

Telecoms and Media

Contributing editors

Alexander Brown and Peter Broadhurst



2017

GETTING THE
DEAL THROUGH

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Telecoms and Media 2017

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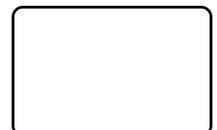


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Communications policy

1 Regulatory and institutional structure

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 for a regulatory framework for communications services in Russia, outlines communications operators' and users' rights and obligations, authorities of regulators and other matters. A significant amount of regulation goes through subordinated legislation passed by the Russian government and other regulators. The key licensing and communication services rules include:

- Russian Government Decree No. 87 On Approval of the List of Names of Communications Services Included in Licences, and of the List of Licensing Requirements of 18 February 2005 (Decree No. 87);
- 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 2016.

Regulatory bodies

The Russian government (<http://government.ru>) is the main Russian executive authority issuing various regulations in the communications sector and supervising activities of the subordinated bodies.

The Russian Ministry of Communications and Mass Media (MCMM) (<http://minsvyaz.ru/ru>) is the principal regulatory body for the communications sector. It develops and implements state policy in the sphere of tele and post communications and use and conversion of the radio-frequency spectrum, and adopts various regulations in these spheres.

The Russian Federal Service for Supervision of Communications, Information Technology, and Mass Media (Roskomnadzor) (<https://rkn.gov.ru>) is responsible for state control and supervision in the sphere of communications. Among other things, it adopts various regulations, issues communications licences and holds tenders for granting such licences (where required), registers radio-electronic means and high-frequency devices, permits import of such means and devices from abroad, issues permits for the use of communications networks and telecom-designated construction, maintains state registers in the relevant spheres. It is authorised to conduct inspections and to impose sanctions (eg, fines, suspension of licences) for discovered violations.

The Federal Communications Agency (Rossvyaz) (www.rossvyaz.ru/) manages state property and renders certain public services in the sphere of communications, including those related to creating, developing and using communication networks, satellite communication systems. (For example, Rossvyaz allocates numbering resources, registers declarations of compliance of communications means and maintains the register of such certificates.)

The State Radio Frequencies Commission (Radio Frequencies Commission) (<http://minsvyaz.ru/ru/activity/advisories/7/>) regulates radio-frequency spectrum. The commission establishes a radio frequency spectrum that would be available for the provision of communications services and restricts number of communications operators to operate in this spectrum in a given territory of the Russian Federation, determines plans and programmes for the allocation of radio frequency bands. In certain cases it can also suspend or terminate frequency allocation.

The Russian Federal Antimonopoly Service (the FAS) (<http://fas.gov.ru/>) is a federal executive body in the field of competition, antimonopoly and advertising in all industry sectors including telecommunications. It also regulates prices for communications services performed by natural monopolies and 'significant operators' and participates in price-related disputes. It is entitled to adopt regulations, to enforce laws and impose fines and other sanctions in areas of concern.

Foreign ownership restrictions

Russian law does not have a 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.

Further, certain Russian companies carrying out communications activities can be deemed 'having strategic importance for ensuring the country's defence and state security' (strategic companies) and be 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 (Law No. 57-FZ). These are companies acting as communications operators and having a dominant position (generally, a 35 per cent share) in (i) an all-Russian communications market; or (ii) fixed telephone service market of no fewer than five Russian regions, or (iii) fixed telephone service market in Moscow, St Petersburg or Sevastopol or (iii) in certain Russian ports.

To acquire direct or indirect control of such entities (or to acquire the fixed assets of such companies where those fixed assets exceed 25 per cent of the aggregate book value), foreign investors may have to obtain the consent of the government foreign investment control 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).

Finally, the recent amendments to Federal Law No. 160-FZ On Foreign Investments in the Russian Federation of 9 July 1997, and Law No. 57-FZ have significantly extended the powers of the foreign investment control commission in relation to foreign investments. In particular, from 29 July 2017 (the date when the amendments came into force) the head of this commission has the authority and discretion to order that any foreign investment with respect to any Russian company (ie, not necessarily a strategic company) should be cleared by the commission.

2 Authorisation/licensing regime

Describe the authorisation or licensing regime.

Communications licences

Government Decree No. 57 contains an exhaustive list of communication services requiring a communication licence. It includes, among others, communication services for the purposes of cable, terrestrial broadcasting, telematics and data communications services. Licences are granted by Roskomnadzor. Roskomnadzor maintains a publicly available register of the licences (<https://rkn.gov.ru/communication/register/license/>). The licensing process includes submission of 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 could be from three 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 on the basis of applications. See question 17 for the information on obtaining broadcasting licences.

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

Radio frequencies (RFs)

In general, the Radio Frequencies Commission allocates radio frequencies 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 (once in four years).

Further, Roskomnadzor allocates particular RFs and RF channels. The allocation procedure varies depending on types of the communications services involving RFs. But in general, to obtain an RF permit, the applicant has to undergo a series of expert reviews performed by the Service for Radio Frequencies and various state security agencies. Also, if the applicant 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 RF, permits are allocated via tenders. (There is a separate procedure for allocation of RFs for terrestrial and satellite broadcasting, please see question 17 for more detail.)

In general, the allocation procedure may take up to 120 days. RFs are usually allocated for 10 years, provided that such term does not exceed the term of the relevant communications licence. The term may be extended based on the application. 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 incorporated equipment, etc).

The above licensing and authorisation regimes equally apply to fixed, mobile and satellite networks and services, and to 2G, 3G and 4G networks. The first tender with respect to LTE frequencies was held in October 2015. RF bands in the ranges 1,710-1,785MHz and 1,805-1,880MHz have been allocated among major telecom operators for developing LTE standard networks.

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

3 Flexibility in spectrum use

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 on the basis of a non-personalised general licence that applies to all radio electronic devices of particular type, for example, to certain short-range devices.

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

4 Ex-ante regulatory obligations

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 in Russia generally (significant operators). Roskomnadzor maintains the register of significant operators.

Significant operators must ensure equal access to their networks and equal treatment for traffic of telecom operators providing similar services. Significant operators are required to publish the rules on access to 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.

Access 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 Russian government.

5 Structural or functional separation

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 services operators. The MCMM approves the rules on the separation of accounts. Current rules have been 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.

6 Universal service obligations and financing

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

In Russia, phone connection services via payphones, multifunctional devices, information kiosk terminals 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, devices for phone connection 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 connection collective access point must be installed in every community with population exceeding 500 people; and at least one internet access point for users with their own devices must be installed in every community with a population of between 250 and 500 people.

The Russian government is empowered to nominate 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 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 maximum rates prescribed by the 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.

7 Number allocation and portability

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 has to submit an application to a 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 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.

8 Customer terms and conditions

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

General rules of the Russian Civil Code and Russian consumer protection laws apply to communications services. Communications service contacts with individuals are considered to be public contracts meaning that 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.

In addition to that the Russian communication laws require that the terms and conditions of contracts with subscribers must comply with the rules of provision of communications services adopted by the Russian government. The Russian government adopted rules of 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 communication services, broadcasting, telegraphy communication services, telematics services, postage and other services.

9 Net neutrality

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?

There is no law on the net neutrality principles. However, the FAS provided certain guidance. In February 2015, the FAS prepared the report on implementation of net neutrality principles that describes the measures for traffic management in Russia. The report introduced the following tools, which, the FAS believes, could maintain net neutrality:

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

10 Platform regulation

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

Russian law does not have any special law on 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, VPNs and film-streaming businesses (online cinemas) and other relevant matters.

11 Next-Generation-Access (NGA) networks

Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NAG 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 the establishment of 'equal access for any person to telecom services'. These included installation of more than 100,000 public phone booths (info mats, 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 booths and public access points and construction of more than 200,000km of fibre-optic communication lines. The amended law also provided for establishment of hotspots in settlements of 250–500 people and access to the internet at a speed of at least 10Mbit/s without traffic limitations.

Further in 2014 the Russian government approved a list of Internet websites with a 'free access'. The list includes websites of state authorities, federal informational system Unified Portal of State Municipal Services and websites of certain mass media, that are official sources for the publication of laws and regulations.

12 Data protection

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, work and services directly to potential consumers, and an obligatory opt-in confirmation. These rules equally apply to the telecommunications sector.

13 Cybersecurity

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

Russian law does not specifically provide for the measures aimed at cybersecurity. In certain industries it became common practice to develop standards for cybersecurity. In 2016, the Russian Central Bank has issued recommendations on the maintenance of information security for the banks. The recommendations provide for a set of standards to prevent data leaks, which include: (i) measures recommended for adoption in order to prevent possible leaks of confidential information and recommendations with regard to the implementation of such measures; (ii) recommendations for the maintenance of the necessary and adequate level of monitoring and control of possible leakage channels; and (iii) types of data recommended for inclusion in the category of confidential information.

14 Big data

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 collection and processing of big data. Nevertheless, certain aspects of business related to usage of data analysis are subject to the PD Law and other data protection regulations.

15 Data localisation

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. There are certain narrow exceptions allowing the processing of data abroad:

- pursuant to international agreements or treaties to which Russia is a party;
- to render justice;
- to perform functions of the Russian federal government or a Russian municipal government; or
- to pursue professional journalism, lawful mass media activity, lawful scientific activity, lawful literary activity or other lawful creative activity, unless doing so infringes on the rights and lawful interests of a personal data subject.

16 Key trends and expected changes

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

The MCMM has developed a programme called 'Electronic Economy' in furtherance of the orders of the Russian President and the Russian government of 5 December 2016. The programme is aimed at the 'electronic transformation' of the Russian communications sector by 2024. It covers different aspects: 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, by 2020 the government aims to implement 5G networks in all cities with population over 1 million and develop a plan for the allocation of 5G radio frequencies by 2018.

Media**17 Regulatory and institutional structure**

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

The key law regulating the media sector in Russia is the 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); 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 MCMM with three subordinate institutions:

- Roskomnadzor, responsible for the state control and supervision of compliance with Russian laws on mass media, telecommunications and personal data processing;

- the Federal Agency for Press and Mass Communications, responsible for the management of state property in the press and other media sectors; and
- Rossvyaz, responsible for the management of state property and law enforcement functions in the field of communication and information, including construction, development and utilisation of communication networks, satellite systems, TV and radio broadcasting systems.

18 Ownership restrictions

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?

Effective from 1 January 2016 more stringent foreign ownership restrictions have been 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' are also prohibited.

Additional restrictions apply to certain 'strategic' media companies. Pursuant to Law No. 57-FZ, the following activities are considered strategic:

- TV and radio broadcasting on the territories which cover 50 per cent and more of the population of the Russian Federation subject;
- acting as an editor, publisher or founder of printed mass media if the aggregate circulation per year 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 and less frequently; and
- foreign investments in companies exercising the above strategic activities that lead to establishing control over such companies is subject to certain restrictions, including the requirement to obtain the approval of the foreign investment control government commission.

Separate foreign ownership restrictions have recently been adopted for certain specific media services – for example, for an audiovisual service owner (see question 21).

Finally, the recent amendments to Federal Law No. 160-FZ On Foreign Investments in the Russian Federation of 9 July 1997, and Law No. 57-FZ have significantly extended the powers of the foreign investment control commission in relation to foreign investments. In particular, from 29 July 2017 (the date when the amendments came into force) the head of this commission has the authority and discretion to order that any foreign investment with respect to any Russian company (ie, not necessarily a strategic company) should be cleared by the commission.

19 Licensing requirements

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, satellite) usually involves obtaining the following permissions from state authorities:

- a mass media registration;
- a broadcasting licence; and
- a communication services licence (it is 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 requisite application.

Broadcasting licences are granted by Roskomnadzor as well. Broadcasting licences are divided into two major types: (i) a universal licence that could be granted to the editor of a TV or radio channel, and allows for the broadcasting in all environments for the whole territory of Russia, and (ii) a broadcasting licence that is granted to entities that are not editors of TV or radio channels, for broadcasting in specific environments (eg, cable, terrestrial or satellite). If broadcasting is to occur using terrestrial or satellite frequencies, a public tender through a Federal Tender Commission for TV and Radio Broadcasting is required for the allocation of such frequencies.

Broadcasting licences are granted for 10 years.

With respect to obtaining a communications licence, see question 2.

20 Foreign programmes and local content requirements

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, 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 (see above about the current foreign ownership restrictions). Distribution of foreign printed media not registered in Russia requires a permit from Roskomnadzor.

21 Advertising

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

The principal law regulating broadcast media advertising is the Advertising Law. The Advertising Law provides for the following restrictions and limitations for broadcast media advertising.

Restrictions for paid channels

Effective from 1 January 2015, advertising on TV programmes or in broadcasts on TV channels that are accessed exclusively on a paid basis and/or with the use of technical decoding devices, is not permitted. The following channels are exempt from this restriction: (i) Russian national 'must-carry' free television channels; (ii) TV channels broadcast in Russia by terrestrial transmission using limited frequency resources; or (iii) TV channels transmitting not less than 75 per cent of local content.

Time limitations

The general time limitations for advertising air time are as follows:

- air time devoted to advertising should not exceed 15 per cent of the overall air time per hour;
- the interruption of children's and educational programming by advertising is limited to one to three minutes at the beginning and at the end of the programme depending on the duration of the programme;
- for any other programming, including movies, interruption for 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 restricts advertising of specific types of goods, including:

- advertising of alcohol products is prohibited for broadcasting on TV channels;
- advertising of medicines, medical equipment, medical products, medical services, including methods of treatment should comply with certain rules. In particular, such advertising should contain warnings regarding contra-indications, 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; and

- advertising of tobacco, tobacco goods and smoking-related equipment, and certain other goods.

22 Must-carry obligations

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 is approved by Presidential Decree No. 715 dated 24 June 2009. Currently, this 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.

23 Regulation of new media content

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 broadcast 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, effective from 1 July 2017, Federal Law No. 149-FZ On Information, Informational Technologies and Protection of Information of 27 July 2006, has been 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 for to form and (or) organise internet distribution of a 'collection of audiovisual works' (eg, VOD service providers). An AS owner must, among other things, comply with the Mass Media Law requirements and restrictions on dissemination of information. The new regulation also provides for foreign ownership restrictions with respect to AS owners: foreign states, international organisations, foreign entities, Russian entities with more than 20 per cent foreign shareholding, foreign citizens, Russian citizens with double citizenship and their affiliates that operate international audiovisual services (ie, with more than 50 per cent users located outside of Russia) are not allowed to directly or indirectly control more than 20 per cent of an AS owner.

24 Digital switchover

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 and is scheduled to be completed by the end of 2018 as contemplated by the state programme on development of broadcasting in Russia approved by the Russian government. In the meantime, both digital and analogue broadcasting will operate simultaneously.

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 within for terrestrial and satellite broadcasting can be allocated via tenders pursuant to Government Decree No. 25 of 26 January 2012. Pursuant to Government Decree No. 336 of 2 July 2004 radio frequencies bands could be reallocated by a decision of the Radio Frequencies Commission. If a band reallocation involves changing the band purpose from terrestrial broadcasting to other type of broadcasting, it will require prior consent of the broadcasters of must-carry channels as well as of the broadcasters that have air terrestrial broadcasting licences for this band.

25 Digital formats

Does regulation restrict how broadcasters can use their spectrum (multi-channelling, high definition, data services)?

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 allocation of RFs (as the case maybe), or arising from the must-carry obligations.

26 Media plurality

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 and 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 described in question 18 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, pornography, etc).

27 Key trends and expected changes

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

One of the key trends is emerging popularity of 'new media' (as opposed to traditional ones) that provide content on-demand through the internet, such as online newspapers, blogs, social media and messaging apps, and the government endeavours to commence regulating these spheres. Until recently, most of such new media were outside the scope of the Russian mass media legislation. But there are new laws to regulate them. For instance, on 29 July 2017, Russia adopted two new laws amending the Information Law. Federal Law No. 276-FZ introduced certain rules designed, in essence, to ban those VPNs (and similar technologies) whose owners are not identified or that allow accessing websites, networks and other resources blocked in Russia. These rules come into effect on 1 November 2017. Federal Law No. 241-FZ requires messenger operators to make mandatory identification of users, which could be done using subscribers' phone numbers. These rules come into effect on 1 January 2018. There are many other legislative initiatives to regulate new media. For example, there is a pending bill relating to social networks and messaging that proposes to oblige them to delete content (eg, if it deems it to be unreliable and (or) discrediting the honour and dignity of another person or his or her reputation) at the request of state authorities.

Regulatory agencies and competition law**28 Regulatory agencies**

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 MCMM and Roskomnadzor. Roskomnadzor has control and supervision authorities both in communications and broadcasting spheres. The antitrust regulation is provided by the FAS. The FAS also regulates advertising of any kind (see also questions 1 and 21). The particular authorities of these state bodies are outlined in the relevant regulations; this helps to avoid conflicting jurisdiction.

29 Appeal procedure

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

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

For example, in sum, if one believes that a decision or an action of the regulator (eg, imposing fines, or cancelling a licence) is illegal, groundless or violates rights and legal interests, one could appeal it to the relevant supervising authority of the official or state authority that took an action or rendered a decision (the supervising authority). For instance, the relevant supervising authorities are as follows: for a Roskomnadzor official it is the head of the Roskomnadzor department where such official works; for the head of a Roskomnadzor department, it is the head of Roskomnadzor; and for the head of Roskomnadzor, it is the MCMM.

Usually, stages, timing and other details for such 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, one could appeal to a court by filing a claim to invalidate a decision of the regulator. The appeal process is governed by procedural legislation, for example, to 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 plaintiff becoming aware of violation of its rights. The appeal process might be a multi-staged process, 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 has a rather stringent procedure and protections

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(ie, there will be formal hearing, the person will be able to present evidence). The court appeal is a public process and information will be posted in the Russian courts' databases.

30 Competition law developments

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.

FAS v Google

The *FAS v Google* case remains one of the most discussed decisions of the FAS in the communications and media sectors. In 2015, upon a request from Yandex, a popular Russian search engine, the FAS investigated and found that Google had abused its market dominance on Android devices by prohibiting manufacturers of Android-based mobile devices from pre-installing the applications and services of other internet companies. The FAS imposed a fine equal to 7 per cent of Google's 2014 turnover in Russia and ordered Google to amend its agreements with the manufacturers, and notify all Android users of the possibility of deactivating pre-installed services and installing alternative applications, and of changing the Google Chrome browser for another search engine.

In 2016, Google attempted but failed to appeal the FAS decision in two instances in Russian courts. After the continuing failure of Google to comply with and implement the FAS order, the FAS imposed new fines on Google. However, finally, in April 2017, Google and the FAS entered into a settlement agreement confirming, among other things, that Google will abandon the exclusive pre-installation of its products on smartphones sold in Russia, and will pay the fines imposed.

FAS v Microsoft

The *FAS v Google* case gave rise to other, similar claims and investigations. In 2016 Kaspersky Lab, a Russian antivirus software and cybersecurity provider, asked the FAS to investigate Microsoft's allegedly anticompetitive practices. In particular, Kaspersky claimed that Microsoft had significantly reduced the time period given to independent developers to adapt their antivirus software for the company's latest operating system - Windows 10 - from two months to just six days, resulting in many security apps being flagged as incompatible and being replaced with Microsoft's own Windows Defender. In June 2017, the FAS upheld these claims and issued a warning requiring Microsoft to discontinue such practices that discriminate against other antivirus developers. We await further developments.

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Asset Recovery
Automotive
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Private Banking & Wealth Management
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Public Procurement
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