

## II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

### 1. *Public Information Law*

1.1. The implementation of the Public Information Law has been partly elaborated on in the section about freedom of expression.

1.2. The shareholders assembly of the publishing company “Novosti” appointed Goran Nikolic PhD, Dijana Vukomanovic PhD, Tatjana Vidojevic, Maja Ninkovic-Corac and Srdjan Muskatirovic as members of the Supervision Committee of the company. At the constitutive session of the Supervision Committee, held on November 8, Goran Nikolic was elected Chairman. Nikolic has received his PhD at the Faculty of Economics of the Belgrade University and is employed as a postdoctoral fellow of the Institute for European Studies. Dijana Vukomanovic is the postdoctoral fellow of the Institute for Political Studies and the Vice-President of the Socialist Party of Serbia (SPS). Tanja Vidojevic and Maja Ninkovic-Corac have a longstanding experience as journalists and editors. Srdjan Muskatirovic is an Economist and is currently working in the representative office of the “Laderna International BV” company. The term of office of the five-strong Committee is four years. We remind that the majority owner of “Novosti” is businessman Milan Beko, through three foreign companies admittedly under his control, controlling 62.4% of the shares of “Novosti”. Back in June 2011, the Securities Commission ordered Beko to release the offer for the acquisition of “Novosti” in no later than three months, failing which he should announce the sale of all shares above the 25% threshold. Since none of these two things has happened, Milan Beko is not allowed to vote anymore based on his shares above the 25% threshold. In this way, a situation has been created where the state again has become the shareholder with the most votes in “Novosti”. The state namely directly holds 29.5% of the shares in “Novosti” and indirectly, through the Republic Pension and Disability Insurance Fund, another 7.15%. Hence, it holds the majority in “Novosti”'s shareholders assembly. It has not been disclosed whose candidates are the elected members of the Supervision Committee, but Dijana Vukomanovic is known to be the Vice-President of SPS, while Tanja Vidojevic is a member of the Main Board of the Serbian Progressive Party (SNS). “Laderna International BV”, the employer of Srdjan Muskatirovic, is one of Milan Beko's companies.

Under the Public Information Law, the founders of a public media may not be, directly or indirectly, the state and territorial autonomy, an institution, company or other legal person predominantly owned by the state, or entirely or largely financed from public sources, unless it

is provided for otherwise by a separate law governing the field of broadcasting and except in the case of news agencies. The Strategy for Development of Public Information System in the Republic of Serbia also stipulates that the state may not be the owner of media, namely it reconfirms the commitment of the state to withdraw from the ownership in media. Unfortunately, the seriousness of such commitment appears doubtful after the above-described election of the new management of "Novosti". The election of a vice-president one party of the ruling coalition and a member of the main board of the other ruling party confirms that the government is aimed at taking the opportunity to control "Novosti", holding slightly more than 36% of the shares.

## **2. Broadcasting Law**

2.1. The package of television programs Arena sport obtained the license for cable broadcasting on November 26, based on the opinion of the Ministry of Culture and Media and the Ministry of Finance. The two ministries have concluded Arena Sport was eligible for obtaining the license, since their majority owner "Telekom" is not owned by the state, but by a shareholders society. Such explanation was voiced by Goran Karadzic, the Vice-President of the RBA in an interview to "Politika". Karadzic added that the provisions of the Public Information Law and the Broadcasting Law, prohibiting state companies from being broadcasters, did not apply to this case. "They are subject to the Law on Companies. The aforementioned provisions of the media laws were adopted to avoid political pressure and in this case such pressure was avoided, since the recipient of the license is a sports channel", Karadzic said. The state participates in the structure of "Telekom"'s equity with 58.11%. In August 2011, "Telekom" have invested 7.7 million Euros and have become the owner of 51% of the shares of HD Win, the company that is the founder of the package of television programs Arena Sport. Four channels from this package are distributed via "Telekom"'s IPTV service and in standard and high resolution in the cable systems. One of these channels is offered in the basic package, whereas the remaining three, as well as the versions of all channels in HD, and may be purchased for an extra fee. "It is distorting the facts. "Telekom" is indeed a shareholders company, but the state is the majority shareholder. I do not see any major difference," said the President of the Independent Journalists' Association of Serbia (NUNS) Vukasin Obradovic. Petar Jeremic, the Chairman of the Executive Board of the Journalists' Association of Serbia (UNS) also believes that the explanation, provided for the issuance of the license by the RBA Council, is unacceptable. "It is distorting the basic principles the state has accepted regarding the withdrawal from the media. They have obviously found the right form how to avoid it. "Telekom" is clearly owned by the state," Jeremic told Politika.

As we have already written in the part of this Report pertaining to the enforcement of the Public Information Law, the latter stipulates that the founders of a public media may not be, directly or indirectly, the state and territorial autonomy, an institution, company or other legal person predominantly owned by the state, or entirely or predominantly financed from public sources, unless it is provided for otherwise by a separate law governing the field of broadcasting and except in the case of news agencies. Under the Broadcasting Law, the holder of the broadcasting license may not be a company, institution or other legal person whose founder is the Republic of Serbia or an autonomous province, save for the public service broadcasting institutions. That idea was accepted by the Media Strategy as the strategic commitment of the state. The Republic of Serbia is not the founder of HD Win (and that is unquestionable) – “Telekom” is, as the owner of 51% of the shares of that company. Since the state is the majority shareholder of “Telekom”, it seems undisputed that we have here a case described by the Public Information Law as prohibited indirect participation of the state in media ownership. The mere fact that “Telekom” is organized in the form of a shareholders company and not as a public company makes no essential difference. The problem seems to be with the other side. Namely, the state intends to privatize “Telekom” at one point. Until then, it wants to keep it competitive against private telecommunications operators, in order to ensure the highest possible price when privatization comes. Since some of “Telekom”'s private competitors, also active on the media content distribution market, already have TV channels (and particularly sports channels) more or less transparently in their property or under their control on other grounds, the state in this case seems to be stretching the law in order to maintain the competitiveness of its investment and the value thereof pending privatization. This, again, demonstrates the shortsightedness of the government, which seems unable to navigate through various interests or protects its own benefit by looking further than the revenues that a state company to be privatized could bring to the state budget. The key issue seems to be why the state has impeded the horizontal integration of telecommunication operators and built a legal framework in which no operator would be able to have the media service providers merged under its control. The question is also why the state is renouncing platform-neutral regulation and why it is treating differently vertical integration in the field of analog terrestrial television than in other types of distribution. We remind that, not that long ago, the state separated the public company “Broadcasting Equipment and Communications” (ETV) from the RTS system, with the argument that it was unacceptable to have the same company – in that case the public service broadcaster – be at the same time a competitor to commercial stations and manage the distribution system used by its competitors. At the same time, the state allowed the operators, which run different distribution systems – able or IPTV – to vertically integrate with media companies. Hence, “Telekom” has now been

allowed to do what used to be forbidden to RTS, which practice was the reason why the RTS had separated the public company ETV – to remain the owner of both the distribution system (IPTV) and the content distributed via that system (Arena Sport television channels). It is important to remind why this is bad and why the state separated the public company ETV from RTS in the first place. The key objection related to vertical integration is that it closes down the market, i.e. creates uneven business conditions. There are limited (if any) systemic guarantees that would ensure that the distributor will provide its services without discrimination to other competitors, applying the same conditions under which it provides such services to itself. Following economic logic only, “Telekom” would give privilege to its sports channels package over the ones of its competitors, just like the RTS used to give privilege, for the same economic reasons, to its own television program over the ones of its commercial station competitors, which it used to distribute via terrestrial distribution prior to the separation of ETV. The only principled solution to this would be to introduce unified rules that would restrict the opportunities for vertical integration of content providers (media companies) and media content distribution providers (telecom operators) by a single set of rules that would be both platform-neutral (they would apply equally to terrestrial, cable, satellite, IPTV or any other distribution platform) and that would apply equally to privately owned and state-owned market players.

2.2. In early November, the users of the services provided by cable operators discovered a new channel – Pink 2 – at the place in the programming menu where TV Avala used to be. The RBA Council Deputy Chairman Goran Karadzic said it was a cable channel. “Pink has the license for two dozen such programs, including Pink 2. Nobody has taken over the frequency that belongs to Avala”, Karadzic explained. He added that the RBA, at the time when Pink 2 appeared in the cable systems, was not aware that TV Avala had ceased terrestrial broadcasting. The deadline for the submission of complaints on the RBA decision revoking TV Avala’s license had not expired at the time and the said complaint would have had suspended the decision, thus enabling TV Avala to continue operating until the final RBA decision. The reason why the new channel took the place of TV Avala, according to Jovana Lukic, the Communications Manager in the cable operator SBB, is a well-established practice. “A station has had its license revoked and we allocated its place in the cable network to a new channel”, Lukic told the daily “Politika”. The disappearance of TV Avala will result, in the opinion of the employees, with about 100 jobs lost. What is more, the now defunct station, co-owned by Zeljko Mitrovic, the owner of TV Pink, owes its employees eight salaries. The Association of Independent Electronic Media (ANEM), the Journalists’ Association of Serbia (UNS), the Independent Journalists’ Association of Serbia (NUNS) and the Independent Journalists’ Association of Vojvodina (NDNV) have condemned the decision of the largest cable operator in Serbia – SBB Serbia Broadband – Srpske kablovske

mreže d.o.o. from Belgrade, to switch-off TV Avala from its distribution system while that station was still airing its program terrestrially, only to allocate that particular channel, unlawfully and contrary to its own business conditions, to a new channel of the company Pink International – Pink 2.

According to RATEL's Review of the Telecommunications Market for 2011, 76 cable operators and 2 IPTV operators operated in Serbia last year. To that number we may add three satellite DTH operators. According to the same source, the penetration of cable, IPTV and satellite DTH service in Serbia is 53% of the total number of households, while the number of subscribers has grown by 6.7% compared to 2010. The largest operator is Serbia Broadband – Srpske kablovske mreže d.o.o. (SBB), with more than 50% of the market. Seven of the largest operators (SBB, JP PTT, Telekom Srbija, Kopernikus, IKOM, Digi SAT and Radijus vektor) control about 88% of the market. This has paradoxically created the situation where the applicable regulations provide for a stricter regime of issuance of broadcasting licenses for terrestrial distribution of TV programs, which uses a public resource (broadcasting frequencies), but which is not anymore the primary type of reception of media content for most of the population. Therefore, in the situation that has been created, the dominant cable operators are able to exert in some cases a stronger influence than that of the competent operator. We remind that Serbia practically does not have the so-called *must-carry* regulation, nor does it regulate the logical numeration of licensed television channels. With respect to *must-carry* regulation, the Broadcasting Law stipulates only that cable, satellite DTH and IPTV operators may distribute the programs of terrestrially licensed channels without the obligation to acquire a special license, if they distribute them in an area which their terrestrial licenses are valid for anyway, as well as if they simultaneously distribute the programs of public service broadcasters free of charge. The Law on Electronic Communications additionally provides that RATEL, at the request of the RBA, may appoint an operator of the electronic communications network for the distribution and broadcasting of media content. This operator shall be obligated to air one or several radio or television programs at the national, provincial or local level, when a substantial number of end users utilizes the electronic communication network of that operator as the sole or primary way for capturing media content, as well as when this is necessary in order to achieve clearly determined goals of general interest that are laid down by the RBA in accordance with the principles of proportionality and transparency. In practice, RATEL passed only two such decisions in March of this year: the first ordering SBB to distribute the program of four municipal TV stations in Novi Sad and the second, ordering the same cable operator to distribute the program of two local TV stations. As for logical numeration of licensed TV channels, Serbian regulations do not contain rules that would apply to it. This issue has become increasingly

important with the strengthening of the digital platform for the distribution of media content. The logical number of a particular TV channel is a number under which a service is offered in the menu of the provider of the digital service of media content distribution. Today these numbers are allocated freely by cable, satellite DTH and IPTV operators and it is possible to imagine a situation where certain cable channels receive a lower number in the menu (and therefore facilitated access via the remote control) even than the numbers assigned to PSBs. A similar thing happened in the case of replacing the signal of TV Avala in the cable systems with the signal of Pink 2. On a channel that was memorized at low position on the remote controls of the majority of users in the analog cable offer (since the program of a national terrestrial commercial station was aired on that number), the viewers were suddenly offered the signal of a new cable channel. At that, at least in the case of SBB, this was even contrary to that company's own General Business Conditions (GBC), the excerpts of which SBB posted on its website. These GBC say that, in the case of vacant capacities in the resources (a place in the cable system), all eligible broadcasters may compete. Media and journalists' associations required SBB to inform the public as to whom it had offered place that became vacant with the disappearance of TV Avala and in which manner; based on which criteria it had decided to assign that place to Pink 2; to publicly state who were the members of the SBB's Programming Council, who were to review, under the GBC, the applications of other candidates (if they were reviewed at all) and if the Programming Council existed at all. SBB failed to answer any of these questions and the only thing the above mentioned Communications Manager said was that everything was "as usual", since a TV station had its license revoked and the place was assigned to a new one". Why it was assigned to that particular station, were other interested stations damaged in that process (they definitely were), since Avala's channel was already memorized at a low number on the viewers' remote control? No answer has been provided to that question. It seems that such practices of cable operators require having more precise regulations regarding the logical numeration of licensed TV channels, especially since it is very well known that terrestrial broadcasting licenses are issued in a complex procedure involving an open competition, as well as that the fee for such licenses is ten times higher than the one for cable broadcasting. In such a situation, bearing in mind that the penetration of cable, DTH and satellite reception of television exceeded 50% of households last year already and that this year it may only become more prevalent, the question is what are the terrestrial channels actually paying for and what is the value they get in return, since they had to undergo rigorous control and obtain the license in an open competition and not only at request (like cable channels), let alone the ten times more expensive fee. More precise regulation of logical numeration of television channels should at least ensure that terrestrial channels be awarded lower numbers in the menus of cable operators and therefore easier access from the remote control. In the aforementioned press release, the media and journalists' associations said that, failing a satisfactory response by SBB to the question if that



company had respected its own GBC in the above-described case, it would consider that the cable operator had abused its dominant position and undermined competition, namely that SBB had limited the market and applied uneven business conditions to the same jobs with different market players. We are yet to hear anything about this case from RATEL (as the regulator in the sector) or the Commission for Protection of Competition.