

Eliminating Contradictions between Domestic Legislation in the Field of Satellite Telecommunications and International Obligations within the Framework of the World Trade Organization

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On August 22, 2012 the Russian Federation joined the World Trade Organization (WTO). As a new WTO member, Russia assumed a number of obligations. It was for the purpose of eliminating contradictions between the effective national legislation and the obligations within the framework of the WTO that appropriate rules started being made. One of such rules relating to satellite telecommunications deserves a separate detailed description. In mid-2013, on the invitation of the Ministry of Telecom and Mass Communications of the Russian Federation, a special working group started elaborating a draft Regulation of the Government of the Russian Federation. The following two new Procedures were to be approved under this Regulation: the *Procedure of the International Legal Protection in the Russian Federation of Radio Frequency or Radio Frequency Channel Assignments* (International Legal Protection Procedure), and the *Procedure of the Use in the Territory of the Russian Federation of Satellite Telecommunications Networks Falling under the Jurisdiction of Foreign States* (Networks Use Procedure).

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I. International Legal Protection Procedure

The first regulation – the International Legal Protection Procedure – governs any activity in the Russian Federation related to the international legal protection of frequency assignments including the filing, coordination and registration with the International Telecommunication Union (ITU) of frequency assignments and performance characteristics of satellites deployed in geostationary and other orbital positions as well as any activity related to the international distribution and regulation of the use of the radio frequency spectrum.

As set forth in the Procedure, such activities are based on the standards and rules of international sharing and utilization of the radio frequency spectrum.

I.I Purview

The Procedure is applicable both to domestic satellite systems deployed in the interests of Russian individuals or legal entities and to international satellite systems used in the interests of several states, if such systems fall under the jurisdiction of the Russian Federation.

At the same time, the Procedure is not applicable to diplomatic and consular missions of foreign states, and to delegations of foreign states temporarily staying in the Russian Federation.

The Procedure also does not apply to cases when the telecommunications administration of the Russian Federation acts as the notifying administration on behalf of a group of named administrations.

Although the latter exemption is only applied rarely, it is still very important in terms of abidance by the regulatory documents of the ITU and, specifically, the ITU Radio Regulations, and it is of primary importance to groups of named administrations, including intergovernmental satellite telecommunication organizations.

I.II Exemption for Groups of Named Administrations

It will be recalled that under the ITU Radio Regulations frequency assignments to satellite networks can be filed on behalf of a group of administrations while one of such administrations acts as the notifying administration in the interests of the whole group. This is also applicable to a group of administrations being members of an intergovernmental organization.

For example, the administration of the Russian Federation acts at the ITU as the notifying administration of the Intersputnik International Organization of Space Communications, which is an intergovernmental organization uniting twenty six member states (Intersputnik). The relationship between the administration of the Russian Federation and Intersputnik is governed by a bilateral agreement and other internal instruments of Intersputnik instruments defining the procedure of the international legal protection of Intersputnik's satellite networks. Not all of the above-mentioned internal instruments have

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international treaty status, which prevails over national laws according to the Constitution of Russia.

I.III Practical Importance of Exemption

Thus, the above exemption, which was included in the International Legal Protection Procedure following Intersputnik's recommendation, unequivocally lays down that no national regulation of one of the Intersputnik member state is applicable neither to the Intersputnik international organization, nor to the other twenty five member states, while preserving the pattern of the relationship between the Russian administration and Intersputnik stipulated in the latter's documents.

Obviously, this exemption is also applicable to any other instances when the administration of the Russian Federation files satellite networks with the ITU on behalf of a group of named administrations and acts as the notifying administration in the interests of this group.

II. Networks Use Procedure

The other regulation – the Network Use Procedure – lays down the rules of accessing satellite networks and satellite capacity, and the procedure of using them in the territory of the Russian Federation.

II.I Two Groups of Satellite Networks

According to the Procedure, satellite networks are divided into two groups treated in somewhat different ways:

- 1) foreign satellite networks, that is networks filed with the ITU by the administrations of foreign states and equated networks filed in the interests of an intergovernmental satellite telecommunication organization; and
- 2) Russian satellite networks filed with the ITU by the administration of Russia and/or in its interests.

II.II Equal Status as a General Rule

As a general rule with several exceptions to be discussed below, foreign satellite networks can be accessed and used in the Russian Federation. However, such satellite networks need to have been coordinated with adjacent Russian satellite networks as set forth in the ITU Radio Regulations.

Whereas it seems that this reference to an ITU regulatory document is quite natural, this is actually an important achievement of the authors of the Networks Use Procedure.

In the past, to allow the use of a foreign satellite network the Russian authorized body might demand that such network be coordinated with all adjacent Russian satellite networks regardless of priority. In other words, if a Russian satellite network filed later with no priority under the ITU Radio

Regulations was viewed in Russia as promising and potentially important for the future development of the national satellite system, this might have been a reason to reject access to a foreign satellite network.

This practice could not but limit foreign satellite operators' entry into the Russian market and, therefore, needed to be given up.

II.III Exemption for Defense Purposes

At the same time, even the new Networks Use Procedure provides for certain limitations with respect to foreign satellite networks. For example, they can be used for government, national defense or security enforcement purposes only in exceptional cases if Russian satellite systems are unavailable and only if agreed upon with the federal executive authorities.

Access to foreign satellites is limited in a similar manner: they can be used to maintain economic, infrastructure, energy or ecological security at times when no Russian spacecraft can be used for this purpose and if agreed with the federal executive authorities.

However, such limitations seem quite reasonable and even necessary for any sovereign state.

III. Significance and Current Status of New Regulation

As a new WTO member Russia undertook to allow foreign persons to provide satellite telecommunications services both in the territory of Russia and elsewhere, but only to customers in Russia. Considering that satellite telecommunications services are a sufficiently profitable and rapidly growing industry while Russia's obligations are favorable to international suppliers, one can expect that in the next several years more international players will be entering the Russian market.

In this context, steps to improve national legislation and eliminate contradictions between domestic laws and international regulations in the field of satellite telecommunications are essential not only in terms of fulfilling obligations arising out of Russia's accession to the WTO but also as a means of supporting growth of the Russian telecommunications sector.

Currently, the draft Regulation of the Government of the Russian Federation containing both Procedures – the *Procedure of the International Legal Protection in the Russian Federation of Radio Frequency or Radio Frequency Channel Assignments* (International Legal Protection Procedure), and the *Procedure of the Use in the Territory of the Russian Federation of Satellite Telecommunications Networks Falling under the Jurisdiction of Foreign States* (Networks Use Procedure), - is about to be finally agreed upon by the national departments concerned. It is expected to be signed and take effect by the end of 2014.