

# Telecoms & Media 2021

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# Telecoms & Media 2021

**Contributing editors****Alexander Brown and David Trapp****Simmons & Simmons LLP**

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Lexology Getting The Deal Through is delighted to publish the 22nd edition of *Telecoms & Media*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

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Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Alexander Brown and David Trapp of Simmons & Simmons LLP, for their continued assistance with this volume.



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# Russia

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## COMMUNICATIONS POLICY

### Regulatory and institutional structure

- 1 Summarise the regulatory framework for the communications sector. Do any foreign ownership restrictions apply to communications services?

#### Regulatory framework

The key statute for the communications sector is Federal Law No. 126-FZ On Communications of 7 July 2003 (the Communications Law). It provides a regulatory framework for communications services in Russia, outlines communications operators' and users' rights and obligations, the powers of regulators and other matters. A significant amount of regulation is implemented through subordinate legislation adopted by the Russian government and other authorities. The key licensing and communication services rules include:

- Russian Government Decree No. 2385 on Licensing of the Activities in the Field of Communication Services and on Invalidation of Certain Acts of the Russian Federation Government of 30 December 2020 (Decree No. 2385);
- Russian Government Decree No. 575 on Approval of Rules on Providing Telematics Communications Services of 10 September 2007; and
- Russian Government Decree No. 785 on Approval of Rules on Providing Communications Services for Television and (or) Radio Broadcasting of 22 December 2006.

#### Regulatory bodies

The Russian government is the main Russian executive body and issues key regulations in the communications sector and supervises the activities of subordinate bodies.

The Ministry of Digital Development, Communications and Mass Media (Minkomsvyaz) is the principal regulatory body for the communications sector. It develops and implements state policy in the telecommunications sector, including with the use of the radio-frequency spectrum, and adopts various regulations within these spheres.

The Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor) is responsible for state control and supervision in the sphere of communications. Among other things, it issues communications licences and holds tenders for granting such licences (where required), registers radio-electronic and high-frequency devices, participates in the import control of such devices, issues permits for the use of communications networks and telecom-designated constructions and maintains relevant state registers. It is authorised to conduct inspections and to impose sanctions (eg, fines and the suspension of licences) for discovered violations.

The State Commission on Radio Frequencies regulates the radio-frequency spectrum. The commission decides which part of the radio-frequency spectrum would be available for the provision of which

communications services and determines plans and programmes for the allocation of radio-frequency bands. In certain cases, it can also suspend or terminate frequency allocation.

The Federal Antimonopoly Service (FAS) is a federal executive body in the field of competition, state procurement and advertising in all industry sectors, including telecommunications. It also regulates prices for communications services offered by the natural monopolies (eg, Russian Post) and 'significant operators', and participates in price-related disputes. It is entitled to adopt regulations, enforce laws and impose fines and other sanctions in areas of concern.

#### Foreign ownership restrictions

Russian law has no general rule restricting foreign ownership in the communications sector. However, as a matter of practice, only Russian-registered entities can apply for and obtain licences to provide communications services. These entities may have foreign ownership or other control. At the same time, certain restrictions apply in related areas such as the mass-media sector.

Further, certain Russian companies carrying out communications activities may be deemed as 'having strategic importance for ensuring the country's defence and state security' (strategic companies) and are subject to Federal Law No. 57-FZ on the Procedure for Making Foreign Investments in Business Companies Having Strategic Importance to the National Defence and State Security of 29 April 2008 (the Foreign Strategic Investments Law). These include companies acting as communications operators and having a dominant market position (generally, more than a 35 per cent share) concerning the national communications market, fixed telephone services to no fewer than five Russian regions, fixed telephone services in Moscow, St Petersburg or Sevastopol or in certain Russian ports.

To acquire direct or indirect control of such entities (or to acquire fixed assets of such companies exceeding 25 per cent of the aggregate book value), foreign investors may need to obtain the consent of the government's foreign investment control commission (the government commission) headed by the Russian Prime Minister, subject to certain thresholds, exemptions, specific regimes for state-owned and offshore foreign investments and other requirements provided in the law. Also, under Federal Law No. 160-FZ on Foreign Investments in the Russian Federation of 9 July 1999 and the Foreign Strategic Investments Law, the head of the government commission has the authority and discretion to order that any foreign investment concerning any Russian company (ie, not necessarily a strategic company) should be cleared by the government commission.

## Authorisation/licensing regime

### 2 | Describe the authorisation or licensing regime.

#### Communications licences

Government Decree No. 2385 contains an exhaustive list of communications services requiring a communications licence. It includes, among others, communications services for cable, terrestrial broadcasting, telematics and data communications services. Licences are granted by Roskomnadzor. Roskomnadzor maintains a publicly available register of licences. The licensing process includes the submission of the application with attachments, which will vary depending on the type of services applied for. On average, it takes about 75 days to obtain a communications licence. The duration of a licence can be up to 25 years.

For certain telecommunications services, such as TV or radio broadcasting, a communication licence is not sufficient, and a separate broadcasting licence is required. Broadcasting licences are issued by Roskomnadzor under separate regulations but also based on applications.

In certain cases, the communications licence may be granted only via a public tender, for instance, if it involves the use of the radio frequencies spectrum.

#### Radio frequencies

The Radio Frequencies (RF) Commission allocates RFs among relevant radio services (for civil use, military use and other purposes) based on the Table of Distribution of RFs approved by the Russian government from time to time (generally, once every four years).

Further, Roskomnadzor allocates particular RFs and RF channels. The allocation procedure varies depending on the type of communications services involving RFs. But, in general, to obtain an RF permit, the applicant must undergo a series of expert reviews performed by the Service for Radio Frequencies and various state security agencies. Also, if a company applies for a licence to provide communication services in a territory with limited resources of the public communication network or in a territory where the number of communication operators is limited by the possibility of using the available RFs, permits are allocated via tenders. There is a separate procedure for the allocation of RFs for terrestrial and satellite broadcasting.

The allocation procedure may take up to 40 business days. RFs 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-off fee and annual payments, both depending on various factors (eg, the availability of RFs in the region, type of RF usage, number of services provided and type and quantity of installed equipment, etc).

The above licensing and authorisation regime equally applies to fixed, mobile and satellite networks and services, and 2G, 3G and 4G networks. The first tender concerning Long Term Evolution (LTE) frequencies was held in October 2015. RF bands in the ranges of 1,710–1,785MHz and 1,805–1,880MHz have been allocated among major telecom operators for developing LTE standard networks.

In May 2021, the Russian government approved the use of the 24,250–25,250MHz range for 5G and International Mobile Telecommunications-2020 network development.

Providing access to Wi-Fi in public spots is considered a communication (telematic) service and is subject to relevant licensing and authorisation regimes. Public Wi-Fi operators must ensure the identification of users of public Wi-Fi spots. Various means of identification can be used ranging from user IDs, bank card details, to the government's portal service login information and codes texted to users' mobile phones.

## Flexibility in spectrum use

### 3 | Do spectrum licences generally specify the permitted use or is permitted use (fully or partly) unrestricted? Is licensed spectrum tradable or assignable?

Spectrum permits in Russia specify permitted use by reference to the type of radio-electronic device that the spectrum permit holder can use in the permitted range of frequencies. Spectrum permits also specify territory, purposes and other conditions of the spectrum use. Changes to the permitted parameters of use require re-issuance of the spectrum permit.

In certain cases, it is possible to use the spectrum based on a non-personalised general licence that applies to all radio electronic devices of a particular type (eg, to certain short-range devices).

Spectrum permits are issued by Roskomnadzor based on the decisions of the State Commission on Radio Frequencies. The spectrum permit is not tradable or assignable but can be transferred to another user based on the decision of the State Commission on Radio Frequencies.

## Ex-ante regulatory obligations

### 4 | Which communications markets and segments are subject to ex-ante regulation? What remedies may be imposed?

Russian telecommunication laws impose certain restrictions and obligations on telecommunication operators that alone, or together with their affiliates, control at least 25 per cent of the installed capacity or have the ability to put through at least 25 per cent of traffic in a certain geographical (numbering) zone or Russia generally (significant operators). Roskomnadzor maintains the register of significant operators.

Significant operators must ensure equal access to their networks and equal treatment for the traffic of telecom operators providing similar services. Significant operators are required to publish the rules on interconnection with their networks and submit them for the review of the regulator. The regulator has the right to issue a directive requiring the operator to amend its rules if the regulator believes that the rules are not in line with the telecommunications laws and regulations.

Interconnection service fees charged by significant operators are subject to tariff regulation. Service fees for certain public electronic communication services and public post services are also subject to state tariffs. The list of public electronic communication services and public post services subject to state tariffs is approved by the government.

## Structural or functional separation

### 5 | Is there a legal basis for requiring structural or functional separation between an operator's network and service activities? Has structural or functional separation been introduced or is it being contemplated?

Significant operators must keep separate records of their revenues and expenses in respect of different lines of business, different services and parts of networks used to render such services. The same rules apply to telecom operators that are natural monopolies and universal service operators. Minkomsvyaz approves the rules on the separation of accounts. The current rules were approved in 2006.

Russian competition laws also provide for forced separation as a last-resort measure that may be implemented by a court at the request of antitrust authorities in respect of a dominant market player that systematically abuses its dominant position.

## Universal service obligations and financing

### 6 | Outline any universal service obligations. How is provision of these services financed?

In Russia, phone connection services via payphones, multifunctional devices, phone boxes and similar devices and internet connection services via access points and collective access points are viewed as universal communications services. Laws contain certain requirements applicable to universal communication services. For example, phone-connection devices must be evenly distributed to allow a user to reach the nearest device within an hour without the use of a vehicle; at least one internet access point for users with their own devices must be installed in every community with a population of between 100 and 500 people.

The government nominates the provider of universal communications services from the operators controlling significant market share of the universal public telecommunications network in at least two-thirds of the constituent territories of the Russian Federation. In 2014, the government nominated Rostelecom as such a provider. Rostelecom renders universal telecommunication services based on a 10-year contract with the Federal Communications Agency.

Service fees for universal communication services set by an operator of universal communications service may not exceed the maximum rates prescribed by FAS. Additional costs incurred by the operator of universal communications service are covered from the Universal Services Reserve, which is funded by mandatory payments of public telecommunications network operators, penalties for delays in their payments and other statutory sources. The current payment rate is 1.2 per cent of the revenues of public telecommunications network operators.

## Number allocation and portability

### 7 | Describe the number allocation scheme and number portability regime in your jurisdiction.

From 1 December 2013, mobile number portability across mobile networks of different operators within the one constituent territory of the Russian Federation became available for subscribers for a flat fee not exceeding 100 roubles.

To change a mobile service operator, a subscriber must submit an application to the new operator to request the unilateral cancellation of the contract with the current operator and the subsequent transfer of the mobile phone number to the new operator.

Following receipt of the subscriber's application, the new operator and the subscriber enter into a service contract and the new operator files a request to a special database of transferred numbers to inform the current operator about the transfer. The mobile phone number is transferred to the new operator subject to the subscriber having paid all service fees due to the current operator.

In its application, the subscriber is entitled to designate a specific time and date from which the new operator should commence the provision of services. The services may not commence earlier than eight days from the date of execution of the service contract with the new operator for individuals and not earlier than 29 days for legal entities, or later than six months from the execution of the service contract.

## Customer terms and conditions

### 8 | Are customer terms and conditions in the communications sector subject to specific rules?

The general rules of the Russian Civil Code and Russian consumer protection laws apply to communications services. Communications service contracts with individuals are considered to be public contracts – service providers may not refuse to sign a contract with any willing individual and must ensure equal treatment of all subscribers of the same category.

Also, Russian communications laws require that the terms and conditions of contracts with subscribers must comply with the rules of the provision of communications services adopted by the government. The government adopted rules of the provision of communication services that contain detailed regulations governing the rights and obligations of service providers and subscribers of communications services. There are separate regulations for different types of telephone and radio communications services, broadcasting, telegraphy communications services, telematics services, postage and other services.

## Net neutrality

### 9 | Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

The net-neutrality principle is not formally recognised in Russian communications laws. However, FAS has provided certain guidance relevant to this issue. In February 2016, FAS prepared a Basic Document on the Net Neutrality that describes the measures for traffic management in Russia. The document introduced the following tools, which, FAS believes, can help maintain net neutrality:

- unified traffic-control instruments;
- intolerance to any kind of technical or technological discrimination of services and applications;
- a variety of tariffs and similar means of traffic management and telecom services quality control measures; and
- equal opportunities for traffic operators.

Roskomnadzor may use mechanisms established by Federal Law No. 90-FZ of 1 May 2019 (the law on sovereign runet) to slow down the access to the web resources, which contain prohibited information.

## Platform regulation

### 10 | Is there specific legislation or regulation in place, and have there been any enforcement initiatives relating to digital platforms?

Russian law has no special rules for digital platforms. General laws governing the internet apply (the key law is Federal Law No. 149-FZ on Information, Informational Technologies and Protection of Information of 27 July 2006 (the Information Law)). These laws contain specific rules on social networks, information dissemination organisers, messenger services, virtual private networks (VPNs) and film-streaming businesses (online cinemas) and other similar matters.

Other laws may apply as well. For example, in 2018, Russia introduced specific rules for e-commerce aggregators (ie, platforms aggregating information on goods or services, by amendments to Law No. 2300-1 on Protection of Consumers' Rights of 1 January 2019). The amendments impose certain obligations and liability on owners of e-commerce aggregators in connection with consumers buying goods or services via e-commerce platforms.

Further to this, Federal Law on Attracting Investments with the Usage of Investment Platforms (the Crowd Investing Law) of 2 August 2019, in effect from January 2020, introduced the 'investment platform' concept – an information system for entering into investment contracts with the use of information technologies and technical means.

Further, FAS currently considers amending Federal Law No. 135 on Protection of Competition (the Competition Law) to introduce criteria for the determination of digital platforms owners as dominant players. It is envisaged that these changes will contain definitions of 'digital platform' and 'network effects'.

## Next-Generation-Access (NGA) networks

### 11 | Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

The concept of 'universal services' was introduced to the Communications Law in 2005 and provided for the state support of measures aimed at establishing 'equal access for any person to telecom services'. This included the installation of more than 100,000 public phone boxes (info mats and multi-function devices), public-access points and hotspots.

In 2014, the Communications Law introduced further measures in this regard. It provided for the state support of the maintenance of the existing public phone boxes and public-access points and the laying of more than 200,000 kilometres of fibre-optic communication lines. The amended law also provided for the establishment of hotspots in settlements of between 250 to 500 people and access to the internet at a speed of at least 10Mbit/s without traffic limitations.

Following the adoption of the Digital Economy Development Programme in 2018, which includes plans to create 5G networks, in November 2020, the government approved the roadmap for the development of 5G networks, which provides for the expansion of 5G in Russia between 2021 to 2024.

## Data protection

### 12 | Is there a specific data protection regime applicable to the communications sector?

Federal Law No. 152-FZ of 27 July 2006 on Personal Data (the PD Law) provides for the general rules on personal data processing, including the rules applicable to data processing in the communications sector. As a general rule, personal data should be processed upon receipt of individuals' explicit consents, unless one of the statutory exemptions applies. The PD Law sets out general principles for the use of personal data including in the promotion of goods and services directly to potential consumers, and an obligatory opt-in confirmation. These rules equally apply to the telecommunications sector, including the localisation requirement.

When collecting personal data, including through the internet, a data operator must ensure that the recording, systematisation, accumulation, storage, adjustment (update and modification), extraction of personal data of Russian Federation citizens occurs in databases located in Russian Federation territory.

## Cybersecurity

### 13 | Is there specific legislation or regulation in place concerning cybersecurity or network security in your jurisdiction?

The key statute for regulation of cybersecurity of information systems in Russia is Federal Law No. 187-FZ on Security of Critical Information Infrastructure of the Russian Federation of 26 July 2017 (the CII Law). The CII Law is in effect from 1 January 2018.

The CII Law provides the framework for ensuring the security of the Russian critical information infrastructure (CII), including the functioning of the state system for detecting, preventing and liquidating consequences of cyberattacks against information resources in Russia. The CII comprises IT systems and telecommunication networks operating in spheres of healthcare, defence, transport, fuel, spacecraft, metallurgy, nuclear, financial sector and science that are owned or maintained by the Russian state authorities and legal entities, and the relevant electronic communication networks. The CII Law imposes certain duties on the owners or maintainers of CII facilities (eg, to notify the competent state authorities on computer incidents, to assist state authorities in detecting, preventing and eliminating the consequences of

computer attack, and to comply with established requirements for the operation of technical facilities used to detect computer attacks).

Federal Law No. 90-FZ of 1 May 2019 (the law on sovereign runet), which introduced a set of amendments to the Federal Law on Communications and the Information Law, came into force on 1 November 2019, and the provisions regarding the national domain-name system and national cryptosecurity standards came into force in January 2021.

The main purpose of the sovereign runet law is to ensure autonomous operation of the Russian segment of the internet in case of an emergency, which will be declared by Roskomnadzor. Roskomnadzor, via the specially created Centre for Monitoring and Control of Public Communication Networks, will take control over the internet if an emergency occurs. The Centre for Monitoring and Control of Public Communication Networks has the authority:

- to collect information about network infrastructure and IP addresses;
- maintain the register of traffic-exchange points; and
- in case of emergency, order the rerouting of the traffic.

The law also introduced certain duties on communications operators and owners of technological networks to counter network threats such as rerouting data through domestic lines and installing specific hardware allowing Roskomnadzor to reroute or block the traffic directly.

In February 2021, the Russian President signed Federal Law No. 19-FZ that introduced penalties of up to 6 million rubles for violating the applicable rules under the law on sovereign runet.

## Big data

### 14 | Is there specific legislation or regulation in place, and have there been any enforcement initiatives in your jurisdiction, addressing the legal challenges raised by big data?

Russian law does not specifically regulate the collection and processing of big data. Data analytics is currently subject to the PD Law and other data protection regulations. There are several legislative initiatives in the big data area.

In February 2020, Minkomsvyaz published separate draft amendments to the Information Law. Under these amendments, big data is defined as the set of depersonalised data classified by group principles. The draft law proposes to introduce a register of big data operators and provides that the principles, rights, and obligations of big data operators, procedures and means of big data processing will be established by the government. The draft amendments have not been introduced to the State Duma yet.

In 2021, the National Centre for Digital Economics announced the development of the Russian national standard corresponding with ISO/IEC TR 20547-1:2020 Information technology – Big data reference architecture – Part 1: Framework and application process.

## Data localisation

### 15 | Are there any laws or regulations that require data to be stored locally in the jurisdiction?

Certain data must be stored locally in Russia. For example, under the PD Law, personal data of Russian citizens must be primarily recorded, systematised, stored, updated and retrieved with the use of databases physically located in Russia.

In December 2019, the liability for non-compliance with the personal data localisation requirements was increased. The law introduced severe penalties such as fines for legal entities of up to 6 million rubles for a first-time offence, and up to 18 million rubles for a second-time offence for non-compliance with the localisation requirement.



Also, the Communications Law requires that communication operators store in Russia:

- up to three years: information about the facts of receipt, transmission, delivery and processing of voice information, text messages, images, sounds, video and other messages by telecommunications services users; and
- up to six months (but subject to special storage capacity rules): text messages, voice information, images, sounds, video and other messages of telecommunication services users.

The Information Law imposes similar data localisation obligations on information dissemination organisers and messengers. The draft law purporting to introduce data localisation requirements on owners of technological networks holding autonomous system numbers is pending.

**Key trends and expected changes**

**16** Summarise the key emerging trends and hot topics in communications regulation in your jurisdiction.

In 2017, Minkomsvyaz developed the Digital Economy programme following orders of the President and government of 5 December 2016. The programme is aimed at the digital transformation of the Russian communications sector by 2024. It covers different aspects such as: legislative and regulatory spheres, staff and education, research and development, information infrastructure, information security, state governance, smart city and electronic healthcare. For example, as part of the programme, the government aims to implement 5G networks and develop a plan for the allocation of 5G RFs. The Radio Frequencies Commission intends to permit operators to use already allocated RFs used for 2G, 3G and 4G networks for testing and development of 5G.

From 1 April 2021, Russian software must be preinstalled on certain consumer electronic devices offered for sale in Russia. These devices include smartphones, tablets, PCs, laptops and smart TVs. The Russian government published the list of approved applications subject to the pre-installation requirement, which includes Russian-developed browser, search engine, mail agent, social networks, office suites, audio-visual services and others.

Russia also considers imposing an obligation on telecom operators to grant free access to socially important websites. As part of the experiment, Minkomsvyaz published the list of socially important resources in March 2020 and introduced the draft amendment to the State Duma in December 2020.

**MEDIA**

**Regulatory and institutional structure**

**17** Summarise the regulatory framework for the media sector in your jurisdiction.

The key law regulating the media sector in Russia is Law of the Russian Federation No. 2124-1 on Mass Media of 27 December 1991 (the Mass-Media Law).

Specific content requirements for mass media can also be found in other laws including:

- Federal Law No. 436-FZ on Protection of Children from Information Harmful to Their Health and Development of 29 December 2010 (the Child-Protection Law);
- Federal Law No. 15-FZ on Protection of Health Against Tobacco Smoke and Consequences of Tobacco Consumption of 23 February 2013 (the Anti-Tobacco Law);
- Federal Law on Information, Information Technologies, and Information Protection, No. 149 of 27 July 2006 (the Information Law); and

- Federal Law No. 38-FZ On Advertising of 13 March 2006 (the Advertising Law).

The principal state authority responsible for developing and implementing national policy and regulation for telecommunications, mass media, IT and postal services is the Ministry of Digital Development, Communications and Mass Media (Minkomsvyaz) and its subordinate government agency Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor), which is responsible for the state control and supervision of compliance with Russian laws on mass media, telecommunications, and personal data processing.

**Ownership restrictions**

**18** Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

On 1 January 2016, foreign-ownership restrictions were introduced to the Mass-Media Law, as follows:

- a foreign legal entity, foreign citizen or Russian company with foreign participation is banned (along with certain other persons and entities) from serving individually or jointly as the founder or participant of any mass-media organisation, or acting as the editor-in-chief of such an organisation or as a broadcaster;
- a foreign legal entity, foreign citizen or Russian company with more than 20 per cent foreign participation (along with certain other persons and entities) may not own, manage or control, directly or indirectly more than 20 per cent of a shareholder or participant of a founder, editor or broadcaster; and
- any other forms of control of foreign entities and individuals over a mass-media organisation are also prohibited.

These restrictions are vaguely drafted and subject to conflicting interpretations. For example, in January 2019, the Russian Federation Constitutional Court ruled that certain parts of article 19.1 are not constitutional and directed to amend the Mass-Media Law to remove the ambiguity. The subject matter of the amendments is to provide clarity on certain terms used in article 19.1 and to address how investors can enjoy certain corporate rights within the permitted 20 per-cent limit. In March 2021, the draft amendments to article 19.1 passed the first reading of the State Duma.

Additional restrictions apply to certain strategic media companies. Under the Foreign Strategic Investments Law, the following activities are considered strategic:

- TV and radio broadcasting in territory covering 50 per cent or more of the Russian Federation’s population;
- acting as an editor, publisher or founder of printed mass media if the aggregate annual circulation is not less than 15 million copies for editions published two and more times a week, 2.5 million copies for editions published once a week, once in two or three weeks, 700,000 copies for editions published once or twice a month and 300,000 copies for editions published once a quarter or less frequently; and
- foreign investments in companies exercising the above strategic activities that lead to establishing control over such companies are subject to certain restrictions, including the requirement to obtain approval of the government commission.

Separate foreign ownership restrictions apply to certain specific media services such as audiovisual service owners.



Also, under Federal Law No. 160-FZ on Foreign Investments in the Russian Federation of 9 July 1997 and the Foreign Strategic Investments Law, the head of the government commission has the authority and discretion to order that any foreign investment concerning any Russian company (ie, not necessarily a strategic company) should be cleared by the government commission.

Further, in November 2017, the Information Law was amended to extend to media organisations certain restrictive regulations on the foreign agents that were initially designed to apply to non-profits who receive financing from foreign sources and engage in political activity in Russia. In particular, foreign agent mass media must include a special disclaimer in every publication or post identifying their status as foreign agents. Also, they must keep separate accounts for funds and property received from foreign sources, submit quarterly reports on the sources of financing to the Russian Ministry of Justice and publish activity reports in Russia bi-annually. The Russian Ministry of Justice keeps the register of foreign agent mass media,

### Licensing requirements

19 | What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

In general, broadcasting using traditional technologies (free-to-air, cable and satellite) usually involves obtaining the following permissions from state authorities:

- a mass-media registration;
- a broadcasting licence; and
- a communication-services licence (not required if the broadcaster has an agreement with a licensed communication-services provider).

Mass-media registration is granted by Roskomnadzor to a mass-media founder within a month of filing the application.

Broadcasting licences are granted by Roskomnadzor as well. Broadcasting licences are divided into two major types:

- a universal licence that can be granted to the editor of a TV or radio channel, and allows broadcasting in all media in all Russian territory; and
- a broadcasting licence granted to entities that are not editors of TV or radio channels, for broadcasting in specific media (eg, cable, terrestrial or satellite). In the case of free-to-air or satellite broadcasting, the applicant must also obtain the right to use a specific broadcasting frequency.

As a rule, frequencies are allocated through a public tender by the Federal Tender Commission for TV and Radio Broadcasting.

Broadcasting licences are granted for 10 years.

The state fee for the application of a broadcasting licence is 7,500 rubles. The broadcasting licensing procedure takes up to 45 business days.

### Foreign programmes and local content requirements

20 | Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

Generally, the Mass-Media Law guarantees unrestricted access to the information and materials of foreign mass media to Russian citizens. However, the distribution of foreign TV and radio channels (as well as other mass media) and content is permitted only upon registration of mass media in Russia. Distribution of foreign printed media not

registered in Russia requires a permit from Roskomnadzor. The Russian advertising laws also have an exemption from the general advertising ban, which applies to all pay-TV channels; such exemption is available to cable channels with primarily local content.

Further, in November 2017, the Information Law was amended to extend to media organisations certain restrictive regulation on the foreign agents that were initially designed to apply to non-profits who receive financing from foreign sources and engage in political activity in Russia. In particular, foreign-agent mass media must include a special disclaimer in every publication or post identifying their status as foreign agents. Also, they must keep separate accounts for funds and property received from foreign sources, submit quarterly reports on the sources of financing to the Russian Ministry of Justice, and publish activity reports in Russia bi-annually. The Russian Ministry of Justice keeps the register of foreign agent mass media,

### Advertising

21 | How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

The principal law regulating broadcast media advertising is Federal Law No. 38-FZ on Advertising of 13 March 2016 (the Advertising Law). The Advertising Law contains certain restrictions and limitations for broadcast media advertising.

#### Restrictions for paid channels

From 1 January 2015, advertising on TV programmes or in broadcasts on TV channels that are accessed exclusively on a paid basis or with the use of technical decoding devices are not permitted. The following channels are exempt from this restriction:

- Russian national must-carry free television channels;
- TV channels broadcast in Russia by terrestrial transmission using limited frequency resources; or
- TV channels transmitting not less than 75 per cent of local content.

#### Time limitations

- The general time limitations for advertising airtime are as follows:
- airtime devoted to advertising should not exceed 20 per cent of the overall airtime per hour and 15 per cent of the overall airtime per day;
  - advertising should not exceed four minutes per occurrence; and
  - advertising may not be aired during religious programmes or programmes of less than 15 minutes.

Each interruption of a programme or broadcasting by advertising should be made with advance notice.

#### Restrictions on advertising for certain types of goods

The Advertising Law generally prohibits advertising of drugs, weapons, tobacco, tobacco goods, and smoking-related equipment and certain other goods. The advertising of alcohol products is specifically prohibited for printed media, the internet and broadcasting on TV channels, save for certain exceptions, including the advertising of beer and related beverages during live sports broadcasts or records, and of Russian wine.

There are also rules and restrictions applicable to the advertising of certain other goods. For instance, the advertising of medicines and medical services, including methods of treatment, should contain warnings regarding contraindications, as well as the need to read instructions and seek advice from specialists. These notices should be broadcast for at least five seconds and should cover at least 7 per cent of the picture area.

There is also special restriction of the advertising of certain types of goods in children's programming, such as the advertising of

alcoholic products, medicines and medical services, including methods of treatment, military products and weapons, risk-based games, bets, and others.

### Must-carry obligations

**22** | Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

Under the Communications Law, each TV communication services operator must broadcast must-carry channels to its subscribers for free. The list of must-carry channels includes:

- all Russian TV and radio must-carry channels listed in Presidential Decree No. 715 of 24 June 2009. Currently, the list includes 10 TV channels: Channel 1, Russia-1, Match TV, NTV, Peterburg-5 Channel, Russia-Kultura, Russia-24, Karusel, OTR and TV Center-Moscow; and three radio channels: Vesti FM, Mayak and Radio Rossii;
- must-carry channels of the constituent territories of the Russian Federation;
- municipal must-carry channels; and
- TV channels that have obtained the right to carry out terrestrial broadcasting using positions in multiplexes. Currently, there are 10 TV channels that have obtained the right to carry out terrestrial broadcasting using positions in multiplexes.

### Regulation of new media content

**23** | Is new media content and its delivery regulated differently from traditional broadcast media? How?

Russian law currently does not provide for a specific regulation applicable to new media content or online (internet) TV broadcasting. Arguably, the existing Mass-Media Law definitions of a 'TV channel' and a 'TV programme' are broad enough to apply to TV content broadcast online. However, as a matter of practice, in general, online broadcasting is currently permitted without licence.

The rules on content applicable to traditional broadcast media would apply to online broadcast in most instances. There are recent new laws related to different aspects of new media content. For example, on 1 July 2017, the Information Law was amended to include a concept of an 'audiovisual service owner' (AS owner). In essence, an audiovisual service is a website, webpage, IT system and/or software that is used to form or organise internet distribution of a 'collection of audiovisual works' (eg, video-on-demand service providers). An AS owner must, among other things, comply with the Mass-Media Law requirements and restrictions on the dissemination of information. The new regulation also provides for foreign ownership restrictions concerning AS owners: foreign states, international organisations, foreign entities, Russian entities with more than 20 per cent foreign shareholding, foreign citizens, Russian citizens with dual citizenship and their affiliates that operate international audiovisual services (ie, with more than 50 per cent of users located outside of Russia) are not allowed to directly or indirectly control more than 20 per cent of an AS owner.

In December 2020, Russian lawmakers proposed a draft law expanding the foreign ownership restrictions. While the existing regulation affects only international AS players, the proposed draft is expected to prohibit any foreign ownership of more than 20 per cent of an AS owner.

### Digital switchover

**24** | When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

The Russian switchover from analogue to digital broadcasting started in 2009. The switchover of 20 federal must-carry channels to digital broadcasting was completed in October 2019.

There is no specific plan of reallocation of the radio frequencies freed up by the switchover. Under the existing regulation, the particular radio frequencies' capacities for terrestrial and satellite broadcasting can be allocated via tenders under Government Decree No. 25 of 26 January 2012. Under Government Decree No. 336 of 2 July 2004, radio frequencies' bands may be reallocated by a decision of the Radio Frequencies Commission. If a band reallocation involves changing the band purpose from terrestrial broadcasting to another type of broadcasting, it will require the prior consent of the broadcasters of must-carry channels as well as of the broadcasters that have air terrestrial broadcasting licences for this band.

### Digital formats

**25** | Does regulation restrict how broadcasters can use their spectrum?

Currently, there is no specific regulation restricting spectrum use by broadcasters (such as multi-channelling, high definition and data services), other than restrictions provided in the broadcasting and communication licences, licensing requirements and decisions on the allocation of RFs (as the case may be), or arising from the must-carry obligations.

### Media plurality

**26** | Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?

There is no specific regulation or promotion of media plurality in Russia. But the Mass-Media Law provides that mass-media organisations must not be restricted in Russia other than in cases provided by the Russian mass-media legislation. Generally speaking, subject to foreign ownership restrictions and other restrictions in the Mass-Media Law and other laws and, in many instances, registration requirements, Russia allows mass media in any form. The Mass-Media Law also provides that the search, production and distribution of information cannot be restricted other than in cases provided by law (such cases include terrorist and extremist materials, propagation of violence and pornography, etc).

### Key trends and expected changes

**27** | Provide a summary of key emerging trends and hot topics in media regulation in your country.

The three key trends are as follows. First, the emergence of new types of media and internet services (online and electronic newspapers, blogs, social media, messaging apps, aggregators and services) that fall outside of traditional regulation attract attention from the government. This results in new regulation affecting these new types of media and services. For example, following the 2017 adoption of the special regulation on virtual private networks, messengers and online cinemas, in 2018, Russia introduced special rules for e-commerce platforms that aggregate information from online shops and service providers. In March 2019, Russia changed its Civil Code to include digital rights, and further laws regulating activities in this field are pending.

In August 2020, Minkomsvyaz initiated the public discussion of the draft law amending the Communications Law, which introduces the definitions of the data processing centre. If adopted, this new law will impose certain requirements on the owners and operators of data processing centres.

In April 2021, the Russian government introduced the draft law, which, if adopted, will oblige the owners of technological networks holding autonomous system numbers to store the information about the facts of receipt, transmission, delivery and processing of voice, text, images, sounds, video and other messages.

Second, Russia continues to strengthen governmental control in cyberspace to combat cybercrime. This resulted in the adoption of Federal Law No. 187-FZ of 26 July 2017 on the Security of Critical Information Infrastructure of the Russian Federation, in effect from 1 January 2018. Further, Federal Law No. 90-FZ of 1 May 2019 introduced a set of amendments to the Information Law, which are colloquially known as the 'sovereign runet law' or the 'law on the secured internet'. These amendments allow the government to restrict access to the internet and to control internet traffic in emergencies. Since 1 January 2018, messenger operators must run a mandatory identification of users that could be done using subscribers' phone numbers.

Third, Russia continues to strengthen control over information posted online to prevent the dissemination of information it deems harmful or illegal.

For example, under Federal Law No. 31 of 18 March 2019, online media and communications services providers are required to prevent the distribution of fake news. Fake news is broadly defined as any unverified information that threatens someone's life, health, property, public peace or security, or threatens to interfere or disrupt critical infrastructure, transport or public services, banks, communication lines and facilities, power and industrial facilities. Owing to the covid-19 pandemic, Federal Law No. 99 of 1 April 2020 introduced separate liability for the distribution of fake news related to the:

- circumstances threatening life and safety of citizens;
- measures, which are taken to ensure the public safety; and
- methods of counter-acting these threatening circumstances.

Federal Law No. 30-FZ of 18 March 2019 enabled Roskomnadzor to require the deleting of information that shows disrespect to Russian governmental authorities, state symbols, or Russian society and to block non-compliant resources.

In December 2020, the Russian Administrative Offences Code was amended to introduce increased penalties for the violation of illegal content blocking requirement of up to 20 per cent of the violating company's annual income.

## REGULATORY AGENCIES AND COMPETITION LAW

### Regulatory agencies

**28** Which body or bodies regulate the communications and media sectors? Is the communications regulator separate from the broadcasting or antitrust regulator? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

The key state bodies regulating the communications and media sectors are the Ministry of Digital Development, Communications and Mass Media (Minkomsvyaz) and the Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor). Roskomnadzor has controlling and supervisory powers both in the communications and broadcasting spheres. The anti-trust regulator in Russia is the Federal Antimonopoly Service (FAS). FAS

also regulates advertising of any kind. Specific powers of these state bodies are outlined in the relevant regulations, which helps to avoid conflicting jurisdiction.

### Appeal procedure

**29** How can decisions of the regulators be challenged and on what bases?

Generally speaking, a decision of the regulator may be challenged by complaining to a supervisory authority if such exists (administrative proceedings) or to a court.

For example, if a person believes that a decision or an action of the regulator (eg, the imposition of fines or the cancellation of a licence) is illegal, groundless or violates its rights and legal interests, the claimant may appeal to the relevant supervising authority of the regulator that took such action or rendered such decision. For instance, the relevant supervising authorities are as follows:

- for Roskomnadzor officials, the head of the Roskomnadzor department where such official works;
- for the head of a Roskomnadzor department, the head of Roskomnadzor; and
- for the head of Roskomnadzor, Minkomsvyaz.

Typically, the steps, timing and other details for the appeal process are described in the particular regulations of the relevant authority. Terms and time limits in administrative proceedings vary depending upon the circumstances. A typical appeal through administrative proceedings takes between 15 days and a month and can be further appealed in court.

Alternatively, the claimant may appeal to a court. The appeal process is governed by procedural legislation, for example, by the Russian Arbitrazh Procedural Code (if the decision relates to any entrepreneurial activities), or the Russian Code of Administrative Judicial Proceedings (if the decision concerns rights of individuals or non-profit organisations). To appeal, a claim should be brought to court within three months of the claimant becoming aware of a violation of its rights. The appeal process might be multi-staged, and each stage has its own rules on timing. In total, the appeal process could take 10 months (or even more). In general, appeal in court follows a rather stringent procedure with protections (ie, there will be a formal hearing and the person will be able to present evidence). The court appeal is a public process and relevant information will be posted in public databases of the Russian court system.

### Competition law developments

**30** Describe the main competition law trends and key merger and antitrust decisions in the communications and media sectors in your jurisdiction over the past year.

From 1 April 2021, manufacturers of certain consumer electronic devices offered for sale in Russia are required to preinstall Russian software. In November and December 2020, the Russian government approved lists of devices and Russian software that are subject to the preinstallation requirement.

In 2019, FAS presented a new draft law to amend the Competition Law, the 'fifth antimonopoly package', as a response to the digitalisation of the economy. Most likely, the draft will be changed significantly. The current draft proposes the need to impose specific criteria to determine whether an owner of a digital platform (ie, a resource that is used to organise and provide interaction between sellers and buyers) has a dominant market position. Among other things, it suggests the application of the network effects test, and the digital platform owner may be viewed as dominant if the network effect of its platform allows for a certain influence over the market. The 'network effect' is defined

as the dependence of the consumer value of goods on the number of consumers of the same group (direct networks effect) or change in the consumer value of goods for one group of consumers when the number of consumers in another group decreases or increases (indirect networks effect). An exception is made for digital platforms with a revenue of less than 400 million rubles in the past calendar year.

In February 2021, the Russian Association of E-commerce Companies requested FAS to extend the proposed regulations to affect search engines, social networks and messengers. The draft law is yet to be introduced to the State Duma.

### Coronavirus

31 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Reportedly, the Russian government considers changing the regulations of the data storage requirements imposed by the Yarovaya Law on traditional telecommunication operators and operators of various internet communication platforms such as messengers, email services, chats, forums and others. Namely, the Russian government aims to postpone the obligation to increase the volume of storage capacities maintained by the regulated entities, as well as introduce other support measures for the telecom operators.

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