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# Telecoms, Media & Internet 2021

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

**14th Edition**

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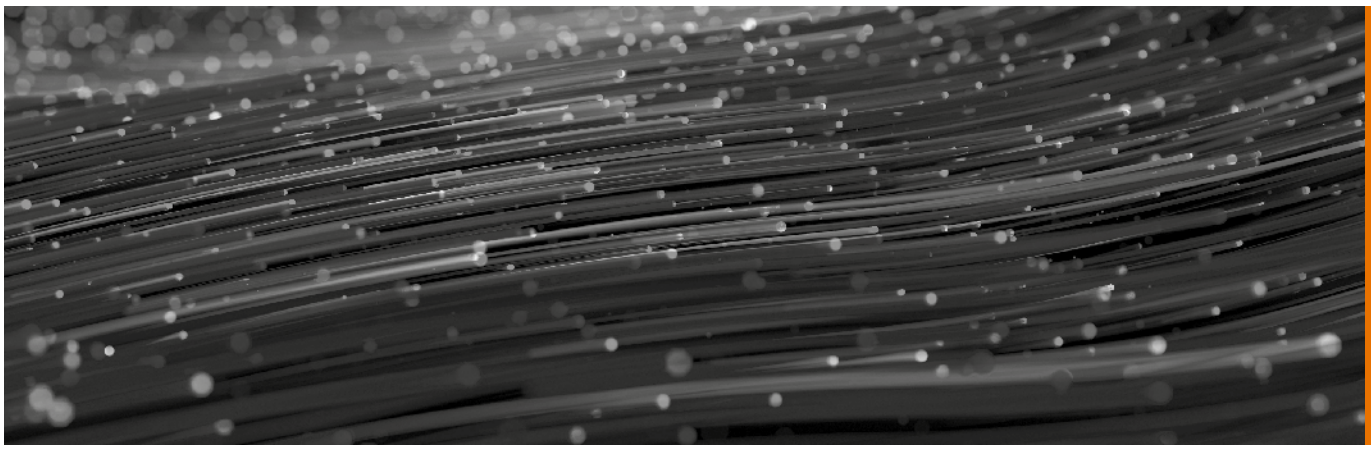

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# International Comparative Legal Guides

## Telecoms, Media & Internet 2021

### 14th Edition

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# Russia



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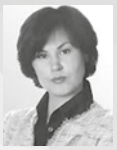
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## 1 Overview

**1.1 Please describe the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction, in particular by reference to each sector's: (i) annual revenue; and (ii) 3–5 most significant market participants.**

The Russian telecom market, the largest in Europe, grew by 2.1% in 2019 to RUB 1.73 trillion (roughly USD 23 billion). It is led by Rostelcom, MegaFon, Mobile Telesystems (MTS), and Vimpylcom (Beeline) with respective market caps of USD 3 billion, USD 6 billion, USD 10 billion (US) and USD 2.37 billion. In 2019, MTS had a consolidated annual revenue of RUB 476 billion (roughly USD 6.3 billion), MegaFon – RUB 349 billion (USD 4.6 billion), Rostelcom – RUB 392 billion (USD 5.23 billion), and Beeline – RUB 289 billion (USD 3.86 billion).

Rostelcom, the largest fixed line operator, recently acquired a Russian subsidiary of Swedish-based Tele2, which provides wireless service to more than 44 million subscribers, making Rostelcom the largest integrated Telecoms Company in Russia.

**1.2 List the most important legislation which applies to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction and any significant legislation on the horizon such as the regulation of online harms or artificial intelligence (please list the draft legislation and policy papers).**

In accordance with Art. 71 of the Russian Constitution, federal communications are governed (and regulated solely by adopted federal regulations) by the Russian Federation. The primary legislation governing communications and telecommunications is the Communications Law governing entry, network interconnection, licensing, telecom operators' contract approval, and penalties for its violation.

The regulation of these sectors is primarily governed by the following Russian laws:

- Federal Law of 07.07.2003 No. 126-FZ "On Communications", as amended (the "Communications Law").
- Federal Law of 27.07.2006 No. 149-FZ "On Information, Information Technologies and Information Protection", as amended (the "Information Law").

Other relevant legislation includes:

- Law No. 2124-1 of 27.12.1991 "On Mass Media", as amended ("Mass Media Law").
- Federal Law 06.07.2017 No. 187-FZ "On Security of Critical Information Infrastructure of the Russian Federation" (the "Critical Infrastructure Law").
- Federal Law of 29.04.2008 No. 57-FZ "On Foreign Investments in Commercial Entities of Strategic Importance for Country Security and State Defense", as amended (the "Strategic Investments Law").
- Federal Law 09.07.1999 No. 160-FZ "On Foreign Investments in the Russian Federation", as amended (the "Foreign Investments Law").
- Federal Law of 27.07.2006 No. 152-FZ "On Personal Data", (as amended) (the "Personal Data Law").
- "The Code of the Russian Federation on Administrative Offences" of 30.12.2001 No. 195-Fz and its 13 Administrative Offences in the field of communication and information).
- Federal Law of 26.07.2006 N 135-FZ "On Protection of Competition".
- Federal Law of 29.12.2010 No. 436-FZ "On the protection of children from information that harms their health and development".
- Federal law of 04.05.2011 N 99-FZ "On the licensing of individual activities".
- Federal Law of 24.04.2020 No. 123-FZ "On conducting an experiment to establish special regulation in order to create the necessary conditions for the development and implementation of artificial intelligence technologies in the subject of the Russian Federation - the city of federal importance to Moscow and amending Arts 6 and 10 of the Federal Personal Data Act".
- Federal Law of 27.07.2006 No. 152-FZ "On Personal Data", (as amended) (the "Personal Data Law").
- Government Decree 161, dated 28.03.2005, prescribing network interconnection requirements ("Interconnection Decree").
- Decree of the President of the Russian Federation of 10.10.2019 No. 490 "On the development of artificial intelligence in the Russian Federation" (along with the "National Strategy for the Development of Artificial Intelligence for the period up to 2030").
- "The roadmap of the Ministry of Digital Development, Communications and Mass Communications of the Russian Federation for the development of "end-to-end" digital technology "Wireless Technologies" dated 10.10.2019.

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

The Ministry of Digital Development, Communications and Mass Communications of the Russian Federation ("Ministry of

Digital"), and the Federal Service of the Russian Federation and the Federal Service for Supervision in the Sphere of Connection, Information Technologies and Mass Communications ("Roskomnadzor" or "RKN")).

The State Commission for Radio Frequencies and the Federal Radio Frequency Service are part of the Ministry for Digital Development, Connection and Mass Communications.

**1.4 In relation to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors: (i) have they been liberalised?; and (ii) are they open to foreign investment including in relation to the supply of telecoms equipment? Are there any upper limits?**

Yes, the Russian telecoms market has been liberalised – but not according to the Western model of "ordered competition" (*e.g.*, the Telecommunications Act of 1996 in the U.S.). Rather, it was state-controlled privatisation, leading to regional state enterprises that were eventually privatised (but remaining under indirect state control). Ownership of many privatised companies remained murky. Foreign investment played a role in the creation of the largest Russian telecoms companies, with foreign strategic players such as Telia and Sonera (in MegaFon), Deutsche Telecom (in MTS), Telenor (in Beeline), and Global TeleSystems (GTS) (in Golden Telecom) as examples.

There are a number of restrictions on foreign ownership and investment in Russian telecom companies.

First, foreign entities may not hold telecoms licences in Russia.

Second, foreign ownership or control of telecoms companies, among others, is restricted by the Foreign Investment Law (Federal Law of 09.07.1999 No. 160-FZ ) (as amended) requiring prior governmental approval for the direct or indirect acquisition or the control of more than 25% of a Russian company by a foreign state, international organisation or entity under their control.

Third, foreign control (understood broadly and including any form of direct or indirect stock ownership of operational control) over Russian entities deemed to have strategic importance requires approval under the Strategic Investments Law (Federal Law No. 57-FZ). Certain telecoms or audio-visual activities (*e.g.* operations of dominating communications market players within the geographical market of Russia or in a certain number of constituencies subject of the federation; TV or radio-broadcasting covering the territories where 50% or more of the population of any constituent subject of the Russian Federation resides; space-related activities) and, consequently, companies engaged in such activities qualify as having strategic importance for the state interests.

Fourth, the Mass Media Law imposes restrictions on foreign direct or indirect control of mass media, limiting such control to 20%; similar restrictions are set by the Information Law for stock ownership by certain foreign parties in online audio-visual services operating in Russia.

Similar restrictions on foreign ownership and control have at various points been proposed in respect of online news aggregator platforms and "significant" internet companies.

Finally, as a practical matter, governmental authority and discretion, as well as Russian Counter-Sanctions (Federal Laws 127-FZ, 281-FZ), may subject any foreign investment to governmental approval.

Thus far, the only specific target under both laws has been Ukraine (President's Decree of 22.10.2018 No. 592) and a number of further regulations have been adopted by the Russian Government restricting operations in Russia for certain individuals and companies.

## 2 Telecoms

### General

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

The Russian Federation has been a member of the World Trade Organization ("WTO") since 22.08.2012 (becoming the 156th WTO member). As part of its accession, Russia committed to undertake trade reforms, including specific commitments on telecommunications. In relevant part, these included zero tariffs on information technology products, eventual elimination of the foreign equity limitations on telecommunications, and eventual limitation of mandatory requirements for telecommunication equipment used in public networks to those consistent with the Eurasian Economic Community and Custom Union agreements.

In its 2018 Report on the Implementation and Enforcement of Russia's WTO Commitments, the U.S. Trade Representative noted that Russia had agreed to open its market for telecommunication services to all WTO suppliers, to allow telecommunications companies to operate as wholly owned subsidiaries of foreign-owned enterprises and eliminated the requirement that a fixed satellite operator must establish a commercial presence in Russia in order to provide capacity to a Russian telecommunications company. Russia also accepted the WTO Basic Telecommunications Reference Paper that requires the establishment of an independent regulator, the prevention of anti-competitive behaviour by dominant suppliers, and the introduction of transparency obligations and interconnection requirements. As of the date of the report, U.S. officials stated that they were not currently aware of any concerns with respect to Russia's implementation of its WTO GATS commitments in this area.

That said, apparently notwithstanding these commitments, today there are restrictions on foreign investment in (or ownership or control of) telecommunications companies in Russia (see answer to question 1.4 above).

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

Telecom services are regulated by the Mass Communications Ministry and RKN. See also our answers to questions 2.5–2.8 below. For spectrum and radio licensing regulations, see our answer to question 3.1.

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

Federal Antitrust Service (in the competition field). See also our answer to question 1.3 above.

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

In the event that an individual end-user, such as a customer of a telecommunications company, or a legal entity, though not in the course of business, considers that a determination, action, or

inaction by an agency with authority in the sphere of telecommunications has violated his (its) rights or legitimate interests, he (it) has standing to turn to the courts of general jurisdiction to complain of such action, inaction, or determination, and ask that it be deemed illegal and the violation cured.

Appeal against the action, inaction, or determination of an agency with authority in the sphere of telecommunications by complainants who have standing is accomplished by submitting an administrative complaint pursuant to the Code of Administrative Practice of the Russian Federation (hereinafter: "CAP RF"), Chapter 22. Appeal from legal determinations of an agency with authority in the sphere of telecommunications, and from interpretations of law with normative authority contained therein, proceeds by way of Chapter 21 CAP RF.

The general rule provides that such administrative complaints are heard by the District Courts. The middle-level courts of subjects of the Russian Federation have jurisdiction: over cases challenging laws and decrees with normative authority to interpret laws, by governmental agencies of subjects of the Russian Federation, by representative agencies of municipal authorities (par. 2, prt. 1, Art. 21 CAP RF); and on discontinuing the activity of mass media that operate within the territory of a single subject of the Russian Federation (par. 6, prt. 1, Art. 20 CAP RF). "The Moscow City Court reviews as a first-instance court administrative cases about limiting access to audiovisual services" (prt. 2, Art. 20 CAP RF).

The Supreme Court has original jurisdiction: over cases challenging laws or regulations of federal agencies of the executive branch, other federal governmental agencies, interpreting laws and having normative authority (pts 1, 2, prt. 1, Art. 21 CAP RF); and over discontinuing the activity of mass media that operate within the territory of two or more subjects of the Russian Federation (pt. 6, prt. 1, Art. 21 CAP RF).

Cases arising out of administrative and other public disputes (challenging non-normative rules, illegal actions (inaction), and decisions of governmental agencies with authority in the sphere of telecommunications based on complaints of legal entities in connection with their commercial activity are handled by the Arbitration Courts of the Russian Federation pursuant to Chapter 22 of the CAP RF.

The appeal from the illegal prosecution of a legal entity providing telecommunications services or its manager for an administrative violation is governed by Chapter 30 CAP RF.

## Licences and Authorisations

### 2.5 What types of general and individual authorisations are used in your jurisdiction?

Telecom operators must be licensed, according to type of services, under the Communications Law and in accordance with the requirements of Government Decree 87 (18.02.2005). Licensed services include, among others, voice and data transmission services, telephony, telematics, terrestrial and cable broadcasting. Licences are issued per territory and operators must hold licences for each service type and each region where they operate.

### 2.6 Please summarise the main requirements of your jurisdiction's general authorisation.

Applicants for telecom service licences must file an application, together with supporting documentation, a description of the proposed services and a network layout. Licences are issued per territory and operators must hold licences for each service type and each region where they operate. In cases set forth by law (*e.g.* if the service requires a spectrum allocation, while the number of operators in a particular bandwidth is limited), the licences are issued via a bid process. The average duration of obtaining a licence is around 75 days after application and the length of a licence can span up to 25 years before needing renewal. A minimum of three years is required to obtain a licence. Fees usually include a one-time licence fee of RUB 7,500 (approximately USD 100) for any type of licence. Separate fees are charged for frequency use and number pool assignments.

### 2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded. Are there restrictions on the change of control of the licensee?

Radio Frequencies ("RF"): The allocation process may take up to 120 days and licences are usually allocated for 10 years, but this term cannot exceed the term of the relevant communications licence. The term may be extended an unlimited number of times. RF permits are subject to a one-time fee and annual payments, both depending on various factors (the availability of RFs in the region, type of RF usage, number of services provided, type and quantity of installed equipment, etc.). Providing access to Wi-Fi in public spots is considered a communication (telematic) service and is subject to relevant licensing and authorisation regimes.

For TV or radio broadcasting, there must be a mass media registration and a broadcasting licence at the broadcaster's level; the holder of a communication licence is not allowed to contract with a non-licensed broadcaster. Broadcasting licences are issued by RKN under separate regulations, but also on the basis of applications.

Spectrum permits are issued by RKN on the basis of the decisions of the State Radio Frequencies Commission. The spectrum permit is not tradeable or assignable, but can be transferred to another user based on the decision of the State Radio Frequencies Commission. Where the services to be provided require the use of spectrum, the applicant must submit a frequency-use permit issued by the State Commission for RF Allocation and in limited circumstances due to capacity limitations, licences can be issued at auction.

See the answer to question 1.4 regarding foreign ownership restrictions.

### 2.8 Are there any particular licences or other requirements (for example, in relation to emergency services) in relation to VoIP services?

Voice over internet protocol ("VoIP") is not expressly regulated by Russian legislation. Operators typically provide services under the terms of telecom licences for data transfer for voice transmission purposes. Government Decree 161 of 28.03.2005 allows for VoIP connection between networks; however, the Communications Law requires that communication operators keep in Russia, for up to three years: information about the facts of receipt; transmission; delivery; and processing of voice information including sounds. Additionally, it requires up to six months of storage regarding text messages, voice information, images, sounds, video and other messages of telecommunication services users. Significant operators must keep separate records of their revenues and expenses regarding different lines of business, different services and parts of networks used to render such services.

## Public and Private Works

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

Until as recently as 2015, a telecoms operator did not have, generally, specific mechanisms enabling it to install on a third-party-owned land plot its infrastructural objects. It had to either purchase the respective land plot or negotiate a lease (sublease, private servitude, *etc.*) agreement with the landowner or legal possessor.

Major telecom and other infrastructural projects were often stalled because of land issues and Russian legislators gradually realised that infrastructure developers had insufficient legal authority to install structures on third-party-owned land plots and the actual process of obtaining the entitlement to install infrastructure was often lengthy, and not straightforward or guaranteed.

The problem of securing the right to install the infrastructure objects on a third party's land was at its worst when it was about constructing on land "linear" objects like telecommunication or supply lines, roads, electricity lines, or "chains" of property objects like electricity or telecommunication poles or masts or retranslation/amplification equipment (the "Linear Objects").

As an attempt to tackle it and, more generally, to provide for a more developed legal framework for developing different types of public infrastructure on land plots (both state and privately owned), some substantial amendments were made to Russian legislation – primarily to the Land Code of the Russian Federation (the "Land Code") in 2014/2015.

In particular, the Land Code was supplemented with whole new Chapters V.3 and V.7 regulating a specific case of a "private servitude" and a "public servitude", respectively. Both Chapters specifically mention "installation of telecommunication structures" as one of the reasons for obtaining the respective servitude. These servitudes may also be granted for the purposes of carrying out surveying and planning works preceding the construction and maintenance of the existing structures.

Chapter V.3 provides for just a more detailed regulation of a specific situation when a land plot chosen by a telecoms operator for the installation of its infrastructure is state or municipally owned.

The telecoms operator pursuing in such circumstances the option of getting a private servitude over a neighbouring (or any other) land plot that would entitle it to install certain structures would need to enter into a servitude agreement with either the owner of such land plot (*i.e.*, the state or a municipality) or, if there is a private entity or individual having a long-term contractual right to such land plot (a lease, etc.), with such legal possessor.

The procedure of entering into a servitude agreement is regulated by the Civil Code, the said Chapter V.3 of the Land Code and some other supplementary provisions. It is mostly a civil law procedure but some important administrative restrictions and regulations also apply to it; for instance, the calculation of the payment for the servitude right would be made in accordance with the guidelines established by the owner of the respective land plot (*i.e.*, the state or municipality).

The servitude agreement must be concluded for a specified period that, in the case of its conclusion with a legal possessor, cannot exceed the term of the contractual right of such possessor; the termination of the contractual right of the land plot's possessor would terminate the servitude as well. With some minor exceptions, the servitude must be perfected by its state registration in the Unified State Register of Immovable Property. If a telecoms operator wishing to establish the servitude and the private owner/possessor of the respective land plot fail to agree upon the terms of the servitude agreement, the telecoms provider may apply to the court, which will prescribe its terms for the parties.

Alternatively, Chapter V.7 of the Land Code now provides for a new "public servitude" specifically developed to ensure a mostly administrative and, more importantly, mostly mandatory procedure for the respective land owners and possessors in accordance with which companies installing Linear Objects (including telecoms operators) could go around a substantial part of the "civil law obstacles".

Perhaps the key feature of the new servitude, established by Chapter V.7 of the Land Code (the "V.7 Servitude"), differentiating it from other public servitudes, is that it is established not in favour of an undefined group of entities but in favour of a particular legal entity. That (and some of its other features) sparked debates as to the legal nature of the V.7 Servitude and whether it is a public servitude at all. However, it is already being applied in practice – along with all the other options that existed before – and in many instances favoured by the developers.

To obtain a V.7 Servitude, a telecoms operator must identify the required land plot and then apply to the town or rural municipal authority. The application must be supplemented by the relevant planning documentation, *etc.*, it must specify the terms of the requested encumbrance, the period for which the V.7 Servitude is requested (which, by law, must be between 10 and 49 years for the cases of installment of telecom infrastructure) and the boundaries of the encumbrance.

The V.7 Servitude will, generally, not be granted if the land plot is owned by an individual and used for his/her personal purposes, for instance, for individual residential construction or gardening; still, there are a few exceptions (mostly related to the operation of the already existing telecom infrastructure) when the V.7 Servitude could be imposed even over such land plots. There are also some other exceptions and limitations for granting the V.7 Servitude such as:

(1) if the V.7 Servitude is requested in relation to the land areas where the activity intended to be carried out by the applicant is prohibited; or

(2) if its imposition will lead to the impossibility of or substantial difficulties in using the respective land plot for a certain period (in most cases, exceeding one year).

Following the receipt of the application, the municipal authority will identify the owners and possessors of the land plot(-s) with regard to which the V.7 Servitude is requested to be imposed upon and notify them on the application and its details.

The decision on the granting of the V.7 Servitude must be issued within 45 days following the receipt by the municipal authority of the application with all supporting documents. If it is issued in respect of a land plot which is state or municipally owned (and not encumbered by a long-term lease or similar long-term right), it will also include a procedure for calculating payments for this encumbrance.

The V.7 Servitude will be deemed granted when, upon the request of the respective authority, it is registered in the Unified State Register of Immovable Property. Contrary to the private servitude commented above, the V.7 Servitude will survive any change of owner or possessor of the land plot.

If the V.7 Servitude is granted regarding a land plot which is owned by the state or municipality and has no long-term encumbrances (*e.g.*, a lease), its state registration completes the procedure.

If, however, a land plot is privately owned or possessed under a long-term contractual right, the covenantee will be required to send to the owner/possessor a draft servitude agreement,

together with an expert assessment of the amount of the compensatory payment made in accordance with the guidelines established by legislation.

The owner/possessor of the land plot will have a right to challenge the imposition of the V.7 Servitude but only on the grounds of its issue not being in compliance with the applicable legislation. Moreover, if such court action is initiated but the covenantee has deposited the amount of the compensatory payment at the notary public, the covenantee will be entitled to commence its activity in the encumbered area immediately.

As a general rule, the structures installed by the covenantee on the encumbered land plot (including those qualifying as immovable property) will become owned by the covenantee. If they are sold by the latter to a third party, the V.7 Servitude will be assigned to the purchaser.

As a result of the above regulation, the terms of the draft servitude agreement submitted to a private owner/possessor of the respective land plot will, effectively, be imposed upon them, thus undermining their title.

At the same time, such private owner/possessor will be able to seek in the court, in addition to the servitude payment, compensation of (a) losses caused by impossibility to perform their obligations towards third parties, and (b) other losses caused by the actions of the respective covenantee on the encumbered land plot.

If a telecoms operator encounters complications in securing the V.7 Servitude but the respective land plot is vital for the development of a telecommunication project, the rights to it may, in some cases, still be secured albeit under a rather lengthy procedure: it would have to be initially "ceased for the public purposes" and then a right to it would have been vested in the respective telecoms operator in accordance with applicable regulations.

## Access and Interconnection

**2.10 How is wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?**

Russian law does not mandate the unbundling of local loops. But such unbundling, as well as interconnection and internet access, has largely occurred due to market forces. Telecoms operators view the provision of local loops to internet service providers as a revenue generation opportunity, thereby creating broadband markets (an example being the co-operation of MGTS and MTU-Intel that established the broadband market in Moscow).

Telecom network interconnection is prescribed by Arts 18 to 20 of the Communications Law. Technical requirements for general network interconnection and broadcast network interconnection are prescribed by government decrees, one of which being the Interconnection Decree. Otherwise, interconnection is subject to operator contracts. Operators of publicly available networks must interconnect with other operators. Those having a "substantial position" (defined in terms of 25% or more of capacity in a geographic numbering area) have equal access and non-discrimination obligations and, generally speaking, may not refuse interconnection requests.

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

Those operators holding a substantial position in publicly available networks are subject to network cost regulation, exercised by the Federal Agency for Communications.

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

The Communications Law, Art. 28, permits telecom operators to set forth their service rates in tariffs. Publicly available services deemed to be natural monopolies, however, are controlled by the state. These include local and inter-city calls, terrestrial television transmissions, cable and broadcasting communications. These are regulated by the Federal Anti-monopoly Service under Government Decree 637, dated 24.10.2005. As an example of anti-monopoly regulation by this Service, mobile operators are not permitted to charge domestic roaming charges.

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

Under the Mass Communications Order 54, dated 02.05.2006, operators having a substantial position in public networks, providing universal service, or deemed to be natural telecoms monopolies, are subject to accounting separations requirements.

**2.14 Describe the regulation applicable to high-speed broadband networks. On what terms are passive infrastructure (ducts and poles), copper networks, cable TV and/or fibre networks required to be made available? Are there any incentives or 'regulatory holidays'?**

On 31.01.2013, under the chairmanship of the President of Russia, an extended meeting of the Government of the Russian Federation was held, at which one of the main activities of the government for the period up to 2018 discussed the issue of overcoming the information (digital) inequality within the regions of Russia and the development of broadband access. Taking into account the size of the country, the need to address the problem at all levels – federal, regional and municipal – was stressed, and the best regional practices were replicated nationally. Targets for overcoming regional information inequality are set in the main documents of strategic planning of the development of the information society in the Russian Federation – the Information Society Development Strategy in the Russian Federation (adopted in 2008) and the state programme "Information Society (2011–2020)".

There is no single regulation governing relations in the sphere of broadband networks in Russia. The legal regulation of broadband access to networks is carried out by various bodies of the Russian Federation.

The Russian Government's Order of 29.12.2014 No. 2769-r "On the approval of the Concept of Regional Informatics" provides for the development of the regional segment of the telecommunications infrastructure. The basis of the regional segment of telecommunications infrastructure can be modern fibre-optic multi-service communication networks, operating according to the same standards with the established level of quality of service, providing consumers with data transmission services of any type. Proposals are being prepared by the Ministry of Digital to change the legal framework required for the sharing of communication channels by different state authorities, local governments and organisations.

In order to reduce digital inequality, the subjects of the Russian Federation are encouraged to implement measures aimed at increasing the availability of high-speed internet access services

and other types of information and telecommunications services, reducing administrative barriers, stimulating the growth of the number of telecom operators in the region and increasing competition. When planning the development of the regional segment of telecommunications infrastructure, it is appropriate for the state authorities plan for the provision of: i) at the expense of the budget of the Russian Federation in all settlements with a population of 250 to 500 people) – at least one access point, connected by the use of a fibre-optic communication line data transmission speeds of at least 10 Mbps; and ii) through extra-budgetary sources in all settlements with a population of more than 500 people – at least one means of collective access to the internet without the use of user equipment.

The general regulation of communication facilities is governed by Arts 2 and 5 of the Communications Law.

Communication structures that are firmly connected to the land and whose movement without disproportionate damage to their purpose is impossible, including linear cable communication facilities, relate to real estate rights, state registration of property rights and other material rights which are carried out in accordance with civil law. Features of the state registration of property rights and other material rights to linear cable communication facilities are established by the Communications Law. Operators of the public telecommunication network are required to provide access services to other telecom operators on the basis of accession agreements to other telecom operators in accordance with the rules of telecommunications network access and interaction approved by the government (Art. 18 of the Communications Law).

## Price and Consumer Regulation

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

Yes. Please see our answer to question 2.12 above.

**2.16 Is the provision of electronic communications services to consumers subject to any special rules (such as universal service) and if so, in what principal respects?**

Yes. Telephone and internet services available from payphones, kiosks, and other access points (universal communications services) are provided by a government-nominated entity (currently Rostelcom) that has public service obligations. There is currently a universal service fee of 1.2% of the revenues of all public telecommunications companies that is used to support the Universal Services Reserve. Rostelcom's costs of providing universal service are subsidised, in part, by this Universal Service Reserve.

Telecom service providers must also comply with certain consumer disclosure requirements when entering into service contracts with subscribers (set forth in the Rules for the Provision of Data Transfer Services adopted by Government Decree 32, dated 23.01.2006). They must also give no less than 10 day's notice of rate changes in advance (as well as certain technical service issues) through a website posting.

## Numbering

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

The government controls telephone numbers under Art. 26 of the Communications Law. Number allocation, number pools, and related rules are prescribed by Government Decree 350, dated 13.07.2004, and Order 204 of the Mass Communications Ministry.

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

Number portability (allowing subscribers to keep their phone numbers when changing providers) is prescribed by Art. 44 of the Communications Law (effective December 2014). The transfer fee is limited to RUB 100 (approximately, USD 1.20 today). The number portability database is funded by the universal service fund.

**2.19 Are there any special rules relating to dynamic calling line identification presentation?**

Calling Line Identification Presentation ("CLIP") is viewed as a supplementary service provided by telecoms operators and is not specifically regulated. The CLIP service provided by the telephone equipment (telephone sets with built-in CLIP function) impacts the connection charges, since, pursuant to the Regulation of the Government of Russia of 09.12.2014 No. 1342 "On the Provision of Telephone Connection Services", as amended, such equipment, along with facsimile or voicemail, is treated as equal to the physical response of the called party and starts the running of the call time for charge calculation purposes.

**2.20 Are there any obligations requiring number portability?**

Yes. Please see our answers to questions 2.17 and 2.18.

# 3 Radio Spectrum

**3.1 What authority regulates spectrum use?**

The regulation of the use of radio spectrum is carried out by an inter-agency collegiate RF body under the federal executive authority in the field of communications (v. 2 p. 22 of the Communications Law and the Russian Government's Resolution of 02.07.2004 No. 336 "On the Approval of the Regulation on the State Commission on Radio Frequency").

The relevant agencies are the State Commission for Radio Frequencies and the Specially Mandated Service for the Regulation of Radio Frequency and Electronic Means at the Federal Executive Authority in the Field of Communications ("Federal Radio Frequency Service"), which are both part of the Ministry of Digital. Collectively, they are responsible for spectrum allocation, technical supervision of the use of RFs and radio devices, and also exercise other powers provided for by the Communications Law and the Decree of the Government of the Russian Federation of 14.05.2014 No. 434 "On Radio Frequency Service". The State Commission for Radio Frequencies regulates compliance with allocated spectrum rules and the Federal Radio Frequency Service collects frequency use fees.

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

The distribution of the RF spectrum is carried out in accordance with the Frequency Distribution Table between the Russian

Federation's radio services and the plan for the prospective use of RF spectrum by electronic means developed by the State Radio Frequency Commission and approved by the Government of the Russian Federation. The State Radio Frequency Commission considers proposals by self-regulating organisations and individual telecom operators to revise the Frequency Distribution Table between the Russian Federation's radio services and the plan for the prospective use of radio spectrum by radio services.

The right to use the RF spectrum is granted by the allocation of RF bands and/or the appropriation (destination) of RFs or RF channels. The use of RF spectrum without a permit is not permitted.

Telecom service licences are issued by the Ministry of Digital. Where the services require spectrum, the applicant must obtain a frequency use permit (licence) from the State Radio Frequency Commission Allocation. Where spectrum frequency is limited, licences can be issued on the basis of bidding or tender (auction, competition), conducted in accordance with the Russian Government Regulation of 24.05.2014 No. 480 "On bidding (auctions, competitions) for a license to provide communications services".

The State Radio Frequency Commission establishes the availability of RF spectrum available for tender and limits the possible number of telecom operators in the territory. The decision to conduct the bidding (and authorisation thereof) is made by the Ministry of Digital.

All radio-frequency tenders open in one of two forms: competition; or auction. These provisions do not apply to the relationship related to the use of RFs in the provision of communications services for television broadcasting and broadcasting purposes (Art. 31 of the Communications Law).

Licence terms vary and must be between three and 25 years.

### 3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions? Are there penalties for the unauthorised use of spectrum? If so, what are they?

Certain bandwidth frequencies may be reserved for the exclusive use state authorities' national defence interests (see Regulation of the Russian Government No. 88 of 01.02.2000).

With respect to bandwidth available for allocation for civil and commercial purposes, the general rule, as set in Art. 24 of the Communications Law, is that the use of spectrum requires a licence. However, certain exemptions are allowed by law. For example, certain frequencies are allocated for use by amateur radio communications parties on short range devices. Such use is allowed without individual licences or other permits, provided that certain technical conditions are met (including the registration of the rig). The latest decision on the allocation of frequency bandwidth for amateur use was made on 16.04.2018 (Resolution of the State Radio Frequency Commission No. 18-45-02).

Other examples are allocations of bandwidth frequencies for use within the framework of events viewed as having national importance and supported by the federal authorities. Thus, Federal Law 07.06.2013 No. 108-FZ "On matters related to the preparation for the FIFA World Cup in 2018, Confederations Cup in 2017 and European Football Championship of UEFA in 2020" (as amended) vested the Government of Russia with the right to set specific rules of spectrum use. By Regulation No. 240 of 06.03.2020, the Russian Government set a simplified procedure of frequencies allocation (within the ranges approved by the State Radio Frequency Commission) to organisers and participants of the event on a free-of-charge and priority basis (subject to expert opinion on compatibility of their radio electronic devices).

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

One-time fixed fees and annual fees are set individually by RKN for each user holding permit to use the spectrum on the basis of the Methodology developed by the Ministry of Digital and taking into account: frequency range; number of frequency channels used; and the technologies applied. For GSM, UMTS, IMT-MC-450, LTE standards and their modifications, the State Radio Frequency Commission determines the amounts in each decision on the allocation of frequencies and/or each licence for telecommunications services with the use of RF spectrum.

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

There is no special procedure set for the change of control of a telecom licence holder. Any change of control may be subject to clearance under the Competition Law, the Foreign Investments Law or the Strategic Investments Law (each setting forth different thresholds, requirements and clearance procedures).

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

Licences may be transferred without prior approval to a successor (Art. 35 of the Communications Law). Transfer of a licence requires, firstly, for the spectrum use permit to be transferred, and, secondly, that the licence be reissued to the transferee. Application and notice to RKN is required. Licences are issued in the name of only one holder and sub-licensing is not permitted.

## 4 Cyber-security, Interception, Encryption and Data Retention

### 4.1 Describe the legal framework for cybersecurity.

Art. 16 (Protection of Information) of the Information Law requires the protection of information through various measures, including preventing unauthorised access, hacking, cyber attacks, and other protections of information. Art. 17 of the Information Law provides for civil remedies and criminal penalties for violation of this law.

The Personal Data Law creates the legal framework with respect to security of processing of personal data.

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

Enforcement authorities must be provided with direct access to telecoms networks under rules set out in Government Decree 538, dated 27.08.2005, which is one of the licence terms for holding a telecom licence. The Federal Security Service ("FSB") is responsible for co-operation with telecoms operators to accomplish this. Details are set forth in Order 73 for data transfer network (dated 27.05.2010) issued by the Ministry of Digital. Russian authorities can seek records, correspondence and other subscriber information from the operators, subject to approval in accordance with Federal Law of 12.08.1995 144-FZ

(as amended). Generally, to the extent they limit constitutional privacy rights, such actions require a court order; however, requests for information are frequently reported to be sent to operators without observation of the procedure.

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

Please see our answer to question 4.2 above.

**4.4 How does the state intercept communications for a particular individual?**

Please see our answer to question 4.2 above.

**4.5 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.**

The use of encryption is subject to licensing under Government Decree 313 dated 16.04.2012. Licensees must apply for certification of information security systems, including technical analysis of encryption devices by authorised laboratories. Requirements are published by the Federal Service for Technical and Export Control.

Of note, Russian regulation is not sufficiently elaborate on the distinction between the concepts of encryption and encoding, which often results in unclarity and inconsistent approaches with respect to certain services and technologies applied, including, among others, message services.

The Information Law sets forth a requirement for parties which qualify as organising the distribution of information online for the reception, transmission, processing or delivery of electronic communications (such as e-mail and messaging services) to provide the Federal Security Service with the means of decryption of such communications. The requirement was openly opposed by certain market players, *e.g.*, the popular instant messaging service Telegram, which in 2018 publicly denied the requests of the regulator to provide the Federal Security Service with encryption keys (referring to the non-existence of uniform encryption keys in case of end-to-end encryption applied by the platform). As a result, Telegram was officially blocked in Russia (although remained at all times *de facto* available to users) until earlier this year, when it was suddenly officially announced to be cleared and allowed to operate.

**4.6 Are there any specific cybersecurity requirements on telecoms or cloud providers? (If so, please list the relevant legislation.)**

Telecom operators and cloud service providers are subject to general cybersecurity requirements set out in the Personal Data Law and the Information Law. Pursuant to these laws, a number of by-laws have been adopted, elaborating on the specific requirements depending on the types of data processed and threat levels.

For example, Regulation of the Russian Government of 01.11.2012 No. 1119 "On Approval of Requirements to Personal Data Protection in the Course of its Processing in Personal Data Information Systems" determines three types of cyber threats (relevant for system or application software) and four prescribed levels of personal data security, depending on the types of threats, categories of data processed and the number of data subjects. Based on the subscriber base, significant telecom operators fall within the two categories requiring the strictest cybersecurity regime.

Another important requirement necessarily applicable to telecom operators or cloud service providers is the data localisation rule, pursuant to which data operators of personal data of Russian citizens are required by Personal Data Law to store and performs certain processing actions with such data only with the use of databases physically located in the territory of Russia.

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

Telecom operators are subject to a number of data retention requirements, including account, tax reporting and information storage obligations in compliance with investigative requirements (including maintenance of subscriber and service databases for three years). Operators of universal services, data transfer and telematics, when providing public internet access, must obtain valid customer identification (including customer name and mobile network subscriber number) and keep such data for at least six months.

Under the Yarovaya Law, all telecom operators must store records of voice messages and any other data (*e.g.*, video) that are delivered or exchanged by their subscribers.

See the data localisation requirement (question 4.7 above).

## 5 Distribution of Audio-Visual Media

**5.1 How is the distribution of audio-visual media regulated in your jurisdiction?**

Answer not available at time of going to press.

**5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.**

Answer not available at time of going to press.

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

Answer not available at time of going to press.

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

Answer not available at time of going to press.

## 6 Internet Infrastructure

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

Art. 1253.1 of Part IV of the Civil Code of Russia sets forth the specific terms of liability of an information intermediary,

understood as the party transmitting the content in information and communications networks, including on the internet, and/or the party providing the opportunity for the placement of the content or providing access to the content placed in the information and communications networks, for infringement of intellectual property rights.

The information intermediary is not liable for the content carried in its networks provided that such intermediary: (i) has not initiated the transmission or placement of such content; (ii) has not altered the content (except for necessary technological changes); and (iii) had no knowledge of the infringing nature of the content. This rule has been generally consistently applied and is viewed as rather non-controversial.

At the same time, a certain lack of clarity remains as regards the information intermediary providing opportunity for the placement of the content in the information and communications networks (*e.g.* web resources). This category of information intermediaries is released from liability if it: (i) has not altered the content so placed; and (ii) upon a written request from the rights holder referring to the infringing nature of such takes timely and sufficient measures to stop the infringement. It is further set forth in Art. 1253.1 of the Civil Code that the list of necessary and sufficient measures to stop the infringement may be set by law. At this point, however, there is no uniform and consistent understanding of the scope of measures that may be needed to exempt the information intermediary from liability. In a number of cases, courts have recognised the use of content-filtering tools or a mere removal of the content upon the rights holder's request as sufficient.

Noteworthy, the Supreme Court of Russia in the Ruling of its Plenary Session of 23.04.2019 No. 10 indicated that the status of the information intermediary should not be taken for granted and must be established on a case-by-case basis, particularly, if such person simultaneously carries out various types of operations.

A separate regulation is set by the Information Law for news aggregator websites or apps targeting Russian audiences and accessed by at least one million users per day. Among other things, such news aggregators are required to check the accuracy of information of social importance and delete incorrect information immediately upon request from the authorities. The news aggregators may be liable for the news information they provide unless such information is a word-for-word reproduction of the content placed at an official website of a state authority or earlier circulated by mass media that can be identified and held liable.

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

Operators are under an obligation to block access to certain information qualified as illegal in Russia (see answer to question 6.4 below).

There are also certain requirements applicable to parties providing instant private messaging services (*i.e.*, services enabling the communications only within such information systems whereby making the information publicly available or transmitting such information to the general public is not enabled). The private instant messaging services are obliged to identify all users by phone numbers and restrict distribution of illegal information upon the regulator's request. The user identification requirement also applies to internet service providers at public Wi-Fi access points.

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

Currently, there are no statutory "net neutrality" requirements (the principle that all network traffic must be treated equally). While the concept has some support from both government agencies and some carriers, it is not unanimous. The Federal Antimonopoly Service ("FAS") has expressed its support for the principle and published the Fundamentals on net neutrality. The Fundamentals were supported by major telecom operators Beeline, MTS and MegaFon and have been observed by the market players on a voluntary basis. RKN, on the other hand, has stated that the development of 5G applications such as telemedicine and self-driving cars would require traffic prioritisation. Some of the larger carriers have echoed such concerns. The Ministry of Digital appears receptive to the industry's position. Thus, in its Order of 27.12.2019 No. 923 approving the Roadmap for the formation and development of 5G/IMT-2020 networks in Russia, the Ministry indicated that in providing 5G/IMT-2020 services telecom operators will have to put aside the net neutrality principle as contradicting the logic of communication networks development that dictates setting varying priorities for critically important communications and services.

### 6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content? Are consumer VPN services regulated or blocked?

Russian regulation imposes on communication operators and internet service providers an obligation to block access to certain web resources containing information that is restricted or prohibited for distribution. RKN is the state authority maintaining the Register of domain names, URLs and webpage addresses, allowing the identification of websites that contain information prohibited for distribution in Russia. A web resource can be blocked, among other things, for: child pornography; information on methods of development, production and locations for purchase of drugs and methods of committing suicide; calls for extremism, riots and massive public events not approved by the authorities; content infringing upon copyright and related rights; information viewed as potentially harmful to children (within the meaning and based on criteria set forth in the Children's Protection Law); for certain violations of personal data regulation; and many more.

The blocking tool has been used with increasing frequency over the last few years. Telecom operators and providers of internet access are mandated to block access to webpages included in RKN's stop lists, and are subject to fines for a failure to implement the blocking orders.

The use of any tools and technologies allowing access to blocked websites (such as VPN services, browser plug-ins, anonymous search engines) is prohibited in Russia. The websites and apps providing the users with access to web resources included in the stop lists may in their turn be blocked by RKN.

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