the process of the provision of communications services, and that concerns subscribers as well as other persons who have not entered into a contract for the provision of communications services but who use communications services with the consent of a subscriber. Above all, it must maintain the confidentiality of information concerning specific details related to the use of communications services; the content and format of messages transmitted over the communications network; information concerning the time and manner of transmission of messages.[64]

This information may be processed only if the undertaking notifies the subscriber, in a clear and unambiguous manner, of the purposes of processing the information and gives the subscriber an opportunity to opt out. Irrespective of whether the subscriber refuses such processing, the undertaking still has the right to collect and process such personal data without the consent of the subscriber:

a that is necessary for the purposes of recording transactions made in the course of business and for other business-related exchange of information;

b if the sole purpose of the processing is the provision of services over the communications network;

c if it is necessary for the provision, upon the direct request of the subscriber, of information society services; or

d that is necessary for billing the subscriber, including for the determination and calculation of interconnection charges.[65]

If the processing is done for publishing data on subscribers in number directories or through directory enquiry services, the processor must provide the subscribers with an opportunity to decide on whether and to what extent they wish such data to be published. Subscribers must also have an opportunity to verify and amend the data that concerns them, and to terminate the publication of such data.[66]

The ECA also prescribes other requirements deriving from the e-Privacy Directive, as discussed above in subsection iii above.

Lawful interception and data retention

Under Section 113 of the ECA, a communications undertaking must grant a surveillance agency or security authority access to the communications network for the conduct of surveillance activities or for the restriction of the right to confidentiality of messages, respectively. A communications undertaking is required to preserve the confidentiality of information related to the conduct of surveillance activities, and activities that restrict the right to inviolability of private life or the right to the confidentiality of messages. The electronic communications undertaking may recover the costs it incurs in relation to the provision of access to the communications network under the rules of Section 114 of the ECA.

Under Clause 111^1(11)5) and Section 114^1 of the ECA, a communications undertaking must provide certain retained data at the request of a court within civil matters.

64 Subsection 102(1) of the ECA.

65 Section 102 and 104 of the ECA.

66 Sections 102–107 of the ECA.

Obligations to retain data (as per the now-invalid Data Retention Directive[67]) have been imposed under the ECA and have not been revoked despite the *Digital Rights Ireland*[68] and the *Tele2 Sverige*[69] rulings. Communications undertakings must retain for a period of one year an extensive amount of data under the ECA, and have an obligation to provide information to competent state authorities and courts.[70]

Protection of children online

Estonia has adopted various laws that aim at protecting children online. For example, the Child Protection Act[71] limits the permissibility of certain content to all children below the age of 18 years. It is prohibited to manufacture, show and disseminate to children content that promotes violence or cruelty, or contains pornographic content.[72] The same is provided in the Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty.[73] This can be enforced in administrative proceedings by issuing a precept to terminate the violation and to restrict or take down the improper content. In the event of failure to comply with the precept, penalty payments can be imposed repeatedly until the precept is complied with. Parental consent cannot override the requirements set for content providers or limit their legal liability.

Note that under Estonian law, there are liability restrictions for information society service providers in the case of mere transmission, caching and storage. The latter is feasible if the service provider does not have actual knowledge of the contents of the information and, as regards claims for compensation for damage, is not aware of facts or circumstances from which the illegal activity or information is apparent. Additionally, the service provider must, upon obtaining knowledge or awareness of the facts specified above, act expeditiously to remove or to disable access to the information.[74]

Sexual enticement of children below the age of 14 is criminalised and punishable under the Penal Code.[75] Sexual enticement means, among others, handing over, displaying or otherwise knowingly making available pornographic works or reproductions to a person less than 14 years of age. This is punishable by a pecuniary punishment or up to three years' imprisonment for natural persons and by a pecuniary punishment of €4,000 to €16 million for legal persons. Showing sexual abuse of a person aged less than 14 years, or engaging in sexual intercourse in the presence of such person or knowingly sexually enticing such person in any other way, are punishable by the same sanctions. Handing over, displaying or knowingly making available of works or reproductions of works promoting cruelty in another manner to a person of less than 14 years of age, or showing the killing or torturing of an animal in the presence of such person without due cause or knowingly exhibiting of cruelty to him or her in another manner, are punishable by a pecuniary punishment the amount of which is up to €3,200 in the case of legal persons.[76]

67 Directive 2006/24/EC.

68 Judgement of the Court of Justice of the European Union (CJEU) of 8 April 2014 in case C-293/12.

69 Judgement of the CJEU of 21 December 2016 in joined cases C-203/15 and C-698/15.

70 Section 111[1] of the ECA.

71 Available in English at https://www.riigiteataja.ee/en/eli/ee/520122017002/consolide/current.

72 Section 25 of the Child Protection Act.

73 Available in English at https://www.riigiteataja.ee/en/eli/ee/520012015009/consolide/current.

74 Sections 8–10 of the ISSA.

75 Available in English at https://www.riigiteataja.ee/en/eli/ee/509072018004/consolide/current.

76 Sections 179–180 of the Penal Code.

The MSA also includes provisions that are aimed at protecting children. Television and radio service providers may not transmit programmes that may cause substantial physical, mental or moral detriment to minors, in particular such programmes that include pornography or that propagate violence or cruelty for the purposes of the Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty. On-demand audiovisual media services that may cause substantial damage to the physical, mental or moral development of a minor must be made accessible by the on-demand audiovisual media service provider by means of personal identification codes or other relevant technical solutions only in a manner that is not accessible to minors under normal circumstances.[77]

The Advertising Act[78] includes several requirements for advertising directed at persons less than 18 years of age. Advertising that targets groups that are primarily made up of children must take into account their unique physical and mental state resulting from their age. Children may not be a target group of advertising if it is prohibited to sell the advertised goods or provide the advertised services to children. Advertising that targets groups that are primarily made up of children may not:

a create the impression that the acquisition of certain goods or the use of certain services will give the child an advantage over other children or that the lack thereof will have the opposite effect;

b create feelings of inferiority in children;

c incite children to behave or act in a manner that has or may have the effect of bringing children into unsafe conditions;

d contain elements that frighten children;

e exploit the trust children place in their parents, teachers or other persons;

f include a direct or indirect appeal to children to demand the acquisition of the advertised goods or the use of the advertised services from other persons; or

g directly incite children to enter into transactions independently.[79]

These requirements also apply to any online advertising.

IV SPECTRUM POLICY

i Development

The Estonian spectrum policy is changing continuously. The demand for spectrum is increasing rapidly with the development of and increasing demand for new technologies and mobile communications services. Currently, the 5G mobile network is being developed. All this proves to be a challenge in conditions where frequency spectrum is a scarce resource.

To tackle this challenge, the Estonian Radio Frequency Allocation Plan is constantly changing to conform to new developments. The use of RFs in Estonia is harmonised with those of the EU, as Estonia takes account of the recommendations of the European Commission to the greatest extent possible.[80] The ECA provides that the purpose of regulating the management of RFs is to ensure the purposeful, objective, transparent and proportionate

77 Section 19 of the MSA.

78 Available in English at https://www.riigiteataja.ee/en/eli/ee/504042018001/consolide/current.

79 Section 8 of the Advertising Act.

80 Subsections 6(3), 8(3) and 8(4) of the ECA.

management, and the effective and efficient use, of RFs for the needs of users of RFs and for the provision of communications services, the creation of possibilities for the development of new technologies and fast elimination of radio interference. The Radio Frequency Allocation Plan determines, among other things, the RF bands for the introduction of new technologies together with restrictions on new and existing users. The ECTRA reviews the allocation plan at least once a year and submits to the responsible minister proposals for amendments if the development of electronic communications technology requires it.[81]

ii Flexible spectrum use

As discussed above, the use of spectrum requires its prior allocation by the ECTRA. Spectrum is allocated on the basis of the Radio Frequency Allocation Plan, which determines the manner, regime and purpose of using frequency bands. Upon granting a frequency authorisation to a communications undertaking, the ECTRA establishes in the authorisation, among other things, the purpose, manner, conditions and area or location of the use of spectrum, as well as the requirements for the shared use of RFs. Therefore the authorisation may include in its conditions the possibility to share the use of spectrum, as well as the possibility to trade frequency or grant it for use on the basis of a contract. Accordingly, the use of spectrum is made more flexible by way of allowing such trading and shared use of spectrum.

In addition, the ECTRA carries out spectrum auctions in previously unused frequency ranges and rearranges the use of spectrum, if need be, as discussed further below.

iii Broadband and next-generation services spectrum use

The ECTRA is also constantly dealing with the need for new uses of mobile spectrum. For example, in 2015 it rearranged the frequency usage of mobile operators in the 900MHz band to enable the introduction of new technologies. In the course of the process, the frequency blocks of each operator were rearranged so that complete frequency ranges were allocated to each operator to create wider bandwidth and create conditions for introducing new 4G and 5G technologies.[82]

If the ECTRA finds that the number of available spectra is not sufficient for their allocation, it can hold a public competition in the form of a spectrum auction. The latest auction of mobile broadband spectrum ended in May 2017. The auction of frequencies in the ranges of 2,540–2,570MHz, 2,660–2,690MHz and 2,575–2,615MHz ended with the selling of three frequency division duplexes (FDD) and two time division duplexes (TDD) that provide the right to use 100MHz-worth of spectrum in Estonia. Two operators, Elisa Eesti AS and Telia Eesti AS, participated. FDD I and II were bought by Telia, bidding €1,601,234 and €3,605,535 respectively. FDD III, TDD I and II were bought by Elisa, bidding €2,608,789, €1,612,346 and €1,597,001 respectively. Accordingly, around €11 million was earned through the auction.[83]

After the digital switchover occurred on 1 July 2010, the freed-up frequencies were allocated for 4G mobile communication services. It can therefore be said that more and more spectrum is becoming available for mobile services. More specifically, the latest and upcoming auctions are focused on 5G technologies. During the Estonian presidency of the Council of

81 Subsection 9(2) and Clause 10(1)1) of the ECA.

82 https://www.tja.ee/sites/default/files/content-editors/TJA/Aastaraamat/tja_ar_2015_est_web.pdf.

83 https://www.tja.ee/et/uudised/selgunud-sagedusala-2500-mhz-avaliku-konkursi-voitjad.

the EU from July to December 2017, a Ministerial Declaration was signed to make 5G a success for Europe.[84] It was agreed that 5G is the vision for a fully connected European society and a path towards the European gigabit society. The crucial step in implementing this vision is to make more spectrum available in a timely and predictable manner. To realise this goal, it is necessary to release 5G spectrum bands.[85] In March 2019, the Ministry of Economic Affairs and Communications published a 5G Roadmap for Estonia, aspiring to achieve 5G coverage in larger cities and their peripheral areas by 2023 and in transport corridors by 2025.[86] The plan further envisages international Connected Automated Driving corridors and more leeway for small-cell 5G networks.

iv Spectrum auctions and fees

The ECTRA carries out auctions if it finds that the number of available spectra is not sufficient for their allocation.

Following a consultation with the stakeholders, the ECTRA decided to divide the separable bandwidth of 3,410–3,800MHz into three time division duplexes (TDD) large enough (3x130MHz) to implement the large data amounts and facilitate the future development of 5G technologies: 3,410–3,540MHz, 3,540–3,670MHz and 3,670–3,800MHz. Additionally, a fourth smaller buffer zone was left to ensure undisturbed operation of defence forces equipment.[87] This frequency band is considered as the most important 5G frequency range in the European 5G Roadmap, which will allow the use of innovative technologies and devices (IoT).[88] In February 2019, the ECTRA announced the auction for the 3,410–3,800MHz frequency range for the development of 5G technology with a starting price of €1,597,000 for each range. The auction was suspended in March 2019 following an appeal by Levikom, a broadband network operator, which argued that dividing the frequency into three large ranges stifles competition and provides an unfair advantage to big operators.[89] In its opinion, the Estonian Competition Authority urged the Ministry to consider auctioning the spectrum in smaller 5–10MHz ranges.[90]

In addition to the currently suspended 3,410–3,800MHz auction, the Ministry of Economic Affairs and Communications is planning to auction spectrum in the 700MHz frequency band in the first half of 2020. Furthermore, a public consultation for the use of 26GHz frequency band is to take place before the end of 2019 and a study for the use of spectrum in the 40.5–43.5GHz and 66–71GHz frequency range is planned for the future.[91]

84 https://www.eu2017.ee/sites/default/files/inline-files/Ministerial%20declaration%205G_final_1.pdf.

85 https://www.mkm.ee/sites/default/files/8.a_b_aob_5g_roadmap_final.pdf.

86 https://www.mkm.ee/sites/default/files/eesti_5g_teekaart.pdf.

87 https://www.mkm.ee/en/news/state-issues-first-5g-frequency-licenses; https://www.ttja.ee/et/uudised/kohtuvaidlus-ei-lase-meil-5g-vorku-parimal-viisil-toole-panna-0.

88 https://www.tja.ee/et/uudised/algasid-ettevalmistused-3600-mhz-sageduslubade-avaliku-konkursi-korraldamiseks.

89 https://news.err.ee/929416/court-cancels-5g-frequency-auction-pending-competition-complaint-decision.

90 https://www.konkurentsiamet.ee/public/Konkurentsiameti_seisukoht_5G_sageduslubade_suhtes.PDF.

91 https://www.mkm.ee/sites/default/files/eesti_5g_teekaart.pdf.

V MEDIA

i Regulation of media distribution generally

Media services are subject to the licensing obligations discussed above. In addition, there are restrictions on content that are one of the pre-requirements for obtaining licences.

For example, the MSA requires a television and radio service provider to reserve at least 5 per cent of the daily transmission time of the programme service on at least six days a week for transmitting self-produced new programmes, except on national holidays. At least 10 per cent of the monthly transmission time must be reserved for transmission of own productions, deducting the transmission time allocated for news, sporting events and games programmes as well as for advertising, teletext services and teleshopping. At least 50 per cent of the minimum capacity of own production must be shown during prime time between 7pm and 11pm. At least 51 per cent of the annual capacity of the television programme service must be reserved for transmission of audiovisual works of European origin, deducting the transmission time allocated for news, sporting events and games programmes, as well as for advertising, teleshopping and teletext services, and at least 10 per cent of such audiovisual works must have been created by producers that are independent of this television service provider. These requirements are subject to certain exceptions; for example, local channels are exempted from some of them.[92]

The MSA also sets out some requirements for commercial communications, TV and radio advertising, sponsorship and product placements. In addition to the MSA, these are regulated by the Advertising Act.

ii Internet-delivered video content

Besides television services, on-demand audiovisual media services are becoming increasingly popular. On-demand audiovisual media services do not require a licence, but do require a notification of economic activities to be submitted through the state portal or to a notary, as discussed above.

Most of the biggest ISPs in Estonia have started their own video distribution services. However, this does not limit the accessibility of on-demand services of other service providers. Standalone services are also freely accessible. However, generally service providers measure the use of data without taking into account that part of the data that is used for VOD. Still, it must be noted that there are examples on the market of ISPs' own on-demand video distribution services that do not use up mobile data if streamed via the service provider's own networks. Thus, one the strategies used to attract customers to buy video distribution services is that ISPs do not charge for the data used on streaming via mobiles on their own VOD services equally with the data used for other VOD services.

VI THE YEAR IN REVIEW

The most important changes in the legislation concerning the ICT sector in 2018 and 2019 have been regarding the GDPR, the Cyber Security Act and the auctioning of 5G spectrum frequency.

The GDPR became applicable on 25 May 2018, which required companies to adjust their data processing practices and gave people greater control over the use of their personal

92 Section 8 of the MSA.

data. On 15 January 2019, Estonia adopted the new Personal Data Protection Act (PDPA), replacing the previous pre-GDPR act. The PDPA was followed by the Personal Data Protection Act Implementing Act, which came into force on 15 March 2019 and acts to amend national legislation to establish legal conformity with the GDPR.

The Cyber Security Act entered into force on 23 May 2018. The Act provides requirements regarding the maintenance of network and information systems, liability and supervision as well as the bases for the prevention and resolution of cyber incidents, and lays down numerous obligations for communications services and information society service providers to ensure cybersecurity.

In 2019, Estonia announced its national strategy for the development and implementation of artificial intelligence. The plan includes public-private partnership initiatives, further e-state services and sandboxes for testing and developing public sector solutions, among others.[93]

Significant recent transactions include the acquisition of Apollo Group by UP Invest and the acquisition of Baltic Classifieds Group by private equity firm Apax Partners.

In the summer of 2019, the Estonian Competition Authority cleared private equity firm Apax Partners' acquisition of the 100 per cent share of the Baltic Classifieds Group from UP Invest.[94] Baltic Classifieds Group operates specialised and general online classifieds portals in the Baltics. The Estonian Competition Authority also cleared the acquisition of Apollo Group by UP Invest. UP Invest holds 78 per cent of Apollo Group shares following the transaction.[95] Apollo Group operates in the entertainment market, managing the Apollo book store and cinema chain.

Most of the major mobile service providers have recently come out with their own VOD services, such as Elisa's Elisa Elamus and Telia's TELIA TV, which includes FOX NOW, Eurosport Player and HBO. This marks a growing demand for VOD among viewers.

Telia, a major mobile and internet service provider, recently announced the launch of a new TV channel which will broadcast sports, movies and series. The channel will reach viewers in early 2020.[96]

With VOD and mobile internet becoming increasingly in demand, the EU also saw the growing need for the lowering of roaming charges. Eventually, on 15 June 2017 Regulation (EU) 2017/920 became applicable, which significantly lowered roaming charges in the European Union. The Regulation allows consumers to choose a subscription service that allows them to use mobile services within the EEA on the same conditions as in Estonia.

With the above developments, there is also an increasing demand for spectrum on the market. An auction for spectrum in the 3,600MHz frequency range in three 130MHz time division duplexes was announced in early 2019, but suspended shorty after a local broadband operator appealed the auction claiming it stifles competition. The Ministry of Economic Affairs and Communications is planning to auction spectrum in the 700MHz frequency band in the first half of 2020.

93 https://www.kratid.ee/in-english.

94 https://www.konkurentsiamet.ee/public/Koondumised/14-2019_ARAKIRI_10.06.2019_otsus_5-5-2019-027.pdf.

95 https://www.konkurentsiamet.ee/public/Koondumised/2018/otsuse_arakiri.pdf.

96 https://www.telia.ee/uudised/telia-hakkab-eestis-edastama-oma-telekanalit.

VII CONCLUSIONS AND OUTLOOK

Looking ahead, some of the next important developments in the communications, technology and media sector are the following.

From 1 January 2019, the Estonian Technical Regulatory Authority and the Consumer Protection Board have been joined into one single regulatory authority: the Consumer Protection and Technical Regulatory Authority (ECTRA). The new Authority resumed the obligations of the Technical Regulatory Authority and the Consumer Protection Board.[97]

In November 2019, all the current radio service providers' licences will expire. The ECTRA and the Ministry of Culture carried out a competition for radio licences for the period of 2019 to 2024. The ECTRA issued a total of 28 radio service provider licences, most of which were to service providers who previously held a licence.[98]

The Estonian ICT sector is fast-developing and highly important to the legislators. The government's goals include developing and implementing artificial intelligence technology, bringing ultrafast internet to more and more end users and promoting Estonia as the world's capital of innovation regarding the communications and information society. However, there are still challenges for policymakers caused by convergence and ultra-fast developments in the sector.

Generally, Estonia follows European policies, and has successfully implemented the various pieces of EU legislation into national law. One shortcoming concerns the rules on data retention by communications service providers, which are based on an invalid directive and have not been revoked from national law.

97 https://geenius.ee/uudis/tarbijakaitseamet-ja-tehnilise-jarelevalve-amet-liidetakse-uheks/.

98 https://www.ttja.ee/et/uudised/ttja-andis-valja-uued-raadioteenuse-osutamise-tegevusload.

Chapter 10

LATVIA

Andris Tauriņš and Madara Meļņika[1]

I OVERVIEW

ICT is one of the driving forces of the Latvian economy. In 2017, 6,559 companies[2] with 33,990 employees[3] contributed to 4.2 per cent of national GDP,[4] while in 2018 the export of computer and IT services generated €12,733.5 million in revenue.[5]

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.

The year 2019 has been marked by severe disagreements between public broadcasters and the National Electronic Mass Media Council, which functions as a platform for debate regarding the independence and future of public media. Moreover, due to the changes regarding the regulations on advertising, problems have arisen also regarding the financial situation of the public media.

II REGULATION

i The regulators

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

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/ITG230.px/table/tableViewLayout1/?rxid=a39c3f49-e95e-43e7-b4f0-dce111b48ba1.

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

5 Data available at https://data1.csb.gov.lv/pxweb/lv/zin/zin__ikt_sektors/ITG270.px/table/tableViewLayout1/.

Electronic communications

The Public Utilities Commission (Regulator)[6] is an autonomous body that, inter alia, regulates business activities in the electronic communications sector and protects users' rights from a technological perspective. The Regulator's actions are based on the Law On Regulators of Public Utilities[7] (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.[8] To do this, the Regulator assigns usage rights (licences) of scarce resources: RF spectrum and numbering.[9] Additionally, it registers ECS providers, evaluates draft tariffs submitted by providers,[10] acts as an out-of-court body to resolve disputes where providers are involved[11] and carries out other tasks provided by law.

However, according to the Electronic Communications Law[12] (ECL), the Electronic Communications Office (ECO) is mainly responsible for the administration of the RF spectrum and numbering resources.[13] ECO provides electromagnetic compatibility, assigns RFs for the operation of radio equipment, and undertakes other tasks as provided by law.[14]

Media

The other primary regulator, the National Electronic Mass Media Council (NEMMC),[15] is also an autonomous institution. It monitors the legality of the content of electronic mass media.

On the basis of the Electronic Mass Media Law[16] (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.[17] Additionally, it develops and approves the National Development Strategy of the Electronic Mass Media Sector.[18]

The NEMMC has considerable powers regarding the public electronic mass media. Upon consultation with the public electronic mass media, it develops and approves annual

6 See https://www.sprk.gov.lv/.

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

8 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.

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

10 Article 19(2) of the LORPU.

11 Article 32(1) of the LORPU.

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

13 Article 4(2) of the ECL.

14 Article Section 6(1) of the ECL.

15 See https://NEPLPadome.lv.

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

17 Article 60(1) of the EMML.

18 Article 60(3) of the EMML.

plans for programmes.[19] Additionally, it develops and approves the statutes of the public electronic mass media,[20] determines the allocation of the state budget subsidy and the resources granted in the annual Budget,[21] and appoints and dismisses the boards[22] 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.[23]

ii Main sources of law

The main sources of law in the field of electronic communications are the above-mentioned Law On Regulators of Public Utilities from 2001, the Electronic Communications Law from 2004 and the Electronic Mass Media Law from 2007. The Law On the Press and Other Mass Media from 1990 contains the norms applicable to mass media.

Additionally, more detailed regulations are contained in the specific regulations issued by the Regulator or the Cabinet of Ministers. Some examples of these regulations are the Decision of the Council of the Public Utilities Commission No. 1/35 'General authorisation conditions in the electronic communications sector' of 20 December 2018,[24] Cabinet of Ministers Regulation No. 24 'Regulations on the State Fee for the Issuance of a Broadcasting Permit and the Review of the Basic Conditions, the Issuance and Re-Registration of a Broadcasting Permit, and the Supervision of the Exercise of Broadcasting Rights' of 9 January 2018,[25] Cabinet of Ministers Regulation No. 1226 'Regulations Regarding Types of Regulated Public Utilities' of 27 October 2009,[26] Decision of the Board 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),[27] among others. The Regulations regarding the general authorisation conditions are updated regularly.

iii Regulated activities

As stated in the LORPU, licences have to be acquired only by the 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.[28]

19 Article 62(1) of the EMML.
20 Article 62(4) of the EMML.
21 Article 62(3) of the EMML.
22 Article 62(5) of the EMML.
23 Article 62(7) of the EMML.
24 Available at https://likumi.lv/ta/id/303972-visparejas-atlaujas-noteikumi-elektronisko-sakaru-nozare.
25 Available at https://likumi.lv/doc.php?id=296448.
26 Available at https://likumi.lv/ta/en/en/id/199830-regulations-regarding-types-of-regulated-public-utilities.
27 Available at https://likumi.lv/ta/en/en/id/295646-regulations-regarding-the-registration-of-electronic-communications-merchants-and-the-list-of-electronic-communications-networks-and-services.
28 Article 181(1) of the LORPU.

Electronic communications

Providers of ECSs do not need a licence, but only a general authorisation.[29] This regulation follows the Access Directive.[30]

Under the Regulations on Registration, providers must send a notification before 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 register[31] available on the website of the Regulator.[32]

On 20 December 2018, the classification of the above-mentioned services was amended by including a direct reference to the fact that notification must also be sent before the provision of the services offered through the virtual mobile electronic communications network.[33]

RF spectrum can be utilised for radio equipment operations after the receipt of an RF assignment use permit from ECO or in accordance with a common RF assignment use permit.[34]

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.[35] 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.[36]

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.[37]

29 Article 32 and following of the ECL.
30 Access Directive (2002/19/EC).
31 Article 18.1(3) of the LORPU.
32 Available at https://www.sprk.gov.lv/lapas/komersantu-pakalpojumi67.
33 https://likumi.lv/ta/id/303973-grozijumi-sabiedrisko-pakalpojumu-regulesanas-komisijas-2017-gada-30-novembra-lemuma-nr-1-32-noteikumi-par-elektronisko-sakaru-...
34 Article 50 of the ECL.
35 Article 15(4) of the EMML.
36 Article 17(1) of the EMML.
37 Article 18(6) of the EMML.

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.[38]

iii Ownership and market access restrictions

A foreign company can send the necessary registration notification and carry out the business of providing electronic communications services if it is established as a commercial business in any EU Member State or has established a subsidiary in Latvia. The registration notice also requires the company to identify itself using its united registration number.

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.

Corporations that are the owners of the media are obliged to inform the commercial registry authority of their beneficial owners in the cases and according to the procedure prescribed by the Commercial Law.

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.[39] Likewise, permissions and rights to broadcast[40] 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.[41]

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.[42] 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.[43]

38 Article 19(1) of the EMML.

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

40 Article 15(2) of the EMML.

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

42 Article 15(2) of the Competition Law.

43 Article 15(21) of the Competition Law.

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.[44]

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.[45]

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,[46] and a memorandum of mutual understanding on the further development of these companies was signed in July 2018.[47] Nevertheless, some players in the field still believe that the merger of these companies is inevitable.[48] This was supported by the fact that on 9 May 2019 the relevant shareholders – the ministries of the Republic of Latvia and the company Telia Company – again debated on the merger.[49]

Another topic of considerable discussion is the merger of public media companies.[50]

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.

ii Universal service

The regulations regarding universal services obligations[51] have been implemented in Latvia through the ECL[52] 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

44 Article 16(3) of the Competition Law.

45 Article 17(1) of the Competition Law.

46 Information available: https://www.diena.lv/raksts/latvija/zinas/ceturtdien-apspriesta-_tet_-un-lmt-apvienosana-14219250.

47 ibid.

48 ibid.

49 ibid.

50 Information available at www.delfi.lv/bizness/uznemumi/roke-butu-bistami-apvienot-sabiedriskos-medijus.d?id=49341615.

51 Directives Nos. 2002/22/EC and 2009/136/EC.

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

rates that are sufficient to provide internet access all over Latvia.[53] 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.[54]

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 that have a significant market power.[55]

Prerequisites for providing services

To receive permission to provide services, providers must comply with the general rules regarding the electronic communications field.[56] 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.[57]

Theoretically, service providers are free to choose which services they provide. However, the ECL regulates the minimal content of contracts between providers and users.[58] 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.[59] Providers must also not facilitate access to information on the internet the distribution of which is prohibited in accordance with regulatory enactments.[60] Also the norms regarding consumer protection and the prohibition of unfair commercial

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

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

55 Article 60(2) of the ECL.

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

57 Article 33(3) of the ECL.

58 Article 22(3) of the ECL.

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

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

practice apply. 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 that 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.[61]

All other ECS providers are not obliged to monitor the transmitted information or search for circumstances indicating the transmission of illegal content.[62]

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 the 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.[63]

End users and subscribers have equal rights to receive ECSs, and they have the right to choose several ECS providers simultaneously.[64] 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 the service supplier, and interoperability with other ECS providers' services.[65] Owners of private ECNs have a duty to ensure the interoperability of their network if such private network is connected to the public ECN.[66] Additionally, the Regulator has the right to fairly, proportionally and with equal treatment impose obligations regarding access and interconnections upon ECS providers to ensure the access necessary to end-users.[67] The Regulator has the same right regarding the obligation on public ECN operators to ensure access to application software interfaces and electronic programme guides.[68]

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

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

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

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

65 Article 67(1) of the ECL.

66 Article 26 of the ECL.

67 Article 36(1) of the ECL.

68 Article 36(2) of the ECL.

iv Privacy and data security

Decisions on the basis of national security

On 20 June 2018, amendments to the EMML were adopted to strengthen Latvia's information space.[69] 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.[70] 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.[71] On 31 January 2019, the NEMMC adopted the decision to prohibit the retranslation and distribution of 'Rossia RTR' in the territory of Latvia for three months.[72] However, the decision was deficient as it explicitly prohibits only the retranslation of 'Rossia RTR', while the same content could be and has been provided also in other programmes, such as 'RTR Planeta' and 'Rossiya-24'.[73]

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.[74] 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)[75] 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 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, based on the National

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

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

71 Information available at https://lvportals.lv/dienaskartiba/295735-neplp-ar-eiropas-komisiju-apspriez-rossija-rtr-ierobezosanu-2018.

72 Information available at https://neplpadome.lv/lv/sakums/padome/padomes-sedes/sedes-sadalas/neplp-aizliedz-retranslet-"rossija-rtr"-latvijas-teritorija.html, the decision available at https://www.neplpadome.lv/lv/assets/documents/Lemumi/Lemums%2012%20par%20Rossija%20RTR%20ierobezosanu.pdf

73 Information available at https://nra.lv/latvija/271932-rossija-rtr-aizliegums-neprecizs-liela-dala-operatoru-to-var-ignoret.htm

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

75 See: https://cert.lv/en/about-us.

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.[76] In addition to regulations mentioned above, in summer and autumn 2019 the Cabinet of Ministers debated on the Latvian Cybersecurity Strategy for 2019 to 2022.[77] Taking into account the priorities set by the European Union and the objectives set out in national policy planning and other documents, the guidelines outline five fields of action for the period up to 2022:

a promoting cybersecurity and reducing digital security risks;,
b resilience of ICTs, strengthening of provision of ICTs and services critical to society;
c public awareness, education and research;
d international cooperation; and
e cyber justice and the reduction of cybercrime.[78]

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.

On 25 October 2018, the LSIT was amended to implement Directive 2016/1148.[79, 80] The amendments establish 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 October 2018, the Constitution Protection Bureau stated that within the past few years the Russian military intelligence service had repeatedly attacked targets in Latvia, including the defence and foreign affairs sectors. Some of the attacks had also been targeted towards the media.

76 Prime Minister Order No. 146 of 28 May 2017 On the National Information Technology Security Board.
77 Information available on http://tap.mk.gov.lv/lv/mk/tap/?pid=40466584&mode=mk&date=2019-07-09.
78 Guidelines 'Latvian Cybersecurity Strategy for 2019 to 2022', version of 22.11.2018 11:11.
79 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.
80 Information available at https://likumi.lv/ta/id/302455-grozijumi-informacijas-tehnologiju-drosibas-likuma.

On the day of 13th Saeima (parliamentary) elections, attacks were carried out on the Latvian social network 'draugiem.lv'[81] as well as some email systems, websites and network infrastructure in the public sector. However, no politically motivated cyberattacks, carried out by the Russian military intelligence service, which would have had an impact on the elections, had been observed.[82]

Data security

To maintain high professional standards in the processing of personal data in the electronic communications sector and to develop new societal services and technologies, while respecting individuals' rights to data protection and privacy, in May 2019, the Latvian Information and Communication Technology Association (LICTA) published the guidelines for personal data processing.[83] These guidelines specify how the requirements of the GDPR must be applied to the specific nature of personal data processing within the electronic communications.

Fraud

To limit the number of cases of fraud in the electronic communications sector using numbering, on 11 February 2019, the Regulator modified the Numbering Fraud Prevention Rules. This was done taking into account the growing variety of fraudulent practices and the pleas of the businesses that had suffered from such fraud.

The rules supplement and clarify the signs of fraud, as well as explaining the necessary conduct of the victim in cases of suspected fraud, both nationally and internationally.[84]

Criminal law measures

Unauthorised access to automated data processing systems is prohibited by Article 241 of the Latvian Criminal Code,[85] while Article 243 stipulates liability for interference with the operation of automated data processing systems and illegal actions with the information included in such systems. The Criminal Code also prohibits illegal operations with devices that could influence automated data processing systems,[86] violation of the safety provisions of information systems[87] and other TMT-connected crimes.

IV SPECTRUM POLICY

i Development

For many years, there was a fee for the usage of spectrum. A significant change was its revocation in 2014. The respective amendments were made because the ECL provided (and still provides) that ECO collects a fee for provided public paid services, including a monthly

81 Information available at https://skaties.lv/zinas/latvija/atjaunota-kiberuzbrukuma-cietusas-draugiem-lv-majaslapas-darbiba/.

82 Information available at https://www.lsm.lv/raksts/zinas/latvija/sab-krievijas-specdienests-pedejos-gados-uzbrucis-latvijas-kibertelpai.a295244/.

83 Information available at https://www.dvi.gov.lv/lv/zinas/likta-vadlinijas-fizisko-personu-datu-apstrade/.

84 Information available at https://www.sprk.gov.lv/index.php/events/regulators-velas-ierobezot-krapniecibas-gadijumus-elektronisko-sakaru-nozare.

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

86 Articles 244 and 2441 of the Latvian Criminal Code.

87 Article 245 of the Latvian Criminal Code.

payment for the provision of the electromagnetic compatibility of radio equipment.[88] 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.[89]

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.[90] All other limitations in law apply regarding the transfer of the 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.[91]

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.[92]

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

iii Broadband and next-generation mobile spectrum use

In 2017, 4G coverage reached 98 per cent of households in Latvia.[93] 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.[94] Latvia is also named as one of the top OECD countries for mobile data usage.[95]

In 2018, more than half of all download speed measurements in the territory of Latvia exceeded 30Mbit/s. Also the quality of the signal has been described as outstanding when

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

89 Article 12 of the ECL.

90 Article 47(31) of the ECL.

91 Article 47(61) of the ECL.

92 Article 47(51) of the ECL.

93 Digital Economy and Society Index (DESI) 2018 Country Report – Latvia.

94 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.

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

looking at such parameters as latency, jitter and packet loss ratio. In this manner, as noted by the Regulator 'the mobile internet quality indicators mark the further development of technology, both by improving and expanding the existing 4G technologies, as well as by providing a suitable platform for the gradual transition to the latest 5G technology.'[96]

In 2012, however, there still were 363 white territories that needed the development of the optical network.[97] 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.[98] It was amended in 2016[99] 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.[100] 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.[101]

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.[102] 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.[103] On 11 January 2019, the Regulator annulled the rights of Lattelecom to use the specified bands after 1 January 2021.[104]

On 19 June 2019, LMT started the provision of 5G network in Latvia. Similarly, on 18 June 2019, its competitor company 'Tele2' had already started the 5G base station to

96 Information available at https://infogram.com/id-qualityreport_2018_summary-1h0n250ee0nz4pe?live.

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

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

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

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

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

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

103 Information available at www.sam.gov.lv/sm/content/?cat=433.

104 Information available at https://www.sprk.gov.lv/events/regulators-anule-radiofrekvencu-spektra-lietosanas-tiesibas-sia-lattelecom.

provide the network within a business centre. Thus Latvia was one of the first countries in the world to lauch the 5G network. Additionally, Latvian firm MikroTik has announced the production of 5G internet routers in Latvia.[105]

In 2018 and 2019, 27 Latvian municipalities were awarded financing from the European Commission to create WiFi points in their territories.

Spectrum auctions and fees

The right to use radio spectrum bands is acquired via auctions. In August and September 2018, an auction took place for the allocation of rights for use of the 3,550MHz–3,600MHz spectrum band.[106]

Since 2014, no spectrum fee exists.[107] 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.

V MEDIA

i Regulation of media distribution generally

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.[108]

Providers must respect human rights and defend the idea of a democratic and independent Latvia.[109] All television broadcasts in foreign languages, with specific exceptions, must be provided with subtitles in Latvian,[110] while films must have either an audio translation or subtitles.[111] If a public electronic medium creates and distributes television news broadcasts

105 Information available at www.la.lv/tiesraide-no-rigas-un-liepajas-latvija-tiek-palaists-pirmais-5g-internets-lmt-tikla.
106 ibid.
107 Amendments in the Law on Taxes and Duties of 19 December 2013.
108 Article 26 of the EMA.
109 Article 24(2) of the EMA.
110 Article 28(4) of the EMA.
111 Article 28(3) of the EMA.

in a foreign language, a summary must be provided in the form of a line in the national language.[112] 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.[113]

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.[114]

Emerging platforms are treated differently from traditional media outlets. While the traditional outlets are considered as media, regulated by the Law on Press,[115] platforms that are not registered as mass media or in their style are not identical to online news portals[116] do not fall under the scope of this law. By now the criteria of an identical style, developed by the Supreme Court, have been applied only to platforms that work in cooperation with printed magazines, or which are publicly recognised as trustworthy news portals.[117] Therefore, it is not known whether these criteria could be applied also to fight against the fake news outlets.

In 2017, Parliament adopted at first reading a draft Law on Public Electronic Media and its Management, which provides for a new and separate regulation for public electronic media, addressing their governance, financing, supervision and other issues. Initially, the bill was scheduled to be adopted by mid 2017, but in June 2019, the bill was on its second reading.

ii Internet-delivered video content

Latvian television provides access to many of its programmes on the Latvian Public Media portal.[118] The same practice is evolving in some other television stations.[119] 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 a 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.

Many smart-television options are also offered to consumers in Latvia. Non-linear services have specific regulations within the EMMA. These regulations include, for example, the duty to ensure that minors under normal conditions cannot access the services that might seriously impair their physical, mental and moral development.

Since 2018, the NEMMC has the rights to limit access to websites that provide audiovisual content illegally. In August 2019, the NEEMC carried out a massive inspection of internet websites to find such channels. So far it has resulted in the blocking of two internet web pages, by restricting the use of their domain names until 15 January.[120]

112 Article 28(5) of the EMA.

113 Article 32(1) of the EMA.

114 Article 21.1(1) of the EMA.

115 Law On the Press and Other Mass Media of 20 December 1990.

116 17 October 2012 Judgment of the Supreme Court of the Republic of Latvia No SKC-637/2012.

117 26 November 2015 Judgment of the Limbazi District Court in case No. C27200514; 21 December 2o17 Judgment of the District Administrative Court, Archive No. A42-01972-17/14; 28 January 2015 Judgement of the Riga Regional Court in the case No. C30761212.

118 See: https://www.lsm.lv/.

119 See: https://tvplay.skaties.lv.

120 Source: https://www.neplpadome.lv/lv/sakums/padome/padomes-sedes/sedes-sadalas/neplp-ierobezo-majaslapas-www.peers.tv-un-www.edem.tv.html.

VI THE YEAR IN REVIEW

The year 2019 can be marked as one of public media crisis.

Up to 2019, the EMML stated that the boards of public electronic media were to be appointed and removed by the NEMMC. Any person with a good reputation, high-level education and at least five years' professional experience in the field of media or business could be appointed as a board member. In spring 2019, the NEMMC appointed two new members of the Board of the National Television (LTV). This decision was opposed[121] by the Latvian Journalists Association and other media representatives, who claimed that the chosen members of the board were not qualified enough as they did not have any media work experience. The chosen board members resigned[122] and the NEMMC amended the statutes of the Board of the National Television stating that the Board is made up of one person.[123]

As a reaction to these events,[124] on 20 June 2019, Parliament adopted amendments to the EMML, which clarify both the requirements for the members of the public media board and their selection procedure, as well as the procedure for the recall of the board. With the amendments[125] the competences of the NEMMC have been limited, especially due to the creation of the Nomination Commission for Public Media Board Members.

This is one of the examples of disagreements between the NEMMC and the media. Additionally, in May 2019, the NEMMC initiated an administrative case against one of the commercial television stations in Latvia. The core of the proceeding was the distribution of the critical opinion, expressed by the State Audit Office of the Republic of Latvia, regarding the NEMMC. The politicians highly criticised this decision to initiate the proceedings by as it seemed that the law was being used to oppress the freedom of expression.[126]

Another important question has been the public radio crisis. On 15 July 2019, following the critical statements and the expression of distrust by the radio journalists,[127] the Board of the Latvian Radio announced a human resources and financial crisis in the media.[128] It was stated that at present, lack of funding critically endangers the ability to provide high-quality, objective and diverse information in sufficient quantities. The consequences of bad governance, as alleged by the journalists, was worsened by the decision in 2018 regarding the withdrawal of public media from the advertising market. Another financially negative effect was caused by the amendments to the Consumer Protection Law prohibiting the advertisement of consumer loans in the public media. Therefore, in August 2019, the

121 Information available at https://www.lsm.lv/raksts/zinas/latvija/latvijas-radio-zurnalisti-aicina-neplp-anulet-ltv-valdes-konkursa-rezultatus.a315339/.

122 Information available at https://www.lsm.lv/raksts/zinas/latvija/ltv-jaunieceltie-valdes-locekli-atsakas-no-amatiem.a315342/.

123 Information available at https://www.lsm.lv/raksts/zinas/latvija/neplp-samazina-ltv-valdes-loceklu-skaitu--mediju-vadis-viens-cilveks.a317059/.

124 Information available at https://www.diena.lv/raksts/latvija/politika/saeima-rosina-mainit-sabiedrisko-mediju-valdes-loceklu-atlases-kartibu-14220911.

125 Amendments of 20 June 2019.

126 See, for example, www.la.lv/to-var-saukt-par-noderigu-nepratu-rinkevics-komente-neplp-versanos-pret-tv3; www.la.lv/pavluts-rodas-iespaids-ka-neplp-likuma-normu-izmanto-mediju-brivibas-ierobezosanai.

127 Information available at https://www.lsm.lv/raksts/zinas/latvija/latvijas-radio-zinu-dienests-izsaka-neuzticibu-radio-valdei.a325190/.

128 Information available at https://www.lsm.lv/raksts/zinas/latvija/latvijas-radio-valde-pazino-par-krizi-medija-prasa-papildu-teju-miljonu-eiro.a325652/.

NEMMC had to demand €10 million extra funding from the state for the stabilisation of the financial situation of the public broadcaster.[129] However, there is no clarity regarding the long-term solution yet. Additionally, even the additional budget does not solve the disagreements between the radio journalists and the board regarding the political influence on the content.[130]

On another note, in September 2018, the Baltic Transport Ministers signed a memorandum of understanding on the development of connected and automated driving and 5G technologies along the Via Baltica corridor. The purpose of this memorandum is to promote connected automated driving with the aim of supporting sustainable mobility, improving road safety and promoting innovation. In addition, it is in line with one of the three strategic objectives set by the European Commission for the rollout of electronic communications networks by 2025 (i.e., to provide 5G in all major cities for continuous highways).[131]

i Mergers, acquisitions and licensing

In 2019, there were no important mergers in the field of TMT. The only merger that was somewhat connected to electronic communications was between ALSO Holding AG, which owns Latvian registered companies, engaged in the provision of computer programming services and the wholesale of computers, their peripherals and software, and Solytron Bulgaria OOD, a company active in the wholesale of information and communication technology.

In 2018, the key TMT field merger was between SIA Bite Latvija, SIA Stream Networks and SIA LATNET SERVISS.[132] 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.

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 the decision regarding the temporary blocking of Rossia RTR channel and the following debates on the legality of their statements regarding the newly elected President of Latvia,[133] as well as the declarations by the Security Police, Central Election Commission and other institutions regarding the Parliamentary elections. On 18 June 2019, the NEMMC demanded additional amendments to the EMMC, which would change the way in which the NEMMC may derogate from the country of origin principle and restrict the retransmission and distribution of programmes in the territory of Latvia.[134]

129 Infomation available at https://www.delfi.lv/news/national/politics/aicina-valdibu-pieskirt-ap-10-miljoniem-eiro-situacijas-stabilizesanai-sabiedriskajos-medijos.d?id=51366261.

130 Information available at https://www.lsm.lv/raksts/zinas/latvija/saeima-sagaida-aktivu-neplp-ricibu-konflikta-risinasana-latvijas-radio.a326686/.

131 Information available at www.sam.gov.lv/satmin/preview/?cat=433&action=print&.

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

133 Information available at https://www.neplpadome.lv/lv/sakums/padome/padomes-sedes/sedes-sadalas/neplp-konstate-naida-runu-%E2%80%9Crossiya-24%E2%80%9D.html.

134 Information available at https://www.lsm.lv/raksts/zinas/latvija/neplp-iesniedz-saeima-likuma-grozijumus-informativas-telpas-drosibas-stiprinasanai.a322802/.

Also important are the disagreements between NEMMC and the public media[135] regarding issues of media independence and the competence of the NEMMC as well as the discussions regarding the financial future of the public media. Some of the issues could be solved by the new Law on Media, which should be actively debated in Parliament this year.

Additionally, the communications companies are strongly focusing on the creation of 5G network infrastructure. Noteworthy is the cooperation between two telecomunications companies Bite and Tele2, which have agreed to share the network infrastructure.[136] This partnership is expected to boost the 5G network development process, benefit the economies in Latvia and Lithuania and also enable companies to increase service quality and optimise each party's network infrastructure maintenance and development costs. This agreement is the first of its kind in the Baltic region and currently it is under the scrutiny of the regulators.

VII CONCLUSIONS AND OUTLOOK

In the field of media, the actual implementation of a decision that the public media will exit the advertisement market from 2021 is being discussed. This decision has already created severe financial challenges for the public media. It is necessary to find a permanent source of financing that would not depend on the political situation and would not make the media vulnerable.

Additionally, it is yet not known how the disagreements between the public media, politicians and the NEMMC, as well as the crisis of trust in the Latvian Radio, will turn out.

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

135 Information available at https://www.lsm.lv/raksts/zinas/latvija/mediju-eksperte-rozukalne-neplp-sevi-diskreditejusi.a327519/.

136 Information available at https://www.lsm.lv/raksts/zinas/ekonomika/tele2-un-bite-vienojusas-par-tiklu-koplietosanu-latvija-un-lietuva.a321182/.

Chapter 11

LITHUANIA

Stasys Drazdauskas[1]

I OVERVIEW

An effective innovation system, which would encourage the growth of an innovative economy, is seen by the Lithuanian government as a strategic objective. Lithuania is focused on the development of high-level scientific knowledge, scientific research, experimental development, as well as fostering innovative business, intersectoral business cooperation and technology transfer.

Lithuania is particularly strong in the health and biotechnology area (worth about 1 per cent of the GDP),[2] where the government is continuously committed to provide support. Photonics is another advanced area in Lithuania, where 700 specialists are employed in the laser industry.[3] In fintech, with the support of the Lithuanian Bank, Lithuania is experiencing the emergence of many new pilot projects, such as the Fintech Sandbox, Blockchain Sandbox, Open Banking Sandbox and Energy Sandbox.[4]

Advancement in the aero cosmic field, particularly driven by the successful launch of the first Lithuanian nano satellites, inspired the government to adopt the Aerocosmos development programme for 2016–2020.[5]

Information technology sector production in Lithuania is close to €2 billion, which to a large extent is driven by software engineering, programming and consulting services, where over 31,000 IT specialists (18,100 software developers) are employed (about 2.3 per cent of the total workforce in Lithuania).[6] Business service centres established by Barclays, Daskebank, WesternUnion, SEB, skandia, Paroc, Swedbank and Euromonitor international account for a large portion of the IT workforce in Lithuania.

Electronic communication market revenue grew by 0.5 per cent in 2018.[7] At the end of 2017 there were 4.3 million active mobile communication subscribers (149 per cent of the total Lithuanian population). The internet is used by almost 80 per cent of the population, and average broadband speeds are 50MB/s with fast public WiFi.

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1 Stasys Drazdauskas is a counsel at Sorainen.

2 https://investlithuania.com/wp-content/uploads/2018/02/Biotech-in-Lithuania.pdf.

3 https://investlithuania.com/wp-content/uploads/2017/09/Photonics-in-Lithuania.pdf.

4 https://investlithuania.com/wp-content/uploads/2018/05/Technology-in-Lithuania.pdf.

5 http://ukmin.lrv.lt/lt/veiklos-sritys/inovaciju-veiklos-sritis/inovaciju-strategijos-ir-programos.

6 https://osp.stat.gov.lt/statistikos-leidiniu-katalogas?p_p_id=101&p_p_lifecycle=0&p_p_state=maximized&p_p_mode=view&_101_struts_action=%2Fasset_publisher%2Fview_content&_101_assetEntryId=4756134&_101_type=content&_101_urlTitle=informacines-technologijos-lietuvoje-2016-leidinio-pristatymas-&inheritRedirect=true https://investlithuania.com/lt/prioritetiniai-sektoriai/technologijos/.

7 https://www.rrt.lt/wp-content/uploads/2019/09/Ataskaita_2019_II_ketvirtis.pdf.

The use of electronic governance services in Lithuania grew to 48 per cent of the total residents. In the area of electronic governance Lithuania ranked in 11th place in Europe in 2017.[8]

II REGULATION

i The regulators

Electronic communications is one of the most regulated technology areas in Lithuania. The Law on Electronic Communications (LEC)[9] transposes the EU regulatory framework for electronic communications. On the basis of the LEC further government regulations have been adopted to regulate certain more technical or more detailed issues of the framework.

The Communications Regulatory Authority[10] is the main regulator in the electronic communications area, and is also responsible for adoption of a number of delegated legal acts, as well as supervisory measures (market review, imposition of measures for entities with significant market power, etc.).

The LEC applies to electronic communication services, the definition of which is equivalent to the EU Framework Directive, public communication networks, universal services, as well as governance of electronic communication resources (frequencies, numbering plan). The law also contains provisions on privacy in electronic communications, transposing the e-Privacy Directive.

Information society services are regulated by the Law on Information Society Services,[11] transposing the Directive on electronic commerce, which is based on non-discrimination, technological neutrality, functional equivalency and other principles. Liability exemptions for transmission service, caching service, and hosting service providers are established, without imposing a general obligation for providers to monitor stored or transmitted information.

Media services are regulated by the Law on Provision of Information to the Public (LPIP).[12] The law establishes the procedure for collecting, producing, publishing and disseminating public information and the rights, duties and liability of producers and disseminators of public information, their participants, journalists and institutions regulating their activities. The law establishes licensing and notification requirements for broadcasting (TV, radio) organisations, limitations on ownership, requirements for media content, programme composition, language, advertising restrictions, ethics, etc.

The media area is supervised by an independent regulatory authority – the Radio and Television Commission (RTC).[13] The RTC is responsible for licensing of radio and television broadcasting and rebroadcasting activities, notification procedures, approval of ownership transfers, monitoring and supervision of content control, and advertising requirements.

8 https://ivpk.lrv.lt/lt/naujienos/auga-elektroniniu-budu-teikiamu-paslaugu-skaicius.

9 Latest English version: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/05cd4e020f0a11e7b6c9f69dc4ecf19f?jfwid=-502q00eth.

10 Website: https://www.rrt.lt/en/.

11 https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.277491/FGVmSopPwK.

12 Latest English version: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/c4a1511305c611e8802fc9918087744d?jfwid=-502pzze92.

13 Website: https://www.rtk.lt/en/.

Other regulatory bodies that may exercise supervision over ECS providers pursuant to their competence include (not exhaustively) the State Consumer Rights Protection Authority, the State Data Protection Inspectorate, the Competition Council, and the Inspector of Journalist Ethics.

ii Main sources of law

The main sources of law in the field of electronic communications are the Law on Electronic Communications, the Law on Information Society Services and the Law on Provision of Information to the Public.

More detailed regulations are contained in the specific regulations issued by the Communications Regulatory Authority or the government, for example, Order No. 1V-340 of the Communications Regulatory Authority regarding General Terms on Engaging in Electronic Communication Activities and Order No. 1V-125 of the Communications Regulatory Authority on Allocation of Spectrum for Broadcasting Radio and Television Programmes.

iii Regulated activities

Under the LEC, the provision of public communication (fixed, mobile and over electricity networks) networks or services, as well as public satellite communication networks and services is subject to a prior notification obligation. The notification form is publicly available on the website of the Communications Regulatory Authority (CRA).[14]

All public communication service providers who engage in the provision of public communication networks and services, dedicated lines, internet access, data transfer services, television (satellite, cable, multi-channel microwave, digital terrestrial, IPTV) services, cable radio services, optical fibre network services, and TV and radio transmission services are subject to quarterly reporting obligations. The reporting form is publicly available on the website of the CRA,[15] which can be submitted electronically.

There is no requirement for communication service providers to be established or registered locally.

RFs are assigned by the CRA in accordance with the approved national plans. They can be assigned directly to the applicant, or by way of a public auction (e.g., in case of mobile communications networks). Telephone numbers are distributed according to the national numbering plan.

The RTC is responsible for licensing of radio and TV broadcasting and rebroadcasting activities. Licences are required for radio and TV broadcasting via terrestrial stations or networks, cable networks, multi-channel microwave networks, and networks the main purpose of which is not radio or TV broadcasting. Broadcasting via websites or web portals is not subject to licensing. Other broadcasters or subscription media service providers are subject to notification requirements.

14 https://www.rrt.lt/wp-content/uploads/2018/07/Pranesimo-apie-elektroniniu-rysiu-veikla_forma_.doc.

15 https://www.rrt.lt/wp-content/uploads/2018/07/ketvirtines-ataskaitos-forma_2017.xlsx.

iv Ownership and market access restrictions

In Lithuania, there are no general ownership restrictions for communication services providers. However, where national radio spectrum is allocated via public auction, participants usually are required by the CRA to comply with European and transatlantic integration criteria (i.e., entities must be established in countries of the EEA, EFTA, OECD or NATO).

The Law on Companies having Strategic Importance for National Security[16] recognises information technology and telecommunications and other high technologies as economy sectors having strategic importance for national security. When an investor in this sector acquires ownership of more than one-quarter of the entity of the strategic sector, this acquisition must be notified to the Commission on Coordination of Security for Objects of Importance for National Security.

Radio and TV broadcasting licence holders may be owned by entities, who comply with certain restrictions. Licence holders cannot be owned by state or municipal institutions, governmental organisations, companies owned by the government or municipalities, banks, and political parties. Licence holders must also comply with reputation requirements (i.e., absence of criminal convictions for management or owners). Licence holders can be owned only by entities established in the EU or NATO, and which had no relations with entities or governments outside the EU or NATO that would pose a threat to national security.

Local and regional public information disseminators (newspapers, journals) must report their ownership to the RTC.

The telecommunication, media and technology sectors are also subject to general concentration controls from the perspective of competition law. In certain cases, an acquisition transaction may require notification and approval from the Competition Council.

In general, Lithuanian law does not limit market access, except for the limitations specified above.

v Transfers of control and assignments

Telecommunication service providers are usually not subject to ownership change notifications or approvals.

A change in the ownership of at least 10 per cent in the radio or TV broadcasting licence holder requires prior consent from the RTC. Prior to the ownership change, the licence holder has to apply to the RTC for consent and provide all information required to prove the reputation and origin of the new owner. Consent is granted usually within one month. In the event a concentration permit is required from the Competition Council, the consent is only issued after the permit is granted by the Competition Council.

The Commission on Coordination of Security for Objects of Importance for National Security reviews notifications regarding compliance of the investors with the restrictions of the Law on Objects having Strategic Importance for National Security and must adopt its conclusions within 15 days after receipt of notification.

16 https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.189498/HJFvQfiJZU?jfwid=-502pzz0ei.

III TELECOMMUNICATIONS AND INTERNET ACCESS

i Internet and internet protocol regulation

The LEC does not contain rules dedicated specifically to internet or IP-based services. Certain electronic communication services, which are based on IP technology (e.g., VoIP), are subject to the same regulatory regime as other public access telecommunication services. For example, services that include inbound and outbound call services qualify as equivalent to public access telecommunication service, and the same legal and regulatory regime applies to such services. Call services provided via PSTN, ISDN based on IP, coaxial based on IP, STP or UTP based on IP, FTTP based on IP, GSM technology based fixed line services all qualify as substitute services by the CRA.

The CRA is supervising the implementation of Regulation (EU) 2015/2120 on open internet access and the BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules.[17]

Information society services (other than electronic communication services) are subject to the regulation of the Law on Information Society Services, which is based on the principles of technological neutrality and non-discrimination. Information society service providers are required to provide the following directly and permanently accessible information to the recipients of the service:

a the name of the service provider;
b the service provider's registered address;
c contact details, including the electronic mail address;
d the register, where the service provider is registered, and registration number;
e supervisory authority; and
f VAT payer code.

If reference is made to the fee charged for the service, information on whether the fee includes taxes and delivery charges must be provided.

Information society service providers who engage in information transmission (mere conduit), caching and hosting service provision are exempt from liability for the information transmitted. Additionally, such information society service providers are not required to monitor information upon the mere transmission thereof or provision of access thereto, temporary storage thereof in cache memory or storage thereof at the request of the recipient of the service, nor is the service provider obligated to actively seek facts or circumstances indicating illegal activity. However, these information society service providers are required to remove illegal content once they are notified by the right holders or those affected by the illegal information.

ii Universal service

In Lithuania, universal electronic communication services include provision of a subscriber line, internal calls and foreign calls, and call-box stations. Universal services are provided by Telia Lietuva, AB, a fixed-line communication service provider.

17 https://www.rrt.lt/telefono-rysys-internetas-tv/paslaugu-kainos-kokybe/paslaugu-kokybe-matavimai-zemelapiai/atvira-interneto-prieiga-ir-tinklu-neutralumas/.

iii Restrictions on the provision of service

Price regulation

In Lithuania, the CRA has imposed price limitations to certain providers for universal services, for call termination in public access telephone services, wholesale line rental services, wholesale local fixed access services, wholesale central access for massive market products, mobile call termination services, and broadcasting transmission services.

Access

Communication network service providers have to provide access to their infrastructure in cases where the user of infrastructure cannot implement its right to electronic communication infrastructure, or where the costs of such implementation would be disproportionately high. The network operator is required to conclude the agreement with the user of the infrastructure following the principles of non-discrimination and transparency.

Contracts with consumers

The Lithuanian Civil Code (Article 6.161) qualifies public communication service contracts as public contracts (i.e., public communication service contracts have to be concluded with any customer who applies for the services, where it is technically possible to provide the service). Service providers may not refuse to conclude contracts or to provide discriminatory terms to certain groups of customers. Standard terms on electronic service contracts are controlled by the general contract law provisions as well as specific terms in the LEC.

Net neutrality

Regulation (EU) 2015/2120 laying down measures concerning open internet access is directly applicable in Lithuania. Thus all communications service providers in Lithuania are under the obligation to treat all traffic equally, when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.[18] Observance of net neutrality and open internet access is supervised by the CRA.

Unsolicited phone calls, faxes, emails and texts

Lithuania has implemented the e-Privacy Directive 2002/58/EC[19] in the LEC. The LEC provides the same requirements regarding marketing communications for natural as well as legal persons. Under the LEC, the use of electronic contact details of a natural or legal person for direct marketing is allowed only with the person's prior consent (opt-in).

If a communications service provider obtains the electronic contact details (email, phone number) of a customer, who is a natural or legal person, in connection with selling a product or providing a service, such contact details may still be used for direct marketing of its similar products to the customer if the customer is given, upon the initial collection of

18 Articles 3 and 4 of Regulation (EU) 2015/2120.

19 Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (the Directive on privacy and electronic communications), as amended.

electronic contact details and each time when the buyer's electronic contact details are used for direct marketing, a clear and distinct opt-out opportunity free of charge and in an easy manner; and the customer is allowed to exercise its right to refuse over an ECN.

The exemption described above does not apply to voice calls, or calls placed with automated calling machines.

iv Security

Lithuania adopted the Law on Cyber Security in 2014,[20] which was recently amended to implement EU Directive 2016/1148 (the NIS Directive). The law provides for the requirements for the maintenance of network and information systems essential for the functioning of society and state and local authorities' network and information systems, liability and supervision as well as the bases for the prevention and resolution of cyber incidents.

The LEC provides the obligation for network service providers to retain certain electronic communication data for at least six months, for the purpose of investigation of serious crimes.

As of 25 May 2018, the General Data Protection Regulation (GDPR) has been applicable in Lithuania. This was also of extreme importance in the communications sector, as the general rules set out in the GDPR are also applicable in the communications sector. In addition to the GDPR, Lithuania still has the Law on Legal Protection of Personal Data[21] as amended to comply with the GDPR.

In addition to the GDPR and the Law on Legal Protection of Personal Data, some data protection requirements are also set out in the LEC, in particular related to e-Privacy Directive implementation.

Minors are protected by the Law on Protection of the Underaged from Negative Impact of Public Information, which applies to TV, radio content, as well as advertising, trademarks, computer games and other public information.

IV SPECTRUM POLICY

i Development

The CRA has approved a number of plans for development of radio spectrums (3,410–3,600GHz, 380–385MHz, 390–395MHz, 220–2,300MHz, 2,500–2,690MHz, 2,300–2,400MHz, 3,600–3,800MHz and 790–862MHz).

There is a list of spectrum approved by the CRA, which can be used without authorisation.

Recently the government decided to open the spectrum at 700MHz, which will be used for 5G communication.

The 4G network was developed in Lithuania from 2014.

ii Flexible spectrum use

There is a list of spectrum approved by the CRA, which can be used without authorisation.

20 https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f6958c2085dd11e495dc9901227533ee/aWQzaxBVgy.

21 https://www.e-tar.lt/portal/lt/legalAct/TAR.5368B592234C/VCRurdZydD.

iii Broadband and next-generation mobile spectrum use

Spectrum for mobile networks is traditionally made available by auction to three operators.

Recently the government decided to open the spectrum at 700MHz, which will be used for 5G communication. It is expected to be launched by 2020.

iv Spectrum auctions and fees

The latest spectrum auction was held in 2015 for 880–915MHz, 925–960MHz, 1,710–1,785MHz and 1,805–1,880MHz, where the frequencies were assigned to three MNOs in Lithuania.

The next auctions for developing 5G are likely to be for spectrum around 700MHz.

V MEDIA

i Restrictions on the provision of service

Censorship

Censorship of public information is prohibited in Lithuania. In order to ensure freedom of information, the LPIP prohibits exerting pressure on the producer or disseminator of public information, their participant or a journalist, compelling them to present information in the media in an incorrect and biased manner. The producer, disseminator of public information, their participant or a journalist shall have the right to keep the confidentiality of the source of information and not to disclose it, except where a court orders such disclosure.

Restriction

The LPIP prohibits publication in the media of information that:

a incites to change the constitutional order of the Republic of Lithuania through the use of force;

b instigates attempts against the sovereignty of the Republic of Lithuania, its territorial integrity and political independence;

c spreads war propaganda, instigates war or hatred, ridicule, humiliation, instigates discrimination, violence, physical violent treatment of a group of people or a person belonging thereto on grounds of age, sex, sexual orientation, ethnic origin, race, nationality, citizenship, language, origin, social status, belief, convictions, views or religion;

d disseminates, promotes or advertises pornography or propagates or advertises sexual services and paraphilias;

e promotes or advertises addictions and narcotic or psychotropic substances;

f is slanderous and offensive to a person or degrades his or her honour and dignity; or

g violates the presumption of innocence and impedes the impartiality of judicial authorities.

Language requirements

The LPIP requires public information to be produced and disseminated in the state language. Radio or television programmes that are broadcast in a language other than Lithuanian must be translated into Lithuanian or shown with Lithuanian subtitles, except for educational, occasional, special, music and rebroadcast foreign radio or television programmes or parts of programmes as well as programmes produced by broadcasters of radio or television

programmes intended for the ethnic minorities of Lithuania. Broadcasters of television programmes are prohibited from showing audiovisual works that have been translated from an official EU language into a non-EU language. When rebroadcasting television programmes, rebroadcasters or other persons providing services of dissemination of television programmes or individual programmes via the internet for Lithuanian users must give priority to the official EU languages.

EU content

Broadcasters of television programmes must, where possible, reserve more than half of the television programme time remaining after deducting the time allocated for news, sports events, games and advertising programmes, teletext services and teleshopping for European works. Broadcasters of television programmes must, where possible, reserve at least 10 per cent of the television programme time remaining after deducting the time allocated for news, sports events, games, advertising programmes, teletext services and teleshopping for European works created by independent producers not earlier than within the past five years.

Advertising restrictions

Advertising and audiovisual commercial communications must be decent, correct and readily recognisable. It is prohibited to publish in advertising and audiovisual commercial communications information that degrades human dignity, promotes any discrimination based on race, sex or ethnic origin, nationality, citizenship, religion or belief, disability or age, or contains manifestations or promotion of sexual orientation, is offensive to religious or political convictions or promotes behaviour prejudicial to health or safety or behaviour grossly prejudicial to the protection of the environment.

Advertising of tobacco and alcohol products and audiovisual commercial communications intended for advertising of tobacco and alcohol products is prohibited.

The total time of television advertising spots and teleshopping spots within a given hour must not exceed 20 per cent.

ii Internet-delivered video content

Besides television services, on-demand audiovisual media services are becoming increasingly popular. On-demand audiovisual media services do not require a licence, but do require a notification to be submitted to the RTC.

Most of the biggest TV channels in Lithuania have started their own video distribution services. Internet news portals are also including video publications as part of their service.

VI THE YEAR IN REVIEW

The most important changes in the legislation concerning the ICT sector in 2017 and 2018 are the GDPR and the Law on Cyber Security.

The GDPR became applicable on 25 May 2018, and required companies to adjust their data processing and gave people a greater control over the use of their personal data.

The Law on Cyber Security was updated to implement the Networks and Information Security Directive 2016/1148.

Significant recent transactions include the acquisition of previously Viasat-owned TV channels (TV3, TV8).

In March 2017, it was also announced that the Swedish media holding Modern Times Group had signed an agreement to sell its Baltic businesses to the US Providence Equity Partners. The value of the transaction was approximately €115 million. The transaction concerned the sale of three TV channels in Lithuania (TV3, TV8 and TV6), five TV channels in Latvia and three in Estonia. The sold entities form the third-largest commercial television operator in the Baltic region, nationwide commercial radio stations, digital assets and an online advertising consultancy operating across the Baltic region.

VII CONCLUSIONS AND OUTLOOK

Generally, Lithuania follows the European policies and has successfully implemented the various pieces of EU legislation into national law.

It is likely that the government will continue its policy of supporting key technology areas.

In the telecommunications sector, the most important development in the upcoming year should be the development of the 5G network.

Appendix 1

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Ayah is a trainee associate in Bird & Bird's corporate practice in the UAE. Her experience covers advice on local legislation and regulations, advising on foreign companies' establishment and deregistration in the UAE, and the related legal requirements.

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CMS Russia

Elena Andrianova is a senior associate in the TMT and competition teams at CMS Russia. She specialises in commercial law with a particular focus on TMT regulatory aspects, as well as antimonopoly issues.

She has broad experience in advising major clients in the IT and media sectors on various regulatory issues. She often advises on mass media legislation and licensing and certification. She assists Russian subsidiaries of major foreign and Russian companies on a broad spectrum of regulatory issues. She has gained practical experience in relation to joint venture structuring and M&A projects in the TMT sector. She has also taken part in due diligence investigations in relation to regulatory issues.

Ms Andrianova holds a law degree from the Moscow State Law Academy (MGYuA) as well as an LLM degree from Queen Mary, University of London.

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Manuela Becchimanzi is an associate of Cleary Gottlieb Steen & Hamilton LLP, based in the Rome office. Her practice focuses primarily on Italian and European antitrust laws and administrative law.

Ms Becchimanzi graduated *summa cum laude* from the University of Genoa in 2012. She received an LLM in European legal studies from the College of Europe, Bruges, in 2016.

Ms Becchimanzi has been a member of the Rome Bar since 2016. She is a native Italian speaker and is fluent in English and French.

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Marco D'Ostuni is a partner based in the Italian offices of Cleary Gottlieb. He focuses mainly on competition law and on regulation in the energy, telecommunications and media sectors. He has represented clients in some of the leading EU and Italian competition law cases, often in liberalised and heavily regulated sectors.

He is distinguished as a leading lawyer in Italy in competition and EU law by *Chambers Europe*, *The Legal 500 EMEA* and as a Thought Leader in *Who's Who Legal*; in technology, media and telecommunications by *Chambers Europe* and *The Legal 500 EMEA*; and in *Who's Who Legal: Data – Telecoms & Media*. In 2018 and 2014, he was named Italian 'Telecommunications Lawyer of the Year' by online magazine *Legal Community*. In 2019, he won the Client Choice Award for competition in Italy and in 2018 he was named 'Antitrust Lawyer of the Year' in Italy by the *Toplegal* magazine. He is a member of the Rome Bar and the New York Bar. He is widely published on antitrust matters and regularly lectures at numerous conferences and universities. He graduated with honours (University of Naples Law School, 1996), obtained two LLM degrees (College of Europe of Bruges, 1998, including Best Advocate General prize in the European Law Moot Court Competition; and Columbia University School of Law, 2000, Fulbright and Harlan Fiske Stone Scholar) and holds a PhD in competition law (University of Perugia, 2008).

STASYS DRAZDAUSKAS

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Dr Stasys Drazdauskas is head of the Sorainen technology, media and telecommunications sector group in Lithuania. He is a highly experienced lawyer, practising in intellectual property, information technology, dispute resolution and other practice areas.

Stasys advises companies involved in the media, retail and wholesale, financial services, pharmaceuticals, and consumer product manufacturing on matters related to intellectual property as well as information technologies and data protection. He helps strategise trademark registration and scope of protection, protects against IP infringements, advises on acquiring or commercialising IP rights, including copyright, trademarks, domain names, trade secrets and inventions.

Stasys is on the list of arbitrators recommended by the Vilnius Court of Commercial Arbitration.

In addition to his professional career, he is also active in the academic field and currently lectures on European private law at Vilnius University's Faculty of Law.

Stasys appears in the following directories: *Chambers Global* for dispute resolution ('His mind is very sharp and he is really talented,' say clients). Stasys is recognised for his growing arbitration practice and is noted for his particular focus on IP, IT and data-related corporate conflicts; *The Legal 500* for intellectual property and IT ('On the technology and telecoms side, Stasys Drazdauskas handles data protection and cloud law issues and is praised for his 'frankness and result-oriented approach"); *World Trademark Review 1000* recommends Stasys as a leading trademark professional; and Best Lawyers for intellectual property, information technology and media resolution.

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Hiroki Kobayashi is a corporate partner of Latham & Watkins Gaikokuho Joint Enterprise in Tokyo. He advises on Japanese legal issues relating to a variety of areas of transactional practice, including corporate law and various government regulatory matters. He handles cross-border M&A matters in collaboration with Latham & Watkins attorneys in other offices, and counsels clients on M&A transactions conducted under different business practices. His experience includes an acquisition by Turner Broadcasting System, Inc through its Japanese subsidiary Japan Entertainment Network KK of Japan Image Communications Co, Ltd, a licensed operator of multiple TV channels, and a sale by Liberty Global of its US subsidiaries holding shares in Jupiter Telecommunications, Japan's largest cable television operator, to KDDI. Mr Kobayashi has spoken on the topic of privacy in cyberspace at a meeting of an academic society of computer scientists. Mr Kobayashi is admitted to practise in Japan and New York, and is a member of the Dai-ichi Tokyo Bar Association and the New York State Bar Association. He is a native speaker of Japanese and fluent in English.

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Xawery Konarski is a legal expert with more than 20 years' experience in new technologies. He is a senior partner and co-founder of the law firm Traple Konarski Podrecki & Partners, where he supervises the technologies, media and telecommunications practices.

Xawery Konarski is vice-president of the Polish Chamber of Information Technology and Telecommunications (PIIT) and president of the New Technologies Law Association (SPNT). He is also a legal adviser to the Internet Advertising Bureau Poland (IAB Poland) and the Polish Chamber of Insurance (PIU).

As an legal expert he participated in the legislative work on a number of laws in the field of new technologies. He is an arbitrator for the Arbitration Court for Internet Domains at the PIIT.

He is the author of several academic publications in the field of new technologies and personal data protection law.

Xawery Konarski has been repeatedly recommended in Polish and international rankings of specialist TMT lawyers (including *Chambers Europe*, *The Legal 500* and *Rzeczpospolita*).

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Mr Oliver Kuusk is a legal assistant of the competition and regulatory practice group at Sorainen.

Mr Kuusk assists lawyers in a range of matters including data protection, information technology, infrastructure, telecommunications, media and intellectual property, among others.

Mr Kuusk is passionate about media and intellectual property law, having attended the ELSA Summer Law School on film law at the University of Łódź and researched the use of trademarks in audiovisual works as part of his bachelor studies.

Prior to joining Sorainen as a legal assistant in 2018, he assisted the Sorainen competition and regulatory practice group as a legal trainee and completed traineeships at the Police and Border Guard Board and Nelja Energia, a renewable energy company.

Mr Kuusk holds a BA degree in law and is currently obtaining an MA degree in law at the University of Tartu. He previously studied at the University of Sheffield Law School as an exchange student.

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Ms Liisa Maria Kuuskmaa is a legal assistant of the competition and regulatory practice group at Sorainen.

Ms Kuuskmaa assists lawyers in a broad spectrum of areas such as competition law, information technology and data protection, telecommunications, distribution and trade, and infrastructure and regulatory. She has experience in assisting lawyers in numerous complex cases, including advising clients in various regulatory compliance and trade regulation matters, drafting and implementing agreements, and resolving related disputes.

Prior to joining Sorainen as a legal assistant in 2018, she completed a traineeship at the firm, and also gained experience at the legal clinic of the University of Tartu and as an intern at the Estonian Prosecutor's Office.

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Kirill is head of the technology, media and telecommunications (TMT) sector group in Belarus.

Kirill leads most of the IT related projects coordinating the TMT team in Belarus. Kirill's key areas of expertise include commercial contracts and regulatory matters. He is highly experienced in advising major international clients of the TMT sector in their distinctive projects involving Belarus on complex matters such as the special regime for

residents of High Tech Park, including IT related tax matters as well as new crypto regulations and blockchain projects and IP matters in IT and legal due diligence for IT companies with unique experience of dispute resolution in IT. Kirill also is one of the shortlisted specialists in the country for data protection and privacy matters both on a national level and from an EU perspective, with a deep understanding of GDPR specifics. He also represents clients in their relations with higher state authorities in significant projects in the telecoms sector in Belarus, as well as advising international companies on online media regulations.

Kirill is frequently invited as a speaker to IT related events for lawyers and IT businesses as well as writing on the topic of IT law. Due to his reputation as TMT sector group leader and a key expert in the IT sphere, he has been recognised as one of the 'Next generation lawyers for commercial, corporate and M&A' by *The Legal 500* along with nominations for arbitration and trade and customs by *Who's Who Legal*.

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Pavel Lashuk is an associate of the commercial and regulatory practice group at Sorainen and specialises in data protection and regulatory matters.

As part of his day-to-day work, Pavel assists both local and international TMT clients in developing their business in Belarus considering the progressive involvement of technologies and concomitant laws. As a part of his expertise, Pavel helps clients to derive the advantages and exercise modern technologies within the High-Tech Park. Pavel ensures proper legal support to clients engaged in software and database development, including intellectual property and data protection advice.

Pavel is the author of a number of articles on TMT law topics.

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Michał Matysiak is a member of the IT-Telco and public procurement law teams at Traple Konarski Podrecki & Partners. He provides legal advisory services in the areas of IT, telecommunications, and public procurement law.

He is currently a trainee legal adviser at the Cracow Bar Association. In 2018, he enrolled in a PhD programme at the Institute of Law Studies of the Polish Academy of Sciences, where he also serves as teaching assistant in the Department of Private Law and the New Technologies Law Centre.

Michał gained practical experience while working for reputed Cracow law firms. During his studies, he was involved in the activities of the University Legal Clinic of the Jagiellonian University in Cracow.

He graduated from the Faculty of Law and Administration of the Jagiellonian University (2017), where he defended his MA thesis, entitled *Wybrane aspekty ochrony gier komputerowych przed zjawiskiem klonowania* (Selected Aspects of Protecting Computer Games against Cloning), in the Department of Intellectual Property Law. He also graduated from the School of American Law organised by the Columbus School of Law at The Catholic University of America in Washington, DC (2017).

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Ms Madara Meļņika, an associate working in Sorainen's dispute resolution and C&R practice areas, obtained bachelor's and master's degrees from the University of Latvia, Faculty of Law.

During her bachelor's studies, on the Erasmus+ mobility programme Madara spent a semester at the University of Salzburg, and during her master's studies she used a scholarship from Kurt Hagen to research and study German law for six months at Freie Universität Berlin. In addition, Madara represented the University of Latvia in the Price Media Law Moot Court Competition where her team won the regional rounds of North Europe. She has also participated as a co-author in a legal research group on the protection of journalists' sources organised by ELSA International and the Council of Europe, and has been a member of the Youth Board in Index on Censorship. In 2019, Madara, as the only representative from Latvia, was awarded a place in the International Scholarship Programme of German Parliament. She took part in the five-month internship at the Parliament, working at the Deputy responsible for Culture and Media issues.

Currently, Madara Meļņika is involved in various media law and human rights projects.

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Mr Mihkel Miidla is a partner and head of the regional technology, media and telecommunications sector group at Sorainen as well as head of the information technology and data protection practice in Estonia. He advises clients in all IT and telecoms-related matters. As a specialist in IT law, Mr Miidla provides outstanding support in cases where IT and IP are closely related.

Mr Miidla is one of Estonia's leading experts on data protection with his extensive experience in advising clients on personal data protection matters and as a visiting lecturer on privacy and data protection issues at the University of Tartu. He advises on all aspects of data protection, including implementation of the General Data Protection Regulation, cybersecurity, online privacy and data breach response strategies.

Mr Miidla is passionate about novel technologies and disruptive innovation. He advises clients on regulatory matters relating to launching innovative services and products in Estonia.

Mr Miidla also has significant experience in the field of service and trade contracts, including agency, supply and distribution arrangements. He has assisted many local and international businesses in trade deals as well as in setting up trade operations in Estonia and abroad. He has valuable experience in product and service-related issues ranging from advertising and labelling requirements to complex industry-specific regulatory and competition (e.g., automotive industry, energy and utilities) issues.

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Matthew T Murchison is a partner in the Washington, DC office of Latham & Watkins LLP, where his practice focuses on communications and appellate matters. Mr Murchison advises clients on a range of regulatory, litigation, and transactional matters in the communications sector. He routinely appears before the Federal Communications Commission to represent clients on a variety of significant issues, including net neutrality, major transaction reviews,

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Lisbeth Savill is a partner in Latham & Watkins' London office and a member of its entertainment, sports and media practice. She focuses on commercial work in the media and entertainment sectors, including financing, distribution and licensing arrangements for audiovisual content, and the purchase, sale and financing of entertainment companies. Her clients cover a wide range of interests in the entertainment and media sectors, including equity and debt financiers, major studios, independent producers, rights holders and distributors of film and television content. Lisbeth has been recognised as a leading lawyer in the film and television industries for many years. She is actively involved in issues important to the entertainment sector.

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Daryl's practice covers information technology, data privacy, commercial and compliance work. Daryl advises frequently on telecommunications and e-commerce as well as general licensing and regulatory matters including anti-bribery and corruption, consumer products, consumer protection, environmental, customs, and sanctions and trade compliance.

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Mr Andris Tauriņš is the co-head of the dispute resolution team and head of the TMT sector group of Sorainen Latvia. His main specialisation is dispute resolution in court and by way of arbitration, intellectual property, information technology and pharmacy law, as well as e-commerce issues. He lectures on topics involving intellectual property rights and has been a lecturer on intellectual property rights at Riga Business School, as well as on copyright matters at Latvia Culture College.

In addition, Andris is a licensed professional patent attorney specialising in trademarks. This qualifies him to represent international clients before the Latvian Patent Authority in trademark-related matters, including international trademark registration applications.

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Appendix 2

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