

## **IV MONITORING 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. As previously indicated in this report, the Council of the Republic Broadcasting Agency has passed a decision calling a public competition for the issuance of radio and/or television broadcasting licenses, namely one local television license and two regional and 50 local radio licenses. In addition to meeting the legal requirement (publication in the Official Gazette of the Republic of Serbia, in at least one widely available daily newspaper and in at least one local or regional newspaper in the area for which the competition is called), the text of the public competition was posted on RBA's website on March 15, 2010. The deadline for the submission of applications for the public competition was May 31, 2010, which is in accordance with the Law, which stipulates that this deadline may not be less than 60 days from the day the advertisement was published. The text of advertisement is available [here](#), only in Serbian.

Section II elaborates on the potential practical negative consequences of the RBA Council's decision – Monitoring of the Implementation of Existing Laws, subsection 2.2.

1.2. At a session held on March 23, 2010, the RBA Council concluded that the broadcasting of political parties' (namely their local boards) greetings in the form of paid advertisements for Easter or other holidays was prohibited. Explaining its conclusion, the Council referred to Article 106 of the Broadcasting Law, that stipulating that it was disallowed to advertise political organizations outside of the election campaign. The RBA Council took into account Article 2, paragraph 2 of the Advertising Law, which defined the advertisement message as a message that was, among other things, praising the advertiser; hence, the RBA Council was of the opinion that in the concrete case, the advertiser was a political party (its local board). The Council also invoked Article 13.6 of the Broadcasters Code of Conduct, the provisions of which stipulated that it was prohibited to directly or indirectly advertise, outside of the election campaign, political organizations and their gatherings, rallies or actions of any sort, during which their full or short name is mentioned or displayed. Although an Easter or other kind of greeting is not the content that directly recommends the advertiser, the Council concluded that, in accordance to Article 13.6 of the Broadcasters Code of Conduct, it was also prohibited to indirectly advertise political organizations.

## **2. REPUBLIC TELECOMMUNICATIONS AGENCY (RATEL)**

2.1. In an interview for the daily Blic, published on March 1, 2010, the Telecommunications Minister Jasna Matic said that RATEL was currently in the procedure of commissioning a design of the digital terrestrial broadcasting network. RATEL itself has not made public any information related to the design of the said network. We hereby remind that the Action Plan accompanying the Strategy of the Transition from Analog to Digital Television and Radio Broadcasting in the Republic of Serbia – adopted by the Government of the Republic of Serbia on July 2 last year and entailing the production of a conceptual design of the distribution network, including the choice of channels by allocation zone, the drafting of the distribution network (primary and secondary) design and the design of MFN/SFN networks – assigns the production of that conceptual design to RATEL. The deadlines for the said task have elapsed in the last quarter of last year and the first quarter of this year respectively.

2.2. During March, RATEL has furnished to radio stations new decisions and calculations of fees for the use of radio frequencies. We hereby remind that, pursuant to the new Rules on the Amount of the Fee for the Use of Radio Frequencies that became effective in early February, these fees were significantly reduced. Namely, the base for calculating the fee was reduced by more than 10%. Certain coefficients were also reduced, leading to an overall reduction of the fee by up to 50% in the case of some broadcasters. Such reduction of fees may be considered, if not the only, then as one of the rare effects – albeit considerably belated – of last year's Government measures to help the media in crisis. By adopting this set of measures – passed at the request and proposal of the media sector – the Government recommended the regulators to lower the fees. However, paradoxically and in spite of RATEL's readiness to fulfill this recommendation, the Government had first rejected RATEL's decision on lowering the fees, requesting the passing of new Rules. When RATEL passed the new Rules so as to fulfill the recommendation of the Government, the latter waited for two months before approving these Rules so that they may enter into force.

## **STATE AUTHORITIES**

### **3. SERBIAN PARLIAMENT**

On March 23, 2010, the Parliament of the Republic of Serbia passed a decision to appoint journalist Gordana Susa as member of the RBA Council. Susa was appointed to the Council

from the list of candidates proposed by Culture and Information Committee, on the basis of the proposals of the associations of broadcasting public media, journalist association, the association of filmmakers and drama artists and composer associations. In this way, the authorized proposer - consist of media, journalist and artistic associations - has finally had its candidate appointed to the RBA Council, after three candidacy procedures and reconciliation of candidate lists, the adopted amendments to the law, a failed vote and the Committee's decision. The appointment took place more than 13 months after the expiry of mandate of the previous Council member, Slobodan Djoric. Namely, after the Culture and Information Committee refused last June to table for voting a list with three names agreed upon by media and journalist associations, the Parliament amended the Broadcasting Law. These amendments have authorized the Culture and Information Committee, in case that the said associations fail to agree upon on a list with only two names, to shortlist the candidates. When the media and journalist associations subsequently managed to agree upon a list with two candidates, none of them received sufficient number of votes in Parliament. Gordana Susa has been for the whole time one of the proposed candidates. She was finally elected from the third candidate list laid down by the Committee on the basis of the proposal of media, journalist and artistic associations. In the opinion of the authors of this report, Susa could have been appointed earlier, without the unnecessary feet dragging and law amendments; the media and journalist associations prevailed in this battle owing to their determination and unity.

#### **4. THE MINISTRY OF CULTURE**

On March 27, 2010, the Culture Minister Nebojsa Bradic said in an interview for Vecernje Novosti that earlier this year the European Commission Delegation had approved the funding for a project of the Ministry of Culture entailing the drafting of a media study. In Bradic's words, the study will contain a comparative analysis of Serbian and the European media legislation and institutions in charge of implementing media policies. The Minister also announced an analysis of the media market in Serbia, an analysis of the outcomes of media privatization and the position of the state news agency Tanjug. Particularly interesting was Bradic's assertion that the Law on Unlawful Media Concentration was well in the works, which would particularly also deal with the issue of vertical concentration. "One of the biggest problems is that there is currently no legal obstacle for a publisher of a daily newspaper to be at the same time the owner of the distribution network. This is not in line with good European practice and it will be changed," Bradic said.

After last year's amendments to the Law on Public Information –criticized by media professionals and media and journalist associations – the Ministry made a concession by

accepting the proposal of the said associations for the drafting of a Media Development Strategy in Serbia. A working group was initially set up comprising the associations' representatives. However, the associations objected that the working group might not be functional if there were no adequate analysis of the as-is situation as the groundwork for its activities, on which a vision of development would be laid upon. In that sense, the said study funded by the European Commission and the analysis of the media market in Serbia could be a valuable starting point for working on the strategy.

However, what is surprising is Minister Bradic's claim about the Law on Unlawful Media Concentration being well in the works. Namely, the Culture Ministry had set up a working group more than two years ago, which produced the draft of Law on Unlawful Concentration and Transparency of Ownership of Public Media, better known in the public as the Law on Unlawful Media Concentration. This draft, which dealt only with horizontal, but not vertical media concentration, had passed the public debate and was finalized in late 2008. The "working version" of that draft is still posted on the website of the Ministry of Culture. Ministry officials had previously said that the draft was in the procedure of obtaining the approval of other ministries in the Government and that it would be subsequently tabled to the Parliament. However, the draft was practically forgotten after that – the only ones making any mentions of it were certain associations that insisted on its adoption. Last year's adoption of the Law on the Amendments to the Law on Public Information was viewed by many as a proof that the Government had given up on the Law on Unlawful Media Concentration. Namely, the Amendments to the Law on Public Information regulate the Media Register differently from the Law on Unlawful Concentration and Transparency of Ownership of Public Media. In that sense, the statement made by Minister Bradic comes as a complete surprise.

Since the statement that the "Law on Unlawful Media Concentration is well in the works" could not have been corroborated from another source, it is possible that Bradic was misunderstood or that he has sided with one party in the row between the management of Vecernje Novosti and the German WAZ-Mediengruppe. In the context of the said row, Bradic's pointing to the problem of vertical concentration is particularly indicative. His allegation that "one of the major problems is that there is no legal provision barring the publisher of a daily newspaper from being at the same time the owner of a distribution network" could be interpreted as being directed against WAZ, which is one of the shareholders of the dailies *Politika* and *Dnevnik*, while being the sole owner of press distribution company *Stampa sistem*. Otherwise, the row between Vecernje Novosti and WAZ-Mediengruppe escalated after Stanko Subotic had accused businessmen Milan Beko and Milorad Miskovic on TV B92 and Montenegrin TV In of having acquired Vecernje Novosti with his money. WAZ-Mediengruppe joined the debate by alleging that the said acquisition was realized with that company's money; the Germans also announced they

would take over Vecernje Novosti after they received the approval of the Competition Protection Commission. When the management of Vecernje Novosti launched a campaign against the said takeover, WAZ furnished the media its contract with the Director and Chief Editor of Novosti Manojlo Vukotic. The said contract reveals that Vukotic, while running the daily Novosti, had at the same time provided consultancy services to WAZ in relation to the takeover of his own media company. The media also received proof of payments made abroad to Vukotic under this contract. Vukotic did not explain if and how he had paid taxes on these proceeds.

## **COLLECTIVE ORGANIZATIONS**

Although SOKOJ on one side and OFPS and PI on the other invited in late February representative user associations to the negotiations on the tariff of the author's fee for the use of protected items from their repertoire, during March, these negotiations have not started yet. One of the reasons is the dilemmas related to the matter of proving the representativeness of the above mentioned associations. Under the new Law on Copyright and Related Rights, as representative shall be considered the user association representing the majority of users from a certain industry and/or the association, the representativeness of which has been recognized under other regulations. In the context of radio and television broadcasters as users, the great number of issued licenses means that no association comprises the absolute majority of users in its membership. On the other hand, none of these associations have been recognized as “representative” on the basis of media regulations. Even the establishment of the number of users of a particular association has been made difficult due to the fact that, since the adoption on the Company Law, the associations may not register anymore new members with the Business Registers Agency. The Company Law namely does not provide for the concept of “business association”, which was the form of association embraced by legal persons, founders of the media, in accordance with the previous Company Law. This absence of any reference to the above concept makes it practically impossible to prove one’s representativeness by invoking the number of members, since the registers have not been updated for six or more years. Alternatively, the Law on Copyright and Related Right stipulates that representativeness shall be established based on the activities of the associations, the degree of their organization and similar criteria, which leaves room for arbitrariness. The deadline for reaching an agreement is 60 days from the publication of the public call, but such agreement is unlikely. However, since the said deadline is not preclusive, there is still hope that the agreement on tariffs will be reached after all and that the latter will not be determined in a procedure before the Commission for Copyright and Related Rights.

