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TELECOMMUNICATIONS AS A SEGMENT OF THE INFORMATION SYSTEM IN THE REPUBLIC OF CROATIA FINANCIAL AND LEGAL ASPECTS

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Abstract

The Republic of Croatia belongs to the circle of transitional countries that has undertaken major efforts at the build-out of the information system. The development of telecommunications has been given a great importance because they represent one of the essential basis for the economical development and the general development of the Croatian society altogether. In the last few years there was monopoly in the Croatian market of telecommunications. However, the competition to T-Mobile has been introduced and due to this fact the quality of telecommunication services has been increased, the prices have been lowered and at the same time the fiscal revenue to the state budget has been growing because the number of users has been significantly bigger, especially in the area of mobile telecommunications and Internet services.

Key words: information system, concession, telecommunications, public income.

The Republic of Croatia belongs to the circle of transitional countries and since its independence it has commenced with the build-out of the quality information system which represents quality basis for the general economical development. The most important shift has been achieved in the area of telecommunications, where the Republic of Croatia belongs to the top transitional countries according to the number of users and the quality of service and according to some standards it has stood side by side with developed countries. This paper deals with legal and financial aspects of such development, based on the example of HT d.d., the biggest telecommunicational operator in the Republic of Croatia (there are two more telecommunicational operators in the country). On the one hand, the growth in the quality of service with all the operators can be identified on a daily basis, on the other hand there is a daily increase of the public revenue of the state budget due to the growing number of users and the large spectrum of telecommunicational services.

Telecommunications are one of the segments of the information system. They are one of the four fields of electrical engineering dealing with broadcasting, reception, transmission and communication of information.

A more serious study of telecommunications and their application in everyday life started in the mid 1920's. The term telecommunications was first used on the occasion of the foundation of the International Telecommunication Union, (ITU). Basic purpose of this international association was to regulate and secure telecommunication connections between the member states by means of international agreements. The union was founded in Madrid in 1932, when it united the work of the following then existing consultative committees: International Telephony Consultative Committee (CCIF), established in 1924; International Telegraphy Consultative Committee (CCIT), established in 1925 and; International Radio Consultative Committee (CCIR), established in 1927.

The International Telecommunication Union continued performing the activities of the International Telegraph Union (ITU), which was established in Paris on 17th May 1865, and therefore this date is marked as the International Telecommunication Day. Since 1947, the International Telecommunication Union has been a specialized organization of the United Nations.

Our country became the 169th member of the International Telecommunication Union on 3rd June 1992, when the Government of the Republic of Croatia deposited our country's membership application form with the Secretary General. The delegation of the Republic of Croatia participated in the work of the General Assembly of the ITU for the first time in December 1992.

A more serious application of the telecommunications in everyday life begins after the World War II, and especially in the period of the world's division into two blocks, i.e., during the cold war, when technological development and armament race reached unimagined proportions.

Telecommunications reached their technological "boom" with the emergence of telecommunication satellites. These are the Earth's artificial satellites allowing the exchange of information between very distant points on Earth.

DEVELOPMENT OF TELECOMMUNICATIONS IN CROATIA

After the constitution of the Republic of Croatia as an independent, sovereign and democratic state with its economic system based on new, significantly different foundations; there was the need for better normative regulations of the sphere of telecommunications.

The Parliament of the Republic of Croatia in its 18th session on 21st of June 1994 passed the Law on Telecommunications.¹²⁸ Until then, the sphere of telecommunications was, namely, regulated through three laws, two of which were adopted from the former SFRY; these laws are: The Law on Postal, Telegraphic and Telephone Services,¹²⁹ The Law on the Communications System¹³⁰ and The Law on Telecommunications.¹³¹

The Law on Telecommunications regulates: definitions of fundamental terms in the sphere of telecommunications; duties of the participants in the construction and use of objects and equipment; proprietary rights and duties relating to the functioning of the system; norms for the ways of giving concessions through soliciting for tenders for radio, television and cable television against the payment of a fee; details about the conditions for the use of radio frequency against an adequate fee; the definition of the basic purpose of the program for radio and television; provisions about the control of the implementation of this Law and about fines for torts or criminal offenses committed by legal and physical persons.

Technical objects and public telecommunications equipment in the Republic of Croatia must be designed, produced, built, maintained and utilized according to Croatian condition, norms and recommendations of the International Telecommunication Union (ITU).

Telecommunications are of strategic interest in all states and thus in the Republic of Croatia the obligation was determined for all owners to give priority to the transmission of messages relating to the security or defense of the state or to a large scale danger for human lives and property. The possibility was left for the Government of the Republic of Croatia to decide, for protection of the interests and security of the state, that telecommunication capacities and professional staff must be put at its disposal for a certain period of time.

Public concession income were unknown in the Republic of Croatia before it became an independent state, because the legal theory in the former SFRY did not deal with this legal institute. The main reason for that was the fact that all economic and non-economic activities were performed exclusively by state subjects in state ownership, which was defined by the Constitution of the SFRY as social property.¹³² However, a

¹²⁸ Official Gazette of the Republic of Croatia, No. 53/94.

¹²⁹ Official Gazette of the Republic of Croatia, No. 53/91.

¹³⁰ Official Gazette of the Republic of Croatia, No. 53/91.

¹³¹ Official Gazette of the Republic of Croatia, No. 18/78, 1/83, 24/83, 21/87 and 47/89.

¹³² In former socialist countries there was a form of socialist ownership that represented a type of collective ownership. This type of ownership, of course, emerged for the first time in the USSR, and it was later present in all other former socialist countries. However, former SFRY (Socialist Federal Republic of Yugoslavia), as well as its republics and autonomous provinces, developed a different form of socialist ownership, which in the period of their existence was a constitutional category, and it was defined as social ownership. Therefore, social ownership was an original form of socialist ownership different from the state socialist property. The socialist character of ownership /property was formulated in the Constitution of the SFRY from February 1974, as well as in the Republic and Province Constitutions. Article 12, paragraph 1 of the Constitution of SRH (Socialist Republic of Croatia), as well as other republic constitutions, adopted the definition of social ownership from the federal Constitution, and it goes as follows: "means of production and other means in associated labor, products of associated labor and income realized through associated labor, means for the satisfaction of collective and common social needs, natural wealth and goods in general public use are socially owned property." The Constitution of the republic of Croatia no longer recognizes social ownership; it guarantees the right of ownership, and regulates the Republic of Croatia as a social state. Provisions of Article 48 paragraph 1 of the Constitution of the Republic of Croatia prescribe: "The right of ownership is guaranteed". This constitutional

great step forward in the law of the former SFRY relating to the institute of concession was made in 1988 by the Law on Foreign Investments, which opened the possibility to give concessions to foreign investors for exploitation of certain renewable natural resources or resources in general use.

Concession is a contract by which the state or municipal authority, under certain conditions, gives its companies or land for exploitation with the right to excavate useful minerals, build companies, etc.¹³³

A concession contract is most frequently a bilateral legal business by which the party giving the concession (grantor) takes upon himself the obligation to give certain economic rights to the party receiving the concession (concessionaire) for exploitation. Here, we speak of the limitation of the right of ownership over a limited or unlimited period of time, but with the right of termination.

In the Republic of Croatia, the grantor can be the state or its units of regional government and self-government. From this aspect, concessions in the Republic of Croatia are classified as big, medium-size and small concessions.

The objects of concessionaire's exploitation are mostly renewable or unrenewable natural resources, transport infrastructure (highways, navigable waterways, railroad, etc), telecommunications, performing of various services, etc. When profit is the exclusive motive for granting a concession, we speak of economic concessions to which the provisions of the Commercial Law are applied. If the concessionaire is a foreigner, then the provisions of the International Commercial Law are applied. If profit is not the sole motive for granting a concession, but political grounds prevail, then we speak of the so-called political concessions (e.g., ceding military bases, airports, sea and river ports, passages, etc.); to such relations the norms of Public International Law are applied. However, in such cases the state realizes a specific sort of incomes that serve for the satisfaction of public consumption, most frequently for armament and for satisfaction of other strategic needs of the state's vital interest.

In their nature, concession incomes are of non-fiscal character,¹³⁴ and similar to domain incomes. In recent times, they, namely, represent a specific surrogate of the domain incomes. Historically, they appear in the periods of monopolistic and state capitalism, most frequently concessionaires were the colonial states, or their entrepreneurs in their former colonies, which gradually led to neocolonialism through this form of exploitation of natural resources.

Prior to the passing of the Law on Concessions¹³⁵, Croatian legislation was not familiar with the institute of concession. The Constitution of the Republic of Croatia and the Law on Concessions do not define the legal institute of concession.

The questions of what can be the object of concession in the Republic of Croatia and under which conditions have been regulated through: the Constitution of the Republic of Croatia; the Law on Concessions; special laws and various by-laws.

provision, namely, marks the return to the sources of civic constitutionality; it abolishes all previous limitations of the rights of ownership that were introduced in the former Socialist Republic of Croatia.

¹³³ Klaić, B.: *Rječnik stranih riječi*, Nakladni zavod matice Hrvatske, Zagreb, 1980, p. 720.

¹³⁴ In financial literature, public income is classified according to various criteria. However, one of the best classifications is the one according to the need to use fiscal sovereignty, i.e., division into fiscal and non-fiscal income. Fiscal incomes (lat. *fiscus* – basket, small vessel for collecting money – in ancient Rome *fiscus* marked the place where assets – usually money – were collected for waging many wars; later, *fiscus* became the synonym for state treasury into all state income – the income of the Roman Empire – was flowing.) are those incomes that the public authority, i.e., the state, introduces by virtue of its authority – using its fiscal sovereignty (under fiscal sovereignty, we understand constitutional and legal authority and right to establish fiscal incomes, to introduce them or decide about their amount. The forms of fiscal income are: taxes, customs duties, contributions, charges or fees and parafiscal revenues. According to the basis of their alimentation, non-fiscal income differ from fiscal income; fundamental distinction rests in the fact that they are not the result of the implementation of legitimate means of public coercion. Their budget alimentation is the exclusive product of the disposition of the state and its citizens. In their budget alimentation, there are two financial interests. The first, public interest, was generated by the state, i.e., by its units of local self-government, and its goal is the satisfaction of public consumption. The second, private interest, is found in physical or legal persons, who want to make some profit by purchasing some property, exploitation of a concession, and the like. It must be emphasized that this sort of public income appears in various forms and comes from various sources. From structural point of view, these incomes are not stable as it is the case with fiscal incomes. It is very difficult to make a precise classification of non-fiscal incomes because unlike fiscal income their alimentation is not based on the fiscal sovereignty of the state. Financial theoreticians use various classifications, and the most widespread one is the classification into: incomes from public property; incomes from gifts, heritage and legacies; public (state) debts; incomes from new emission of money; incomes based on various forms of credits; public (government) loans; post-war incomes.

¹³⁵ Official Gazette of the Republic of Croatia, No. 89/92.

Therefore, the Law on Concession is in its character *lex generalis*, because it generally regulates the issue of concessions in the Republic of Croatia. On the other hand, each individual concession has been regulated separately, by a special law, so that every law is, in its character, *lex specialis*. The following are some of the special laws in Croatia, dealing with concessions: Law on Telecommunications,¹³⁶ Roads Act,¹³⁷ Agricultural Land Act,¹³⁸ Hunting Act,¹³⁹ Navigational Code,¹⁴⁰ Law on Free Trade Areas,¹⁴¹ Public roads Act¹⁴² etc.

As it has been stated above, the Constitution of the Republic of Croatia does not explicitly mention concessions in its text. It does, however, talk about the goods of vital state interest, i.e., about their exploitation (Article 52): “The sea, seashore and islands, waters, air space, mineral wealth and other natural resources, as well as land, forests, fauna and flora, other parts of nature, real estate and goods of special cultural, historic, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection.

The way in which goods of interest to the Republic of Croatia may be used and exploited by bearers of rights to them and by their owners, and compensation for the restrictions imposed on them, shall be regulated by law.”

The Law on Concessions prescribes that through concessions rights are acquired to economically exploit natural resources and other goods, as well as to perform activities of interest for the Republic of Croatia. At the same time, the law forbids concessions on exploitation of forest and other goods specified by a separate law.

A concessionaire may be any native or foreign legal or physical person performing an economic activity.

The time period, for which a concession is given, is limited with the upper limit of 99 years, whereas the lower limit has not been specified.

The Government submits the concession proposal to the Parliament (Sabor) of the Republic of Croatia, but only after the opinion of the municipality, city or county has been obtained, on whose territory the right of economic exploitation of goods or performing of services has been acquired.

Final decisions about concessions can be made only after the following procedure: public collection of bids, soliciting for tenders and upon request (only in cases when this is provided by a special law).

Before bringing the decision about concession, the Government must appraise: business reputation of the bidder, ability to realize the concession, technical and financial favorability of the bid and influence upon the preservation and protection of the natural environment.

The Parliament of the Republic of Croatia decides about giving the concession. It can, however, authorize the Government alone to decide about giving a specific concession.

Control over the fulfillment of the contract on concession is not regulated by the Law on Concessions, but by special laws containing provisions about concessions.

Compensations for concessions go to the budget of the Republic of Croatia, i.e., to the budgets of the units of local government and self-government. The Law on Concessions does not regulate the amounts of compensations for particular concessions; this is most frequently regulated by the contract on the use of concession.

The Ministry of Finance keeps a unique register in which all contracts on the use of concessions are recorded, whereas contracts relating to immovable property are entered into land registers of the authorized municipal court.

¹³⁶ Official Gazette of the Republic of Croatia, No. 56/1990, 135/1997, 8/1998, 113/2000, 124/2001.

¹³⁷ Official Gazette of the Republic of Croatia, No. 56/91, 61/93, 26/93, 109/93, 47/94, 52/94 and 48/96.

¹³⁸ Official Gazette of the Republic of Croatia, No. 54/94.

¹³⁹ Official Gazette of the Republic of Croatia, No. 10/94.

¹⁴⁰ Official Gazette of the Republic of Croatia, No. 17/94, 74/94, and 43/96.

¹⁴¹ Official Gazette of the Republic of Croatia, No. 44/96.

¹⁴² Official Gazette of the Republic of Croatia, No. 100/96.

HRVATSKE TELEKOMUNIKACIJE d.d. COMPANY

HT- Hrvatske telekomunikacije d.d. is a joint stock company whose shareholders are Deutsche Telekom AG (51%) and the Republic of Croatia (49%).

Under the Separation Law of 10 July 1998, the Telecommunications and Post businesses of HPT s.p.o. and the related assets and liabilities were transferred at net book value into two new joint stock companies, HT d.d. and HP d.d. on 1 January 1999. HPT s.p.o. ceased operations from the date. The share capital of HT d.d. was registered on 28 December 1998 on the basis of the unaudited balance sheet of HPT s.p.o. as at 31 December 1997. The registered office address of the Company is Savska cesta 32, Zagreb, Croatia.

During 2002 the Management Board of HT. d.d. made a decision to transfer the mobile telecommunication business to a newly established wholly owned subsidiary, HT mobilne komunikacije d.o.o. («HTmobile»). HTmobile was registered at the Commercial Court on 6 November 2002 and commenced its commercial activities on 1 January 2003. The headquarters of Htmobile is Ulica grada Vukovara 23, Zagreb, Croatia. On 1 October 2004, Htmobile has changed its registered name to T-mobile Croatia d.o.o.

The Group is part to the following concession agreements:

a) Concession Agreement for the performance of telecommunication services in a fixed network

With this Agreement, the Government grants HT d.d. as the Concessionaire, the right to provide the following services throughout the territory of the Republic of Croatia:

I. Public Voice Services over a Fixed Public Telecommunications Network,

II. International Telecommunications Services,

III. Data Transmission Services,

IV. Domestic and international Leased Line Services,

V. Telecommunications services open to competition in a fixed network in accordance with Article 25 of the Law on Telecommunications.

The Concession Agreement was signed on 22 September 1999, with two amendments dated 30 July 2001 and 17 October 2001.

The concession is granted for the period of 30 years, and it can be extended under the same conditions. The Concession Agreement conditions may be revised upon the agreement of both parties.

Concession fees for Public Voice Services amounts 0.2% (2003:0.5%), leased line services 0.1% (2003:0.2%), value added services 1 % and other telecommunication services 1% realised from gross annual revenue are effective in 2004.

After the expiry of HT d.d.'s exclusive rights in the fixed network on 1 January 2003, the Law on Telecommunications stipulates adjusting of the Concession Agreement with provisions of the Law. HT d.d. has submitted an invitation for negotiations to the Government of the Republic of Croatia.

HT d.d. has the right to provide the services under I to V above, but has had, and probably will have again, the obligation to provide Universal services, as determined in Article 37 of the Law on Telecommunications.

The Concession Agreement can be terminated or suspended by the Government of the Republic of Croatia with twelve months notice if HT d.d. after issuance of a third warning from the Government if it fails to comply with certain fundamental conditions of the Agreement or fundamental terms of the Law on Telecommunications or of relevant Subordinate Legislation.

The Concession Agreement defines certain network buildout targets which HT d.d. has met as of 31 December 2002, but the Government (through Ministry) i.e. authorized regulatory body may set new, reasonably achievable, service quality standards.

Prices for telecommunication services that are rendered by HT d.d. and for which authorized regulatory body determined that HT d.d. has significant market power on public voice service market in fixed network and leased telecommunication lines market have to be cost driven and pre-approved by authorized regulatory body in accordance with Article 63 Paragraph 3 of the Law on Telecommunications.

b) Concession Agreements for Telecommunication Services with the usage of radio frequency spectrum: GSM and NMT

Pursuant to these Agreements, T-Mobile Hrvatska d.o.o. (ex Htmobile) has the right to develop and operate telecommunications services with usage of radio frequency in the global mobile network system (GSM Concession), and the right to develop and operate a network for the provision of analogue mobile telecommunications services (NMT Concession):

These Concession Agreements were first concluded between HT d.d. and Government of the Republic of Croatia. Both contracting parties have subsequently changed. On HT d.d.'s part, due to the spin-off mobile business unit into a separate legal entity, the Concession Agreements have been transferred to the new company, Htmobile, and signed on 28 January 2003. The other contracting party is now the Croatian Institute for Telecommunications, to which the Government has transferred some of its authority. The newly concluded GSM and NMT Concession Agreements repeal the old ones, concluded between the Government of the Republic of Croatia and HT d.d. In addition, the company HT mobilne komunikacije d.o.o. changed its name into T-Mobile Hrvatska d.o.o. as of 1 October 2004 («T-Mobile»).

On 13 December 2004, Croatian Agency for Telecommunication and T-Mobile have signed Agreement on Termination of the NMT Concession Agreement which defines that T-Mobile will shut down its NMT network at 31 March 2005. All annual fees were paid in accordance with valid regulations (annual concession fee of HRK 4 million, annual radio frequency fee of HRK 12 thousand and annual fee of HRK 150 per each mobile radio station).

The GSM Concession Agreement lasts for 10 years starting from 16 September 1999. In addition to the initial concession fee paid in amount of HRK 100 million, T-Mobile currently pays an annual concession fee HRK 5 million for the GSM Concession.

T-Mobile also has to pay annual fee of HRK 150 per one mobile radio station (i.e. subscriber) in GSM network. However, T-Mobile has the right to recharge this fee to its subscribers.

The Concessionaire has to develop GSM network in such a way that in every moment the network meets certain prescribed quality parameters.

The Council of Croatian Agency for Telecommunications (the Telecommunication Council) has the right to revoke the Concession if the Concessionaire fails to comply with certain fundamental terms of the Law on Telecommunications or of relevant Subordinate Legislation.

According to Concession Agreement, the Telecommunication Council shall not grant any new concession for the provision of telecommunications services in GSM network in frequency band of 900 MHz before 31 October 2005.

c) Concession Agreements for Telecommunication Services with the usage of radio frequency spectrum in third generation mobile network system – UMTS

The Telecommunication Council has on 14 July 2004 published the Tender for frequencies for the provision of public telecommunication services with the usage of radio frequency spectrum in mobile GSM/DCS 1 800 and UMTS network. After cancelling the Tender for giving the concession, the new Tender was published by the Telecommunication Council on 22 October 2004.

In accordance with Article 31 of Regulation on Concessions and licences for the provision of telecommunication services, T-Mobile was only obliged to submit the official request in order to obtain concession for performance of public telecommunication services with the usage of radio frequency spectrum in third generation mobile network system (UMTS), The Telecommunication Council has on 18 October 2004 made the decision on granting the UMTS concession for whole territory of Republic of Croatia (national level) to T-Mobile for the period of 20 (twenty) years.

In accordance with above mentioned Decision, as of 8 November 2004, the Croatian Agency for Telecommunications has performed technical review for fulfilling the conditions for signing the UMTS Concession Agreement.

Based on this Decision, T-Mobile and the Telecommunication Council have signed an UMTS Concession Agreement on 16 December 2004.

T-Mobile is obliged to start with provision of telecommunication services and activities resulting from UMTS Concession Agreement in the period of six months from the date of signing this Concession Agreement, at the latest. Based on this Concession Agreement, T-Mobile is obliged to pay annual fee for second and every next year of providing telecommunication services amounts to 1% of the total revenue realized in UMTS mobile network, at the latest within 45 days from 18 October every year, concerning that the initial concession fee in the amount of HRK 132 million has been already paid.

In addition, T-Mobile is obliged to pay an annual fee for granting and usage of radio frequency amounts to HRK 5 million per each granted frequency block of 5 MHz in UMTS network, at the latest within 45 days from 18 October every year, concerning that an annual fee for the first year in the amount of HRK 20 million has been already paid.

Table No. 1

HT – Revenue by business segment in HRK million				
Year	Total Revenue	%	Fixed telephone network	%
2001.	7.056.864,00 ¹⁴³	100	4.717.000,00	66,8
2002.	7.704.000,00 ¹⁴⁴	100	5.052.000,00	65,6
2003.	7.840.000,00 ¹⁴⁵	100	4.933.000,00	62,9
2004.	8.118.000,00 ¹⁴⁶	100	4.148.000,00	51,0

Table No. 2

HT – Revenue by business segment in HRK million				
Year	Total Revenue	%	Mobile network	%
2001.	7.056.864,00 ¹⁴⁷	100	1.673.000,00	23,7
2002.	7.704.000,00 ¹⁴⁸	100	2.078.000,00	26,9
2003.	7.840.000,00 ¹⁴⁹	100	2.384.000,00	30,4
2004.	8.118.000,00 ¹⁵⁰	100	2.909.000,00	35,8

Table No. 3

HT – Revenue by business segment in HRK million				
Year	Total Revenue	%	Internet services	%
2001.	7.056.864,00 ¹⁵¹	100	353.000,00	5,0
2002.	7.704.000,00 ¹⁵²	100	139.000,00	1,8
2003.	7.840.000,00 ¹⁵³	100	280.000,00	3,6
2004.	8.118.000,00 ¹⁵⁴	100	300.000,00	3,7

CONCLUSION

The telecommunicational operators in the Republic of Croatia have great chances both for further growth and the achievement of great financial results. However, some difficulties may be encountered in the business, due to the unsolved problem of ownership regarding the underground cable installation and the cable installation carried over the ground. The right of ownership has been proclaimed by the units of local self-administration and they have registered this right with the competent municipal court. This unsolved question can be affecting, on the one hand, the further development of telecommunications and on the other hand the financial results of the telecommunicational operators, especially T-Mobile.

¹⁴³ Annual report of Hrvatski Telekom for the year 2002., p. 18.

¹⁴⁴ Ibidem, p. 51.

¹⁴⁵ Annual report of Hrvatski Telekom for the year 2003., p. 63.

¹⁴⁶ Annual report of Hrvatski Telekom for the year 2004., p. 82.

¹⁴⁷ Supra note No. 16, p. 18.

¹⁴⁸ Supra note No. 16, p. 51.

¹⁴⁹ Supra note No. 17, p. 63.

¹⁵⁰ Supra note No. 18, p. 82.

¹⁵¹ Supra note No. 16, p. 18.

¹⁵² Supra note No. 16, p. 51.

¹⁵³ Supra note No. 17, p. 63.

¹⁵⁴ Supra note No. 18, p. 82.

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