

## II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

### 1. Law on Public Information

1.1. The implementation of the Law on Public Information was elaborated on in the segment about freedom of expression.

### 2. Broadcasting Law

The Council of the Republic Broadcasting Agency (RBA) announced on October 25 the open competition for the issuance of a TV broadcasting license for the territory of the Republic of Serbia. After the failure of the previous competition, cancelled by the RBA's decision on September 13, by which the Agency rejected the complaints of "Kopernikus cable network" d.o.o. from Nis and „Nova.rs Television" d.o.o. from Belgrade against the Decision of the Council dated August 9, under which broadcasting licenses for national coverage were not issued. The criteria of the competition are slightly different, but they are not making the competition itself any less controversial. First, the media market's value has plummeted, as did the interest of the investors for investments in the media sector. Furthermore, since the RBA Council already decided at the previous competition that the applicants have failed to meet the requirements for obtaining a license, the question is which new candidates may apply for the repeated competition, namely what may Kopernikus or Nova offer this time that would be significantly different?

But even if we disregard that, the fact remains that the RBA has blatantly violated the procedure and, notwithstanding the material shortcomings of that competition, compromised the lawfulness and legitimacy of the entire process. What is actually happening here?

First, Article 49, paragraph 2 of the Broadcasting Law stipulates that an open competition must be called when, under the Radio Frequencies Allocation Plan, there is a possibility for issuing new broadcasting licenses. However, calling such a competition was subject to the adoption of the new Rulebook on the Allocation Plan. The Ministry of Foreign and Internal Trade and Telecommunications published the said Rulebook on October 25 in the Official Gazette, but the latter entered into force on November 2 only. This practically means that, on October 25, when the competition was called, the mandatory criteria for calling such competition were not fulfilled, since the Rulebook on the Allocation Plan regulating the competition hadn't yet entered

into force. However, the fact that the RBA Council rushed into calling the competition, instead of waiting for the eight days that had to pass in order for the Rulebook to enter into force, is merely part of the problem.

The other questionable circumstance concerns the criteria for national coverage pertaining to the obligation to supply no less than 60% of the population with quality television coverage. Namely, the new competition was called for only 21 frequencies instead of 33, which was the number of frequencies provided by the hitherto K5 network for which the previous (failed) competition was called. Part of the frequencies of the former K5 network was moved to Annex 5 of the Allocation Plan and will be used for the extension of the initial network for digital broadcasting (we will elaborate on this in more detail in the segment about digitalization). The question remains if the new network, comprising only 21 frequencies, can really be a national network, namely if quality television coverage may be supplied to 60% of the population in Serbia, as required by the Broadcasting Law. Furthermore, of the 21 frequencies subject to the open competition, at least six are questionable. Namely, the competition was called for three frequencies, for which licenses (used by other users) have been already issued and which, under the Register of the Republic Agency for Electronic Communications (RATEL), shall remain in force until June 16, 2015. The holder of these licences is the public company Broadcasting Technology and Links (these are the frequencies relinquished by the RTS in late 2010). Even if we disregard the fact that the procedure, in which RATEL had issued RTS' licenses to Broadcasting Technology and Links, had no clear grounds in the law, the terms of these licences, expiring on June 16, 2015 are not something that should have been disregarded when calling this competition. The latter has, hence, been called for frequencies that, under the present public registers, will remain occupied for another 1,5 years.

But that is not all. Another two frequencies that were the object of the open competition are also disputed. One of them used to belong to *Super TV*, which was the only commercial broadcaster for the territory of the Autonomous Province of Vojvodina. When *Super TV* had its broadcasting license revoked in 2009, that frequency remained vacant and it was, until recently, been included in Annex 3 to the Allocation Plan, which contained frequencies intended for experimental digital broadcasting. The question is why, if the said frequency became vacant before, the RBA didn't called a new tender for provincial coverage in Vojvodina back in 2009 (on the grounds of Article 49, paragraph 2 of the Broadcasting Law it invokes today when calling the national tender)? We remind that the still effective Broadcasting Development Strategy by 2013 says that Article 47 of the Broadcasting Law provides for the existence of commercial stations at the provincial level, namely that the existence of commercial provincial broadcasters is a statutory obligation. This means that the RBA has been wittingly breaking the law since 2009, by

failing to call a competition for a commercial broadcaster for the territory of Vojvodina or that it is breaching it now, if the frequency in question became vacant only now, by having reallocated that frequency for national coverage, instead of using it for provincial coverage.

Another frequency which the current competition was called for until recently belonged to *TV Zona* from Nis. Bearing in mind the RBA's position that a competition "will always be called" when frequencies become vacant (which served as its key argument for calling the previous, failed competition for national coverage back in April), why is the Agency selectively enforcing the law, namely why is it enforcing it by calling a national competition and not a local one in Nis and a provincial one in Vojvodina? Particular curious is the fact that the competition also offered the frequency/location of Pljackovica. The latter is a hill above Vranje, constituting a radioactive area since the NATO bombing in 1999 and from which the signal is merely re-broadcasted to lower locations. The latter fact brings in question the capacity of the new network and its potential to provide quality television broadcasting for at least 60% of the population of the Republic of Serbia. One may only conclude that, by calling a new competition only a month after the failure of the previous one (the new one being called unreasonably hastily and without legal grounds, on a network that is unlikely to achieve national coverage and which includes frequencies that had either been allocated to someone else or were originally intended for different coverage), the RBA has further eroded the credibility of independent broadcasting regulation.