

## Communications regulation and outsourcing law in the Russian Federation: overview

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### THE TELECOMMUNICATIONS MARKET

1. Give a brief overview of the structure of the telecommunications market in your jurisdiction. Briefly set out any major recent developments, such as mergers and acquisitions, restructurings and insolvencies.

#### Market structure

By the end of 2016 the telecommunications market volume reached RUB1.597 trillion. The market's expansion rate for 2016 was about 0.6%. The majority of forecast-makers expect very slow growth of 0.4% for the upcoming years. By the end of 2016, the telecommunications market had the following structure:

- Mobile communications: 55%.
- Landline telephone communications: 9%.
- Broadband internet access: 11%.
- Postal communications: 9%.
- Subscription-based television: 5%.
- Services rendered by operators/providers to other operators/providers: 5%.
- Other services: 6%.

Source of information (in Russian): <http://tmt-consulting.ru/wp-content/uploads/2016/12/%D0%A2%D0%9C%D0%A2-%D1%82%D0%B5%D0%BB%D0%B5%D0%BA%D0%BE%D0%BC-2016.pdf>

#### Recent developments

Aggressive marketing and business strategies of the joint venture of Rostelecom and Tele2-Russia-T2 RTK Holding (Tele2 brand) led to a change in the market and now it is dominated by the "Big Four" mobile operators:

- MTS.
- Megafon.
- VimpelCom (Beeline brand).
- Tele2

Among recent M&A transactions the purchase by Megafon of the controlling stake of Mail.ru Group (one of the biggest Russian IT companies owning two most popular social networks in Russia—vk.com and ok.ru) is to be highlighted. Approximate transaction value was US\$740 million.

Source of information (in Russian): <https://www.protarif.info/news/new?id=1904>

### RESTRICTIONS ON FOREIGN OWNERSHIP

2. Are there any restrictions on foreign companies entering the telecommunications market in your jurisdiction?

Generally, communications legislation does not limit foreign investments or foreign ownership in the telecommunications sector. In particular, one of the biggest Russian mobile operators, PJSC "VimpelCom", is owned by VEON Holdings B.V. with its headquarters in Amsterdam. The general principle is that a licence holder is incorporated as a Russian company but the company can be owned by foreigners.

Certain restrictive mechanisms are prescribed by the Federal Law "On the Order for Foreign Investment in Companies Having Strategic Importance for the Defence of the Country and State Security" No. 57-FZ of 29 April 2008. Specific rules apply to foreign investors wishing to enter into share capital of Russian telecommunications companies falling under specific criteria established by law.

Each transaction that would result in establishing foreign control over any of the abovementioned companies is subject to prior approval by Russian competent bodies. The respective applications must be filed with the Federal Antimonopoly Service, while the Governmental Commission on Monitoring Foreign Investments in the Russian Federation is responsible for issuing the respective approvals.

The official website of the Federal Antimonopoly Service is available in English (<http://en.fas.gov.ru>).

The official webpage of the Governmental Commission on Monitoring Foreign Investments is available in English ([www.government.ru/en/departments/8/about](http://www.government.ru/en/departments/8/about)).

### REGULATORY FRAMEWORK

#### Legislation and regulatory authorities

3. Give a brief overview of the regulatory framework for telecommunications in your jurisdiction. Which authorities regulate telecommunications services in your jurisdiction? Is there a separate regulator for competition law issues in this sector?

#### Regulatory framework

The regulatory framework for telecommunications predominantly consists of various federal laws and federal secondary legislation. The most important federal laws in this sphere are:

- Federal Law "On Communications" No. 126-FZ of 07 July 2003 (Communications Law).

- Federal Law "On Postal Communications" No. 176-FZ of 17 July 1999.
- Federal Law "On Information, Information Technologies and Protection of Information" No. 149-FZ of 27 July 2006 (Information Law).

There are also certain other federal laws that contain rules significant for the telecommunications sector, including:

- Federal Law "On Advertising" No. 38-FZ of 13 March 2006.
- Federal Law "On Personal Data" No. 152-FZ of 27 July 2006 (Personal Data Law).

Penalties for various administrative offences in the sphere of telecommunications are mainly concentrated in Chapter 13 of the Code of the Russian Federation on Administrative Offences.

The federal secondary legislation is mainly represented by:

- Executive orders of the Russian President.
- Decrees of the Russian Government.
- Orders of the Russian Ministry of Telecom and Mass Communications (*Minkomsvyaz*).

The official website of Minkomsvyaz is available in English ([/](#)).

### Regulatory authorities

The President, the Russian Government and Minkomsvyaz are the main producers of federal secondary legislation in the sphere of telecommunications.

The State Commission for Radio Frequencies (SCRF) (intergovernmental co-ordination authority with Minkomsvyaz) is responsible for the regulation of spectrum, as well as for shaping the state policy in the sphere of spectrum allocation and use.

The functions of the Federal Service for Supervision in the Sphere of Communications, Information Technology and Mass Media (*Roskomnadzor*) include in the sphere of telecommunications, among other things:

- State control and supervision.
- Issuing licences.

Certain important functions are given to the Federal Communications Agency (for example, allocation of the numeration resource).

There is no separate regulator for competition law issues in this sector. The Federal Antimonopoly Service acts as a regulator for competition law issues in all sectors of the economy.

The official webpage of the SCRF is in Russian only ([www.minsvyaz.ru/ru/activity/advisories/7](http://www.minsvyaz.ru/ru/activity/advisories/7)).

The official website of Roskomnadzor is available in English (<http://eng.rkn.gov.ru>).

The official website of the Federal Communications Agency is available in English (<http://eng.rossvyaz.ru>).

### Authorisation and licences

#### 4. What notification, authorisation and licences are required to provide telecommunications services? What is the licence application procedure and fee?

There is a general rule that legal entities and private entrepreneurs can only give fee-based communications services subject to obtaining a licence. The exact list of communications services that are subject to licensing is approved by the Decree of the Russian Government No. 87 of 18 February 2005.

In certain cases, the licence can be provided on the basis of an application filed with the Federal Service for Supervision in the Sphere of Communications, Information Technology and Mass Media (*Roskomnadzor*). The Roskomnadzor decides whether or not to issue the requested licence within (depending on the circumstances) 30 to 75 days after the respective application accompanied by the required documents is filed.

However, the licence is issued on the basis of results of an open tender (auction or contest), if either:

- The communications services are going to be given with the use of spectrum, and the State Commission for Radio Frequencies (SCRF) determines that the spectrum available for giving these communication services limits the potential number of telecom operators within such territory.
- There are limited resources of the general use communications network in the respective territory, including (without limitations) the limited numbering resource (number pool), and the competent communications authorities determine that the number of telecom operators within the territory is limited.

Each open tender is held by Roskomnadzor on the basis of the respective resolution of the Russian Ministry of Telecom and Mass Communications (*Minkomsvyaz*). Roskomnadzor decides whether or not to issue the requested licence within 30 days from when the minutes on the results of the tender are signed.

The current amount of state duty for issuing a licence is RUB7,500. Specific financial obligations of a telecom operator can be determined on the basis of results of an open tender. In particular, if a tender is held in the form of an auction, the exact amount of fee to be paid by the winner is to be determined through bidding.

The basic rules relating to licensing in the sphere of communications are provided by Chapter 6 of the Communications Law. The detailed rules of tenders' holding for the purposes of licensing in the sphere of communications are approved by the Decree of the Russian Government No. 480 of 24 May 2014. The detailed procedure (administrative regulations) for issuing licences in the sphere of communications is prescribed by the Order of Minkomsvyaz No. 357 of 27 December 2011.

#### 5. How long does a telecommunications licence typically last and what are the usual conditions attached to it? Can conditions be varied? Are licences available for public inspection?

Generally, a telecommunications licence lasts between three to 25 years. The exact term is to be determined by the Federal Service for Supervision in the Sphere of Communications, Information Technology and Mass Media (*Roskomnadzor*) on the basis of the following factors:

- The licence period requested by a telecom operator in its application.
- The nature of communication services indicated in the application.
- The time period indicated in a State Commission for Radio Frequencies' (SCRF) resolution on the allocation of a radio-frequency band, if the communications services are to be given with the use of the radio-frequency spectrum.
- The technical limitations and technological conditions in accordance with the rules for connecting electric communication networks and their interaction (approved by the Decree of the Russian Government No. 161 of 28 March 2005).

However, Roskomnadzor can issue a licence that lasts less than three years, if it is specifically requested by an applicant. Licences can be prolonged in accordance with applicable legislation.

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The detailed description of conditions attached to a licence issued for the purposes of each type of telecommunications services is approved by the Decree of the Russian Government No. 87 of 18 February 2005. There are 20 legally recognised types of communications services and each type has its own list of licence conditions. Most types of communications services have the following licence conditions:

- Compliance with the licence period.
- Compliance with the license's provision establishing the commencement date of services.
- Provision of services within a territory indicated in the licence (in certain cases, within the entire territory of the Russian Federation).
- Ensuring provision of certain services and abilities to subscribers or users (the exact list of such services or abilities varies, depending on the specifics of the exact type of communications services).
- Provision of communications services in accordance with an order for giving the respective type of services approved by a decree of the Russian Government (if applicable).
- Fulfilment of the obligation imposed on a licence holder on the basis of results of a licence tender (auction or contest) (if applicable).

Other licence conditions vary depending on the specifics of the exact type of communications services.

After a licence is issued, the respective licence holder can file an application with Roskomnadzor on amending or supplementing the licence (including licence conditions). These applications are dealt with by Roskomnadzor within 60 days. Where the licence holder wishes to change the type of communications services, the licence's territory or conditions relating to the use of the radio-frequency spectrum, a new licence must be issued in the order prescribed by applicable legislation. Where the applicable legislation is amended, the licence conditions can be amended or supplemented respectively by Roskomnadzor at its own initiative with subsequent notification of a licence holder.

The register of communications licences is available for public inspection at the official website of Roskomnadzor in Russian only ([www.rkn.gov.ru/communication/register/license](http://www.rkn.gov.ru/communication/register/license)).

### Penalties for non-compliance

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#### 6. What are the consequences of non-compliance with the telecommunications regulations?

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The main negative consequences of non-compliance with the telecommunications regulations can be divided into four groups:

- **Mandatory orders.** The Federal Service for Supervision in the Sphere of Communications, Information Technology and Mass Media (*Roskomnadzor*) can issue orders that are mandatory for telecom operators on rectifying revealed violations of telecommunications regulations.
- **Licensing and spectrum-related measures of competent regulators.** In certain cases, Roskomnadzor can:
  - issue warning notices on the licences' suspension;
  - suspend licences or permits for spectrum use;
  - cancel permits for spectrum use;
  - claim for cancelling licences or permits for spectrum use through competent courts.
- **Administrative liability.** In certain cases, non-compliance with the telecommunications regulations can be treated as an

administrative offence. Descriptions of most of them are concentrated in Chapter 13 of the Code of the Russian Federation on Administrative Offences. In most situations, administrative offence cases are considered by competent officers of Roskomnadzor. However, in certain circumstances these cases can or must be considered by a competent court. An administrative fine is the most common penalty for administrative offences in the sphere of communications.

- **Civil liability.** If the communication services are given by an operator not in conformity with an agreement with a subscriber or user or rules for giving the respective type of services, the subscriber or user can use all civil remedies prescribed by the agreement or applicable legislation, including (without limitations) consumer protection legislation, such as claim damages or penalties. Mandatory pre-judicial settlement of disputes procedure is covered by Article 55 of the Communications Law.

### Appeals

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#### 7. Can decisions of the regulators be appealed and on what grounds?

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The Federal Service for Supervision in the Sphere of Communications, Information Technology and Mass Media's (*Roskomnadzor*) decisions made after considering administrative offence cases can be appealed in the order prescribed by Chapter 30 of the Code of the Russian Federation on Administrative Offences and applicable laws of court procedure. In particular, telecom operators can generally file their appeal petitions with a competent commercial (*arbitrazh*) court. The rules of paragraph 2 of Chapter 25 of the Commercial (*Arbitrazh*) Procedure Code of the Russian Federation apply to these court proceedings. The court will (depending on exact circumstances) cancel the decision in full or in part or modify the decision if the court reveals that either:

- The Roskomnadzor's decision or the procedure of its issue is incompatible with applicable laws.
- There are no grounds for making a telecom operator liable for an administrative offence or for application of certain penalties.
- The decision was made by an incompetent officer.

Typically, other types of regulator's decisions can also be appealed. However, the other set of procedural rules apply. In particular, telecom operators in most cases can challenge regulator's decisions (for example, a decision to reject an application for a licence) in a competent commercial (*arbitrazh*) court in accordance with the rules of Chapter 24 of the Commercial (*Arbitrazh*) Procedure Code of the Russian Federation. The court will cancel a decision if the court reveals that the decision:

- Is incompatible with laws or acts of secondary legislation.
- Violates rights and lawful interests of an applicant.

### Universal service obligations

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#### 8. Is the incumbent provider or other large providers with significant market power subject to specific regulations? Do universal service obligations apply? Are there provisions for the structural separation of a network?

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There are two categories of telecom operators or providers that are subject to specific regulations:

- Operators that occupy a substantial position in the general use communications network (OESP).
- Universal services operators (USO).

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The OESP is defined as an operator that together with its affiliates within a certain geographically limited numbering zone or within the entire territory of the Russian Federation either:

- Occupies 25% or more of the total installed capacity.
- Can transmit not less than 25% of all traffic.

The installed capacity is a quantity measured by technical capabilities of equipment integrated into an operator's network that reflects the technological ability of the operator to give electric communications, network connection and traffic transmission services within a certain territory.

OESPs must enter into network connection (interconnection) agreements on an equal and non-discriminatory basis with all other operators. The price limits for these network connection (interconnection) services are regulated by the Federal Communications Agency on the basis of the rules approved by the Decree of the Russian Government No. 627 of 19 October 2005.

The USO status can be given by the Russian Government to an OESP that occupies a substantial position in the general use communications network in not less than two thirds of Russian regions (subjects of the Russian Federation). These operators cannot refuse the USO status. Currently, Rostelecom is appointed as the sole USO in Russia. Detailed descriptions of the USO's universal service obligations (including the list of populated areas in which the universal services are to be given) must be included in an agreement concluded between the USO and the Federal Communications Agency.

The universal services include the following communication services:

- Telephone communications services with the use of payphones, multifunctional devices, information terminals and other similar devices.
- Data transfer and internet access services with the use of public access equipment and access points.

The price limits for giving the universal communications services are regulated in accordance with the rules approved by the Decree of the Russian Government No. 242 of 21 April 2005.

Under the laws and other legal acts there are no provisions devoted to the structural separation of a network.

### **General conditions**

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#### **9. What general conditions apply to telecommunications services? Which other regulations must be complied with?**

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The federal laws relating to communications must be complied with to provide telecommunications services (see *Question 3*). The government and the Ministry of Telecom and Mass Communications (*Minkomsvyaz*) have also approved seven sets of specific rules applicable to giving certain types of telecommunications services:

- Telematic communications services (Decree of the Russian Government No. 575 of 10 September 2007).
- Communications services for broadcasting purposes (Decree of the Russian Government No. 785 of 22 December 2006).
- Communications services of wired radio broadcasting (Decree of the Russian Government No. 353 of 6 June 2005).
- Telephone communications services (Decree of the Russian Government No. 1342 of 9 December 2014).
- Data transfer communications services (Decree of the Russian Government No. 32 of 23 January 2006).

- Telegraph communications services (Decree of the Russian Government No. 222 of 15 April 2005).
- Postal communications services (Order of the Minkomsvyaz No. 234 of 31 July 2014).

In addition, the general rules on obligations, transactions and agreements of the Civil Code apply to telecommunications services agreements, as well as the specific rules applicable to all services agreements that can be found in Chapter 39 of the Civil Code. If communications services are provided to an individual, the Law of the Russian Federation "On Consumer Protection" No. 2300-1 of 7 February 1992 (Consumer Protection Law) also applies.

### **SPECTRUM USE**

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#### **10. Which authorities allocate spectrum use and how is it managed?**

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The State Commission for Radio Frequencies (SCRF) and Federal Service for Supervision in the Sphere of Communications, Information Technology and Mass Media (*Roskomnadzor*) are the key governmental bodies involved in the allocation of the radio-frequency spectrum use.

The spectrum use is distributed and allocated through three procedures:

- Distribution of radio-frequency bands: determination of purposes for radio-frequency bands through a table of distribution of radio-frequency bands between radio services (table).
- Allocation of a radio-frequency band: written permit for use of a specific radio-frequency band, including for the purposes of designing, modernisation, production in or import into the Russian Federation of various radio-electronic means or high-frequency devices with certain characteristics.
- Assignment of a radio frequency or radio-frequency channel: written permit for use of a specific radio frequency or radio-frequency channel with indication of a specific radio-electronic mean, purposes and conditions of such use.

The table is to be drafted by the SCRF and approved by the Russian Government. The table can be amended or supplemented no more than once in four years. The current edition of the table is approved by the Decree of the Russian Government No. 1049-34 of 21 December 2011. At one point during every two years, the SCRF collects and considers suggestions of industry bodies (self-regulatory organisations) and separate operators on amending or supplementing the table.

Radio-frequency bands for civil purposes are allocated by the SCRF on the basis of the table and the rules approved by the Resolution of the SCRF No. 11-13-01 of 20 December 2011. Radio-frequency bands can be allocated for a maximum term of ten years. In most cases, the SCRF's decisions on allocation of radio-frequency bands are addressed to an indefinite range of persons. These decisions can be addressed to individual applicants only for the purposes specifically indicated in the abovementioned rules (the majority of these purposes are not connected with giving communications services).

Assignment of radio frequencies and radio-frequency channels for civil purposes falls within the competence of Roskomnadzor. Generally, the respective permits are issued for a term not exceeding ten years. The procedure for assignment of radio frequencies and radio-frequency channels is described in detail in the rules approved by the Resolution of the SCRF No. 16-39-01 of 7 November 2016.

If a licence for giving communications services with the use of spectrum is issued on the basis of results of an open tender



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(auction or contest), the respective radio frequencies are assigned to the winner of the tender.

Fees for spectrum use are regulated on the basis of the rules approved by the Decree of the Russian Government No. 171 of 16 March 2011. For example, the amount of fees for GSM (except for GSM-R), UMTS, IMT MC-450, LTE standards and their subsequent modifications (cellular communications standards) used for civil purposes are regulated by Roskomnadzor for the respective radio-frequency band in respect of each Russian region (its part).

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### 11. Can spectrum use be traded or sublicensed?

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Spectrum use cannot be traded or sublicensed. Regulation of spectrum use is an exclusive privilege of the Russian state. Although providing communications services through mobile virtual network operators is allowed in Russia, such operators are not treated as sub-licensees in relation to the spectrum use.

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## INFRASTRUCTURE AND NETWORK MANAGEMENT

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### 12. Do communications providers have any powers to place their equipment on third party sites?

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Telecom operators or providers under an agreement with a proprietor or other owner of buildings, electricity transmission towers, railway overhead contact systems, poles, bridges, sewers, tunnels, railroad precincts, and road easement areas can construct and maintain communications means and facilities in or on these objects, while the respective proprietors or owners can ask for a reasonable fee (rent) for that (*Article 6(3), Communications Law*). Operators can for a fee (under a paid basis agreement) place their communications cables into cable communications lines owned by other persons (*Article 6(5), Communications Law*). However, the law does not impose the direct obligation on proprietors or owners to conclude these agreements.

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#### Access and interconnection

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### 13. Does access to infrastructure and a network have to be given to other providers?

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See *Question 12* on access to infrastructure.

For access to a network, operators that occupy a substantial position in the general use communications network (OESP) must enter into network connection (interconnection) agreements on an equal and non-discriminatory basis with all other operators. The price limits for these network connection (interconnection) services are regulated by the Federal Communications Agency on the basis of the rules approved by the Decree of the Russian Government No. 627 of 19 October 2005. The detailed rules for network connection (interconnection) mandatory for OESPs are prescribed by the Decrees of the Russian Government No. 161 of 28 March 2005 and No. 760 of 13 December 2006.

In contrast to the above, regular telecom operators or providers can (but are not obliged to) enter into network connection (interconnection) agreements with other operators. Prices for these network connection (interconnection) services are not regulated.

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### 14. Is the interconnection of networks required? Are interconnection prices regulated and how are interconnection disputes resolved?

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See *Question 13* on the interconnection of networks and related prices.

Disputes on entering into network connection (interconnection) agreements are resolved by competent courts (*Article 18(4), Communications Law*).

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#### Data protection and security

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### 15. What data protection or consumer privacy regulations apply to the telecommunications sector, including both generally applicable and sector-specific laws? Are communications providers required to retain communications data? If yes, which data and for how long? What are the penalties for breach of these regulations?

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Various provisions relating to data protection and privacy in the telecommunications sector are prescribed by the:

- Communications Law.
- Information Law.
- Personal Data Law.
- Related secondary legislation.

In accordance with the rules approved by the Decree of the Russian Government No. 538 of 27 August 2005, communications operators or providers must update their databases (where information on their subscribers or users and services given to them is kept) in a timely way. This information must be kept for three years. In particular, the databases must include the following information on subscribers or users:

- For a subscriber or user that is an individual, the following are needed:
  - full name;
  - residential address;
  - passport (ID) details.
- For a subscriber or user that is a legal entity, the following is needed:
  - full name;
  - registered address;
  - list of employees or officers that use the respective communications equipment certified by an authorised representative of the legal entity (full name, residential address and passport (ID) details in respect of each employee or officer).
- Information on payments for communications services given (including information on connections, traffic and subscriber's or user's payments).
- Information on subscriber's or user's numbers that are kept by the respective subscriber or user after conclusion of communications services agreements with other mobile telephone operators and the names of such operators (that is information relating to the number portability).

In addition, each operator/provider must keep the following information on the territory of the Russian Federation within three years after completion of respective acts: information on facts of receipt, transmission, delivery and/or processing of voice information, text messages, images, sounds, video and other messages by subscribers/users.

After 1 July 2018 an additional obligation will be imposed on operators/providers by the Communications Law: they will be obliged to keep the following information on the territory of the Russian Federation within up to six months after completion of its receipt, transmission, delivery and/or processing: subscriber's/user's text messages, voice information, images,

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sounds, video and other messages. The exact scope of information to be kept by operators/providers, as well as the order and exact timeframe for keeping such information will be governed by a decree of the Russian Government.

The Information Law also imposes obligations on any person (operator/provider) that ensures functioning of information systems or computer programs that are designated or used for receiving, transfer or delivery of electronic messages by internet users. In particular, each operator/provider must keep the following information on the territory of the Russian Federation within one year after completion of respective acts: information on facts of receipt, transmission, delivery and/or processing of voice information, texts, images, sounds, video and other electronic messages by internet users and information on such users.

After 1 July 2018 an additional obligation will be imposed on such operators/providers by the Information Law. They will have to keep the following information on the territory of the Russian Federation within up to six months after completion of its receipt, transmission, delivery and/or processing:

- Internet user's text messages.
- Voice information.
- Images, sounds, video and other electronic messages.

The exact scope of information to be kept by such operators/providers, as well as the order and exact timeframe for keeping such information will be governed by a decree of the Russian Government.

New provisions of the Information Law were due to come into effect 1 January 2018 on providing competent public authorities with instruments for decoding encrypted instant messages, as well as obligations of operators/providers to identify end-users of instant messaging software and/or information systems.

However, the above provisions of the Information Law are not binding (and are not expected to become binding) for:

- Operators of state and municipal information systems.
- Communications operators or providers acting on the basis of respective licence(s) regarding these licensed activities.
- Individuals that act as operators for personal, family and household needs.

The most common penalty for non-compliance with the rules on data privacy is an administrative fine. For example, see Articles 13.11 and 13.12 of the Code of the Russian Federation on Administrative Offences. Personal data subjects can claim for compensation of damages, losses and moral (non-pecuniary) damage suffered as a result of personal data privacy violations (*Article 24(2), Personal Data Law*).

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## **16. What are the rules relating to the interception of calls? How and on what grounds can government authorities require disclosure of communications data? What are the penalties for breach of these rules?**

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The list of operational investigation measures indicated in the Federal Law "On Operational Investigations" No. 144-FZ of 12 August 1995 includes, among other things, the following measures (measures):

- Control of (access to) postal items, telegrams and other messages.
- Interception of telephone calls.
- Collecting data from technical communications channels.
- Collecting computer information.

Under the above law and the Executive Order of the Russian President No. 891 of 1 September 1995, the Federal Security Service and (in certain cases) internal affairs bodies (police) are responsible for carrying out the measures.

The general rule is that the measures can be carried out exclusively on the basis of a court order that can be issued where any of the following information is available:

- Information on an offence committed, or on preparing or committing an offence that requires preliminary investigation.
- Information on persons that are preparing, committing or have committed an offence that requires preliminary investigation.
- Information on events or acts (omission) threatening state, military, economic, information or ecological security of the Russian Federation.

Also, interception of telephone or other calls is only possible for:

- Persons that are suspected or accused of committing crimes that are described by the Russian Criminal Code as crimes of medium gravity, grave or extremely grave crimes.
- Persons that may have information on the abovementioned crimes.

However, there are at least two main exceptions from the general rule mentioned above:

- The measures can be carried out on the basis of a reasoned resolution of one of the persons heading the respective law enforcement body with a mandatory subsequent notification of a competent court within 24 hours if either:
  - an urgent reaction is needed in circumstances that may lead to committing a grave or extremely grave crime;
  - there is information on events or acts (omission) threatening state, military, economic, information or ecological security of the Russian Federation.

Within 48 hours of initiating any of the measures, the respective law enforcement body must obtain a court order approving the measure or stop carrying out the measure.

- If there is a threat to life, health, or property of a person, interception of telephone calls of the person is possible on the person's written application or consent, on the basis of a resolution approved by the head of the respective law enforcement body, with a mandatory subsequent notification of a competent court within 48 hours.

The rules relating to interception of telephone calls and disclosure of communications data within the framework of officially launched criminal cases can be found in the Russian Criminal Proceedings Code.

The rules on interaction of telecom operators with the law enforcement bodies during investigations is approved by the Decree of the Russian Government No. 538 of 27 August 2005.

Non-compliance of a telecom operator with regulatory requirements and (or) lawful instructions of law enforcement bodies relating to interaction for investigation purposes (including failure to ensure provision of (access to) the respective communications information) can lead, among other things, to the suspension of a communications licence by the Federal Service for Supervision in the Sphere of Communications, Information Technology and Mass Media (*Roskomnadzor*) (and its cancellation through the courts, if non-compliance is continuing).

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## 17. Are there any network or data security obligations imposed on communications providers?

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Each communications operator must build up its communications networks in a way that ensures their sustainability and security (*Article 46, Communications Law*).

Each operator that processes personal data of individuals is obliged to apply necessary legal, organisational and technical measures (or ensure application of the same) to protect the personal data from illegal or accidental access, deletion, alteration, blocking, copying, transfer or dissemination, as well as from other unlawful acts towards the personal data (*Article 19(1), Personal Data Law*). The Personal Data Law and related secondary legislation contain detailed rules on this obligation's fulfilment methods.

## PRICE REGULATION

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### 18. How are prices and charges regulated?

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See *Questions 8, 13 and 14* on price regulation of the network connection (interconnection) services.

See *Question 8* on price regulation of universal communications services.

See *Question 21* on price regulation in the sphere of number portability.

Prices (tariffs) for certain categories of communications services are subject to state regulation in accordance with the Federal Law "On Natural Monopolies" No. 147-FZ of 17 August 1995 and rules approved by the Decree of the Russian Government No. 637 of 24 October 2005. The exact list of these regulated communications services is also approved by the abovementioned decree. It includes various publically available postal and telegraph services, a number of landline telephone communications services and a number of communications services relating to broadcasting of the set of mandatory publically available TV and radio channels. The Federal Antimonopoly Service is responsible for the respective price regulation.

Prices for all other communications services may be determined by each telecom operator at its sole discretion.

## TELEPHONE NUMBER AND SUBSCRIBER MANAGEMENT

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### 19. How are telephone numbers allocated and managed in your jurisdiction?

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The telephone numeration resource is managed by competent public authorities in accordance with Article 26 of the Communications Law and the rules approved by the Decree of the Russian Government No. 350 of 13 July 2004.

The Russian system and plan of numeration is approved by the Order of the Ministry of Telecom and Mass Communications (*Minkomsvyaz*) No. 205 of 25 April 2017. It establishes requirements for the structure of numbers, letters, symbols or their combinations, including codes designed for unambiguous determination (identification) of a communications network and/or its nodes or end elements, as well as requirements for the use of such numbers, letters, symbols or their combinations with identifiers allowing to choose various number formats, operators or communications services.

Codes of geographic and other numeration zones, service access codes and operator selection codes do not have a particular

recipient and are regulated by Minkomsvyaz in accordance with the Russian system and plan of numeration.

If the telephone numeration resource in the respective territory (zone) is not limited, the resource can be allocated by the Federal Communications Agency on an application of a telecom operator. The amount of the state duty payable by a telecom operator for a numeration resource is variable and is calculated in accordance with Article 333.33(1)106 of the Russian Tax Code.

If the telephone numeration resource in the respective territory (zone) is limited, the resource can only be allocated on the basis of results of an open tender for a respective communications licence (see *Question 4*).

The numeration resource is treated as limited if the numeration resource in the respective territory (zone) that is already allocated (distributed) or applied for exceeds 90% of the available resource in accordance with the Russian system and plan of numeration.

### 20. Does access have to be provided to certain services, such as the emergency services and directory enquiries?

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The ability to make free anytime calls to emergency services must be provided to subscribers or users by each telecom operator that has any licence for:

- Local telephone communications services, except for local communications services with the use of payphones and public access equipment.
- Local telephone communications services with the use of payphones.
- Local telephone communications services with the use of public access equipment.
- Mobile radio communications services in the general use communications network.
- Mobile radiotelephone communications services.
- Mobile satellite radio communications services.

The ability to make directory enquiries must be provided to subscribers or users by each telecom operator that has any of the following licences:

- Any of the licences mentioned in the list above.
- A licence for intercity and international telephone communications services.
- A licence for intra-zone telephone communications services.

The transmission of alarm signals and urgent information to subscribers or users on threats relating to actual or potential emergency situations (natural or technogenic) and on instructions for population and required protection measures during military conflicts must be ensured by each telecom operator that has any of the following licences:

- Any of the licences mentioned in the first list above (except for the licence for local telephone communications services with the use of public access equipment).
- A licence for telematic communications services.
- A licence for communications services for cable-casting purposes.
- A licence for communications services for on-air broadcasting purposes.
- A licence for communications services for wired radio broadcasting purposes.

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The requirement for telecom operators to ensure transmission to users/subscribers and on the air of information signals and/or emergency information on dangers relating to actual or potential natural and man-caused emergency situations, military activities, instructions for the population or required protection measures is set out in Article 66(3) of the Communications Law. The rules for such transmission are subject to approval by the Russian Government. Costs of telecom operators triggered by such transmissions are not subject to compensation.

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### **21. Are there regulations relating to specific consumer services, such as acquiring and transferring subscribers, number portability, complaint handling, and nuisance and silent calls?**

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Rules relating to specific consumer services in the sphere of communications are mainly concentrated in Chapter 7 of the Communications Law and in sets of specific rules applicable to giving certain types of telecommunications services (see *Question 9*). In particular, very detailed rules relating to acquiring subscribers or users (conclusion of communications services agreements with consumers), number portability and complaint handling can be found in applicable legal acts. Issues such as transferring subscribers, nuisance and silent calls are not regulated.

Rules on acquiring subscribers cover, among other things:

- Methods and places that can be used to enter into communications services agreements with consumers.
- Requirements on the contents of a communications services agreement.
- The list of information and documents that must be provided to a telecom operator by a consumer for the purposes of entering into a communications services agreement.

Rules on number portability describe in detail the procedure for changing one telecom operator to another by a subscriber at the subscriber's initiative while retaining the subscriber's number. The respective subscriber's number is transferred from the numeration recourse of the first telecom operator to the numeration recourse of the second telecom operator without any special permits of public authorities. The number portability price is regulated (it must not exceed RUB100).

Complaint handling rules prescribe time limits for the filing of and responding to complaints addressed to telecom operators. Mandatory pre-judicial settlement of the disputes procedure is prescribed by Article 55 of the Communications Law. It means that a subscriber or user can file a claim to a competent court against a telecom operator only after the respective complaint is filed with the telecom operator.

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### **22. Are consumer telecommunications contracts subject to specific regulations?**

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If communications services are provided to an individual (consumer), the Consumer Protection Law applies to the respective telecommunications contract.

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### **23. Are there restrictions on the use of Voice over IP technology in your jurisdiction?**

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Voice over IP (VoIP) technology is not formally restricted and is widely used in Russia. However, specific VoIP-related provisions of the laws and acts of secondary legislation are not well developed.

Most experts tend to interpret VoIP as governed by the Communications Law as voice data transfer communications services that may be rendered subject to getting the respective license and compliance with the rules for rendering data transfer communications services approved by the Decree of the Russian Government No. 32 of 23 January 2006..

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### **24. Are there regulations relating to the maintenance of net neutrality in your jurisdiction?**

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Currently, the concept of net neutrality is not directly covered in the law. However, certain elements of the principle of net neutrality are reflected in applicable laws. In particular, the Constitution of the Russian Federation and the Information Law establish the freedom of transmitting and receiving information that ensures the consumer's right to get and transfer lawful content. The Communications Law and the Consumer Protection Law establish the right of a subscriber or user to obtain reliable information on communications services and telecom operators (including information on price, quality and other conditions relating to the respective communications services). Possible net neutrality limitations can be dealt with within the framework of the Federal Law "On Protection of Competition" No. 135-FZ of 26 July 2006 that prohibits, among other things:

- Unfair competition.
- Certain types of agreements and joint actions aimed at limitation of competition.
- Abuse of the dominant position in a market.

However, the law does not establish the obligation of telecom operators to disclose information on the applied methods of traffic management.

The idea of further development of the principle of net neutrality is currently widely discussed in society and public authorities. The Federal Antimonopoly Service is well known as one of the most sustainable proponents of this idea.

Several exceptions from the principle of net neutrality are directly prescribed by applicable laws and regulations. For example, Article 66 of the Communications Law gives public authorities priority use of all telecommunications networks in emergency situations. Under paragraph 27 of the Rules for rendering telematic communication services (approved by the Decree of the Russian Government No. 575 of 10 September 2007), a provider can limit certain acts of a subscriber or user if these acts jeopardise the regular functioning of the telecommunications network.

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## **OUTSOURCING AND TELECOMMUNICATIONS**

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### **25. Are there specific regulations for the outsourcing of telecommunications services or the management of these services?**

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There are no specific regulations for the outsourcing of telecommunications services or the management of these services. However, the purchase of goods, works and services (including communications services) by public authorities is governed by the Federal Law "On the Contract System in the Sphere of Purchase of Goods, Works, Services for State and Municipal Needs" No. 44-FZ of 5 April 2013. The purchase of goods, works and services (including communications services) by certain categories of state controlled entities is governed by the Federal Law "On Purchase of Goods, Works, Services by Certain Categories of Legal Entities" No. 223-FZ of 18 July 2011. The basic principle of both laws is that goods, works and services for the needs of public authorities and state controlled entities in most cases are purchased through tenders.



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## 26. Briefly set out the current trends in outsourcing transactions in the telecommunications sector.

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The outsourcing market is traditionally considered as one of the less transparent sectors, and its communications segment is not an exception. In practice, both approaches are used depending on the exact territory (level of competition between communications operators, variety of services provided by exact communications operators within the territory, such as region or municipality) and needs of a particular company:

- Entering into agreements with communications operators providing "communications service packages" that include multiple types of communications services.
- Concluding agreements with multiple communications operators for the purposes of a company's communications needs.

The choice of the exact communications outsourcing scheme is usually considered by the upper management of a company.

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## 27. Who are the key providers of outsourced telecommunications?

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This largely depends on the exact segment of the telecommunications market and the level of competition in it. For example, while the mobile communications segment is dominated by three to four key players, the broadband internet access segment is traditionally more competitive (especially in big cities) and open for mid-market and even comparatively small telecom companies.

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## 28. What are the current technologies influencing or affecting outsourcing by telecommunications operators?

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The ever-growing use of new information and telecommunications technologies (including various cloud based services, Voice over IP

(VoIP), bring your own device (BYOD) technologies) and instant messaging is starting to have a significant impact on the telecommunications market. At the initial stage, these technologies became interesting for Russian subsidiaries of foreign and transnational corporations. However, now there are increasing examples where "purely" Russian companies tend to use the respective services and outsource them. The main issue associated with this trend is that the laws and acts of secondary legislation are very often not kept up-to-date with the technological development in this sphere.

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## 29. From a contractual perspective, what are the key issues in a typical telecommunications outsourcing transaction in your jurisdiction?

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Offering telecommunications services is regulated in detail. In particular, the Communications Law, decrees of the Russian Government listed in *Question 9* and other legal acts describe main rights and obligations of telecom operators and subscribers or users, and contain basic requirements for communications services agreements.

The typical terms and conditions of a telecommunications outsourcing transaction largely depend on the exact list of services covered by the respective transaction. Issues such as the following are or may be included in, or regulated by, an agreement:

- A precise list and description of provided communications services.
- Subscriber's number(s) and or identification or access code(s).
- Pricing and payment provisions.
- Communications equipment supply and/or installation.
- Use and maintenance terms.

## ONLINE RESOURCES

Official Web Portal of Legal Information (State System of Legal Information)

W [www.pravo.gov.ru](http://www.pravo.gov.ru)

**Description.** This is a website officially used to publish laws and acts of secondary legislation. It is available in Russian only. The authors are not aware of an official or unofficial website with reliable translations of legislation that are freely available in English.

Russian telecommunications market: preliminary results for 2015

W [www.mforum.ru/news/article/116198.htm](http://www.mforum.ru/news/article/116198.htm)

**Description.** Article on the preliminary results of the telecommunications sector for 2015. It is available in Russian only.

Russian telecommunications market: 2016 forecast

W [www.nag.ru/articles/article/29465/trendyi-razvitiya-ryinka-telekommunikatsiy-chto-nas-jdet-v-2016-godu.html](http://www.nag.ru/articles/article/29465/trendyi-razvitiya-ryinka-telekommunikatsiy-chto-nas-jdet-v-2016-godu.html)

**Description.** Article forecasting development trends for the telecommunications sector for 2016. It is available in Russian only.

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## Practical Law **Contributor profile**

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