

IV MONITORING OF THE WORK OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

REGULATORY BODIES

1. *Republic Broadcasting Agency (RBA)*

1.1. We have elaborated on the activities of the RBA in the part of this Report concerning the implementation of the Broadcasting Law.

1.2. On the currently active competition for the issuance of broadcasting licenses (one regional license for television for the region of Zajecar, Negotin and Zagubica, two regional licenses for radio in Belgrade, as well as three local licenses for television in Negotin, Krusevac and Partizanske vode and seven local radio licenses in Lazarevac, Jagodina, Razanj, Smederevska Palanka, Kostolac, Sremski Karlovci and Kula), the RBA has issued a list of applicants, whose applications have been completed and submitted on time. This is a phase in the procedure of issuance of broadcasting licenses preceding the actual decision by the RBA about the submitted applications, based on predetermined criteria and prescribed requirements and standards. What is interesting is that many participants have applied – as much as eight contenders for two licenses in Belgrade or seven for the license in Jagodina.

1.3. The RBA Council was involved in a bizarre situation in relation to announcements that a candid camera program, starring the PM Ivica Dacic, could be aired on television. The media reported that Dacic was filmed while being interviewed by a Playboy playmate impersonating a reporter, who did not wear any underwear and “made it sure that the Prime Minister noticed it”, emulating Sharon Stone in the famous “Basic Instincts” movie scene. The RBA Council issued a press release saying, “it is seldom in the situation to react before a specific program is actually broadcast, since there is no legal obligation for the broadcasters to submit any content to the RBA prior to airing”. However, the Council recommended to all broadcasters in the press release “to refrain from airing the aforementioned candid camera piece, or similar content not meeting the basis ethical or aesthetical criteria, insulting personal dignity, threatening the right to privacy and undermining the protection of children and minors”. We will not delve into the discussion about how it is possible

that such a program was made without the consent of the Prime Minister. Instead, we will merely look into the provision of the Broadcasting Law authorizing the RBA to enact recommendations. That provision says that the RBA shall do it in the event of a “lack of consistency in the practice of broadcasters when applying the provisions of this Law concerning the programming content”. There was clearly no practice whatsoever in the above case, since the program had not been broadcast. Hence, it is impossible for non-existent practice to be consistent with anything. Finally, it seems that the RBA was manipulated with the purpose of personal promotion and that the recommendation was not only problematic, since it concerned a program that was not aired at all and hence it could have constituted an illicit preliminary ban. Furthermore, it was unnecessary, since it stopped short of recommending anything that was not already provided for in the Broadcasters’ Code of Conduct. The said Code has already stipulated, “TV stations shall ... avoid indecent dressing”, which involves “presenters and other actors in the program wearing clothes showing predominantly nude body parts or clothes with erotic connotation”. Furthermore, the Code says that “broadcasters must adhere to the principle of protecting fundamental human dignity in all programs”, as well as take all precautionary measures in order to protect juvenile persons from program content that may threaten their integrity and health, moral, intellectual and social development.

2. Republic Agency for Electronic Communications (RATEL)

2.1. The Republic Agency for Telecommunications has completed the public consultations about the Draft Rulebook on the Amendments to the Rulebook on the Control of Use of Radio Frequency Spectrum, Technical Checks and Protection from Harmful Interference. These Amendments to the Rulebook authorize the Agency to identify, *ex officio* or at request, unauthorized use of the spectrum. When such unauthorized use is discovered, the Agency notifies the competent inspectorate and when the broadcasting spectrum is used, the broadcasting regulatory body is notified too. The Amendments also provide for a ban on the use of devices that may produce harmful interference, unless the use of such devices is permitted to defense and security authorities. Unfortunately, it seems that the proposed amendments to the Rulebook fall short of resolving the problem of illegal TV and radio stations.

2.2. In late November 2012, RATEL conducted the second analysis of the retail media content distribution market. Upon completion of the analysis, the Agency made a report, which was,

according to the Law on Electronic Communications, tabled for public discussion. Upon testing three specific criteria, the Agency established that there was no effective competition on the aforementioned market. It is established that the operator Serbia Broadband – Srpske kablovske mreže d.o.o. is an operator with substantial market strength due to: market share exceeding 50%; substantial advantage over the competition due to the lack of negotiating power of the buyers, as well as the fact that SBB was, at the same time, both KDS (cable distribution) and DTH (distribution of media content via satellite) operator; due to enjoying substantial advantage over competitors, owing to service diversification and economy of scale, since SBB is also a broadband Internet operator; owing to the extent of its sales network in the cities; and owing to its substantial advantage over the competitors, since the latter are unable to influence SBB' policies, particularly in terms of sales prices policy. The Report proposes the imposition of regulatory obligations to the operator, namely: a ban on charging excessive prices, ban on obstructing market access or restricting competition by practicing excessive or dumping prices, ban on allowing unjustified advantage to certain end users, restricting retail prices, the duty to obtain prior consent from the Agency when formulating and changing the content and the price of a service package, introducing measures of control of individual tariffs, the obligation to have the prices based on service provision costs, or on the prices on comparable markets. In relation to this Report, the Agency also consulted the Commission for Protection of Competition as to whether the Market Analysis Report and the imposed regulatory obligations comply with competition protection regulations. The Commission found both the Report and the regulatory obligations to comply with competition protection regulations, while pointing to certain wording discrepancies arising from the nature of *ex post* and *ex ante* regulation. Upon the completion of the public consultations, the Agency will pass a conclusion on the adoption of the Report.

The Report on the analysis of the retail media content distribution market from August 2011 has also pointed to the absence of effective competition on that market. The new Report merely confirms that the imposed regulatory obligations still have not achieved their purpose. Problems remain as to the implementation of the obligations and the control mechanisms that RATEL possesses in relation to the realization of regulatory obligations in practice. A serious shortcoming of such analysis is also the fact that it pertains solely to the retail media content distribution market and fails to touch upon the segment of services the operators provide to broadcasters. It has failed to recognize the need to find the proper mechanisms of protecting broadcasters from discrimination in the access to the network, something we have witnessed in the previous period.

STATE AUTHORITIES

3. The Parliament of the Republic of Serbia

On January 28, 2013, the Serbian Parliament's Culture and Information Committee organized a public hearing on the topic of media freedoms, with the poor position of the media (especially at the local level) being the main theme. However, certain MPs claimed that the media laws were not the problem, but rather the lack of professionalism among journalists. The MPs, especially those of the opposition, insisted that media associations should figure out who were the propagandists in their ranks and who were the real journalists. Rade Veljanovski, a professor at the Faculty of Political Sciences, said the Parliament was responsible for respecting freedom of media and speech, not only the government or journalists' associations. The Ombudsman Sasa Jankovic said he was worried after the session, adding, however, that media freedom might progress if Serbia, as a state, started to consistently enforce the laws and the journalists' associations openly stood up to those that were a disgrace for their profession.

4. The Commission for Protection of Competition

On February 12, 2013, the Commission for Protection of Competition announced that the Supreme Court of Cassation had rejected the request filed by "Serbia broadband – Srpske kablovske mreže" d.o.o. from Belgrade to reconsider the verdict of the Administrative Court dated October 6, 2011, in the case of establishing injuring the competition by abuse of dominant position. The Administrative Court reached that verdict in the legal action against the decision of the Commission for Protection of Competition in the repeated procedure on October 4, 2010. In the decision, it has established that the aforementioned company enjoys a dominant position on the market of radio and television program distribution through cable network on the territory of Belgrade and that this dominant position was abused by conducting a promo campaign on the territories of the municipalities of Palilula and Stari Grad in March 2006. This verdict may be understood as yet another proof of the inefficiency of the system for protection of competition in Serbia, since the event from March 2006 will see its epilogue in a court of law after seven years. In the meantime, the aforementioned promotional campaign from 2006 has lost its topicality and relevance. The excessive length of the

procedures initiated before the Commission for Protection of Competition discourages the market participants, which recognize certain practices as anti-competition. We have written in these reports too about the practice of cable operators of applying uneven business conditions to the same jobs (media content distribution) relative to different market participants, namely relative to foreign and local media companies or local and regional media. Unfortunately, the circumstance of the excessively long period until the final decision is made about whether a concrete practice is restrictive or not results in the media becoming reconciled with unequal conditions on the media market and ultimately with the further closure of that market, although such thing is in nobody's interest. In any case, although it seems that it is high time for a comprehensive sector analysis of the media market and related markets, the Commission for Protection of Competition has, for the time being at least, stopped short of conducting one. The Law on Protection of Competition says that the Commission can do such analysis when the prices or other circumstances point to the possibility of having competition restricted, undermined or obstructed in a certain industry.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

5. *Organization of Music Authors of Serbia (Sokoj)*

After the talks held in December and January, ANEM signed, on February 4, a Protocol on Cooperation with SOKOJ, providing radio and TV stations with discounts on the payment of the minimum fee for the use of copyrighted music works for 2013. The Protocol came into force the eighth day upon publication in the Official Gazette of the Republic of Serbia. Comparing to the old protocol, the new one shall provide an even higher discount on the amount of the minimum fees: for the year 2013, the discount is 60% of the applicable tariff. Furthermore, civil sector stations, as well as local stations airing the predominant part of their program on one or more minority languages (with the RBA confirmation), shall be able to pay the fee discounted from the base tariff in the amount of 75%. All stations will be entitled to enjoy the agreed discounts, regardless of the existence of old debts or even disputes with SOKOJ. The Protocol also stipulates the requirements the operator must fulfill in order to enjoy the discounts, as well as the manner of paying the debts from the previous period. The Protocol will be enforced until the end of 2013, namely until a new Tariff Agreement is reached, if such new agreement is reached in the course of this year. All radio



LEGAL MONITORING OF SERBIAN MEDIA SCENE – Report for January - February 2013

and TV stations paying the minimum fee, regardless if they are members of ANEM or not, may refer to the Protocol; its signature was supported by the organizations RAB Serbia, Consolidated Television Stations of Serbia and the Group of Broadcasting Organizations of the Serbian Chamber of Commerce.