

# LEXOLOGY®

Telecoms in Russia

**King & Spalding LLP**

**Global, Russia** | April 29 2019



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## **Market spotlight**

*Trends and developments*

**What is the current state of the telecoms market in your jurisdiction, including any trends and recent developments/deals?**

The Russian telecoms market is dominated by five large companies that each hold a major share of the profits and a large subscriber base. Facing inevitable saturation, the telecoms market is generally following the global convergence trend, with Russian operators focusing on expanding the range of services offered to subscribers. Specifically, all mobile operators and some fixed-line operators have added internet protocol television or cable television services, while cable and satellite broadcasting operators have been increasingly providing additional interactive services and video-on-demand options. There is also increasing market concentration, with local, smaller-sized operators being acquired by or merged into larger, nationwide players.

In terms of statutory regulations, the main trend appears to be a tightening of state control over information distribution via communications networks and the Internet, including messaging and over-the-top services and restrictions on the anonymity of communications (eg, through identification requirements for online and electronic service users). One of the most efficient and increasingly used enforcement measures (in addition to traditional penalties, such as fines) includes blocking access to certain web resources. The list of grounds for the blocking of access to a web resource is constantly expanded. This measure is performed by telecoms operators which must cover all such costs.

## **Regulatory framework**

*Legislation*

**What is the primary legislation governing the telecoms market in your jurisdiction?**

The primary pieces of legislation governing the telecoms market are:

- Federal Law 126-FZ (the Communications Law), dated July 7 2003 (as amended), which is the cornerstone regulation for all telecoms activities. The law also sets out the principal licensing rules applicable to a broad range of operations. Starting from 1 July 2018 the law requires storage of metadata and users' communications by all Russian communications operators;
- Federal Law 149-FZ (the Information Law), dated July 27 2006 (as amended), which regulates information distribution matters. There have been numerous amendments and supplements made to this law over the past years specifically addressing:

o the distribution of information via the Internet;

o the activities of news aggregators, online search engines and information distribution intermediaries (eg, social networks); and

o Federal Law 99-FZ (the Licensing Law), dated May 4 2011 (as amended).

In addition to the above, provisions relevant to the regulation of the telecoms market can be found in laws relating to competition, natural monopolies, foreign investment control, mass media, advertising, city planning and other matters.

In each case, the principal regulation set by law is expanded and detailed in relevant government regulations and other subordinate acts adopted by the competent bodies.

### *Reform*

#### **Are any regulatory reforms or initiatives envisaged?**

The set of rather controversial amendments to the Russian laws, collectively called the Yarovaya Law after one of its authors, Russian Parliamentary Deputy Irina Yarovaya – came into effect on 1 July 2018 with some provisions' effect delayed until October 1 2018. The law will have a major impact on telecoms activities which is yet to be acknowledged and analysed in full . Under the scope of counter-terrorism measures, the law introduced an obligation that all Russian communications operators must store records of voice communications, text messages and all other type of data (including videos and pictures) exchanged, downloaded, shared or uploaded by users of Russian telecoms networks. The metadata pertaining to these communications must be stored for three years and the content itself must be stored for six months after the communication's transmission. All data must be provided to enforcement authorities on request, along with decryption keys if the data has been encrypted by the network operator or service. Failure to provide information, including decryption codes, is subject to fines of up to Rb1 million for legal entities (approximately \$15,000).

Prior to the adoption of the law market players argued that the investment in resources required to comply with the Yarovaya Law would effectively leave them with no chance to invest in the development of new technologies and infrastructure in order to further expand and improve the quality of services provided to subscribers. The actual costs and its effect on the industry are yet to be assessed.

New regulation in force from 1 January 2018 that requires user identification by messaging services was supplemented with a government decree that sets out the procedure for the mandatory identification via user's mobile phone number and comes into force on 5 May 2019.

A bill of law that was submitted to the Russian Parliament in October 2018 suggests a 20% limitation of foreign participation in and control over the Russian online news aggregators. The authors openly admit that the limitation would allow more state control over the news made available to Russian citizens.

Another initiative to mention is being developed by the Federal Anti-monopoly Service as part of the set of amendments referred to as the fifth anti-monopoly package. The Federal Anti-monopoly Service is looking into ways to adjust the current regulation to the needs and specifics of digital economy, namely, to provide new instruments for the analysis of consequences of certain transactions that involve innovative technologies. Current anti-monopoly regulation in Russia exempts certain businesses and deals involving intellectual property from competition rules; the new regulation may abolish this exemption.

Certain amendments to the telecom regulation are expected within the framework of the Digital Economy state programme. The programme was adopted by the Government Order 1632-p of July 28 2017 and anticipates such measures as infrastructure changes, adoption of new regulation, educational initiatives and other. The adopted programme contains a road map for various actions and initiatives to be taken and realised in the upcoming years through year 2030. As part of the process related to the implementation of the programme, the Ministry for Connection and Mass Communications was renamed into the Ministry for Digital Development, Connection and Mass Communications.

### *Universal service obligations*

#### **What universal services obligations apply?**

All telecom service licence holders must pay 1.2% of their revenue minus taxes quarterly to the universal service fund to finance state support of universal telecom services development and the maintenance of the ported mobile phone number database.

### *Regulators*

#### **Which authorities regulate the telecoms sector and what is the extent of their powers?**

The telecoms sector is regulated by:

- the Ministry for Digital Development, Connection and Mass Communications, which is vested with the authority to create a general development strategy for the telecoms,

information distribution and technology industries and to issue subordinate regulations in pursuance of the main regulatory framework set by federal laws; and

- the Federal Service for Supervision in the Sphere of Connection, Information Technologies and Mass Communications (RKN), which is a federal agency under the ministry and oversees compliance in these spheres.

The RKN's competence covers a variety of areas, including mass media registration, the licensing of all types of broadcasting and telecom service, the supervision of personal data protection and information distribution issues. The RKN also maintains and operates the state register of web resources blocked in Russia.

The State Commission for Radio Frequencies and the Federal Radio Frequency Service, which are part of the Ministry for Digital Development, Connection and Mass Communications, are responsible for:

- spectrum allocation;
- the supervision of radio electronic equipment and high frequency devices; and
- compliance control regarding the allocated spectrum and the collection of frequency-use fees, respectively.

## **Foreign ownership**

### *Restrictions*

#### **Are there any restrictions on foreign ownership or investment in the domestic telecoms market?**

Russian law contains a number of restrictions on foreign ownership and investment which extend to the telecoms sector, including the following:

- Foreign entities cannot hold telecoms licences in Russia and foreign telecoms licences are not recognised.
- General foreign investment restrictions are set by:

o the Foreign Investment Law 160-FZ, dated July 9 1999 (as amended), under which any acquisition of direct or indirect ownership of, or control over, more than 25% of the voting shares in a Russian company by a foreign state, international organisation or entity under their control requires prior approval from a special government commission; and

o the Strategic Investment Law 57-FZ, dated April 29 2008 (as amended).

Under the Strategic Investment Law 57-FZ, preliminary clearance from a government commission is required for any transaction that results in the establishment of foreign control over a Russian company engaged in activities of strategic importance for national defence and state security (the list of strategically important activities is set by law and includes some activities in the telecoms and broadcasting sectors, depending on certain market position or coverage thresholds.)

Additional restrictions apply for foreign participation in broadcasting and mass media (foreign control is limited to 20%, whether direct or indirect) and online audiovisual services with effect from July 1 2017 (foreign control is also limited to 20%, whether direct or indirect).

Similar restrictions on participation and control by foreign entities are currently considered for online news aggregator platforms.

## **Licensing and authorisation**

### *Licences/authorisations required*

#### **What licences/authorisations are required to provide telecoms services?**

Operators provide telecoms services in Russia under Government Decree 87, dated February 18 2005, on the basis of telecoms licences for the relevant type of service, including, but not limited to:

- data transmission services (either voice or other data);
- the provision of connection channels, intercity and international telephone calls;
- telematics services;
- telecoms services for terrestrial broadcasting; and
- telecoms services for cable broadcasting.

Telecoms licences are issued under Federal Law 126-FZ (the Communications Law) in accordance with the licensing requirements under Government Decree 87.

Licences are issued on a per territory basis and operators that provide a variety of services must hold relevant licences for all services and regions in which they provide services, which can sometimes number hundreds of licences.

### *Procedure*

#### **What are the eligibility, documentary and procedural requirements to obtain a licence/authorisation?**

Telecoms service licences are issued by the Federal Service for Supervision in the Sphere of Connection, Information Technologies and Mass Communications. The applicant files an application together with supporting documentation, including its corporate documents, a description of the telecoms service to be provided and the network layout. Where the services to be provided require the use of spectrum, the applicant must submit a frequency-use permit issued by the State Commission for Radio Frequency Allocation. In cases where the specific frequency resource is limited or there is a limited capacity of publicly available networks in the territory in which the operator applies, licences can be issued via tender (held as auctions or competitive contests).

### *Validity period and renewal*

#### **What is the validity period for licences/authorisations and what are the terms of renewal?**

Telecoms licence terms are determined by the authority and must be between three years and 25 years.

### *Fees*

#### **What fees apply?**

There is a one-time licence fee of Rb7,500 (approximately \$112) for all types of licence. Separate fees are charged for frequency-use and number pool assignments.

### *Timeframe*

#### **What is the usual timeframe for obtaining a licence/authorisation?**

The average waiting period for a licence to be issued is 75 days from the filing of a complete package or, in the case of an auction, 30 days after the winner has been decided.

### **Network access and interconnection**

### *Regulation*

#### **What rules, requirements and procedures govern network-to-network access and interconnection?**

The principal rules of telecoms network interconnections are set out in Articles 18 to 20 of the Federal Law 126-FZ (the Communications Law). Further, two decrees adopted by the government provide the specific technical requirements for:

- general network interconnections; and
- the interconnection of broadcasting networks, respectively.

Apart from these mandatory rules, all terms of interconnection and network-to-network access are defined and agreed on by the contracting operators. Operators of publicly available telecoms networks must provide interconnection services to other operators.

Operators considered to have a substantial position in publicly available networks (where a 'substantial position' is defined as holding more than 25% of the capacity in the relevant geographic numbering area, individually or as part of a group of affiliates) must offer equal and non-discriminating terms for all connecting operators on the basis of standard published contracts. Operators that hold a substantial position cannot refuse interconnection, except where such connection would contradict their licence terms or applicable regulation.

### *Pricing*

#### **Are access/interconnection prices subject to regulation?**

Network connection costs are government regulated for operators that hold a substantial position in publicly available networks. For such operators, the Federal Agency for Communications sets the minimum and maximum costs of interconnection services per connection point.

### *Disputes*

## **How are access/interconnection disputes resolved?**

Disputes on interconnection-related issues are resolved through standard judicial procedures in *arbitrazh* (ie, commercial) courts.

### *Next-generation access*

## **Have any regulations or initiatives been introduced or proposed with respect to next-generation access?**

The Digital Economy national programme adopted by Government Order 1632-p of July 28 2017 sets the provision of stable 5G mobile services in all major cities of Russia by 2024 as one of its major goals.

In the context of the recent move towards technological neutrality, the State Commission for Radio Frequencies has made some decisions in the past four years which allow the use of certain bandwidths previously reserved for Universal Mobile Telecommunications System standards to promote the development of long-term evolution services without the need for operators to modify previously issued permits.

As of the end of November 2018 mass media reported three operators to have filed their applications for frequencies to deploy 5G networks. The applications will be reviewed by the State Commission for Radio Frequencies in December 2018 and the auction itself will be held sometime in mid-2019.

## **Infrastructure access**

### *Land access*

## **What rules and procedures govern telecoms operators' access to land (both public and private) to install, maintain and repair infrastructure?**

The Land Code sets a specific category of land that can be used for communications, radio, television and informatics services. Federal and municipal land can be leased for the construction and exploitation of communications network infrastructure. The terms for granting such rights are set in the Land Code and city planning regulations. The Land Code also contains rules on the establishment and recordation of easements on lands where telecoms infrastructure is located and way-leave rights for the purposes of exploitation and repair.

### *Infrastructure sharing*

## **Are infrastructure sharing agreements among operators popular and/or encouraged by the regulatory authorities? Which infrastructure sharing structures/agreements are commonly used? Do any regulations apply?**

Until 2013, infrastructure sharing in Russia was limited to passive infrastructure sharing due to certain technical requirements set in the applicable regulation. Those limitations were lifted in 2013 and Russian telecoms operators have since been encouraged to share active and passive infrastructure. Amendments setting the terms of technical interconnection and the joint use of

certain elements of infrastructure were introduced via a number of Ministry for Digital Development, Connection and Mass Communications orders between 2014 and 2016. The existing regulation allows for the joint ownership of frequencies and the joint certification of radio electronic equipment and high-frequency devices. However, in practice, major wireless operators are not usually eager to share infrastructure due to the fact that:

- their existing networks cover the same geographic territories; and
- operators are concerned about the risks of losing subscribers to competitors.

The only area that saw and will most likely see an increase in infrastructure sharing and joint effort is the development of next-generation, long-term evolution and 5G services. Due to the high forecasted costs required to set up these networks, most of which are used by the military at present, major operators are willing to join forces.

In addition to the above, under the Rules of Non-Discriminatory Access to Infrastructure adopted by Government Decree 1284, dated November 29 2014, natural monopolies in the telecoms industries must provide access to their infrastructure facilities by law.

### **Pricing and consumer protection**

#### *Retail pricing*

#### **What rules govern retail pricing for telecoms services?**

Under Article 28 of Federal Law 126-FZ (the Communications Law), telecoms operators are free to set their own retail tariffs for the provision of services. However, the rates of publicly available telecoms and postal services by natural monopolies are controlled by the state. Publicly available services include:

- local and intercity fixed-line calls;
- the terrestrial transmission of publicly available (mandatory) television channels; and
- publicly available telecoms communications to receive cable and terrestrial broadcasting signals.

State regulation of such tariffs is carried out by the Federal Anti-monopoly Service in accordance with the rules set by Government Decree 637, dated October 24 2005.

In August 2018 the Federal Anti-monopoly Service declared a victory over the practices of major mobile operators (ie, MTS, Vimpelcom (Beeline) and MegaFon) to charge intercity roaming fees within the country. The practices were considered non-compliant with Russian competition laws, and all three major operators agreed to cease domestic roaming charges in August-September 2018.

#### *Consumer contracts*

#### **What rules govern consumer service contracts?**

Regulatory provisions designed for the protection of consumers are set out in Law 2300-1 on the



Protection of Consumer Rights, dated February 7 1992.

Specific requirements for telecoms contracts are set out in the relevant rules adopted for different types of telecoms service (eg, the Rules for Provisions of Data Transfer Services adopted by Government Decree 32 on January 23 2006). These rules require:

- the provision of certain information to subscribers at the execution of a contract and during the provision of services;
- compliance with certain technical requirements;
- an assurance of confidentiality and security; and
- the proper identification of subscribers.

Article 44 of the Communications Law also provides for certain requirements applicable to consumer contracts entered into regarding wireless telecoms services. For example, operators of wireless services cannot enter into consumer contracts in movable retail facilities.

Pursuant to Article 44 of the Communications Law, wireless services operators must maintain separate consumer accounts for their main services and additional content services to avoid debiting payments for additional services from the principal account opened for wireless services.

Article 44 also contains provisions on portable numbers and limits the fee for keeping the number to Rb100 (approximately \$1.50).

#### *Disclosure requirements*

#### **Are telecoms service providers bound by any consumer disclosure requirements?**

The requirements for the disclosure of certain information to consumers are specified in the relevant rules for the provision of different types of telecoms service adopted by government decrees. Under the Rules for the Provision of Data Transfer Services adopted by Government Decree 32 on January 23 2006, when executing a telecom services contract with a subscriber, operators must provide:

- their full name;
- details of licences, a services card, the payment terms, support contracts and locations where subscribers can familiarise themselves with all of the terms of the provided services;
- a list of the terms of the provided services; and
- any additional information in connection with the provision of services, as requested by the subscriber, in Russian and other languages (if necessary).

Operators must also post information online regarding the terms for the correction of defects that preclude subscribers from using their services and notify them of any changes in rates no less than 10 days before they come into effect.

#### **Competition**

## *Issues and concerns*

### **Are there any particular competition issues or concerns in the domestic telecoms market?**

The key to accessing the telecoms market and being competitive is utilising the range of relevant licences (which cover a broad array of services). Given the limited resources for the provision of certain services – especially those with the highest commercial potential, such as next-generation wireless services – new licences are often distributed via tenders that are dominated by existing major operators, which makes market entry difficult for new players.

## *Sector-specific regulation*

### **Do any sector-specific competition regulatory/legal provisions apply (eg, special conditions for dominant telecoms market players)?**

The Law on the Protection of Competition contains no telecoms industry-specific requirements or provisions.

The Federal Anti-monopoly Service, the regulatory authority responsible for compliance with competition legislation, issued Information Letter IA/10167 on Setting Different Tariffs for the Same Goods in the Telecoms Market on April 9 2010. The letter requires that operators which hold a dominant position must avoid setting different tariffs for the same services provided in various regions. An operator is considered to hold a dominant position if:

- it has more than a 50% share of the market in the relevant territory; or
- the Federal Anti-monopoly Service considers its position (between 35% and 50%) as dominant in comparison with other service providers in the same market. For the mobile communications market, the threshold is set 25%.

In certain territories, the telecoms market is assessed with regard to where demand is best served in the absence of competition (ie, a natural monopoly). Natural monopolies are regulated by Federal Law 147-FZ on Natural Monopolies of August 17 1995 (as amended) and subordinate regulatory acts. Among other things, tariff regulations may apply to natural monopolies in specific cases. Further, information disclosure standards are higher for natural monopolies and transactions that involve natural monopolies are subject to a separate competition analysis.

## *Separation*

### **Are there any requirements for structural, functional or accounting separation of operators' activities?**

Under Ministry for Digital Development, Connection and Mass Communications Order 54, dated May 2 2006, operators that hold substantial positions in publicly available networks and operators of universal services and natural telecoms monopolies must keep separate accounts for:

- different types of activity;
- provided services; and

- different sections of the telecoms network used for the provision of such services.

## **Spectrum**

### *Allocation*

#### **What rules and procedures govern spectrum allocation?**

Articles 22 to 24 of Federal Law 126-FZ (the Communications Law) set out general provisions on the regulation of spectrum.

Under these provisions, the State Commission for Radio Frequencies (GKRCh), under the Ministry for Digital Development, Connection and Mass Communications, is vested with the authority to regulate the use and allocation of spectrum in Russia. Spectrum frequencies are allocated in accordance with the Frequency Bandwidths Allocation Chart adopted by Government Decree 1049-34, dated December 21 2011. In addition to setting the framework for the use of spectrum and making general decisions on the possibility to use spectrum for the provision of specific services, the GKRCh issues permissions to use certain bandwidths and frequency channels. If a relevant radio frequency resource is limited in the territory that the operator applies for, the spectrum is allocated at auction.

The Federal State Unitary Enterprise Main Radio Frequency Centre analyses electromagnetic compatibility and issues expert evaluations of the potential allocation of spectrum to specific operators that have applied for permissions. This entity also oversees compliance with technical operation requirements for spectrum use in Russia.

Compliance with the terms of allocation of radio frequencies is supervised by the Federal Radio Frequency Service.

### *Fees*

#### **What fees apply to spectrum allocation/authorisation?**

The Federal Service for Supervision in the Sphere of Connection, Information Technologies and Mass Communications sets one-time fixed and annual fees regarding the relevant permissions for each user to use spectrum. The specific amounts are calculated on the basis of the methodology developed by the Ministry for Digital Development, Connection and Mass Communications and rates and co-efficients vary depending on:

- the frequency range;
- the number of frequency channels used; and
- the technologies applied for the use of the spectrum.

For Global System for Mobile Communications, Universal Mobile Telecommunications Systems, International Mobile Telecommunications Multi-Carrier 450, long-term evolution standards and their modifications, fees are calculated based on State Radio Frequency Commission decisions on the allocation of frequencies or telecoms services licences for the use of radio frequency spectrum.

## *Transferral*

### **Can spectrum licences be transferred, traded or sub-licensed?**

There are limited options for the transfer of telecoms licences. A licence can be transferred to a legal successor under Article 35 of the Communications Law without additional approvals. In cases where the use of spectrum is involved, the reissue of a licence to a new licensee requires a prior transfer of the spectrum use permit. Further, when applying for the reissue of a licence, the applicant must inform the Federal Service for Supervision in the Sphere of Connection, Information Technologies and Mass Communications of such prior transfer. A sub-licence where the original holder reserves rights or can revoke the grant of rights is impossible, as licences are issued in the name of one holder only.

### **Voice over Internet Protocol**

#### *Regulation*

### **How is Voice over Internet Protocol (VoIP) regulated in your jurisdiction?**

Voice over Internet Protocol (VoIP) services are not expressly regulated by Russian legislation. VoIP operators normally provide services under the terms of telecoms licences for data transfer for voice information transmission purposes. Rules for the interconnection of telecoms networks adopted by Government Decree 161, dated March 28 2005, allow the connection of Internet Protocol-based networks to other networks.

### **Telephone numbers**

#### *Allocation*

### **How are telephone numbers allocated in your jurisdiction?**

Pursuant to Article 26 of Federal Law 126-FZ (the Communications Law), the government oversees the development and adoption of relevant regulation for the use of telephone numbers in Russia. Allocation rules and the use of unified communications network telephone numbers, adopted by Government Decree 350 on July 13 2004, establish the framework for number allocation subject to the Russian System and Plan of Numbers Pool (adopted by Order 205 of the Ministry for Digital Development, Connection and Mass Communications on April 25 2017). Telephone numbers are allocated by the Federal Service for Supervision in the Sphere of Connection, Information Technologies and Mass Communications subject to capacity and the payment of state fees, unless limited capacity requires the allocation of numbers at an auction.

#### *Number portability*

### **What rules govern telephone number portability?**

The mobile portability rule was added to Article 44 of the Communications Law with effect from December 2013. As a result, subscribers can keep their numbers when they switch from one operator to another and the transfer fee is limited by law to Rb100 (approximately \$1.50). The ported numbers database is financed by the universal services fund, which is funded by operator mandatory deductions.

## **Privacy and data security**

### *Net neutrality*

#### **What is your jurisdiction's regulatory stance on net neutrality?**

Russian legislation contains no statutory requirements for net neutrality. However, the idea has been broadly discussed and is actively supported by the Federal Anti-monopoly Service. In 2016 the Federal Anti-monopoly Service published a basic document on net neutrality on its website, explaining the main principles and goals therein. All major mobile operators (ie, MTS, Vimpelcom (Beeline) and MegaFon) have expressed their support for the principle of net neutrality.

Despite the fact that the Federal Anti-monopoly Service continues promoting net neutrality and seems to have the support of the market representatives, in September 2018 RKN expressed a view that the development of 5G networks and their use for telemedicine and remotely controlled vehicles would require prioritizing such traffic over others. Furthermore, the association of major LTE operators (MTS, Vimpelcom (Beeline), MegaFon and Tele2) has also expressed concerns about the net neutrality in connection with 5G services in the official letter addressed to the Russian Government in August 2018.

### *Encryption*

#### **Are there regulations or restrictions on encryption of communications?**

Russian legislation contains requirements for operators of information systems, including those that process personal data, to use data protection tools. Depending on the level of significance of information and the analysis of potential threats, some systems may require only simple measures, such as password protection, while others may have to be protected with encryption (cryptography), among other means. The use of encryption (cryptographic) software and hardware and the performance of other encryption-related activities is subject to licensing under Government Decree 313 of April 16 2012.

Licensees must also apply for the certification of information security systems using encryption. Such certification involves the technical analysis of relevant systems (devices) by authorised laboratories for compliance with relevant requirements for certain types of system (specific requirements are set out in regulatory and methodological documents mainly adopted by the Federal Service for Technical and Export Control). Notably, Russian regulation is insufficiently specific on distinctions between cryptography and encoding, which can lead to confusion with regard to the scope of application of the above licensing and certification requirements.

Pursuant to Federal Law 149-FZ (the Information Law), a party that qualifies as organising the distribution of information online for the reception, transmission, processing or delivery of electronic communications must provide the Federal Security Service with the means of decryption of such communications. This rule applies specifically to email and messaging services.

### *Data retention*

#### **Are telecoms operators bound by any rules or requirements on the retention of consumer communications data? If so, for how long must data be retained?**

A number of data retention requirements apply to telecoms operators, including:

- general accounting and tax reporting obligations;
- information storage obligations in compliance with investigative activities requirements (ie, the maintenance of subscriber and service databases for three years and the provision of access to the Federal Security Service, where required);
- requirements under certain types of licence – for example, operators of universal services, operators of data transfer and operators of telematics services, when providing internet access at collective access points (eg, public Wi-Fi) must identify customers by their full name via valid identification or other means that allow secure identification, including mobile network subscriber numbers. Such data must be kept for at least six months; and
- obligations under the Yarovaya Law – a federal law named after one of its authors, Russian Parliamentary Deputy Irina Yarovaya – that all Russian communications operators must store records of voice messages and any other type of data (including videos and pictures) exchanged, downloaded, shared or uploaded by users of Russian telecom networks.

In addition to the above, Article 10.1 of the Information Law sets out similar requirements for parties that organise the online distribution of information. Such entities must store the metadata of user communications and information for one year and the messages themselves for six months. Starting from 1 January 2018, these provisions have also applied to the operators of online messaging services. Stored information must be provided to investigative authorities on request.

As of September 1 2015, Russian legislation has required the data localisation of Russian citizens' personal data. This requirement implies that Russian citizens' personal data can be processed only with the use of databases physically located in Russia (which, however, does not limit the parallel use of foreign databases and servers).

### *Government interception/retention*

#### **What rules and procedures govern the authorities' interception of communications and access to consumer communications data?**

Under Russian regulations, enforcement authorities must be provided with direct access to telecoms networks. The relevant rules are set out in Government Decree 538, dated August 27 2005. The Federal Security Service is responsible for cooperation with operators to ensure compliance and the proper installation of technical means to ensure network access.

Details of the technical requirements for the provision of access are specified in separate orders issued by the Ministry for Digital Development, Connection and Mass Communications (eg, Order 73 for data transfer networks, dated May 27 2010).

Once a direct connection has been established, Russian investigative authorities can request relevant information or immediately access records and correspondence by the telecoms operator's subscribers when such actions are approved in accordance with Federal Law 144-FZ on investigative activities, dated August 12 1995 (as amended). By way of a general rule, any limitation of constitutional rights to privacy and secret correspondence is subject to a court order, with the exception of special urgent cases, when relevant orders or approvals can be obtained *post factum*.

#### *Data security obligations*

#### **What are telecoms operators' general data security obligations to consumers?**

Pursuant to Article 63 of Federal Law 126-FZ (the Communications Law), privacy of correspondence is guaranteed in Russia and therefore telecoms operators must maintain compliance with the requirements for the privacy of communications. Specific rules for the provision of different types of telecoms service also require that operators maintain the secrecy of information transmitted via their networks. Certain exceptions exist, as provided in various federal laws (eg, military situations, counter-terrorist operations and the performance of investigative activities).

Under the rules on the provision of services, information on subscribers that becomes available to the operator in the course of the provision of services can be used by the operator only for the provision of information services; the disclosure or transfer of such information to third parties is allowed only on obtaining the subscriber's written consent, subject to the exemptions set out in various federal laws.

Operators are also bound by Personal Data Law 152-FZ, dated July 27 2006 (as amended), which requires the application of the legal, administrative and technical means of protection of personal data collected and processed in the course of business operations.

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