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Television across Europe:

regulation, policy
and independence

Volume 1

OVERVIEW

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BOSNIA AND
HERZEGOVINA
BULGARIA
CROATIA
CZECH REPUBLIC
ESTONIA

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Preface

The **EU Monitoring and Advocacy Program (EUMAP)** of the Open Society Institute monitors human rights and rule of law issues throughout Europe, jointly with local NGOs and civil society organisations. EUMAP reports emphasise the importance of civil society monitoring and encourage a direct dialogue between governmental and nongovernmental actors on issues related to human rights and the rule of law. In addition to its reports on “Television across Europe: regulation, policy and independence”, EUMAP has released monitoring reports focusing on Minority Protection, Judicial Independence and Capacity, Corruption and Anti-corruption Policy, Rights of People with Intellectual Disabilities, and Equal Opportunities for Women and Men. EUMAP is currently preparing reports on Equal Access to Quality Education for Roma; publication is expected in 2006.

EUMAP reports are elaborated by independent experts from the countries being monitored. They are intended to highlight the significance of human rights issues and the key role of civil society in promoting governmental compliance with human rights and rule of law standards throughout an expanding Europe. All EUMAP reports include detailed recommendations targeted at the national and international levels. Directed at Governments, international organisations and other stakeholders, the recommendations aim to ensure that the report findings impact directly on policy in the areas being monitored.

The present reports have been prepared in collaboration with the **Network Media Program (NMP)** of the Open Society Institute. The Media Program promotes independent, professional and viable media, and quality journalism. More concretely, it supports initiatives aimed at helping media-related legislation conform to internationally – recognised democratic standards, increasing professionalism of journalists and media managers, strengthening associations of media professionals, and establishing mechanisms of media self-regulation. The Media Program also supports media outlets that stand for the values of open society, as well as efforts aimed at monitoring and countering infringements on press freedom, and promoting changes in media policy that ensure pluralism in media ownership and diversity of opinion in media. The program works globally, primarily in countries undergoing a process of democratisation and building functioning media markets.

The decision to monitor television across Europe was inspired by the observation that television – a basic component and gauge of democracy – is undergoing rapid changes throughout Europe. Public service broadcasters face unprecedented challenges across the continent. The ever-increasing commercial competition and the emergence of new technologies are major challenges, while the transformation of former State-controlled broadcasters has proved controversial in many transition countries. Private television broadcasting, on the other hand, is also put into question with respect to its programming and to broadcasters’ ownership patterns.

The monitoring of “Television across Europe: regulation, policy and independence”, was based on a detailed methodology – available at www.eumap.org – intended to ensure a comparative approach across the countries monitored. The reports cover the eight Central and Eastern European (CEE) countries that joined the EU in May 2004 (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia); Bulgaria and Romania, expected to join in 2007; two candidate countries (Croatia and Turkey); four older EU member States (France, Germany, Italy, and the United Kingdom) and the potential EU candidate countries in South-Eastern Europe (Albania, Bosnia and Herzegovina and the Republic of Macedonia, plus a special report on Serbia). The preparation of reports on both member and non-member States highlights that international standards must be applied and monitored equally in all countries. It also provides an opportunity to comment on general trends in the development and the policy application, of these standards.

These volumes include individual reports on each of the countries monitored, plus an overview report resuming the main findings across all the countries. First drafts of the country reports were reviewed at national roundtable meetings. These were organised in order to invite comments on the draft from Government officials, civil society organisations and international organisations. The final reports reproduced in this volume underwent significant revision based on the comments and critique received during this process. EUMAP assumes full responsibility for their final content.

Foreword

This report, prepared by the EU Monitoring and Advocacy Program of the Open Society Institute (OSI), in cooperation with OSI's Network Media Program, is an extremely timely and important contribution to the ongoing and increasingly urgent debate on the future of television in Europe.

The report includes a regional overview and 20 individual reports focusing on the state of television – both public service and commercial broadcasting. The countries monitored include the whole of Central and Eastern Europe, South-eastern Europe, selected Western European countries and Turkey.

It is of particular interest to me, in my role as OSCE Special Representative for Freedom of the Media, for a number of reasons.

First, because all of the 20 countries surveyed here are OSCE participating States, representing nearly half of our full OSCE membership.

Second, because the range of countries represented here is very broad, both politically and economically, with the result that the report has particular salience for the breadth of the OSCE itself.

Third, and in particular, because many of the countries here are emerging from a totalitarian past and are headed, hopefully, into a democratic future.

Good television coverage – objective and impartial news coverage, diversity of good quality content, coverage of issues for all segments, including minorities, in each country – is absolutely essential, in my view, for democracy. Sadly, excellence in television is under increasing pressure, from the combined effects of increasing commercialization, hand in hand with technological advances.

The report provides a rich picture of current and potentially troubling developments in three main areas: broadcasting regulators, public service broadcasting, and commercial broadcasting. Let me briefly comment on each.

Broadcasting regulators are the bodies that make the entire broadcasting system work. They grant and oversee broadcast licenses and counter the development of monopolies. It is vital, given these pivotal roles, that regulators be fully independent of Government, both in their operations and in their funding. Yet, we learn from the country reports that such independence is in jeopardy. Appointment processes are often flawed, resulting in Government officials' "favourites" being appointed to high roles in regulatory bodies. Regulators are insufficiently funded, and thus unable to carry out monitoring and other tasks essential for the oversight of broadcasters. In some cases, they are also not given sufficient sanctioning power to have a real impact on the national broadcasting set up.

Perhaps one of the most significant findings of the reports, however, is that there is no single “model” that fits the needs of all regulators, in so far as their independence goes. An appointment procedure that produces a highly independent regulator in one country, will not necessarily do so in a different country. A procedure that empowers civil society to make appointments can be effective in countries with active and independent civil society players, and not effective in those with weak civil society. Context, we learn, is ignored at considerable peril here.

Public service broadcasting, the country reports plainly show, is facing an identity crisis. The advent of commercial broadcasting – often by deluge – has put enormous pressures on public service broadcasters to enter into “ratings wars” with commercial broadcasters. The inevitable result has been the “dumbing down” of public service content in many countries. At the same time, with the predictable advent of niche and other new broadcasting players, of digital “boutiques” and other pay services, arguments are being made that public service content will automatically appear, and there is no need for States to be in the business of providing it. These arguments, typically made by commercial players, are taking root: the licence fee, which is the traditional means of support for public service broadcasters, is being viewed with increasing suspicion by viewers, and even by the European Commission. Such arguments, I believe, need to be rebutted both in principle and in practice, through careful analysis and advocacy: otherwise, we will continue witnessing the erosion of public service principles and services, with, as I have already suggested, a concomitant threat to the democratic process itself.

Finally, and intimately related to the previous point, is the fact that diversity of content and impartiality of news content is becoming increasingly at risk in the commercial broadcasting sector, where cross-ownership is on the rise, ownership structures are becoming increasingly opaque, and the number of broadcast media players is radically shrinking. The lack, or retreat, of pluralism in television is spreading across the regions covered in this report, and is threatening even further the information and cultural needs of citizens in these regions.

This report is vital, in my view, as a snapshot of how television is currently serving – and often, disserving, if truth be told – the development of democracy in a significant part of the OSCE region, and as a source of a blueprint for how the broadcast media can be reshaped to assist in that development.

The pressures are great, and so are the challenges. The report’s recommendations point a way forward, with an aim to securing a central role for broadcasters in the process of democratisation, and in the service of the right to information held by all. I heartily endorse the recommendations, and pledge my support in working towards their implementation.

Miklós Haraszti

OSCE Representative on Freedom of the Media

Television across Europe:
regulation, policy and independence

Overview

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List of Abbreviations

API	Application programming interfaces
CAS	Conditional access systems
CEE	Central and Eastern Europe
ECTT	Council of Europe Convention on Transfrontier Television
EPG	Electronic programme guide
EU	European Union

EU15	European Union member States prior to the 2004 enlargement
DVB-T	Digital Video Broadcasting – Terrestrial
ECJ	European Court of Justice
GATS	General Agreement on Trade in Services
OSCE	Organization for Security and Co-operation in Europe
SEE	South Eastern Europe
TWFD	EU “Television without Frontiers” Directive
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
WTO	World Trade Organization

I. Main Findings

1. EXECUTIVE SUMMARY AND CONCLUSIONS

Close to 4,000 television channels are now available in the 25 European Union (EU) member States and in the other ten countries and territories of the continent aspiring to join the Union.¹ Television is the primary source of information for most people, and is widely considered to be the most influential medium in forming public opinion. Television viewing time has increased steadily over recent years. Television has maintained its dominant position in spite of the rise of new communication technologies such as the Internet.

In Western Europe, the liberalisation of most television markets during the 1980s ended the commanding advantage that public service broadcasters or State television had enjoyed, by opening the frequencies to private players. During the 1990s, State television in Europe's new democracies began a gradual and still incomplete process of transformation into public service television. At the same time, there was an immense proliferation of commercial broadcasting channels, often unlicensed and illegal, in those countries.

Adapting to the Western European model of organising the broadcasting sector was, for many countries in transition, not only a precondition for their eventual membership of the EU, but also part of the general "Europeanisation" of their political, social and economic life. Although broadcasting regulation has been brought broadly into line with Western European standards, the implementation of legislation is often deficient and the operational and financial independence of broadcasting regulators is in many cases flawed. Nonetheless, in most European countries broadcasting now functions – to a greater or lesser degree – as a "dual" system of public service and commercial television.

Across Europe, television remains heavily regulated because it uses a limited natural resource, the spectrum of frequencies, which is controlled by the State. Among the other reasons why television is heavily regulated is its perceived immediacy and power. Legislation ensuring various degrees of independence of broadcasting regulators has been adopted in most countries. However, political and commercial pressures on the national regulatory authorities that are in charge of licensing broadcasters, remain a fact of life.

Public service television enjoys special esteem at the European policy-making level, being considered a vital element of democracy and part of European culture. It is seen as serving the mission to offer an alternative to, and even to raise the standards of,

¹ EUMAP research and European Audiovisual Observatory, *Transfrontier Television in the European Union: Market Impact and Selected Legal Aspects*, Strasbourg, 2004, p. 6.

commercial television. Yet, the digitalisation and convergence of communication and information technologies, as well as the competition from commercial broadcasters, have created pressure on public service broadcasting across Europe to re-define its specific remit – to operate independently of political and economic interests – under new circumstances.

In addition, the European Commission has demanded more transparency and accountability in the finances of public service broadcasting, and intergovernmental organisations such as World Trade Organisation (WTO) have criticised the privileged position of public service broadcasting in terms of its funding. In Western and Eastern Europe alike, public service television broadcasters are frequently reprimanded for their ties to Government and to political parties, and for a growing commercialisation, with the resulting “dumbing down” of general quality, as they try to keep up with the competition from private television broadcasters.

The arrival of commercial broadcasting shook the monopoly of emergent public service broadcasting in the transition countries, and resulted in sharp drops in viewership. Moreover, in this part of Europe, public service television broadcasters often lack funding, and face political interference and pressures, as well as low professional and public awareness of the role that public service television should play. Many reporters for this research wrote that in their countries the distinction between public service broadcasters and their commercial competition, in terms of programme content and quality, has become increasingly blurred. Investigative journalism and minority programming are scarce commodities in both public and commercial television. Newscasts have often become markedly tabloid, particularly on commercial television channels.

Across Europe, television markets are highly concentrated both in terms of ownership and viewership. In most countries, the three largest television channels grab the bulk of the viewership. At the same time, the ownership of private broadcasters tends to be highly concentrated, despite political declarations against the monopolisation of media markets and legislation to limit such concentration. In Western Europe, there is higher concentration of ownership than in transition countries. However, in the past decade the transition countries have seen massive mergers and acquisitions, and the establishment of large media groups controlling much of the broadcasting market. When financially backed by politicians or part of larger enterprises operating in other sectors than the media, commercial television can, and often has, become an instrument for pursuing political or business interests. More often than not there is a low level of transparency of media ownership and interests.

The European Commission has found it difficult to propose any kind of harmonisation of media ownership rules between EU member States, and has indicated that the issue should be left to the member States. The implementation of already existing pan-European standards, such as the Council of Europe’s Convention on Transfrontier Television (ECTT) or the EU’s “Television without Frontiers” (TWF)

Directive, is often hesitant or even deficient, particularly in new EU members and in the candidate States.

In spite of the increased presence of transnational investors in the broadcasting sector, industrial relations in this segment of the media market are mostly played out at the national level, with few examples of cooperation among journalists and other media professionals across Europe. There are only initial attempts to establish minimal labour protection standards and other common rules in spite of massive foreign investments particularly in the broadcasting industry of Central and Eastern Europe. Especially in transition countries, journalists have little labour protection. Foreign investors habitually offer inferior work conditions in comparison to what they provide in their own countries of origin.

Digitalisation has advanced quickly in Western Europe in the past two years after a hesitant launch around 2000. Traditionally, media industry products were sold as concrete material goods, such as books and CDs, or were distributed by analogue terrestrial television broadcasting. Converted into digital signals, media content is now divorced from a concrete form and can be distributed by the Internet, mobile telephony, satellite broadcasting and similar advanced platforms. Although across Europe many questions about digital roll-out have still to be answered, especially those related to its financing and its implications for regulation, digitalisation is likely to sharpen competition and boost diversity and pluralism. At the same time, it is expected to pose new challenges to public service broadcasting and the existing regulatory frameworks. However, in transition countries, digitalisation is a slow process due to lack of funding, policy and legal frameworks.

This overview report brings together the main findings of a monitoring carried out in 20 European countries, which included both transition States and established democracies, and EU member States, candidate countries and potential future candidates. Overall, if one consistent message emerges from across these reports – and it is one that bears out the warnings of many industry insiders and commentators – it is that public service broadcasting stands on the brink of far-reaching change. The momentum of technological change, the ripples of which are reaching even the least developed broadcast sectors examined in this report, is unstoppable.

At present, the powerful commercial broadcasters seem poised to become the clear beneficiaries of this change, while the public service broadcasters appear to risk losing much, if not most, of the traditional justification for their privileges. Nonetheless, as this report shows, the argument for public service broadcasting remains compelling. Public service broadcasting is not only a bulwark against commercial trends that, left unchecked, would be likely to drive standards further down, reducing the less lucrative strands towards invisibility. It also provides essential leverage for raising standards in all programme genres.

It follows that the goal for broadcasting policy-makers, regulators, concerned media professionals and citizens should be to reap the benefits of this change – in terms of a

wider choice of programming, accessible on more, and more convenient, platforms – without in the process losing the achievements of traditional public service broadcasting, in terms of the quality, range and genuine plurality of universally available content, that is responsive to segments of a society as well as to society as a whole. However, there is no certain way to reach this goal. No single approach can guarantee the achievement of a balanced and durable “dual system” of broadcasting or of independent regulation, and nor is there any single model of successful public service broadcasting. Broadcasting is so deeply rooted in, and dependent on, a society’s political experience, institutions and assumptions – not to mention its journalistic traditions and resources – that each society must evolve its own models.

Against this background, the condition of public service broadcasting in Europe’s new democracies gives special cause for concern, and its future is far from secure. These transition States have committed themselves to uphold public service broadcasting, even though it is still an unknown quantity in their societies. In fact, the widespread professional and public indifference to the role of public service broadcasting in these States should come as no surprise. It reflects both the sheer novelty of the concept of public service broadcasting, and the widespread failure of the emergent, or nominal, public service broadcasters to broadcast programming that impresses the public as sufficiently distinct from commercial television to be worth supporting. As a rule, politicians have shown little inclination to respect the autonomy of the public service broadcasters. Even in those States which now see themselves as post-transitional, the public service broadcasters are, for the most part, firmly stuck in mid-transition.

The 41 recommendations put forward in the following section focus on four main areas – media legislation and policy, broadcasting regulators, public service broadcasting and commercial broadcasting – and are intended to contribute to the European policy debate. All the recommendations are based on the findings of the monitoring, as detailed in this overview section and further developed in the country reports – each of which, in turn, contains more specific recommendations for the particular national context.

2. RECOMMENDATIONS

The recommendations in this section are based on the findings of the monitoring of 20 European countries – in Western Europe, Central and Eastern Europe, South-eastern Europe and Turkey. However, these recommendations should also be considered by the EU, the CoE and the OSCE, as well as by the relevant national Governments and Parliaments, in respect to other countries not covered by this monitoring, in particular the countries of the EU's European Neighbourhood Policy², as these actors engage and assist in the process of the transformation of the broadcasting sector in this wider region.

2.1 International level recommendations

2.1.1 Policy

Media policy

1. The European Union (EU), the Council of Europe (CoE) and the Organization for Cooperation and Security in Europe (OSCE) should continue to uphold the principle that independent radio and television broadcasting in the dual system of public and private broadcasters is an essential element of democracy and part of European political and cultural identity. This principle should be sustained as the basis for media policy and legislation.
2. The EU, the CoE and the OSCE should ensure that, while European media industries are encouraged to remain competitive, their development does not involve trade-offs that could harm quality and pluralism in European broadcasting.
3. The EU, the CoE and the OSCE should increase their endeavours to overcome the developmental gap in broadcasting that separates Europe's transitional States from the others.
4. The EU should pay closer attention to the democratic functioning of the media, as well as the stability and transparency of the regulatory environment in the audiovisual sector, when assessing candidate countries' readiness for accession, under the so-called "Copenhagen criteria".

² Countries linked to the EU's European Neighbourhood Policy include the following: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Syria, Tunisia and Ukraine; and also the Palestinian Authority.

Legislation

5. The EU should, in view of the prospective further expansion of the EU, and the need to develop communications with all countries in the Western Balkans and those covered by the EU's European Neighbourhood Policy, revise the TWF Directive so as to appropriately redefine the category of "European audiovisual works".

Assistance and monitoring

6. The OSCE, the CoE, the EU and other international governmental and non-governmental institutions should, each according to its own remit, prioritise the following:
 - the monitoring of media legislation and policy, and of their implementation in practice;
 - the provision of consultancy, research and funding in support of media reforms.
7. The EU should lead efforts to enhance coordination between EU member Governments, the OSCE, the CoE and international and national media organisations, in order to avoid redundant projects and to increase the effectiveness and impact of implemented media projects and programmes.
8. The EU should coordinate, and eventually integrate, existing measures in support of media development within the EU, with programmes to support media in the countries covered by the EU's European Neighbourhood Policy and Stabilisation and Association Process, in order to develop synergies and improve efficiency and quality.

Digitalisation

9. The EU, the CoE and OSCE should foster scientific research and public debate on the social, political and cultural effects of digitalisation in the broadcasting sector, as well as on the creation of national policies in this area.

Involvement of civil society

10. The EU, the CoE and the OSCE should, taking into account the importance of civil society for the democratic changes in Europe and the need to continue with reforms, include representatives from civil society – in particular consumers' associations, media organisations and other NGOs, professional organisations, academics, and other civic partners – in all aspects of their efforts to develop and shape media policy. These civil society representatives should be consulted on basic media issues, including, but not limited to:

- independence of broadcast regulators;
- digitalisation and other technological developments relating to broadcasting;
- measures to ensure that the public interest is served by broadcasters;
- monitoring for compliance with international broadcasting obligations.

2.1.2 Broadcasting regulation

Independence

11. The EU, the CoE and the OSCE should support the further transformation of broadcasting regulators into independent bodies that will be ensured sufficient resources and extensive powers to enable them to effectively monitor the performance of broadcasters, and broadcasters' compliance with legislation and licence conditions. At the same time, they should condemn any undue political interference and pressures on broadcasting regulators.
12. The CoE, in particular, and also the OSCE, should tighten their monitoring of member States' compliance with commitments to the independence of broadcasting regulatory bodies.

2.1.3 Public and commercial broadcasting

Training

13. The EU, the CoE and the OSCE should increase their efforts to promote and support the training and professional development of media staff, both through the support of on-site training and through the further development of specialised training institutions.
14. International and national associations of journalists, together with media owners and other media professionals, should initiate and support programmes of training for journalists in all media outlets.

Professional ethics

15. International and national associations of journalists, together with media owners and other media professionals, should support the introduction of codes of ethics, codes of practice, complaints procedures and other instruments of self-regulation, in all media outlets.

Employment rights

16. International and national associations of journalists and other media professionals, trade unions, and media owners should cooperate in the field of industrial relations in the media industry. In particular they should all

advocate in favour of the adoption of national legislation that would require trans-national and national investors to respect such basic labour principles as the right to collective bargaining, the right to non-discriminatory and adequate wages, and the need for minimal standards of social protection.

2.1.4 Public service broadcasting

17. The EU, the CoE and the OSCE should continue to uphold and protect public service broadcasting as a major European cultural achievement, an institution of vital importance to democracy and social coherence, and a stimulus to higher standards of programming in general. Policy and legislation should respect the principle that market forces alone cannot, and should not, determine broadcasting policy.

2.1.5 Commercial television broadcasting

Transparency

18. The European Commission, and the OSCE, should initiate legislation to ensure transparency of ownership in the broadcasting sector.
19. The EU should establish an independent agency with the mandate of monitoring media markets and media concentration in the EU and on global markets.

Media pluralism

20. The European Commission, the OSCE, and the CoE should stimulate and support a continuing public debate on adequate measures to protect media pluralism in Europe, as well as on the right to information and freedom of expression.

2.2 National level recommendations

2.2.1 Policy

Public consultation

21. Governments and Parliaments should provide for broad public consultations about media policy and media legislation. Public authorities, particularly in transition countries, should pay particular attention to involve civil society representatives – including from consumers' groups, media rights organisations and NGOs, professional organisations, academia, and other civic partners – in media policy and legislation. In particular, such civil society representatives should be consulted on:

- measures to ensure that broadcast regulators, and the broadcasters themselves, are fully independent;
- digitalisation and other technological developments relating to broadcasting;
- measures to ensure that the public interest is served by broadcasters;
- monitoring for compliance of broadcasters with their legislative and licence obligations.

Public education and awareness-building

22. Governments, Parliaments and broadcasters should engage in, and support, serious and extended education efforts to inform the public on all aspects of media policy and media developments that are of public interest.

Training

23. Governments, together with media owners, the universities and civil society organisations, should increase their efforts to ensure training and professional development of media staff, both through support of on-site training and further development of specialised training institutions.

Programming

24. Governments and regulators should either *impose* basic public service obligations for commercial broadcasters, as a necessary and desirable instrument of broadcasting regulation, or should *encourage* commercial broadcasters to broadcast public interest content, through appropriate incentives.
25. Governments or regulators, as applicable, should provide financial and other support to producers who create programming for ethnic, linguistic and other minorities, and for broadcasters which broadcast such content. At the same time, regulators should recognise the fundamental importance of such content in the licence granting process, where appropriate for the context.
26. Parliaments should, where necessary, amend legislation to empower broadcasting regulators to monitor closely the programming of television broadcasters, to ensure their compliance with legal and licence obligations.

Digitalisation

27. Governments should adopt national policies on digitalisation, and action plans for the transition to digitalisation.
28. Governments should initiate legislation that provides for the automatic granting of licences for digital broadcasting to public service broadcasters, with the aim of ensuring that public service broadcasting is preserved in the digital environment.

29. Parliaments should initiate legislation to forbid the formation of conglomerates grouping operators involved in the digital chain – such as digital multiplex operators, television stations, programmes packagers and software providers – in order to prevent the development of dominant positions in the digital television market.
30. Parliaments and Governments should, in view of the likely transformative effects that digitalisation will have on broadcasting, encourage public education campaigns and debate on the introduction of digitalisation.

Local television and community media

31. Governments should include in their national media policies strategies for the development of local television stations and community media. Such stations and media should have fair access to the frequency spectrum, and should, where a reasonable showing of need has been made, benefit from support to start-up their operations.

2.2.2 Broadcasting regulators

Independence and transparency

32. Governments should ensure, both in legislation and in practice, the political and operational independence of broadcasting regulators, in line with the CoE's recommendations.³
33. Governments should ensure that broadcasting regulatory bodies are provided with sufficient funding to carry out all aspects of their remits. This should, in particular, include the duties of the regulators with respect to monitoring broadcasters' compliance with legislative and contractual licence conditions, their inquiring into non-compliance, and, where appropriate, the handing down of appropriate sanctions.
34. Governments should move to enact, where these are not already present in legislation, and should ensure the proper implementation of, detailed conflict of interest rules for appointment to, and continued membership of, broadcasting regulatory bodies.

³ The key recommendation in this regard is the Council of Europe's recommendation on the independence and functions of regulatory authorities for the broadcasting sector of 2000, and its guidelines concerning the independence and functions of regulatory authorities for the broadcasting sector. (Council of Europe, Committee of Ministers, Recommendation (2000) 23 of the Committee of Ministers to the member states on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the Committee of Ministers on 20 December 2000, at the 735th meeting of the Ministers' Deputies).

Frequency allocation

35. Broadcasting regulators should ensure transparent, non-discriminatory and proportional procedures for the allocation of radio-electrical frequencies. EU member States should ensure, in particular, that the provisions of EU Directives 2002/21/CE (the Framework Directive)⁴ and 2002/22/CE (the Universal Service Directive)⁵ are fully transposed into national legislation.

Licensing for digital broadcasting

36. Broadcasting regulators should ensure that digital licences are distributed to a diverse range of operators, in order to ensure that the current dominant positions in the analogue broadcasting are not perpetuated.

2.2.3 Public service broadcasting

37. Governments should continue to support public service broadcasting as a vital element of democracy. Policy and legislation should respect the principle that market forces alone cannot, and should not, determine public service broadcasting policy.

Independence and funding

38. Governments should initiate legislation where needed, and implement existing legislation as required, to ensure that for public service broadcasters, the appointments procedures for the Directors General and for members of the Boards are independent, transparent and fair.
39. Governments should initiate legislation to oblige the public service broadcasters to put in place mechanisms to ensure the transparency of their expenditures, and in particular of their utilisation of public funds.
40. The Boards of public service broadcasting should be obligated – and where they are so obligated, these obligations should be enforced – to ensure that the programming of the broadcasters is in compliance with their public service remit. This is particularly important in view of the fact that public service broadcasters have tended to yield to commercial pressures, adjusting their programming with a view merely to merely increasing audience share.

⁴ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, L108/33, Brussels, 24 April 2002. (*Framework Directive*)

⁵ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services, L108/51, Brussels, 24 April 2002. (*Universal Service Directive*)

2.2.4 Commercial television broadcasting

Transparency

41. Governments should adopt and implement legislation ensuring transparency of ownership of all media outlets, including external investors.

2.2.5 Other

General employment protections

42. Governments should, where such legislation is not in place, adopt legislation to ensure social and labour protection for media professionals employed both in commercial broadcasters and in public service broadcasters.

II. The Current State of Television Broadcasting in Europe

1. CONTEXT

Television has experienced a noticeably similar – although not simultaneous – evolution in both Western and Eastern Europe. In the past five decades, television has gone through a process of continual commercialisation.⁶ An enterprise largely controlled in Europe for more than half a century by the State, television evolved only in the last two to three decades into a dual system, composed of a public sector increasingly competing, often becoming the weaker side, with commercial broadcasters in private ownership. In Central and Eastern European nations, the end of the stranglehold of the State over broadcasting came only in the early 1990s, and was triggered by the collapse of communist regimes throughout the region. Once it began, the whole process was much faster than in Western Europe. The much-heralded “Europeanisation” of the organisation of the social, political and economic systems meant for the broadcasting sector the attempt to conform to Western models of regulations and all other ways and means to operate television. What came as a surprise to many was the massive influx of Western capital into the television industry, often relegating domestic players to the margins of the markets.

1.1 Western models

In the first phase of television in Western Europe, a philosophy based on a combination of cultural paternalism, public service values and administrative logic prevailed over broadcasting, which was envisaged as a national enterprise in charge of promoting culture and education and the dissemination of controlled political information.

In the UK, television has always had a central position in policy-making, due to a general consensus on the role of television in society and a general acceptance of broadcasting independence as a key principle in moulding the television system. The Reithian motto “to inform, to educate and to entertain” became the cornerstone of broadcasting “philosophy” in the UK and remains a touchstone for public service

⁶ Note: the countries covered by the EUMAP report have been divided in this Overview into three main regions. South-eastern Europe (SEE) encompasses: Albania, Bosnia and Herzegovina, Croatia, the Republic of Macedonia, and Serbia and Montenegro (n.b. the EUMAP report only covers Serbia). Central and Eastern Europe (CEE) includes: Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. Western Europe refers to the four countries covered by the report: France, Germany, Italy and the UK. Turkey is treated separately.

values up to the present day.⁷ The only two broadcasters on the UK market until 1982 were the BBC and the ITV network, which commenced broadcasting in 1936 and 1955 respectively. Both are subject to public service obligations. The system was radically reformed in 1990, when new legislation intensified competition.

The BBC was the model for the recreation of Western German broadcasting after 1945 under the observance of the Allied occupying forces. The German public service broadcaster deviates from the BBC model in that the governing bodies of German broadcasters comprise not a small group of “the great and the good” chosen by Government (as in the British tradition), but of representatives of important interest groups from within society (*gesellschaftlich relevante Gruppen*). For the post-authoritarian countries in Central and Eastern Europe, this model of including civil society – including political groupings – in broadcasting governance was highly relevant. The monopoly of public service broadcasting ended in 1982 when, after much lobbying from the industry, the conservative Government liberalised the broadcasting market and permitted private broadcasters to operate, allowing the establishment of the dual broadcasting system.

The concept based on cohabitation of political control and cultural ambition survived in France until 1968, when television started to cater to viewing tastes and opened up to advertising. The State monopoly on French broadcasting ended in 1982, when private players were allowed on the market. However, the State continues to play an important role in the regulation of broadcasting.

Italy presents a special case of controversial involvement of politicians in the regulation of broadcasting and especially in the State-owned broadcaster RAI. Commercial television emerged in the 1970s in a totally unregulated marketplace. In the mid-1990s, commercial television helped propel to political power the northern Italian entrepreneur Silvio Berlusconi, who, as Italy’s Prime Minister, has enjoyed a degree of power over both commercial and public service television in recent years that has no precedent in any developed European democracy.

1.2 Eastern patterns

1.2.1 The post-socialist bloc

Central and Eastern Europe

During communism, in all Central and Eastern European countries television was used as the mouthpiece of the single ruling party, and usually served to glorify the countries’ authoritarian leaders. With the collapse of communism in 1989-1990, broadcasting in the region entered a new era. Its restructuring followed the development of television

⁷ John Charles Walsham Reith, 1st Baron Reith (1889–1971), established the British tradition of independent public service broadcasting. To this day, the BBC’s Charter invokes the definition of its first director (1927–1938) that the BBC’s mission is “to inform, educate and entertain”.

in Western Europe. In the early 1990s, post-communist governments started to change their national broadcasting systems by opening the market up to private players, while at the same time taking steps to transform the state broadcaster into something more independent. Freedom of the media soon came to mean first of all the freedom to run the media as a private business. Private broadcasters pursuing above all commercial gains rapidly outperformed the State broadcasters, which were mostly reluctant or unable to keep up. Altogether, the degree of success of reforms in the broadcasting sector obviously mirrored the overall pace of transformation in each of the countries.

In the early 1990s, many post-communist countries were ravaged by “media wars” between political elites and journalistic communities over who controls the media. In Hungary, for example, ever since the political change of 1989-1990, the country’s media landscape has been the front of such a conflict between political elites and journalists over what the proper function of the media in a pluralistic and open society should be.

In many post-communist countries, the changes in the television sector were carried out chaotically, without any clear policy or legal frameworks in place, which led to an explosion of unlicensed broadcasting outlets. In Poland, for example, by early 1993 there were 57 illegal television broadcasters. Between 1993 and 1997, the major national (i.e. nationwide) television broadcasters were licensed. Despite a late start in liberalising its broadcasting market, Albania enjoyed speedy growth in the sector. However, this process took place in a chaotic and lawless context, with no regulation in place. The Radio Television of Albania was monopolistic until 1995, when the private station TV Shijak started operating.

Slovakia was quick in formally converting its State broadcasters into public service operators. By 1991, both Slovak Television (STV) and Slovak Radio (SR) formally became public service broadcasters, and in the early 1990s six private television operators were licensed. In the Czech Republic, the first commercial television station that broke the monopoly of the State broadcaster Czech Television (ČT) was TV Nova, a television venture as part of Central European Media Enterprises (CME), set up in a Caribbean island by a former US ambassador to Hungary. Unlike its Central European peers, such as former Czechoslovakia and Poland, Hungary was slow in passing broadcasting legislation, which was first enforced only in 1996. Liberalisation of the market was also belated in Hungary, with the first private television operators being licensed only in 1997.

In Bulgaria, with the entrance on the market in the mid-1990s of two national television stations, bTV and Nova TV, television became a competitive industry, and Bulgarian National Television (BNT) lost its dominance. bTV is owned by Balkan News corporation, a company belonging to the transnational media mogul Robert Murdoch. In Romania, foreign and local private investors opened stations in the country between 1993 and 1998, turning broadcasting into a vibrant industry and obliging the State broadcaster (SRTV) to revamp its operations several times to catch up with the competition.

In the Baltic countries, Lithuania already allowed private broadcasters to operate in 1992. By 1996 the restructuring of the former State broadcaster into a public service station had been completed. In Estonia, during communism, State television obviously also had the ideological mission of propping up Soviet propaganda. However – often inspired by Finnish television broadcasts, which could be watched and understood by much of the population in Estonia – to some extent, it did manage to provide some diverse and high-quality programming. Estonia also championed the liberalisation of the television sector in the 1990s, and managed to formally finish the transformation of State television broadcaster into a public service broadcaster by 1994. The liberalisation process was somewhat slower in Latvia, where the first private broadcaster, LNT, started to operate only in 1996, challenging the dominance of the public LTV.

Former Yugoslavia

Due to its multicultural character, federal constitution and permissive ideological system, former Yugoslavia enjoyed a relatively diverse and liberal media system with a huge number of regional and local outlets. Television stations carried a lot of Western programming in the original language with subtitles. For instance, ever since its launch in the 1950s, in Slovenia, the most northerly of the six former Yugoslav federal republics, television boasted a Western look, with the State television airing both highbrow and popular programming, including programmes produced in Western Europe and the US. Furthermore, due to its geographical position, the public could watch Italian and Austrian channels. This openness of Slovenia to the West, together with the rapid liberalisation of the country's broadcasting market – the first private television station was licensed already in 1990, with two more being launched in 1995 – made the change of the political and economic system in Slovenia at the end of the 1980s less abrupt than in other transition states.

The most southerly of the republics, Macedonia, embarked on reforms in the broadcasting sector soon after gaining independence. Already in 1991 and 1992, the first private television stations started operating in Macedonia. In 1991, Parliament officially transformed the Macedonian State broadcaster into public service television. Substantial reform took much longer to achieve, and is still ongoing, assisted by intergovernmental missions, which have tried to help the country to resolve the ethnic tensions that led to a violent insurgency of local Albanians in 2001.

The other three successor States of former Yugoslavia still have to cope to different degrees with the legacy of ethnic conflicts and wars during the 1990s. The media, and especially television, were among the most important instruments of the war effort, and controlled by the nationalistic and populist rulers, inciting ethnic hatred and denigrating the democratic opposition.

Under the terms of the agreement that ended the 1992–1995 war in Bosnia and Herzegovina, that country has been saddled with a hugely complex governance structure, reflecting – but also perpetuating – the abiding lack of political consensus among the three national leaderships. The intergovernmental organisations that have

overseen the country's post-war reconstruction were slow to face the challenge of reforming the broadcasting sector. It is still unclear whether these organisations – and, behind them, essentially the European Union, which is taking more and more control of the reconstruction and development process – possess the means and the resolve to prevent nationalist elites from blocking the emergence of autonomous public service broadcasting.

Serbia and Montenegro is a State union that still has not resolved its future. While the Government of Montenegro has opted for independence, Serbia's southern province, Kosovo and Metohija, has been a UN protectorate since 1999 following a NATO military intervention to end the bloodshed caused by the conflict between ethnic Albanian insurgents and the Serbian Government. The electronic media in Serbia have changed dramatically over the past 15 years. During the 1990s, most of the media were under Government control, and nothing more than the mouthpiece of Slobodan Milošević's authoritarian and belligerent regime. However, some media outlets persisted in their opposition to the Government, depending greatly on Western political protection and financial aid. Ironically, the regime did not bother itself about the proliferation of commercial radio and television stations, numbering hundreds, as long as they stuck to low-quality entertainment and other escapist programming for the politically disoriented population. Real changes in media policy, ending the dominance of State television, came only after the fall of this regime in October 2000, and they still remain hesitant and incomplete.

In Croatia, under Franjo Tudjman, the first democratically elected President after the end of single-party rule, the Government's authoritarian attitude towards the media was evident even before the start of war in summer 1991. In the later 1990s, this attitude generated resistance from democratic political parties and civil society in the country and friction with the international community, which insisted on ending hate speech and other inciting propaganda against ethnic minorities and the democratic opposition. The dominance of Government-influenced State broadcasters continued until the end of 1999, when Tudjman died and his party then lost both the presidential and the parliamentary elections. The broadcasting system then underwent reforms broadening the independence of television. According to the EU, the changes will have to continue in order to reach the required standards for the EU accession.

1.2.2 Turkey

Turkish television was dominated for more than two decades by the State broadcaster, which was awarded the country's sole licence in 1964 and enjoyed a monopoly until 1990, when the first privately owned television station started to air to Turkey from the Federal Republic of Germany. Other stations followed suit. The official lifting of the State monopoly in broadcasting took place in 1993.

1.3 Western models and money

The development of post-communist broadcasting in Central and Eastern Europe has been characterised by the introduction of Western European models of public service broadcasting and the influx of foreign investors. In building their public service television systems, the countries in this region have mainly drawn inspiration and concrete example from British, French and German models.

The generic “European” model used for restructuring the media sectors in post-communist countries has two main components: a private media sector capable of sustaining outlets that comply with the local laws, codes of ethics and other rules set up by the national regulators, and a public service broadcasting sector, operationally independent from the State although ultimately accountable to the elected representatives of the people. These two sectors should coexist in a stable but competitive equilibrium, within a matrix of appropriate legislation that is duly implemented and enforced.

Another significant influence on television in the transition countries has been the inward rush of foreign investment, totally reshaping the markets. In some cases, investment in the transition countries was also stimulated by limits on media ownership in some Western countries – surplus income generated in the West was invested in media in the East, where there were chances for extra profits.

Today, the countries monitored in this report are no longer separated by major ideological or philosophical differences, which naturally also affect broadcasting. The degree of “Europeanisation” in the CEE and SEE regions, in terms of both political liberties and media structures, varies widely from country to country. However, the “European framework” has become a widely accepted concept, as each country has developed specific forms of broadcasting legislation and policy ensuring a degree of media independence.

The essential difference now lies in the greater vulnerability of public service broadcasting within transition (and post-transition) countries to political and economic pressures alike. Even here, however, there are significant exceptions: the situation of public service broadcasting in Italy, where the Prime Minister controls dominant parts of the commercial television, has prompted the Representative for the Freedom of the Media of the Organisation for Cooperation and Security in Europe (OSCE) to voice his concerns. Usually, such reprimands are addressed to countries with unconsolidated democratic political systems.

Public service broadcasters across Europe face common challenges to their traditional mission. These stem from powerful deregulatory trends, a certain loss of belief in the importance of non-commercial public communication, and technological innovations that, by vastly multiplying channels and thus fragmenting the audience, alter the nature of broadcasting and hence weaken the usual justifications both for generalist institutions that deliver public service content, and for the mandatory licence fee. This

situation favours commercial broadcasters, who have denounced the protection and special financing that public service broadcasting enjoys in Europe as unfair. There have also been external pressures from the US, and from international institutions such as the World Trade Organization, which seem to want to treat television, and indeed, culture, as just another commodity.

2. AN OVERVIEW OF EUROPEAN BROADCASTING

Although the Internet and other new media platforms were seen as a threat to the popularity of television, it has managed to defend its leading position in terms of media consumption. However, in 2002, in the aftermath of the global economic slow-down after the terrorist attacks on New York on 11 September 2001, national television networks started also to experience an economic downturn, while niche players, such as thematic channels, pay-TV or teleshopping channels, are enjoying economic growth, albeit from a much smaller base. Despite fragmentation of viewership after the liberalisation of television markets, the bulk of audience at the national level is still attracted by up to three national players.

2.1 Television audiences

(See Table 1)

Some media pundits saw the end of television coming with the Internet boom a few years ago. They argued that viewers would be more attracted by the interactivity offered by the Internet than by television's traditionally passive mode of consumption. However, despite the rapid expansion of the Internet, television has maintained its massive appeal to viewers worldwide. Over the past ten years, television-watching has been on the rise, and in 2003 the average viewing time in Europe was more than three hours per day (see Table 1). In Western Europe, the average viewing time for adults increased from 195 minutes in 1995 to 217 in 2003, and in CEE from 208 minutes in 2000 to 228 minutes in 2003.⁸ Among Central and Eastern Europeans, Serbians and Hungarians are the most avid viewers. In Western Europe, the south (Italy) has always been riding high in television watching, while the Nordic countries (Denmark, Sweden and Finland) have always had the lowest viewing rates, averaging only 162 minutes in 2003.

⁸ IP International Marketing Committee, *Television 2004. International Key Facts*, October 2004, p. 25, (hereafter, IP International Marketing Committee, *Television 2004*). The CEE region in the study of the IP International Marketing Committee includes 17 countries: Belarus, Bulgaria, the Czech Republic, the Baltic States, Hungary, the States of the former Yugoslavia except for Bosnia and Herzegovina, Poland, Russia, Turkey and Ukraine.

Besides a general increase in viewing time, each country presents specific viewing habits depending on local culture, the offer of programmes and the political, social and cultural events in the country. In Germany, for example, well over a decade after unification, there are still differences in watching time, with former East Germans, who are more affected by unemployment, tending to watch more television than former West Germans – 249 minutes compared to 217 minutes per day, according to 2004 data. Usually, large sporting events such as the Olympic Games or world championships tend to beef up the viewing time. Political events, especially major crises, but also less dramatic, although still important events, such as elections similarly draw big audiences. In the Republic of Macedonia, for example, television viewing rocketed from around 259 minutes to 325 minutes per day during the armed insurgency by Albanian rebel groups during spring and summer 2001.

In general, although in some countries overall trust in the media has declined in recent years, all country reports in this research confirm that television is still the main source of information for the population. Indeed, the presence of television in everyday life is pervasive. In Bulgaria, television-watching is the most important leisure activity. According to recent data, in Romania and Slovakia, television is the main source of general information for 73 per cent and 76.9 per cent of the population, respectively, while in Estonia, television is the primary source of both international and national news for the majority of the audience.

Another fact confirmed far and wide is that public service television remains the main source of news for the largest part of the population in most of the countries covered by this report. Only in a few countries, such as the Czech Republic, Slovakia and Hungary, do private channels attract more viewers for newscasts.

2.2 Television business

(See Tables 2, 3 and 4)

With the liberalisation of television markets – in the 1980s in Western Europe and after 1990 in post-communist Europe – television became a competitive and, for most of this time, thriving industry. Investments have poured across Europe over the past two decades, boosted by the medium's increasing popularity as a mainstream provider of both information and entertainment. By 2003, throughout Europe, the number of television households almost matched the total number of households. The share of households owning at least one television set in 2003 was over 90 per cent in all the countries covered by this report, with the exception of the Republic of Macedonia and Albania, where, respectively, 83 per cent and 68.8 per cent of total households had a television set. (See Table 2.)

Despite the hefty capital that the broadcasting industry has attracted, its growth has, nonetheless, significantly slowed in the past years. In 2002, broadcasters in the EU

pulled in revenues of €65.4 billion, a drop of 1.3 per cent over the previous year.⁹ This decrease was mainly triggered by a slump in the revenues of both public and private television companies. At the same time, relatively newer, developing segments such as pay-TV stations, thematic channels, TV packagers¹⁰ and teleshopping channels experienced growth, albeit from a much smaller base. The industry's downturn in 2002 came after five years of steep economic growth. The broadcasting industry in the EU saw its revenues growing by €15.1 billion from 1998 to 2002. In 2002, the public service broadcasters (radio and television) took a 42.5 per cent share of the total EU revenue, while commercial broadcasters (radio and television) took 32.5 per cent. The remaining share was divided between home-shopping companies, pay-TV companies, TV packagers and thematic channels (see Table 3).

In terms of profit margins, the fastest-growing audiovisual industry in the EU in 2001 was the television satellite industry, which, between 1998 and 2002, saw annual profit margins of between 24 per cent (2002) and a stunning 44 per cent (2000).¹¹

In 2002, the total loss suffered by the 391 public and private broadcasting operators surveyed by the European Audiovisual Observatory was roughly €3 billion.¹² By contrast, broadcasters operating in the new markets of Central and Eastern Europe posted profits, with some of these stations ranking among the 50 largest private television companies in Europe in 2003. They included the Polish Telewizja Polsat, TVN and Wizja TV, the Czech CET 21, operator of TV Nova, and the Hungarian Magyar RTL Televisio and MTM-SBS Televisio. Even in an impoverished economic environment, such as in Serbia, TV Pink, a commercial television broadcaster, accumulated enough profits to launch cross-border investments in the region. However, the situation of private stations operating in the transition countries is not rosy everywhere. Many private television operators have struggled to survive over the past decade. In Romania, for example, the largest national private stations, including Pro TV and Antena1, have gone through dire financial crises in the past years, failing to pay tax arrears and getting indebted to the State budget.

France, Germany, Italy and the UK remain the most important countries in the television industry at the pan-European level. The top ten broadcasting companies in 2003 originated from these countries and commanded combined revenues of €22.7 billion.

⁹ European Audiovisual Observatory, *The Yearbook 2004*, Strasbourg, 2004, Vol. 1, p. 30, errata slip, (hereafter, European Audiovisual Observatory, *The Yearbook 2004*).

¹⁰ A television packager is a company putting together various television channels and marketing them as a package of programmes, transmitted via satellite, cable or terrestrial digital transmission multiplex operators. See: André Lange (ed.), *Developments in Digital Television in the European Union*, European Audiovisual Observatory, France, 4 December 1999.

¹¹ European Audiovisual Observatory, *The Yearbook 2004*, Vol. 1, p. 32.

¹² This figure does not include small regional and local players. European Audiovisual Observatory, *The Yearbook 2004*, Vol. 1, p. 35.

2.3 What's on TV?

(See Tables 5 and 6)

Despite the steady increase in average viewing time, the liberalisation of television markets has accentuated the fragmentation of national viewerships, with the former State television players losing considerable market shares. However, in most of the countries covered by this report, private television is in the hands of a few large players, and the bulk of national viewerships – in Bulgaria, Croatia and the Czech Republic, over 80 per cent – is concentrated on a limited number of channels, usually no more than three. The exceptions are Germany and Turkey, where the largest three channels attract a combined audience of less than 50 per cent. (See Table 5.)

Overall, private television stations have the largest audiences. In 2003, only in Bosnia and Herzegovina, Croatia, Italy, Poland, Romania and the UK did public service television channels manage to attract higher overall national ratings.¹³ (See Table 6).

Television programming has seen an extremely dynamic evolution in recent years, with programme formats continually mixed and frequently rejuvenated. The main trend is commercialisation, with entertainment pervading all formats to create hybrid offerings. The most flourishing rise in prime-time output has been reality TV formats, which have started to devise fresh formats such as “docu-soaps” (*The Osbournes*), reality game shows (*Big Brother*), quiz shows (*Who wants to be a millionaire?*), Latin American *Telenovelas* with worldwide replicas of this type of drama, and hybrid reality shows (*Hell's Kitchen* on the UK's ITV 1, 2004). Of course, sports are a highly valued ingredient of programming, with a tremendous increase in rights costs. In addition to that, quality documentaries are gaining higher audiences. Researcher Carine Dubois wrote: “The quality of these documentaries has improved with expensive special effects and technological advances. As a consequence, co-productions are becoming the only way to finance these very expensive projects.”¹⁴

¹³ In most of these countries, the audience share of the public service broadcasters has been declining since then. In Croatia, for example, with the entrance of RTL in the market, Croatian public service television saw its audience shrinking dramatically.

¹⁴ Such quality documentaries include “Pompeii: The Last Day”, scoring high ratings on France 2, and “D-Day”, which attracted high viewing figures on Discovery and German ProSieben. IP International Marketing Committee, *Television 2004*, p. 43.

3. BROADCASTING REGULATION ACROSS EUROPE

(Tables 7 and 8)

Broadcasting regulation in all countries covered by this report is part of the political process. The *influence* of political institutions and their representatives on broadcasting is legitimate, as elected legislators and governments are the legitimate representatives of the public. However, broadcasting regulation is also commonly subject to political *pressures and interference* by party politicians, and industrial and other lobbies, which encroach upon their independence by attempting to compel them to serve specific economic and political interests.

An obvious conclusion of the reports in this study is that there is no single model of broadcasting regulation. The performance of broadcasting regulatory authorities reflects national specificities, including cultural codes, the history of broadcasting, and the peculiarities of local political culture. In the UK, it might be sufficient to expect the Government, when appointing the board of the national regulatory authority, to adhere to the so-called “Nolan principles”.¹⁵ According to these rules, public life should be governed by seven values: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. In other European countries, the mere idea that the Government should appoint the governors of the autonomous broadcasting regulator is seen as incompatible with the regulator’s independence. In many post-authoritarian contexts, clearly as an expression of distrust in the State and the political parties, the public shows a preference for a situation whereby representatives of civil society and academia play an important role in the national regulatory authorities. However, there is a generally accepted normative credo across Europe favouring autonomous broadcasting regulators, which should be legally and operationally shielded from political and business influences.

In many transition countries, the structures of broadcasting regulation are in place, but the implementation of legislation ensuring their independence is flawed. The EU accession process has helped both the new EU members and the present and future candidate countries to speed up the reform of their broadcasting legislation. Nonetheless, in many countries there is an ongoing debate about the discrepancy between the legal norms and their implementation. In the Czech Republic, for example, the appointment of the members of the Radio and Television Broadcasting Council by only one chamber of Parliament is considered unhealthy for the independence of the regulator. Dilution of appointing power among more State authorities – the Chamber of Deputies and Senate, for example – would increase the degree of the Czech regulator’s independence, in the opinion of local media observers.

¹⁵ Further information on the “Nolan principles” is available at http://www.bbc.co.uk/foi/docs/governance_of_the_bbc/board_of_governors/Standing_Orders.htm and http://www.public-standards.gov.uk/about_us/seven_principles.htm (both accessed 24 August 2005).

In Serbia, the Government and Parliament decided to ignore the legal procedure for the nomination of the members of the first post-authoritarian broadcasting council, thus undermining its legitimacy.

In established democracies, such as the UK, concerned voices point to the dichotomy of the “citizen or consumer” terminology that Ofcom, the broadcasting regulator established in 2003, prevalently employs. Ofcom’s terminology does suggest that two concepts of society and the individual, which are sometimes diametrically opposed, enjoy equal status in its policy approach – an outlook that ominously promotes consumption over citizenship. In other words, there is a worry that business interests will receive more attention than the public interest.

In Italy, although there have been efforts to neutralise media regulation by setting up independent regulators, politicians still exercise a great deal of control over regulation, due to a confusing and complicated regulatory system. Overlaps and conflicts between several bodies involved in the regulation of broadcasting make regulation particularly difficult.

In France, although the High Council for Broadcasting (CSA) is now a well-established regulator, it has periodically come under criticism from broadcasting professionals, journalists and experts, and also from the public and even its own commissioners. This criticism targeted the CSA’s lack of political independence, its inadequate powers, its slowness in reacting to problems in the market, and the low level of public participation in the CSA’s decision-making.

3.1 Tasks

The main tasks of the various types of broadcasting regulatory bodies can be summarised as follows:

- regulatory tasks:
 - licensing of broadcasting activities – including, in some countries, the setting of programming criteria and public service broadcasting obligations in the licence contracts;
 - monitoring – based on legislation and/or the licence contract;
- enforcement and sanctioning powers;
- specific tasks – such as appointing management bodies of the public service broadcasters;
- development of media policy and legislative proposals;
- assigning frequencies.

The regulatory bodies’ tasks can also be divided in terms of *whom* they regulate:

- terrestrial (national/regional/local), cable and/or satellite broadcasters;
- public/private broadcasters:
 - common tasks for all broadcasters – for example, monitoring broadcasters’ compliance with legislation, and developing media policy;
 - specific tasks for private broadcasters – for example, licensing and controlling ownership limits;
 - specific tasks for public broadcasters – for example, appointing management bodies.

Unlike the print media, broadcasting is heavily regulated. For several decades, in its early stages, broadcasting was directly influenced and regulated by the State. However, with the opening up of television markets to private players in the last two to three decades, a more complex system of regulation – actually often called deregulation – was put in place. It took essentially two forms: one was a loosening of political control, and the other one was the opening up of the frequency spectrum to commercial broadcasters, without imposing a public service remit on them (with few exceptions), as is imposed on the public service broadcasters.

Besides licensing, the tasks of the broadcasting regulators include the monitoring of broadcasters’ compliance with existing legislation and contractual conditions, and a set of sanctioning powers. In cases of legal violations or breaches of contracts and licence conditions, most regulators are entitled to impose penalties. The main sanctions that they can enforce are warnings and requests to remedy the breach, fines, suspension of the broadcast licence and, in the most serious cases, revocation of the broadcast licence.

Monitoring media ownership and promoting competition appear in some cases among the top priorities of the broadcasting regulators, which thus take upon themselves some prerogatives of the national anti-monopoly authorities in the field of broadcasting. Broadcasting regulators have been slowly raising their profile in the media policy-making process, proactively contributing to the initiation of legislation in this field. However, in most countries, especially transition states, they are not yet a decisive or influential factor in media policy.

With the exception of Germany and Lithuania – where there are separate regulatory authorities for public service broadcasters and private broadcasters – regulatory authorities are commonly in charge of licensing and monitoring both public and private stations. In Bulgaria, Latvia, Poland, Serbia, Estonia and France, the broadcasting councils also appoint some of the managing bodies of the public service broadcasters.

3.2 Patterns of regulation

In most of the countries monitored, the main national broadcasting regulator has a formally independent status. In countries such as Croatia, Lithuania, the Republic of Macedonia and Romania, they are independent regulatory authorities.¹⁶ In the Federal Republic of Germany, regulation is carried out by 15 authorities in the federal units with the status of public service organisations, and in the UK, Ofcom is an independent statutory corporation accountable to Parliament through parliamentary committees and the National Audit Office.

Besides the main regulator, which is usually in charge of licensing and monitoring broadcasting activities, broadcasting regulation is complemented by other institutions, which fall into two main categories.

First, there are countries where State authorities or State bodies are directly involved in regulation. Such is the case of Estonia, where the Ministry of Culture has an important say in broadcasting – licensing private broadcasters, monitoring their activities and imposing sanctions. In Poland, the State is also directly involved in broadcasting regulation. The main regulator, the Polish National Broadcasting Council (KKRiT), is, according to its statute, a State institution in charge of the regulation of broadcasting. In the Republic of Macedonia, the Government is the body in charge of broadcast licensing (in cooperation with the national Broadcasting Council) and has relevant sanctioning powers in this field, such as revocation of a broadcaster's licence. However, new legislation is in the pipeline, strengthening the autonomy of the regulatory authority.

Second, in most of the countries monitored, the work of the main regulatory bodies is supplemented by so-called technical regulators, in charge of managing the frequency spectrum. The activities of these regulators are primarily related to telecommunications; however, because they manage the frequency spectrum, their remit also covers radio and television broadcasting. The extent of involvement of the technical agencies in broadcasting regulation, and their influence over television and radio markets, differs from country to country. Sometimes, the technical regulators are legally entitled to impose sanctions on broadcasters, but usually their role is limited to coordinating the allocation and use of frequencies with the broadcasting regulators.

In Estonia, the Ministry of Culture has the right to impose fines, in Croatia, the Croatian Telecommunications Agency has the right to revoke licences, and in Bulgaria, the Communications Regulation Commission can revoke licences at the request of the broadcasting regulator. In Romania, the role of the Inspectorate General for Communications and Information Technology (IGCTI) in broadcasting is formal – the legal obligation of applicants for broadcast licences to register with the Inspectorate is a mere formality. Nonetheless, there are still concerns about the independence of the technical regulators, which are normally directly controlled by governments. The

¹⁶ In Bosnia and Herzegovina, they have the status of an independent State agency.

Romanian IGCTI, for example, can exert substantial influence in the licensing process, because, as an administrator of the frequency spectrum, it can block the release of frequencies to new entrants.

Another model of regulation, gaining ground especially in Western Europe, is that of an integrated broadcasting and telecommunications regulator, whereby the main national broadcasting regulator also combines the “technical” tasks usually carried out by a separate regulator. This model is present in France (the High Council for Broadcasting, CSA) dealing with broadcasting content issues and frequency management, Italy (the Communications Guarantee Authority, AGCOM) and now also in the UK (Ofcom).

3.3 The main broadcasting regulatory body – structure

In most countries monitored, the main broadcasting regulator numbers between seven and nine members. Exceptions are as follows: the Czech Republic and Lithuania, where the regulator has 13 members; Romania, with 11 members; Hungary, with at least five members. Germany has a complex system with 15 regional authorities for the private broadcasters, each serving a state (*Land*) and having a variable number of members, between 11 and 50.¹⁷ The public service broadcasters in Germany are supervised by their own regulatory bodies.

Usually, the members of the broadcasting regulators’ councils are appointed by Parliament upon nomination by various bodies, which could be the President of the Republic, a specialised parliamentary media commission, the Government, one of the chambers of Parliament, Members of Parliament, the political parties or civil society organisations.

A second model is the mixed appointment system, with the President of the Republic and the two chambers of Parliament sharing this responsibility. One of the most innovative modes of appointment is that found in Lithuania, where nine out of the 13 members of the broadcasting council are appointed by professional organisations representing guilds such as painters, cinematographers, writers and journalists. Germany has a complex system for appointing the members of the broadcasting regulators, who are delegated by socially relevant groups, whose seats in the council are established by law. The UK’s Ofcom is also built on a complex structure, resembling a commercial corporation. Ofcom’s board has a composition of executives and non-executives, with the non-executives making up the majority and appointed by the Government according to a set of principles established by an independent committee on standards in public life – the “Nolan’s principles” (mentioned above).

With a few exceptions – such as France, Hungary, Lithuania and the Republic of Macedonia, where the broadcasting council members cannot be removed – the body

¹⁷ The states of Berlin and Brandenburg have a joint regulatory body for private broadcasters.

that appoints members also has the legal right to sack them. However, in most cases, the conditions under which members may be sacked are rather narrow and are clearly set out in law. In most of the countries monitored, the broadcasting legislation contains provisions on the conflict of interest for members of the broadcasting councils. They are forbidden to be members of a political party or of Government structures, or to work or to have interests in broadcasting businesses. However, in a large number of countries, despite such provisions, the members of the council are affiliated to political circles whose interests they serve. In Germany, members of regulatory authorities represent socially relevant groups such as the trade unions or churches – but they are also often members of political parties. In Poland, for example, despite provisions on conflict of interest for the National Broadcasting Council (KKRiT), in practice the members of the regulator have been appointed rather on the basis of affiliations with the political parties controlling Parliament, the Senate and the Presidency. In Italy too there were introduced in 1997 stricter provisions on conflict of interest for the members of the Communications Guarantee Authority (AGCOM), such as prohibiting members to work for companies involved in the communications sector for four years after their mandate. However, media observers expressed doubts whether these provisions can guarantee the independence of the regulator, as the decisive power in the Authority is concentrated in the hands of its President, whose appointment is largely controlled by the Prime Minister.

In many countries, members of the broadcasting councils are not appointed based on professional qualifications. However, lawmakers in Croatia and several countries have introduced over the past few years provisions requiring candidates for a seat in the broadcasting council to possess media expertise. Members of the broadcasting councils have tenures of four to six years. Only in Italy are they appointed for seven years, while in Germany their term can last several mandates. In most countries, the terms of members are staggered, to avoid tying them to the parliamentary cycle. This is an implicit admission of the permanent and pervasive influence of political parties on nominally autonomous regulatory authorities, in spite of all attempts to erect legal barriers against it.

3.4 The main broadcasting regulatory body – funding

There are two important angles in looking at the funding of the regulators. First, its source – if funding comes from the State budget, it can affect the independence of the regulators. Second, the amount of funding – without sufficient financing, they cannot carry out their activities, particularly monitoring.

The most common model of funding the broadcasting councils in the monitored countries is one where the funding comes from the State budgets. In some cases, the budgets of the broadcasting councils are supplemented by other resources, such as the licence fee, the regulator's own revenues from technical fees or application fees, taxes on private broadcasters' income, donations and grants. Croatia, Lithuania and Germany are countries where regulators are funded by a sole source of financing other

than the State budget. In Croatia and Lithuania, the regulators' activities are financed from a tax imposed on broadcasters, and in Germany they receive a part of the revenue from the licence fee. In Albania, by contrast, the broadcast regulator uses a multitude of sources to finance its operations. These include funds from licence fees, revenues from broadcast licence applications, tax on private broadcasters' income, State budget and donations.

3.5 The main broadcasting regulatory body – independence

The precondition for the regulatory authorities to fulfil their tasks is that they must operate independently from pressures. The main legal mechanisms that are believed to ensure broadcasting councils' independence are linked with the appointment and termination conditions of the council membership, their conditions for their terms in office, conflict of interest provisions in the membership conditions, and the criteria for appointing the members. Yet, again, at the end of the day it is the political culture and tradition in a particular country that breeds the prevailing attitude towards non-governmental regulators. Especially in young democracies, the political and business elite still often does not exercise self-restraint towards autonomous bodies such as the broadcasting regulators. Sometimes, the lack of independence results from deficient legislation.

In Bulgaria, for example, media experts have called for the adoption of clearer rules on conflict of interest. More often, however, the lack of independence is due to a culture of collusion between individual regulators and the bodies appointing them, particularly State institutions, a situation that is brought about or at least tolerated by flawed implementation of the legislation. While almost everywhere there is legislation containing clear conflict of interest clauses in the election of the broadcasting regulators' members, its implementation is lax.

3.5.1 Independence from political pressures

Governments across Europe have shown, at least formally, a willingness to loosen their grip on broadcasting regulators. The outcome of this process has been the adoption of legislation guaranteeing broadcasting regulators a degree of independence.

However, improved legislation has not necessarily changed the actual state of affairs. In Bulgaria, it was hoped that media legislation forbidding the Government from firing members of the main national regulator, the Council for Electronic Media, would give them more autonomy – and, at the end of the day, courage – in making decisions based on their own judgements and in the public interest. However, successive Governments have blatantly interfered in the Council's activities by taking steps to terminate the mandates of the Council's members illegally. Also in Romania, although the degree of autonomy enjoyed by the main national broadcasting regulator, the National Audiovisual Council (CNA), has increased, there are still serious suspicions

about the fairness of the licensing process. In Serbia, the ruling coalition in the parliament chose in August 2003 to confirm the obviously flawed election of the first broadcasting council instead of adhering to the law and repeating the procedure.

The appointment procedures leave room for political interference in many cases, harming the operational independence of the regulators. Such is the case of the Czech Council for Radio and Television Broadcasting (RRTV), the members of which are officially appointed by the Prime Minister. However, in reality, the Chamber of Deputies in Parliament, which proposes the members, has total control over the appointment and dismissal process. Appointment of the regulators' decision-making members by a single institution makes the Council a heavily politicised institution, mirroring the distribution of power in the Chamber of Deputies. Czech media observers believe that distributing the task of appointing the members of the Broadcasting Council to more authorities – such as the Senate or the Presidency – would dilute the power that the Chamber of Deputies alone has in the appointment process.

The Slovakian Council for Broadcasting and Retransmission has managed in the past five years to adequately enforce media legislation and ensure a certain degree of transparency over its operations. Back in 1998, the Council's name had become tarnished because of its overt bias in favour of the Government at the time. The introduction of staggered terms for the Council's members in 2000 was also seen as a positive step for the regulator's neutrality. However, there are serious suspicions that the candidates for membership of the Council are closely linked with political parties. Furthermore, their appointment exclusively by Parliament – albeit upon nomination by both MPs and civil society – has been questioned by broadcasters and media observers, as it leaves room for serious political interference. In Albania, the political establishment meddles overtly in the affairs of the National Council for Radio and Television by interfering in the election of its members or contesting its decisions.

In Estonia, the Government regulates the broadcasting sector directly. There, the Ministry of Culture performs the most important regulatory and sanctioning functions, such as licensing and monitoring content, imposing fines, and suspending and revoking broadcasting licences. However, due to strong resistance by broadcasters to political interference, the Ministry has confined itself to ensuring the adherence of broadcasters to legal provisions without pressuring the broadcasters to follow political agendas. It also proposed the establishment of a new regulator, but no agreement has been reached on the new institution's remit.

However, in some countries the State is trying to re-impose its grip on regulation. In Latvia, according to two new draft laws prepared in 2003 and 2004 by the specialised media commission in Parliament, the Latvian Broadcasting Council, responsible for regulating both commercial and public service television, would be dissolved, and the Ministry of Culture would take over most of the regulatory tasks for commercial broadcasting, including licensing and the prevention of monopolies, while regulatory powers over public service broadcasting would pass to a new authority. In Serbia, Parliament has bestowed a six-year tenure at the Broadcasting Council to those

members who were nominated by the political parties, whereas nominees of civil society and professional associations serve only four years.

Civil society organisations have put pressure on the State authorities in the process of reforming broadcasting regulators and strengthening their autonomy. However, some of these organisations are also under the influence of political agents, or their representatives are recruited by political parties to advocate their interests in the regulator's decisions. In Slovakia, for example, although nominations for members in the national Council for Broadcasting and Retransmission are submitted to Parliament by both MPs and NGOs, in reality members of the council have often been political nominees.

Bosnia and Herzegovina, a country that is still, ten years after the end of the war, an international protectorate, presents a special case. The Communications Regulatory Authority (RAK) was launched as an international agency shielded from political pressure by the Office of the High Representative. Today, the Authority is considered to be an efficient and independent regulator. However, it has at times been exposed to political and economic pressures exerted by various interest groups. It is hoped that civil society will become the driving force that dissipates these pressures, but the development of a strong civil society still has a long way to go.

The establishment of an appointments system for the broadcasting regulator in Lithuania, whereby a majority of members come from professional associations, has nurtured the independence of the Radio and Television Commission, which is only in charge of regulating commercial broadcasters. There have been no attempts by the Government or Parliament to interfere in the Commission's internal affairs. In addition to the Commission, Lithuania has a recognised system of self-regulation, comprising the Lithuanian Commission of Journalists' and Publishers' Ethics and the Journalists' Ethics Inspector.

In Western European countries, the work of broadcasting regulators has also come under critical scrutiny. In France, the High Council for Broadcasting (CSA) has been criticised for its political dependence. The CSA's commissioners have been repeatedly suspected of lacking neutrality, as they are appointed by political authorities. In Italy too, despite legal provisions barring the members of the AGCOM from conflicts of interest, there are well-founded doubts as to whether these provisions guarantee the independence of the regulator, because the voting system of AGCOM members in the end gives the highest power to a single person, the President of the AGCOM. Usually the AGCOM membership equally replicates the division of political power in Parliament (four against four) and therefore the decisive power rests in the hands of the AGCOM President, who is Government-nominated.

To ensure a high degree of independence from the State, the UK's Ofcom was built on a complex governing structure, which retained the "arm's length" approach specific to the British system – meaning a proper cooperative relationship between Government, industry and regulators, a situation not found anywhere else in Europe. Although this

appointment system technically leaves room for State interference, Ofcom works in a political culture that accepts the independence of broadcasters as a fundamental value. While this situation does not guarantee regulatory independence, it may be an essential condition for consistently achieving such independence. While the closeness of some senior Ofcom officials to the Government has been the subject of press comment, the regulator seems to enjoy a high level of trust. However these are still early days for Ofcom, which is a new institution.

After 1945, the Germans followed the British example and opted for an “internal” control-based system of regulation for the public service broadcaster, and an “external” control system for private broadcasters. To ensure the independence of both types of regulators, they are constituted by representatives of socially relevant groups. A less positive aspect of the broadcasting regulation in Germany is the fact that its regulatory structures have, since the start, incorporated the authority of political parties, and so are vulnerable to political horse-trading (see section 4.6.2).

3.5.2 Independence from commercial pressures

Lobbying by commercial television stations and/or corruption scandals have tainted the reputation of regulators in countries such as Latvia and Poland.

The Latvian Broadcasting Council has often been considered to be non-transparent and prone to succumb to lobbying by commercial television. Under a proposed new Law on Public Broadcasting, the regulatory framework might change. A new body would take over the regulation of public service broadcasting, while the Ministry of Culture would carry out all regulatory tasks on private broadcasting. The rationale for this proposal is the fact that the current Latvian Broadcasting Council (NRTP) is marred by conflict of interests, as it formulates the public service broadcaster’s budget and regulates the commercial television at the same time, both players fighting for a slice of the same advertising pie.

In Poland, the National Broadcasting Council has been accused of licensing broadcasters arbitrarily. The Council was enmeshed in a corruption scandal that devastated the political scene in 2003. The scandal broke when it was revealed that the renowned filmmaker Lew Rywin had proposed a deal to the Polish publisher Agora, a deal according to which the Government would have dropped an article forbidding cross-ownership between publishers and television in a proposed draft amendment to the Broadcasting Act. Rywin asked Agora for €13 million for his services. He said that he was acting as intermediary for a group of “power-holders”. Subsequently it became public knowledge that the group of “power-holders” Rywin referred to allegedly included the President of the public broadcaster, the Secretary of the Broadcasting Council, and Prime Minister Leszek Miller himself. All of them denied any involvement in the affair. A final report carried out by a parliamentary commission found that “unauthorised officials had made illegal changes in the official text of the law.”

In Western Europe, regulators have been criticised for their soft approach towards commercial broadcasters. Under French law, for example, the CSA possesses a wide range of enforcement measures, but has been reluctant to use them. There is a widespread belief that this reluctance is shown mainly because of the considerable economic power of private broadcasters, which discourages the regulator from considering radical steps such as revoking broadcast licences. Italy's regulatory regime is also characterised by weak legal provisions on dominant positions and unclear enforcement measures, which make the AGCOM averse to harsh decisions against powerful broadcasters.

3.5.3 Lack of powers

Besides political and economic pressures, another problem that broadcasting regulators have faced is the lack of sufficient powers to enforce regulations or proactively regulate the market. In many countries, the broadcasting regulators do not have enough capacity and lack power to monitor the activities of broadcasters for violations. The lack of such abilities has an adverse effect on the sanctioning power of regulators. The Macedonian Broadcasting Council, under the present Broadcasting Law, which is likely to be changed soon, is an example of extremely limited competencies. It can only formulate opinions and proposals on issues such as licensing and sanctioning of broadcasters, while the Government retains the power to make decisions in these areas.

In order to better regulate the market, broadcasting regulators have been entitled in an increasing number of countries to propose media policy. In Poland, the National Broadcasting Council (KKRiT) has the right to formulate State policy on broadcasting in agreement with the Prime Minister. However, as a rule, although entitled to participate in media policy-making, the actual influence of broadcasting regulators in adopting legislation is minor.

Public participation in media policy is very low in most of the countries monitored. A first timid step in this regard was the creation in Italy of a Users' National Council, composed of experts delegated by consumers' associations. They make proposals on draft media legislation to the Communications Guarantee Authority (AGCOM), Parliament, the Government and other bodies. In France, the low public participation in the debate over the adoption of decisions by the country's broadcasting regulator, the High Council for Broadcasting (CSA), has been criticised numerous times. Although the CSA is making its decisions public, it rarely asks citizens to contribute to this process, turning broadcasting regulation into a closed-door debate of experts, broadcasting executives, businesses and Government officials.

4. PUBLIC SERVICE TELEVISION: IN SEARCH OF IDENTITY

Public service broadcasting has been praised by the Council of Europe and other international organisations and bodies as a vital element of democracy in Europe and part of its cultural heritage. Yet there is a broad agreement that it is currently challenged by political and economic interests, by the impact of new media platforms, by increasing competition from commercial broadcasters and by other factors. Indeed, there is a deep crisis of identity of public service broadcasting.

On one hand, public service broadcasting is still considered by European policy-makers to be a cultural good, one that must be preserved. However, international and intergovernmental organisations such as the WTO and potentially the European Commission (see section III.5.2) have criticised the privileged position of the public service broadcasters, which receive public funding while (in most cases) at the same time competing with commercial broadcasters for advertising revenue.

In Western Europe, public service television has stabilised its position on the market for a longer time and enjoys a healthy viewership. Nonetheless, across Europe, media observers and civil society organisations criticise public service broadcasters for their affinities with political parties and for the “dumbing down” of their programming, prompted by competition with commercial broadcasters. In transition countries, public service broadcasting often suffers in particular from a lack of professionalism, an enfeebled sense of mission, a lack of viable funding, political interference with its governing bodies, and low public awareness of public service television’s distinctive role. Consequently, in these countries, little is expected from public service broadcasting. In the mid-1990s, with the advent of private broadcasters, the monopoly of the former State broadcasters was dismantled. Since 1995, the audience shares of public service broadcasters saw a steep decline, which has continued until today. In Hungary, the public service broadcaster saw a dramatic drop in viewership between 1995 and 2001 from almost 80 per cent to 13.2 per cent. In 2004, after the entrance of the private station RTL Televizija on the Croatian broadcasting market, the public service television company HTV saw its audience halved. However, in several countries, such as Poland, the Czech Republic, Slovakia, Serbia or Hungary, public service television has recently been picking up. (See Table 13)

4.1 Status

(See Table 9)

Public service broadcasters in Europe are heavily politicised, although they are officially public organisations independent from the State. There is interference in a great many cases.

Public service broadcasters are struggling to legitimise their existence in our multichannel environment and to communicate this mission to the public that they notionally serve. This impasse is the result of three main factors: acute deficiencies in the governance structures of the public service broadcasters, inadequate and/or easily manipulable sources of funding, and the slow reform of their programming to distinguish it from commercial programming. These factors are, of course, interrelated.

The governing bodies of public service broadcasters commonly include people connected to the local political elite. As councillors in the public service broadcasters governance structures, these people often represent the interests of the political parties and politicians who propelled them into office. That is why the governance and management of public service broadcasters has become, particularly in the transition countries, but not only there, a political game, with the public service broadcasting governance structures changing according to changes in governments.

In CEE and SEE, the formal transformation of the State broadcasters into public service entities – which took place after 1990 – has been, with few exceptions, completed. However, the transformation into public service entities is, in almost most cases, more formal than substantial. In reality, the State still plays the role of an “occult manager”, closely controlling the public service broadcasters.¹⁸ Most of these broadcasters have the status of public organisations or corporations. The only exceptions are the Latvian LTV, which is a limited liability company owned by the State, and the Polish TVP, which is fully owned by a joint-stock company of the State Treasury. Hungary also presents an exception: the public service broadcasters MTV and Duna TV are joint-stock companies run by a foundation expressly set up in the 1990s for this purpose. In Serbia, in March-April 2004, the Government bypassed the Broadcasting Act’s provision and instead directly appointed a new Director General and Governing Board of the public service broadcaster RTS, citing as the source of its competency to do so the Law on Public Enterprises and Related Areas of Public Interest. In Western Europe, the only exception is the Italian RAI, which is majority-owned by the Ministry of the Economy and Finance.

4.2 Governance

(See Table 10)

4.2.1 Governance structure

The governance structure of the public service broadcasters in the countries monitored in this report consists, as a rule, of three main layers: a council of governors, a management board and the director general. The council is responsible mainly for general policy and overseeing the station’s budget and activities. The management

¹⁸ The term “occult manager” was used by the media expert Alina Mungiu-Pippidi in *State into Public: The Failed Reform of State TV in East Central Europe*, 1999, The Joan Shorenstein Center on the Press, Politics and Public Policy.

board carries out the daily management of the broadcaster. Besides these two structures, some public service broadcasters, such as Czech Television (ČT), have in place a supervisory commission, in charge of supervising the activity of the councils and the financial audit.

A technically different model of regulating the public service broadcaster is one that operates through an “external” governing structure, which appoints the station’s management and monitors their activities. In Estonia, the public service station ETV is regulated by the Broadcasting Council, an independent body responsible for ETV’s supervision. The same situation exists in Lithuania, where LRT is supervised by the Council for Lithuanian Radio and Television. Another governance pattern is one that operates through a more simplified structure, consisting only of a management team. This is the case in countries such as Bulgaria, where the five-member Management Board of the public service station BNT is appointed by the main broadcasting regulator, the Council for Electronic Media, and in Latvia, where LTV is managed by an eight-member Board, the General Director of which is named by the national broadcasting regulator, the NRTP, and charged with appointing his or her own team of managers. In this system, there is no specific council for public service broadcasters sitting above the administration.

4.2.2 Appointments

Generally the public service broadcasters’ *councils* have between nine and 15 members. A notable example is Germany, where the broadcasting councils of the ARD’s ten regional member organisations and ZDF’s Television Council have a variable number of members, which can each reach 77. With 25 members, the Councils of RTV Slovenia (both radio and television) also have a large governing structure. The tenures of the public service television councils last between three and six years. The members of the public service television councils are usually appointed by Parliament. In some countries, such as Poland and Serbia, they are appointed by the general broadcasting councils. In Latvia, only the General Director of the public broadcaster is appointed by the general broadcasting regulator, and then he or she appoints his or her councillors. However, there is now a proposal of legislation to set up a new broadcasting council that would regulate only public service television, while the Ministry of Culture would take over regulation of commercial broadcasters. The members of these councils are usually dismissed by the body that appointed them.

The *management boards* of the public service broadcasters are composed of television professionals, usually directors of the main internal departments of the stations or candidates proposed by the station’s General Director. They are normally appointed by the Councils of the public service broadcasters.

The *General Director* of the broadcaster plays a central role in the governing equation. With only a few exceptions – such as Romania and the Republic of Macedonia, where the General Director of the local broadcasters is appointed by Parliament, and Turkey,

where the General Director is named by the Government – the General Directors of the public service broadcasters are appointed by the stations' regulatory council.

In Western Europe, the mechanisms of appointing the governing structures of public service television are more complex. In France, for example, the Government, Parliament, the broadcasting regulator and the staff of the public service enterprise France Télévisions appoint their people to the station's Council of Administration. In Germany, the councils of public service television stations ARD and ZDF are composed of important social groups whose seats in these councils are guaranteed by the law. However, at the end of the day, in most cases, the public realises which party is behind each of the candidates.

The councils of public service television have the greatest power among the governing bodies of the broadcasters. In most of the countries, they appoint the General Director of the station, who then selects his or her management. However, in some transition countries, the position of General Director has gained in importance. In the Czech Republic, for example, observers stress the point that Czech Television (ČT) needs a strong personality to lead the station and resist political interference with the station's affairs directly or via the station's council, which is appointed by the Chamber of Deputies. In other countries, such as Romania, increasing power vested in the hands of a single person – by combining the positions of General Director and President of the Council of Administration into a single post – has had negative effects on the independence of the station, as the General Director-President is appointed by Parliament.

4.3 Public service mission and obligations

(See Table 11)

Public service broadcasters everywhere have a number of obligations based on three main principles: programming tailored to public service broadcasting, impartial and accurate information, and universal access. Public service broadcasters are required in most of the countries to do the following (see Table 11):

- to air independent, accurate, impartial, balanced, objective news and information;
- to ensure diversity of programming and viewpoints;
- to broadcast a certain proportion of news, cultural, artistic, educational, minority, religious, children's and entertainment programming;
- to promote local culture and values;
- to produce and broadcast programmes relevant for all the regions in the country;

- to provide free-of-charge airtime for public interest announcements, such as healthcare, road safety and urgent messages of State authorities.

Commercial television stations are usually bound by a set of general broadcasting obligations, such as avoiding incitement to ethnic hatred and violence, or airing erotic programmes only at late hours. Beyond these, public service television broadcasters must follow more guidelines and operate within a legally established remit. In most of the countries monitored, there are some common obligations for both public and commercial television stations, but these vary significantly (see section 6).

Public service broadcasters are commonly obliged also to air programme strands that do not necessarily appear on commercial television, especially cultural and educational programming, programmes for minorities and regional news. The obligations imposed on public service television broadcasters show a common understanding that public service television is more than a medium of communication and should fulfil a much wider societal role. Its mission includes the promotion of local culture, traditions and values. In some countries, legislation emphasises this role. In Turkey, the public service broadcaster TRT is obliged to pursue the national goals of the country, based on the reforms and principles of Atatürk, the founder of the modern secular Turkish State. In Poland, the public broadcaster is required to respect the Christian system of values and strengthen family ties.

However, the obligations imposed on public service broadcasters are for the most part broadly or vaguely worded, leaving wide room for interpretation. In the UK, the BBC only has to show “a reasonable proportion and range” of output for Scotland, Wales, Northern Ireland and the English regions. In Croatia and in Bosnia and Herzegovina, public service broadcasters are required to air “adequate” shares of information, cultural, educational and entertainment programming. In the Republic of Macedonia and in Serbia, there are obligations for the public service broadcasters to provide programming for national minorities in their languages. In general, public service broadcasters devote insufficient time to cultural or minority programming or air these programmes at unattractive hours.

Some Western European countries present more complex models of public service obligations. In France, each of France Télévisions’ three channels bears specific public service obligations. France 2 and France 3, for example, are required to provide free airtime to political parties represented in Parliament and unions and professional associations considered to be nationally representative, based on rules established by the country’s general broadcasting regulator, the High Council for Broadcasting (CSA). France 2 must air religious programmes, and all three public channels must regularly broadcast programmes on science and technology. Although many of these programmes are run at late hours, the imposition of a more detailed set of public service obligations has helped France Télévisions to gain a more distinctive voice in the French broadcasting scene.

All terrestrial broadcasters in the UK have public service obligations. This is the uniqueness of the British model of broadcasting, with the BBC having the most responsibility as the main public broadcaster, followed by Channel 4. ITV and Channel 5 have fewer obligations, covering regional productions and minimum programme requirements, which include current affairs and news. Both the BBC and Channel 4 receive frequencies at no cost in return for their public service obligations.

4.4 Funding

(See Table 12)

Public service television broadcasters are huge enterprises by local standards in all European countries. On a pan-European level, five out of the ten largest broadcasting companies ranked by operating revenues are public enterprises (Italy, the UK, France and Germany). (See Table 4).

In the smaller European markets, public service broadcasters employ a couple of hundred employees. On average, public service broadcasters in Central and Eastern Europe each employ between 1,500 and 3,000 staff, but the payroll increases with the size of the country. The Polish TVP has a workforce of 4,600, while the Turkish TRT employs some 8,000 people. In Western Europe, German public broadcasters ARD and ZDF have a combined staff of nearly 25,000. Public service broadcasters typically employ far more people than private television stations in the same market conveying similar volumes of programming. In Hungary, for example, public service television employed some 1,600 people in 2004. Commercial television stations RTL Klub and TV 2 produce the same amount of programming with only up to 400 employees.

In most countries, the funding of the public service broadcaster is a hybrid model, combining revenue from two of the following three sources: the licence fees paid by taxpayers, allocations from the State budget, and commercial revenue from advertising, broadcasting rights, donations, and renting technical equipment and other assets that the stations own. Among the few countries where the principal public service broadcaster is funded through a single source are the UK¹⁹ – where the BBC finances its operations from licence fee revenues alone (its commercial revenues being, relatively, marginal) – and Estonia, where ETV covers its expenses mainly through State subsidies. Estonia is, in fact, the country that tested a new model of financing its public service broadcaster from fees imposed on private broadcasters. Launched in 1998, this model functioned until mid-1999. It was widely praised in the country, as it allowed ETV to shift its focus away from programmes with high commercial potential to more cultural programming. Through this model, a significant amount of advertising money was diverted to the private television stations. However, the model was scrapped when a private television station, TV1, failed to pay its annual contribution to ETV on time.

¹⁹ BBC World, the television channel, is commercially funded and BBC's World Service, the radio service, enjoys State funding.

In many of the countries monitored, including Croatia, the Czech Republic, Germany, Italy, the UK, the Republic of Macedonia, Romania, Slovakia, Slovenia and Turkey, more than 50 per cent of the public service broadcasters' total funding comes from licence fees. In other countries, such as Albania, Lithuania, Estonia, Latvia, Serbia (where a mandatory licence fee will be reintroduced starting 1 October 2005) and Hungary, the main funding of public service television is represented by State finances.

4.5 Public service broadcasting at a crossroads

Over the past decade, public service broadcasting has been praised and criticised in roughly equal measure. Considered by the European political elite to be an essential part of European cultural identity, public service broadcasting has been supported by European political bodies. In the Protocol on the system of public broadcasting attached to the 1997 Treaty of Amsterdam, public service broadcasting is considered to be "directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism". The Protocol contains the provision that if it will be left to the competency of member States to provide for the funding of public service broadcasting "for the fulfillment of the public service remit".²⁰ In 2005, at its Seventh Ministerial Conference on Mass Media Policy (Kiev), the Council of Europe reaffirmed the importance of public service broadcasting "as an element of social cohesion, a reflection of cultural diversity and essential factor for pluralistic communication accessible to all."²¹ At the same time, the European Commission stressed the point that the State aid to public service television must pass the proportionality test, which means that this aid must not exceed the net costs of the public service mission.²²

On the other hand, public service broadcasting has come under pressure from the WTO, which has called for total liberalisation of the audiovisual market, which would mean the elimination of preferential treatment for the public service broadcasters.²³ At

²⁰ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed on 2 October, C 340, 10 November 1997, Protocol No. 9 on the system of public broadcasting in the member States, C340/109, available at <http://europa.eu.int/eur-lex/en/treaties/selected/livre545.html> (accessed 30 July 2005) (hereafter, EU Protocol on Public Broadcasting (1997)).

²¹ Council of Europe, "Integration and diversity: the new frontiers of European media and communications policy. Adopted texts", Seventh European Ministerial Conference on Mass Media Policy, Kiev (Ukraine), 10-11 March 2005, Resolution No. 2, Cultural diversity and media pluralism in times of globalisation, p. 7, available at http://www.coe.int/T/E/Human_Rights/media/MCM%282005%29005_en.pdf (accessed 30 July 2005).

²² For more on the Commission's position on State aid for public service broadcasting, see: section III.5.2 of this Overview report.

²³ See: Pauwels, Caroline – Jan Loisen, *The WTO and the Audiovisual Sector. Economic Free Trade vs. Cultural Horse Trading*, in *European Journal of Communication*, 18, 3/2003, pp. 291–313; see also section III.2 of this Overview report.

the same time, the World Bank argued in a 2002 study that public service obligations can be fulfilled more efficiently by private broadcasters.²⁴

Private broadcasters also impugn the model of financing the public service broadcasters, which, they claim, is unfair to private competitors. They have repeatedly accused the public service broadcasters of “buying” audience shares with State or taxpayers’ money. However, a recent review of public service broadcasting around the world, carried out by the international consulting company McKinsey, for the British body Ofcom, concludes that there is no evidence that commercial funding is commonly “crowded out” by high levels of public funding.²⁵ The authors of this study write that statistically, the most significant effect came from the gross domestic product, which has a particularly strong effect on the level of advertising funding.

Finally, in transition countries, public service television is still associated by the general public with State television, due to the long history of communist State monopoly on television, and because of the numerous disclosures of State interference in the public broadcasters’ activities and programmes. Some governments still seem reluctant to cede control over the public service broadcaster. In Serbia, the present director of RTS, appointed by the Government, prefers to call the former State broadcaster “national television”. This fascination with the alleged importance of a “national institution”, in this case RTS, keeps the fantasies of “national grandeur”, with all its dangers, high on the State broadcaster’s agenda.

4.6 Independence

The most important condition for public service broadcasters to fulfil their role is that they are able to operate independently from the State. There are three areas in which independence is vital for the overall functioning of public service broadcasting as an objective and trustworthy mass medium: financial independence, management independence and editorial independence. All three are interconnected and have a direct influence on the overall performance of public service television.

4.6.1 Financial independence

The subsidising of public service broadcasters from the State budget is generally seen as the most hazardous model of financing, as it automatically creates dependence of the broadcaster on the State structures.

²⁴ For more, see: World Bank Institute Development Studies, *The Right to Tell. The Role of Mass Media in Economic Development*, The World Bank, Washington, D.C., 2002.

²⁵ McKinsey & Company, *Review of Public Service Broadcasting around the World*, London, September 2004, p. 2, available at <http://www.ofcom.org.uk/consult/condocs/psb2/psb2/psbwp/wp3mck.pdf> (accessed 1 September 2005).

State subsidies seriously jeopardise the independent position of public service broadcasting. This is the case in Albania, where the bulk of the funds used by the public broadcaster, RTSH, comes directly from the State coffers (see Table 12). Lack of transparency in the management of these funds increases concerns about the station's independence. At the same time, this form of financing does not encourage RTSH to complete its reform and look for more flexible methods of management. The reliance of the Bulgarian public broadcasters BNT and BNR on funding from State subsidies has also thrown serious doubts on their political independence. In Serbia, there was a public outcry when, in August 2005, Parliament re-introduced mandatory licence fees, to be paid together with the electricity bill. Many media experts argued that mandatory fees are not justified until there is public service television.

The licence fee is a fee paid by the owners of television sets and is independent of the State budget. In some countries it is called a tax on television and is levied with the electricity bill. Revenue from a licence fee is considered to be the most appropriate model of financing public service broadcasting, as long as there is transparency and accountability over the spending of public money. However, funding from licence fees has also been seriously questioned in countries where this form of universal taxation is not justified by quality, diverse programming, which would sufficiently distinguish the public broadcaster from the programmes of commercial television. (See section II.6.) A fairly common phenomenon – particularly in those transition countries employing the licence fee system for public broadcasting – is a decline in paying the licence fee, due to deficient systems of collecting the fees and to widespread economic hardship, and also to the refusal of householders to pay the fee, as they perceive that they do not receive any value for it.

In many of the countries monitored, licence fee revenues represent the largest part of the public service broadcasters' budgets (see Table 12). Although the licence fee is basically a disguised form of taxation, the fact that it does not come directly from the State budget makes it a legitimate way of financing the public service broadcasters, because it ensures more financial independence. In Hungary, the elimination of the licence fee in 2002 was seen as a negative symbolic message, showing that the incumbent Government was overtly challenging the independence of the public service broadcaster.

Nonetheless, simply introducing a public television licence fee is not sufficient to ensure the financial independence of the public service broadcaster. As long as the level of licence fee is decided by Parliament or the Government, and increasing it requires a change in legislation, the fee can become another tool for States to control broadcasters. In Germany, there is an independent Commission for the Evaluation and Assessment of the Financial Requirements of Public Service Broadcasters (*Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten*). The financing of the Hungarian public service television broadcasters before the scrapping of the licence fee was not satisfactory, as previous Governments repeatedly exerted political pressures on the station, by keeping the licence fee at a low level to hinder the station from

becoming truly independent. The financial independence of public service broadcasting is ensured through establishing a stable and sufficient source of independent funding, linked to economic indicators such as the rate of inflation, and with adequate public representation.

4.6.2 Management independence

Recent years have seen an increasing diversification of the bodies appointing governance structures of the public service broadcasters in transition countries. This is a positive development, as it diluted political control over the broadcasters. (See section II.4.2.) However, the appointment process is still vitiated by political bickering and, as a result, suspicions of political interference with the governors of the public service broadcasters still run high.

In Albania, the union of employees working with RTSH has repeatedly claimed that the election of the General Director is a purely political affair, citing facts that confirm this allegation. In the Republic of Macedonia, despite legal changes in 1997 and 1998 aimed at increasing the level of independence of the public broadcaster's governance structures, the tradition of political partisanship in the public radio and television broadcaster, MRT, has survived, and the managers of the broadcaster are usually close to the ruling parties. Also in Macedonia, as a rule, political parties ensure that top managerial positions are divided among candidates of different ethnic background, who, in turn, owe their nomination to the political parties.

An epitome of the politicised management of a public service broadcaster was the crisis of Czech Television in 2000-2001, which erupted when Jiří Hodač, a journalist allegedly linked with the Civic Democratic Party (ODS), was appointed to head the station. Furious protests by many staff were supported by large street demonstrations. In the end, Hodač resigned and Parliament came under public pressure to change the way of appointing the governing bodies of Czech Television, namely the Czech TV Council, which in turn appoints the station's General Director. The change was that Parliament must appoint the members of the Czech TV Council not directly, as was the case before, but from a pool of delegates nominated by civil society organisations. However, the new system did not bring major changes, as political parties are usually looking for their own candidates from civil society organisations, and in the end push them onto the governing boards. Involvement of civil society in the appointing of the governance structures is, therefore, a step towards greater independence for the governing bodies, but does not guarantee the management's independence.

Another example of the low impact that civil society has made on the structures of the public service broadcasters is Hungary, where the public service television stations MTV and Duna TV are governed by large boards of trustees that also include NGO representatives. In general, the governance structure of these stations is criticised because of its high number of members (a combined membership of 60 for both stations), which blurs responsibility for the decisions made. Besides that, the representatives of NGOs are

selected without any formal delegation mechanism – they lack representativeness, have no media expertise and are often associated with political parties.

Even in a long-established and sophisticated public service regulatory system, such as Germany's, political influence on the governing structures is significant. First of all, political parties are directly represented in the Broadcasting Councils of ARD and ZDF via the State parliaments. Members propelled to the Council by social groups and NGOs also often align themselves with a political party. In Italy, the public service broadcaster RAI has remained, after numerous legal reforms, under the direct and overt control of Parliament, and thus under the influence of the political parties. The situation worsened with the rise to political power of Silvio Berlusconi, the media magnate who controls the largest television operator in the country, Mediaset.

The absence of clear rules on conflict of interest in many countries has a negative influence on the independence of the governing bodies of the public service broadcasters. This is the case in Poland, where the members of the TVP's Supervisory Council are not prohibited from holding other paid positions in TVP itself. This situation allowed members of the Board to often take on other jobs in TVP or TVP-affiliated companies.

4.6.3 Editorial independence

Editorial independence is closely related to the financial and management independence of the public service broadcasters. Without sound financing allowing the public service broadcaster to carry out investigative and solid news reporting and produce high-quality programmes, or management structures guaranteed immunity against external pressures, editorial independence cannot be achieved.

All public service broadcasters operate according to a set of editorial standards and production guidelines aimed at ensuring high-quality programmes, and accurate and unbiased news. These standards are complemented by self-regulatory mechanisms such as journalistic codes of ethics. However, the broadcasters' internal standards tend to be worded very vaguely and serve a merely formal purpose. The editorial independence of public service broadcasters depends on their general level of operational independence and partly also on the journalists' professionalism and determination to serve their public with true and objective reports.

The BBC's programme guidelines have been imported or adapted in many transition countries. These guidelines are governed by the principles of impartiality, accuracy and fair representation of all social groups and individuals. Central to the BBC's editorial policy is the concept of "due impartiality" underpinning a programming culture governed by accuracy, fairness and a respect for the truth. Despite its huge programming output, the BBC has breached these principles only rarely.

The situation of news reporting and editorial independence varies widely. There are countries where the news coverage of public service television has somewhat improved,

but in other countries, the public service broadcasters offer politically slanted, inaccurate, partisan reports. Journalists in the public service broadcasters experience direct or indirect political interference and pressures in their work.

Survey of editorial independence in public service broadcasters

Bulgaria	Journalistic practices in general have begun to be professional, and reporting is usually fair and well sourced. However, the lack of a firewall between management and editorial desk, and pressures from the ruling party have hindered BNT from achieving true independence.
Croatia	Performance of the public service broadcaster has significantly improved, with news programmes on domestic television showing no marked bias towards the governing parties.
Czech Republic	Czech Television's journalists do not experience direct, serious interventions of politicians or management into their work, but accuse MPs of indirect pressures when they openly condemn investigative reports.
Hungary	Political bias is more significant in public service television than in the commercial media. However, the pro-Governmental slant of Hungarian public service television has not had a big impact on the political affinities of the general public.
Albania	Editorial independence in Albania is extremely poor in both the public and the private media, partly due to a lack of self-regulatory mechanisms, which were not adopted because of resistance to them on the part of all post-communist governments.
Latvia	Public television does not provide objective reporting. Its news broadcasts include also comments and opinions. This habit stems from the vague wording of the journalistic standards in the station's Code of Ethics, allowing for opinionated reports to go on air.
Poland	TVP's journalists were subject to direct manipulation by the station's management, who refused to pay journalists or removed their programmes from the schedules if they did not conform to various political demands of the station's management.
Romania	SRTV has been known as the mouthpiece of the Government, which directly controlled and censored the station's news programming. After the general elections in 2004, SRTV has embarked on a major process of restructuring the station, which, it is hoped, will put an end to the Government's intervention into the station's affairs.
Estonia, Lithuania	No examples of political interference in PSB editorial independence.
Italy	Due to RAI's weak management, the station's journalists are vulnerable to attacks from the ruling coalition. Two notorious cases involved the firing of RAI's well-known journalists, Enzo Biagi and Michele Santoro, after the media tycoon and Prime Minister Silvio Berlusconi publicly attacked them.
France	Editorial independence is a matter of practice. When facing pressures, French journalists receive support from unions or professional organisations. A more dangerous development is the relationship between journalists and political sources based on which journalists trade fresh information for news coverage.

5. PRIVATE TELEVISION: CONCENTRATION OF OWNERSHIP

Concentration of media ownership and lack of transparency with respect to who owns what in large media companies are the main impediments to building independent and trustworthy commercial television broadcasters. In some small countries, however, media concentration is held to be the only solution for building sustainable media businesses. The level of concentration is higher in Western Europe than in transition countries, but the consolidation of media outlets is taking place in the transition countries at a faster pace. In other countries, commercial television is financially backed by politicians or is part of larger enterprises, and therefore functions as a tool of pursuing political or business interests. Commercial television across Europe is often criticised for “dumbing down”, sacrificing general quality to the achievement of the largest possible audiences and thus increasing chances to attract advertising money. Journalists working within commercial television in the transition countries are underpaid – although in some cases they earn more than those working for public service broadcasters – and have limited or no labour protection. These factors all compromise the independence of the newsrooms in commercial television stations.

5.1 Obligations

Commercial television operates on the basis of licences issued by domestic broadcasting regulators, which also monitor their output to ensure that private operators comply with the existing legal provisions governing television in each country. (See section III.) Although free to build their own programming schedules and decide their content, commercial stations in Western Europe are usually under some general obligations to serve the public interest. In post-authoritarian countries, the notion of imposing public service obligations on commercial broadcasters is not widespread. These obligations are specified in broadcasting legislation and/or the broadcast licence.

Among the four Western European countries monitored in this report, there were broad public service requirements for commercial channels in the UK and Germany. In France, regulation obliges commercial broadcasters to show particular types of programming, often linked to preserving the national cultural heritage. In Italy there are only minimal obligations of quality for commercial channels.

Both public service and commercial broadcasters are subject to a legal set of general broadcasting content obligations, such as the protection of minors by avoiding showing excessive violence and explicit erotic content before a certain watershed, for instance 21.00 (9 pm). There is also a ban on incitement to ethnic or religious hatred. For EU member States, some of these obligations derive from the EU “Television without

Frontiers” (hereafter, TWF Directive)²⁶ while for non-EU countries, there are relevant provisions in the Council of Europe’s European Convention on Transfrontier Television (ECTT).²⁷ The provisions of the TWF Directive and the ECTT substantially overlap. (See section III.4.)

In some countries, commercial broadcasters are subject to a set of additional programming obligations stipulated in the licence agreement signed when broadcasting regulators grant private broadcasters a licence to broadcast television. (See section II.6)

5.2 Concentration of ownership

(See Tables 14 and 15)

As in any other business, the key driver of private broadcasting is the bottom line. To make money, commercial stations have to attract large audiences, which generate advertising revenues. However, television is not a business like any other: it produces a special type of commodity – news and information – and then distributes it using part of a limited spectrum of frequencies, which form a public resource administered by the State. Furthermore, television is the most influential medium in today’s developed societies and therefore has a crucial role at the societal level, which creates the basis for justifying regulation.

The most negative development in the commercial television sector since the liberalisation of television has been the steady concentration of ownership, which jeopardises television’s diversity and pluralism as well as editorial independence. The concentration of television ownership in a few hands is potentially dangerous, in that it means a concentration of influence that can be used for political, personal, ideological or commercial gains.

Over the past decade, the media industry has seen a series of massive mergers and acquisitions, which led to the consolidation of several large media empires across the continent and threw local markets into the hands of a few media groups. Even where anti-monopoly legislation is in place and ceilings on ownership are enforced, television

²⁶ EU “Television without Frontiers” Directive (TWF Directive): Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in member States concerning the pursuit of television broadcasting activities, 89/552/EEC, OJ L 298 of 17 October 1989, as amended by European Parliament Directive of June 1997, 97/36/EC, OJ L 202 60 of 30 July 1997, consolidated text available on the European Commission website at http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf (accessed 15 March 2005), (hereafter TWFD).

²⁷ Council of Europe, European Convention on Transfrontier Television (ECTT), 5 May 1989 amended according to the provisions of the Protocol (E.T.S. no. 141) of the Council of Europe of 9 September 1998, entered into force on 1 March 2002, available at <http://conventions.coe.int/treaty/en/Treaties/Html/132.htm> (accessed 30 June 2005), (hereafter, ECTT).

corporations have taken advantage of permissive laws, legislative loopholes or weak regulatory mechanisms to maintain and even increase their ownership share. They either hide the traces of their ownership in foreign jurisdiction that protects their secrecy, or employ multi-layered, sophisticated ownership structures to evade any investigations launched by the regulatory bodies.

The level of concentration of media ownership is higher in Western Europe than in the transition countries. Italian commercial broadcasting is the most notorious example, with the company Mediaset, owned by the Milan entrepreneur and current Prime Minister Silvio Berlusconi, owning all three national commercial television channels in the country, Canale 5, Italia Uno and Rete4. In Germany, the 30 per cent concentration threshold for private broadcasters effectively means that legislators accepted a duopoly in private television, which has been developing since the mid-1980s. France faces a constant dilemma on how to reconcile pluralism and diversity in the media with the creation of large French media conglomerates able to compete internationally.

In the past decade, with the opening up of Eastern and Central European markets to private investors, several Western groups rushed into the region and built large television networks. In countries from the former communist bloc, national legislation in the early 1990s forbade foreign ownership, but now conditions for media ownership are much more relaxed, with foreign entities allowed to invest directly in the media. Only in Serbia are there still legal limits on foreign media ownership, which is allowed only 49 per cent in the overall founding capital.

The largest pan-regional television operators in Central and Eastern Europe include the US company Central European Media Enterprises (CME), which in the past 15 years has built a network of nine stations in six countries, the German RTL Group, part of the Bertelsmann media conglomerate, which owns stations in Hungary and Croatia, and plans more acquisitions, the Swedish Modern Times Group (MTG), which operates national stations in all three Baltic states, Rupert Murdoch's News Corporation, owner of the largest Bulgarian television station, and SBS Broadcasting, which operates in Hungary. (See Table 15)

5.3 Cross-ownership

Cross-ownership regulations vary widely. In most of the countries monitored, legislation forbids cross-ownership deals. Usually, a company is not allowed to operate two broadcasters with similar footprints, or broadcasting to households in the same geographical area. For example, legislation commonly forbids operation of two national television stations or two national radio networks. Furthermore, most of the countries have legal provisions against joint ownership of print media and electronic media. In Bulgaria, Lithuania or Poland there are no limits on cross-ownership, however.

In recent years, the Western European trend of building multi-media ventures is reaching the transition countries where there are now more multi-media mergers. Even in countries with legal provisions against cross-ownership, vertical concentration has been augmented as owners use sophisticated ownership structures to hide their ownership. In Slovakia, despite strict legal limitations on cross-ownership, the local media mogul Ivan Kmotrík is said to own shares in three television stations, and also in the Mediaprint & Kapa Pressegrasso company, which is the largest newspaper distribution network in the country.

In small countries, concentration of media ownership is often not considered to be a threat. Media policy-makers in Estonia, for example, argue that in such small markets, media companies would not be able to survive if they did not consolidate their various businesses. Yet Estonia presents a considerable vertical and horizontal concentration in the media, with the Norwegian group Schibsted operating the largest media enterprises in the country. Another argument supporting the need for cross-ownership consolidation came from the Polish company Agora – the publisher of Poland’s leading daily newspaper, *Gazeta Wyborcza*, and operator of a network of local radio stations – which said that the real threat to media pluralism is represented by cross-ownership ventures owned by multinational media giants, and not by domestic firms.

5.4 Transparency of ownership

Another inadequacy of the commercial television markets is the lack of transparency of media ownership, which can hide from the public eye potential conflicts of interests and owners’ interference with the stations’ programming. One of the frequent methods of hiding ownership is registration of the media company in offshore countries such as Cyprus, or countries such as Switzerland, where confidentiality of ownership is guaranteed. In Bulgaria, the real owners of many media outlets are unknown, as they register the outlets under the names of offshore companies. In Romania too, many television stations hide their ownership in foreign countries. In the past two years, under pressure from civil society, the Romanian broadcasting regulator forced several television companies to disclose their ownership, but media ownership is still far from clear. In Serbia, one of the new “oligarchs”, Bogoljub Karić, together with his brothers, owns BK Telecom, a national television channel, known for its conservative stance and formerly for its support for the former Milošević regime, but again and again there are rumours that their company has undisclosed shares in weeklies and other print media.

Introduction of legal provisions empowering broadcasting regulators to examine all the ownership layers of broadcasting players could be one solution for shedding more light on the sector. At the same time, such steps as establishing central publicly available databases of media owners, and enacting more drastic sanctions for broadcasting companies hiding ownership data or providing false ownership data, could help to make the sector more transparent.

Hiding under foreign jurisdictions should not mean that broadcasters can breach national requirements to be fully transparent. Even if a company owning a television station is formally registered in Switzerland, where confidentiality of ownership is ensured, there is nothing preventing the regulator in the country where this station operates from obliging the broadcaster in question to disclose its ownership.

5.5 The marketplace

(See Tables 15, 16)

Commercial television is funded from advertising and other commercial revenues, such as sponsorship and teleshopping. In the media market, television was the sector that has acquired the largest part of the advertising revenues over the past decade, and its share continues to increase, to the detriment of other media, such as print media, radio and outdoor.²⁸

Italy is the largest advertising market in terms of advertising spending per capita. Although the discrepancy between Western markets and transition markets remains high, the advertising markets in the transition countries have been growing fast. In advertising expenditure per capita, Hungary comes second after Italy among the countries studied in this report (see Table 15). Albania and Bosnia and Herzegovina still lag behind their peers in the region. In most of the countries, television pulls in more than half of the national total advertising spending. Only in the four Western European countries analysed in this study (France, Italy, the UK and Germany), the Czech Republic, and two Baltic countries (Latvia and Estonia), does television attract less than half of this total. Except for Bosnia and Herzegovina, and Poland, commercial television attracts the largest share of total television advertising in the other countries.

It is important to note, however, that the data on advertising expenditure (for 2003) in Table 15 is based on gross figures. In many transition countries, these figures are not reliable, as they are based on the official tariffs that television stations provide to advertisers and do not include the (extremely widespread) discounts, barter deals or commissions offered or charged by advertising agencies and media-buying companies. In these countries, the real, net figures are much lower. Marked differences between net and gross figures appear in countries such as Turkey, Romania and Hungary. Although not that marked, differences between gross and net figures of advertising revenues exist also in Western European markets.

5.6 The independence of commercial television

The launch of private television has fundamentally changed the television landscape in the transition countries, and forced the former State broadcasters to rejuvenate their programming in order to survive the competition. In the early days of their operations

²⁸ IP International Marketing Committee, *Television 2004*, p. 46.

in these countries, some commercial broadcasters pioneered dynamic news and political programmes and brought investigative reporting to these nations. Today, however, commercial television is usually not a reference for solid investigative journalism and quality news programmes, as these stations, in their efforts to attract ever-larger audiences, have resorted increasingly to low-quality entertainment and sensationalist newscasts.

Self-regulatory mechanisms in commercial television in transition countries are few in number, and journalists staffing these stations are often targets of direct or indirect pressures. ANEM, the Association of Independent Electronic Media in Serbia, is one of the few examples of private broadcasters formulating a code of ethics. Clear labour regulations are lacking in many countries, and journalists are underpaid and have to accept that tacitly, because the working offers in their countries are limited. As a rule, foreign broadcasting media companies offer working conditions to their staff in transition countries that would be considered sub-standard in their countries of origin. Associations of Journalists and trade organisations in Croatia, Serbia and other countries have often complained because of that. Journalists often fear for their jobs, as collective bargaining, trade union protection and similar forms of Western industrial relations have not yet taken hold in many transitional countries. In such a precarious environment, and against the background of widespread political interference in programming and economic pressures, self-censorship thrives.

In Romania, in-depth political and current affairs programmes and talk shows have been removed from the schedules of commercial television stations, replaced by low-quality “political cabarets” mixing political debate with variety shows. Commercial stations justify this programming, saying that their sole indicator of success is the audience share, and that viewers want such programming. On the other hand, broadcasters air more light entertainment and “goof” (poor-quality) television, because this avoids covering controversial political and economic issues that could draw the ire of influential politicians and businesses, which back them through favourable regulation or advertising contracts.

Media owners’ links with other businesses also have a negative impact on editorial independence, because the owners use their outlets to advance their other business interests rather than to serve their viewers. That is the case in some transition countries, including Romania, Albania, Serbia and the Republic of Macedonia, and also in Turkey, where, because television is not usually a sustainable business, media outlets are either backed by political circles or are part of larger companies, the owners of which have invested in other sectors and use the media only as a tool with which to pursue their business interests.

6. TELEVISION PROGRAMMING

Television programming is changing fast to keep up with public tastes and to reflect industry innovation and competitiveness. Under the pressure of commercial television competition, public service broadcasters are producing and airing increasingly commercial programmes and therefore they increasingly resemble their commercial rivals. Commercial television produces tabloid newscasts as a way of both attracting audiences and avoiding coverage of sensitive issues, which would jeopardise their business. Investigative journalism is marginal in both public and commercial television. Minority programming is allocated small and unattractive timeslots on public service television and is non-existent on almost all commercial television.

6.1 Changing formats

The main trend in television programming is the incessant search for new programme formats coupled with a reckless commercialisation of content. In an increasingly competitive mass media market, with innumerable outlets fighting for audiences, television strives to attract viewers through innovative, dynamic, frequently sensationalist programming. Channels are continuously reinventing themselves. They hybridise television formats, mixing highbrow programming, such as news or political debates, with light entertainment, such as variety shows. They build newscasts on a markedly tabloid structure, highlighting sensational and freakish items while removing from the schedules in-depth, hard investigative reports, which are time-consuming and expensive to produce. The typical programming of generalist commercial television consists of reality shows, commercial films, soap operas, quiz shows, local entertainment and advertising.

In an environment dominated by increasing media concentration and competition from the commercial media, the role of public service television, as repeatedly declared by the Parliamentary Assembly of the Council of Europe, is to boost diversity and pluralism and deliver programmes for the entire public, including minority and cultural programming, in-depth investigative reports, news and information, children's programming, regional news and drama.²⁹ By doing so, public service television enhances social, political and cultural citizenship and promotes social cohesion.

However, in reality, a number of public service televisions have engaged in competition with commercial television, and, instead of forging new identities that would distinguish them from commercial broadcasters, public service broadcasters copy the programming pioneered by commercial television.

²⁹ Council of Europe, Parliamentary Assembly Recommendation 1641 (2004) on Public Service Broadcasting, adopted on 27 January 2004.

6.2 Public service television

Although a specific remit and obligations are imposed by law on public service broadcasters, their programming increasingly resembles commercial television content, particularly in the transition countries. In the past decade, public service television broadcasters have made some improvements in their programming, airing more news and current affairs programmes, documentaries and religious and minority programming than commercial stations do. However, with competition from commercial television becoming fiercer, public service television broadcasters have progressively increased the ratio of low-quality entertainment, while moving cultural and minority programming to unattractive timeslots. Nonetheless, it has to be said that some of the leading Western European public service broadcasters, including the BBC, ARD and ZDF, have managed to sustain clear programming profiles and ratings success, without succumbing, notably, to down-market demands.

In Slovenia, for example, the public service broadcaster used to offer a mixture of highbrow and popular content, but after the launch of commercial television, it started to air more commercial formats such as game shows and European soap operas.

TVR 1, the first channel of the Romanian public service broadcaster SRTV, airs low-grade comedy shows and local reality shows, which score large national ratings. Besides TVR 1, SRTV runs two more terrestrial channels, TVR 2 and TVR Cultural, the latter airing exclusively programmes on cultural issues.

This formula, with one channel airing more commercial content complemented by other channels airing more public service programming, is employed by public service television networks in several European countries. The first channel of Czech TV, ČT1, is a generalist channel, cramming all kinds of programmes in its schedules, including news, drama, commercial series and films, entertainment shows and children's programmes, while the station's second channel, ČT2, focuses on programmes for minorities, sports, music, documentaries and independent films. A similar formula is employed in Slovakia, where the second channel of the public service television station STV, Dvojka, focuses on smaller target groups, airing music and sports, programmes for national minorities, religious programmes and documentaries, while the station's first channel, Jednotka, resembles a commercial television station, airing entertainment shows, blockbuster cinema films, family shows, gossip magazines and reality shows.

On the first channel of Serbia's public broadcaster, RTS, news programmes occupied a large part of the schedules, but their amount has decreased steadily in reaction to competition from commercial stations, chiefly TV Pink, which, since its launch in 1994 has set the trend for commercial television in the entire region. Its unsophisticated philosophy, "no news, no sports, just entertainment", has proved to be a sweet success. After 2000, Pink began to produce news programming, trying to distance itself from a schedule overloaded with advertising and banking on cheap entertainment. However, it maintains a predominantly entertainment-oriented profile.

It launched stations in Bosnia and Herzegovina and Montenegro, becoming the only pan-regional station originating in the region.

Programming is directly influenced by the financing of public service television. Ensuring a stable, long-term source of funding is a major incentive for the public service stations to fulfil their role. In Estonia, the complete removal of advertising from the schedules of the public service station ETV in 1998 helped the station to change its identity and become a more public service-oriented station, airing more reports on local issues and children's programmes, to the detriment of low-quality entertainment. ETV's representatives claim that ETV redefined its role so as to attract the country's intelligentsia, and that the audience has increased in this segment.

In Western Europe, public service broadcasters have a more distinct voice than commercial stations. In Germany, for example, public service broadcasters ARD and ZDF are by far the leaders in providing information programmes, while commercial channels lead in non-functional entertainment and fill up to one fifth of their airtime with advertising. German public service channels have in general a more balanced mix of programme genres. However, they are regarded as being slightly duller than commercial stations, which boast a more youthful image. In France too, public channels have managed to build a somewhat distinct image in the broadcasting scene. They regularly air political debates and programmes that are non-existent on commercial television, have an extensive coverage of sports and, thus far, have refrained from airing reality TV. The Italian public service network RAI also produces and airs a large amount of drama and entertainment, and a remarkable amount of news and information programmes, including education and sports, plus programmes for minorities. However, in the past three years, RAI aired an increasing number of purely commercial programmes, such as reality shows.

6.3 Commercial television

(See Table 17)

Commercial television everywhere uses a similar formula, based on tabloid news, reality shows, commercial films, soap operas, cheap South American "telenovela" soaps, quiz shows and low-quality comedy shows. Geared towards mass audiences, many commercial stations are removing from their schedules investigative reporting and programming for minorities and niche segments. The educational and cultural element has almost disappeared from commercial television.

The decline in quality of commercial programming is due to a certain degree to inefficient regulation. In some countries, such as the UK and Germany, broadcasting licences come with obligations regarding content. All the terrestrial commercial broadcasters in the UK have public service broadcasting obligations, and are regulated within a framework that obliges them to supply a service that is governed by a set of programme principles and guidelines that are required by law. As part of their contractual conditions, therefore, the free-to-air broadcasters are all regulated according

to principles that aim to ensure a high-quality mix of programming that reflects the needs and tastes of a diverse audience. In recent years these requirements have been somewhat diluted. In Germany, regulatory authorities can and do oblige commercial channels to air high-quality programmes by independent producers, often in the best evening slots. In France, commercial television and radio stations are bound to a set of obligations stated in their licensing contract. For example, the largest television channel in the country, TF1, is obliged by the licensing contract to air at least 800 hours of news and current affairs programming per year.

However, in many other countries similar obligations are often vaguely worded, allowing private broadcasters to evade them. In the Czech Republic, for example, the law does not invest the broadcasting regulator, the Council for Radio and Television Broadcasting (RRTV), with the power to compel commercial stations to respect their licence conditions. As a result, the largest commercial station in the country, TV Nova, despite pledging to air “intellectual content”, instead airs typical commercial programmes, and has become the common denominator for the lowest quality of programming.

Commercial broadcasters are subject to few legally imposed public service obligations. In Bosnia and Herzegovina, Bulgaria, Latvia, Lithuania, the Republic of Macedonia, Poland and Slovakia, private broadcasters have no legal public service obligations. In other countries, such as Romania, public service obligations are very general (airing objective information and upholding political and social pluralism) or formal (broadcasting, free of charge, State announcements serving the public interest), and therefore have no impact on the general programming of the stations. Quite detailed public service obligations on commercial television exist in Hungary, where the law obliges commercial stations to air “public programmes” on at least 10 per cent of daily airtime, and at least a 20-minute newscast and 25 minutes of public programmes in prime time. The law clearly defines “public programming” as news or programmes for children and teenagers, information helping citizens in everyday life, works of art, programmes serving freedom of religion, etc. However, even with such detailed public service obligations, the content of Hungarian commercial television has remained focused on lowbrow genres.

6.4 Quotas

6.4.1 European quotas

The main EU regulatory framework in television programming consists of the TWF Directive and the European Convention on Transfrontier Television (ECTT). (See section III.4.3.) The TWF Directive has been incorporated into national legislation, and domestic broadcasters comply with its requirements. However, in some transition countries there has been inadequate monitoring of the TWF Directive implementation. In Slovenia, RTV Slovenia fulfils these quotas, but because of lack of monitoring, it is not clear whether commercial television channels comply. Although it helped to promote European content, the Directive’s influence on programme quality was not marked.

Broadcasters in many countries have chosen to fulfil the European quota requirements by airing a great deal of local production, which is mostly cheap to produce.

6.4.2 Minority quotas

Minority programming is little-promoted on mainstream television. Nowhere are quotas imposed on commercial broadcasters for any programming directed at linguistic and ethnic minorities. Furthermore, although minority programming should be a priority on public service television (because of its universal obligation to cater for all sections of society), only in Macedonia has legislation imposed quotas for minority programming on the public service broadcaster. Similarly in Serbia, although no quotas are assigned for programming in minority languages, public service broadcasters are obliged to “adhere to linguistic and speech standards not only of the majority population but also, proportionately, of national minorities and ethnic groups in the area where the programme is being broadcast”. In all the other countries, the public service broadcasters only have broad requirements to include minority programming in their schedules (see Table 18). Such is Hungary, where minority programming is considered to be a “public programme”, and Romania, where the public service broadcasters have a general obligation to dedicate programmes to national minorities. In Slovakia, the public service television broadcasters are obliged by law to cover minorities, and in Slovenia, the public service broadcaster is only required to ensure that its minority programming reaches 90 per cent of the areas inhabited by Hungarian and Italian minorities. There is also the case of Italy, where quotas and obligations on minority programming are imposed on RAI in bylaws and service contracts.

6.5 Independent news and investigative reporting

Although there have been improvements in the degree of independence of newsrooms both in public service television and commercial broadcasting, news production is still under pressure from the market and from political agents and owners, and investigative reporting is marginal in most television stations.

For many stations in the transition counties, public service and commercial alike, the tabloidisation of newscasts has become a way of avoiding reporting on sensitive issues. In Hungary for example, commercial television stations chose to be *apolitical* – meaning that they do not discuss parliamentary politics – instead of being *politically neutral*. The same situation exists in Romania, where for years commercial television stations, indebted to the State budget for failing to pay their tax arrears on time, chose to cover peripheral topics or “soft” news, such as accidents and cases of theft, rather than sensitive political issues, which would upset influential political and business elites. Furthermore, reporting by many commercial stations is slanted in favour of the station’s owners or their allies. Such is coverage in Turkey, where private broadcasters often take an editorial line that favours their owners’ interests.

However, there are also some cases of solid reporting and high-quality news production in the transition countries. The Slovakian public service station STV, after the change of its management in 2003, introduced qualitative investigative reporting programmes such as *Reportéri* (“Reporters”), which soon gained a solid reputation. Another example is the Serbian broadcaster, B92, which has consistently focused on information and investigative journalism.

In Western Europe, public service broadcasters are better at fulfilling their programming obligations, and in some countries, they have built up a distinctive programming in comparison with commercial stations. However, solid investigative reporting is still rarely seen.

6.6 Niches and alternatives

Another trend in television is the emergence of niche channels, which are gaining rapidly in popularity. All-news channels, for example, have opened at a rapid pace in the transition countries, such as Romania (Realitatea TV and N24), Slovakia (TA 3), and the Czech Republic (ČT 24). Although their audiences are low compared to mainstream outlets, they boost diverse news and information programming. Some of these stations have been praised locally for providing relatively reliable and impartial news, such as Realitatea TV in Romania and B92 in Serbia.

6.7 Local television

In transition countries, local television is in dire financial straits. As the bulk of the advertising budgets goes to the national television stations, which control the largest part of the national audience, local stations have come under the control of municipalities or have become tools to promote the interests of their owners.

In Serbia, the local media have been repeatedly exposed to the influence of the local authorities, and continue to operate under extreme uncertainty, a situation that has only been exacerbated by the postponement of the legal deadline for their privatisation. In August 2005, Parliament approved changes in the Broadcasting Law extending the privatisation deadline for local media until the end of 2007.

Broadcasting regulators lack resources to monitor the programming of local and regional television stations. Journalists working with local stations lack contractual protection and are paid low salaries. To survive, local television stations are affiliated to national commercial television stations and provide them with local news feeds, but are unable to air their own programming.

6.8 Community media

A new reality in broadcasting is the emergence of community media, consisting of local media outlets run by NGOs, non-profit organisations or minority communities. However, they usually lack resources and are hardly ever awarded broadcasting licences and authorisations to broadcast. Efforts to galvanise the organisation of community media at a pan-European level have intensified. They included the campaign for the establishing of a transnational network of minority community media, officially launched on 18 December 2003, which then culminated in releasing a European Manifesto of community media during the European elections of 2004.

In the Manifesto, the minority community media called on the European Commission, the European Parliament and the Governments of the member States to recognise the minority media as a public community service, and that the “must carry” status should be granted on all relevant broadcast platforms. They also called upon policy-makers to ensure that minorities receive media in their own language.³⁰ The campaign is supported by the European Commission’s Community Action Programme to Combat Discrimination (2001-2006). Although there are no exact figures available on the community media, it is estimated that there are thousands of such outlets in the EU, reaching millions of viewers, readers and listeners.³¹

7. MULTI-MEDIA AND NEW TECHNOLOGIES

Rapid technological progress in the communications sphere presents many challenges to traditional broadcasting. The rapid advances in mobile telephone use and computer software have boosted new platforms such as Internet and mobile communication, which in the near future will be able to carry television content. This will necessitate a new concept of regulation. The most significant development in the terrestrial television industry is digitalisation, which has developed rapidly in Western Europe in the past two years. The new broadcasting technology replaces analogue with digital signals, that can be easily used by various media platforms, such as the Internet or mobile telephone devices. In transition countries, digitalisation is a slow process, however. Although there are some incipient State strategies for digitalisation, and limited testing has been carried out, in most cases there is no clear policy, and the debate on the introduction of digital broadcasting occurs among a limited number of specialists and researchers.

³⁰ The Manifesto is available online at <http://www.multicultural.net/manifesto/index.htm> (accessed 30 August 2005).

³¹ For more information on community media initiatives, see http://www.multicultural.net/minoritymedia_project_info.htm (accessed 30 August 2005).

Altogether, digitalisation is expected to spark new competition in broadcasting across Europe. It is not clear yet how digital television will be funded and what exactly its implications for broadcasting regulation will be. However, it is clear that an early switch-off of analogue signals in some European countries is not a realistic scenario, because of the slower rate of shift to digital.

7.1 Market review

(See Tables 19 and 20)

Besides terrestrial television, the most-used platforms for delivering television are cable and satellite. The expansion of these platforms has been significantly different in different countries, depending both on State policy in the communications field and on local geography.

In Western Europe, there have been several patterns of development of cable and satellite, which took off mainly in the 1980s. First, there are countries, such as Germany, that have invested massively in both cable and satellite distribution to expand their television offering. Another pattern of the development of cable and satellite penetration is found in the southern countries, such as Italy where there is almost no cable connected or small satellite penetration.

In post-communist countries, cable and satellite penetration is still low and a large part of the population takes its television from terrestrial channels. Countries with low penetration of cable and satellite include Croatia, the Czech Republic, Lithuania, the Republic of Macedonia, Serbia and Montenegro, Slovakia and Turkey (see Table 18). However, cable television has been steadily growing in a few countries in this region, such as Romania, Bulgaria, Hungary, Poland and Slovenia. Satellite television penetration is low, in both CEE and SEE, with only Croatia enjoying satellite coverage of over 25 per cent.

Regarding all means of communications, the telecommunications industry has seen a bold growth over the past five years. More than half of these countries' households had a telephone line in 2003, except for Albania and Lithuania (where mobile telephone use is high). More than half of their populations owned a mobile telephone that year, except for Bulgaria, Albania, Macedonia, Romania and Serbia and Montenegro. However the mobile telephone industry is one of the fastest-growing in the region.

The most promising growth is expected from the Internet, which has enjoyed great expansion in recent years. The average Internet usage in Western Europe was 46 per cent in 2003, as compared to 13 per cent in CEE. However, Internet penetration has increased extremely rapidly in the past two years, and its enhanced capability to carry all kinds of communications, including radio, television and voice services, makes it the medium with one of the highest potentials for growth in the future communication industry.

With the online market burgeoning in 2003, the industry has seen more intense efforts on the convergence front. Cable operators were the first in Europe to connect households to cable modem services, putting Internet and cable television in a single package. They were followed by the telephone companies that launched DSL services in 2002. By the end of 2002, the DSL households exceeded the number of cable modem households.³²

The marriage of the Internet and television, which suffered a blow when the dot.com bubble burst in spring 2000, is re-emerging as a real opportunity for the future transmission of television. Companies such as Microsoft launched software and set-top boxes able to capture Internet protocol TV, which would air programming assembled by broadcasters for this specific platform. As of 2005, telephone companies have been working on offering television content on mobile telephone screens.

Although all these new platforms are in their infancy, technological advancement is posing great challenges to traditional television, as television content will be made available on almost any communication gadget. It also raises questions related to the following:

- regulation of television (as much of this new environment is not regulated and may prove to be practically impossible to regulate);
- the future role and influence of television in society (as the number of content producers and providers will be virtually unlimited);
- the impact of advertising and content in general (as new technologies will allow the rewinding or skipping of programmes);
- the stability and feasibility of the industry (as an indefinite number of players will have access to the communication channels).

However, before these convergent technologies fully get off the ground, traditional television – terrestrially transmitted, free-to-air – is preparing for digitalisation, a major technological change in the radio spectrum that is expected to vastly increase the number of television channels that households receive on traditional sets.

7.2 The digital revolution

In a speech on Europe's new broadcasting landscape held at the European Media Leaders' Summit last year, Viviane Reding, European Commissioner responsible for the Information Society and Media, expressed optimism regarding digital television in Europe,

It seems that every generation has a media revolution. To the pre-Second World War generation it was radio. For the post-war generation it was

³² European Audiovisual Observatory, *The Yearbook 2004*, p. 43.

television. For the young people of today it is digital. Now, ten years into the digital revolution, it is clear that its impact will be at least as profound as the radio and television revolutions that preceded it.³³

After a slow start in 2000, with several digital television packagers going bust, digital television has picked up and already secured a total market share of 14 per cent in Europe.

Digital broadcasting will improve picture and sound quality and mobile reception. It uses the spectrum more efficiently and will therefore be able to offer more television and radio channels on the same frequency, along with enhanced information services, including interactive television services, such as online shopping, multiple viewing angles and live betting. There are digital transmission standards for satellite, cable and terrestrial television.

In order to use the frequency spectrum more efficiently, for example by releasing some frequencies for telephone use, the European Broadcasting Agreement, Stockholm, 1961, needs revising. This is planned to happen at the ITU Planning Conference scheduled for 2006. The new frequency distribution plan will deal with digitalisation without the constraints imposed by analogue transmission (such as limited content on a single frequency), and will have to ensure that digital services are protected from interference.

In general, the business model for digital television that is gaining ground is free-to-air television, which has so far been beating the pay-TV model. The popularity of this model prompted manufacturers of technical devices to produce cheaper set-top boxes that households need to buy in order to receive digital signals. But such low-cost digital devices will not allow viewers to use the advanced interactive services that digitalisation is promising. To be able to receive the digital signal, viewers need to buy either a set-top box converting the signal or a more expensive integrated digital television set.

Although digital television has lately made significant progress, media experts do not expect the huge increase in the number of channels that was predicted in the early days of digitalization, because Europe is culturally diverse, and also divided into small population groups, to allow such expansion at an affordable cost.³⁴

The European Commission is striving to accelerate digitalisation, and has proposed 2012 as the deadline for member States to phase out traditional analogue terrestrial broadcasting.³⁵ The switch will mean also changes in regulation of television. In 2003,

³³ Speech at “Business without frontiers: Europe’s new broadcasting landscape”, European Media Leaders’ Summit 2004, London, 7 December 2004.

³⁴ Didier Lefèvre in: IP International Marketing Committee, *Television 2004*, p. 54.

³⁵ European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on accelerating the transition from analogue to digital broadcasting (from digital “switchover” to analogue “switch-off”), COM(2003) 541 final, 17 September 2004.

the Commission launched a far-reaching consultation on the revision of the TWF Directive, the main document regulating television content in the EU. The conclusion of this consultation was that the principles underlying the Directive – safeguarding cultural diversity, protection of certain categories of viewers, and free movement of services – will be still valid in the digital market.³⁶

7.3 The status of digitalisation

(Table 21)

The development of digital television varies dramatically across the continent, with Western Europe leading this revolution. Some market players, policy-makers and media observers were sceptical about the success of digitalisation, predicting that households would be slow in purchasing new devices to watch television, and that such a broadened television offer would not be sustainable, as the viewing time cannot increase exponentially to match the expansion of television programmes promised by digitalisation.

However, digitalisation seems to be a one-way ticket, due to the ceaseless rise of new technologies and pan-regional plans of redistribution of frequencies. The positive side is that digitalisation should sharpen competition in Europe's concentrated television markets, where a limited number of players control the bulk of viewers and advertising revenues. Yet digitalisation also poses numerous challenges to regulators, as there is a danger that the current dominant positions in the television markets will be further entrenched if today's leading stations are granted enough licences to maintain their dominance also in the future digital markets.

Fast West

In Italy, the two dominant players, the public service station RAI and Berlusconi's media giant Mediaset, are trying to snatch up digital licences, with the aim of consolidating their market position. Their efforts are supported by the Government, which has opted to subsidise digital set-top boxes, apparently with the aim of speeding up digitalisation. Such measures are likely to consolidate the dominance of the two broadcasters well before 2010, the earliest date for switchover to digital.

In France, the broadcasting regulator, the High Council for Broadcasting (CSA), has already granted digital licences to eight different private operators. The public broadcasters have received digital licences as well. Terrestrial digitalisation was launched in France in March 2005, when in addition to the existing terrestrial channels, seven free-to-air channels started digital broadcasting. Analogue broadcasting will be switched off when digital television has reached at least 80 per cent of the total population. It is, however, still unclear how digital channels will recoup their

³⁶ Commissioner Reding, speech at "Business without frontiers: Europe's new broadcasting landscape", European Media Leaders' Summit 2004, London, 7 December 2004.

investment. Furthermore, among the current players, the dominant TF1 in particular is challenging digitalisation on technical grounds, as it fears the competition that it is likely to bring.

The UK is in the vanguard of digital developments and has one of the most ambitious plans to scrap analogue transmission. In the third quarter of 2004, digital penetration in the UK reached 56 per cent. The digital pay-TV market is sluggish compared to free-to-air platforms. Taking over the digital licence of ITV Digital, which folded in 2002, Freeview offers a free-to-air model, with the opportunity to subscribe also to premium channels such as film and sports channels. Freeview is a consortium of the BBC, Crown Castle and BSkyB. Besides Freeview, the BBC has introduced over the past years several new digital channels such as BBC3, BBC4, CBeebies, CBBC, BBC Parliament and BBC News 24. All these are pegged as auxiliary services to the BBC's mainstream channels and are still being assessed.

In Germany, digital television has made a slow start despite general support by broadcasters, infrastructure operators and the makers of technical devices, which want to stick to the official deadline for analogue switch-off set by the Federal Government for 2010. The region of Berlin/Brandenburg has been the first worldwide to complete the switch-off of analogue transmission in 2003. Public broadcasters have been involved in digital developments since the very beginning, but private players such as RTL or ProSiebenSat.1 have shown no special interest, as they realise that digitalisation will reduce their advertising revenues. At the end of 2004, Germany had just over five million digital households, or 15 per cent of total television households, which was double the number in 2002, but still not a breakthrough.

Slow East

In the post-communist states, digitalisation lags behind. In many countries, there is no articulated policy for digitalisation, and public debate is non-existent.

In Croatia, Bosnia and Herzegovina and the Republic of Macedonia, there is still no public policy or action plan for digital broadcasting switchover. In Albania, despite the lack of guidelines and legal framework for the launch of digitalisation, a television station, Digitalb, started to air digitally after the domestic broadcasting regulator prepared a draft strategy to develop digital television, which proposed switching off the analogue signal between 2016 and 2020.

The broadcasting regulator in Bulgaria, the Council for Electronic Communications, adopted a Statement on digital terrestrial broadcasting, which mapped out the future map of digital channels, and a digital pilot project to test the digital signal is under preparation.

Besides a strategy document for RTV Slovenia in 2004-2010, which mentions the public broadcaster's obligation to provide digital radio and television channels, there are few plans for switching from analogue to digital signal.

In the Czech Republic, digital broadcasting was tested in 2000, and a year later the Government put together a policy paper detailing the plan of transition to digitalisation. The advertising industry, which has craved greater competition on the Czech market, expects digitalisation to dismantle the concentration of the television market. However, there are serious concerns that the current large players, particularly TV Nova, will use their influence to seize much of the digital spectrum in the future. The first digital licences were to be awarded in the Czech Republic during 2005.

Some peripheral tests of digital terrestrial broadcasting were first carried out in Hungary in 1999, and switchover is slated for 2012. In 2004, the State-owned transmission company Antenna Hungária was given a green light to start experimental terrestrial digital broadcasting of the programmes of the three public service television channels.

The Lithuanian broadcasting regulator, the Radio and Television Commission, started to issue digital licences in 2004. However, Lithuania still lacks a policy for digitalisation. Digital broadcasting was tested in Latvia in 2002, but the whole process finished in a stalemate after the eruption of a dispute between local government and the British company Kempmayer Media Ltd., which was chosen to install the terrestrial digital broadcasting network. In September 2004, the Broadcasting Council released a new strategy for digitalisation, which is, however, vague and does not mention any timeframe for the roll-out of digitalisation. In Estonia, digital television was tested as of May 2004, but the experiment was terminated in early 2005 for financial reasons. According to a policy document on digital television, fully digital television broadcasting is to be in place by 2015.

Romania started experimental digital television in 2002, but local experts say that digitalisation is a “non-starter” in the country, as it lacks substantial investment and a serious debate involving all parties – including television broadcasters, the regulators, civil society organisations and the Government. Besides the experimental digital television, there is no Government plan or strategy for digitalisation. Poland started to look into digital television in the late 1990s, identifying a strategy on digitalisation as early as 1997. In 2001 and 2003, the domestic Broadcasting Council prepared two official plans for the development of digital television. In May 2005, the Government approved a national strategy for the transition to digital, under which analogue broadcasting is scheduled to cease by 2015. The first project for a digital multiplex was launched by Polsat in cooperation with TVN. In Slovakia, the Government set up in June 2001 an interdepartmental Working Group for Digital Broadcasting (SKDV) and at the same time released a strategy document for the implementation of digitalisation. The document foresees a total analogue television switch-off by 2015 at the latest. Four pilot projects to test digitalisation were launched in 2004. The launch of regular digital broadcasting is set for 2006. In late 2002, the Turkish broadcasting regulator released an action plan and a road map on digitalisation of broadcasting, foreseeing switchover by 2018.

Scarce debate

In transition countries, debate on digitalisation is scarce, and, when it occurs at all, it is usually restricted to media researchers and specialists, the advertising industry and policy-makers. Civil society groups in some countries have made efforts to raise public interest in the issue, but with little apparent success to date.

This lack of debate reflects the low visibility of digitalisation in the relatively under-developed broadcasting landscapes of the transition countries, as well as the high levels of public and professional indifference towards public service broadcasting as such. Nonetheless, it is regrettable, given the inevitable impact that digitalisation will have on public service broadcasting. The multiplication of communications platforms and content providers, hugely increasing television consumer choice, will erode the profit margins of commercial broadcasters, undermining the rationale for imposing public service obligations on them. As for the mainstream public service broadcasters, funded by licence fees or the State budget, they will face other kinds of unavoidable pressure from the proliferation of choice, the devaluation of the analogue spectrum and the continuing growth of satellite and cable subscriptions.

So far, the clearest forward thinking on these matters has occurred in the UK, where the national regulator, Ofcom, has issued several reports on the prospects for public service broadcasting in the imminent digital era. Although it addresses the UK context – where all national terrestrial television broadcasters have public service obligations and where public service broadcasting is incomparably better placed than in the transition countries – Ofcom’s analysis is relevant wherever commercial broadcasters are bound by public service obligations. After observing that public service broadcasting has been sustained by a “delicate balance” of institutions, funding and regulation that “will not survive the move to the digital age”,³⁷ Ofcom proposed that “a new model of provision will be needed in the digital age if public service broadcasting is to maintain its unique ability to reach millions of people with a plurality of suppliers providing distinctive content.” Boldly, Ofcom stated that “PSB should in future be defined in terms of purposes and characteristics, rather than in terms of specific types of programmes or the output of certain institutions”. Concretely, this new model might take the form of “a new publicly funded service”, called a Public Service Publisher (PSP). The PSP would have “a remit to pursue public purposes with innovative ideas”, in order to “enhance public service broadcasting in the post-switchover world”. It would “explore new ways of contributing to public service purposes, unencumbered by the need to protect existing television channels”, for example by commissioning material for digital distribution on different platforms

³⁷ The quotations in this paragraph are from: Ofcom, *Review of public service broadcasting, Phase 2 – Meeting the digital challenge*, executive summary and recommendations, 28 September 2004, available at <http://www.ofcom.org.uk/consult/condocs/psb2/psb2/execsum> (accessed 12 August 2005.)

(competing with the BBC's digital services).³⁸ This is an issue that will certainly provoke more research and debate across Europe, in particular about the possible impact that this step would have on the quality and broad appeal of the content of public service broadcasting and on public support for public service broadcasting as such, including support for the licence fee.

³⁸ An independent assessment of this proposal commissioned by the BBC argued that the PSP concept would have more obvious benefits if it had an explicitly regionalist remit, to offset the likely cuts in regional and local public service programming by commercial broadcasters under the pressures of digitalisation. See: *Independent assessment of Ofcom's PSP proposal*, commissioned by the BBC, November 2004, available at http://www.bbc.co.uk/thefuture/text/spectrum_psp.htm (accessed 12 August 2005).

III. European and International Broadcasting Regulation

1. INTRODUCTION

Television broadcasting is subject to regulation by various international and European bodies. At the international level, the legal frameworks of the World Trade Organization (WTO) and the United Nations (UN) need to be considered. At the European level, regulatory competence lies with the European Union (EU) as well as with the Council of Europe (CoE). All these bodies have adopted legally binding conventions, as well as non-binding declarations and recommendations that are relevant to broadcast regulation.³⁹ In addition, numerous additional recommendations and declarations have been issued through such intergovernmental fora and international bodies as the Organisation for Security and Cooperation in Europe (OSCE), the United Nations (UN) Human Rights Committee, the UN Commission on Human Rights and the special rapporteurs on freedom of expression and the media appointed by the OSCE and the UN.⁴⁰

The result is a profusion of international instruments, the binding legal force of which varies. All international treaties and some instruments adopted by the EU⁴¹ are strictly binding in international law. Of the other instruments mentioned, although none have the strict binding legal force that international treaties do, some are considered to reflect international custom, and their provisions are binding for that reason, while yet others may be used to interpret the precise nature of a legally binding treaty provision and attain some binding force through association with that treaty. Even measures that

³⁹ For example, Recommendation Rec (2004) 16 of the Committee of Ministers of the Council of Europe to member states on the right of reply in the new media environment is advisory in nature, while the Convention on Transfrontier Television (ECTT), adopted under the auspices of that same body in 1989, is binding in law on those States that have ratified or acceded to it. Recommendation Rec (2004) 16 of the Committee of Ministers of the Council of Europe to member States, on the right of reply in the new media environment, adopted on 15 December 2004.

⁴⁰ See, for example: Istanbul Summit Declaration and Charter for European Security, adopted by the OSCE Heads of State in 1999, para. 26, 27; General Comment 10 of the UN Human Rights Committee on the Right to Freedom of Expression, UN Doc. HRI/GEN/1/Rev.1 at 11 (1994); UN Commission on Human Rights, Resolution 2004/42 on the right to freedom of expression and opinion, 19 April 2004; Joint declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Organisation of American States (OAS) Special Rapporteur on Access to Information, 6 December 2004.

⁴¹ Only some parts of EU law are directly binding (see section 2.3).

cannot be argued to have any binding legal force may be politically important and have an impact on legislative proceedings, and for that reason cannot be ignored.⁴²

Depending on their provisions and scope, international and European regulations are implemented and/or supervised either by international and supranational bodies, such as the WTO or the European Commission, or by national media and competition authorities – for example, OFCOM in the UK, or the Federal Cartel Office and the State Media Authorities in Germany.

The following paragraphs provide a brief overview of the various areas of law pertinent to broadcasting, where international agreements exist. Chapter 2 provides a more detailed discussion of the content of the international law most relevant to broadcast regulation.

1.1 Overview of binding treaties and other international and European regulation

Legally binding international treaties pertinent to broadcasting policy are generally concerned with two different areas of regulation. On the one hand, the broadcasting industry is subject to general competition law, while on the other it is regulated by sector-specific media legislation.

Historically, the aim of international broadcasting regulation has been threefold: safeguarding media pluralism and freedom of expression, safeguarding the regulation of international trade (and, by implication, of national media markets), and ensuring that the international highways of communication (including satellite, Internet, cable and free-to-air traffic) do not become congested. These different regulatory aims – often carried out under the auspices of different international organisations – have resulted in different regulatory approaches.

1.1.1 General competition law

Like any other industry, the broadcasting sector is governed by international, EU and national general competition law, which aims to safeguard and foster competition in a free market economy, and intervene only to prevent behaviour that is not based on the rules of a free market. For example, as the broadcasting sector consolidates, mergers between different companies have led to the rise of large (and sometimes huge) media corporations. Competition law acts to intervene at the point where the size of these companies becomes such as to have a detrimental effect on free and open competition. Competition law has also become highly relevant in the bidding wars that often rage around major sporting events, such as the Olympic Games or major football tournaments: here, such law prevents the formation of bidding cartels. Finally, within

⁴² This is the case, for example, for many of the recommendations and declarations issued by the special mandates on freedom of expression established by the OAS, OSCE and the UN.

Europe, anti-competition law is highly relevant to State subsidies in the media sector insofar as these may distort the free market. From time to time, this point is debated in the context of public service broadcasting and the State subsidies received in that sector (see section 5.2).

Indirectly, competition law also has an impact on media plurality. The general assumption is that more broadcasters can operate in a market of undistorted competition, and hence that the range of opinions is likely to increase. General competition law becomes relevant as a means of media ownership control to the extent that certain media mergers must be notified to, and approved by, the competition authorities, and that the law is duly implemented in practice (see section 6).

1.1.2 Sector-specific media legislation

Competition law does not regulate content, and it cannot subject operators to rules that aim to promote culturally and linguistically diversified programmes. For these reasons, competition law alone is not considered sufficient to safeguard media pluralism, and has therefore been supplemented by sector-specific media provisions. If competition law alone were to be relied on, the broadcasting sector would be fully open to the free play of market powers. This would incur the risk that only a few strong market players would emerge to dominate the sector and that, therefore, the number and range of broadcast “voices” would be far from optimal, from the point of view of a real pluralism.

It is now widely recognised that the provision of television services does not just have economic implications, but also plays a highly significant social, cultural and political role. Various international agencies are therefore concerned with the regulation of broadcast content, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), and, in Europe, the EU. In addition, technical aspects of broadcasting need to be regulated in order to ensure that different broadcast signals do not clash.

Content regulation

Within the EU, the first serious attempts at content regulation of broadcasting came in the early 1980s, as awareness grew of the implications of the serious and increasing audiovisual trade deficit with the United States. In 1984, the European Commission published its Green Paper on the establishment of a common market in broadcasting,⁴³ in which it outlined its vision for European broadcasting policy. Initially focusing on cable and satellite television, EU actions have now been adopted in three main areas:

⁴³ A “Green paper” is EU jargon for a policy proposal designed to stimulate debate. European Commission, *Television without Frontiers. Green Paper on the Establishment of the Common Market for Broadcasting, especially by Satellite and Cable*, COM (84) 300, Brussels 14 June 1984.

43. the establishment of European support mechanisms for the broadcast media;
44. the defence of European cultural interests in the context of wider international debate, for example at the World Trade Organization (WTO);
45. the establishment of a regulatory framework allowing the realisation of a single internal European market.

Measures in areas (1) and (2) have had only a limited direct impact on the content of European broadcasting, focusing instead on its defence against content brought in from abroad (mainly the United States). In area (3), regulation has focused on such matters as the protection of minors from what has been termed “harmful content”, ensuring a “right of reply” and the regulation of advertising. The “Television without Frontiers” (TWF) Directive⁴⁴ has been vital to achieving an internal European broadcasting market, by providing that EU member States cannot restrict reception or retransmission of broadcast from other member States for reasons of content falling within the scope of the directive.

In contrast to the binding legal framework developed within the EU, UNESCO’s regulations have been of a more advisory and/or declaratory nature. Its 1997 “Declaration of Sofia” is a good example. This Declaration – which, among other things, calls for pluralism in the media, access to information and respect for editorial independence – was originally adopted by the participants of a seminar organised by UNESCO, and finally endorsed by UNESCO’s General Conference.⁴⁵ Although, in and of itself, the Declaration has no binding legal force, it lays down a set of important principles and, having been endorsed by UNESCO’s General Assembly, it is an important political document.

Technical aspects

The international regulation of the technical aspects of broadcasting has largely been coordinated under the auspices of the International Telecommunications Union (ITU). Founded as the International Telegraph Union in Paris in May 1865, the ITU is the oldest international organisation in the world. It now operates as a UN Agency,

⁴⁴ EU “Television without Frontiers” Directive (hereafter, TWFD): Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Television without Frontiers Directive), OJ L 298, 17 October 1989, as amended by European Parliament Directive 97/36/EC of June 1997, OJ L 202 60, 30 July 1997.

⁴⁵ UNESCO, Declaration of Sofia, Resolution 35, adopted by the General Conference at its twenty-ninth session, 1997, (hereafter, UNESCO, Declaration of Sofia).

with a broad membership drawn from all sectors of society.⁴⁶ It is concerned mainly with the technical aspects of telecommunications regulation, including broadcasting regulation, and while its functioning is crucial to the existence of the broadcasting industry, its rules do not impact on content. For this reason it will not be considered further here – other than to note that with increasing convergence between different forms of communication, its role may well become more important.⁴⁷

1.2 Co-regulation and self-regulation

The binding provisions of competition and sector-specific media law are supplemented by self-regulatory and co-regulatory instruments. Self-regulation concerns measures taken by broadcasters themselves, drawing on their own expertise to develop their own regulation in areas such as journalistic ethics. Co-regulation is a mixture of self-regulation and regulation by an independent overseeing body.

Self-regulation is considered to be more effective than binding obligations, as statutory legal frameworks may lack flexibility and adaptability. For instance, through self-regulation, it may become easier to take regional or local conditions into account. However, self-regulation also carries risks. For example, it may allow strong market players to set up rules that favour their interests to the detriment of competitors and users. The functioning of the internal market could be endangered if the quantity of self-regulatory codes leads to a fragmentation of markets.

For EU member States, the European Commission has set out its general approach to co- and self-regulatory instruments in its White Paper on *European Governance*⁴⁸ (2001) and “Better Legislation Action Plan” (2002).⁴⁹ The Commission explicitly recognises and encourages self-regulation in the audiovisual sector. In its Communication on the Future of European Regulatory Audiovisual Policy (1999) the Commission stressed its view on the interplay of legally binding and self-regulatory measures,

Co-regulation allows for the implementation of the objective defined by the Community by means of measures taken by the recognised stakeholder in a

⁴⁶ Membership of the ITU consists of States and also, unusually for an international organisation, of companies and other such organisations, which can hold classes of membership referred to as Sector Member or Associate status. This allows, for example, direct participation by a company in the development of technical standards, something not allowed in some other standards bodies such as ISO (International Organization for Standardization), where companies participate only indirectly, through State delegations.

⁴⁷ “Traditional” broadcast content can now be distributed through mobile telephones or the Internet, to name but a few examples. This poses difficult regulatory challenges.

⁴⁸ European Commission, *European Governance. A White Paper*, COM (2001) 428 final, Brussels, 25 July 2001.

⁴⁹ European Commission, Communication from the Commission. Action Plan “simplifying and improving the regulatory environment”, COM (2002) 278 final, Brussels, 5 June 2002.

given area. The legislature decides to what extent the design and application of implementing measures may be entrusted to stakeholders on account of their recognised experience on the issue. Where this mechanism fails to produce the expected results, the legislature reserves the right to directly employ statutory measures.⁵⁰

In the broadcasting sector, self-regulation is already used to a considerable extent. Its main field of application lies in advertising and the protection of minors. Under the Council Recommendation on the Protection of Minors and Human Dignity, concerned industries and parties are prompted to cooperate in drafting codes of conduct in the broadcasting and Internet sectors.⁵¹ In April 2004, the Commission launched a proposal to update the Recommendation, which centred on the development of self- and co-regulatory models.⁵² Although advertising is already subject to detailed regulation under the TWF Directive and national laws, broadcasters have set up additional codes of conduct that deal, for instance, with the advertising of alcoholic beverages. Self-regulation also exists with respect to technical standards. For instance, within Europe, agreement has been reached on the use of the digital terrestrial broadcasting standard (Digital Video Broadcasting Terrestrial, DVB-T) in digital terrestrial television.

Finally, self-regulatory mechanisms play an important role in safeguarding editorial independence and in securing editorial standards (see also section 4.1). For example, the International Federation of Journalists (IFJ) regularly adopts resolutions on a broad variety of topics, such as authors' rights, employment policies in the media, and other freedom of speech issues,⁵³ which form the basis for self-regulatory mechanisms. With respect to advertising, the principle of self-regulation is also endorsed by global industry groups such as the International Advertising Association (IAA). The IAA, on the basis of

⁵⁰ European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, on the future of European regulatory audiovisual policy, COM (2003) 784 final, 15 December 2003, Brussels, p. 23, (hereafter, European Commission Communication on the future of European regulatory audiovisual policy); See also: European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, on principles and guidelines for the Community's audiovisual policy in the digital age, COM (1999) 657 final, Brussels, 14 December 1999.

⁵¹ Council Recommendation of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity, 98/560/EC, L270/48, 1998.

⁵² European Commission, Proposal for a Recommendation of the European Parliament and of the Council on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry, COM (2004) 341 final, Brussels, 30 April 2004.

⁵³ See, for example: IFJ, Resolutions adopted by IFJ World Congress 2004, 21 June 2004, available on the IFJ website at <http://www.ifj.org/> (accessed 30 June 2005).

its own “Declaration on Self-Regulation & Privacy” (2000), assists its national member organisations in implementing self-regulatory mechanisms in this field.⁵⁴

2. SOURCES OF LAW

This section provides a more detailed overview of international legal standards in the area of broadcasting regulation, broken down by international organisation: the competition rules agreed in the framework of the WTO, the various treaties, agreements and recommendations issued by, and through, the UN, and the bodies and agencies established under it, the EU, and the CoE.⁵⁵

2.1 The World Trade Organization (WTO)

The WTO is concerned mainly with the regulation of international trade. Given that broadcasting is a business with international aspects, it is potentially subject to WTO regulation. Among the WTO rules, the General Agreement on Trade in Services (GATS)⁵⁶ impacts on broadcasting. It covers all forms of international trade in services. In order to establish a free flow of services, GATS sets out three main principles:

- Most-favoured-nation treatment (MFN clause) – each member shall immediately and unconditionally provide services and service suppliers of another member with treatment that is no less favourable than the treatment it accords to similar services and service suppliers of any other country.⁵⁷

⁵⁴ International Advertising Association (IAA), Declaration on Self-Regulation & Privacy, 2000, available on the IAA website at <http://www.iaaglobal.org/> (accessed 30 June 2005).

⁵⁵ The European Union (EU) is not to be confused with the Council of Europe (CoE). The CoE is a large grouping of European States established in the early 1950s, with headquarters in Strasbourg, the primary achievement of which has been the development of a binding human rights framework through the European Convention on Human Rights (ECHR). Its member States have concluded several hundred treaties between them, including some on broadcasting regulation. However, as compared to the EU, the CoE remains a relatively loose affiliation of States. The EU is a much smaller grouping of European States, which, between them, have set up a single economic market as well as a common legal framework encompassing areas of law ranging from immigration to rules on education, broadcasting, and agriculture and fishery. It has its headquarters in Brussels, and has grown from 6 member States to 25. Confusingly, one of its pivotal bodies is called the “Council” of the European Union. Typically, the treaties agreed under the auspices of the CoE leave its member States much more room for discretion in the implementation of policies than the much more detailed and prescriptive rules and regulations emanating from “Brussels” do.

⁵⁶ General Agreement on Trade in Services (GATS), (Annex 1B of the General Agreement establishing the World Trade Organization).

⁵⁷ GATS, art. II.

- Equal treatment – foreigners, including their companies and products, shall not be discriminated against.
- Market access – market access shall not be restricted.

Despite the argument, often repeated, that audiovisual media should be fully exempted from GATS, no such general exemption has been established. However, WTO members can derogate from the most-favoured-nation principle, provided that they note such exemptions in a special register. With respect to audiovisual services, the EU and its member States have noted some exemptions to the MFN clause. One exemption, for example, is the national quota regulations, as set forth in the EU's TWF Directive (see section 4.3).

The EU and its member States have therefore, to a significant extent, preserved national sovereignty and Community provisions in the broadcasting sector. However, this situation may change after the current round of trade negotiations, known as the "Doha Round", which has brought calls, particularly from the US representatives, for full market access and equal treatment in all service sectors. Whether the EU and its member States will be able to keep broadcasting out of the GATS regime remains to be seen.⁵⁸ The implications for broadcasting are considerable. A decision in favour of the commercial lobby's claims would accelerate the erosion of public service broadcasting, by intensifying the commercial pressure on less profitable programme strands and on domestic production quotas.

2.2 United Nations

The right to freedom of expression

Article 19 of the Universal Declaration of Human Rights (UDHR) states that,

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.⁵⁹

Although not directly applicable in member States, this provision serves as an important global policy appeal. It is also considered by many to form part of the body of law referred to as "international custom" that applies to all States.

It has been further substantiated in the legally binding International Covenant on Civil and Political Rights (ICCPR).⁶⁰ This treaty, ratified by more than 150 States around

⁵⁸ Further details on the most recent developments are available on the WTO website at http://www.wto.org/english/tratop_e/serv_e/serv_e.htm (accessed 4 August 2005).

⁵⁹ Universal Declaration of Human Rights (UDHR), adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

⁶⁰ International Covenant on Civil and Political Rights (ICCPR), entered into force 23 March 1976, 999 U.N.T.S. 171.

the world,⁶¹ elaborates the substance of the right to freedom of expression (also at Article 19) in terms that are very similar to those of Article 19 of the UDHR. However, it adds the crucial clause that freedom of expression may be restricted *only* if such restriction is provided by law, pursues a legitimate aim, and is truly *necessary* to achieve that aim. Given that broadcasting is a central exercise of the right to freedom of expression, any broadcasting laws or regulations that affect either the ability of broadcasters to exercise their freedom of expression, or the equally important right of the public to receive information from broadcasters, must be justifiable under this formula. This does not imply that there is an unlimited right to broadcast, but it does mean that disproportionately intrusive rules or vague requirements, such as requirements for all broadcasters to respect “the national honour and dignity of the State”, cannot be considered legitimate. It also (probably) means that broadcast regulation has to be carried out by bodies that are independent of the State and that serve the public interest.

Various UN bodies and agencies have issued declarations and recommendations that elaborate on the meaning of the right to freedom of expression in broadcast regulation. While in themselves not binding, these recommendations and declarations elaborate the binding treaty provision of Article 19 of the ICCPR, ratified by most European States, and cannot for that reason be ignored. Two bodies are of particular importance: the UN Special Rapporteur on Freedom of Expression, and the UN Human Rights Committee. The first is a special body set up by the UN Commission on Human Rights, the primary human rights body in the UN political hierarchy, to report on violations of freedom of expression but also to consider its scope and content. The Human Rights Committee is a body of experts set up under the ICCPR to supervise the implementation of that treaty in national States and to receive complaints from individuals.⁶²

In 2003, the UN Special Rapporteur on freedom of expression issued a Joint Declaration, together with his counterparts at the OSCE and the OAS, laying down certain principles in the area of broadcast regulation. Namely, the following:

- All public authorities that exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including a “by appointment” process for members that is transparent, allows for public input and is not controlled by any particular political party.
- Regulatory systems should take into account the fundamental differences between the print and broadcast sectors, as well as the Internet. Broadcasters should not be required to register in addition to obtaining a broadcast licence. The allocation of broadcast frequencies should be based on democratic criteria

⁶¹ As of 27 April 2005, the ICCPR had been ratified by 154 States.

⁶² This last competence requires that States sign up to a specific treaty, the Optional Protocol to the ICCPR.

and should ensure equitable opportunity of access. Any regulation of the Internet should take into account the very special features of this communications medium.⁶³

This declaration echoes several of the those adopted by the CoE, as well as UNESCO's Declaration of Sofia.

The UN Human Rights Committee, in its consideration of States' implementation of Article 19 of the ICCPR, has made several similar recommendations concerning media regulation.⁶⁴ These recommendations are all highly authoritative and indicate the scope and content of the binding international law on the right to freedom of expression in relation to broadcast regulation. Although directed at individual States, general rules can be extrapolated from them.

UNESCO

As the specialised UN agency in the fields of culture, social policy and education, the role of UNESCO cannot be overlooked. In light of the potential perils to national cultural sovereignty coming from the implementation of GATS, UNESCO has taken measures that concern the cultural dimension of broadcasting. In 2001, it adopted its Universal Declaration on Cultural Diversity.⁶⁵ However, since the declaration is not legally binding, some member States regarded it as inadequate in the age of globalisation. For this reason, a new standard-setting instrument – a binding convention on the protection of the diversity of cultural contents and artistic expressions – is currently being considered. In July 2004, UNESCO published a preliminary draft of the convention, which stipulates the following: “The States Parties [...] affirm their sovereign right to adopt measures to protect and promote the diversity of cultural expressions within their territory, and recognise their obligations to protect and promote it both within their territory and at the global level.”⁶⁶ A consolidated

⁶³ Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 18 December 2003.

⁶⁴ For example, in 2002, in relation to the implementation of the ICCPR in Moldova, the UN Human Rights Committee expressed its concern that the State broadcaster in that country did not give airtime to opposition parties (UN Doc. CCPR/CO/75/MDA – 26 July 2002). In relation to Kyrgyzstan, it has expressed its concern regarding governmental interference in licensing, and arbitrary licensing policies generally (Kyrgyzstan – CCPR/CO/69/KGZ – 24 July 2000). In relation to Armenia, it has expressed the concern that governmental control over the electronic media was in violation of the right to freedom of expression (CCPR/C/79/Add.100 – 19 November 1998).

⁶⁵ UNESCO, Universal Declaration on Cultural Diversity, adopted by the 31st Session of the General Conference of UNESCO, Paris, 2 November 2001.

⁶⁶ Article 5(1) of the preliminary draft of a convention on the protection of the diversity of cultural contents and artistic expressions. The draft, and further information on recent developments, is available on the UNESCO website at http://portal.unesco.org/culture/en/ev.php-URL_ID=11281&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed 30 June 2005).

draft incorporating responses to the preliminary draft will be submitted to UNESCO's next General Conference in October 2005.

In addition, several other non-binding declarations relevant to the media have been adopted under the auspices of UNESCO. In Europe, the Declaration of Sofia is the most relevant. It lays down a number of declaratory principles on media regulation, including the following,

All States should provide, or reinforce where they exist, constitutional and legal guarantees of freedom of expression and of press freedom and should review, revise and/or repeal those laws, regulations and measures that limit the exercise of this fundamental right. They should pay special attention to ensuring the respect of these guarantees. Tendencies to draw limits or taboos outside the purview of the law restrict these freedoms and are unacceptable. [...]

Free access to information from public authorities must be granted. No journalist should be forced to reveal sources of information. Adequate guarantees must be established. [...]

State-owned broadcasting and news agencies should be, as a matter of priority, reformed and granted statutes of journalistic and editorial independence as open public service institutions. [...]

If supervisory regulatory broadcasting authorities are established, they must be fully independent of government.⁶⁷

While not possessing legal binding force, this declaration sets out important principles and has been endorsed by UNESCO's General Conference, lending it considerable political weight.

2.3 European Union (EU)

As set out above, at the EU level, broadcasting is subject to fairly extensive regulation with respect to both content and its economic and technical aspects. To the extent that it is directly binding, all EU member States are strictly bound to implement this body of regulation.

Under EU law, only certain legal rules are of a direct binding nature. In addition to those rules imposed directly by one of the founding treaties, which are strictly binding in law and which are known as "primary legislation", the member States have agreed amongst themselves that the legislative institutions in Brussels⁶⁸ will have the power to

⁶⁷ UNESCO, Declaration of Sofia, note 11.

⁶⁸ The EU's legislative bodies are the European Commission, a civil service body that prepares legislation, the European Parliament, a directly elected body that enacts legislation, and the Council of the European Union, a ministerial-level body in which all EU Member States are represented.

pass a number of other, legally binding, instruments known as “secondary legislation”. These include the following:⁶⁹

- regulations – binding legal instruments that are directly applicable, without the need for them to be “transposed” or separately “enforced” by national legislative measures in the EU member States;⁷⁰
- directives – legal instruments that are binding as to the result that must be achieved, but leave discretion to member States as to the form and method in which this is achieved within the domestic legal system;
- decisions – legal measures that are binding in their entirety, but only on the member State or other entity to which they are addressed.

Of these three, the first two are the most common legislative instruments. There is no difference in hierarchy between the two: they are merely different forms of regulation. A directive may be used where a policy needs to be introduced but its precise formulation is not important, while a regulation is used where detail is important both in the form of the legislative measure and in the desired policy outcome. Decisions, the third available direct binding instrument, are often found in areas such as competition law and State aid, and may be addressed to a single member State to notify them of a breach of competition rules. They are immediately legally binding.

In addition to these three instruments, “Recommendations” and “Opinions” may also be adopted.⁷¹ The European Commission, which functions as the EU’s civil service, has the power to formulate recommendations or deliver opinions on matters of EU law, either where this power has been specifically allotted to it or where the Commission deems it important to deliver its opinion or recommendation.⁷²

Finally, the power of the European Court of Justice to deliver binding judgements on matters of EU law must also be mentioned. Cases may be brought before it by member States, by an EU institution such as the European Commission, or by a national court – in the case of the latter, this is known as a “reference” and must concern the interpretation of an EU legislative measure.

⁶⁹ Article 249, Treaty establishing the European Community (EC Treaty).

⁷⁰ However, member States may need to change some of their existing laws that may not be compatible with the Regulation.

⁷¹ EC Treaty, art. 249.

⁷² EC Treaty, art. 211.

2.3.1 Primary level legislation

Rules found in the Treaty establishing the European Community⁷³ are known as “primary level” legislation. The EU has considerable ability to direct its member States’ legislation and policy with respect to the economic aspects of broadcasting. In this regard, the EU can take action to foster freedom in the provision of services⁷⁴ and to uphold the “right of establishment”.⁷⁵ Furthermore, the EC Treaty’s competition rules enable the European Commission to regulate concentration processes⁷⁶ (see section 6), and State aids⁷⁷ (see section 5.2), including those in the broadcasting industry. For EU members, if the question arises whether a broadcaster is applying restrictive practices or is abusing a dominant position, the EC Treaty will be relevant.⁷⁸ It also provides the legal basis to examine whether the funding of public service broadcasters through licence fees distorts competition to the disadvantage of private broadcasters, which generate their income by advertising and subscription services.⁷⁹

Concerning the cultural dimension of broadcasting, especially content issues, the regulatory competency of the EU is limited. The EC Treaty states that “The Community shall contribute to the flowering of the cultures of the member States [...]. [It] shall take cultural aspects into account in its actions under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures.”⁸⁰ However, this same article also explicitly excludes harmonisation measures in cultural

⁷³ The EC Treaty is the oldest of the treaties that make up what is known as the “European Union”, and concerns what some would refer to as the EU’s “core business”, namely regulation on all those matters necessary to establish a single, internal European economic market. Over the years, other treaties were adopted that extended the competence of the “Union”. The most important of these was the “Treaty on European Union”, which began to give the Union competences in policing, judicial affairs, immigration, foreign affairs and defence. It also established the “European Union”, consisting of three “pillars”: economic cooperation, through the “old” European Community, judicial and home affairs cooperation, and foreign affairs and defence cooperation. Rules and legislation relevant to broadcasting have all been adopted in the context of the “old” first pillar, the European Community. Although it is technically correct to refer to these as Community legislation, in common parlance they are often referred to as “EU” legislation.

⁷⁴ EC Treaty, art. 49. According to the case law of the European Court of Justice (ECJ), broadcasters provide services within the meaning of Article 49 of the EC Treaty. See: C-155/73 *Sacchi* [1974] 409; C-52/79 *Debauve* [1980] 833; C-352/85 *Bond van Adverteerders* [1988] 2085; C-260/89 *ERT* [1991] I-2925; C-148/91 *Veronica* [1993] I-487.

⁷⁵ EC Treaty, art. 43. The Treaty defines this right as “the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms”. See: the decisions of the European Court of Justice in case C-155/73 *Sacchi* [1974] 409, and case C-52/79 *Debauve* [1980] 833.

⁷⁶ EC Treaty, art. 81.

⁷⁷ EC Treaty, art. 87.

⁷⁸ EC Treaty, arts. 81, 82.

⁷⁹ EC Treaty, art. 87.

⁸⁰ EC Treaty, art. 151

policy at the EU level.⁸¹ In practice, therefore, the EU does not have the competency to interfere directly with broadcasting regulation in member States insofar as such interference would affect the content of broadcasts. However, the EU has used nonetheless its powers to prescribe content regulation in some areas, particularly concerning such matters as the protection of minors, in the name of achieving a “single market”.⁸²

2.3.2 Secondary level legislation

At the level of secondary legislation – the directives, regulations and decisions referred to above – the main legal instruments are as follows:

- the “Television without Frontiers” Directive (TWF Directive);
- the Cable and Satellite Directive;⁸³
- the Regulatory Framework for Electronic Communication Networks and Services (2002);
- the EC Merger Regulation.⁸⁴

General competition law

The EC Merger Regulation is one of the main tools of European anti-monopoly law. In today’s consolidating market, its provisions are of some significance to the broadcasting sector (see section 6.3).

Sector-specific media regulation

Technical aspects

Competition law is also relevant when considering the infrastructure that is used for the transmission of broadcasts, whether via satellite, cable or terrestrial networks or other forms of electronic communication. In addition, the new EU regulatory framework for electronic communications – the Regulatory Framework for Electronic Communication Networks and Services – was adopted in 2002, to be applied by

⁸¹ EC Treaty, art. 151(5).

⁸² The justification given for this content regulation is that if every country had its own, specific, rules on content regulation, it would be very difficult for broadcasters to operate across borders – they would have to know and take into account the law of every single EU country in which they operated. Therefore, the EU has sought to create a level playing field by providing the same basic rules on certain content-related matters in all EU Member States.

⁸³ Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, O.J. L248/15, 6 October 1993, (hereafter, Cable and Satellite Directive).

⁸⁴ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, L24/1, 29 January 2004, (hereafter, EC Merger Regulation).

member States as of July 2003.⁸⁵ The framework includes the following four directives, and a decision on spectrum policy:

- the Framework Directive;⁸⁶
- the Access Directive;⁸⁷
- the Universal Service Directive;⁸⁸
- the Authorisation Directive;⁸⁹
- the Radio Spectrum Decision (see section 3.1).⁹⁰

Although regulation of content remains outside its scope, this framework is nonetheless vital for broadcasters.⁹¹ This is because it applies to all transmission infrastructures,⁹² and therefore regulates the conditions under which their signals are transmitted and received. With respect to broadcasters, the framework includes provisions on “must carry obligations”,⁹³ as well as rules on conditional access systems and “associated facilities” for digital television (see section 3.2.3).

⁸⁵ Further details on the Framework can be found at http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/index_en.htm (accessed 30 June 2005).

⁸⁶ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, L108/33, 24 April 2002, Brussels, (hereafter, Framework Directive).

⁸⁷ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, L108/7, Brussels, 24 April 2002, (hereafter, Access Directive).

⁸⁸ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services, L108/51, Brussels, 24 April 2002, (hereafter, Universal Service Directive).

⁸⁹ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services, L108/21, Brussels, 24 April 2002, (hereafter, Authorisation Directive).

⁹⁰ Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community, L108/1, Brussels, 24 April 2002, (hereafter, Radio Spectrum Decision).

⁹¹ See: recital 5 of the Framework Directive: “This framework does not [...] cover the content of services delivered over electronic communications networks using electronic communications services, such as broadcasting content [...]”

⁹² See: the legal definition of “electronic communications networks” in Article 2(a) of the Framework Directive.

⁹³ Universal Service Directive, art. 31.

Content regulation

At the EU level, sector-specific media regulation can be found primarily in the TWF Directive. The directive lays down the minimum standards that the content regulation of television broadcasts by the member States must guarantee. It was introduced in order to ensure what in EU parlance is referred to as a “free market” in broadcasting services: a single European market with common legal rules facilitating the cross-border provision of services without any legal obstacles (broadcasting is referred to as a “service” within the EU).

Prior to the introduction of the TWF Directive, it was very difficult for broadcasters in Europe to broadcast across borders, because of the different legal content rules that applied in the various European States. The directive thus seeks to facilitate broadcasting across European frontiers (hence its name) by prescribing similar content rules in a number of areas, and providing that no European country may restrict retransmission or reception of broadcasts emanating from another EU country for reasons falling within the scope of the directive. The main goal of the directive was to facilitate the growth of a strong European broadcasting industry that could provide a counterweight to US programming, which was perceived as a threat to European culture. Its main provisions concern the following (see section 4):

- “listed” events of major importance for society;
- quota regulations;
- advertising and sponsoring;
- the protection of minors;
- the right to reply.

The TWF Directive is based on the country-of-origin principle – broadcasters only have to comply with the national law of the member State in which they are located.⁹⁴ Once this compliance is verified, a broadcast that is transmitted to another member State shall not be subject to secondary control under the national law of the receiving State. The retransmission of the broadcast can only be suspended by this State in exceptional circumstances.⁹⁵

Adopted in 1989, the directive was first reviewed in 1997 to take account of technological and market developments. Its implementation by member States must be frequently monitored, by means of a report by the Commission to the European Parliament, the Council and the Economic and Social Committee.⁹⁶ In January 2003, the Commission delivered the fourth such report, which contains details on the

⁹⁴ TWFD, art. 2(1).

⁹⁵ TWFD, art. 2a(2).

⁹⁶ TWFD, art. 26,

implementation status in all member States.⁹⁷ Since 2003 a second revision of the directive has been undertaken, focusing on the following aspects:

- the regulation of audiovisual content;
- the level of detail in the regulation of advertising;
- the right to information and right to short reports;
- the promotion of the distribution and production of television programmes;
- co-regulatory measures in the media sector;
- the regulatory treatment of interactive television.⁹⁸

The European Commission plans to present a new TWF Directive before the end of 2005.

2.4 Council of Europe (CoE)

The CoE is an affiliation of European States that have, among themselves, each adopted various binding legal treaties. Although it also has a ministerial meeting as well as a Parliament, neither has the power to adopt binding legal rules. Both the Committee of Ministers and the Parliamentary Assembly do, however, frequently adopt detailed recommendations and other instruments that are of significant political importance – because of their usually detailed nature, and, in the case of the Committee of Ministers, because of the high level of Government at which they are adopted. These recommendations are frequently also used to interpret the necessarily brief provisions found in legally binding treaties, and acquire some legal force by association with such treaties.

Relevant to broadcast regulation, the main treaties and recommendations are as follows:

- the European Convention on Human Rights (ECHR)⁹⁹ – a flagship human rights treaty, and the oldest general human rights instrument in the modern era;

⁹⁷ European Commission, Fourth Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 89/552/EEC “Television without Frontiers, COM (2002) 778 final, 6 January 2003, available at http://europa.eu.int/comm/avpolicy/regul/twf/applica/comm2002_778final_en.pdf (accessed 30 June 2005).

⁹⁸ European Commission Communication on the future of European regulatory audiovisual policy, p. 24.

⁹⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), adopted 4 November 1950, entered into force 3 September 1953, E.T.S. 005.

- the Convention on Transfrontier Television (ECTT)¹⁰⁰ – containing rules similar to the EU’s Directive of the same name;
- two ministerial recommendations – one on the independence and functions of regulatory authorities for the broadcasting sector (2000) and another on the guarantee of the independence of public service broadcasting (1996).¹⁰¹

2.4.1 The right to freedom of expression

The ECHR is a binding legal treaty that has near-constitutional status in most European States. Membership of the CoE is linked to acceptance of the ECHR: it is not possible to be a member State without also ratifying and implementing the ECHR. Its provisions are further elaborated in an extensive body of law developed by the European Court of Human Rights, a human rights court that has the power to make binding judgements. Article 10 of the ECHR protects the right to freedom of expression in terms similar to those found in Article 19 of the UDHR. However, it adds two important elements to the language of the UDHR. First, it states explicitly that the right to freedom of expression does not prohibit States from establishing licensing mechanisms in the broadcast sector; second, it provides a detailed clause on restrictions on the right to freedom of expression. This restrictions clause, which also applies to broadcasting regulation, provides that,

The exercise of [the right to freedom of expression], since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.¹⁰²

This has been interpreted as establishing a three-part test, requiring that any restrictions (1) be prescribed by law, (2) pursue a legitimate aim, and (3) be necessary in a democratic society. The European Court of Human Rights has stated that the first requirement will be fulfilled only where the law is accessible and “formulated with

¹⁰⁰ Council of Europe, European Convention on Transfrontier Television (ECTT), 5 May 1989, amended according to the provisions of the Protocol (E.T.S. no. 141) of the Council of Europe of 9 September 1998, entered into force on 1 March 2002.

¹⁰¹ Council of Europe, Recommendation Rec (2000) 23 of the Committee of Ministers to member States on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the Committee of Ministers on 20 December 2000 at the 735th meeting of the Ministers’ Deputies (hereafter, Council of Europe, Recommendation Rec (2000) 23); and Recommendation Rec (96) 10 of the Committee of Ministers to member States on the Guarantee of the Independence of Public Service Broadcasting, adopted on 11 September 1996 (hereafter, Council of Europe, Recommendation Rec (96) 10).

¹⁰² ECHR, art. 10.

sufficient precision to enable the citizen to regulate his conduct.”¹⁰³ Second, the interference must pursue one of the aims listed in Article 10(2) – the list of aims is an exhaustive one, and thus any interference that does not pursue one of those aims violates Article 10. Third, the interference must be necessary to secure one of those aims. The word “necessary” means that there must be a “pressing social need” for the interference.¹⁰⁴ The reasons given by the State to justify the interference must be “relevant and sufficient” and the State must further show that the interference is proportionate to the aim pursued.¹⁰⁵

Any broadcasting regulation must pass this test in order to be legitimate.

2.4.2 Sector-specific media regulation

Content regulation

The ECTT is a binding legal treaty, the provisions of which are to a significant extent similar to those of the EU’s TWF Directive and rely on many of the same principles (see section 4). It was adopted in order to ensure the policy objective of a large and strong European broadcasting market, beyond the strict borders of the EU. In order to coordinate between the two instruments, the ECTT only applies to members of the EU insofar as there is no pre-eminent EU rule (i.e. no provision in the TWF Directive governing the particular subject concerned).¹⁰⁶

Regulatory bodies in the broadcast sector

The Committee of Ministers of the Council of Europe has adopted two important recommendations on broadcasting regulation: one on the independence and functions of regulatory authorities for the broadcasting sector (2000), and another on the guarantee of the independence of public service broadcasting (1996).¹⁰⁷ Although these have no binding legal force, they cannot be ignored, because they elaborate on the meaning of Article 10 ECHR, which is binding, in the area of broadcast regulation, because of the high ministerial level at which they have been adopted, and, unlike UN recommendations, because they are tailored specifically to European circumstances.

Central to both recommendations is the idea that broadcasting regulatory bodies and supervisory bodies of public service broadcasters should be established in a manner that minimises the risk of interference in their operations – for example, through an open appointments process designed to promote pluralism, and which includes guarantees

¹⁰³ European Court of Human Rights, *Sunday Times v. the United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49.

¹⁰⁴ See, for example, *Hrico v. Slovakia*, 27 July 2004, Application No. 41498/99, para. 40.

¹⁰⁵ *Lingens v. Austria*, 8 July 1986, 8 EHRR 407, paras. 39-40.

¹⁰⁶ ECTT, art. 27.

¹⁰⁷ Council of Europe, Recommendation Rec (2000) 23; and Recommendation Rec (96) 10.

against dismissal and rules on conflict of interest. For example the recommendation on the independence and functions of regulatory authorities for the broadcasting sector (Rec (2000) 23) specifically states that the following rules should be observed:¹⁰⁸

3. The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests.
4. For this purpose, specific rules should be defined as regards incompatibilities in order to avoid that:
 - regulatory authorities are under the influence of political power;
 - members of regulatory authorities exercise functions or hold interests in enterprises or other organisations in the media or related sectors, which might lead to a conflict of interest in connection with membership of the regulatory authority.
5. Furthermore, rules should guarantee that the members of these authorities:
 - are appointed in a democratic and transparent manner;
 - may not receive any mandate or take any instructions from any person or body;
 - do not make any statement or undertake any action which may prejudice the independence of their functions and do not take any advantage of them.
6. Finally, precise rules should be defined as regards the possibility to dismiss members of regulatory authorities so as to avoid that dismissal be used as a means of political pressure.
7. In particular, dismissal should only be possible in case of non-respect of the rules of incompatibility with which they must comply or incapacity to exercise their functions duly noted, without prejudice to the possibility for the person concerned to appeal to the courts against the dismissal. Furthermore, dismissal on the grounds of an offence connected or not with their functions should only be possible in serious instances clearly defined by law, subject to a final sentence by a court.

3. TECHNICAL REGULATION

Broadcasting regulation is not only about regulating content, but also about regulating the technical networks, devices and services that are necessary for its transmission. Two aspects of technical regulation are of particular importance. First, every terrestrial broadcast transmission occupies parts of the radio spectrum and therefore requires due

¹⁰⁸ Council of Europe, Recommendation Rec (2000) 23, Appendix, Chapter II.

allocation of capacities. Second, although digitalisation has to some extent reduced the problem of spectrum or bandwidth scarcity, it has not put an end to the problem. New bottlenecks have arisen in the environment of digital television, which call for regulatory action.

3.1 Radio spectrum management

Every terrestrial broadcast transmission uses airwaves and therefore requires regulation of the restricted capacities available. At the international level, the radio spectrum is coordinated under the Stockholm Plan, which was adopted in 1961 by the International Telecommunication Union (ITU). Naturally enough, the Stockholm Plan could not foresee recent technical developments such as digital terrestrial broadcasting. A general amendment of the Stockholm Plan is therefore being discussed, but is not expected to enter into force before 2005 or 2006. At this point, the principles that it will follow are not yet known sufficiently as the entire revision is still under discussion.

At the EU level, the European Commission published a Green Paper on spectrum policy in 1998.¹⁰⁹ The first draft of a proposal for a Radio Spectrum Decision followed in 2000.¹¹⁰ Since member States reacted hesitantly to these measures, the Commission subsequently followed a policy of merely supporting and accompanying the spectrum arrangements at the international level. Nonetheless, with the adoption of the Radio Spectrum Decision in 2002, the Commission has more recently returned to its former initiatives on the creation of a regulatory framework for spectrum policy in the European Community.¹¹¹ In the interest of Community policies, the decision encourages coordinated action of the Commission and the member States in the international negotiations on spectrum management.

As a worldwide pioneer, in Germany, the Berlin/Brandenburg region launched digital terrestrial broadcasting (Digital Video Broadcasting Terrestrial, DVB-T) with a full analogue switch-off in August 2003. Other regions in Germany, and in the UK, Spain, Sweden, Finland and Austria followed this model (see section II.7.3).

In comparison to analogue transmission, digital technology allows up to ten times more channels to be broadcast on the same bandwidth. Although digitalisation thereby reduces the dilemma of limited transmission capacities, it raises new challenges for the allocation of airwaves to broadcasting. Before the advent of digital technologies, the frequencies assigned to terrestrial television broadcasting in Europe were already

¹⁰⁹ European Commission, *Green Paper on Radio Spectrum Policy in the Context of European Community Policies such as Telecommunications, Broadcasting, Transport, and R&D*, COM (1998) 596 final, 9 December 1998.

¹¹⁰ European Commission, Proposal of the European Parliament and of the Council on a regulatory framework for radio spectrum policy in the European Community, COM (2000) 407.

¹¹¹ Radio Spectrum Decision.

occupied by analogue channels. Therefore digital terrestrial transmission can only be implemented to the detriment of the analogue technology upon which the broadcasters and viewers have so far relied. The question arises of how to regulate the transition to digital transmission and the ultimate switch-off of analogue broadcasts in a manner that takes into account the interests of all parties involved. For instance, it should be ensured that consumers have enough information to become acquainted with all the possibilities of new digital terrestrial services and to adjust to the new transmission technology by purchasing digital set-top boxes.

The European Commission has provided guidance for member States in a Communication on digital switchover in 2004.¹¹² However, specific EU measures on switchover scenarios are not envisaged. In particular, the Commission has neither determined an EU-wide timing for analogue switch-off, nor stipulated a prohibition on the sale of analogue receivers.¹¹³ On 24 May 2005, the Commission adopted a Communication on Accelerating the Transition from Analogue to Digital Broadcasting, in which it concludes that it expects most broadcasting in the EU to be digital by 2010, and proposes a deadline of early 2012 for phasing out traditional analogue terrestrial broadcasting.¹¹⁴

3.2 Digital television gatekeepers

While digitalisation produces a more effective way of using transmission capacities, it also introduces new risks to the pluralism of media contents. In addition to the existing players, such as cable, satellite or terrestrial network operators, digital broadcasting creates opportunities for new entrants to the market, who may in turn become digital gatekeepers. These are as follows:

- operators of multiplexing services;
- manufacturers of digital equipment (including set-top boxes);
- providers of application programming interfaces (API);

¹¹² European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the transition from analogue to digital broadcasting (from digital “switchover” to analogue “switch-off”), COM (2003) 541 final, 17 September 2004, (hereafter, European Commission, Communication – from digital “switchover” to analogue “switch-off”).

¹¹³ European Commission Communication – from digital “switchover” to analogue “switch-off”, pp. 5, 16.

¹¹⁴ European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on accelerating the transition from analogue to digital broadcasting, COM (2005) 204 final, 24 May 2005, p. 9. In the Communication, EU member States are listed in two groups: group A, with a switch-off date of the end of 2010 or earlier (Austria, Germany, Spain, Finland, Italy, Malta and Sweden) and group B, with a switch-off date of the end of 2012 or earlier (Belgium, Hungary, the Slovak Republic, Slovenia and the UK).

- providers of conditional access systems (CAS);
- and providers of electronic programme guides (EPG).

What all these services have in common is that a dominant position in the relevant market could be abused to discriminate against third parties with respect to access to the particular technical service and in terms of conditions of payment. The problems are exacerbated if the service providers are vertically integrated undertakings that are also interested in disseminating their own content.

Multiplexing services ensure that digital broadcasting signals are packed into transmittable data containers. This packaging is carried out in digital play-out centres. In this regard, broadcasters could, for example, suffer discrimination in such a way that their programmes are bundled in a certain digital bouquet against their will or that additional service information to their programmes is not included in the multiplex signal.

Multiplexing services are not subject to specific legal regulation on the European level. If the national States have not enacted rules on multiplexing, these services only have to meet the requirements of general competition law. In EU member States, to the extent that a multiplexer is a dominant market player, it is thereby bound by the principles of Article 82 of the EC Treaty and its relevant counterparts in national laws (i.e. it may not use its dominant position to discriminate against any third parties).

Either viewers must have a digital television, or the digital multiplex signal must be converted back into analogue signals by the recipient, in order to view it with an analogue television set. This can be done either through an analogue/digital converter that is built into the television set or by an external decoder (set-top box). EU law does not impose rules on the decoders themselves. Instead, provisions are made for the hardware and software that are used in the set-top boxes. For EU member States, the Regulatory Framework for Electronic Communication Networks and Services is relevant (see section 2.3.2).

Digital television signals can be encoded in such a way that only viewers who possess the relevant decoding device, such as a smart card, can watch a given programme. The technology to allow such encryption/decryption processes is generally referred to as a conditional access system (CAS).¹¹⁵ According to this definition, a CAS does not presuppose payments in return for the decryption. As such, a CAS can be applied not only in a pay-TV environment but also in a free-TV environment. The Regulatory Framework for Electronic Communication Networks and Services treats CASs in the

¹¹⁵ Article 2(f) of the Framework Directive defines a CAS as “any technical measure and/or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation”.

framework of “associated facilities”.¹¹⁶ In EU member States, the Access Directive, *inter alia*, obliges CAS operators to offer their services to all broadcasters on a “fair, reasonable and non-discriminatory basis”, compatible with EU competition law.¹¹⁷

Application programming interfaces (APIs) are the software that controls the hardware components of the set-top box. Digital services that can be received with the same set-top box generally include not only the digital television broadcasts, but also electronic programme guides (EPGs) as well as a variety of multi-media applications. If these digital services are offered by different providers, however, the technologies used can vary, and it is up to the APIs to make sure that services can all be processed and mirrored in the set-top box.

For EU member States, in accordance with the Access Directive, the national regulatory authorities are able to impose obligations on operators to provide access to APIs on fair, reasonable and non-discriminatory terms.¹¹⁸ The Framework Directive requires EU member States to encourage providers of interactive television services and interactive receiver equipment to offer an open API, and to encourage transparent provision by API providers of all information necessary to other applications.¹¹⁹ It also empowers the Commission to draw up a list of standards and/or specifications (hereafter, List of Standards 2002) to serve as a basis for encouraging the harmonised provision of associated facilities.¹²⁰ This list was issued in December 2002, and also concerns APIs.¹²¹ The common open-source interface mentioned in the list is the multi-media home platform (MHP) on which the digital video broadcast group

¹¹⁶ Article 2(f) of the Framework Directive defines “associated facilities” as “facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service. It includes conditional access systems and electronic programme guides.” Framework Directive, art. 2(e).

¹¹⁷ Provisions for conditional access systems (CAS) can be found in Article 6, in conjunction with Annex I Part I of the Access Directive. Although neither Article 6 nor Annex I Part I of the directive gives guidance as to what is to be understood by “fair, reasonable and non-discriminatory terms”, further provisions of the Directive shed light on the requirement of non-discrimination. Article 9(2) stipulates that where an operator is bound by non-discrimination obligations, national regulatory authorities may require it to publish a standard offer to potential customers. Such a standard offer shall provide for an “unbundled” provision of services, i.e. no customer shall be required to pay for facilities or services that are not necessary for the service requested. The standard offer must therefore be broken down into different components according to market needs, with each such component being offered at a specific price. In addition, Article 10(2) states that the operator is bound under non-discrimination obligations to apply equivalent conditions in equivalent circumstances to other undertakings providing the same services, and to provide services and information to others under the same conditions and of the same quality as it provides for its own services, or for those of its subsidiaries or partners.

¹¹⁸ Access Directive. art. 5(1)(b), in conjunction with Annex I, Pt II.

¹¹⁹ Framework Directive, art. 18.

¹²⁰ Framework Directive. art. 17.

¹²¹ List of standards and/or specifications for electronic communications networks, services and associated facilities and services, 2002, C331/47.

(DVB), as well as various European broadcasters, regulators and manufactures have agreed. It has long been debated whether this standard of an open interface should be made compulsory. However, as it stands, MHP is not mandatory under EU regulation. In accordance with the Framework Directive, the use of the standards set out in the list is encouraged,¹²² but there is no legally binding obligation for the member States to implement them. In a communication delivered in July 2004, the Commission confirmed that there was no current intention to mandate EU-wide standards.¹²³ Therefore, no specific API system, whether it be MHP or any other programming interface, is stipulated at present.

In the digital age, electronic programme guides (EPGs) are taking over the role of traditional (i.e. printed) television guides. Quite similar to web browsers, which navigate through the Internet, EPGs help viewers to find their way through the multitude of different channels offered on digital television and to access the selected programme. In this respect, EPGs can take two forms. First, a broadcaster can run its own EPG to guide recipients through the digital bouquet of its own programmes. Second, a platform provider, such as a satellite or cable network operator, can offer an EPG that not only provides information on the channels or the bouquet of a particular broadcaster, but also informs customers of all the contents available on the platform. Naturally, broadcasters will want access to the superordinate EPG of the relevant platform operator. Apart from the pricing, another concern that broadcasters might have is the ranking of the listed programmes. There is a strong feeling, especially among commercial broadcasters, that in a multi-channel television environment their listing position on an EPG will influence their viewing figures. When negotiating carriage contracts with a cable network operator that offers its own EPG, for example, broadcasters therefore often make a specific listing position subject to those contracts.

Under the Regulatory Framework for Electronic Communication Networks and Services, EPGs are also dealt with as “associated facilities”. Of most relevance to EPGs is the Access Directive, which, as for APIs, states that member States can oblige EPG operators to provide access to their facilities on “fair, reasonable and non-discriminatory” terms.¹²⁴ EPGs also belong to the “associated facilities” referred to in the standardisation provision of the Framework Directive.¹²⁵ However, unlike APIs, they are not mentioned in the List of Standards 2002. It should also be noted that content and display issues related to EPGs are not covered by the Regulatory Framework for Transmission Networks and Services.¹²⁶ In particular, it is left to the

¹²² Pursuant to the provisions of Article 17(2) of the Framework Directive.

¹²³ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, on interoperability of digital interactive television services, COM (2004)541 final, 30 July 2004, Brussels, p. 7.

¹²⁴ Access Directive, art. 5(1)(b), in conjunction with Annex I(Pt II).

¹²⁵ Framework Directive, art. 17.

¹²⁶ Access Directive, art. 6(4).

discretion of member States whether, and how, they want to make sure that there are safeguards for certain broadcast contents, such as public service television channels, so that they be appropriately accessible via EPGs. This means, *inter alia*, that the EU framework does not prejudice the ability of member States to make special provision for listing the contents of public service broadcasters.

4. CONTENT REGULATION

Broadcasting should serve to enhance the freedom of expression, opinion and information.¹²⁷ However, these fundamental rights – the bearers of which encompass many different parties, including broadcasters, journalists and recipients – cannot be upheld without considering the conflicts that may arise between these freedoms, and without balancing them against other legitimate rights or interests, such as the promotion of cultural and linguistic diversity or the protection of minors. Content regulation makes a necessary contribution to resolving these conflicts.

4.1 Programming and editorial standards

European-level instruments seek to preserve editorial standards through both legally binding provisions and self-regulation. General programming standards are set out in the TWF Directive and the ECTT.¹²⁸ While the TWF Directive is confined to stipulating that broadcasts must not contain any incitement to hatred on grounds of race, sex, religion or nationality, the ECTT contains more detailed regulation. It explicitly prohibits pornography and any undue prominence given to violence, and additionally contains requirements for news programmes, which are required to present facts and events fairly, and encourage the free formation of opinions.

Self-regulation as regards editorial standards is mainly achieved by codes of practice for journalism and editorial statutes. The journalism unions of the national States, as well as their European and international associations and federations, all have codes of ethics, which are usually overseen by an independent complaints body. The standards demand, *inter alia*, accuracy, fairness and respect for privacy.

Beyond an investigation by the competent bodies, a violation of editorial standards may lead to a right to reply. Both the TWF Directive and the ECTT provide for a

¹²⁷ As set out in, for example, the following: Article 10 of the ECHR, which is the highest legal document of the Council of Europe; Article 11 of the EU Charter of Fundamental Rights; Article 19 of the UNDHR. For an overview of the case law developed over the last 40 years by the European Court of Human Rights, see: Council of Europe, *Freedom of Expression in Europe – Case law concerning Article 10 of the European Convention on Human Rights*, Human Rights File No. 18, revised, Council of Europe Publishing, Strasbourg, 2002.

¹²⁸ TWF Directive, art. 22(a); ECTT, art. 7.

natural/legal person's right to reply in the event of false or misleading reporting.¹²⁹ According to this right, a broadcaster must televise a reply to an assertion of incorrect facts whenever the person's legitimate interests, such as reputation and good name, have been damaged. The ECTT guidance on this is rather vague and only requires that arrangements be in place for an effective exercise of the right to reply as regards timing and modalities.¹³⁰ The TWF Directive contains more specific provisions: the reply must be transmitted within a reasonable time subsequent to the request being substantiated, and at a time and in a manner appropriate to the broadcast to which the request refers.¹³¹

4.2 Right to short reporting and listed events

While the ECTT establishes a right to "short reporting",¹³² there is no equivalent provision in the TWF Directive. The right applies to events of great public interest. In practice, the right to short reporting has to date mostly been exercised in relation to sports events such as the matches of national football leagues. It ensures that every broadcaster licensed in Europe is entitled to access those events for news reporting purposes. The event's organiser may charge news reporters a regular admission fee to the event, but may not hinder them from reporting on the event even if the transmission rights have been exclusively licensed to another channel. The ECTT does not specify the events concerned, but it is to be read in a broad sense.

Under the TWFD and the ECTT, the exploitation of certain sports events by pay-TV is only permissible if the same or another broadcaster provides simultaneous free coverage of the same event.¹³³ Similar to the right to short reporting, these provisions aim to ensure public access to broadcasts of major importance to society. The member States can agree on designated ("listed") events, which are then examined by the European Commission or the Convention's Standing Committee. The lists that exist so far mainly identify sports events, such as the Olympic Games, but also cultural happenings, such as the Sanremo Italian Music Festival or the Vienna Opera Ball. They are, however, generally restricted to the most prestigious and popular events. With respect to football coverage, for example, the lists typically only cover the national team matches, but they do not apply to national league football. The latter may therefore still be shown exclusively on pay-TV, as is the case in Italy (Sky Italia), the UK (BSkyB) and Germany (Premiere).

¹²⁹ TWFD art. 23; ECTT, art. 8.

¹³⁰ TWFD art. 8(1).

¹³¹ TWFD art. 23(1).

¹³² ECTT, art. 9.

¹³³ TWFD, art. 3(a); ECTT, art. 9.

4.3 Quota regulations

Both the TWF Directive and the ECTT provide a quota in favour of European works.¹³⁴ The TWFD also introduces a quota in favour of independent producers.¹³⁵ These rules aim to ensure diversity of programming and to promote television production in Europe.

The quota for *European works* provides that broadcasters shall dedicate the “majority proportion” – without this term being further specified in the law – of the airtime reserved for drama and documentary programming to European works. A work is considered to be of European origin where its producer is based in an EU member State or in another European country that has ratified the ECTT.¹³⁶ However, this definition also extends to affiliates of non-European production companies, as long as their Europe-based entities operate with permanent staff of whom at least 50 per cent are European citizens. Upon implementation of the TWF Directive by an EU member State, the fulfilment of these quotas should be monitored by national media authorities (see section II.6.5).

The quota for *independent producers* establishes a requirement of 10 per cent in terms of airtime or programming budget for European works created by producers who are not associated with any broadcaster. The TWF Directive additionally provides that the proportion of 10 per cent should be achieved progressively, taking into account the broadcasters’ informational, educational, cultural and entertainment responsibilities to its viewing public, and that it must be achieved by earmarking an undefined “adequate” proportion for recent works (i.e. works transmitted within five years of their production).

4.4 Advertising and sponsorship

The TWF Directive and the ECTT both set out a series of rules for advertising, teleshopping and sponsorship, including provisions concerning advertising targeted at minors.¹³⁷ These formal requirements include the basic rule that advertising content and editorial content of a television programme must be clearly separated by visual means,¹³⁸ and detailed provisions on the duration and insertion of advertising and

¹³⁴ TWFD, Chapter III (Promotion of distribution and production of television programmes), arts 4-6; ECTT, art. 10.

¹³⁵ TWFD, art. 5.

¹³⁶ “European works” are defined in Article 6 of the TWFD; The definition of “European audiovisual works” is found in Article 2(e) of the ECTT.

¹³⁷ TWFD, Chapter IV; ECTT, Chapters III and IV.

¹³⁸ TWFD, art. 10.

teleshopping spots.¹³⁹ The TWF Directive and the ECTT also address the content regulation of advertising and sponsoring.¹⁴⁰

With respect to *advertising*, both the TWF Directive and the ECTT have developed general standards. It is postulated that advertising shall not prejudice respect for human dignity.¹⁴¹ Advertising shall not be misleading and shall not prejudice the interests of consumers. Furthermore, advertisers shall not exercise any editorial influence over the content of programmes.¹⁴² Additionally, both ban or restrict advertising for certain products such as tobacco products, medicinal products and treatment or alcoholic beverages.¹⁴³ Neither explicitly prohibits political or religious advertising. However, the TWF Directive stipulates that television advertising and teleshopping shall not be offensive to religious or political beliefs.¹⁴⁴

With respect to *sponsoring*, according to specific rules, while sponsoring is generally admissible, it is also subject to the following restrictions:

- A sponsor may not be granted any influence on the editorial content and/or the scheduling of a television programme, and the responsibility and the editorial independence of the broadcaster may not be affected.
- Unlike commercials, sponsoring is restricted to merely profiling the sponsor by means of promoting a particular television programme without giving any relevant incentives for consumption.
- The tobacco industry may not sponsor any television programme.
- Pharmaceutical and medical supply companies may act as a sponsor provided that their sponsorship only promotes the name or image of the company but no prescription drugs or medical treatments.¹⁴⁵

In order to ensure legal security and equal treatment in the different member States for new advertising and sponsoring techniques – such as split screen, interactive advertising and virtual advertising – the European Commission specified in an interpretative communication how the rules of the TWF Directive apply to these new techniques.¹⁴⁶ For example, it is here specified that the TWF Directive provisions on hourly and daily

¹³⁹ TWFD, arts. 11, 18.

¹⁴⁰ TWFD, arts. 12-17; ECTT, arts. 11, 15, 17-18.

¹⁴¹ TWFD, art. 12(a).

¹⁴² ECTT, art. 11.

¹⁴³ TWFD, arts. 13-15; ECTT, art. 15.

¹⁴⁴ TWFD, art. 12(c).

¹⁴⁵ TWFD, art. 17; ECTT, arts 17, 18.

¹⁴⁶ European Commission, Commission interpretative communication on certain aspects of the provisions on televised advertising in the “Television without Frontiers” Directive, C102/2, Brussels, 2004.

duration of advertising shall apply in full to split screen advertising, or that virtual advertising and sponsoring techniques, such as the display of three-dimensional images on football grounds, shall comply with the directive.

4.5 Protection of minors

The regulatory regime for the protection of minors is twofold, consisting of *general* protection measures on the one hand, and *special* protection in the field of advertising on the other.

With respect to the general protection of minors, both the TWF Directive and the ECTT call for measures to prevent minors' physical, mental or moral development from being impaired.¹⁴⁷ The TWF Directive clearly distinguishes between programmes that might seriously impair the development of minors and programmes that are likely to impair their development. Under the TWF Directive, programmes that *might seriously impair* the development of minors are completely banned¹⁴⁸ – this concerns in particular broadcasts that involve pornography or gratuitous violence. By contrast, programmes that are only *likely to impair* the development of minors are not totally banned from television; they may be televised, subject to scheduling restrictions.¹⁴⁹ Furthermore, when such programmes are broadcast in unencrypted form, they must be preceded by an acoustic warning, or identified by the presence of a visual symbol throughout their duration.¹⁵⁰ Appropriate technical means such as decoding technologies can also be used.¹⁵¹

Minor-specific advertising rules can be found in both the TWF Directive and ECTT. The ECTT is confined to prohibiting advertising that is likely to harm children's interests, and teleshopping that exhorts minors to contract for the sale or rental of goods and services.¹⁵² The TWF Directive provides more detailed regulation, for instance by specifically forbidding advertisements depicting minors consuming alcoholic beverages or exploiting the special trust that they place in parents, teachers or other persons.¹⁵³

¹⁴⁷ TWFD, art. 22; ECTT, art.7(2).

¹⁴⁸ TWFD, art. 22(1).

¹⁴⁹ TWFD, art. 22(2); ECTT, art. 7(2).

¹⁵⁰ TWFD, art. 22(3).

¹⁵¹ TWFD, art. 22(2). As for the technical facilities to control the programmes that minors may watch, see also: TWFD, art. 22b(2).

¹⁵² ECTT, art. 11(3),(4).

¹⁵³ TWFD, art. 15(a), 16.

5. PUBLIC SERVICE TELEVISION

5.1 European policy approach

Across Europe, public service broadcasting is an inherent component of the media landscape. Public service television programmes account for significant audience shares in member States – over 40 per cent in France, Germany, Italy, Poland and the UK, in 2003 (see Table 12).

Unlike commercial broadcasters, many public service broadcasters are partly or entirely funded by way of a licence fee, which must be paid on a monthly or annual basis by every television household. In the UK, BBC programmes must be completely free of advertising. In other countries, in consideration of this privileged funding, special restrictions apply as to the amount of advertising and sponsoring in public broadcast television programmes. For example, in Germany, ARD and ZDF may not feature any advertising after 20.00 on weekdays and all day on Sundays. Public service broadcasters are also subject to specific requirements to offer a broad diversity of programming, including educational, cultural and news elements, pursuant to national law (see section II.4.3).

Public service broadcasting is explicitly acknowledged under both Council of Europe recommendations and EU law. In a separate protocol, “considering that the system of public broadcasting in the member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism”, the contracting parties to the EU’s Amsterdam Treaty agreed that each member State shall generally have the sole competence to provide for the funding of its public broadcasting system, subject to certain conditions.¹⁵⁴ This reflects the European understanding of public broadcasting as an important element of the culture and the political system of democracy of each member State. The independence of public service broadcasting from Government influence is furthermore addressed in a specific Recommendation by the Council of Europe’s Committee of Ministers, which provides that “the [national] legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy”.¹⁵⁵

By contrast, the US broadcasting model is a fully commercial, market-dominated operation, with only a small element covering public services. The latter accounts for a share in the overall television audience market of well below five per cent. Pursuant to the Public Broadcasting Act of 1967, the Corporation for Public Broadcasting (CPB) was established as an umbrella organisation for the nation’s 350 public television stations that form the Public Broadcasting System (PBS).¹⁵⁶ The CPB was created to

¹⁵⁴ EU Protocol on public broadcasting (1997).

¹⁵⁵ Council of Europe, Recommendation No. R (96) 10.

¹⁵⁶ 47 U.S.C. 396, as amended.

“encourage the growth and development of public radio and television broadcasting, including the use of such media for instructional, educational, and cultural purposes”. A non-profit organisation, it is funded by the Federal government as well as by State and local governments, but it also receives grants from private and corporate donors and from colleges, universities and foundations. In contrast to most European public service broadcasters, however, public broadcasting stations are not entitled to a mandatory licence fee to be paid by each television household. In June 2005, a US Congress subcommittee voted to first sharply reduce, and then, within two years, to eliminate, all federal money for the CPB. Expressing alarm, public broadcasters and their supporters in Congress interpreted the move as an escalation of a Republican-led campaign against a perceived liberal bias in their programming. The Congress will take a final decision on public service funding later in 2005.

5.2 State aid

In recent years, public broadcasters throughout Europe have found themselves increasingly challenged by their commercial competitors with recourse to the EC Treaty State aid regime.¹⁵⁷ Private broadcasters in various member States have filed complaints with the European Commission, seeking clarification on whether the licence fee schemes constitute State aids, which are incompatible with the provisions of the EC Treaty.¹⁵⁸

The dispute starts with the question of whether the licence fee can be qualified at all as State aid within the meaning of Article. 87(1) of the EC Treaty. According to this provision, any aid shall be incompatible with the common market if it is “granted by a member State or through State resources in any form whatsoever and distorts or threatens to distort competition by favouring certain undertakings insofar as it affects trade between member States”. In response, the public service broadcasters and member State governments argue that licence fees do not provide an economic advantage to the public broadcasters, because they merely compensate the broadcasters for the additional costs that result from the public broadcasters’ fulfilment of their special obligations, under the Protocol on the system of public broadcasting in the member States appended to the Amsterdam Treaty.¹⁵⁹

In addition to this debate, there is also controversy as to whether the granting of State aid could be justified under the EC Treaty. Under the EC Treaty, certain State aids are considered to be compatible with the common market for promoting culture (Article

¹⁵⁷ EC Treaty, art. 87 *et seq.*

¹⁵⁸ A list of the most recent State aid cases in the broadcasting sector can be found at http://europa.eu.int/comm/competition/state_aid/decisions/additional_docs.html (accessed 4 August 2005).

¹⁵⁹ EU Protocol on public broadcasting (1997).

87(3)d), and State aids can be justified when granted to undertakings that are entrusted with services of general economic interest (Article 86(2)).¹⁶⁰

The European Commission has made clear that it regards licence fees as constituting State aid within the meaning of Article 87(1) EC.¹⁶¹ In its view, the only option to declare them as compatible with the EC Treaty's State aid regime lies in a justification under Article 86(2). However, the requirements that the Commission refers to, in order to approve licence fee schemes as justified under Article 86(2), are high. The Commission expects public broadcasters to fulfil the following three conditions:

- The broadcaster's activities must be clearly and precisely defined by the national authorities as a service of general economic interest (*definition*).
- The broadcaster must be officially entrusted with the provision of that service (*entrustment*).
- The State funding must not exceed the net cost of that service, taking into account other direct or indirect revenues derived from the service (*proportionality*).¹⁶²

The first requirement constitutes the most crucial point in order to ascertain whether the authorities provide more compensation than is strictly necessary for the net costs of public service broadcasting.¹⁶³ Here, the Commission is pressing to apply the Transparency Directive¹⁶⁴ to public service broadcasters, on the grounds that member States are only likely to achieve compliance with the State aid regime if the public service remit is defined more precisely, and if the financing of public service broadcasters is regulated more transparently. This poses a challenge to the public service broadcasting systems of various member States, because it is in particular the

¹⁶⁰ In this regard, the European Court of Justice has held that State funding of public service broadcasters is allowed only if a number of conditions are cumulatively met: clear public service obligations exist, parameters for determining the compensation have been pre-established, there is no overcompensation, and either the operator is selected through tender procedure or compensation is determined with reference to the costs of a typical, well-run undertaking. European Court of Justice, *Altmark Trans GmbH, Regierungspräsidium Magdeburg v. Nahverkehrsgesellschaft Altmark GmbH*, Case C-280/00, 24 July 2003.

¹⁶¹ See, for example, the following: European Commission, Communication from the Commission on the application of State aid rules to public service broadcasting, C320/5, Brussels, 15 November 2001, para. 16 *et seq.*, (hereafter, European Commission Communication on State aid); European Commission, Decision of 19 May 2004 on measures No. C 2/2003 (ex NN 22/02) implemented by Denmark for TV2/Danmark, C(2004) 1814 final, para. 56 *et seq.*, (hereafter, TV2/Danmark Decision).

¹⁶² TV2/Danmark Decision, para. 82.

¹⁶³ European Commission Communication on State aid.

¹⁶⁴ European Commission, Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings, L195/35, 1980, last amended by Commission Directive 2000/52/EC of 26 July 2000, L193/75, 2000, (hereafter, Transparency Directive).

precise determination and definition of the public service task that is often (still) lacking (see section II.4.3).

Only very recently, the Commission has taken specific action in this regard. On 3 March 2005, the European Commission announced that it was requesting the Netherlands, Ireland and Germany to clarify their policies on the funding of public service broadcasters.¹⁶⁵ In the case of Germany, the Commission has launched an investigation with respect to ARD and ZDF.¹⁶⁶ Following complaints from German private broadcasters, the Commission approached the German Government with a detailed questionnaire concerning the funding of online services and the acquisition of sports rights by the public broadcasters. The German Government submitted its reply to this questionnaire in May 2005, again stressing its view that the German licence fee does not fulfil the relevant criteria to qualify as a subsidy under EU law. Based on this response, it is now up to the Commission to decide whether it will further pursue the case by opening formal unlawful State aid proceedings. If it does so – which, at the time of writing, seems rather likely – the outcome of such proceedings might indeed have a significant impact on the fundamentals of public broadcasting, not only in Germany but also in other EU member States. For a decision against ARD and ZDF would undermine the justification for the licence fee and boost the commercial broadcasting lobby's argument that public service broadcasting should be broadly confined to unprofitable niches, excluding it from the most popular and lucrative segments of broadcasting.

6. MEDIA OWNERSHIP CONTROL

Globally, as well as in a pan-European context, the past decade has seen increasing concentration of media ownership, on a scale that threatens to endanger the existence of a wide spectrum of views and opinions in the broadcast sector. In the EU, this development is still being addressed through general competition law, despite constant calls to implement sector-specific media ownership regulation.

6.1 Market situation

Television markets throughout Europe show structural similarities – there is strong public service broadcasting in many States, and the private sector is dominated by a few companies. In smaller countries, such as the Baltic States, the number of television

¹⁶⁵ See: European Commission, press release IP/05/250 of 3 March 2005, available at <http://merlin.obs.coe.int/redirect.php?id=9587>, and also the Commission's helpful FAQ on the subject, MEMO/05/73 of 3 March 2005, available at <http://merlin.obs.coe.int/redirect.php?id=9588> (both accessed 28 August 2005).

¹⁶⁶ Case E 3/2005; See also: the Chapter on Germany in the EUMAP reports.

stations is significantly limited because there is often not enough market potential for more than one or two operators, due to the lack of advertising resources. Since the introduction of commercial television from the mid-1980s onwards, Vivendi and the Bertelsmann/RTL Group have grown to become Europe's two largest commercial broadcasting groups. The few channels that dominate the private sector are often owned by international media companies, which, in addition, are integrated multimedia players, active not only in the television sector but also, *inter alia*, in radio and the press. For example, the major companies Mediaset, NewsCorp, Bonnier, Bertelsmann/RTL and Axel Springer are all engaged in both broadcasting and publishing. (See section II.5.)

6.2 Policy debate

In most European countries, media ownership is already subject to sector-specific national legislation. However, there have also been some initiatives by the European Commission, the European Parliament, the European Economic and Social Committee and the Council of Europe to establish a pan-European regime of media ownership control.

In the 1990s, the European Commission launched two initiatives that were both rejected by the EU Council. In 1992, it published a Green Paper on pluralism and media concentration in the internal market¹⁶⁷, and in 1996–1997 it submitted a draft directive on media concentration. The proposal suggested restrictions on television, radio and cross-media ownership, but it was not adopted, mainly for reasons of lack of competency. In 2003, more than a decade after the first Green Paper, the Commission again called for comments on European media ownership control.¹⁶⁸ The 2004 report on public consultation on the 2003 Green Paper revealed that interested parties had broadly rejected the Commission's proposal. In January 2004, the Commission presented a proposal for a directive on services, that could provide a background for an EU regulation on media concentration, going beyond the measures already available under general competition law.¹⁶⁹ However, this draft directive is also still under discussion.¹⁷⁰ Among the contentious issues is the absence of an exception or cultural specificity clause that would prevent the directive from undermining member States' ability to maintain or introduce regulations or sector-specific policies in order to promote cultural and linguistic diversity and media pluralism. Furthermore, the

¹⁶⁷ European Commission, *Pluralism and Media Concentration in the Internal Market. An Assessment of the Need for Community Action*, COM (92) 480 final, December 1992.

¹⁶⁸ European Commission, *Green Paper on Services of General Interest*, COM (2003) 270 final, Brussels, 21 May 2003.

¹⁶⁹ European Commission, Proposal for a Directive of the European Parliament and of the Council on Services in the Internal Market, COM (2004) 2 final, Brussels, 5 March 2004.

¹⁷⁰ For the most recent developments, see: http://europa.eu.int/comm/internal_market/en/services/services/ (accessed 4 August 2005).

Commission itself has lately stated that it sees no legal basis at the EU level for legislating against concentration for the sake of media pluralism.

The European Parliament has supported and partly initiated the Commission's initiatives on EU rules on media concentration.¹⁷¹ Only recently, some members of the European Parliament have again called for the Commission to take action in the field of media concentration. So far, however, the Commission has not formally reacted to such demands.

In March 2000, the European Economic and Social Committee put forward an initiative on media pluralism and concentration in the age of globalisation and digital convergence, and recommended the coordination of national regulatory bodies through the Commission.

Through recommendations and reports, the Council of Europe has also been active in tackling media concentration. For example, it published a report on media concentration in the digital environment in October 2000, and media concentration issues are continually discussed in the Council of Europe's Steering Committee on the Mass Media – now renamed the Steering Committee on the Media and New Communications Services. In November 2004, the CoE presented a study on transnational media concentrations in Europe, which suggested ongoing monitoring, possibly a convention at the level of the CoE, and further measures at the level of its member States.¹⁷²

However, despite all the debate and concern about increasing concentration in the media industry, no harmonisation of media pluralism rules has yet taken place at the EU or CoE level. This is mainly due to member States' remaining competencies in this area and also to the realisation that national market sizes and regulatory models are too different to be harmonised.¹⁷³ Also, national governments, as well as the media industry itself, have clearly indicated that they would prefer that the media ownership issue be dealt with at the national level.

¹⁷¹ See, for example: European Parliament, Resolution of 22 April 2004 on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights), 2003/2237 (INI), A5-0230/2004; see also: the Italy Chapter of the EUMAP reports.

¹⁷² Council of Europe, *Transnational Media Concentrations in Europe*, report prepared by the AP-MD, (Advisory Panel to the CDMM on media concentrations, pluralism and diversity questions), Media Division, Directorate General of Human Rights, Strasbourg, November 2004.

¹⁷³ See, for example: European Broadcasting Union, *Position Paper on the Commission Proposal for a Directive on Services in the Internal Market*, 8 December 2004, p. 10, available at http://www.ebu.ch/CMSimages/en/leg_pp_directive_services_081204_tcm6-23334.pdf (accessed 4 August 2005).

6.3 Existing legal framework

Due to the lack of jurisdictional competency of the EU bodies, protection of media pluralism is therefore primarily a task for the member States. No EU criteria exist concerning *media* concentration. Instead, at the EU level, only Community competition law can be relied upon in order to attempt to prevent a degree of cumulative control or participation in media companies that might endanger pluralism in broadcasting.

As far as existing legislation measures are concerned, neither the EC Treaty nor the TWF Directive (for EU member States), or the ECTT (for CoE member States), contains sector-specific provisions on media concentration.

For EU member States, instead of being subject to broadcasting-specific legislation, mergers in the television sector are only supervised under the Merger Regulation, which, as a general competition law instrument, is applicable to all mergers. The Regulation does not provide for special turnover thresholds for media mergers. Furthermore, it is exclusively in the European Commission's competency to decide whether a merger falls within the scope of the regulation. Finally, the regulation contains an exemption for member States to protect legitimate interests and explicitly lists the protection of media pluralism as one of those interests.¹⁷⁴ For example, this clause has been invoked in the "Newspaper Publishing" case in 1994, which was first cleared by the Commission but then did not receive approval by the UK competition authorities due to media pluralism concerns.¹⁷⁵

¹⁷⁴ EC Merger Regulation, art. 21(4).

¹⁷⁵ Case No IV/M.423 – Newspaper Publishing.

ANNEX 1. Legislation and recommendations cited in the report

European Union

Treaties

Treaty establishing the European Community (EC Treaty).

Consolidated version available at

http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/pdf/12002E_EN.pdf (accessed 30 June 2005).

Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed on 2 October, C 340, 10 November 1997, Protocol no. 9 on the system of public broadcasting in the member States, O.J. C340/109. (*EU Protocol on public broadcasting (1997)*)

Available at <http://europa.eu.int/eur-lex/en/treaties/selected/livre545.html> (accessed 30 July 2005).

Directives

Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services, L108/51, Brussels, 24 April 2002. (*Universal Service Directive*)

Available at

http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00510077.pdf (accessed 30 June 2005).

Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, L108/33, Brussels, 24 April 2002. (*Framework Directive*)

Available at

http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00330050.pdf (accessed 30 June 2005).

Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, L108/7, Brussels, 24 April 2002. (*Access Directive*)

Available at

http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00070020.pdf (accessed 30 June 2005).

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ANNEX 3. Tables

Table 1. Individual television viewing time (2003)
Ranked by viewing time

	Average viewing time for adults, Monday-Sunday (minutes per day)
Serbia and Montenegro	278
Hungary	274
Macedonia	259
Croatia	254
Poland	250
Italy	245
Estonia	239
UK	239
Slovakia	235
Romania	235
Turkey	224
Germany	217
Czech Republic	214
France	213
Lithuania	210
Latvia	207
Bulgaria	185
Slovenia	178
Albania	NA
Bosnia and Herzegovina	NA
Average (18 countries)	219

Source: IP International Marketing Committee¹⁷⁶

Table 2. TV overview (2003)

Ranked by population

	Population (thousands)	Households (thousands)	Television households (TVHH) (with at least 1 TV set)		Number of terrestrial channels received by 70 per cent of the population
			Total (thousands)	Share of all households (per cent)	
Germany	82,537	38,720	34,370 ¹⁷⁷	91.1	25
Turkey	71,271	16,460	10,789	97.9	15
France	61,684	24,870	23,750	95.0 ¹⁷⁸	7
U.K.	59,232	25,043	24,482	97.8	5
Italy	55,696	21,645	21,320	98.5	9
Poland	38,195	13,337	12,982	97.3	6
Romania ¹⁷⁹	21,698	7,392	6,763	91.5	3
Czech Republic	10,230	3,738	3,735	97.6	4
Hungary	10,117	3,863	3,785	98.0	3
Serbia and Montenegro ¹⁸⁰	8,120	2,700	2,300 ¹⁸¹	98.0	6
Bulgaria	7,845	2,905	2,754	94.8	2
Slovakia	5,379	1,645	1,628	99.0	4
Croatia	4,438	1,477	1,448	97.5	4
Bosnia and Herzegovina ¹⁸²	3,832	NA	NA	97.0	6
Lithuania	3,463	1,357	1,331	98.1	4
Albania ¹⁸³	3,144	726	500	68.8	1
Latvia	2,331	803	780	97.2	4
Macedonia	2,023	564	467	83.0	7
Slovenia	1,964	685	673	98.0	5
Estonia	1,356	582	565	97.1	3

Source: IP International Marketing Committee,¹⁸⁴ EUMAP national reports; EUMAP research

Table 3. The EU broadcasting market – breakdown by type of broadcaster (1998–2002)

	Total net revenues (€ million)					Change in net revenues 2002/2001	Share of total net revenue 2002
	1998	1999	2000	2001	2002	(per cent)	(per cent)
Total	50,213	56,961	63,269	66,259	65,387	-1.3	100
Public broadcasters (radio and television)	23,353	25,689	26,896	28,549	27,769	-2.7	42.5
Commercial broadcasters (television)	14,548	16,640	18,713	18,187	17,349	-4.6	26.5
Commercial broadcasters (radio)	3,302	3,302	3,893	3,898	3,935	1.0	6.0
Home shopping companies	727	1,034	1,297	1,518	1,730	13.9	2.1
Pay-TV companies	2,989	3,320	3,569	3,784	3,915	3.5	6.0
TV packagers	3,671	4,956	6,485	7,410	7,722	4.2	11.8
Thematic channels	1,623	2,019	2,416	2,912	2,967	1.9	4.5

Source: European Audiovisual Observatory¹⁸⁵

Table 4. Top 10 European television companies (2003)

Ranked by unconsolidated operating revenues

Rank	Company	Country	Main activities	Type (public/private)	Unconsolidated operating revenues (€ million)
1	British Sky Broadcasting	UK	TV	private	4,242.1
2	BBC Home Service	UK	TV+Radio	public	4,214.1
3	RAI	Italy	TV+Radio	public	2,736.7
4	RTI	Italy	TV	private	2,008.2 ¹⁸⁶
5	ZDF	Germany	TV	public	1,778.4 ¹⁸⁷
6	TF1	France	TV	private	1,596.2
7	RTL Television	Germany	TV	private	1,589.0
8	Canal+	France	TV	private	1,585.0
9	France 2	France	TV	public	1,573.5
10	France 3	France	TV	public	1,416.0
	Total	–	–	–	22,739.2

Source: European Audiovisual Observatory¹⁸⁸

Table 5. Concentration of national audiences (2003)

Ranked by aggregate audience share

	Top 3 channels (in terms of audience share)	Aggregate audience share of the top 3 channels (per cent)
Czech Republic	TV Nova, ČT 1, Prima TV	86.1
Bulgaria	bTV, Kanal 1, Nova TV	84.2
Croatia ¹⁸⁹	RTL Televizija, HTV 1, Nova TV	83.8
Hungary	RTL Klub, TV2, MTV 1	75.7
Slovakia	Markíza TV, STV 1, Joj	72.9
France	TF 1, France 2, France 3	66.9
Slovenia	Pop TV, SLO 1, SLO 2	64.2
Lithuania	LNK, TV 3, LRT	63.4
Poland	TVP 1, TVP 2, Polsat	62.6
UK	BBC 1, ITV 1, BBC 2	61.7
Macedonia	A1 TV, MTV 1, Sitel	60.0
Estonia	TV3, Kanal 2, ETV	59.9
Italy	RAI 1, Canale 5, RAI 2	59.4
Romania	Romania 1, Pro TV, Antena 1	57.5
Latvia	LNT, TV 3, LTV 1	52.2
Serbia and Montenegro	Pink, RTS 1, BK	51.8
Germany	RTL, ARD, ARD 3	43.4
Turkey	Kanal D, Show TV, ATV	43.0

Source: EUMAP calculation, based on data from IP International Marketing Committee¹⁹⁰

Table 6. Audience share of the leading channels (2003)

Country	Channel	Audience share (adults) (per cent)	Type of station
Albania ¹⁹¹	Klan TV	21.5	Private
	TVSH	17.1	Public
Bosnia and Herzegovina ¹⁹²	FTV	23.8	Public
	HRT Zagreb	10.5	Public (Croatia)
Croatia ¹⁹³	RTL Televizija	39.5	Private
	HTV1	31.8	Public
Czech Republic	TV Nova	43.4	Private
	ČT 1	22.1	Public
Estonia	TV3	22.1	Private
	Kanal 2	19.8	Private
France ¹⁹⁴	TF1	31.8	Private
	France 2	20.5	Public
Germany	RTL	15.0	Private
	ARD	14.5	Public
Hungary	RTL Klub	29.5	Private
	TV2	29.4	Private
Italy	RAI 1	24.2	Public
	Canale 5	23.2	Private

Country	Channel	Audience share (adults) (per cent)	Type of station
Latvia	LNT	22.2	Private
	TV3	15.1	Private
Lithuania	LNK	27.0	Private
	TV3	23.9	Private
Macedonia	A1	28.9	Private
	MTV1	16.9	Public
Romania	Romania 1	28.4	Public
	Pro TV	15.6	Private
Serbia and Montenegro	Pink TV	21.2	Private
	RTS 1	20.4	Public
Slovakia	Markiza	45.9	Private
	STV 1	15.7	Public
Slovenia	Pop TV	29.0	Private
	SLO 1	24.9	Public
Turkey	Kanal D	15.0	Private
	Show	14.4	Private
UK	BBC 1	26.3	Public
	ITV 1	24.3	Private

Source: EUMAP research, based on data from IP International Marketing Committee and European Audiovisual Observatory¹⁹⁵

Table 7. Overview of broadcasting regulators

Source: EUMAP reports

Country	Name	Official Status	No. of members on the board	Who appoints them	Who can dismiss them	Tenure (years)	No. of terms	Funding
Albania	National Council of Radio and Television (<i>Këshilli Kombëtar i Radios dhe Televizionit</i> , – KKRT)	Independent regulatory body	7	Parliament – at the proposal of: <ul style="list-style-type: none"> • the President of the Republic (1) • the Parliamentary Media Committee (6) 	Parliament	5	Max. 2 consecutive (staggered)	<ul style="list-style-type: none"> • proportion of the licence fee • revenues from broadcast licence applications • 5 per cent of the annual income tax paid by broadcasters • State budget • donations
	Regulatory Entity for Telecommunications (<i>Enti Rregullator i Telekomunikacioneve</i> – ERT)	Independent regulatory body	5	<ul style="list-style-type: none"> • President of the Republic (1) • Council of Ministers (2) • Parliament (2) 	Institution appointing them	5	Max. 2	<ul style="list-style-type: none"> • State budget • own revenues
Bosnia and Herzegovina	Communications Regulatory Authority (<i>Regulatorna agencija za komunikacije</i> – RAK)	Independent State agency, non-profit institution	7 (+ Director General)	<ul style="list-style-type: none"> • Parliament – upon nomination by the Council of Ministers (Council members) • Council of Ministers approves the Director General, upon nomination by the RAK Council 	Institution appointing them	4	Max. 2	<ul style="list-style-type: none"> • technical fees paid by telecomms. operators and broadcasters • grants and donations

Country	Name	Official Status	No. of members on the board	Who appoints them	Who can dismiss them	Tenure (years)	No. of terms	Funding
Bulgaria	Council for Electronic Media (<i>Svet za elektroni medii</i> – CEM)	Independent specialised body	9	<ul style="list-style-type: none"> National Assembly (5) President of the Republic (4) 	Council for Electronic Media	6	Max. 2 consecutive (staggered)	State budget
	Communications Regulation Commission (<i>Komisija za reguliranje na sobsceniata</i> – KRS)	Legal entity	5	<ul style="list-style-type: none"> Parliament (3) – elected President (1) Council of Ministers (Chair) 	The authority that appointed them	5	Max. 2 consecutive	State budget
Croatia	Council for Electronic Media (<i>Vijeće za elektroničke medije</i> – CEM)	Independent regulatory body	7	Parliament – at the proposal of the Government	Parliament – at the proposal of the Government	5	Max. 2 (staggered)	Tax on broadcasters
	Croatian Telecommunications Agency (<i>Hrvatska agencija za telekomunikacije</i> – CTA)	Independent regulatory authority	5	Parliament – at the proposal of the Government	Parliament – at the proposal of the Government	5	Not specified	<ul style="list-style-type: none"> 5 per cent of broadcast licence fee A tax on the use of postal addresses and numbers in telecomms. 0.2 per cent of the gross annual income of telecomms. service providers
Czech Republic	Council for Radio and Television Broadcasting, (<i>Rada pro rozhlasové a televizní vysílání</i> – RRTV)	Independent administrative authority ?	13	Nominated by the Chamber of Deputies and appointed by the Prime Minister	Prime Minister, based on a proposal of the Chamber.	6 (not staggered)	Max. 2	State budget
	Czech Telecommunication Office (<i>Český Telekomunikační Úřad</i> – ČTÚ)	Independent administrative authority	5	Government (at the proposal of the Minister of Informatics)	Government (at the proposal of the Minister of Informatics)	5 years (staggered)	Not specified	State budget

Country	Name	Official Status	No. of members on the board	Who appoints them	Who can dismiss them	Tenure (years)	No. of terms	Funding
Estonia	Ministry of Culture (<i>Kultuuri Ministeerium</i>) Media Division	Government Ministry	–	–	–	–	–	State budget
	Broadcasting Council (<i>Ringhäälingunõukogu</i>)	Regulatory authority accountable to Parliament	9	Parliament – on the proposal of Parliamentary Cultural Affairs Committee	Parliament	5	Not restricted	State budget
	State Communications Board (<i>Sideamet</i>)	State institution subordinate to Ministry of Economic Affairs and Communications)	–	–	–	–	–	State budget
France	High Council for Broadcasting (<i>Conseil supérieur de l'audiovisuel – CSA</i>)	Independent administrative authority	9 commissioners	<ul style="list-style-type: none"> • President of the Republic (3) • President of the Senate (3) • President of the National Assembly (3) 	Cannot be removed	6 years (staggered)	Max. 1	State budget
Germany	15 regional authorities (<i>Landesmedienanstalt</i>) for each <i>Land</i> , except for Berlin and Brandenburg which have a common regulator	Public service organisation	Chairman or Director + Assembly (the no. of its members varies between 11 and 50)	<ul style="list-style-type: none"> • By the Assembly (Chairman) • By representatives of socially relevant groups (the Assembly) • the distribution of groups' seats is laid down in Länder laws 	<ul style="list-style-type: none"> • Assembly (Chairman) • Socially relevant groups (the Assembly members) 	4-8	<ul style="list-style-type: none"> • Usually renewable (Chairman) • Renewable (Members of the Assembly) 	Percentage of the licence fee
Hungary	National Radio and Television Commission (<i>Országos Rádió és Televízió Testület – ORTT</i>)	Independent entity under the supervision of Parliament	At least 5 members	<ul style="list-style-type: none"> • President of the Republic and Prime Minister jointly (chair) • elected by Parliament, at the proposal of parliamentary fractions of political parties (the rest of members) 	They cannot be recalled	4	No limit (Staggered)	State budget

Country	Name	Official Status	No. of members on the board	Who appoints them	Who can dismiss them	Tenure (years)	No. of terms	Funding
Italy	The Communications Guarantee Authority (<i>Autorità per le Garanzie nelle Comunicazioni – AGCOM</i>)	Independent authority with competencies in telecomms, audiovisual and publishing	9	<ul style="list-style-type: none"> President of the Republic (Chair) – upon advice from the Prime Minister and in agreement with the Minister of Telecommunications Chamber of Representatives (4) Senate (4) 	The body that appointed them upon the proposal of the AGCOM	7	Max. 1	<ul style="list-style-type: none"> State budget taxes paid by telecomms. operators
Latvia	National Radio and Television Council (<i>Nacionālā radio un televīzijas padome – NRTP</i>)	Independent administrative authority	9	Parliament, upon nomination by at least 5 MPs	Parliament	4	Max. 2 consecutive (staggered)	State budget
Lithuania	Radio and Television Commission of Lithuania (<i>Lietuvos Radijo ir Televizijos Komisija – LRTK</i>)	Independent institution	13	<ul style="list-style-type: none"> Parliament (3) President of the Republic (1) the rest (9) are appointed by professional associations (i.e. painters, cinematographers, writers, actors, journalists, churches, publishers) 	Cannot be recalled (except for cases of health problems, resignation, conviction)	Duration of the term of Parliament, Presidential term and governing bodies of associations that appointed them	Max. 2 consecutive (staggered)	Percentage of the income of commercial broadcasters
Macedonia	Broadcasting Council (<i>Sovet za radiodifuzija – SRD</i>)	Independent regulatory authority	9	Parliament	Cannot be recalled, unless they resign, abstain from participation for longer than 6 months or because of a conviction	6	Max. 2 (staggered)	<ul style="list-style-type: none"> Part of the licence fee Part of the administrative fee private broadcasters pay for using broadcast licence

Country	Name	Official Status	No. of members on the board	Who appoints them	Who can dismiss them	Tenure (years)	No. of terms	Funding
Poland	National Broadcasting Council (<i>Krajowa Rada Radiofonii i Telewizji – KRRiT</i>)	State institution	9	<ul style="list-style-type: none"> • Chamber of Deputies (4) • Senate (2) • President of the Republic (3) 	By the institution that appointed them	6 (staggered)	Only one	State budget
	Office of Telecommunications and Post Regulation (<i>Urząd Regulacji Telekomunikacji i Poczty – URTiP</i>)	Government administration office	President of URTiP	Prime Minister	Prime Minister	5	Not specified	State budget
Romania	The National Audiovisual Council (<i>Consiliul Național al Audiovizualului – CNA</i>)	Autonomous public authority	11	Parliament – upon nomination by: <ul style="list-style-type: none"> • President (2) • Government (3) • Chamber of Deputies (3) • Senate (3) 	Parliament at the proposal of specialised parliamentary commissions	6 (staggered)	Not specified by law	State budget
	Inspectorate General for Communications and Information Technology (<i>Inspectoratul General pentru Comunicații și Tehnologia Informației – IGCTI</i>)	Autonomous public institution	IGCTI's board (Vice-President and President)	Prime Minister	Not specified by law	Not specified by law	Not specified by law	Own revenues (technical services)
Serbia	Republican Broadcasting Agency (<i>Republička radiodifuzna agencija – RBA</i>)	Independent regulator	9	Parliament – upon nomination by politicians, academia, NGOs, media and professional organisations	Parliament	4-6 years ¹⁹⁶	Staggered	Broadcast licence fees

Country	Name	Official Status	No. of members on the board	Who appoints them	Who can dismiss them	Tenure (years)	No. of terms	Funding
Slovakia ¹⁹⁷	Council for Broadcasting and Retransmission (<i>Rada pre vysielanie a retransmisiiu</i> – RVR)	Independent body	9	Parliament – upon nomination by MPs and civil society organisations	Parliament (in cases of breach of rules of compatibility, sentence etc.)	6	Max. 2 (staggered)	State budget
Slovenia	Agency for Post and Electronic Communication (<i>Agencija za pošto in elektronske komunikacije Republike Slovenije</i> – APEK)	Independent body	Director	Government	Government	5	Max. 1	State budget
	Broadcasting Council of the Republic of Slovenia (<i>Svet za radiodifuzijo Republike Slovenije</i> – SRDF)	Independent body	7	Parliament – upon nomination by University of Slovenia, Chambers of Culture and Commerce, Journalist Association	Parliament	5	Max. 2	State budget
	Ministry of Culture	State authority	–	–	–	–	–	State budget

Country	Name	Official Status	No. of members on the board	Who appoints them	Who can dismiss them	Tenure (years)	No. of terms	Funding
Turkey	Radio and Television Supreme Council (<i>Radio ve Televizyon Üst Kurulunun – RTÜK</i>)	Regulatory authority	9	Parliament – upon nomination by: <ul style="list-style-type: none"> political parties in Government (5) political parties in opposition (4) 	Cannot be dismissed	4	Not specified	<ul style="list-style-type: none"> Annual fees from commercial broadcasters Tax on advertising income of private broadcasters Fines on commercial broadcasters Allocations from the Assembly budget
	Telecommunications Authority (TK)	Independent authority	5	Council of Ministers	Not specified	5	Not specified	Own sources (plus State subsidies when needed)
	Communication High Council (HYK)	Body of approval for comms. policies	5	Members are Government representatives		–	–	–
UK	Office of Communications (OFCOM)	Statutory corporation, independent of the Government, accountable to Parliament	Board ¹⁹⁸ (9 members – 6 non-executive members including the Chair + 3 executive members, including Chief Executive of Ofcom and 2 members from the Ofcom Executive)	<ul style="list-style-type: none"> Ministers, based on Nolan principles¹⁹⁹ (non-executive members) Secretary of State for Culture, Media and Sport and the Secretary of State for Trade and Industry (Chairman) Ofcom Board (CEO) 	Secretary of State for Culture, Media and Sport and the Secretary of State for Trade and Industry	5 (Chair)	Not specified	From a number of sources, such as: <ul style="list-style-type: none"> Television broadcast licence fees. Radio broadcast licence fees. Administrative charges for electronic networks and services and associated facilities. Funding to cover Ofcom's operating costs for spectrum management (grant-in-aid from the Government)

Table 8. Broadcasting regulators – scope of regulation

Source: EUMAP reports

Country	Name	Scope of regulation	Main regulatory powers	Main sanction powers
Albania	National Council of Radio and Television (KKRT)	Private and State broadcasters	<ul style="list-style-type: none"> • licensing • determining production and broadcasting standards • monitoring information programmes of national, and sometimes local, broadcasters 	<ul style="list-style-type: none"> • warnings • fines • suspension or shortening of broadcast licence • revocation of broadcast licence
	Regulatory Entity for Telecommunications (ERT)	Cable broadcasters	<ul style="list-style-type: none"> • technical inspection of the broadcaster 	<ul style="list-style-type: none"> • orders aimed at remedying the situation • revocation of licence
Bosnia and Herzegovina	Communications Regulatory Authority (RAK)	Private and public broadcasters	<ul style="list-style-type: none"> • licensing of private broadcasters • monitoring licensees' compliance with the licence conditions and the regulations of the RAK 	<ul style="list-style-type: none"> • warnings • fines • suspension of broadcasting • revocation of broadcast licence
Bulgaria	Council for Electronic Media (CEM)	Public and private broadcasters	<ul style="list-style-type: none"> • licensing • monitoring programming • election and dismissal of General Directors of public service broadcasters • approval of the managing boards of public service broadcasters • organising and conducting research on broadcasting 	<ul style="list-style-type: none"> • fines • dismissal of General Directors of public service broadcasters • revocation of licences
	Communications Regulation Commission (KRS)	Technical regulator	<ul style="list-style-type: none"> • management of the frequency spectrum • issuing telecommunication licences 	<ul style="list-style-type: none"> • revocation of telecommunication licences at the request of the CEM

Country	Name	Scope of regulation	Main regulatory powers	Main sanction powers
Croatia	Council for Electronic Media (CEM)	Public and private broadcasters	<ul style="list-style-type: none"> licensing monitoring broadcasters' compliance with legal provisions and licence conditions 	<ul style="list-style-type: none"> warnings revocation of licence
	Croatian Telecommunications Agency (CTA)	Technical regulator	<ul style="list-style-type: none"> management of frequency spectrum 	<ul style="list-style-type: none"> revocation of broadcast licence
	Ministry of Culture	All broadcasters	<ul style="list-style-type: none"> supervising broadcasters' compliance with the law 	<ul style="list-style-type: none"> warnings
Czech Republic	Broadcasting Council (RRTV)	Public and private broadcasters	<ul style="list-style-type: none"> licensing monitoring of broadcasters' compliance with legal provisions monitoring of broadcasting programming participation in media policy-making 	<ul style="list-style-type: none"> warnings fines withholding the broadcast licence
	Czech Telecommunication Office (ČTÚ)	Technical regulator	<ul style="list-style-type: none"> managing the frequency spectrum 	<ul style="list-style-type: none"> none
Estonia	Ministry of Culture	Public and private broadcasters	<ul style="list-style-type: none"> licensing private broadcasters monitoring broadcasters' compliance with licence conditions and the Broadcasting Act (Media Division in the Ministry of Culture) 	<ul style="list-style-type: none"> fines suspension of licence (for 14 days) revocation of licence
	Broadcasting Council	Public broadcasters	<ul style="list-style-type: none"> main body responsible for the supervision of public service broadcasters 	<ul style="list-style-type: none"> can dismiss the management of the public service broadcaster
	State Communications Board	Technical regulator	<ul style="list-style-type: none"> management of frequency spectrum technical supervision 	<ul style="list-style-type: none"> fines
France	High Council for Broadcasting (CSA)	Public and private broadcasters	<ul style="list-style-type: none"> licensing monitoring broadcasters' compliance with programming obligations appointing heads of the public service broadcasters issuing opinions on the Government's bills on broadcasting frequency management 	<ul style="list-style-type: none"> warnings fines licence reduction and withdrawal

Country	Name	Scope of regulation	Main regulatory powers	Main sanction powers
Germany	Federal regulatory authorities (15)	Private broadcasters	<ul style="list-style-type: none"> • licensing • control of media concentration • supervision of programme content • conducting media research 	<ul style="list-style-type: none"> • fines • revocation of licences
Hungary	National Radio and Television Board (ORTT)	Public and private broadcasters	<ul style="list-style-type: none"> • licensing • monitoring supervising and monitoring • commenting on draft legislation on frequency management 	<ul style="list-style-type: none"> • warnings • suspension of broadcasting • fines and penalties • termination of broadcasting
Italy	The Communications Guarantee Authority (AGCOM)	Public and private broadcasters (integrated communications regulator)	<ul style="list-style-type: none"> • establishing standards for the industry • supervising the market and verifying the existence of dominant positions • licensing (in cooperation with the Ministry of Telecommunications) • proposing legislation and policies • management of the frequency spectrum • enforcing broadcasters' compliance with the law 	<ul style="list-style-type: none"> • fines
Latvia	Broadcasting Council (NRTP)	Public and private broadcasters	<ul style="list-style-type: none"> • licensing • formulation of national strategy for broadcasting • conducting research • monitoring of broadcasting • appointing the General Director of the public television and approving the station's board • determining the basic parameters of the public broadcasters • preparing the public service television budget 	<ul style="list-style-type: none"> • warnings • filing reports with a court on administrative violation • suspension of licence (up to seven days) • revocation of licence
Lithuania	Radio and Television Commission of Lithuania (LRTK)	Public and private broadcasters	<ul style="list-style-type: none"> • licensing • supervising broadcasters' compliance with the law and licence conditions 	<ul style="list-style-type: none"> • warnings • fines on senior managers of commercial and public service broadcasters • suspension of broadcast licence • revocation of broadcast licence

Country	Name	Scope of regulation	Main regulatory powers	Main sanction powers
Macedonia	Broadcasting Council (SRD)	Public and private broadcasters	<ul style="list-style-type: none"> • assisting Government in licensing • monitoring the content of broadcasting to ensure it is in line with the licence conditions 	<ul style="list-style-type: none"> • warnings • filing proposals to the relevant Inspectorate to impose fines on broadcasters, or to the Government to revoke licences
	The Government	Private broadcasters	<ul style="list-style-type: none"> • licensing (after consultation with the Broadcasting Council) 	<ul style="list-style-type: none"> • fines • revocation of licence • revocation of frequency • (relevant Inspectorates within the Ministry of Culture, Ministry of Economy and Ministry of Transport and Communications)
Poland	National Broadcasting Council (KRRiT)	Public and private broadcasters	<ul style="list-style-type: none"> • licensing • appointing the Supervisory Council of the public broadcaster • monitoring broadcasters' compliance with the law • monitoring private broadcasters' compliance with the licence conditions 	<ul style="list-style-type: none"> • financial penalties • revocation of the broadcast licence
	Office of Telecommunications and Post Regulation (URTiP)	Technical regulator	<ul style="list-style-type: none"> • management of frequency spectrum 	<ul style="list-style-type: none"> • None
Romania	The National Audiovisual Council (CNA)	Public and private broadcasters	<ul style="list-style-type: none"> • licensing private broadcasters • monitoring broadcasters' compliance with the law • issuing recommendations on broadcasting policy 	<ul style="list-style-type: none"> • summons to remedy breaches of law • fines • revocation of broadcast licence
	Inspectorate General for Communications and Information Technology (IGCTI)	Technical regulator	<ul style="list-style-type: none"> • management of frequency spectrum • monitoring the compliance by broadcasters with the conditions of using frequencies 	<ul style="list-style-type: none"> • None
Serbia and Montenegro	Republican Broadcasting Agency (RRA)	Public and private broadcasters	<ul style="list-style-type: none"> • licensing (in cooperation with the Telecommunications Agency, not yet established) • monitoring the broadcasters' compliance with programme requirements • appointing the managing board of public broadcaster 	<ul style="list-style-type: none"> • warnings • revocation of broadcast licence

Country	Name	Scope of regulation	Main regulatory powers	Main sanction powers
Slovakia	Council for Broadcasting and Retransmission (RVR)	Public and private broadcasters	<ul style="list-style-type: none"> licensing monitoring broadcasters' compliance with legislation 	<ul style="list-style-type: none"> notifications demand for remedy fines revocation of the broadcast licence
Slovenia	Agency for Post and Electronic Communication (APEK)	Public and private broadcasters	<ul style="list-style-type: none"> supervision of broadcasters' compliance with programming obligations supervision of ownership restrictions licensing (based on binding recommendations by the Broadcasting Council) technical, financial and administrative assistance to the Broadcasting Council 	<ul style="list-style-type: none"> warnings fines forbidding advertising temporary or permanent withdrawal of the licence
	Broadcasting Council (SRDF)	Public and private broadcasters	<ul style="list-style-type: none"> supervision implementation by broadcasters of programming obligations gives instruction to the Agency about granting licences 	
	Ministry of Culture	Public and private broadcasters	<ul style="list-style-type: none"> preparing legislation in the field of broadcasting supervising the implementation of media legislation receiving complaints from the public on breach of media legislation (the Media Inspector at the Ministry) 	<ul style="list-style-type: none"> warnings fines forbidding advertising temporary or permanent withdrawal of the licence
Turkey	Radio and Television Supreme Council (RTÜK)	Private broadcasters and, partly, public broadcasters	<ul style="list-style-type: none"> licensing monitoring content nominating candidates for the General Directorate and the Executive Board of public service television TRT 	<ul style="list-style-type: none"> warnings suspension of broadcasting revocation of the licence
	Telecommunication Authority (TK)	Technical regulator	<ul style="list-style-type: none"> management of the frequency spectrum 	<ul style="list-style-type: none"> None
	Communication High Council (HYK)	Supervisory board convening twice a year	<ul style="list-style-type: none"> approval of the frequency plan submitted by TK 	<ul style="list-style-type: none"> None

Country	Name	Scope of regulation	Main regulatory powers	Main sanction powers
UK	Office of Communications (OFCOM)	Integrated communications regulator (broadcasting, telecoms. and wireless comms.)	<ul style="list-style-type: none"> • Licensing • Three-tiered system of content regulation: (1) monitoring of programming and advertising standards and impartiality; (2) monitoring of quantitative obligations (quotas); (3) monitoring of fulfilment of programme promises made by broadcasters (self-regulation) • Spectrum management • Monitoring media ownership (promoting competition) 	<ul style="list-style-type: none"> • fines • revocation of broadcast licence

Table 9. Overview of public service television broadcasters

Country	Name		Details	No. of nationwide analogue terrestrial television channels	Status/Ownership	Number of employees
Albania	RTSH	Radio-Television of Albania, <i>Radio, Televizioni Shqiptar</i>	Albanian Television (<i>Televizioni Shqiptar</i> – TVSH) and Tirana Radio (TR) are regulated together as RTSH.	1	Public legal entity	210 (TVSH Tirana unit only, the entire number is NA)
Bosnia and Herzegovina	BHRT BiH	The Public Broadcasting Service of B&H, <i>Javni radiotelevizijski servis BiH</i>	The Public Broadcasting System of B&H (<i>Javni radiotelevizijski sistem Bosne i Hercegovine</i> – JRTS BiH) consists of: <ul style="list-style-type: none"> • BHRT BiH (n.b. previously the acronym PBS B&H was used) • The Radio-Television of the Federation of Bosnia and Herzegovina (<i>Radio-Televizija Federacije BiH</i> – RTF BiH), • The Radio-Television of Republika Srpska (<i>Radio-televizija Republike Srpske</i> – RTRS) 	3 (1 nationwide+2 entity-wide)	Public corporations	145 (radio and television, in 2004)
Bulgaria	BNT	Bulgarian National Television, <i>Blgarska Nacionalna Televizija</i>	BNT is governed separately from Bulgarian National Radio (BNR)	1	Public institution	1,965 (2002)
Croatia	HTV	Croatian Television, <i>Hrvatska televizija</i>	Croatian Radio (<i>Hrvatski radio</i>) and HTV are governed together as HRT (Croatian Radio-Television, <i>Hrvatska radiotelevizija</i>)	2	Public institution with founder's rights retained by the Government	1,735 (2002)
Czech Republic	ČT	Czech TV, <i>Česká televize</i>	ČT is governed separately from Czech Radio (<i>Český rozhlas</i>)	2	Independent public service corporation	2,500 (2004)
Estonia	ETV	Estonian Television, <i>Eesti Televisioon</i>	ETV is governed separately from Estonian Radio (<i>Eesti Raadio</i>)	1	Public institution	497 (2003)

Country	Name		Details	No. of nationwide analogue terrestrial television channels	Status/Ownership	Number of employees
France	–	France Télévisions	The public broadcasting sector is composed of five different entities: France Télévisions, Radio France, Radio France International (RFI), ARTE and the National Audiovisual Institute (INA)	3	Public broadcasting corporation	6,900 (2003)
Germany	ARD	Association of Public Service Broadcasters in Germany, <i>Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten Deutschlands</i>	Each public service broadcaster has three authorities responsible for the management and supervision of the organisation.	A network of 9 regional broadcasters + Deutsche Welle	Public service broadcasting organisations	21,000 (2003)
	ZDF	Second German Television, <i>Zweites Deutsches Fernsehen</i>		1		3,600 (2004)
Hungary	MTV	Hungarian Radio and Television, <i>Magyar Televízió</i>	Hungarian public radio and television are regulated together as MTV, while Duna TV is regulated as a separate entity	2	MTV and Duna TV are both one-man joint stock companies run by Hungarian Television Public Foundation	1,600 (2004)
	Duna TV	<i>Duna Televízió</i> , Duna Television		1		NA
Italy	RAI	<i>Radiotelevisione Italiana</i>	Italian public radio and television are regulated together as RAI	3	Corporation majority-owned by the Ministry of Economy and Finance	13,000 (2003)
Latvia	LTV	Latvian Television, <i>Latvijas Televīzija</i>	LTV is governed separately from Latvian Radio (<i>Latvijas Radio – LR</i>)	2	State-owned limited liability company	NA

Country	Name		Details	No. of nationwide analogue terrestrial television channels	Status/Ownership	Number of employees
Lithuania	LRT	Lithuanian National Radio and Television, <i>Lietuvos nacionalinis radijas ir televizija</i>	Lithuanian Television (<i>Lietuvos televizija</i>) and Lithuanian Radio (<i>Lietuvos radijas</i>) are regulated together as LRT	2	Public company	650 (2005)
Macedonia	MRT	Macedonian Radio & Television, <i>Makedonska radio-televizija</i>	Macedonian Television (<i>Makedonska televizija – MTV</i>) and Macedonian Radio (<i>Makedonsko radio</i>) are governed as part of the radio and television public corporation MRT.	3	Publicly owned broadcasting enterprise founded by Parliament	NA
Poland	TVP	Polish television, <i>Telewizja Polska</i>	–	3	State owned (sole-proprietor joint stock company of the State Treasury)	4,600 (2003)
Romania	TVR	Romanian Television Broadcasting Corporation, <i>Societatea Română de Televiziune (SRTV)</i>	TVR is governed separately from the Romanian Radio Broadcasting Corporation (<i>Societatea Română de Radiodifuziune – SRR</i>)	3 (the third channel, TVP3 is broadcast via through 12 regional broadcasters)	Public corporation	Approx. 3,000 (2004)
Serbia	RTS	Radio Television Serbia, <i>Radio-televizija Srbije</i>	There are separate broadcasting systems in Serbia and Montenegro	3	Operates in a legal limbo	6,126 (2004)
Slovakia	STV	Slovak Television, <i>Slovenská Televízia</i>	STV is governed separately from Slovak Radio (<i>Slovenský rozhlas – SRO</i>)	2	Public service institution	900 (2004)
Slovenia	RTV Slovenia	<i>RTV Slovenija</i> , Radio-television Slovenia	Television Slovenia (<i>Televizija Slovenija – TVS</i>) and Radio Slovenia (<i>Radio Slovenija</i>) are governed jointly as RTV Slovenia	2	Public institution	2,150 (2004) (including radio)
Turkey	TRT	Turkish Radio and Television Corporation, <i>Türkiye Radyo Televizyon</i>	TRT governance structure comprises both television and radio activities	4	Impartial public corporation	8,000 (2004, including radio)

Country	Name		Details	No. of nationwide analogue terrestrial television channels	Status/Ownership	Number of employees
UK	BBC	British Broadcasting Corporation	BBC governance structure comprises both television and radio activities	2	Public corporation	19,579 (2004)
	Channel 4	–	–	1	Public corporation	884 (2004)

Table 10. Governance structure of public service television broadcasters

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
Albania	RTSH	Steering Committee	15	Proposed by: <ul style="list-style-type: none"> • ruling majority (5) • opposition (5) • NGOs (5) • Elected by Parliament 	5 (re-election only after 3-year-break)	By Parliament in the event of a conflict of interest, mental or legal incapacity, non-attendance of meetings, resignation.
		General Director	–	Nominated and released by the Steering Committee	5	Steering Council in cases of: <ul style="list-style-type: none"> • violation of law • conviction for criminal offence • resignation
		Management Council	5	Proposed by General Director and elected by the Steering Committee	4 (if not passed retirement age)	By decision of at least 8 members of the Steering Committee in cases of: <ul style="list-style-type: none"> • Violation of law and regulations • Conviction of a criminal offence • Unjustified absence from four consecutive meetings
Bosnia and Herzegovina	BHRT BiH	Board of Governors ²⁰⁰	9	Appointed by: <ul style="list-style-type: none"> • Parliament (4) • outgoing Board of Governors (3) – upon nominations by civil society + chairmen of the governing bodies of public broadcasters RTV FBiH • RTRS (2) 	3 (renewable only once)	By the body that appointed them only upon proposal by the Board of Governors
		Director General	–	Appointed and dismissed by the Board of Governors	4 (renewable once)	By the Board of Governors in cases of: <ul style="list-style-type: none"> • resignation • failure to perform legal or contractual duties

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
Bulgaria	BNT	Management Board	5	Council for Electronic Media (CEM), at the proposal of BNT Director General	3 (max. 2 consecutive)	By decision of the CEM, at the proposal of the BNT Director General – in cases of: resignation, actual inability to fulfil tasks for six months, condemnation or incompatibility with membership criteria
		Director General	–	CEM	3 (max. 2 consecutive)	By decision of the CEM, in the same cases as for BNT Management Board
Croatia	HRT	Programming Council	11	Parliament at the proposal of NGOs after a public contest	4 (staggered, max. 2 terms)	By Parliament in cases of: <ul style="list-style-type: none"> violation of the law lack of attendance of the council meetings for six months inappropriate intervention in programming
		Management Board	5	Appointed by: <ul style="list-style-type: none"> HRT Programming Council (4) Workers Unions (1) 	4 (can be re-elected)	By HRT Programming Council (at least two thirds of the members), in cases of refusal to execute decisions of the Programming Council
		General Director	–	HRT Programming Council (in a public contest)	4	By HRT Programming Council in cases of: <ul style="list-style-type: none"> refusal to execute decisions of the Programming Council unethical or improper work damaging the stations
Czech Republic	ČT	Czech TV Council	15	Appointed by the Chamber of Deputies at the proposal of civil society organisations	6 (staggered terms)	By Parliament if it rejects the Council's annual report
		General Director		Appointed by the Czech TV Council	6	By the Czech TV Council
		Board of Directors		Senior managers at the first managerial level		

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
Estonia	ETV	Management board	Up to 5	Broadcasting Council, in a public contest	Up to 5 years	By no-confidence vote of two thirds of the Broadcasting Council: <ul style="list-style-type: none"> • if a judgement of conviction enters into force • on the grounds provided in the management contract
France	France Télévisions	Council of Administration	14	<ul style="list-style-type: none"> • 2 MPs appointed by the National Assembly (1) and the Senate (1) • 5 high civil servants appointed by the Government • 5 personalities appointed by the CSA • 2 elected by the France Télévisions' staff 	5 years	Not specified in legislation
Germany	ARD and ZDF ²⁰¹	Director General	–	By the Broadcasting Council	Usually 4 years (possibility of renewing the contract)	By the Broadcasting Council in case of serious neglect of duty
		Broadcasting Council (ARD) and Television Council (ZDF)	Varies (it can reach 77 at the ZDF)	Composed by important social groups (parliaments, big churches, employers, unions, universities, cultural and sports associations, organisations for women, older people and foreigners). The distribution of seats set by Länder broadcasting laws.	Varies (usually 4 to 6 years, renewable)	By socially relevant organisations that appointed them
		Administrative Council	Varies (up to 15 members)	By the Broadcasting Council (and in some cases others such as Parliament, broadcasters' employees etc.)	Varies (usually 4 to 6 years renewable)	By the Broadcasting Council when, for example, a member is found to have acted against the broadcasters.

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
Hungary	MTV	Boards of trustees (Executive Committee and ordinary members)	29	<ul style="list-style-type: none"> Executive Committee (at least 8 members): delegated by the Government coalition (half) and opposition (half); chair elected by Parliament; Ordinary members delegated by civil society 	4 (Executive Committee) 1 (Ordinary members)	<ul style="list-style-type: none"> The mandate of the Board of trustees may be withdrawn prior to its expiry by Parliament, on the recommendation of the competent parliamentary committee, on the basis of provisions in the Hungarian Civil Code. The mandate of individual members of the Executive Board (or the Chairman) can be terminated for reasons of conflicts of interests, for failure to fulfil the responsibilities arising from the mandate for a continuous period of more than three months; or if the member's guilt is established by a non-appealable sentence imposing imprisonment. Parliament decides on these issues with a two-third voting ratio of the attending MPs. For the ordinary members, the decision to terminate the member's mandate is taken by the delegating organisation.
	Duna TV		31			
Italy	RAI	Board of Directors	9	<ul style="list-style-type: none"> Ministry of Economy and Finance (2) Parliamentary Commission for Broadcasting (7) 	3	By the Ministry of Economy and Finance in accordance with a Parliamentary Broadcasting Commission's resolution on the firing (the law does not specify in what cases).
		General Director	–	RAI Board of Directors (in agreement with the Ministry of Economy and Finance)	Same as members of the Board	By the Board of Directors (in agreement with the Ministry of Economy and Finance)

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
Latvia	LTV	Board	8	<ul style="list-style-type: none"> Broadcasting Council (General Director of the Board) General Director (other 7 members of the Board) 	5 (General Director, max. 2 consecutive)	By two-thirds majority vote of the Broadcasting Council (General Director)
Lithuania	LRT	Council of Lithuanian Radio and Television (LRT)	12	<ul style="list-style-type: none"> The President of the Republic (4) Parliament (4) Lithuanian Science Council, Lithuanian Board of Education, Lithuanian Association of Art Creators and Congregation of Bishops (1 by each) 	<ul style="list-style-type: none"> 6 (President's appointees) 4 (Parliament) 2 (civil society) max. 2 terms 	May not be recalled (except in cases such as resignation, conviction or forfeit of Lithuanian citizenship)
Macedonia	MRT	Board	11	Parliament (4 are MRT employees proposed by the Council of MRT Employees)	4	Absence, resignation etc.
		Financial Supervisory Board	5	Parliament	4	Parliament
		General Director	–	Parliament	4	Parliament
Poland	TVP	Supervisory Council	9	<ul style="list-style-type: none"> National Broadcasting Council (KRRiT) (8) Minister of Treasury (1) 	3	By the institution that appointed them in cases of breaching the law
		Management Board	1 to 5	Supervisory Board of TVP	4	By two-thirds of votes of the Supervisory Council in cases when members fail to fulfil TVP's programming strategy or act against TVP's interests
		Programming Council	15	National Broadcasting Council (KRRiT)	4	Not specified

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
Romania	TVR	Council of Administration	13	<ul style="list-style-type: none"> • Joint parliamentary groups (8) • President of Romania (1) • Government (1) • station's personnel (2) • national minorities parliamentary groups (1) 	4	By Parliament (if it rejects the council's annual report or budget proposal)
		Managing Committee	8 (including Director General)	The Council of Administration	Not specified by law	By the Council of Administration
		Director General-President of the Council of Administration	–	Elected by Parliament	Not specified by law	By Parliament
Serbia	RTS	Governing Board	9	Republican Broadcasting Agency (RBA) Council	5	No accountability requirements
		Director General	–	Governing Board in a public contest	4	No accountability requirements
Slovakia	STV	STV Council	15	Elected by Parliament upon nomination by: <ul style="list-style-type: none"> • the Committee for Education, Science, Sport and Youth, Culture and Media in Parliament, • MPs • or civil society organisations 	6	By Parliament (in cases of criminal offence, conflict of interest etc.)
		Supervisory Commission	3	<ul style="list-style-type: none"> • Parliament (1) • Government (1) • President of the Republic (1) 	3	–
		General Director	–	Appointed by the STV Council	5 (max. 2 consecutive)	By the STV Council (in cases of criminal offence, conflict of interest etc.)

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
Slovenia	RTV Slovenia	Council of RTV Slovenia	25	<ul style="list-style-type: none"> • Civil society and academia (17) • Parliament (5) • RTV Slovenia staff (3) 	4 (may be renewed)	By the institution that appointed them (the reasons for dismissal should be stated in the statute of each of these institutions)
		Supervisory Board	7	Parliament (5) RTV Slovenia staff (2)	4	By the institution that appointed them
Turkey	TRT	Executive Board	6	Council of Ministers – upon nomination by the RTÜK	4	Their tenure cannot be terminated
		General Director	–	Council of Ministers – upon nomination by the RTÜK	4	By the Council of Ministers upon proposal by the RTÜK in cases of: breach of impartiality; very serious duty offence; loss of civil servant qualifications
		Coordination Board	6 (TRT managers)	–	–	–

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
UK	BBC	Board of Governors	12	Secretary of State for Culture, Media and Sport	5 max.	<ul style="list-style-type: none"> • if the Queen terminates a Governor's mandate; • holding of any office which creates a conflict of interest • bankruptcy • if a Governor suffers from a mental disorder such that he or she is hospitalised, has been detained, or has had a guardian appointed • absence from meetings for at least 3 months without consent.
		Executive Board	10	The main BBC Executive Board is made up of 9 directors and is chaired by the Director-General who also appoints them	not specified	For the directors – as per their employment contracts
	Channel 4	Board	13 to 15 executive and non-executive members	<ul style="list-style-type: none"> • Ofcom, in agreement with the Secretary of State for Culture, Media and Sport (non-executive members) • the Board (Chief Executive) • Chief Executive nominates executive members 	Fixed terms (non-executives)	–

Table 11. The main public service obligations imposed on public service broadcasters

Country	Main public service obligations
Albania	<ul style="list-style-type: none"> • to broadcast a wide range of programming in terms of quantity and quality • to transmit programmes that serve all the public, including the unpaid production and broadcasting of certain programmes, notices and advertising spots
Bosnia and Herzegovina	<ul style="list-style-type: none"> • to accurately inform the public • to support democratic processes • to ensure an adequate proportion of news, cultural, artistic, educational, sports, entertainment and children’s programming • to ensure that the highest quality programming is available to the public by presenting diverse and factual information
Bulgaria	<ul style="list-style-type: none"> • to broadcast political, economical, cultural, scientific, educational and other socially important information • to broadcast Bulgarian and foreign educational and cultural programmes, for all age groups • to encourage the creation of works of Bulgarian authors • to promote Bulgarian culture
Croatia	<ul style="list-style-type: none"> • to provide different programmes for specific regions of the country • to broadcast “adequate” shares of information, cultural, educational and entertainment programming • to produce programmes for Croatians abroad, and for national minorities in Croatia, with direct funding from the government for this purpose
Czech Republic	<ul style="list-style-type: none"> • to produce and broadcast programmes serving as a reference for the whole of society • to enhance social cohesion and the integration of all individuals, groups and communities • to act as a forum for public debate open to the broadest possible range of opinions and viewpoints, and to provide independent and impartial news, information and commentary • to create plural, inventive and diverse programmes that meets high ethical and quality standards, and to not respond to the market pressures by lowering the standards of its programming • to create programmes able to attract a large proportion of the public while remaining sensitive to the needs of minority groups • to reflecting the present–day diversity of philosophical concepts and religious denominations • to ensure that its programme schedules contain a significant proportion of original programming, especially feature films, drama and other creative exploits, and to cooperate with independent producers and the film sector
Estonia	<ul style="list-style-type: none"> • to preserve and develop the Estonian nation, language and culture, strengthen Estonian statehood and advance Estonia’s international reputation • to advance and promote Estonian national culture and record, preserve and introduce its greatest achievements • to present the greatest achievements of world culture to the public • to create and transmit multifaceted and balanced programme services at high journalistic, artistic and technical standards • to satisfy the informational needs of all sections of the population, including minorities • to create primarily informational, cultural, educational and entertainment programmes

Country	Main public service obligations
France	<ul style="list-style-type: none"> • to air general interest messages, such as health and road safety information, programmes to inform consumers about their rights and programmes aimed at integrating foreign residents • to provide free airtime to organisations designated by the Government to be in charge of defending an issue of national interest • to broadcast at any time any official declarations or messages of the Government to the French people • to ensure continuity of service in case of strikes • France 2, France 3 and Radio France must provide free airtime to political parties represented in Parliament and to those unions and professional associations considered to be representative at national level, based on rules determined by the CSA • France 3 is obliged to cover the activity of Parliament through a weekly live broadcast of Parliamentary sessions devoted to MPs' questions to the Government. • France 2 has to broadcast religious programmes • to air, during electoral campaigns, the candidates' broadcasts • France 2 and France 3 must each broadcast a minimum of 15 public musical, dance or drama performances per year, and must also broadcast music programmes • France 2, France 3 and France 5 must regularly broadcast programmes on science and technology, and the social sciences
Germany	<ul style="list-style-type: none"> • to produce and distribute programmes that contribute to the public discourse • provide a comprehensive overview of regional, national, European and • international developments • to contribute to the process of international understanding, European integration and social coherence at the federal and regional level
Hungary	<ul style="list-style-type: none"> • to regularly, comprehensively, impartially, faithfully and exactly inform of domestic and international events of public interest • to ensure the diversity of programme items and viewpoints, and the presentation of minority opinions, and the satisfaction of the interests of a wide range of audiences • to take special care to cherish pieces of universal and national cultural heritage, and to ensure cultural diversity • to show programmes which serve the physical, intellectual and mental development of minors • to present the values of churches and religions, national, ethnic and other minority cultures • to give access to important information to groups or individuals who are in a disadvantageous position on account of their age, physical, mental and psychic condition • to present programmes which show the social economic and cultural life of the various regions of the country.
Italy	<ul style="list-style-type: none"> • to broadcast an adequate number of radio and television programmes devoted to education, information, training, promotion of culture, theatrical, cinematographic, television and musical works, including works in the original language that are recognised as being of great artistic value or highly innovative • to allot broadcasting time, in accordance with the legislation, to: all parties and groups represented in Parliament; regional assemblies and councils; local autonomy associations; national trade unions; religious denominations; political movements; public bodies; political and cultural associations; legally recognised • national cooperative associations; and ethnic and linguistic groups • to broadcast in German and Ladino for the autonomous provinces of Bolzano and Trento, in French for the autonomous region of Valle d'Aosta, and in Slovenian for the autonomous region of Friuli Venezia Giulia • to broadcast free-of-charge announcements of public and social interest as requested by the Prime Minister, and broadcasting information on road and motorway traffic • to broadcast children's programmes at appropriate hours • to provide for distance learning

Country	Main public service obligations
Latvia	<ul style="list-style-type: none"> • to ensure diverse and balanced programmes, consisting of informative, educational and entertaining broadcasts for all groups of society • to ensure freedom of information and expression and objectiveness of broadcasts • to distribute comprehensive information about events in Latvia and abroad • to report on the activities of the Parliament, President, Government and local Governments • to provide educational, cultural, scientific, light entertainment, children's and sports broadcasts • to promote the production of broadcasts concerning the life and culture of ethnic minorities • to ensure pre-election campaigning opportunities
Lithuania	<ul style="list-style-type: none"> • to provide accurate, objective and balanced information, good quality educational, cultural and entertainment programmes • to collect and disseminate information about Lithuania and the world • to strengthen independence and democracy in Lithuania • to create, cherish and protect national cultural values • to foster tolerance, humanism and a culture of cooperation, thinking and language • to strengthen public morale and citizenship
Macedonia	<ul style="list-style-type: none"> • to ensure that programmes are protected from the influence of political organisations or economic interests • to produce and broadcast programmes intended for all segments of society, without discrimination, taking care to cater for specific social groups, such as children and youth, minority and ethnic groups, people with disabilities and sick people, and people who are socially deprived • to preserve and foster the cultural identity of the ethnic communities • to promote public dialogue, tolerance and the advancement of the multicultural character of the country • to promote the respect of basic human freedoms and rights, democratic values, privacy and dignity • to respect speech and language standards of both majority and non-majority communities • to foster domestic audiovisual creativity which contributes to the development of culture in Macedonia • to provide adequate and impartial treatment of all political subjects during election campaigns
Poland	<ul style="list-style-type: none"> • to encourage artistic, literary, scientific and educational activities, and the dissemination of knowledge of Polish language • to produce educational programmes and ensure the access to such programmes of people of Polish descent and Poles living abroad • to provide reliable information about the vast diversity of events and processes taking place in Poland and abroad • to respect the Christian system of values • to serve to strengthen the family ties, and advance the propagation of pro-health attitude • to provide, free-of-charge, the airtime necessary for direct presentation and explanation of State policy by the supreme State authorities; for political parties, national trade unions and employers' organisations to present their position in regard to major public issues; for public service organisations to provide information about the free of charge services they provide; for entities and individuals participating in elections of the President, the Parliament, the Senate, the local self-governments, the European Parliament and in referendums to present their election programmes
Romania	<ul style="list-style-type: none"> • to ensure the pluralism and freedom of information, ideas and opinion, and inform the audience in a correct and accurate manner • to air programming that meets certain professional standards such as balanced and objective information, promotion of Romanian cultural, scientific and artistic values, preservation of minority rights and democratic, civic, moral and sporting values

Country	Main public service obligations
Serbia	<ul style="list-style-type: none"> • to broadcast news programmes and other programmes that “meet the public interest” • to show “special respect for national heritage” and to “respect the traditional spiritual, historical, cultural, humanitarian and educational importance and role of the churches and religious communities in society” • to produce and broadcast programmes with informative, cultural, art, educational, religious, scientific, children's, entertaining, sports and other content, meeting the needs of all citizens, which must ensure diversity and balance of content, and uphold the democratic values of a modern society, particularly the respect for human rights and cultural, national, ethnic and political pluralism of views and opinions • to broadcast news programmes adhering to principles of impartiality and fairness • to uphold freedom of speech and pluralism of opinion, and prevent any form of racial, religious, national, ethnic, gender-based or other intolerance or hatred • to “adhere to linguistic and speech standards not only of the majority population but also, proportionately, of national minorities and ethnic groups in the area where the programme is being broadcast”
Slovakia	<ul style="list-style-type: none"> • to broadcast programmes that contribute to the development of a democratic society • to create space for pluralism of opinions without favouring the interest of any political party, political movement, group or part of society or religious confession or faith • to support the development of artistic works, culture and education • to produce programmes for a broad viewership, complying with the principles of editorial independence, produced by professionals who assume their responsibility to society • to offer impartial, verified, unbiased, actual, understandable, balanced and plurally-sourced information about what is going on in Slovakia and abroad
Slovenia	<ul style="list-style-type: none"> • to respect human integrity and dignity in its programmes • to observe the principle of impartiality, and to ensure the verity of information, the pluralism of opinions and religious beliefs • to broadcast radio and television • programmes for the Italian and Hungarian minorities in Slovenia • to ensure almost universal access to its channels
Turkey	<ul style="list-style-type: none"> • to establish the principle and reforms of Atatürk and realisation of the national goals of Turkish Republic • to protect and reinforce the existence and independence of the State, the indivisible integrity of the nation and public, and public well-being • to foster national education and national culture • to safeguard the national security policy and the national and economic interests of the state • to form public opinion freely and soundly in line with constitutional guidelines

Country	Main public service obligations
UK ²⁰²	<p>BBC:</p> <ul style="list-style-type: none"> • to maintain high general standards in all respects • to offer a wide range of subject matter, meeting the needs and interests of audiences • to transmit an impartial and professional daily account of proceedings in both Houses of Parliament. <p>BBC services are defined as public services that should:</p> <ul style="list-style-type: none"> • provide information, education and entertainment. • stimulate, support and reflect, in drama, comedy, music and the visual and performing arts, the diversity of cultural activity in the UK contain comprehensive, authoritative and impartial coverage of news and current affairs in the UK and throughout the world to support fair and informed debate at local, regional and national levels • provide wide-ranging coverage of sporting and other leisure interests • contain programmes of an educational nature [...] • to include a high standard of original programmes for children and young people • contain programmes which reflect the lives and concerns of both local and national audiences • contain a reasonable proportion and range of programmes for national audiences made in Northern Ireland, Scotland, Wales and in the English regions outside London and the South East. <p>Channel 4:</p> <ul style="list-style-type: none"> • to demonstrate innovation, experimentation and creativity • to appeal to the tastes and interests of a culturally diverse society • to include programmes of an educational nature • to exhibit a distinctive character

Table 12. Funding of public service television broadcasters

Country	Name	Share of total budget (per cent)				Annual budget (€ million) (year)
		Licence fee	State budget	Commercial income (advertising and sponsorship)	Other	
Albania	TVSH	NA	58	8.6	33.4	7.8 (2004)
Bosnia and Herzegovina	BHRT B&H	NA	NA	NA	NA	NA
Bulgaria	BNT					25.05 (2004)
Croatia	HTV	57.4	0	36.0	6.6	171 (2002) (including radio)
Czech Republic	ČT	66.7	0	29.1	4.2	140.39 (2003)
Estonia	ETV	0	93.0	0	7.0	13.5 (2004)
France	France Télévisions	64.8	0	30.3	4.9	2,308.9 (2003)
Germany	ARD	94.0	0	6.0 (only advertising)	NA	5,371.0 (2003) (advertising and licence fee only)
	ZDF	93.3	0	6.7 (only advertising)	NA	1,677.0 (2003) (advertising and licence fee only)
Hungary	MTV					122.5 (2004)
	Duna TV	0	82.0	12.0	6.0	30.6 (2003)
Italy	RAI	55.2	0	38.8	6.0	2,593 (2003)
Latvia	LTV	0	57.0	43.0		12.35 (2004)
Lithuania	LTV	0	76.0	23.0	1.0	14.5 (2003)
Macedonia	MTV	80.2	0	12.1	7.7	15.7 (2004) (including radio)

Country	Name	Share of total budget (per cent)				Annual budget (€ million) (year)
		Licence fee	State budget	Commercial income (advertising and sponsorship)	Other	
Poland	TVP	31.9	0	56.3	11.8	416.5 (2004)
Romania	SRTV	75.5	14.3	8.38	0	96.0 (2003)
Serbia	RTS	0 ²⁰³	75.2	24.8		60.7 (budget envisaged for 2004, including radio)
Slovakia	STV	60.2	16.8	18.8	4.2	59.76 (2004)
Slovenia	TVS	72.8	0	16.5	10.7	111.1 (2003) (including radio)
Turkey	TRT	53.7	21.8 (mainly)	10.4	14	254.7 (2003)
UK	BBC	94.0	0	0	6.0	4,211 (2002/3)
	Channel 4	0	0	100	0	1,262 (turnover for 2004)

Table 13. Daily audience market share of public service television (1995–2003)

Ranked by 2003 audience market share

	Daily audience market share of public television (per cent)								
	1995	1996	1997	1998	1999	2000	2001	2002	2003
Croatia ²⁰⁴	NA	NA	NA	NA	94.5	94.3	88.0	90.0	72.9
Poland	80.0	70.0	57.5	52.6	51.1	46.2	45.4	45.9	51.2
Italy	48.2	47.9	48.1	48.0	47.6	47.3	46.9	46.5	48.6
France	43.9	44.9	44.1	43.0	42.2	42.3	45.3	45.3	46.4
UK	54.3	54.9	53.0	51.1	49.5	48.5	48.0	47.6	46.2
Germany	40.1	40.6	40.5	42.5	42.8	43.1	43.3	44.4	44.4
Serbia and Montenegro ²⁰⁵	NA	NA	NA	NA	NA	26.4	NA	35.7	35.5
Romania	NA	NA	NA	46.4	39.2	40.4	35.9	33.3	35.0
Slovenia	61.5	41.0	33.0	32.4	32.1	32.9	34.4	35.1	34.7
Bosnia and Herzegovina ²⁰⁶	NA	NA	NA	NA	NA	NA	NA	NA	31.8
Czech Republic	NA	27.35	NA	33.29	32.1	31.22	29.2	29.4	30.2
Bulgaria	NA	89.8	75.1	76.0	69.6	66.5	31.8	30.0	24.8
Slovakia	73.7	63.2	27.5	24.3	18.1	18.4	20.2	21.0	21.8
Macedonia ²⁰⁷	NA	NA	NA	NA	NA	37.6	NA	32.0	21.2
Latvia	NA	NA	NA	24.9	18.3	18.2	18.1	17.4	18.4
Hungary	79.0	72.7	NA	25.5	15.6	13.6	13.2	15.3	17.5
Albania ²⁰⁸	NA	NA	NA	NA	NA	NA	NA	17.1	NA
Estonia	28.0	26.0	NA	22.4	18.3	16.6	17.1	18.0	16.7
Lithuania	NA	NA	NA	16.3	10.3	10.2	9.1	12.2	11.8
Turkey	NA	4.1	NA	2.2	5.3	5.9	6.9	8.3	9.9

Source: European Audiovisual Observatory; IP International Marketing Committee; EUMAP research²⁰⁹

Table 14. The 10 leading European private television companies (2003)
 Ranked according to unconsolidated operating revenues (EUR million)

Rank	Company	Country	Unconsolidated operating revenues (€ million)
			2003
1	RTI ²¹⁰	Italy	2,008.2
2	TF1	France	1,596.2
3	RTL Television	Germany	1,589.0
4	ITV Network ²¹¹	UK	1,375.3
5	SAT1	Germany	776.0
6	ProSieben Media	Germany	687.0
7	Metropole Television (M6)	France	659.0
8	Central Independent Television ²¹²	UK	639.6
9	Gestevisión Telecinco	Spain	564.4
10	Antena 3 de Televisión	Spain	538.9
	Total		10,433.6

Source: European Audiovisual Observatory²¹³

Table 15. Main western investors in television in Central and South Eastern Europe²¹⁴

Group	Station	Country	Launch	Technical coverage (per cent of country's territory)	Diffusion	Audience share		Share of television advertising spending in the country (per cent)
						Share (per cent)	Position on the national market	
Central European Media Enterprises (CME)	Nova TV	Croatia	2000	87	Terrestrial	14.3	4	NA
	TV Nova	Czech Republic	1994	100	Terrestrial, cable, Satellite	43.4	1	66.5
	PRO TV	Romania	1995	77.0	Terrestrial, cable	15.6	2	25.1
	Acasă	Romania	1998	53.7	Cable	6.7	4	5.9
	Markíza TV	Slovakia	1996	96.8	Terrestrial, cable	45.9	1	76.2
	Pop TV	Slovenia	1995	80.0	Terrestrial, cable	29.0	1	57.6
	Kanal A	Slovenia	1991	80.0	Terrestrial, cable	9.1	4	18.4
RTL Group	RTL Klub	Hungary	1997	96.2	Terrestrial, cable	29.5	1	31.1
	RTL Televizija	Croatia	2004	NA	Terrestrial, cable	39.5	1	NA
Modern Times Group (MTG)	TV3	Lithuania	1992	98	Terrestrial	23.9	2	48.4
	TV3	Latvia	1998	85.8	Terrestrial	15.1	2	32.1
	TV3	Estonia	1993	97.0	Terrestrial, cable	22.1	1	53.7
News Corporation	bTV	Bulgaria	2000	86.4	Terrestrial, cable	37.9	1	45.1
SBS Broadcasting	TV2	Hungary	1997	96.8	Terrestrial, cable	29.4	2	58.0

Sources: EUMAP research;²¹⁵ based on IP International Marketing Committee²¹⁶

Table 16. Gross advertising expenditure (2003)

Ranked by per capita total gross advertising spending.

Country	Gross television advertising expenditure – per capita (€) ²¹⁷	Gross television advertising spending (€ million)	Total gross advertising spending (€ million)	Share of television advertising (per cent)	Channel with the largest advertising market share (share in per cent)	Type of channel
Italy	164.17	9,143	25,624	35.7	Canale 5 (33.1)	Private
Hungary	91.34	924	1,412	65.4	TV 2 (58.0)	Private
Germany	90.00	7,428	17,407	42.7	RTL (30.7)	Private
U.K.	88.42	5,237	11,986	43.7	ITV1 (51.4)	Private
France	87.10	5,373	16,366	32.8	TF1 (54.4)	Private
Turkey	82.31	5,866	7,855	74.7	Samanyolu TV (20.5)	Private
Slovenia	82.17	161	276	58.3	Pop TV (57.6)	Private
Slovakia	53.65	288	411	70.1	Markíza (76.2)	Private
Croatia	53.15	235	394	59.8	Nova TV (55.1)	Private
Romania	51.50	1,117	1,294	86.3	Prima TV (26.6)	Private
Latvia ²¹⁸	49.45	115	NA	33.5	LNT (37)	Private
Czech Republic	48.89	500	1,034	48.3	TV Nova (66.5)	Private
Lithuania	48.35	167	231	72.3	TV3 (48.4)	Private
Estonia	44.59	60	101	25.6	TV3 (53.7)	Private
Poland	36.82	1,406	2,410	58.3	TVP1 (25.5)	Public
Serbia and Montenegro	25.94	210	261	80.6	Pink TV (46.2)	Private
Bulgaria	17.28	135	193	70.0	bTV (45.1)	Private
Macedonia	16.63	33	44	75.8	A1 (38.3)	Private
Bosnia and Herzegovina ²¹⁹	4.69	11	18	63.8	FTV (50)	Public
Albania ²²⁰	4.42	7	14	54.0	NA	NA

Source: IP International Marketing Committee²²¹

Table 17. Main public service obligations imposed by law on commercial television

Source: EUMAP reports

Country	Obligations
Albania	Broadcasting, free of charge, messages of and information of great interest to the public (in emergency situations)
Bosnia and Herzegovina	None
Bulgaria	None
Croatia	Broadcasting: <ul style="list-style-type: none"> • news and information • contents important for the exercise of human rights, political rights, the rule of law, and the development of civil society
Czech Republic	Broadcasting: <ul style="list-style-type: none"> • State announcements serving the public interest • open captions for people with hearing difficulties
Estonia	Broadcasting news on at least 5 per cent of the airtime
France	<ul style="list-style-type: none"> • Ensuring internal political pluralism • Regulations on covering electoral campaigns • Ensuring cultural diversity • protection of minors
Germany	<ul style="list-style-type: none"> • Broadcasting a “reasonable” amount of cultural, informational and educational programmes • Requirements on editorial standards
Hungary	<ul style="list-style-type: none"> • Broadcasting “public programmes” in at least 10 per cent of the daily programme (except for specialised channels) • Public programmes of at least 25 minutes must be aired in primetime • Airing at least a 20-minute-long daily newscast
Italy	<ul style="list-style-type: none"> • Complying with editorial guidelines ensuring truthful presentation of facts and events • Equal access for politicians to news programmes • Broadcasting official communiqués and declarations by constitutional organs
Latvia	None
Lithuania	None
Macedonia	None
Poland	None (imposed by licence conditions)

Country	Obligations
Romania	<ul style="list-style-type: none"> • Airing objective information by presenting facts and events • Upholding political and social pluralism, cultural, religious and linguistic diversity, information, education and public entertainment
Serbia	<ul style="list-style-type: none"> • Production of free, comprehensive and timely information • Broadcasting urgent announcements regarding threat to human life, health, security and property
Slovakia	None
Slovenia	<ul style="list-style-type: none"> • Broadcasting 20 per cent of their own production • Broadcasting Slovenian works on science, art and literature and Slovenian movies on at least two per cent of their annual airtime
Turkey	<ul style="list-style-type: none"> • Broadcasting quotas of programming on education, culture, Turkish folk and Turkish classical music programmes • Airing public advertisements on issues such as road safety, cigarette smoking, etc.
UK	All commercial broadcasters have public service obligations and are obliged to supply a certain programming with the aim of ensuring a high quality mix of programming for a diverse audience. The public service remit for every Channel 3 service and for Channel 5 is the provision of a range of high quality and diverse programming.

Table 18. Legal quotas for programming for languages and minority group representation in broadcasting

	Public service television	Commercial television
Albania	None	None
Bosnia and Herzegovina	None	None
Bulgaria	None	None
Croatia	None	None
Czech Republic	None	None
Estonia	None	None
France	None	None
Germany	None	None
Hungary	None (minority programming is considered a “public programme”)	None
Italy	Requirements (in bylaws and service contract) for programmes aimed at linguistic minorities	None
Latvia	None	None
Lithuania	None	None
Macedonia	Yes	None
Poland	None	None
Romania	None (general obligation to host programmes dedicated to national minorities)	None
Serbia	None	None
Slovakia	Not specific (general obligations to cover minorities)	None
Slovenia	None (public broadcaster is only required to reach with its minority programming 90 per cent of the areas inhabited by Hungarian and Italian minorities)	None
Turkey	None	None
UK	[?]	[?]

Table 19. Cable and satellite penetration (2003)

	Penetration (percentage of households)		
	Cable	Satellite ²²²	Only terrestrial
Albania	NA	NA	NA
Bosnia and Herzegovina ²²³	NA	19.0	NA
Bulgaria	52.1	9.8	36.5
Croatia	12.2	26.3	61.9
Czech Republic	19.3	8.9	71.8
Estonia	48.0	3.0	49.0
France ²²⁴	14.0	14.4	65.6 ²²⁵
Germany	55.8	37.1	7.1
Hungary	57.8 ²²⁶	5.2	37.0
Italy	0.3	17.0	NA
Latvia	NA	4.7	48.3
Lithuania	38.3	NA	61.7
Macedonia	16.0	23.0 ²²⁷	70.0 ²²⁸
Poland	44.0	16.9	40.8
Romania	58.0	3.8	42.0
Serbia and Montenegro	25.0	6.0	70.0
Slovakia	39.2	25.2	51.7
Slovenia	55.9	9.7	35.0
Turkey	10.2	11.6	83.0
UK	13.3	27.7	49.4 ²²⁹

Source: IP International Marketing Committee,²³⁰ data extracted from EUMAP country reports

Table 20. Communication technology and audiovisual equipment (2003)

	Share of households (per cent)				Share of population (per cent)	
	Phone	PC	VCR	DVD	Mobile	Internet users
Albania	31.6	NA	NA	NA	38.1 ²³¹	0.5
Bosnia and Herzegovina ²³²	99.0	10.0	NA	NA	NA	11.0
Bulgaria	76.4	14.2	40.5	7.9	27.9	21.8
Croatia	96.3	42.2	53.9	8.3	80.0 (households)	31.4 (households)
Czech Republic	72.7	37.0	48.9	6.0	71.7	30.0
Estonia	64.3 (population)	38.3 (population)	36.8	7.5	70.8	46.6
France	96.0	42.7	80.4	31.8	69.1	42.9
Germany	98.7	58.2	67.8	27.1	72.5 (households)	55.0
Hungary	68.4	24.4	53.2	6.2	74.8	10.5
Italy	83.0 (population)	39.6	66.7	11.4	87.8	30.2
Latvia	62.0 (population)	20.6 (population)	42.7	NA	51.3	22.8
Lithuania	23.0 (population)	19.9 (population)	29.6	4.5	62.0	26.5
Macedonia	93.0	17.0 ²³³	52.0 ²³⁴	2.0 ²³⁵	37.0	12.0
Poland	77.8	23.0	49.6	4.7	50.9	13.6
Romania	67.7	17.5 (population)	11.8	NA	27.7	14.7
Serbia and Montenegro	75.0	17.0	35.0	4.0	35.0	13.0 (households)
Slovakia	57.5	31.8	59.6	4.7	78.7 (households)	9.2 (households)
Slovenia	88.7	49.8	54.2	32.2	91.5	49.7
Turkey	86.6	15.4	8.8	4.3	74.1	12.3
UK	93.4	57.0	84.7	38.5	75.8	57.1

Source: IP International Marketing Committee²³⁶

Table 21. Digital terrestrial television – DVB-T implementation progress overview (2004)

	Share of households that can already (or are expected in the near future to) receive at least one multiplex (per cent)
Bulgaria	26
Czech Republic	More than 10
Estonia	40
U.K.	81
Croatia	40
Italy	60
Lithuania	25
Macedonia	10
Poland	Around 14
Slovenia	15
Slovakia	17

Source: European Audiovisual Observatory²³⁷

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- ¹⁷⁶ IP International Marketing Committee, *Television 2004. International Key Facts*, October 2004, p. 29, (hereafter, IP International Marketing Committee, *Television 2004*)
- ¹⁷⁷ This figure does not include television households with non-EU citizens.
- ¹⁷⁸ Data from EUMAP national report
- ¹⁷⁹ Data for population and households for Romania are for 2002.
- ¹⁸⁰ Data for households for Serbia are for 2002.
- ¹⁸¹ Data for Serbia without Montenegro
- ¹⁸² The figures for Bosnia and Herzegovina include data provided by the Agency for Statistics for Bosnia-Herzegovina and data from the chapter on Bosnia-Herzegovina in this EUMAP report. The percentage of television households only refers to urban population. See: eSEEurope Regional Information and Communications Technologies Sector, *Status and Usage Report: Building an Information Society for all*, 2004, p. 85, (hereafter eSEEurope, *Status and Usage Report*).
- ¹⁸³ Data for Albania includes data provided by: Instat (“Albania population in 2001”) and the EBU, and data from the Albania chapter in this EUMAP report.
- ¹⁸⁴ IP International Marketing Committee, *Television 2004*, p. 14.
- ¹⁸⁵ European Audiovisual Observatory, *The Yearbook 2004*, Volume 1, pp. 30–31, errata slip.
- ¹⁸⁶ Data for 2002
- ¹⁸⁷ Data for 2002
- ¹⁸⁸ European Audiovisual Observatory, *The Yearbook 2004*, Volume 1, p. 34.
- ¹⁸⁹ Data from 2004.
- ¹⁹⁰ IP International Marketing Committee, *Television 2004*, country reports.
- ¹⁹¹ Data is from the Albania chapter in this EUMAP report (for the year 2002)
- ¹⁹² Data is from the Bosnia and Herzegovina chapter in this EUMAP report (for the year 2004)
- ¹⁹³ Data was provided via e-mail by AGB Puls Agency (for the year 2004)
- ¹⁹⁴ Data for France is from the national chapter on France in this EUMAP report (for the year 2004)

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- ¹⁹⁵ IP International Marketing Committee, *Television 2004*, country reports; European Audiovisual Observatory, *The Yearbook 2004*; EUMAP country reports
- ¹⁹⁶ Following amendments to the Broadcasting Act in August 2005, members of the Council of the Republican Broadcasting Agency (RBA) will serve terms of between four and six years. Those members elected upon the proposal of the Parliamentary Committee for Culture and Information will have a six-year mandate; those proposed by the Parliament of the autonomous province of Vojvodina, the universities and the religious communities will have a five-year mandate, while those proposed by NGOs and professional associations will have a four-year mandate.
- ¹⁹⁷ Other institutions, such as the Competition Authority, Ministry of Culture and the Telecommunications Office are marginally involved in the regulation of broadcasting in Slovakia.
- ¹⁹⁸ Ofcom has a number of other boards and committees whose work feeds into the main Board. The most significant such bodies are the Ofcom Content Board (an independent Ofcom subcommittee of 11 non-executives and 2 executives whose members are appointed by the Ofcom Board from the regions); and the Consumer Panel (operating independently of Ofcom, it has 11 members from the regions and the civil society appointed by Ofcom, and an independent Secretariat)
- ¹⁹⁹ The “Nolan principles” are established by a Committee on Standards in Public Life and laid down in a code set out by the Office of the Commissioner for Public Appointments. According to the Nolan rules, public life should be governed by seven principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The rules state that a process of openness and transparency should govern public appointments.
- ²⁰⁰ As the BHRT BiH is comprised of three public broadcasting television stations, their activities are coordinated by an Executive Committee grouping the three chairmen of the Boards of Directors (BHRT BiH, RTF FBiH and RT RS). The governing structure of the BHRT BiH also exists at the RTF FBiH and RT RS.
- ²⁰¹ Each public service broadcaster has the three authorities responsible for the management and supervision of the organisation.
- ²⁰² For the BBC: the BBC's public obligations are stated in its Royal Charter (1996), and its services and standards are specified in the accompanying Agreement between the Government and the BBC; For Channel 4: information from the Channel 4 website, based on obligations under Section 265 of the Communications Act 2003.
- ²⁰³ Amendments to the Broadcasting Act in August 2005 re-introduce a mandatory licence fee that viewers and listeners will have to pay together with their electricity bill, from 1 October 2005.
- ²⁰⁴ Data for Croatia are from IP International Marketing Committee, *Television 2004*, p. 316; and from IP International Marketing Committee, *Television 2003. International Key Facts*, November 2003, p. 18.
- ²⁰⁵ Data for Serbia-Montenegro are from IP International Marketing Committee, *Television 2004*, country report.
- ²⁰⁶ Data for Bosnia-Herzegovina are estimates from the EUMAP national reports.
- ²⁰⁷ Data for Macedonia are from IP International Marketing Committee, *Television 2004*, country report.

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- ²⁰⁸ Data for Albania are estimates from the EUMAP national reports.
- ²⁰⁹ European Audiovisual Observatory, *The Yearbook 2004*, Vol. 2, p. 65.
- ²¹⁰ Data for 2002.
- ²¹¹ Data for 2002.
- ²¹² Data for 2003 on 15 months.
- ²¹³ European Audiovisual Observatory, *The Yearbook 2004*, Vol. 1, p. 40.
- ²¹⁴ Data is for 2003, except for Croatia which is for the year 2004.
- ²¹⁵ EUMAP research based on data from: AGB Puls, TNS A-Connect, IP/RTL Group: Television 2004, Visio Slovakia, AGB TNS International Romania, Radio and TV Programs in Slovenia by SRDF, Media Services AGB Slovenia, GfK-USM: Monitoring SMI Ukraine, AGB Ukraine, Ukrainian expert estimations; AGB Puls Croatia, AGB Hungary, Noema Bulgaria, TNS-Emor Estonia, TNS BMF Latvia, TNS Gallup Lithuania (Data for Croatia in this table was provided via e-mail by AGB Puls Agency (for the year 2004).
- ²¹⁶ IP International Marketing Committee, *Television 2004*, country reports.
- ²¹⁷ In some countries, there is a big gap between gross and net figures due to large discounts and commissions employed. Such countries include Romania, Turkey, Hungary.
- ²¹⁸ The share of television spending listed for Latvia is from the net figure.
- ²¹⁹ Data for Bosnia & Herzegovina is net figures for the year 2002. All data for Bosnia & Herzegovina are highly approximate (see EUMAP country report).
- ²²⁰ Estimates by Albanian Centre for Media Monitoring (see EUMAP country report).
- ²²¹ IP International Marketing Committee, *Television 2004*, country reports.
- ²²² Private and collective dishes.
- ²²³ The figures for Bosnia-Herzegovina are only for urban population. See: eSEEurope, *Status and Usage Report*, p. 85.
- ²²⁴ Figures for France are from the chapter on France in the EUMAP report.
- ²²⁵ IP network estimate.
- ²²⁶ Figure also includes terrestrial, MMDS and UPC Direct.
- ²²⁷ Data from 2002.
- ²²⁸ Estimate by the Broadcasting Council of the Republic of Macedonia.
- ²²⁹ Without digital terrestrial households

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- ²³⁰ IP International Marketing Committee, *Television 2004*.
- ²³¹ Data from the local mobile phone companies AMC and Vodafone and Albtelecom.
- ²³² The figures for Bosnia-Herzegovina are only for urban population. See: eSEEurope, *Status and Usage Report*, p. 85.
- ²³³ Estimate by the Statistical Office of the Republic of Macedonia.
- ²³⁴ Estimate by the Statistical Office of the Republic of Macedonia.
- ²³⁵ Estimate by the Broadcasting Council of the Republic of Macedonia.
- ²³⁶ IP International Marketing Committee, *Television 2004*, country reports.
- ²³⁷ European Audiovisual Observatory, *The Yearbook 2004*, Vol. 2, pp. 56–57.

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List of Abbreviations

ALL	Albanian <i>lek</i> (the country's currency)
ERT	Regulatory Entity for Telecommunications, <i>Enti Rregullator i Telekomunikacioneve</i>
KKRT	National Council of Radio and Television, <i>Keshilli Kombetar i Radio Televizionit</i>
OSCE	Organization for Security and Cooperation in Europe
RET	Regulatory Entity for Telecommunications
RT	Radio Tirana
RTSH	Radio-Television of Albania, <i>Radio Televizioni Shqiptar</i>
TVSH	Albanian Television, <i>Televizioni Shqiptar</i>

1. EXECUTIVE SUMMARY

The electronic media sector in Albania is now substantial, with many radio and television stations covering most of the country. These outlets have, for the most part, moved beyond the stage of struggling against Government attempts to control information. Even when it is politically motivated, interference with the media is exerted through economic means, such as the allocation of State advertising and Government support or obstruction of the proprietors' other business activities. However, most of the present conflicts between the Government and the media are caused by economic, rather than political, interests. Although economic conditions in Albania do not allow many of these outlets to become self-sustainable, very few of them have shut down.

While, in overall terms, the country's media legislation is adequate, revisions are still needed to accommodate new or imminent developments in the media sector. In addition, the law has not yet ensured the transparency of media ownership and financing. Moreover, it should provide better guarantees to Albanian and foreign broadcasters regarding the functioning of the media sector according to free market rules.

Apart from the letter of the law, its proper implementation has been a constant problem in the past. Improved implementation will be crucial to the healthy development of Albanian media. The regulator has not experienced a smooth progress in fulfilling its mission: its decisions have often been contested and have sometimes provoked protests. Effective self-regulation is virtually unknown. Given the lack of employment contracts for journalists and the extremely unstable labour market, self-censorship rather than self-regulation is the norm among journalists.

Overall, due both to the positive attitude of the media outlets themselves and also to the supervision of the main broadcasting regulator, the National Council of Radio Television (KKRT), most broadcasters now operate in strict compliance with broadcasting laws. However, the advent of digital broadcasting provoked some outlets to revert to bad habits until the KKRT imposed some exemplary fines.

Proper implementation of the law is especially desirable for strengthening the role of the public service broadcaster, Radio-Television of Albania (RTSH), and enabling it to fulfill its mission. The public broadcaster's role has faded steadily with the emergence of private electronic media, which are continuously investing and attempting professional improvement. While private media grow, the public broadcaster has stagnated, finding it difficult to reform the huge structure that was inherited from the communist era. The legacy of full State control has been difficult to cast off. Even though the legal framework for the transformation of State television into a public broadcaster has been in force for six years now, accusations of pro-Government bias continue. Over the last years, none of the governing or advisory bodies at RTSH has attempted to draft the required strategy to transform the institution into an efficient public broadcaster. In addition, no solution has been found to RTSH's funding

problems: its reliance on short-term State funding renders it highly vulnerable to political pressure and is ultimately incompatible with a public service mission.

More positively, the public broadcaster has been a pioneer in some new media technologies, though it remains to be seen whether these will succeed in Albanian conditions. These technologies are latecomers to the media scene and it is too early to say very much about their impact. As a matter of fact, the lack of reliable research, monitoring, surveys and other kinds of data make it difficult to reach general conclusions about developments in any area of Albanian media.

2. CONTEXT

The present picture of the television market in Albania, and its evolution in recent years, is remarkable. Until 1995, for most Albanians, electronic media meant the State radio and television network. Today, according to official data, Albania has 66 television stations and 45 radio stations.¹ The lack of systematic and scientific audience research makes it difficult to assess the market shares of broadcasters operating in Albania. It also remains difficult to assess their coverage of territory. It is, however, an established fact that Radio-Television of Albania (RTSH), the public broadcaster, covers 80 per cent of the country's territory.

2.1 Background

The commercial television sector has experienced a late, but speedy, growth, characterized by lawlessness and chaos, in the absence of regulation. Even after regulation was established, the regulatory body has not always been able to fully establish its authority over the electronic media, though it has achieved some significant successes. Although the television market, like every other media market in the country, is almost deformed by a glut of television stations that the small market can hardly sustain, only a few stations have shut down.

The importance of commercial television has grown overall, thanks, in part, to the poor performance of the public service broadcaster, which has failed to reform itself as a truly public broadcaster. Another reason for the high profile of commercial television, especially in the capital, Tirana, is that some commercial stations have benefited from huge investments, particularly in equipment. These investments have made the stations popular and important in the eyes of the public. However, even those more popular outlets have not yet managed to become self-sustaining, and advertising revenue accounts for just half of their total annual income, a situation that indicates Albania's television market is still far from being viable and independent.

¹ KKRT, list of licensees, available (in Albanian) on the KKRT website at http://www.kkrt.gov.al/licenca_frame.htm (accessed 22 March 2005).

2.2 Structure of the television sector

The State radio and television network, Radio-Television of Albania (RTSH), was Albania's only broadcaster until 1995, when the first private television station, TV Shijak, started operating from a residential address. Private broadcasters multiplied over the next few years and today, according to the National Council of Radio and Television (KKRT), Albania has 66 television stations and 45 radio stations. These numbers were even higher before late 2003, when the KKRT revoked some broadcast licences for failing to pay their fees or to submit the necessary documentation. Most of the electronic media outlets are centred around western Albania, especially in the capital, which is home to 72 per cent of all radio stations and 75 per cent of all television stations.² However, the quality of broadcasting lags far behind the speed of its growth.

There are currently two private national television stations: TV Klan, which was launched in 1998 and covers 43 per cent of Albania's territory, and TV Arberia, which was launched in 1996 and covers 30 per cent of the territory. The slow spread of the coverage of these national television stations might soon present problems, in that the stations are lagging behind their licence conditions, especially TV Arberia, which covers 30 per cent of the territory instead of the required 47 per cent.³ Meanwhile, smaller stations are reaching farther than they should: several stations have chosen to install booster transmitters, even though their licence does not authorize them to do so. In this way, some television stations with a regional licence are catching up with the signal coverage of the private national stations, or even outdoing them.⁴

When it comes to extending their territorial coverage, the two private national radio stations do a better job than the private national television stations. Top Albania Radio, dating from 1998, covers 87 per cent of the country's territory, while Radio +2, also founded in 1998, covers 72 per cent of the territory.⁵

The State broadcaster, RTSH, covers most of the country: Radio Tirana (RT), broadcasts two national channels which both reach 80.5 per cent of the country's territory, while Albanian Television (TVSH) broadcasts one national channel which covers 73 per cent and is, in an important sense, the only national television station.⁶ There is no data on the coverage of population, so the difference in footprint between

² KKRT, *2003 Raport Vjetor ne Kuvendin e Shqiperise, (2003 Annual Report to Parliament)*, available at http://www.kkrt.gov.al/informacion/raport_2003.htm (accessed 13 May 2005) (hereafter, KKRT, *2003 Annual Report*).

³ KKRT, *2004 Raport Vjetor ne Kuvendin e Shqiperise, (2004 Annual Report to Parliament)*, p. 13, (hereafter, KKRT, *2004 Annual Report*).

⁴ KKRT, *2004 Annual Report*.

⁵ KKRT, *2003 Annual Report*.

⁶ KKRT, *2003 Annual Report*.

the public and commercial broadcasters may be less important than it appears.⁷ Along with its Tirana-based RT and TVSH, RTSH also has regional radio studios in four cities and television studios in three cities outside Tirana. These branches operate with limited budgets and broadcasting time.

In the last few years, the market has witnessed the rise of news channels, such as News 24 and TV Alsat. This new genre of television has been imitated by other local stations, partly due to the financial inability of many stations to buy programmes in conformity with the broadcasting rights requirements of anti-piracy provisions, which came into force in October 2003.⁸

2.3 Market shares of the main players

There is no way of knowing the real market share of each television station, as audience research is sporadic and limited, and its findings are contested by the television community. Attempts to monitor television audiences were made between 2001 and 2003. These surveys did not include the whole country or all television stations and were limited in time, hence are of limited utility. However, they are the only available source of audience figures. Table 1 shows the television channels with highest audience shares, according to the 2002 survey.

⁷ Albanian Institute of Statistics (INSTAT), *Popullsia e Shqiperise 2001, (Population of Albania 2001)*, Tirana 2002, p. 32, (hereafter, INSTAT, *Population of Albania 2001*). According to the most recent (2001) census, Albania had a total population just over 3,087,000. Some 58 per cent of the population was rural, and 42 per cent urban. With 523,000 inhabitants, the capital city of Tirana accounted for 11.1 per cent of the country's population. A more recent (July 2004) estimate of the total population, cited by the US Census Bureau, is 3,544,808. See: USAID, *USAID Country Health Statistical Report*, available on the USAID website at http://www.usaid.gov/our_work/global_health/home/Countries/eande/albania.pdf (accessed 29 March 2005).

⁸ Law No. 9124 of 29 July 2003, on some amendments to Law No. 8410 of 30 September 1998 on the Public and Private Radio and Television in the Republic of Albania (hereafter, Law No. 9124/2003).

Table 1. Audience share of the top ten television channels (2002)

Channel	Audience share (per cent)
Klan	21.5
TVSH	17.1
Top Channel	11.9
Telenorba Shqiptare	11.3
TVA	8.2
Vizion +	3.4
Telesport	3.2
TV Shijak	2.7
TV Teuta	2.2
Gjeli Vizion	1.3
Total	82.8

Source: Institute of Surveys and Opinions⁹

Judging by all three years of this research, the public broadcaster performs poorly in the capital, Tirana, where it rarely reaches 10 per cent of the audience during the day, and hardly more than this during the evening news bulletin. It appears to be more popular in provincial centres, far from Tirana. As TVSH still has a bigger footprint than the other national television stations, its second place in Table 1 probably reflects the fact that its signal reaches many more people, rather than the appeal of its programming.

In the radio industry, there are no audience surveys at all – a lack that reflects the importance of television compared to radio. While the inaccurate or missing audience measurement makes it difficult to assess the most important players in terms of their market share, a general opinion can be inferred by looking at the programming structure and projects of specific television stations. Considered in this way, the most important television stations, apart from TVSH, which has the largest territorial coverage, include TV Klan and TV Arberia (the private national stations), Top Channel, Vizion +, TV Koha – and perhaps TV Shijak and the news channels News 24 and TV Alsat.

⁹ Institute of Surveys and Opinions (Instituti i Sondazheve dhe Opinioneve), *Media 2002*, Tirana, 2002, p. 54, (hereafter, Institute of Surveys and Opinions, *Media 2002*). See section 5.4 for more information about these surveys.

3. GENERAL BROADCASTING REGULATION AND STRUCTURE

The legal framework on broadcasting activity in Albania is laid down by the Law on Public and Private Radio and Television in the Republic of Albania (hereafter, the Law on Radio and Television).¹⁰ The law, which has since been amended four times since its adoption in 1998, purports to regulate in detail the activity of the electronic media, including the public broadcaster. Unfortunately, it has not achieved this. The recent launch of digital broadcasting confirmed that the law has failed to regulate the sector comprehensively. This is particularly problematic in a country where the courts follow the law literally, refusing to use analogical or interpretative tools.¹¹ Moreover, the proper implementation of the law is impeded by various economic and political factors, as well as by the lack of a tradition of independent media and independent and strong institutions.

3.1 Regulatory authorities for the television sector

The Law on Radio and Television established the National Council of Radio and Television (*Keshilli Kombetar i Radio Televizionit* – KKRT) as the main regulatory body. In addition to the Law on Radio and Television, two other telecommunications laws are important for the television sector. These are the Law on Telecommunications in the Republic of Albania,¹² and the Law on the Regulatory Entity of Telecommunications,¹³ which established the second regulatory body, the Regulatory Entity for Telecommunications (*Enti Rregullator i Telekomunikacioneve* – ERT).

¹⁰ Unless otherwise stated, the reference throughout this chapter is to the current (2003) version of the amended law: Law No. 8410 of 30 September 1998 on the Public and Private Radio and Television in the Republic of Albania, as amended by Law No. 8657 of 31 July 2000; Law No. 8794 of 10 May 2001; Law No. 9016 of 20 February 2003; and Law No. 9124 of 29 July 2003, (hereafter, Law on Radio and Television).

¹¹ In the Anglo-Saxon judicial tradition, judges have great freedom in interpreting, and to a certain extent, even making the law. In Western Europe, judges contribute to the implementation of the law by interpreting it under specific circumstances. In Albania, by contrast, if an issue is not specifically regulated by the law – as is the case with digital broadcasting – it is generally considered by the parties involved as not bound by any legal principle whatsoever, and the judges consider themselves unable to rule on it.

¹² Law No. 8038 of 23 November 1995 on Telecommunications in the Republic of Albania, as amended by Law no 8287 of 18 February 1998.

¹³ Law no 8288 of 18 February 1998 on the Regulatory Entity of Telecommunications (hereafter, Law on ERT).

Before the Law on Radio and Television was adopted, in 1998, broadcasting in Albania was basically lawless. By the time that the KKRT became operational, in 2000,¹⁴ many broadcasters were already operating, bound only by their own interests. This situation partly explains the difficulties faced by the KKRT in establishing itself as the regulator of the broadcasters. Even at present, the KKRT is not always successful in enforcing comprehensively its numerous responsibilities. On many occasions, the KKRT's decisions have been contested, not only by the broadcaster who was harmed by the decision but also by the Albanian political establishment.

In fact, the interference of the political establishment – by getting involved in the election of members of the KKRT, by contesting its decisions or by other means – has complicated the relationship between the regulator and the various broadcasters. For example, after the first wave of licensing national radio and television stations in 2000, many television stations refused to accept the KKRT's decisions, claiming that broadcasters had been awarded national licences because they were close to the governing party. Many stations expressed their refusal by broadcasting blank screens and issuing statements and interviews against the KKRT decision for several days. While it has gradually strengthened its position, the KKRT is still far from being seen as an impartial and independent regulator.

The second broadcasting regulator, the ERT, is “a legal person of a public nature”, and is responsible for enhancing telecommunication in Albania, based on the principles of non-discrimination, transparency and fair competition. It is composed of five members, one appointed by the President, two by the Council of Ministers and two by the Parliament.¹⁵ In the television sector, the competencies of this authority concern the establishment of available frequencies for the electronic media, which are then presented to KKRT. Moreover, it plays an important role, together with KKRT, in controlling the technical aspects of signal broadcasting by the licensed operators.

3.1.1 KKRT structure and composition

The Law on Radio and Television states that the KKRT is an independent body, consisting of a chair, a deputy chair and five other members, elected on the basis of their experience and qualifications in the social, juridical, economic, educational, mass media, radio, and television fields.¹⁶ The President of the Republic proposes one candidate, while the other six candidates are proposed by the Parliamentary Standing Committee on the Means of Public Information (hereafter, the Parliamentary Media Committee). Parliament selects the members from among the candidates and elects the

¹⁴ On 8 December 1999, the KKRT received the Council of Ministers' approval to begin paying its staff. In accordance with Article 138 of the Law on Radio and Television, the KKRT began functioning three months after this decision.

¹⁵ Law on ERT, art. 3.

¹⁶ Law on Radio and Television, art. 8.

chair by simple majority voting. The deputy chair is then elected by the members. Members serve a five-year term, and may not serve more than two successive terms. In order to ensure continuity, the terms of members are staggered. This is achieved by providing for a six-year term for the first elected chairman and deputy chairman.

The law lists the restrictions on eligibility for membership of the KKRT.¹⁷ Members are not allowed to belong to political parties or associations. They are not allowed to be members of Parliament or the Government, and they cannot declare themselves publicly as supporters of Parliament or the Government, or act in their interest. KKRT members are also not permitted to be members of joint stock companies with mass media interests or to represent commercial interests that conflict with their function. During their term of service, and for one year after it expires, KKRT members should neither have financial interests related to broadcasting nor should they protect the interest of a company or firm producing audio-visual materials, press publications, advertisements or telecommunications.

In addition to these restrictions, the Parliamentary Media Committee must ensure that the composition of the KKRT reflects a fair balance of representation from the various political groups.¹⁸ This principle of balance was observed by letting the parliamentary majority and opposition propose three members each, with the seventh member being proposed by the President. In practice, however, this formula did not work until recently, because the opposition Democratic Party had refused, since 1998, to propose candidates for the KKRT. The body therefore worked with six members instead of seven until July 2004, when the opposition parties finally agreed to send all their representatives, and the KKRT is now complete.

Another important issue covered by the Law on Radio and Televisions is the KKRT's accountability. While the law provides for an independent broadcasting authority, it also ensures that this authority remains accountable to Parliament. Accountability is achieved by three mechanisms: the annual report, the scope for dismissing members and the possibility of dissolving the entire Council.¹⁹

The KKRT is obliged to present an annual activity report to the Parliamentary Media Committee and to Parliament. If Parliament declines to approve the annual report for two consecutive years, the Council is to be dissolved. The KKRT passed a difficult trial in this test of accountability in 2002, when the KKRT failed to obtain the two-thirds quorum in Parliament. Some of the main charges against the KKRT, chiefly voiced by the opposition, were allegations of double standards in the imposition of fines and the granting of licences and frequencies, as well as allegations of a general lack of objectivity.

¹⁷ Law on Radio and Television, art. 14.

¹⁸ Law on Radio Television, art. 9.

¹⁹ Law on Radio and Television, arts. 7(19) and 15.

In addition to the above-mentioned controls on the Council, Parliament is empowered under the law to dismiss a member of the KKRT if the member:

- is convicted of a criminal offence by a final decision of a court of law;
- becomes unable to perform his or her duty because of illness;
- is absent from more than one third of Council meetings in a year; or
- does not satisfy the stated restrictions on membership.²⁰

Any member who is removed from the Council may challenge their dismissal in court, and can theoretically appeal up to the Constitutional Court. If a member is dismissed, a substitute shall be elected by the normal procedure. The substitute will be entitled to a term of office equal to the time remaining for the predecessor.

The KKRT was initially funded by a direct grant from the Council of Ministers in December 1999. Normally, the law provides for five sources of funding for the KKRT: a proportion of the licence fees; revenues from processing the broadcast licence applications and from all the taxes applying to radio and television broadcasts; five per cent of the annual income tax paid by licensees; State budget funding; and donations. These sources of income serve to defray the overhead costs of the KKRT, which has four departments and one directory.²¹ In 2005 the KKRT will start to draft a strategy for gradually achieving financial independence from the state budget and becoming self-sustaining.

3.1.2 KKRT main competencies

The KKRT's numerous competencies are in many cases only broadly formulated in the law, giving the Council wide scope for action and interpretation. However, in most cases, political groups and the media have not welcomed such an active role by the KKRT. According to the Law on Radio and Television, the KKRT is responsible for overseeing broadcasters' compliance with the Law on Radio and Television. While it is required by law to guarantee fair competition among electronic media, the KKRT is also legally obliged to ensure the existence and further development of the public broadcaster, RTSH.²²

The KKRT also has an advisory role: it offers opinions on the future of radio and television in Albania, on ratifying and enforcing relevant international agreements, and on amendments to national legislation and regulations. Outside of the country, the KKRT represents Albania in international organisations and negotiations regarding

²⁰ Law on Radio and Television, art. 15.

²¹ Decision No. 12 of the KKRT of 26 June 2000 on the Internal Regulation of the National Council of Radio and Television and its Administration. Available (in Albanian) on the KKRT website at http://www.kkrt.gov.al/keshilli_frame.htm (accessed in May 2004).

²² Law on Radio and Television, art. 7(4).

electronic media, and by supporting cooperation with foreign and international broadcasters.

Among its responsibilities for content, the KKRT is in charge of determining production and broadcasting standards for public and private electronic outlets. It is responsible for monitoring the information programmes of national broadcasters and, when it deems necessary, those of local broadcasters. In this regard, the law also provides for the establishment of a Complaints Council as an advisory body to KKRT.²³ This organ, composed of a chairman and two members appointed by the KKRT, is responsible for dealing with the moral and ethical aspects of programming in the electronic media. It is entitled to supervise programming in order to ensure that there are no abuses of violence, sex and dignity by private and public electronic media and investigates complaints in this direction. However, it should be noted that the decisions of the Complaints Council lack binding legal force. The Council is only a tool established to assist the KKRT in discharging its legal responsibilities regarding programming content.

The KKRT is also involved in the broadcast licensing procedure. It is authorised to adopt regulations and bylaws elaborating the general licensing provisions of the Law on Radio and Television. (See Section 3.2.) The latest amendments to the law, in 2003, have made the KKRT also responsible for supervising broadcasters' compliance with broadcasting rights.²⁴

In discharging its responsibilities, the KKRT may demand any information it deems necessary from applicants or licensees, the State administration, courts, banks and other relevant institutions. However, to date, the KKRT has not been very active or successful in this regard. For example, its 2003 annual report stated that 49 per cent of the annual income of television stations came from "unknown" sources, and that no television station had made any profit.²⁵ These were remarkable findings, but the KKRT has not chosen to shed any further light on them. Meanwhile, for 2004, only 60 per cent of the licensed operators submitted their annual balance sheets to the KKRT, and most of them did so in a non-detailed manner, thus rendering it difficult for the KKRT to make any accurate conclusion about their income.²⁶ For the time being, the KKRT seems unable to fulfill its duties.

²³ Law on Radio and Television, art. 18.

²⁴ Law No. 9124/2003.

²⁵ KKRT, *2003 Annual Report*.

²⁶ KKRT, *2004 Annual Report*, Annex 1, p. 4.

3.2 Licensing

The Law on Radio and Television states that:

A licence for radio-television transmission is valid as permission to install technical equipment and gives the private subject the right to transmit. A licence authorises the exploitation of transmission networks with national or local coverage and specifies the work frequencies, the power, the location of installation, the zone of coverage as well as other elements.²⁷

The broadcast licences awarded by the KKRT cover teletext, terrestrial, cable and satellite broadcasting. The KKRT also issues licenses for the installation of booster transmitters for broadcasting foreign programmes and programmes rebroadcast by foreign broadcasters in Albania for the Albanian public. Furthermore, the KKRT may also authorise private and public operators to broadcast from Albania to other countries, in accordance with international agreements. All licences awarded by the KKRT are based on the frequencies made available beforehand for the electronic media by the ERT.

According to the law, there are two types of licence, one for national transmission and one for local transmission.²⁸ Broadcast licences are awarded exclusively by the KKRT, with the exception of cable programmes, where the ERT has the main responsibility for the technical inspection of the broadcaster. Following the award of the licence to the cable operator, the ERT controls the implementation of the technical aspects and gives permission for operating the cable net.²⁹

In principle, for those areas with available frequencies, the KKRT should open a public contest for broadcast licences, on the basis of: criteria established by the Law on Radio and Television, the regulations adopted by the KKRT, the number of bidders and their preferences, and the frequencies made available by the ERT.³⁰ The law guarantees the transparency of the procedure, by requesting KKRT to make public any details. Only successful applicants would then sign a contract with the KKRT. In practice, however, there have not been many applicants for these licences, because most broadcasters were established before the KKRT; so competition has not been strong. The KKRT monitors the compliance of the licensees with their contract conditions. In the event of a violation, the KKRT decides on the imposition of sanctions provided by the law, and it may also require other public institutions to intervene, in line with their competencies and the circumstances of the case.

In cooperation with the ERT, the KKRT controls the quality of signal reception in the licensed areas and requires that public complaints be answered by respective media.

²⁷ Law on Radio and Television, art. 19.

²⁸ Law on Radio and Television, art. 20.

²⁹ Law on Radio and Television, art. 127

³⁰ Law on Radio and Television, art. 21.

Although the quality of the signals is generally satisfactory, there are cases when regulation does not succeed in solving problems between television stations, even when the solution is technical. For example, in January 2004, TV Shijak complained that the KKRT had allowed TV News 24 to power up its transmitter, thus interfering with the reception of the signal of TV Shijak.³¹ Although the KKRT responded by ordering News 24 to adjust the power of the transmitter in agreement with the licence terms, TV Shijak's signal still suffers significantly from time to time.

The Law on Radio and Television excludes the following persons or groups from the right to hold a licence:

- persons who have been deprived of their capacity to act by a final court decision;
- political parties and organisations, religious communities and societies, local government authorities, and other state authorities; and
- public entities with an economic character, banks and other credit institutions.³²

With regard to financial backing, applicants for a national television licence should have a declared and verified capital of at least ALL 100 million (or approximately €787,401),³³ while those seeking a radio license need ALL 20 million (€157,480) in capital. They should be able to pay the fee for the licence, as established by law, and also the taxes on the use of frequencies as established in Albanian tax legislation.³⁴ The applicant should be able to cover over 70 per cent of the territory to which they want to broadcast, with the prospect of extending this coverage within six years to no less than 90 per cent of the territory and the population. This coverage should be achievable in conformity with the technical norms elaborated by the KKRT.

National television licences are awarded for up to eight years and FM radio licences for up to six years. National and local licence applicants must commit themselves to respect the legal and regulatory criteria in the areas of programming structure, duration and substance; news broadcasting; advertising; employment qualifications of staff; public service; and copyright. In addition, applicants for national licences should commit themselves to transmit programmes according to the criteria established, which means not less than ten hours per day for FM radio and not less than six hours per day for television. Radio transmissions should commence within one year of receiving the licence. For television, this grace period is a year and a half. However, the requirement

³¹ Albanian Media Institute, *Albanian Media Newsletter – January 2004*. All AMI newsletters are available (in English) on the AMI website at <http://www.institutemedia.org> (accessed 15 March 2005).

³² Law on Radio and Television, art. 26.

³³ The exchange rate used throughout the report is €1 = ALL 127. ALL is the abbreviation for Albanian *lek*, the unit of national currency.

³⁴ Law No. 8435 of 28 December 1998 on the System of Taxes in the Republic of Albania (hereafter, Law on the Tax System).

to broadcast by the end of the grace period has not always been followed to the letter. In some cases television licences have not been withdrawn, even though this period has passed without any broadcasting, and this has prompted the allegations of double standards, mentioned above.

Like those applying for national licences, applicants for local licences must have verified capital. For local radio licences, the requirement varies from ALL 2 million to ALL 5 million (or approximately €15,748 to €39,370). For local television licences, the capital requirement varies from ALL 5 million to ALL 25 million (€39,370 to €196,850), depending on the location of the broadcasting zone.

Local radio licensees should broadcast not less than six hours daily, and should begin within 180 days of receiving their licence. Local television licensees should broadcast not less than four hours daily, and should begin within 270 days of receiving their licence. Cable licensees should broadcast not less than six hours daily, and should begin doing so within one month of receiving their licence. Local radio licenses are awarded for three years, while local television licences are awarded for five years. Within one year of receiving the licence, the licensee should be technically able to penetrate 10 per cent of the households in its broadcasting zone. This reach should be extended to 20 per cent after two years and 50 per cent after five years.

Many broadcasters claim that the licence fees prescribed by law are excessive.³⁵ It has been argued that the reason why the KKRT has so far approved all licence applications, even though there are an unsustainably high number of broadcasters, is to maintain its funding.³⁶ The KKRT claims that it does not reject applicants because it would rather support the development of media outlets than burden them with unnecessary restrictions.³⁷ The fact is that many broadcasters were already broadcasting when the KKRT was established. By the time the KKRT became operational in 2000, it was already difficult to shut broadcasters down, and the only available option was to grant licences to all operating broadcasters, rather than be accused of undermining media freedom. Moreover, the law is flexible in that it provides the option of fulfilling certain conditions within a period of time after the receipt of the licence. Meanwhile, the KKRT itself has been flexible in monitoring the implementation of the law, arguing that strict implementation would result in almost no licences being approved at all.

3.3 Enforcement measures

The Law on Radio and Television states that the KKRT may revoke a licence when:

- the licence has been issued on the basis of false information;

³⁵ Elda Spaho, “Televisionet private: Jo diskriminimit nga RTVSH”, (“Private Broadcasters: No to discrimination by RTVSH”), in *Shekulli* newspaper, 29 January 2004.

³⁶ IREX, *Media Sustainability Index 2002 – Albania*, IREX, Washington DC, 2003, p. 5, available on the IREX website at <http://www.irex.org/msi/2002/country/albania.pdf> (accessed 15 March 2005), (hereafter, IREX, *MSI 2002 – Albania*).

³⁷ KKRT, *2003 Annual Report*.

- the stipulations in the licensing contract have not been met;
- the obligations under this law and other legal obligations associated with broadcasting have been severely violated;
- broadcasting has not commenced, after the stipulated grace period – 180 days for local radio, 270 days for local television, 12 months for national radio and 18 months for national television;
- there has been no broadcasting for 30 days in a calendar year, excluding technical interruptions beyond the authority of the licensee;
- the licensee's circumstances have changed, making it impossible to observe the licence conditions;
- the licensee's property has been put up for auction.³⁸

The KKRT oversees and monitors broadcasters' compliance with their legal and contractual requirements, and it is empowered to sanction violations. The sanctions should be imposed no later than one year after the violation was committed.³⁹ A sanction can be a warning, a fine of anywhere from ALL 20,000 to ALL 1,500,000 (or approximately €157 to €11,811) or suspension, shortening or revoking of a licence. The KKRT must notify the licensee before imposing a sanction, giving them an opportunity to respond. Should the KKRT proceed with the sanction, the licensee must be given a copy of the decision. The KKRT is obliged to publish the decision in the following number of the *Official Journal*, and in its *Bulletin*.

The sanctions imposed by the KKRT constitute administrative sanctions, and they may be challenged to the KKRT and in the respective court of law. Even a decision by the KKRT to refuse an application (which has never happened yet) may be challenged legally, by the applicant or other affected parties.

It should be remembered that Albania's broadcasting sector was essentially lawless until 1998. For this reason, the KKRT did not initially seek a high profile. However, the KKRT has gradually strengthened its position, increasing the pressure on Albanian broadcasters to comply with the law. The KKRT has imposed sanctions against a number of broadcasters, especially since 15 October 2003, when the latest amendments to the Law on Radio and Television came into force, making the KKRT responsible for ensuring compliance with broadcasting rights. TV Shijak, Telenorba Shqiptare, TV Koha, AVN, Skampa, Alsat and others have been fined for violating these amendments.⁴⁰

³⁸ Law on Radio and Television, art. 34.

³⁹ Law on Radio and Television, art. 137.

⁴⁰ For example: fine No. 63 for TV Rozafa, 3 March 2004; fine No. 68 for TV skampa, 12 March 2004, fine No. 90 for TV Telesport, 29 September 2004. Information obtained from the Department of Jurisdiction and Licences, KKRT, 23 May 2005.

Among these broadcasters, TV Shijak, which has been fined several times for violating broadcasting rights, claimed that the sanctions were politically motivated.⁴¹ Its main argument was that the KKRT had not sanctioned identical violations by stations that support the current Government. This objection was not convincing, because TV Shijak really was in breach of the law and also because it provided no evidence of unsanctioned offences committed by other outlets. Eventually, in late December 2004, KKRT decided to withdraw the broadcast licence from TV Shijak, on the grounds that it had not paid its dues to the regulator and it continued to broadcast programmes without the broadcasting rights. Since this decision, the station made the payment and stopped broadcasting pirated programmes, but the matter is presently in court, where TV Shijak is appealing the judgment in favour of the KKRT.⁴²

Another KKRT sanction that caused controversy was the case of Alba TV and Alsat. The KKRT removed Alba TV's transmitter on 7 August 2003, on the grounds that the station had not paid its annual licence taxes to the KKRT and had suspended its broadcasts without notifying the KKRT. Alsat was also caught up in this case, because it was using Alba TV's transmitters. In June 2003, Alba TV had signed an agreement with Alsat, which only had a satellite-broadcasting licence, so that the latter could broadcast terrestrially via Alba TV. According to the KKRT, this agreement was not valid, because the Law on Radio and Television at the time of the agreement forbade holders of satellite licences from terrestrial broadcasting. This prohibition was only lifted under subsequent amendments to the law adopted in 2003, which permit licensees for terrestrial broadcasting to rebroadcast their programmes by satellite, and vice versa.⁴³

Alsat and Alba TV claimed that this decision was purely political, because the non-payment of taxes pertained to the case of Alba TV only, and they maintained that the KKRT should have warned the station before removing the transmitters. Moreover, Alsat argued that, at the time the transmitters were removed, the 2003 amendments to the Law on Radio and Television had already been adopted by Parliament. Alsat contested the KKRT's action, maintaining that the entry into force of these amendments was a formality.⁴⁴ The case went to court, where KKRT won. Alba TV was closed down by bankruptcy, while Alsat, after obtaining the required licence, is now broadcasting terrestrially as well on channel E7 VHF, covering the Tirana-Durres region.

⁴¹ TV Shijak is indeed known among media experts and the general public for its links to right-wing figures and for its criticism of the present Government, which is formed by the Socialist Party and its allies.

⁴² Court decision No. 1732, 30 March 2005, No. of act 2166, reference obtained from Argita Shkupi, Head of Department of Jurisdiction and Licences, KKRT, Tirana, 23 May 2005.

⁴³ Law on Radio and Television, art. 136(1).

⁴⁴ According to the law, every amendment enters into force after its publication in the *Official Gazette*, or within the time frame established within the law itself. Neither of these criteria was fulfilled in this case.

The KKRT also supervises the public broadcaster's fulfilment of its obligations. According to the Law on Radio and Television, the KKRT may either fine RTSH itself or notify other relevant authorities if the public broadcaster does not meet all its obligations,⁴⁵ but the KKRT has not yet done so. This lack of sanctions is perceived as being due to RTSH's public status and the damaging consequences that sanctions could have. RTSH already has a poor public image, and sanctions certainly would not help. Before the private media emerged, RTSH was in the spotlight, but since then the situation has changed dramatically, and RTSH receives extremely little attention in public debate.

In sum, the KKRT has not yet managed to remove concerns that most of its decisions are influenced by one political group or another, and by the Government most of all. This concern remains even though, as is often pointed out by the KKRT itself, almost all lawsuits against the KKRT have issued in its favour.⁴⁶ Meanwhile the KKRT itself, despite its increased authority, is still a long way from being seen as an impartial and independent regulator.

3.4 Broadcasting independence

The Constitution states that freedom of the press, radio and television is guaranteed.⁴⁷ In similarly general terms, the Law on Radio and Television states that "editorial independence is guaranteed by law."⁴⁸ In addition to this broad provision, the law seeks to guarantee the independence of broadcasting through a number of important provisions pertaining to the regulatory authority, public broadcasting, content, sponsorship and other areas.

Unfortunately Albanian broadcasters have not tried to give concrete meaning to these broad guarantees. Albania suffers in general from a culture of dependence within the working sphere. There is little sense of initiative, and employees are accustomed to meekly obeying the rules. This culture of blind obedience is strongly felt in the media sector. The existing dependence is partly a legacy of the communist era, when the media were under effective and complete control of the ruling party. Journalists lived with the continuing threat that an unintentional, politically incorrect statement could put their very life in danger. Freedom of expression was an unthinkable notion, and critical and

⁴⁵ Law on Radio and Television, art. 137.

⁴⁶ Comment from OSI Roundtable, Tirana, November 8, 2004 (hereafter, OSI roundtable comment). *Explanatory note: OSI held roundtable meetings in each country monitored to invite critique of its country reports in draft form. Experts present generally included representatives of the Government and of broadcasters, media practitioners, academics and non-governmental organisations. This final report takes into consideration their written and oral comments.*

⁴⁷ Constitution of the Republic of Albania, approved by Parliament on 21 October 1998, adopted by the Referendum of 22 November 1998, and in force since its promulgation by the President of the Republic on 28 November 1998, art. 22.

⁴⁸ Law on Radio and Television, art. 5.

independent thinking were fiercely repressed under Albania's Stalinist-style regime. This situation contributed to the present mentality, under which journalists, especially middle-aged and older journalists, do not actively seek to achieve editorial independence.

While the old system discouraged journalists from arguing with their superiors, the existing conditions within the media sector also tend to encourage acquiescence and obedience. The labour market within the sector is quite unstable. It is very easy to enter this market. As one report put it: "You can finish your studies in agriculture and still immediately become a journalist in Albania."⁴⁹ In fact, most media proprietors prefer to employ young, inexperienced persons as journalists. These journalists are then expected to obey the clear rules given by superiors. They do not tend to disobey, since, on the one hand, they lack professional experience and, on the other hand, alternative employers would treat them no differently.

As for the experienced journalists, who together with the public have an interest in strengthening the independence of broadcasting, they can hardly make a difference due to their disorganised and weak legal position *vis-à-vis* their owners. Most commercial broadcasters operate without internal regulations to guarantee broadcasting independence. A code of conduct was drafted some time ago by the two main journalists' associations and the Albanian Media Institute, the principal NGO dealing with media issues, but most media owners have not yet recognised the necessity of such a code. In fact, some of the media companies do not even sign employment contracts with their employees. Even when these contracts exist, the State authorities' indifference and reluctance to act makes it possible for the employer to break the contract without legal consequences. Court proceedings in Albania remain expensive and time-consuming, and confidence in the judicial system is extremely weak. In some cases, the execution of court orders takes even longer than the proceedings. This might explain why, even though a great number of journalists have been fired by their respective media in these last five years, very few of them, if any, have obtained redress from the courts.

There are several journalists' associations, which remain extremely weak. The two principal associations, the League of Albanian Journalists and the Association of Albanian Journalists, have not made any notable attempts to raise awareness among journalists and organise them for their common good. There are also other journalists' associations, established on the basis of a special interest, such as environmental reporting, or on a regional basis, such as the League of Northern Journalists, or by gender. However, rather than standing up for causes that could benefit the media community, and probably the public interest, these often one-person associations – which in many cases appear to represent no real membership – often seem to have been created for their founders' personal interest. The International Research and Exchanges Board (IREX) has

⁴⁹ Unidentified source quoted by the International Research and Exchanges Board (IREX). See: IREX, *Media Sustainability Index 2003 Albania*, IREX, 2004, p. 6, available on the IREX website at <http://www.irex.org/msi/2003/MSI03-Albania.pdf> (accessed 29 May 2005), (hereafter, IREX, *MSI 2003 Albania*).

supported the idea of establishing a trade union for journalists, but all attempts to set up an effective organisation have failed so far, due to lack of cooperation within the media community, or even lack of interest in changing the situation.

Other NGOs and intergovernmental organisations have not dealt extensively with this issue, partly because of lack of interest, and partly because of the opinion that this initiative should emerge from the media community itself, and should not be engineered externally. In sum, the situation of broadcasting independence is equally poor in the public and commercial sectors. The difference is that due to the growing importance of private electronic media, the latter receive much more attention.

4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING

The public service broadcaster, Radio-Television of Albania (*Radio Televizioni Shqiptar* – RTSH), underwent the formal transformation from a State-owned institution into a broadcaster of public character with the entry into force of the 1998 Law on Radio and Television. In recent years, RTSH has received more than half of its budget from the State. Such financial dependence on the Government makes this body very sensitive to Government policy, and it also discourages RTSH from taking the initiative to reform itself into a true public broadcaster. As a result, the range of programmes produced, and the information conveyed, by RTSH does not satisfy the public interest. The poor programming has caused a drop in the influence of RTSH's television station, Albanian Television, (*Televizioni Shqiptar* – TVSH), which has been eclipsed by the speedy development of the commercial television sector.

RTSH has not been offered significant support and expertise in reforming itself to cast off the legacy of State-owned broadcasting. Given the way the political establishment is able to influence RTSH, the lack of transparency and management reforms for the organisation, and the low staff morale and motivation, the current situation points to an urgent need for legal amendments and continuing reforms that would give real meaning to the public service remit bestowed on this institution by law.

4.1 The public broadcasting system

RTSH carries out public service broadcasting through its national television station, TVSH, and its national radio station, Radio Tirana (RT). These institutions were officially transformed from State-owned radio and television into public radio and television when the Law on Radio and Television came into force, but much work remains to be done for this broadcaster to fulfil its public mission. RTSH functions as

a public legal person, while TVSH and RT have limited competencies, such as for example the right to enter co-production relations with third parties.⁵⁰

RTSH is regulated by the Law on Radio and Television as well as by its own statute. The Statute of RTSH defines the structure of the institution; the governing bodies and their competencies; the criteria and procedures for appointing and dismissing the Deputy General Director, the directors of RT and TVSH, and the heads of departments; the job descriptions for all the categories of RTSH employees; and the description of RTSH's financial and economic activity.⁵¹

Because it has the distinctive aim of providing public service broadcasting (and also constitutes a public legal person) there are a number of substantial differences between RTSH and private broadcasters. For one thing, RTSH does not require a broadcast licence.⁵² Furthermore, RTSH's national programmes must reach at least 90 per cent of Albania's citizens.⁵³ At present, RT's signal covers 80.5 per cent of Albania, while TVSH covers 73.3 per cent.⁵⁴ Due to the lack of monitoring and measuring capabilities, combined with the large internal migration, there is no comprehensive data on the percentage of the population inhabiting the above-mentioned territory.

The most important difference between these stations and commercial ones is the programme content. RTSH should have a wider range in terms of quantity and quality, and it should transmit programmes that serve all the public. This includes the unpaid production and broadcasting of certain programmes, notices and advertising spots.

In fulfilling its mission, RTSH receives assistance from the State budget, in an amount that may differ each year at the Government's discretion. Other sources of income include advertising revenue, sale of its productions to interested parties, leasing of antennas and transmitters to private operators, and the fixed annual tax paid by households.

4.2 Services

RTSH presently broadcasts one national television channel and two national radio channels; one radio channel in foreign languages; and the Diaspora channel, which goes out on short-wave; as well as regional broadcasting centres throughout the country. Despite the limited number of available national frequencies, and despite the poor performance of the public broadcaster in comparison with the private sector, the law grants two national television frequencies to RTSH. However, one of those

⁵⁰ Decision No. 440 of Parliament of 1 June 2000 on the adoption of the Statute of Albanian Radio Television, art. 4, (hereafter, RTSH Statute).

⁵¹ RTSH Statute, art. 4.

⁵² Law on Radio and Television, art. 21.

⁵³ Law on Radio and Television, art. 71.

⁵⁴ KKRT, *2003 Annual Report*.

frequencies goes unused, because budget constraints have prevented RTSH from opening up the second national station.⁵⁵

So that RTSH can achieve its objectives, the law entitles the broadcaster to produce programmes; to join and commission productions; to organise concerts and public performances; to publish music, video and audio products, newspapers, magazines and books related to its programmes; to sell its own programmes and advertising slots; to publish other paid messages; and to enter into contractual relations with third parties for these purposes.⁵⁶

The Charter of RTSH defines the business activities it may engage in. Under this Charter, RTSH may carry out teletext services; produce, stage and transmit programmes for third parties; organise commissioned productions; produce and sell advertisements and other commercial messages; buy, sell, exchange and lease programmes, films and videos; sell its musical recordings; and lease radio television studios and equipment to third parties.⁵⁷ RTSH may also produce and publish magazines and other materials to promote its programmes as well as publish books in the public interest. RTSH property may not be sold.

4.3 Funding

The Law on Radio and Television states that RTSH is funded from the following sources:

- a licence fee, payable on ownership of a television set that is capable of receiving RTSH programmes;
- contracts with third parties for various broadcasts, to utilise spare technical capacity;
- other programme services;
- publication of video and audio musical productions, books, newspapers and journals related to various programmes;
- performance activities and public shows;
- other activities defined in the RTSH Statute;
- advertisements and publication of other paid messages;
- donations and sponsorships;
- sale of RTSH programmes to any interested party;
- the State budget.⁵⁸

⁵⁵ Interview with Alfred Dalipi, RTSH Deputy General Director, Tirana, 4 February 2005.

⁵⁶ Law on Radio and Television, Chapter VIII.

⁵⁷ RTSH Statute, art. 49.

⁵⁸ Law on Radio and Television, art. 115.

Moreover, the law provides that “the ministries and other State institutions shall fund special projects of national importance in the fields of culture, science, and education with the approval of the RTSH Steering Council.”⁵⁹

The RTSH Statute also allows RTSH to derive income from leasing equipment; granting the right to use its premises and transmission infrastructure, television stations and repeaters; and selling services, such as production, staging and transmission of programmes, to third parties. According to the Law on Radio and Television:

The fees associated with utilising the RTSH premises, or equipment, installing or utilising the broadcasting equipment of other radio and television operators, as well as the specific contract, shall be prepared by RTSH, based on technical and economic indicators. The National Council on Radio and Television approves them after considering any objections raised by radio and television operators.⁶⁰

The extent of funding from the State budget is established in the Law on the Annual State Budget, based on the yearly budget of RTSH, as approved by the Steering Council. The Parliament approves the annual State budget, which includes the sum allocated to RTSH, but it does not deal specifically with the RTSH budget, which is prepared internally without need for Parliamentary and KKRT approval. The amount is set at the beginning of the year by the Government, when planning the overall annual State budget, and it changes each year. This sum is also used to fund radio services for citizens living outside Albania; radio services for foreign audiences (in foreign languages); television services for Albanians outside Albania; important technical projects to introduce new technologies in production and broadcasting; important film-production projects or major pan-national artistic activities; as well as the RTSH and Cinematography symphony orchestra.

As shown below in Table 2, RTSH’s total budget in 2004 was ALL 990 million (€7.79 million), of which 58 per cent (ALL 575 million) came from the State budget (including ALL 141 million to be invested in equipment and technology).⁶¹ In the two previous years, the figures were similar.⁶² The 2005 RTSH draft budget is a total of ALL 951 million (€7.48 million), of which 58 per cent would come from the State budget.⁶³

⁵⁹ Law on Radio and Television, art. 118.

⁶⁰ Law on Radio and Television, art. 85(2).

⁶¹ RTSH, *Projektbuxheti per vitin 2005, (Draft Budget for 2005)*, RTSH General Directorate, Tirana, 11 February 2005, p. 3, (hereafter, RTSH, *Draft Budget 2005*).

⁶² Interview with Alfred Dalipi, 29 July 2004.

⁶³ RTSH, *Draft Budget 2005*, p. 15.

Table 2. RTSH Budget (2000–2005)

		2000	2001	2002	2003	2004	2005 (planned)
Total Budget	ALL (million)	–	–	930	1,000	990	951
	€ (million)	–	–	7.322	7.874	7.795	7.48
Funding from the State budget	ALL (million)	550	600	640	571	575	560
	€ (million)	4.331	4.724	5.039	4.496	4.527	4.409
	As a share of total budget (per cent)	–	–	69	57	58	59
Funding from advertising revenue	ALL (million)	–	–	–	–	86	86
	€ (million)	–	–	–	–	0.677	0.677
	As a share of total budget (per cent)	–	–	–	–	8.6	9.0

Source: RTSH⁶⁴

The licence fee, currently set at ALL 800 (€6.3) per household per year, is supposed to constitute one of the main sources of income for the public broadcaster, thereby guaranteeing its independence. Remarkably, however, this revenue is not itemised in the RTSH budget and no information is available on the sum collected.⁶⁵

While the level of the licence fee is established by law,⁶⁶ advertising income depends mainly on RTSH itself. The advertising fees, in accordance with the duration of the advertisements and the hours of transmission, are proposed by RTSH's Marketing Directorate, considered by the Management Council and approved by the General Director. Like the income from the licence fee, advertising incomes also remain limited, even though there are no legal limits on the amount of advertising that RTSH may carry. In 2004 the advertising income was ALL 86 million (or approximately €677,165), accounting for 17 per cent of RTSH's total self-generated revenue or 9 per cent of the total budget. The 2005 RTSH draft budget states that RTSH plans to generate the same percentage of revenue from advertising for this year, too.⁶⁷

The level of funding of RTSH, and the use of the available funds, should be a cause of concern, even though these matters have not been discussed very much in public. According to the Law on Radio and Television, the Steering Council is supposed to conduct an annual financial analysis of the institution and make the report public. To

⁶⁴ Data for 2005 from: RTSH, *Draft Budget for 2005*, p. 1; and Interview with Alfred Dalipi, 29 July 2004. (Dalipi corrected some figures in the draft budget, which is not publicly available.)

⁶⁵ The State levies the licence fee annually, as a supplement to one of the monthly domestic bills for electricity, so the revenue is included in the general state budget.

⁶⁶ Law on the Tax System.

⁶⁷ RTSH, *Draft Budget for 2005*.

date, the Steering Council has failed to comply with this duty. As a result, the general public, and interested parties in the industry, lack information on the management of RTSH funds.

Because RTSH regularly receives most of its budget from the State, it is not encouraged to be more enterprising, to take initiatives, to make reforms or introduce flexible methods of management. Moreover, the continuing lack of transparency in the management of Government funds by the public broadcaster must raise concerns about editorial independence, as well as mismanagement and possible corruption.

These concerns are often raised mainly, but not exclusively, by RTSH staff. In December 2004, the Director of the Supreme State Audit pressed charges against RTSH General Director Artur Zheji for abuse of office.⁶⁸ The Supreme State Audit had conducted a review of the financial management of the public broadcaster for 2003 and the first half of 2004. During this audit, various violations were discovered, and Zheji was considered the official primarily responsible. In most cases, the violations concerned the fact that the public broadcaster had not acted against other parties for failing to comply with their contractual financial obligations. The accumulated debt of these parties to RTSH stands at ALL 131,089,229 (€1,032,198).⁶⁹ The Supreme State Audit's report shed further light on the increasingly difficult financial situation of the public broadcaster, a situation that is potentially due to inefficient management. The Supreme State Audit is supposed to audit RTSH on an annual basis.⁷⁰ This audit is meant to examine RTSH's compliance with the relevant legislation in following financial procedures and documentation, such as tender procedures and procurements of different kinds. However, this audit has not been conducted on a regular basis.⁷¹

The Union of RTSH Employees has issued a series of similar complaints, regarding the working conditions and the financial situation of RTSH, in the past. The union has accused the management of abuse of funds and the Government of neglect. Such accusations are not new. Edi Mazi, who preceded the Zheji as General Director, resigned over corruption charges, which were later dropped due to lack of evidence.⁷²

Apart from the income it generates itself and that which it receives from the State budget, RTSH can also accept foreign aid or other donations. However, in the course of the last decade, foreign aid has been sporadic and mainly focused on technical issues,

⁶⁸ Lawsuit of Supreme State Audit, 24 December, 2004, published in *Sot* newspaper, 16 January 2005, p. 7.

⁶⁹ Supreme State Audit (Kontrolli i Larte i Shtetit), *Raport perfundimtar kontrolli ne Drejtorine e Pergjithshme te RTSH, (Supreme State Audit Report on RTSH)*, published in *Monitori Shqiptar i Medias*, 2004/2, p. 250.

⁷⁰ Law No. 8270 of 23 December 1997 on the Supreme State Audit.

⁷¹ Interview with Alfred Dalipi, RTSH Deputy General Director, Tirana, 24 February 2005.

⁷² Albanian Media Institute, *Albanian Media Newsletter*, February 2004.

such as digital equipment, and it has not been a significant element of income at RTSH. While this aid has certainly been useful, there has been no foreign consultancy on a major scale. RTSH could benefit from foreign assistance and consultancy with such challenges as drafting an adequate and sustainable strategy for reforming the station into a public broadcaster. Instead, outside support has been smaller. For example, in 2004 foreign aid consisted of €10,000 from Deutsche Welle and €5,000 from ZDF in the form of technical assistance.⁷³ According to Alfred Dalipi, RTSH receives no other Government, bilateral, or EU funding or assistance.⁷⁴

The situation changed significantly in 2005, now that RTSH has signed a contract with the Chinese Government for assistance in kind – including equipment and technical assistance – amounting to €116,000 per year over 15 years.⁷⁵ Furthermore, RTSH has leased a concession on one local transmitter to Radio Beijing, enabling it to broadcast in FM, in addition to leasing broadcasting time on another transmitter, which is used by other stations, such as Deutsche Welle and Voice of America. The Chinese side has engaged in the complete reconstruction of the transmitter conceded to them. The whole project for the duration of 15 years amounts to €27 million, while the annual lease paid to RTSH for the transmitter concession is €386,500 and €773,000 for a second transmitter, where they share broadcasting time with other foreign radio stations.⁷⁶ Again, while RTSH can certainly use any kind of foreign assistance, expertise in implementing satisfactory reform would be an important way to help TVSH successfully fulfil its public service mission.

4.4 Governance structure

The Law on Radio and Television establishes three governing organs for RTSH, the Steering Council, the General Director and the Management Council.⁷⁷

The Steering Council

The Steering Council is the highest organ of RTSH. It consists of 15 members, elected by Parliament for a period of five years, with the possibility of re-election after a break of three years. The members are elected from among well-known personalities in culture, art, cinema, journalism, law, economics, the media, public relations, international relations, the universities and the Academy of Sciences. Members of Parliament, ministers, senior government officials, leading members of political parties, RTSH employees or employees and owners of private media are barred from membership.

⁷³ Interview with Alfred Dalipi, 4 February 2005.

⁷⁴ Interview with Alfred Dalipi, 29 July 2004.

⁷⁵ Interview with Alfred Dalipi, 4 February 2005.

⁷⁶ Interview with Alfred Dalipi, 24 February 2005.

⁷⁷ Law on Radio and Television, art. 86.

Under the present formula used to appoint the Steering Council, five members are proposed by the ruling majority, five members are proposed by the opposition, and the other five members should come from the ranks of civil society activists.⁷⁸ The opposition considers that this formula hurts the independence of the institution. According to this view, the civil society members in fact support the parliamentary majority.⁷⁹ Whether this has actually been the case would be very difficult if not impossible to establish. Supporters of this formula, on the other hand, argue that it is the only way to ensure the essential civil society element in the membership of the public institution. In general the current formula is an improvement over the previous one, according to which nine members represented public and civil society institutions, while the other six were selected from among a list of 12 candidates, in proportion to party strength.⁸⁰ The *de facto* right of the opposition to influence the composition of the Steering Council was put into strong doubt by the old formula, which made the election of the six candidates dependent on the vote of the majority. Moreover, there was a risk of having nine members representing public and civil society institutions while actually supporting the opposition. According to the present formula, at least the right of the opposition to influence the composition is guaranteed regarding five members. The current Steering Council of RTSH was elected on 29 July 2002.

The Steering Council should meet at least once every two months, with a quorum of at least half its members. It appoints its chair and vice-chair. It is an important decision-making organ and its decisions require that one third of the total members vote in support.

The RTSH Steering Council's main competencies are as follows:

- to approve the regulations for its activity;
- to approve the RTSH Statute within 70 days of its first meeting;
- to appoint and dismiss the General Director by a two-thirds majority, according to the procedure defined in the Statute, no later than one month after its first meeting;
- to appoint and dismiss the Deputy General Director and the directors of Radio and Television by a simple majority vote at the proposal of the General Director, no later than one month after the latter's appointment;
- to approve the members of the Management Board at the proposal of the General Director;

⁷⁸ Law on Radio and Television, art. 88.

⁷⁹ OSI roundtable comment.

⁸⁰ Law 8655 of 31 July 2000 on Some Amendments to Law No. 8410 of 30 September 1998 on the Public and Private Radio and Television in the Republic of Albania.

- to approve the strategy, organisational structure and programme structure of RTSH;
- to monitor the impartiality, objectivity and comprehensiveness of programming;
- to approve the main criteria for staff recruitment, performance assessment, and remuneration;
- to advise the General Director concerning the programme and to assist in determining programme norms and concepts;
- to advise and assist the General Director in carrying out his programme responsibilities;
- to state in writing its position on broadcasts violating RTSH's programme principles, to advise the General Director in such cases, and to demand guarantees for preventing further violations;
- to draft the annual report on RTSH activities for submission to Parliament by the end of March.⁸¹

Membership of the Steering Council may be terminated by Parliament in the event of a conflict of interests, mental or legal incapacity, non-attendance at meetings for six consecutive months, or the submission of a written resignation. By limiting the removal from duty to these specific circumstances, the law limits the discretionary power of the Parliament over the members of the Steering Council. The Steering Council remains accountable to Parliament through the annual report.

Despite the formula used, and the current parliamentary majority, none of the Steering Councils appointed up to now have succeeded in adopting a strategy document on the prospective development of RTSH. Moreover, the Steering Councils have recently even failed to adopt the programme frameworks (see section 4.5 below), due to the poor quality of the proposals coming from RTSH's creative staff.⁸²

The General Director

The General Director has substantial authority. He or she reports to the Steering Council, but is not obliged to execute the Steering Council's orders. The main competencies of the General Director are as follows:

- manages RTSH's programming, financial and business activity;
- proposes the Deputy General Director, the members of the Management Council, and the Director of TVSH and RT to the Steering Council;

⁸¹ Law on Radio and Television, art. 99.

⁸² OSI roundtable comment.

- appoints, suspends or dismisses the heads of departments and sectors, and their deputies, at the proposal of the directors of Radio and Television, except where the law or RTSH Statute directs otherwise;
- ensures that programmes comply with the law;
- makes decisions related to organisation, finances and salaries, after consulting with the Management Board, on the basis of criteria determined by the Steering Council;
- represents RTSH at home and abroad, as well as before a Court of Law;
- ensures the legitimacy of the institution's activity;
- coordinates RTSH's administrative bodies and resolves disputes among them.⁸³

In addition, the RTSH Statute makes the General Director responsible for organising monthly meetings with the directors of departments, providing written reports to the Steering Council and intervening to change or stop programmes being broadcast – when there is a national emergency or when human rights, and in particular children's rights, are violated.⁸⁴

The Steering Council nominates and releases the General Director. Those not eligible for the position of General Director include members of Parliament and Government, senior members of political parties, members of the RTSH Steering Council, and owners, co-owners or members of any private media company. The General Director should be chosen from at least two candidates, who have emerged on the basis of open competition as laid down in the Statute. If no candidate receives two thirds of the votes, they present their action plans for RTSH's structure and management separately to the Steering Council. The Committee then votes again. If once again no candidate secures the necessary majority, the vote is repeated. In the event of a third failure, the candidate who received the most votes would become General Director. The General Director serves a five-year term.⁸⁵

The Steering Council that was established on 29 July 2002 had challenged the election of the current General Director, Artur Zheji by the previous Committee, on the grounds that fewer than half the members voted.⁸⁶ However, after further consideration, and following the interpretation of the Constitutional Court,⁸⁷ the Committee concluded that its authority in this regard was limited to appointing and dismissing the General Director, and it did not have the authority to challenge his election by the previous Committee.

⁸³ Law on Radio and Television, art. 102.

⁸⁴ RTSH Statute, art. 17.

⁸⁵ RTSH Statute, art. 11.

⁸⁶ The Law on Radio and Television (art. 95) states that the regular meetings of the Steering Council shall be held when half the members are present.

⁸⁷ Albanian Media Institute, *Albanian Media Newsletter*, February 2004.

The Union of RTSH Employees has repeatedly claimed that the election of the General Director is a purely political affair. According to the Union, successive General Directors have not been appointed because of any relevant skills, but solely due to their political connections.⁸⁸ Other groups share this opinion, including various members of the Steering Council.⁸⁹ Even politicians closely concerned with the media, such as Musa Ulqini, Chair of the Parliamentary Media Commission, admit that up until now, the priority in selecting RTSH General Directors has been finding a person who can guarantee the impartiality of the news output rather than finding someone who can ensure the overall efficient management of the institution.⁹⁰

Other RTSH senior officials are the Deputy General Director and the directors of RT and TVSH. They are responsible to the General Director, who nominates them, and to the Steering Council, which decides on their nomination or release. The heads of departments within RA and TVSH report to their respective directors.

The Management Council

The Management Council is the consultative organ of the General Director. It advises him or her on a number of important issues, but it has no advisory role regarding programming content. The Management Council's main competencies are as follows:

- drafting the financial rules, for approval by the General Director;
- drafting the budget, preparing the annual accounts and supervising their implementation, on behalf of the General Director;
- assessing the profitability of RTSH's business ventures, such as leasing of equipment, provision of payable services and production of commissioned programmes;
- examining contracts that involve an expenditure of more than five per cent of RTSH's annual budget;
- providing opinions on expenses envisaged in the annual budget; the Steering Council approves the Management Board's proposals related to the expenses envisaged in the budget;
- submitting financial reports and balance sheets to the General Director;
- carrying out other duties as defined in the Statute;
- requesting and receiving information as required from RTSH departments and sectors.⁹¹

⁸⁸ Press Release of RTSH Union, 21 February 2004, published in *Sot* newspaper, 22 February 2004.

⁸⁹ OSI roundtable comment.

⁹⁰ OSI roundtable comment.

⁹¹ Law on Radio and Television, art. 112.

The Management Council's consent is obligatory in a number of situations, including property transactions, employment contracts and other negotiations and agreements with the staff and Unions.

The Management Council is comprised of five members who are proposed by the General Director and elected by the Steering Council. Two members must be from outside the RTSH staff, and their membership involves only part-time responsibilities. Members should be experts in finance, business and management. The restrictions on eligibility for the General Directorship also apply to membership of the Management Council. Members can be removed for violating the law or regulations; for conviction of a criminal offence; for unjustified absence from four consecutive meetings; and when eight or more members of the Steering Council find them incapable of exercising their duties. In the event of a dispute between the General Director and the Management Council, the latter may approach the Steering Council.

Relationship between RTSH governing organs

The power structure described above is intended to guarantee RTSH's balance and impartial functioning, as well as its legitimacy as a public institution. Unfortunately, the legal provisions have not produced the desired result. In fact, many observers, including members of the RTSH governing structures, complain that the way the system is set up is the main source of the problem.

Members of the Steering Council say their powers in relationship to the General Director are too limited.⁹² Some Steering Council members say the main decisions are taken by the General Director, and their role is less significant. For instance, most of the RTSH employees are appointed and dismissed by the General Director, so it is difficult for them to take decisions that may contradict the interests of the General Director, even when employees should make such decisions. One example that was cited at the OSI roundtable in Tirana is employment in the Audit Directory, which is in charge of controlling the management of funds by all RTSH structures, including the General Director. Other complaints centre around the authority of the Management Council. Some say this body goes beyond the limits of an advising body, in particular in some issues of finance.⁹³

In sum, RTSH governing structures show poor understanding and acceptance of their relationship as described in the law. This might be one of the reasons why there are complaints that a system constructed on principles of power distribution and decentralisation are controlled by only one person, the General Director. The easiest solution under such circumstances would be to amend the power relationships of RTSH structures by amending the Radio and Television Law again and the RTSH

⁹² OSI roundtable comment.

⁹³ OSI roundtable comment.

Statute, to create a clearer division of competencies and less intra-reliance. Whether this would also be the most efficient solution remains arguable.

As for the performance of successive General Directors, they have turned out to have problems with reforms and improvement, not so much due to their professional abilities but rather because it is difficult to find a General Director who has not been accused of staying too close to Government interests or those of the ruling party.

4.5 Programme framework

4.5.1 Output

There are no statistics for TVSH's annual output by genre. No independent monitoring exists, but KKRT did monitor the station's output for one month. KKRT's review, conducted over the course of December 2003 to look at the programming structure of television stations after the latest amendments to the Law on Radio and Television – on anti-piracy – were implemented,⁹⁴ found that 73 per cent of RTSH's programming was self-produced.⁹⁵ During the monitored month, entertainment programmes ranked first, taking up 47 per cent of broadcasting time. Information programmes, including broadcasts from Parliament, were second, taking up 35 per cent of the time. Programmes on education and social issues did not even reach 2 per cent. If this brief analysis was indeed representative of TVSH's output in general, then – with the exception of information programming – its output does not differ radically from the private television stations, where entertainment occupies most of the broadcasting time.

In fact, it seems that RTSH's programmes mirror the pattern set by private broadcasters – something which, in itself, casts doubt on RTSH's fulfilment of its public service mission. Any examples of serious investigative journalism are still unknown to TVSH, as this type of reporting is generally lacking in Albanian journalism. Artistic or entertainment programmes, often repeated, make up most of TVSH's output. Programmes covering social issues are still quite rare and superficial. Coverage of cultural activities and interviews with famous personalities account for a high percentage of broadcasting time on TVSH. Overall, TVSH's programme framework is difficult to define in clear terms. As mentioned above, it has at times worked without programme frameworks approved by the Steering Council.⁹⁶

While it is impossible to determine the quantity or genre of new programmes, RTSH has not escaped the practice of repeating old programmes. Since the number of newly produced programmes remains very limited, RTSH continues to rebroadcast, and, as

⁹⁴ Law No. 9124/2003.

⁹⁵ Monitoring of television by KKRT in December 2003 (unpublished material), (hereafter KKRT, *Monitoring of Televisions*).

⁹⁶ OSI roundtable comment.

result of the competition from the private media, it is highly probable that the number of viewers who watch RTSH regularly has decreased substantially. For example, in 2002 TVSH's audience reached its peak in the main evening news bulletin, with an audience share ranging from 19 to 25 per cent of all viewers surveyed in Tirana over a week.⁹⁷ According to the same survey for the following year, the same news edition had a rating of between 6 and 12 per cent of viewers.⁹⁸

4.5.2 Programme guidelines

Most of the legal obligations on programme content apply to public and private broadcasters alike. The Law on Radio and Television imposes extra obligations on RTSH, however: its programmes should be of high quality and serve "all groups of society, national minorities included".⁹⁹ The programmes of RTSH should reflect the variety of Albanian life for listeners and viewers of all ages. These programmes should also serve a specific purpose: informing, educating, entertaining and enriching the mental and spiritual life of the public.¹⁰⁰ Information should be provided from the entire territory of Albania. There should be a diversity of information and entertainment, as well as information for audiences abroad. Coverage of national and international news should be comprehensive and impartial,¹⁰¹ and RTSH should not broadcast political or religious propaganda.

In addition to serving the interests of the whole nation, RTSH is supposed to promote Albanian culture, language, and artistic and literary creativity. Unfortunately, KKRT's 2003 report confirmed that RTSH's educational, cultural and entertainment programming in 2003 was poor. In addition, the Steering Council's 2004 annual report did not note any improvement in this regard: "TVSH, which used to be a unique brand, is at the moment one of the brands that has most difficulties in competing in Albanian media market."¹⁰² This judgement was even more telling, given that TVSH has a substantial staff of 210 employees in Tirana,¹⁰³ which is high compared to the smaller number of people employed in the private sector. The KKRT report recommended that "RTSH must plan, produce, and broadcast more programmes of an educational, cultural, artistic, and entertaining nature, in order to

⁹⁷ Institute of Surveys and Opinions, *Media 2002*, pp. 192–205.

⁹⁸ Institute of Surveys and Opinions, *Media 2003*, Tirana, 2003, (hereafter, Institute of Surveys and Opinions, *Media 2003*), pp. 174–187.

⁹⁹ Law on Radio and Television, art. 66(1).

¹⁰⁰ Law on Radio and Television, art. 66.

¹⁰¹ Law on Radio and Television, art. 66.

¹⁰² RTSH, *Raporti Vjetor per Veprimtarine e RTSH, (Annual Report on the Activity of RTSH)*, RTSH Steering Council, 2004, p. 18.

¹⁰³ Interview with Gentian Grabovari, Head of Human Resources Department, TVSH, Tirana, 24 May 2005.

fill the vacuum it has.”¹⁰⁴ The KKRT made this recommendation to the RTSH’s Steering Council, but there was no public reaction when the KKRT presented its annual report to Parliament in March 2004. RTSH must certainly improve in these directions, because these types of programmes are the foundation of public service broadcasting, and without them, the public service mission will not be complete.

The Law on Radio and Television obliges both public and private broadcasters to carry certain broadcasts without payment. This rule applies to broadcasts on subjects of social benefit or supreme interest to the general public, as defined by the KKRT. The RTSH Statute provides that information produced and/or broadcast without payment should concern national health and public order, as well as national emergencies. In any event, the General Director’s approval is required.¹⁰⁵ The law also requires RTSH to broadcast, without charge, religious services or ceremonies held on official religious holidays and sessions of Parliament, as specified in legislation on elections and referenda.

The Electoral Code imposes other obligations on RTSH regarding programme content and unpaid broadcasts.¹⁰⁶ The Code distinguishes between “parliamentary” and “non-parliamentary” parties, which are separated by the threshold of 2.5 per cent of the popular vote. Among parliamentary parties, the Code distinguishes between those with more or less than 20 per cent of the seats in Parliament. Coverage of any party should be guided by its status according to these criteria. For example, the law stipulates the minimum time allowed for each category of party, and requires that extra time granted to any party should also be granted to the other parties in that category, with proportionally extra time for parties in other categories as well. The media are not allowed to transmit electoral propaganda during the 24 hours before polling day.

The Electoral Code obligations apply to public and private broadcasters alike. The public broadcaster has some additional responsibilities: the Electoral Code regulates the free time that RTSH grants to every political party participating in the elections.¹⁰⁷ This free time shall not be included in the news or information programmes, but should be transmitted in the time space between 18.00 and 22.00. Moreover, RTSH shall produce and transmit candidates’ advertisements for free.

The Electoral Code also specifies the percentages of coverage for specific categories of programmes, including RTSH news programmes.¹⁰⁸ Significantly, it requires that time dedicated to broadcasting news about certain governmental activities, such as inaugurations of objects by a minister or his visit to a certain place, should be calculated according to which political party the Government member belongs. The

¹⁰⁴ KKRT, *2003 Annual Report*.

¹⁰⁵ RTSH Statute, art. 40.

¹⁰⁶ Law No. 9087 of 19 June 2003 on the Albanian Electoral Code (hereafter, Law on the Electoral Code).

¹⁰⁷ Law on the Electoral Code, art. 136.

¹⁰⁸ Law on the Electoral Code, art. 137.

time granted to the Central Election Committee (CEC) for free broadcasting on RTSH is also established by law.

In KKRT monitoring of the main newscasts on public television and the other two national television stations in February 2002, domestic policy covered about 24 per cent of the total time of the news bulletins.¹⁰⁹ The share of news items devoted to the President, the Prime Minister, the Government, and the ruling parties was almost 39 per cent, compared to 8 per cent devoted to the opposition.¹¹⁰ In the same research, the persons who were given more space in terms of soundbites were the President and the Prime Minister, both from the ruling party, with a combined total of 46 per cent of soundbite time.¹¹¹ A more recent monitoring did not show any significant change in this regard: the Prime Minister occupied 21 per cent of the main news edition in TVSH for most of 2004, and the Government received 29 per cent of the coverage, though the share of coverage for the opposition party was slightly bigger than that of the ruling party (not counting the Prime Minister). Similarly, the Government occupied 31 per cent of soundbites in the main news edition and the Prime Minister had 16 per cent of the total soundbite percentage.¹¹² These figures again indicate the difficulty faced by the public broadcaster in changing its practice, or shedding its image, as a body that is closely attached to the ruling party and the Government.

Along with the opposition, which has frequently condemned RTSH's management and leadership, the media community also views RTSH as an institution that is "public" only because it is so designated by law. Various critics, including representatives of the Steering Council, KKRT, and the Parliamentary Commission on the Means on Public Information, agree that RTSH does very little to fulfil its public mission.¹¹³ The poor programming of RTSH, which has led to its increasingly weak position compared to the private sector, sustains this view. Although there are no firm statistics to prove this, it seems clear that all the important political and social debates take place in the commercial national stations, TV Klan and TV Arberia, or Top Channel, TV Koha or some other private television stations. This is true of politically charged moments, such as elections,

¹⁰⁹ According to the Law on Radio and Television (art. 7) KKRT's competencies include the monitoring of news bulletins of the national television stations, and if deemed necessary, of local television stations as well. In addition, in the general elections of 2001, in cooperation with the OSCE and the Central Election Committee, the KKRT monitored television stations during the official one-month election campaign. Monitoring will also take place before the elections scheduled for 3 July 2005. Interview with Andrea Nathanaili, head of the Department of Programming, KKRT, Tirana, 23 May 2005.

¹¹⁰ Press release, KKRT Communications, 8 March 2002, available at http://www.kkrt.gov.al/informacion/njoftime/monitorimi_tv_kombetare.htm (accessed October 2004), (hereafter, KKRT Communication).

¹¹¹ KKRT Communication.

¹¹² KKRT, *2004 Annual Report*, Annex.

¹¹³ OSI roundtable comment.

as well as other times. When it comes to key debates on issues of public interest, the public broadcaster has ignored them for some time now.

Due to its public nature, RTSH still enjoys a legal monopoly of important sports and cultural events, such as the Olympic Games, musical contests and various programmes of this kind. However, these broadcasting rights of RTSH are at present seriously challenged by private media, and they are not always respected in the practice. In all other areas, RTSH has fallen far behind the private competition.

4.6 Editorial standards

As has already been stated, editorial independence is poor both in the public and private media. Both sectors lack a culture or tradition of self-regulation. From the fall of communism until the present day, RTSH has not succeeded in establishing and respecting precise editorial standards that guarantee satisfactory editorial independence. There are various reasons for this.

For one thing, there has been substantial pressure from the political establishment, in particular from the Government. Even though such pressure has been exercised continuously, it has been felt more during particular politically delicate moments, such as pre-election periods. As was mentioned above, legal provisions regulating media coverage of election campaigns are quite recent.

Meanwhile, RTSH itself has been unwilling and unable to withstand political pressure. Since the early 1990s, after the fall of communism, the main problem with successive general directors has not been a lack of professional skills or experience so much as their dependence on, or close affiliation with, the Government and the party in power. The election of the RTSH General Director, who has very substantial executive powers, is still considered a political affair by the media community. In this context, it is not surprising that the lack of meaningful reforms and successive Governments' continuing influence on public broadcasting have not created a favourable ground for establishing and respecting editorial standards that serve the public interest. This fact impacts negatively on the independence of the institution, as well as on its image in society.

Moreover, even though there have been some internal movements by staff seeking greater editorial independence, these have not been strong or well-organised enough to succeed. Like the public administration, RTSH has undergone radical changes of personnel whenever there was a change of governing parties. Any small protest by RTSH staff with regard to content and editorial standards was too fragmented to win sufficient attention from the political establishment, the media or the wider public. As a result, RTSH staff themselves lack strong motivation to support reform. Because of low salaries, some staff are even employed part-time by commercial media outlets. In fact, since TVSH was the only television station in the country until 1995, its staff started the commercial stations that have emerged in recent years – they were the only ones who possessed the knowledge to work in the private industry when it began.

Now, almost a decade later, many young people have swarmed into the private television stations. Yet many on the RTSH staff, who make relatively low salaries, continue to hold two jobs. They consider that their employment at RTSH holds few advantages, except for security. This situation helps to explain why the RTSH staff shows little concern about editorial standards, or other kinds of reform.

5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING

The commercial broadcasting sector in Albania is large and powerful. Nonetheless, it is difficult to provide a detailed picture of this sector, due to the lack of professional research and the lack of information volunteered by the commercial broadcasters themselves. There is a particular dearth of information about how broadcasters fund their operations in a small advertising market, and how their funding methods impact on their credibility and independence.

Many television stations emerged before the relevant legislation was adopted, and it took time before these stations came to respect the authority of the regulator. In some cases, this has not yet been achieved. As with the print sector, the number of outlets is constantly growing.

The lack of a journalists' trade union or effective professional associations, and the consequent lack of collective agreements, means that self-regulation is almost non-existent. Editorial independence in Albanian broadcasting is at the mercy of media owners. The implementation of the anti-piracy law¹¹⁴ led broadcasters to work harder to produce their own output. However, greater efforts are needed to generate material of genuine interest to the whole public, and especially in the area of investigative journalism, which is lacking in both print and electronic media. There are still obstacles in the way of developing a healthy commercial broadcasting environment, including lack of transparency in many aspects of commercial activity, a common tendency for economic and political interests to prevail over the principles of media freedom, and continuous indirect political pressure on both broadcasters and the regulatory authority.

5.1 The commercial broadcasting system

The commercial broadcasting system emerged in 1995 and has expanded steadily ever since. The first commercial television station started broadcasting in 1995, and the number of outlets boomed in the years that followed. The KKRT's roster of licensed broadcasters currently includes two national television stations, 62 local television

¹¹⁴ Law No. 9124/2003.

stations across the country, and 31 cable television stations.¹¹⁵ There are also two digital satellite and terrestrial operators that have started broadcasting without licenses, because the KKRT does not yet have the authority to license them. (See Section 7.5)

The commercial media landscape continues to be characterized by the chaotic creation of unregulated reality on the ground. Parliament only adopted legislation to regulate commercial electronic media in 1998; the first wave of licensing only took place in 2000; and the first and only study of the frequency spectrum, by KKRT, was not completed until late 2002. Thus, legislation has always pursued commercial broadcasting rather than preceding it, a situation that has made for a loose model of regulatory development.

Commercial broadcasters are regulated by the Law on Radio and Television and by KKRT decisions. Also, because all private electronic media are registered in the Commercial Register, they have to respect the relevant laws, such as the Law on Commercial Companies and the Law on the Protection of Competition.¹¹⁶

Regarding the internal regulation of commercial broadcasting companies, there are no rules imposed by law; this is for television management to decide. In point of fact, no electronic media outlets have adopted a code of ethics. When disputes arise, owners, managers, directors and, in some cases, editors-in-chief arbitrate in accordance with the situation and their interests.

The commercial sector is heavily concentrated in Tirana, which makes that city not only the political capital but the media capital as well. All the national newspapers are Tirana-based, as are the two national television stations, 16 local television stations, four cable television operators and two digital satellite and terrestrial operators. As a result, more of the total television advertising expenditure goes to capital-based television stations.

However, advertising budgets and the funding of commercial broadcasting systems in general is far from transparent, and this issue has become a focal point of public debate, especially in 2004. The KKRT's annual report for 2003 stated that all television stations had suffered losses in their annual balance, which brings up questions about the sources of funding for the electronic media, and consequently, their independence and economic viability.¹¹⁷

¹¹⁵ Interview with Argita Shkupi, 10 February 2005.

¹¹⁶ Law No. 9121 of 28 July 2003 on the Protection of Competition; Law No. 7638 of 4 November 1992 on Commercial Companies.

¹¹⁷ KKRT, *Annual report 2003*.

5.2 Services

Commercial television stations are required to broadcast, free of charge, messages and information of great interest to the public, in accordance with the relevant regulation drafted by the KKRT or at the request of local government bodies. This information usually involves short communications of particular interest to the public in the area concerned, especially in emergency situations, such as natural disasters, or on issues such as health and safety and public order.¹¹⁸ This is the only public service obligation for commercial broadcasters stated in the law. In general, there have been no problems with regard to the observation of this provision by the commercial broadcasters.

5.3 Commercial television ownership and cross ownership

In order to better understand the pattern of television ownership, a brief overview of the media landscape and its development may be useful. At the time of this writing, there were 257 media outlets in Albania, including 21 daily newspapers, 18 television stations and 17 radio stations broadcasting in the capital alone.¹¹⁹ Considering the size of the market, and the state of the economy in this country of some 3.5 million people,¹²⁰ these are extremely high numbers.

This boom in media occurred after 1991, when most of the then-existing media outlets were transformed or, as was more often the case, simply disappeared. Against all economic logic, the number of media outlets has continued to expand. For example, media experts and journalists have for long agreed that 14 dailies was too many for this market; nevertheless the number has now reached 21.

In this abundance of outlets, television stations loom as a large and important sector, given the increasing popularity of electronic versus print media. According to a survey published by the KKRT Council of Complaints, the number of hours Albanians spend watching television increased in 2003, compared to the previous year. About 67 per cent of the people surveyed watched at least three hours per day, and some even longer.¹²¹ This survey indicates the overwhelming presence of television in Albanian life. One of the attempts at audience and readership research has confirmed the importance people give to television: a total of 70 per cent of the people surveyed ranked television as the medium that conveys the most credible information, though only 55 per cent characterized this information as sufficiently credible, and 28 per cent considered information from television to have little credibility.¹²² In this context,

¹¹⁸ Law on Radio and Television, art. 39.

¹¹⁹ Albanian Media Institute, *Monitoring the Albanian Media Landscape*, Tirana, July 2003, (hereafter, Albanian Media Institute, *Monitoring the Albanian Media Landscape*); Interview with Argita Shkupi, 10 February 2005.

¹²⁰ INSTAT, *Population of Albania 2001*, p. 32.

¹²¹ KKRT Complaints Council, *Antena*, KKRT, Tirana, March 2004.

¹²² Institute of Surveys and Opinions, *Media 2002*.

knowing who owns what in the Albanian media can help shed more light on the development trends in the television sector.

The Law on Radio and Television contains certain restrictions on ownership. Political parties, religious institutions and economic organisations, such as banks and credit institutions, cannot hold broadcast licences. The restrictions are more demanding for national licences, in terms of the documentation required for licence applications, the initial capital required, the structure of the company, the programme requirements and the percentage of shares held by the company owners.

Applicants for local licences of markets with less than 200,000 inhabitants are not obliged to establish a company. Where the population covered will be larger than 200,000, the owner(s) of the radio or television station should be registered as a legal person. The law forbids the same subject from holding more than two local licences for the same local territory, whether for radio or television. The main motive for this limitation is to prevent local broadcasting monopolies, something that could easily emerge in Albania, given its concentration of population in parts of the country.¹²³ Nonetheless, the law allows the same person to hold both a radio and a television licence for the same territory.

There is no limitation on ownership stakes for a local broadcast licence: the owner can hold 100 per cent of the shares, whether they are a natural or a legal person. Nor are restrictions imposed on licensees with regard to nationality – non-citizens have equal opportunities to obtain a licence, under the same obligations.

In the case of a national licence, however, no legal or natural person can own more than 40 per cent of the broadcaster. This means that a national radio or television station must have at least three owners. Moreover, the owners of one national broadcaster are not allowed to own shares in another national broadcaster. The law also prohibits the owner of shares in a national broadcaster from owning shares in a local radio or television station. These regulations are meant to safeguard media pluralism and diversity, and to prevent national media concentration and monopolies. However, there have recently been cases of this provision being violated. One of the owners of a national television station participated in an auction for the rights to broadcast the matches of the national football team. He claimed to represent a local station, where he was (apparently illegally) a shareholder.¹²⁴

The lack of any detailed press legislation means there are no restrictions on cross-ownership of print and electronic outlets. Owners of electronic outlets are obliged by law to state their ownership when they apply for a broadcast licence and subsequently

¹²³ Instituti I Studimeve Publike dhe Ligjore (Institute of Public and Legal Studies), *Guide per Mediat Elektronike, (Guide to Electronic Media)*, Tirana, January 2000, p. 27, (hereafter, IPLS, *Guide to Electronic Media*).

¹²⁴ “Skandal me tenderin e Kombetares ne FSHF,” in *Koha Jone* newspaper, 22 June 2004, p. 3.

to register any ownership changes in the commercial register. They must also report ownership changes to the KKRT – and receive KKRT approval.¹²⁵

Apart from the limit on ownership stakes, the law obliges national broadcast licensees to register their business as a joint stock company, where the shares must be nominal.¹²⁶ The idea behind this requirement is that joint stock companies are more accountable and transparent. The Stakeholders' General Assembly of the company appoints two thirds of the Supervisory Committee, while the employees appoint one third.¹²⁷ The Supervisory Committee, in turn, appoints the directors of the company.¹²⁸ By commercial law, every joint stock company is required to have a Supervisory Committee, which appoints the Board of Directors of the company and which is responsible for controlling the company's activity.¹²⁹ However, there has so far been no evidence that these controls operate in Albanian media companies. The Supervisory Committees appear to be ghost mechanisms.¹³⁰ Neither the KKRT nor the Commercial Court Register monitors the internal structure of media companies, apart from the information provided in the initial documents required to be submitted, since the legal framework does not require these bodies to constantly control the structure of media companies. In this context, the media owners are able to have their say, undisturbed by the potential system of checks that the Supervisory Committee could provide. There has not even been one public case when the decision of the owner(s) was contested or even discussed by the Supervisory Committee.

The overwhelming majority of the owners of television stations have no previous background in the media, and they generally are involved in other businesses. It would be hard to find a significant shareholder in any media company who has dropped his or her other business interests. Indeed, they often expand those other businesses.¹³¹

It is very difficult to identify owners of the main media groups who have concentrated their capital into one kind of medium alone. Cross ownership is common among the main media groups, all of which own at least one publication as well as a radio and/or

¹²⁵ Law No. 7667 of 28 January 1993 on the Commercial Register, art. 33.

¹²⁶ Law on Radio and Television, art. 20.

¹²⁷ The Stakeholders' General Assembly, comprising all the owners, is the key decision-making organ of a joint stock company, and its existence is required by the Law on Commercial Companies, quoted in: IPLS, *Guide to Electronic Media*, p. 13.

¹²⁸ IPLS, *Guide to Electronic Media*, p. 13.

¹²⁹ IPLS, *Guide to Electronic Media*, p. 27.

¹³⁰ All the data on ownership shares of media outlets and companies is taken from Ilda Londo, Report on Albania, in Brankica Petkovic (ed.), *Media ownership and its impact on media independence and pluralism*, Peace Institute and SEENPM, Ljubljana, June 2004, available at http://www.mirovni-institut.si/media_ownership/albania.htm (hereafter, PI/SEENPM, *Media ownership – Albania*), p. 52.

¹³¹ PI/SEENPM, *Media ownership – Albania*, p. 58.

television station.¹³² For example, the Klan group owns a national television station, holds shares in two daily newspapers and a weekly magazine, and used to own a local radio station. The Spekter group owns the largest daily newspaper, an economics daily and a sports daily, a weekly magazine, a national radio station, a television station, an Internet provider and an advertising agency. The Koha group owns a general daily, a sports daily and a radio station, and it used to own a television station and a cultural magazine. The fourth major group, Edisud, is wholly foreign-owned and has several media outlets in Albania.

Within the broad picture of the electronic media, there is not much significant foreign ownership. Despite the totally unrestricted access, the media market has not proven attractive to outside investors. The most important foreign media presence is the Edisud joint stock company, which owns a daily newspaper title that was first published before the Second World War and was successfully relaunched in the early 1990s. Edisud then started a radio station, a television news channel, which was the first of its kind and set a trend for other stations, and an online news agency. Although the company is Italian, the staff is all Albanian, except for the general administrator.

Other foreign actors in the Albanian media are also Italian. Telenorba Shqiptare, a local television station, is 55 per cent Italian-owned. Alba TV was the other local television station in Italian ownership, but the station stopped broadcasting and did not pay its fees, so the KKRT withdrew its licence in 2003. Another important foreign owner, not only in the media but also in other businesses in Albania, is Julien Roche, a French national who owns 33 per cent of the national broadcaster, TV Klan, and used to own Radio Klan, which shut down. Roche is equal partner with an Albanian businessman in two companies, one of which owns 70 per cent of the shares in the *Albanian Daily News*, a daily English-language newspaper. He is a partner in another company, which owns 51 per cent of the publisher of *Korrieri*, a successful daily newspaper, and *Klan*, probably the best-known weekly magazine. Although foreign owners have generally been successful and expanded their media businesses in Albania, the prospects for further foreign investment in the near future are not very bright.

5.4 Funding

While television's dominance over other media, and its crucial impact on public opinion, are generally recognised, opportunities to translate this importance into real audience figures have been few. As mentioned in section 2.3, audience research is in its infancy. The main audience surveys to date – *Media Readership and Viewership* in 2001, *Media*

¹³² All the following data on ownership stakes in media outlets are quoted from: PI/SEENPM, *Media ownership – Albania*. The data derives from official sources: the Commercial Court Register and KKRT.

2002 and *Media 2003*¹³³ – were limited in time and area.¹³⁴ These surveys were initiated by IREX and implemented by the Institute of Surveys and Opinions, an independent NGO that carries out statistical research. However, the findings were contested by the television industry. For example, according to the 2002 survey the top three televisions were TV Klan, TVSH and Top Channel,¹³⁵ results which were continually mentioned by TV Klan in its newscasts and strongly disputed by Top Channel. In the 2003 survey, the authors decided not to publish an overall rating.

Fierce rivalry among the main television stations has prevented them from forming a joint industrial committee that would serve them impartially by testing the market and popularity of the different stations.¹³⁶ Consequently, the main stations can each claim to be the best. According to IREX, “The concept of uniting for the common good has yet to take hold with the media owners, who appear to fear losing power and influence as individuals within the industry.”¹³⁷ Every attempt at research or innovative programming or operation is frowned upon and mocked by rival stations. The latest case of this phenomenon took place with the emergence of two competing digital television stations, both of which also have shares in important analogue terrestrial stations. The newscasts of these terrestrial stations constantly seek to denigrate the rival digital operation and elevate the performance of their own digital operator. This is only the latest example of friction between television stations, friction that often includes unethical statements bordering on slander. Perhaps the best known example is the continuous sniping in 2004 between TV Klan in its news bulletins and Top Channel in its news bulletins and its popular “Fiks fare” satirical programme. It seems clear that the media climate in the country is far from ripe for media owners or outlets to unite for a common purpose.

The lack of reliable audience data has led television stations to measure their success by “gut feelings” and momentary surges in their reputations. This situation has encouraged chaos in the advertising market. Meanwhile, the lack of detailed legal provisions regarding the allocation of state advertising makes it easier for the Government to trade purchases of advertising for favourable coverage. This phenomenon threatened the development of print media in the past, and it may now be doing the same to television.

¹³³ Institute of Surveys and Opinions, *Lexueshmeria dhe Shikueshmeria e Mediave, (Media Readership and Viewership)*, 2001, Tirana; Institute of Surveys and Opinions, *Media 2002*; Institute of Surveys and Opinions, *Media 2003*.

¹³⁴ These surveys covered the most important districts in the country and employed a diary-based methodology. The randomly selected sample had to keep entries in the diary with regard to their television viewing habits (and for the first year, of their press reading as well) for a month or for a week, depending on the year. These entries were then analyzed to reach conclusions on the media ratings.

¹³⁵ Institute of Surveys and Opinions, *Media 2002*, p. 54.

¹³⁶ A joint industrial committee is a body created by the industry itself, in which the main players agree to conduct or commission research and accept the findings.

¹³⁷ IREX, *MSI – Albania 2003*, p. 9.

The difference, however, is that while the critical problems created by Government-controlled advertising in print media became the focus of concern that led to research, the equivalent problems affecting television seem to be accepted. There has not yet been any research into Government advertising in exchange for favourable coverage, hence there are still no data on how pervasive the practice is.

For example, one of the most visible State advertising campaigns is that of AlbTelekom, the State-owned telecommunications company, which paid for an advertising campaign that did not announce any new services or new information. It seemed strange that AlbTelekom would pay for such a campaign, because it enjoys a complete monopoly on the installation and maintenance of fixed telephone lines. Yet this apparently unnecessary use of State advertising funds was not an isolated incident. As for 2003, the IREX report on media sustainability concluded:

The Government has the tendency to advertise its enterprises, such as AlbTelekom, the power company, and the state insurance company, through the media outlets that support it. Profits from these advertisements are substantial and viewed as rewards for pro-government coverage. Conversely, the stations and newspapers that support the opposition are punished by being ignored by the state advertisers.¹³⁸

Any estimates of the size of advertising markets are necessarily vague, as market research and analysis is practically unknown in all commercial sectors. According to one effort to measure the market, made by the Albanian Center for Media Monitoring, the total advertising market in Albania in 2003 was worth only €12 million.¹³⁹

The Center stated that television received the biggest portion of this sum, €6.57 million or 54 per cent of the total. It found that newspapers received 20 per cent of the total advertising revenue and outdoor advertising received 16 per cent, while the percentages for radio and magazines were insignificant.¹⁴⁰ Still, it must be noted that these figures are unofficial and may not be reliable.

Although the KKRT is uniquely placed to play a role in monitoring advertising expenditure, it has chosen not to do so. Hopefully, this may change now that the 2005 KKRT Action Plan includes carrying out a detailed monitoring of advertisement as the main source of revenue.¹⁴¹ Studies of this kind are costly and rarely conducted. However, the KKRT's 2003 annual report disclosed an alarming figure for the revenue of electronic media outlets: it found that 46 per cent of the total annual revenue

¹³⁸ IREX, *MSI – Albania 2003*, p. 9.

¹³⁹ Albanian Center for Media Monitoring, *Albanian Media Monitor*, 2004/1, July 2004, p. 52. The television advertising market in Bosnia and Herzegovina (estimated population: 3.7 million) was worth an estimated €50 million in 2004; in Macedonia (with 2 million inhabitants), the public broadcaster MRT took around €4 million from advertising in 2003 and has been accused by the commercial players of monopolising the market.

¹⁴⁰ Albanian Center for Media Monitoring, *Albanian Media Monitor*, 2004/1, July 2004, p. 52.

¹⁴¹ KKRT, *Action Plan 2005*, p. 11, quoted in KKRT, *2004 Annual Report*.

derived from advertising, 5 per cent came from donations and sponsorship, while 49 per cent came from “other sources”.¹⁴²

Table 3. Funding pattern for commercial television stations (2003)

Source	Share of total budget (per cent)
Advertising revenue	46
Sponsorship	5
Other sources	49

Source: KKRT¹⁴³

Over the past year, the vague category of “other sources” has featured in debates about media independence and transparency, with the Government, media outlets and media-owners all accusing each other of wrongdoing. Since there is no legal requirement for owners to declare their sources of income, there is no transparency on this extremely important issue. The advertising market is too small to support the almost deformed media market that exists in Albania. In most cases, “other sources” of income means the numerous other businesses of most media owners, including construction, which is the most lucrative business in Albania today, or import-export trading, advertising or Internet services.

Yet there is a more troubling possible “other source” of income for electronic media. There have been allegations that media coverage is used to win favours from politicians in other businesses. In other words, that politicians extend patronage to media owners’ other businesses in exchange for positive coverage. Alba Malltezi, formerly vice-director of *Gazeta Shqiptare* and presently director at TV News 24, has stated that: “The most serious threat to freedom of the press today is its economic dependence, which leads to secret agreements between businesses, politics, and the press: these agreements have nothing in common with free and accurate information.”¹⁴⁴ Alternatively, politicians may look to punish the businesses of media owners who do not give favourable coverage.

An apparent example of such punishment occurred in the Parliament in July 2004, when Prime Minister Fatos Nano accused some important media proprietors of tax evasion, denying employment contracts to their staff and having non-transparent sources of income – not only in their media outlets, but also in their other business activities. Specifically, Nano accused several powerful media groups, including the Koha Group, the 2K Group and Ada Construction, the main shareholders in the Klan

¹⁴² KKRT, *Annual Report 2003*.

¹⁴³ KKRT, *Annual Report 2003*.

¹⁴⁴ PI/SEENPM, *Media ownership – Albania*, p. 57.

group, of having violated the laws on buildings.¹⁴⁵ The charges included allegations of fraud in the payment of social security. For example, national TV Klan had paid social security for 21 persons, receiving the national monthly minimum wage of ALL 10,184 (€80); national TV Arberia had declared 30 employees, with a wage of ALL 13,000 (€102); Top Channel had declared 90 employees with an average salary of ALL 10,000 (€78); and so on. Nano alleged that the figures declared were extremely low and did not correspond to the real salaries paid to media employees. When Nano made these allegations, the editorial policies of these three media groups were at odds with the Prime Minister and the Government, which is not in itself an unusual situation in Albania. However, it does raise the questions of why the Prime Minister chose to single out these companies for criticism, and why there is not systematic independent monitoring of such issues.

Although transparency of media ownership and funding are vital to the development of free and independent media, the owners themselves, the media community, and the Government have not yet discovered a genuine interest in *pursuing* and *achieving* transparency. Instead, independence and transparency are symbols to be displayed when the situation becomes critical for any of the sides involved, and once the storm calms down, the debate moves on to another topic.

In this context, it is extremely difficult to get a clear picture of the advertising business and the market shares of each television station. Naturally, it would also be difficult to make any detailed conclusions about a comparative analysis of the advertising income for the public broadcaster and that of commercial broadcasters.

What can be clearly stated, is that TVSH carries less advertising than most commercial stations. According to the KKRT monitoring in December 2003, advertising occupied only 5.5 per cent of broadcasting time on TVSH.¹⁴⁶ Among the commercial stations that were monitored, only a news channel was lagging behind TVSH.¹⁴⁷ This does not mean that TVSH's advertising revenue is necessarily much smaller than the commercial television stations, as the amount of revenue also depends on the advertising fees and the advertisers.

Another indicator of TVSH's relative advertising draw is Government advertising. According to figures presented to Parliament by the Prime Minister, the State-owned power utility bought €85,000 of advertising time from the public broadcaster over the past three years, compared to €139,000 and €93,000 from the two national private

¹⁴⁵ Speech of Prime Minister Fatos Nano to Parliament on 5 July 2004, as reported in *Soz*, 6 July 2004.

¹⁴⁶ According to Alfred Dalipi, RTSH Deputy General Director, advertisement revenue has not exceeded 10 per cent of the total revenue of RTSH in the last seven years. OSI roundtable comment.

¹⁴⁷ KKRT, *Monitoring of Televisions*.

broadcasters. The proportions were the same for the advertising budgets of the other state enterprises – mainly state utilities.¹⁴⁸

Recent events have shown that the commercial stations are increasingly competitive with the public broadcaster, and not only in attracting advertisers. A controversial tender took place in June 2004 to determine the right to broadcast the national football team's matches during the 2004–2005 season, despite the fact that the law¹⁴⁹ states that the public broadcaster has priority in broadcasting the qualifying rounds of international competitions involving the national team. Although this tender was eventually cancelled, due to irregular procedure, the fact that it took place at all indicates the commercial stations' determination to win rights that belong by law to the public station – and their increasingly competitive edge over the public broadcaster. In fact, SAT+, the digital satellite operator, has now acquired the rights to broadcast the soccer matches of the national team when it plays abroad.

The absence of detailed advertising data means it is also difficult to define the general trends of competition among private broadcasters. Furthermore, because there is no such data, marketing within the industry is very poorly developed. Most television stations do not have a marketing department, and marketing departments with only one employee are not infrequent. The vague knowledge about viewers also leads to advertising fees that are not tailored to suit the audiences of particular programmes. For example, out of 11 television stations, all but one of them based in Tirana, only Top Channel and the national station of TV Klan differentiated their advertising fees according to the show in which the advertisement would be broadcast. These two stations charged higher prices for advertisements during their most successful programmes or their most popular news bulletin. The other stations, however, set fees based on no more than three or four time slots, without regard for the programme or the time of day. Some stations did not even differentiate by time slots, but only set fees based on the number of times the advertisement would be broadcast.¹⁵⁰

Even apart from the rather primitive television marketing sector, advertising agencies in Albania are not thriving. There are a few small agencies, which only act as mediators, buying blocks of time from television stations and selling them to different clients. According to IREX's media sustainability index, these agencies are insignificant. "Every promotion is produced for specific business or political interests without considering viewership or readership. For this reason, the advertising market in Albania is completely absent."¹⁵¹

¹⁴⁸ Speech of Prime Minister Fatos Nano to Parliament on 5 July 2004, as reported in *Soz*, 6 July 2004.

¹⁴⁹ Law on Radio and Television, art. 77.

¹⁵⁰ "Tarifat e Reklamave te Stacioneve Televizive nga janari 2004", ("Advertising Fees of Television Stations as of January 2004"), in *Monitor*, July 2004.

¹⁵¹ IREX, *MSI – Albania 2003*, p. 8.

5.5 Programme framework

Several provisions of the Law on Radio and Television deal with programming content, and most of these provisions are applicable to both public and private broadcasters. Editorial independence is guaranteed in Article 5, while Article 35 (2) prohibits censorship. Article 4 states that radio and television activity should respect the right to information and other human rights and freedoms – including citizens’ political convictions and religious faith, personality, dignity and privacy – in an unbiased manner. Radio and television activity should conform with the constitutional order, sovereignty and national integrity. This obligation is restated in Article 36 of the law:

Public and private radio and television programmes shall respect personal dignity and fundamental human rights, the impartiality, thoroughness and pluralism of information, the rights of children and adolescents, public order, and national security, the Albanian language and culture, the constitutional and human rights of citizens, national minorities, in compliance with the international conventions signed by the Republic of Albania, as well as Albanian religious diversity.

Article 41 seeks to uphold the independence and accuracy of news output by requesting broadcasters to present facts and events in a fair and unbiased manner that encourages the free formation of opinions. This article prohibits broadcasters from bias in favour of any political party or organisation, economic group, religious association or community. Article 45 holds the journalist and the editor responsible for damages resulting from the broadcast of defamatory information.

The provisions on sponsorship are also important for editorial independence. Article 59 defines sponsorship as “the direct or indirect financial contribution by a legal or natural person to a radio and television programme, with a view to promoting the name, manufacturing company, or image of that person”. In no circumstances should sponsors interfere with the content and timing of the sponsored programme.¹⁵² News and information output may not be sponsored. When a programme is sponsored, this information must be broadcast as well. Moreover, natural and legal persons whose main activity consists of the production, sale or offering of goods or services that are prohibited by law may not act as sponsors.

Unfortunately, these legal safeguards are not always respected. It is extremely difficult to find an editor-in-chief or journalist who questions a proprietor’s editorial policy. This is probably because the lack of employment contracts, or the existence of improper contracts, encourages labour instability. Although there are no figures produced by regular research in this area, according to one report, about 90 per cent of journalists work without contracts: “Many journalists come to work wondering if they

¹⁵² Law on Radio and Television, art. 61.

are going to be fired.”¹⁵³ In this situation it is hardly surprising that self-censorship is widespread and the exercise of editorial independence is rather weak.

The only changes in this regard might come as a result of State pressure to pay social security and other employment taxes. Such pressure could oblige media owners to draft and sign employment contracts. While these contracts might not afford substantial protection to employees, they will at least provide a legal basis, which may be invoked before a court of law. It remains to be seen whether the owners will take such a step and whether the journalists and other media workers will take breaches of contract to court. Then it will be up to the courts to hold the media legally accountable, thereby preventing prospective cases of abuse.

Regarding the list of banned programmes, the Law on Radio and Television summarises them in Article 39. They include programmes that incite violence, national, religious and racial hatred, anti-constitutional actions, violation of Albania’s territorial integrity, or discrimination on grounds of political allegiance or religion. Also banned is the broadcast of information constituting State secrets, “encoded messages” against the fundamental interests of the state, pornographic material and information violating citizens’ rights to privacy.

Albanian is the mandatory language of all programmes, except for musical works with scripts in foreign languages, foreign language teaching programmes, programmes targeting national minorities, and local radio and television stations licensed to broadcast in minority languages.

The law does not stipulate quotas for languages and minority group representation. The occasional programmes for national minorities that are broadcast by RTSH are arbitrary in their timing and editorial approach. The main reason for this may be the fact that Albania is a rather homogeneous country in terms of national minorities. However, Radio Prespa was established in 2003 in the area bordering Macedonia; it broadcasts in the Macedonian language. Also, radio stations in southern Albania broadcast daily in Greek. Print outlets have proven more attractive to minorities, as there is a greater number of print outlets in Greek compared to electronic media broadcasting in this language, possibly for financial reasons. However, all these media outlets are individual initiatives. The law does not impose any requirements in this regard and there are no Government subsidies for minority media.

The only content quota imposed by law on local licensees states that at least 15 per cent of their programming each week should comprise non-commercial information and programmes related to the local situation. Amendments to the law in 2003 have increased the obligations on national licensees regarding the programming structure: they should devote no less than 15 per cent of broadcasting time to self-produced programmes and no less than 30 per cent to programmes produced in Albania. Furthermore, both national and local television stations should respect the following in

¹⁵³ IREX, *MSI – Albania 2003*, p. 9.

their programmes: the Constitution of Albania; impartiality, comprehensiveness and plurality of information; personal dignity and fundamental rights; especially children's and teenagers' rights; and private life the Albanian language and culture; citizens' constitutional and human rights; religious diversity; confidentiality of information sources; and the right to reply.¹⁵⁴

The Complaints Council and KKRT monitor the implementation of these requirements in accordance with the law, but no sanctions have been applied in cases of proven violations. The Complaints Council issues a publication that discusses, *inter alia*, practical cases in the light of these norms and how they are respected by the broadcasters. However, only a few persons do show interest in acquiring this publication. Apparently, the easiest way to judge whether they are being fulfilled is to watch television yourself.

According to KKRT's one-time, one-month monitoring exercise, the main television stations all respected the 15 per cent quota for self-produced programmes. In fact, this figure did not drop below 40 per cent for any station.¹⁵⁵ However, this survey was carried out right after the implementation of the anti-piracy provisions of the latest amendment to the Law on Radio and Television,¹⁵⁶ when the stations were forced to broadcast their own productions. There is no reason to suppose that the quota had been respected in the previous period.

The anti-piracy provisions proved to be a watershed for television in Albania. While lip-service had been paid to copyright issues in the past, all the private television stations had filled their schedules with pirated programmes, including Hollywood movies that were still being shown in cinemas across the world. This situation ended abruptly with the October 2003 implementation of the anti-piracy provisions, which were respected by most television stations immediately, with the remainder falling into line after the KKRT imposed some fines. This dramatic change forced many stations to broadcast only music, while showing a test-card of their logo, or to display the simple message that "We will restart soon". Nevertheless, stations tried to compensate by producing more of their own programmes. One month after the law came into force, the share of self-produced programmes did not drop below 45 per cent on any of the main television stations, and in some cases, it rose above 80 per cent of the total broadcasting time.

Due to the lack of measurement of audience preferences, it is hard to tell whether people prefer entertainment programmes rather than more serious genres. However, judging by the general output of the most important television stations, one could conclude that news and debates on relevant, often political, issues have an indisputable weight in the programme schedule. For example, apart from news bulletins, some of

¹⁵⁴ Decision No. 10 of the KKRT of 15 May 2000 on Criteria on Licensing Private Operators for FM Radio and Television Broadcasting, amended by Decision No. 52 of the KKRT of 16 July 2001.

¹⁵⁵ KKRT Monitoring of Television Programmes, December 2003.

¹⁵⁶ Law No. 9124/2003.

the most popular programmes are the weekly “Opinion” and “Shqip”, featuring interviews or debates on a topical issue. Another surprisingly popular programme is “Fiks fare”, a daily satirical magazine that contains significant elements of investigative journalism. The show apparently owes its popularity to its coverage of important problems in everyday life, such as corruption and Government neglect. However, the show’s use of candid cameras or alleged violations of privacy has raised questions and criticism. Meanwhile, entertainment programmes and game shows are also on the rise. More documentaries and educational programmes might raise the value of the overall output, but, at the moment, these genres have very limited exposure. Recently, however, the television stations have started to focus on programmes of a more social nature, attempting to cover more everyday life and human interest stories.

With regard to advertising, legal provisions are much more concrete and detailed, and they apply to the public and private broadcasters alike. Article 49 of the Law on Radio and Television defines advertising as, “any message intended to promote selling and buying of goods or services, by presenting an idea to attain the effects desired by the advertiser, who has been allocated the respective broadcast time in return for payment or another form of compensation”. Television stations should not allot more than 15 per cent of their total daily transmission time, or more than 12 minutes in any one hour, to advertising. Advertisements should be broadcast between programmes, except for the cases defined in Article 52. The law regulates the length of advertising breaks, which varies, depending on the genre and length of the programme.

Regarding content, Article 50 of the law stipulates that advertisements should:

be presented in Albanian or subtitled in Albanian; be fair and not detrimental to other subjects; not be deceptive and never prejudice the consumers’ interests; not be presented by professional announcers, or programme announcers employed at a public broadcasting station.

Subliminal commercials are prohibited. In addition to these general requirements, the Law on Radio and Television bans:

1. commercials that influence the content of programmes;
2. commercials that incite pornography and violence;
3. commercials for tobacco products;
4. commercials for armaments and military equipment;
5. indirect commercials;
6. religious or atheistic commercials;
7. commercials for food products that are not approved by the competent bodies, under Article 19 of Law No. 7941 (31 May 1995), “On food products”;
8. commercials for political parties or associations, with the exception of cases provided by law;
9. other commercials in contravention with applicable laws.

Also banned are advertisements for medical drugs not produced and approved under the laws in force or advertisements that do not reflect the effects of the advertised

medicine as established by the competent authorities. Advertising of alcoholic beverages is also restricted, while the Law on Competition prohibits comparative advertisements when the comparison cannot be verified objectively.¹⁵⁷

With regard to the programmes and information that deal with the European Union (EU) and Europe in general, even though Albania is not bound by the EU directives, such coverage has increased on some television stations, especially since the accession of new EU members in May 2004.

5.6 Editorial standards

A general Code of Ethics was drafted in 1998, but it is rarely applied, because interests, rather than ethics, determine journalists' and editors' decisions. There are no internal codes of ethics in the television stations, except for the general rules imposed by editors-in-chief. The frequent job switches by editors-in-chief mean that self-regulation rarely has a chance to take root. More importantly, the editor-in-chief's actions are also subject to approval by the owner or manager. This is not a written norm, but it is common practice.

As has been noted, it is extremely difficult to find an owner of a significant media outlet in Albania who is not closely related to some other business, to politics, or in some cases, to both. This interdependence, or as the Organization for Security and Cooperation in Europe (OSCE) put it, "triangular relationship of mutually reinforcing benefits",¹⁵⁸ has a profound impact on media freedom and on the possibility of editorial independence in the commercial media system. A media analyst and member of the Parliamentary Commission described the situation as follows:

We have freedom of press, but I'm afraid I cannot say we have a free press. Nowadays, the press is experiencing, first of all, what can be called economic censorship, and, precisely for this reason, it often happens that a large part of the press is forced to, or tends to, become an extension of certain economic and political circles, which damages the essence of what the free press is.¹⁵⁹

With such an abundance of media available to Albanians, one can certainly rejoice over the complete spectrum of opinion, from left to right, and the ample opportunity for expression. However, given the extremely small size of the market, it is impossible not to wonder whether all these media are actually watched, heard or read. This brings up questions about why such media exist, and what their reasons for existing mean for their editorial policy. As Mero Baze, a publisher and Chairman of the Free Media Albanian Forum, a journalists' association dealing with freedom of the press, said:

¹⁵⁷ Law on the Protection of Competition.

¹⁵⁸ Ambassador Osmo Lipponen, Head of OSCE Presence in Albania, Report to the Permanent Council, 30 September 2004, available on the OSCE website at http://www.osce.org/documents/pia/2004/09/3690_en.pdf (accessed October 2004), p. 12.

¹⁵⁹ Interview with Prec Zogaj, in *Indexmedia*, No.1, 2002, p. 39.

The Albanian press will start to enjoy its freedom when the first paper that is not read and the first television station that is not watched, but is only paid to exist, go out of business. We must strive to achieve that day.¹⁶⁰

6. EUROPEAN REGULATION

Albania has partly incorporated European media law and standards. In 1999, Albania signed and ratified the Council of Europe Convention on Transfrontier Television and its Additional Protocol.¹⁶¹ The KKRT refers to the Convention in some of its decisions,¹⁶² and many provisions of the Law on Radio and Television derive from this agreement.¹⁶³

Although, as a non-member, Albania is not legally bound by EU media law,¹⁶⁴ some aspects were taken into consideration when Parliament drafted the country's Law on Radio and Television. This is the case with regard to the provisions on sponsorship, though Albanian law differs from EU law in that it does not prohibit sponsorship by enterprises engaged in television broadcasting activities. Furthermore, Albanian law does not require broadcasters to devote the majority of airtime to programmes originating within the EU, and there are inconsistencies between EU and Albanian copyright legislation.

Implementation of those provisions that do conform to EU media law presents a problem in itself. As with many other economic sectors in Albania, the media industry lacks transparency. The provisions guaranteeing transparency of ownership remain difficult to implement. Commercial law does not fully comply with EU principles, and these differences have an impact on the media industry as well. In addition, the allocation of State advertising does not always occur according to the rules of free

¹⁶⁰ Mero Baze, "The press after 1997, the only pyramid still in place", in *Indexmedia*, No.1, 2002, p. 32.

¹⁶¹ Law No 8525 of 9 September 1999 on the Ratification of the European Convention on Transfrontier Television, *Official Gazette*, October 1999.

¹⁶² See for example: Decision No. 175 of the KKRT of 18 September 2003 on the Rebroadcasting of Terrestrial Radio-television Programmes on Satellite and vice versa.

¹⁶³ Law No. 8410 of 30 September 1998 on Public and Private Radio and Television in the Republic of Albania, *Official Gazette* 20 October 1998.

¹⁶⁴ With particular reference to the "Television without Frontiers Directive": European Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, 89/552/EEC, OJ L 298 of 17 October 1989, as amended by European Parliament Directive of June 1997, 97/36/EC, OJ L 202 60 of 30 July 1997, consolidated text available on the European Commission website at http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf (accessed 15 March 2005).

market and fair competition. There is no continuous research into audiences or newspaper distribution, and in many cases, advertisements are allocated to an outlet that favours the Government or that protects the personal interests of the individual in charge of the allocation.

The most flagrant case of State advertising allocation happened in the print media, and it prompted research by the international organisation Human Rights Watch. This research found that, in the absence of a detailed legal framework to define the manner of allocating State advertising, decisions about where to advertise were often used to reward newspapers with a pro-government editorial policy.¹⁶⁵ Although this research dealt exclusively with print media, the transparency of the allocation of advertising is not very different in the electronic media. This situation has to be corrected in order to approach EU standards of regulation.

7. THE IMPACT OF NEW TECHNOLOGIES AND SERVICES

The regulation of new technologies and services has followed the pattern of regulation for traditional broadcasting in Albania: the new technologies started operating before any legislative efforts had been made to control them. It is still too early to measure the impact of these technologies and services, as research and data are almost entirely lacking.

Governmental, State and non-governmental organisations now enjoy limited Internet access, but such access started spreading among the wider population only in the last couple of years, and then only in some urban areas. Cable television became more popular after 2003: from six cable television stations operating in 2002,¹⁶⁶ the number reached 31 by January 2005.¹⁶⁷ This phenomenon appeared especially in 2004, when the anti-piracy law drastically affected the foreign programming shown on Albanian television.¹⁶⁸ Satellite television has been present in Albania since the early 1990s, but – as with the more recent spread of cable – it reflected the craving for foreign information and entertainment programmes, because no foreign channels were allowed to broadcast in Albania under communism. Albanian-owned satellite television did not start operating until 2003. The boom sector among the new technologies has been mobile phone services, but this is partially a reflection of the less-than-satisfactory land-line service offered by AlbTelekom.

¹⁶⁵ Human Rights Watch, *The Cost of Speech: Violations of Media Freedom in Albania*, Vol. 14, No. 5, June 2002, available on the HRW website at www.hrw.org (accessed 15 March 2004).

¹⁶⁶ Albanian Media Institute, *Monitoring the Albanian Media Landscape*, p. 26.

¹⁶⁷ Interview with Argita Shkupi, 10 February 2005.

¹⁶⁸ Law No. 9124/2003.

7.1 New media

Public policy debate on the new media began only recently, and policy objectives have not yet been defined. At the time of this writing, the only legal provisions for new media are those that address cable television and satellite broadcasting in the Law on Radio and Television. Under these provisions, cable television channels may:

- rebroadcast programmes from terrestrial and satellite stations;
- rebroadcast programmes for closed television networks;¹⁶⁹
- rebroadcast recorded audiovisual products;
- broadcast self-produced programmes.¹⁷⁰

The licensing procedure for cable is the same as for the other television stations, while the use of cable lines is provided by the public service operators. According to the law: “Physical or legal persons that have been licensed for cable radio-television broadcasting must use the cable lines of public service operators. When no lines are available for this purpose, the installation and use of cable networks for radio-television broadcasting is conducted with special permission from the competent bodies.”¹⁷¹ In this case the competent bodies are the KKRT in cooperation with the ERT.

Satellite broadcasting is regulated by all the legal provisions pertaining to terrestrial television, including European agreements. The law states that: “Programme services for the public aired by satellite shall comply with this law in the same way and to the same extent as services for national programmes broadcast by terrestrial means. These services are covered by the European Convention on Transfrontier Television.”¹⁷²

7.2 Market conditions

By January 2005, the KKRT had licensed 31 cable television stations. Interestingly, only four of these are located in the capital. Although Tirana reigns supreme in print media and terrestrial radio and television, cable television is less popular in the capital. Cable channels started broadcasting relatively late, and they remained marginal until the passage of the anti-piracy law.¹⁷³ According to the KKRT’s 2003 annual report, some cable stations started broadcasting without permission, and there are clashes over broadcasting rights between cable and terrestrial stations.¹⁷⁴

¹⁶⁹ This refers to improvised networks of television stations that agree to pool their programming.

¹⁷⁰ Law on Radio and Television, art 122.

¹⁷¹ Law on Radio and Television, art. 125.

¹⁷² Law on Radio and Television, art. 136.

¹⁷³ Law No. 9124/2003.

¹⁷⁴ KKRT, *2003 Annual Report*.

Cable television operators now cover almost all urban areas in the country.¹⁷⁵ These operators have proven increasingly attractive to viewers, because they rebroadcast from several popular foreign channels. These channels feature interesting and entertaining programmes for viewers, in exchange for a reasonable monthly subscription price, which is significantly lower than digital operators. The subscription rate ranges from ALL 500 to 800 (€4 to €6.3) per month, along with an initial installment fee, which ranges from ALL 4,000 to 8,000 (€33 to €66).¹⁷⁶

In late September 2004, the Chairman of the Association of Electronic Media, Aleksander Frangaj, who is also co-owner of TV Klan and has shares in the digital satellite operator, protested that most cable operators do not have broadcasting rights and are therefore competing unfairly against legally licensed stations.¹⁷⁷ However, the KKRT has said that the cable television operators have all presented regular contracts for their broadcasting rights so far, and it maintains that, if the situation is harmful in any way, the law on this sector should be examined for possible amendments.¹⁷⁸

The situation of satellite broadcasting is slightly different. The first Albanian satellite television station, a news channel, was only launched as recently as 2003. Soon after it started broadcasting, the station signed an agreement with Alba TV to use its local frequency for terrestrial broadcasting. The KKRT opposed this agreement and decided to shut down Alba TV, on the grounds that no agreement was legal without KKRT permission and that Alba TV had not paid its fees and taxes for a long time. After subsequent negotiations, the KKRT amended the law by adding that a satellite broadcaster could seek permission to rebroadcast its programmes terrestrially, and vice-versa.¹⁷⁹

Some local and national television stations also air their terrestrial programmes via satellite, for a fee, to target the extensive communities of Albanians living abroad. A group of six stations started transmitting via satellite after reaching agreement with Eutelsat. This group includes the two private national television stations and four Tirana-based local television stations.

Unfortunately there are no data on the number of households with multichannel television and Internet access. However, the last census reflects the almost universal presence of television sets. About 95 per cent of rural households have at least one television set; the figure rises to more than 95 per cent for urban families.¹⁸⁰

¹⁷⁵ KKRT, *2004 Annual Report*, Annex 2, p. 5.

¹⁷⁶ KKRT, *Draft of the Strategy of Development of Digital Television Broadcasting in Republic of Albania*, 11 May 2004, (hereafter, KKRT, *Draft Development Strategy*).

¹⁷⁷ Albanian Media Institute, *Albanian Media Newsletter*, August-September 2004.

¹⁷⁸ Interview with Argita Shkupi, 10 February 2005.

¹⁷⁹ Interview with Argita Shkupi, 10 February 2005.

¹⁸⁰ INSTAT, *Population of Albania 2001*, p. 65.

The Internet was introduced to the country by international organisations that established offices in Albania in the 1990s. Access became easier towards the end of the decade. Technical inadequacy, a lack of familiarity with the technology, a lack of public policy and the high costs delayed the wider spread of Internet access. Bulgarian analyst Simeon Mitropolitski estimates the number of personal computers with Internet access as ranging from 10,000 to 12,000.¹⁸¹ The last two years have witnessed the gradual expansion of Internet access outside of Tirana. The number of Internet providers is estimated at between ten and 15, including AlbTelekom, the public operator of fixed phone lines.

7.3 Services

RTSH was the first broadcaster to start satellite broadcasting through an analogue system.¹⁸² This project started in 1993, with the transmission of two hours of RTSH's terrestrial schedule, including the main evening news bulletin. Its was aimed at Albanian émigrés across Europe. In May 2001, RTSH opened negotiations with Eutelsat on switching to digital satellite broadcasting, because it offers a better quality of broadcast at a lower cost. Analogue satellite broadcasting was suspended on 15 April 2002 and digital broadcasting started on 25 May 2002. This led to the signing of an agreement with Eutelsat in July 2002. This transition was not very smooth, due to the financial burdens: AlbTelekom, the first signatory of the contract with Eutelsat, was unable to meet its commitments, so there were repeated, though brief, interruptions to the satellite transmission. RTSH now has a separate satellite schedule, and it transmits 18 hours per day digitally, with a staff of 14.

There was an initiative to carry this schedule through a network of terrestrial stations, including RTSH's station and other national or local television stations. The idea never came to fruition, probably because RTSH and commercial television stations could not negotiate an agreement that would have profited RTSH by allowing them to lease satellite time to the private stations. Instead, the private stations grouped together and reached a separate agreement with Eutelsat.

¹⁸¹ Simeon Mitropolitski, "Albania: the forgotten kid of Europe", 2 January 2003, available on the website of the International Real Estate Digest at <http://www.ired.com/news/mkt/albania-03.htm> (accessed June 2004).

¹⁸² All the data in this sub-section is taken from the following report: RTSH, *Praktika per realizimin e projektit te stacionit dixhital*, (*The practice for the implementation of the digital station project*), RTSH Technical Directorate of the General Directorate, 9 October 2002, (hereafter, RTSH, *Digital station project*).

7.4 Funding

RTSH's first period of satellite broadcasting, through an analogue system, had an average annual cost of €734,000.¹⁸³ This effort was carried out with the financial support of ethnic Albanians in the neighboring Serbian province of Kosovo, and the Kosovar diaspora throughout Europe, on the grounds that the satellite service benefited the tens of thousands of Kosovar émigrés in Western Europe. Switching to a digital system cut the expenses to an annual average of €490,000, and sometimes even lower: the cost for analogue broadcasting in 1993 was €618,000, while the cost for digital broadcasting in 2002 was €225,000. The new programme of digital satellite broadcasting is paid out by the Government's annual budget allocation to RTSH. (See section 4.3.)

7.5 Digital television

The debate on digitalisation has drawn attention recently, not because any specific plans have been disclosed, but rather because a television station started to broadcast digitally without any legal provisions. The KKRT's 2003 report stated that the preparation of a national frequency map for digital signals is a priority for 2004. The KKRT has also prepared a draft strategy to develop digital television. Following consultations with the OSCE, media owners and other relevant actors, this draft is still under review by KKRT. Once the review is finished, the draft should be presented to the Parliament for approval.¹⁸⁴ A version of this draft, prepared by October 2004, recognized the need for an action plan to switch from an analogue signal to a digital signal, and the plan presented several scenarios for the transition. Given the economic conditions in the country, the draft proposed closing the analogue signal in Albania somewhere in the period 2016–2020.¹⁸⁵ Sufficient time is clearly needed for the transition, as the necessary resources are not in place: the study for analogue frequencies was completed only in late 2002, and there is no study at all on a digital map.

As few policymakers are familiar with the draft strategy for developing digital television, it is not surprising that the public debate has yet to begin. In a way, this debate was provoked by Digitalb, which started broadcasting in July 2004. Soon afterwards, the KKRT issued a press release condemning this step as illegal, because the regulation of this sector had not been approved. Digitalb countered that the KKRT's slow movement on this issue was holding back the media.

Digitalb was not warmly welcomed by the other terrestrial stations, but for a different reason: they complained that it was broadcasting programmes for which it had no broadcasting rights. In protest, a few local stations reverted to broadcasting movies or other programmes without copyright. Almost all of them have returned to

¹⁸³ RTSH, *Digital station project*, p. 3.

¹⁸⁴ Interview with Argita Shkupi, 10 February 2005.

¹⁸⁵ KKRT, *Draft Development Strategy*, p. 23.

broadcasting legally acquired programmes, with the chief exception of TV Shijak, which continued to broadcast movies without broadcasting rights almost every evening, until late December 2004. These stations claimed that at least they were not charging for their piracy, as Digitalb was doing. The KKRT responded by saying that it had no competencies to ask for documentation of broadcasting rights from subjects that the law had not provided for. This was a clear case where the delay in drafting legislation for new technology endangered one of the KKRT's real successes: the implementation of anti-piracy legislation.¹⁸⁶ Nonetheless, TV Shijak interrupted its pirated programmes right after KKRT's decisions to withdraw its licence, indicating KKRT's reassertion of authority.

8. CONCLUSIONS

Television is the most influential part of the media sector in Albania. It follows that the healthy and balanced development of television is crucial to the development of Albanian society in general.

Albanian television stations have developed remarkably, considering that, except for RTSH, the oldest among them has no more than nine years' experience. Most of these stations started in a very primitive way, some even broadcasting from private homes, operated by completely inexperienced people using outdated equipment. Nowadays, most stations have good equipment and some – mostly stations in Tirana – have switched entirely to digital equipment. The quality of reporting has also increased over the years, though there is still ample room for improvement.

Unfortunately, the journalism training which has been provided in considerable quantities by various organisations, has not had any impact on the ability of journalists to organise themselves and protect their interests and their profession. Quality journalism is difficult to achieve when the journalists themselves are very often deprived of their rights. The overwhelming majority of journalists work without contracts, and there is no such a thing as collective bargaining. The country does have a Labour Code, which regulates employment relations and also applies to media outlets, but it is not respected in practice.

At the same time, media legislation has failed to satisfactorily define the rights of journalists, *vis-à-vis* owners – and even editors. The law provides no clear method of defining or proving violations of editorial independence. Because the legislation is incomplete or unimplemented, and because journalists tend to have an extremely insecure employment status, there is ample room for media owners to interfere with editorial policy in any manner, at any moment.

As a matter of fact, media owners are the driving force in the Albanian media landscape, including in television. At a time when media self-regulation is non-existent, and journalists

¹⁸⁶ Law No. 9124/2003.

have no effective rights, the proprietors are completely free to shape editorial policy according to their whims and interests. The proprietors often have a background in other businesses, such as construction and trade, and there are also cases when the owners have political affiliations, or even government posts, before or after holding a media business. Media ownership became a controversial issue in 2003, due to the persistent allegations that owners have traded favourable coverage of politicians for patronage of their other businesses.

The latest report of the KKRT revealed that not even one television station made a profit in 2003. They are all supported by outside sources and, on average, advertising revenue covers less than half of their expenses. In fact, the media market is so glutted it is almost deformed, with 21 daily newspapers, 45 radio stations and 73 television stations in a developing country of some 3.5 million people. Even though most of these outlets are unsustainable, the number that have stopped operating is far exceeded by the new outlets starting up. This paradox is usually explained by widespread allegations – so far unproven – that some proprietors use their media outlets as fronts for enhancing their other businesses. At the same time, although transparency has become a much-used word, it seems there are no actors with the will to push for more transparency, and the legislation does not offer much help in this area.

Encouraging transparency is only one respect in which media legislation could be improved. Since the 1990s, legislation has followed on the heels of actual developments, from the emergence of private print outlets and broadcasters, to the problem of piracy, and the appearance of digital media.

There has been no concerted attempt to address and regulate the media sector. In this context, the law needs constant revision, in order to keep abreast of developments. However, the letter of the Law on Radio and Television is less of a problem than its implementation. There are parts of the law that are rarely implemented, due to their weak definition, insufficient political will, ineffective institutions and the lack of a tradition of law enforcement. Lawlessness, inadequate regulation and individual adventurism have been the norm for private television from the beginning.

To make matters worse, the weak authority of the regulatory body has encouraged fierce controversy over its decisions. Some television stations see the KKRT as a Government-controlled body. For different reasons, many of KKRT's decisions have been ignored. The latest episode concerning digital broadcasting, and other televisions' stations protests against the digital broadcaster, confirmed that the KKRT still has not managed to fully stamp its authority on its field.

On a more positive note, the KKRT has managed, with considerable effort, to implement the anti-piracy law. This has increased the creativity in programmes made by television stations, and has also boosted the authority of the KKRT itself. Although this authority continues to be shaken from time to time, it can be said that the anti-piracy measures have opened new possibilities for the development of television stations, including their professionalism.

Like the KKRT, the public broadcaster, Albanian Television (TVSH), is still struggling to break with its old image as a state-owned, unconditionally pro-Government organ. Its popularity has decreased steadily, and there is much to be done before TVSH truly deserves the title of “public service” broadcaster.

The media in Albania are generally seen as an extension of politics. This applies especially to the public broadcaster. Developments at RTSH have been characterised by unstable leadership, continuous accusations of political bias and poor quality, a bloated payroll, lack of financial transparency, corruption, and bad management.

On the whole, there is a lack of vision in media policy, especially for television and the new technologies. Policies, like laws, always trail behind the emergence of new media. More often than not, the policies accommodate the media’s needs, rather than shaping the media to improve their development. To some degree, the deficiencies of policy-making have been reinforced by the lack of research on the media, which makes it almost impossible to make reliable assessments of the impact of media on society.

9. RECOMMENDATIONS

9.1 Policy

Legislation

1. The Government should take steps to fill the gaps in media legislation, especially those relating to new broadcasting technologies and services, with reference to international instruments on digital broadcasting and competition.
2. International and intergovernmental organisations should continue assistance to the Government and Parliament, and to the regulator – the National Council of Radio and Television (KKRT) – for the drafting of media legislation. They should urge consultation with Albanian media freedom NGOs, and associations of media professionals, as part of the drafting process.
3. International and intergovernmental organisations should continue their assistance to law enforcement agencies on improving the implementation of media legislation.

Public debate

4. Local NGOs working on freedom of expression and access to information, as well as organisations dealing with civil rights more widely, should generate a public debate on important issues related to media development in an informed and impartial spirit, raising awareness of how the media affect citizens. Such an initiative should be strongly supported by international and European institutions, such as the European Union, the OSCE and the Council of Europe.

Research

5. The Government should encourage the in-depth analysis of the media sector, with particular attention to audience research. To guarantee the independence of such research, the Government might function solely as (co)financer of work conducted by academic institutions, local or foreign NGOs or other non-State establishments.
6. Civil society organisations should urge the Government to support such independent research in the media sector.

Consultation

7. The Government should consult the media owners, media freedom NGOs, associations of media professionals, and the international community – especially the Council of Europe – when taking steps that affect the media, and take their responses into account.

New technologies

8. The Government should prepare a long-term strategy for media development that would anticipate the evolution of new technologies, including digital broadcasting and the Internet.
9. The Government should, as a priority, propose to Parliament amendments to the Law on Radio and Television aimed at regulating digital broadcasting, in conformity with international and European standards.

9.2 The Regulatory authorities (KKRT)*Independence*

10. The Government and Parliament should ensure the full implementation of existing legislation, in order to respect and reinforce the independence of the regulatory authority, the National Council of Radio and Television (KKRT), in particular with respect to the nomination of KKRT members and the preparation of the KKRT's annual report.

9.3 Public and private broadcasters*Media diversity*

11. The Government and Parliament should enforce media transparency through the full implementation of media legislation, and by regular reviews of media ownership and funding.

Journalists' rights

12. The Government should take specific steps to enforce the Labour Code in media organisations and regularly monitor its implementation.
13. Journalists' associations, with the assistance of other civil society actors, should demand enforcement of the Labour Code in media companies, and eventually collective bargaining.
14. Civil society organisations should support individual journalists whose rights are violated by media owners, State authorities or other parties.

Funding

15. The Government should establish an independent body to be responsible for the allocation of all Government subsidies to media outlets, in accordance with the principles and procedures set forth in the relevant recommendations of the Council of Europe. This allocation process should be clear and transparent.

State advertising

16. The Government should take immediate steps to ensure the unbiased and apolitical allocation of State advertising and to increase the transparency of the allocation of such advertising.

Independence

17. The Government should regularly investigate allegations of violations of media freedom and independence.

Research and monitoring

18. International and intergovernmental organisations should monitor and report publicly on violations of media independence.
19. International and intergovernmental organisations should assist with research and monitoring of particular areas of media activity, such as its independence, law enforcement, and media ethics.

9.4 The public broadcaster (RTSH)*Reform of RTSH*

20. The Government should support the transformation of Radio-Television of Albania (RTSH) into a genuine public service broadcaster, by clarifying roles and responsibilities and guaranteeing the transparency of management.
21. Journalists' associations and intergovernmental organisations should take appropriate steps of their own to support the transformation of RTSH.

22. The Government and relevant NGOs should seek to engage all involved actors in a public debate on the future of RTSH. This should include RTSH journalists, past and present directors, the regulatory authority (KKRT), NGOs and the journalism community in general.
23. Civil society organisations should bring concerns over RTSH to public attention and request solutions from the competent authorities. Regarding TVSH, these concerns include, but are not limited to, programme quality, transparency of administration, effectiveness of management, and independence from government and political factions.

Funding

24. The Government should ascertain and publish the revenue levied through the licence fee. When this has been done, thought should be given to ways of improving the rate of payment of this fee.

Programming

25. The management and staff of Radio-Television of Albania (TVSH) should improve the quality of programming output and define a programme framework that would increase the public interest and appeal of the station.

9.5 Civil society

Codes of ethics

26. Journalists' associations should draft codes of ethics or amend the existing one, raise awareness of these codes, and promote compliance with them.

Media associations

27. Journalists' associations should significantly strengthen the capacities for public debate and awareness of media organisations and associations, particularly through improved cooperation and by promoting journalists' rights *vis-à-vis* media owners and the Government.
28. International and intergovernmental organisations should provide experience and assistance for strengthening media associations.

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Television across Europe:
regulation, policy and independence
Bosnia and Herzegovina

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List of Abbreviations

BiH	Bosnia and Herzegovina – <i>Bosna i Hercegovina</i>
FBiH	the Federation of Bosnia and Herzegovina – <i>Federacija Bosne i Hercegovine</i> (one of the two “entities” that form the State of Bosnia and Herzegovina)
RS	<i>Republika Srpska</i> – literally “Republic of Serbs” (one of the two “entities” that form the State of Bosnia and Herzegovina)

The public broadcasting system

BHRT	The State-wide public broadcaster, <i>Javni radio-televizijski servis BiH</i> (consists of the national, State-wide channels BHT and BH Radio 1) – part of JRTS BiH.
BHT	The State-wide public service television channel, <i>Televizija Bosne i Hercegovine</i> – part of BHRT
BH Radio 1	The State-wide public service radio channel – part of BHRT.
FTV	The public television channel of the Federation BiH entity, <i>Televizija Federacije BiH</i> – part of RTFBiH.
JRTS BiH	<i>Javni radiotelevizijski sistem Bosne i Hercegovine</i> – the Public Broadcasting System of Bosnia and Herzegovina. Consists of three legal entities which are public broadcasters – RTRS, RTFBiH and BHRT. The new draft Law on the Public Broadcasting System also proposes to establish a Joint Legal Entity, which would be the Corporation of Public Broadcasting Services of BiH.
PBS B&H	Public Broadcasting Service of Bosnia & Herzegovina. (NB. This acronym was used in the Law on PBS 2002.) Today, the abbreviation BHRT is used instead.
RTFBiH	The public broadcaster of the Federation BiH entity, <i>Radio-Televizija Federacije BiH</i> – part of JRTS BiH
RTRS	The public broadcaster of the Republika Srpska entity, <i>Radio-televizija Republike Srpske</i> – part of JRTS BiH
TRS	The public television channel of the Republika Srpska entity, <i>Televizija Republike Srpske</i> – part of RTRS.

Broadcasting regulators

IMC	Independent Media Commission (one of the two regulatory bodies merged to form the RAK in March 2001)
RAK	Communications Regulatory Agency (CRA), <i>Regulatorna Agencija za Komunikacije</i>
TRA	Telecommunications Regulatory Agency (one of the two regulatory bodies merged to form the RAK in March 2001)

Other acronyms

DPA	The Dayton Peace Agreement
HR	High Representative
ISP	Internet Service Provider

OBN	Open Broadcast Network
OHR	Office of the High Representative
OSCE	Organisation for Security and Cooperation in Europe
SAA	Stabilization and Association Agreement
SAP	Stabilization and Association Process

1. EXECUTIVE SUMMARY

The broadcasting sector in Bosnia and Herzegovina (BiH) is oversaturated, dauntingly complex, and financially poor. None of the broadcasters covers the entire country's territory or population. Six television channels – BHT, FTV, RTRS, OBN, TV Pink BiH, and Mreza Plus – each manage to reach some 70 to 80 per cent of the population.

After years of domination, the public broadcasters are losing their leading positions in the market. The market share of the State's three public channels fell to 32 per cent in 2004 from around 38 per cent in 2002, and has continued to decline since, while commercial networks, such as TV Pink BiH, are rapidly expanding.

The key process in the sector is the establishment of a public service broadcasting system comprising three broadcasters – BHRT, RTFBiH and RTRS – and in particular the creation of a State-wide public service television channel, BHT (part of BHRT). The main problem today lies with the political elite, which still seeks opportunities to regain control of formerly State-owned broadcasters. The elected authorities have not adopted a single piece of legislation on public broadcasting at either the entity or the State level. At the same time, other stakeholders – including the journalists themselves – have been largely indifferent to the establishment of public service broadcasting. Consequently, progress has been limited in comparison to the international effort and money invested.

New legislation is needed to create preconditions for sustainable public service broadcasting. A new draft Law on the Public Broadcasting System (hereafter, draft System Law 2004) has been in public discussion for the past year, and is currently under debate in the House of Peoples of the Parliament of BiH. The main flaw of the draft law is that it proposes a public service broadcasting structure that, with four legal entities – three broadcasters and one joint corporation – would be too complex, expensive, and prone to inefficiency to be viable in the longer term.

The development of public service broadcasting has also been hindered by funding shortfalls, due to the inefficient collection of licence fees. After a new system of licence fee collection via fixed telephone bills was introduced at the beginning of 2004, the collection rate rose rapidly to some 50 to 60 per cent. Bearing in mind some 95 per cent of BiH households have fixed phone lines, this means the collection rate has practically doubled compared to the same period in the previous year. However, the licence fee collection system remains vulnerable to misuse and political pressures.

Political self-interest also accounts for the fact that a significant number of municipal and cantonal broadcasters are still owned by local and regional governments. Privatisation has not even started, although all preconditions are in place. Local authorities are not ready to give up control of these outlets, and are blocking the process.

While the major commercial networks appear to be thriving, smaller commercial and independent broadcasters face very tough conditions. It is a puzzle how such a large number of broadcasters are able to survive in such a limited and underdeveloped market. Too many broadcasters exist without any commercial justification and even without any need for their programming on the part of audiences. The market is still distorted by donors' money and political funding of outlets throughout the country. Nevertheless, the television advertising market has seen significant growth – from some KM 40 to 50 million (€20-25 million) gross in 2002 to over KM 100 million (€50 million) in 2004, although these are rough estimates, to be treated with caution.

BiH's progress towards European Union candidacy decisively affects the television industry and the regulatory regime by ensuring that most of the relevant legislation complies with EU broadcasting standards and conditions. The legal framework is based on the Law on Communications (2002) and the key regulatory body is the Communications Regulatory Agency (RAK). To date, the RAK has acted with an impressive degree of independence from local political pressure. The RAK's operations are transparent, including the introduction of new rules and regulations, as well as in respect of licensing procedures. Broadcast licences for terrestrial radio and television broadcasting are awarded on a competitive basis. There are still, however, no convincing reasons to believe that the RAK's independence and transparency would survive the withdrawal of international protection.

Only the biggest broadcasters use media market data on a day-to-day basis. Unless this changes, it will be impossible for most outlets to plan program schedules based on real market results. An important move towards this goal was the establishment of a Joint Industry Committee for the broadcasting industry. Even in its initial phase – and it has yet to be registered as a legal entity – this Committee has managed to bring together key television stations and advertising agencies, enabling them to set higher quality standards for media market research.

In early 2004, BiH gained regulation on concentration of media ownership, finally establishing the framework for promoting competition, diversity and pluralism of ownership. The RAK's Rule on Media Concentration and Cross Ownership – which became an integral part of the Law on Communications – regulates multiple ownership, cross-media ownership and radio and television broadcast licence transferability. At present, there are still no major concentrations of the media in BiH.

The Broadcasting Code of Practices and the licence for terrestrial broadcasting (as issued by the RAK) set out principles for broadcasting programmes in BiH. The RAK is the ultimate authority on programming regulation. The core guidelines for the regulation of programme production in respect of the obligations on public service broadcasters are contained in the Broadcasting Code of Practices; the Law on Communications, as well as in the Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia and Herzegovina, of 2002 (hereafter, PBS Law 2002). Public broadcasters are required to meet quotas in accordance with the EU "Television without Frontiers" (TWF) Directive: most programming must be

of European origin and independent local productions must account for at least 10 per cent of broadcasting time (not counting news, sports and marketing programmes). In addition, at least 40 per cent of broadcasting time must be reserved for domestic programming across all genres, not including news and sports.

BiH scores well with regard to journalists' freedoms compared to the rest of the region. Yet media outlets and journalists are still exposed and vulnerable to pressures exerted by owners, the State and political and religious power holders.

The involvement of civil society in media affairs is rather weak. The country urgently needs an effective watchdog that focuses on media issues, safeguarding the independence of the RAK and the public broadcasters, monitoring ethical and professional matters, and standing up for the rights of journalists.

BiH lags behind western European countries in introducing new media and information technologies. No digital satellite or terrestrial platform is in operation, and cable television has proliferated only in the past few years. There is no national plan to switch from an analogue to a digital signal, and there has been no public debate whatsoever on the introduction of new media technologies. The key domestic players – the State, the RAK and the public service broadcasters themselves – have not yet shaken off their passivity on this issue.

2. CONTEXT

The BiH broadcasting sector is complex, undergoing constant change, and financially poor. It is a mystery how such a large number of outlets have managed to survive in such a limited and underdeveloped market. The complex media scene reflects the complicated State structure that emerged from the Dayton Peace Accord at the end of 1995.

2.1 Background

The media sector in BiH is shaped by extremely complex political and administrative structures, poor economic performance, and difficult postwar peace-building and democratisation processes.¹ The Dayton Peace Accord (DPA), signed in December

¹ The war that lasted from March 1992 until October 1995 left the country in ruins, with a devastated economy and society. At least 100,000 – and perhaps many more – of its 4.35 million inhabitants were killed, a million were displaced within the country, and another million scattered throughout the world as refugees. Apart from the human tragedy, the war almost totally destroyed the country's industrial base, so that productivity fell to a mere 5 per cent of the 1991 level, while unemployment in some regions reached 70 per cent by 1996. At this time of writing in mid-2005, unemployment was estimated at between 16 and 30 per cent. It is believed that approximately one million refugees and displaced persons have returned to their prewar addresses.

1995 by the warring sides and guaranteed by the international community, ended some three and a half years of war. It provided an opportunity to reconstruct the country and reconcile its three main ethnic or national groups, called “constituent peoples”: Bosniaks, Serbs and Croats. As defined in the DPA, BiH consists of two “entities” – the Federation of Bosnia and Herzegovina (hereafter, the Federation BiH), dominated by Bosniaks and Croats, and the Republika Srpska, which is dominated by Serbs. The Federation is divided into ten largely autonomous “cantons”, of which four have a Bosniak majority, four have a Croat majority, and two are mixed. Additionally, there is a District of Brcko, located in the north of the country, which functions as a separate administrative unit within BiH, belonging to neither entity. All three nationalities are “constituent” throughout the country.

This complex governance structure is a legacy of the war and reflects the continuing lack of basic consensus among major political groups on the structure and future of BiH. As a consequence, the country is strongly segregated and polarised along ethnic lines, while its administration is bloated and inefficient. To put it simply, the country is so complex and inefficient that it cannot govern itself.

Different political groups continue to argue for antithetical kinds of reform, ranging from centralisation to total decentralisation (and even the secession of some parts of the country). Proposals range from reforming each of the entities individually, creating three ethnically based entities (or even three ethnic republics within BiH), to “regionalising” the country and eliminating the entities and the ethnically determined structures. The variety of proposals and arguments encourage a general uncertainty and anxiety regarding the future of the country. Such a situation is fertile ground for further manipulation and polarisation along ethnic lines, and it radically impedes the path of democratic and economic reforms. As a consequence, BiH lags behind all the other former Yugoslav countries in respect of meeting the preconditions for commencing negotiations on EU accession.

In sum, the following key general features of BiH affect the development of the media sphere:

- the economy is a shambles, the market is underdeveloped, and the State largely depends on foreign aid and loans from the IMF and World Bank;
- the structure and administration of the State are extremely complex and inefficient;
- the legal and judicial systems are often ineffective;
- civic society is generally weak and so too is its democratic and participatory culture;
- there are substantial administrative and legal barriers to business;
- the country is still highly polarised along ethnic lines and dominated by ethno-nationalist parties;

- a general lack of consensus pervades regarding the country's prospects.

Additionally, a unique feature of contemporary BiH is the fact that it is nominally sovereign but really a protectorate. The highest authority in the country is the High Representative,² while EU-led EUFOR peacekeepers ensure the implementation of the military aspects of the DPA (this was done by the NATO-led Stabilisation Force or SFOR until the end of 2004). Hence there are two parallel systems of governance. One is formed by the State's governing institutions, from the Presidency of BiH, through the State Government, the entity governments, all the way down to the municipal authorities and councils. The other system is that of the OHR, the international military peacekeeping troops (EUFOR) and other internationally appointed and internationally accountable organisations and institutions that supervise the implementation of the DPA. Ultimate authority lies in the hands of the High Representative, to the extent that the High Representative can remove elected members of the Presidency of BiH and prohibit the participation in political life to individuals or organisations that, in his judgement, undermine the implementation of the DPA.

Between the two systems, friction is constant and often flares into confrontation. Progress in reform has been extremely slow due to the conflicting ambitions of local actors, as well as the struggles between local and international bodies. This situation has had a negative impact on the media as well, whether from the point of view of reforming the State broadcaster into a public service broadcaster, implementing the Freedom of Access to Information Act,³ or ratifying any law which needs the support of all three ethnic groups, both entities (the Federation and the Republika Srpska), the State bodies or the international community.

Many of the causes of the problematic situation with the media stem from the fact the DPA practically ignored the media: "The DPA contained next to no provisions about the media. Its drafters essentially chose to ignore the media problem, hoping it could be addressed along the way, or at least prevented from blocking implementation."⁴ Nonetheless, three provisions in the DPA can be linked with the media. First, the Constitution (Article III.1.h) provides that common State institutions should be in charge of creating and running common and international communication facilities. Another is the provision (in Annex 7, Article 1.3.b) which stipulates that the

² The decisive powers are vested in the High Representative by Article V of Annex 10 (Agreement of Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement. This authority was bolstered at the Peace Implementation Conference in Bonn on 9 and 10 December 1997.

³ Freedom of Access to Information Act, *Official Gazette of BiH*, 28/00.

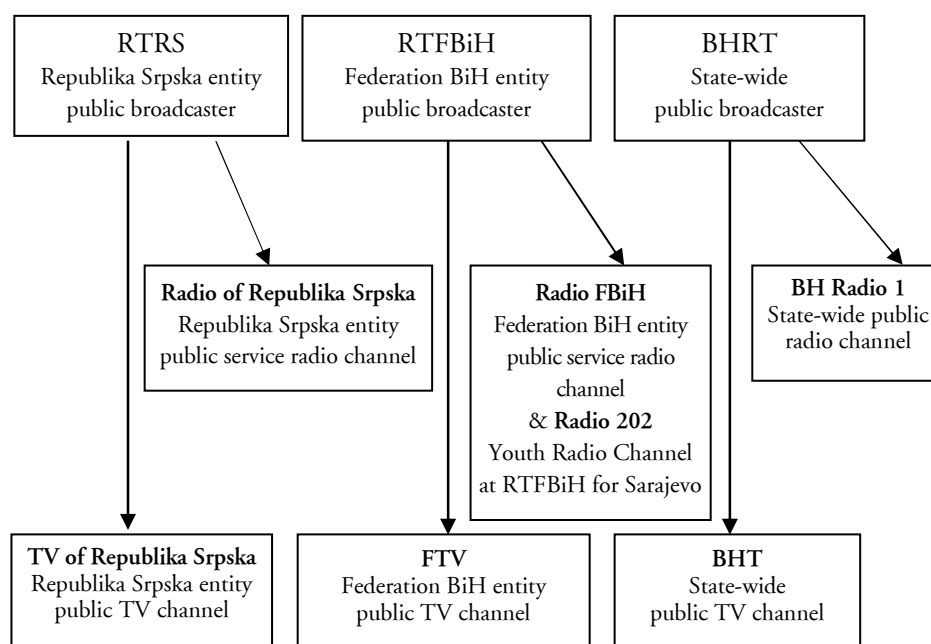
⁴ Mark Thompson and Dan De Luce, "Escalating to Success? The Media Intervention in Bosnia and Herzegovina", in Monroe E. Price and Mark Thompson (ed.), *Forging Peace: Intervention, Human Rights and the Management of Media Space*, Edinburgh University Press, 2002, p. 204, (hereafter, Thompson and De Luce, *Escalating to Success?*).

signatories of the DPA shall prevent any incitement of ethnic or religious hostility through the media. The third is the signatories' agreement to "ensure that conditions exist for the organisation of free and fair elections, in particular a politically neutral environment [...] [and] freedom of expression and of the press" (Annex 3, Article 1.1).

2.2 Structure of the television sector

Mirroring the situation in the country, the media system has developed in a complex way. Today, there are two partly overlapping, but distinct, media systems in BiH, one in each entity, as well as the new State-wide public service broadcaster (*Javni radiotelevizijski servis BiH* – BHRT), which comprises a television channel, BHT, and a radio channel, BH Radio 1.

Figure 1. The BiH public broadcasting system (JRTS)



Additionally, within the Federation, both the media outlets and the audience are – with the notable exception of the entity public service broadcaster RTFBiH – divided between Bosniaks and Croats. This exception will not survive, however, if the strongest Croat party, the Croat Democratic Union (HDZ), as well as other Croat nationalist groups, succeed in their demand for a separate public television channel in the Federation, broadcasting in the Croatian language. The Croat population remains primarily loyal to the local Croat media and, particularly, to Croatian Radio-Television

(*Hrvatska radio-televizija* – HRT), the national television network in neighbouring Croatia. HRT can be seen in most of BiH via cable, satellite and through cross-border spill-over.

The development of the media system has also been conditioned by the struggle between the local political elites on the one hand, and the international community on the other. Domestic political forces have sought ways to create and use the media as their mouthpiece, whereas the international community has invested massive sums in developing independent media outlets since the end of the war in late 1995.

Since 1996, the US Government alone has invested some \$34 million (€27 million) on media development in BiH, including \$14.5 million (€11.6 million) since 1999.⁵ A further \$4.5 million (€3.6 million) has been committed for the period 2003–2006. Other major donors such as the Open Society Fund and the European Commission have together spent at least the same amount since 1996. The Open Society Fund had allocated more than KM 7.5 million (€3.75 million) by 2000. Additionally, the international community invested some €14 million on a single project, the Open Broadcast Network (OBN), during 1996–1997,⁶ rising to some €16 million by 2000.⁷ According to the European Commission office in Sarajevo, the EU has already provided some €8 million for the purchase of transmitters, satellite links, and studio and archive equipment for BHRT. A further €2.5 million has been earmarked for 2005 and 2006.⁸

One point that should be underlined here is that support given to the media sector has been somewhat divided between the EU and US governments. Namely, the US government, primarily through its USAID media programmes, focuses mostly on the support of commercial broadcasters, whereas the EU primarily supports the development of public service broadcasting.

The media sphere remains largely dependent on donations and foreign aid. The sheer scale of this support is one reason why, despite the generally discouraging conditions, BiH has an unsustainable quantity of media outlets. Another reason is the ethnic sectarianism that has fragmented the market and society. There is too much radio, too much television and too much print. A third reason is that some media outlets serve as

⁵ Gwyneth Henderson, Jasna Kilalić and Boro Kontić, *The Media Environment in Bosnia Herzegovina: An Assessment for the USAID Mission in B&H*, unpublished report, January 2003, (hereafter, Henderson *et al*, *The Media Environment in BiH*), p. 3.

⁶ International Crisis Group, *Media in Bosnia and Herzegovina*, Sarajevo, 18 March 1997, pp. 32–33, (hereafter, ICG, *Media in BiH*).

⁷ Dan De Luce, who oversaw media development for the Office of the High Representative in 1999 and 2000, believes that the total spent on OBN may have been “closer to \$30 million” (i.e. €24 million) over a five-year period. Thompson and De Luce, *Escalating to Success?*, p. 227.

⁸ However, probably only 30 to 50 per cent of donors’ money actually came and stayed in BiH. The remainder, in some cases up to 70 per cent, was spent on sending international consultants and experts.

“fronts” for other kinds of business activity: “many media outlets are able to access financial support in many different ways, so it is very hard to estimate when the market may shrink to a more rational level”.⁹ Consequently, the current level of media pluralism needs to be assessed with due caution: it is unclear what will happen after foreign aid has dried up.

The media market is weak. Advertising agency figures for 2002 show that the available annual net revenue in BiH totalled KM 36 million (€18 million). Television got some KM 23 million¹⁰ (€11.5 million), billboards earned some KM 10 million (€5 million), the printed media got KM 2 million (€1 million) and radio received KM 1 million (€0.5 million).¹¹ These figures would be significantly higher without the stiff competition from Croatian and Serbian media outlets, which drain much advertising revenue away from BiH. The real value of the market, which would include substantial barter deals as well as advertisements sold directly to companies who advertise without intermediary agencies, should be around KM 60 million (€30 million) gross.¹²

The *Television Advertising Expenditure* monitoring report by Mareco Index Bosnia (MIB), for the period January-September 2004 shows a different situation. According to MIB, the total advertising expenditure on television in BiH over the first nine months of 2004 was KM 148,521,527 (€75,745,978). Allowing for the fact that big advertisers benefit from significantly reduced prices, which reduce the real gross value of advertising by more than 50 per cent, the gross size of the market for the stated period of nine months in 2004 was probably closer to KM 80 million (€40 million), so the gross assessment of the television advertising market for the whole of 2004 would be somewhere around KM 106 million (€53 million). This would mean that the television advertising market has grown significantly, from KM 40 or 50 million (€20 or 25 million) gross in 2002 to more than KM 100 million (€50 million) in just two years. Nevertheless, these figures are highly approximate since there is a total lack of reliable data on actual discounts and barter deals made. Hence, the probable growth in the advertising market, due to the simple growth of economic activity in BiH, is impossible to measure.

⁹ Henderson et al, *The Media Environment in BiH*, p. 8.

¹⁰ The BiH currency, the “convertible mark”, is tied to the euro with a fixed exchange rate: €1 = KM 1.956 KM; KM 1 = €0.51.

¹¹ Quoted in: Henderson et al, *The Media Environment in BiH*, p. 8.

¹² Henderson et al, *The Media Environment in BiH*, p. 9.

Table 1. Positioning of advertisements in BiH Media (2004)

Time slot	Total (KM)	Share (per cent)
00.00–03.59	4,762,912.50	3.2
04.00–07.59	8,388,967.00	5.6
08.00–11.59	16,975,936.00	11.4
12.00–15.59	20,255,025.80	13.6
16.00–19.59	46,252,184.10	31.1
20.00–23.59	51,886,501.77	34.94
Total	148,521,527.17	100

Source: Mareco Index Bosnia¹³

2.3 Market shares of the main players

The broadcasting sector has grown dramatically since the media market was liberalised by the dissolution of the former Yugoslavia in 1991, followed closely by the war. In 1991, there were only five television and 54 radio channels. By 1997, this had mushroomed to 156 radio and 52 television stations, while, in 2000, the number peaked at 210 radio and 71 television stations. By 2002 this growth was finally contained and partly receded when the main regulator, the Communications Regulatory Agency (RAK), requested all broadcasters to apply for long-term (ten-year) broadcast licences that were allocated in accordance with the RAK's own strict criteria (see section 3.1). Approximately a third of the broadcasters failed to qualify for long-term licences.

According to the RAK, in 2005 there were 188 licensed radio and television channels in BiH, including the three radio and three television channels of the State and entity public broadcasters – RTFBiH, RTRS and BHRT – that together form the public service broadcasting system of BiH – JRTSBH. Out of the total number of 188, there are 42 television and 146 radio stations. All in all, there are 104 private channels: 23 television and 81 radio.

¹³ Data from Mareco Index Bosnia (MIB) – the BH member of Gallup International: MIB, *Positioning of Ads in Media, January-September 2004 period*, available at <http://www.mib.ba> (accessed 26 June 2005).

Table 2. Number of radio and television channels in BiH (1991–2005)

	Television	Radio	Total
1991	5	54	59
1997	52	156	208
2000	71	210	281
2005	42	146	188

Sources: R. Udovicic (2001); Media Task Force (2003); RAK¹⁴

None of the broadcasters covers the whole territory or the whole population of the country. Five television channels each manage to reach some 70 to 80 per cent of the population:

- BHT – the television channel of the State-wide public service broadcaster (BHRT), which started broadcasting on its own frequency in mid-August 2004.
- FTV – the Federation entity television channel, which is a part of the RTFBiH public broadcaster.
- RTRS – the Republika Srpska public service broadcasting entity channel.
- OBN – Open Broadcast Network, a commercial channel.
- TV Pink BiH – established in early 2003 as a subsidiary of the Serbian commercial station, TV Pink.

Additionally, Mreza Plus is another commercial programme produced by a network of several local stations. As it does not have its own frequency, but uses frequencies of the participating stations, it cannot be considered as a separate channel. The Mreza Plus programme manages to reach some 70 to 80 per cent of the population.

Hence, none of the most important stations has universal coverage. When BHT started operating on its own frequency, it had to install a number of transmitters in Republika Srpska in order to provide the minimal required coverage across the country. Additionally, since RTFBiH and RTRS are entity broadcasters and not State broadcasters, they do not have transmitters in the other entity even though their signals extend far beyond their respective entity borders. Clearly, both the public and the commercial broadcasters have an interest in widening their coverage to more remote areas with limited access possibilities. The mountainous terrain of most of the country,

¹⁴ Radenko Udovičić, *The End of the Highest Priced Media Mission in Bosnia-Herzegovina. Dossier: The Case of OBN*, Media Online 2001, available at <http://www.mediaonline.ba> (accessed 30 June 2005), (hereafter, Udovičić, *The Case of OBN*); Media Task Force, *Media in South Eastern Europe: Legislation, Professionalism and Associations*, Media Task Force, Amsterdam, Netherlands, November 2003, p. 10, (hereafter, Media Task Force, *Media in South Eastern Europe*); RAK, Public Register of Broadcasters, available at <http://www.rak.ba> (accessed 7 January 2005).

presents a significant obstacle. The public broadcasters will have to solve this problem, if they are to fulfill their public service mission.

Until 2003, the two dominant players in the market were the entity broadcasters – RTF BiH and RTRS. In the past two years, the commercial sector has provided stiff competition for the public broadcasters, in the form of the three commercial networks – the Open Broadcast Network (OBN), Mreza Plus and TV Pink BH. Additional competition comes from two local and growing stations: NTV Hayat from Sarajevo and Alternativna Televizija (ATV) from Banja Luka.

Table 3, below, provides detail on the trends in the audience shares of key public and private television channels over recent years, for BiH as whole. However, as shown in Table 4, there are very different viewing patterns for the two entities.

Table 3. Television audience shares for BiH as a whole (2002–2004)

	Audience share (per cent)		
	2002	2003	2004
BHT, FTV, RTRS	37.9	33.5	31.8
Local / Regional television stations	42.5	45.1	48.0
Foreign television stations: HRT Zagreb, PINK Belgrade, RTS Belgrade	14.3	16,3	15.5
Other satellite television channels	5.2	5.2	4.7

Source: Mareco Index Bosnia¹⁵

¹⁵ MIB, *Mjerenje gledanosti TV stanica: 2002–2004*, (*TV Audience Measurement: 2002–2004*), 2004, available at <http://www.mib.ba> (accessed 30 June 2005), (hereafter, *MIB TV Audience Measurement: 2002–2004*).

Table 4. Television audience shares in BiH (2004)

Audience share (per cent)					
BiH (as a whole)		Federation		Republika Srpska	
FTV	23.8	FTV	34.8	PINK BH	16.2
HRT ZAGREB	10.5	OBN	10.8	HRT ZAGREB	14.2
PINK BH	10.4	NTV HAYAT	10.4	RTRS	12.5
OBN	7.7	HRT ZAGREB	8.4	ATV	12.4
NTV HAYAT	6.6	PINK BH	7.2	TV BN	11.8
RTRS	5.2	TVTK	5.0	PINK SERBIA	6.7
ATV	4.4	BHT	3.9	RTS (BELGRADE)	4.2
TVBN	4.4	TV TUZLA	2.4	FTV	4.1
TVTK	3.5	TV SA	1.9	OBN	2.1
BHT	2.8	TV ZENICA	1.9	RTV HIT	1.7
PINK BELGR.	2.4	RTRS	1.1	RTL	1.3
TV TUZLA	1.6	RTV USK	1.1	K3 PRNJAVOR	1.2
RTS BELGR.	1.5	RTV MOSTAR	1.0	TV BEL	0.9
TV SA	1.2	Other domestic	4.2	TV SIMIC	0.9
TV ZENICA	1.2	Other domestic	5.7	Other domestic	6.9
Other domestic	7.9			Other domestic	2.9
Other satellite	4.7				

Source: Mareco Index Bosnia¹⁶

The public broadcasters are discussed in detail in section 4.

Neovisna Televizija Hayat (NTV Hayat)

One of the most important private broadcasters is NTV Hayat in Sarajevo, with a 10.4 per cent audience share in the Federation and a 6.6 per cent share in BiH as a whole in 2004 (see Table 4). NTV Hayat Ltd. is a private company established on 19 January 1993, and re-registered in 2002 in line with new legal requirements.¹⁷ The company's start-up capital was KM 26,500 (€13,250). The Director is Elvir Švrakić.¹⁸

TV Hayat is considered one of the most successful local television stations. It is likely that additional revenues will be collected through a recently launched satellite service for the Bosnian diaspora with Mreza Plus programming, as well as a planned expansion of the terrestrial footprint in BiH.

¹⁶ MIB, *TV Audience Measurement: 2002–2004*.

¹⁷ Court Registration File, available in the RAK register of broadcasters.

¹⁸ Court Registration File, available in the RAK register of broadcasters.

Alternativna Televizija (ATV)

ATV is registered in Banja Luka, the capital of Republika Srpska. The owners of the company are the Director, Natasa Tesanovic (34 per cent), Darko Aleksic (17 per cent) and Milan Lukic (49 per cent).¹⁹

ATV has a strong position in Republika Srpska and is respected among media professionals, especially as an important news provider. Its news programme may be its most significant source of revenue. ATV is not as strong in financial terms as NTV Hayat, and for good reason: the Republika Srpska market is weaker than the Federation market. Hence, ATV has received significant support from donors to ensure the availability of high-quality news and information programming by, and for, Republika Srpska.

Pink BiH

Before 2003, TV Pink was available in its original format, as broadcast in Serbia; it had a market share of 4 per cent in 2002.²⁰ The Pink BiH Company was established on 4 February 2003 at Bijeljina, in Republika Srpska, by the Dasto-Semtel Company in Bijeljina and Pink International Company based in Belgrade. The director of Pink BH is Jovo Staniscic, but the owner is Željko Mitrović from Belgrade, who owns Pink International Company.²¹

Pink BiH then bought broadcast licences from several local stations, covering large parts of the population. According to the Mareco Index BiH, by the end of 2004 TV Pink BiH was the third most-watched station in the country, taking first position in Republika Srpska and fifth in the Federation (see Table 4).²² Hence, it has had a significant impact on the overall market, increasing competition and encroaching aggressively on market segments that had been the preserve of the public broadcasters, OBN and Mreza Plus. As one of the five most important commercial channels in the country, it is the newest and most important player on the market.

The Open Broadcast Network (OBN)

OBN started broadcasting in September 1996, linking a number of independent broadcasters around the country under the name “TVIN”. TVIN represented an international attempt to break the information monopolies enjoyed by the ruling nationalist parties before the first postwar elections. Start-up funds were provided by several foreign governments and donors, including the US, Sweden, Japan, Canada,

¹⁹ According to e-mail correspondence with ATV Director Natasa Tesanovic, mid-2004.

²⁰ Mareco Index Bosnia, *TV Audience Measurement*, Wave 3/8, 2002

²¹ Court Registration File available in the RAK register of broadcasters. For further information on Pink International see the Chapter on Serbia and Montenegro.

²² MIB, *TV Audience Measurement: 2002–2004*.

Spain, Italy, the European Commission and the Open Society Foundation of BiH.²³ The money was put into a Trust based in London. From being an informal group of donors, the Trust became the official owner of the company, while the partner company, OBN, was established and registered in BiH.

The project collapsed in 2000 when major donors, dissatisfied with OBN's performance and unable to agree on a vision for the station's future, withdrew their support. However, OBN survived and managed to consolidate. It is now registered in the Cantonal Court of Sarajevo as a company limited by shares. The owners of the company are OBN Limited, based in London, and Gabriel Vukadin from Sarajevo. Vukadin, who is also the Director, owns 52 per cent of the company and OBN Ltd. owns 48 per cent.

According to widespread but unconfirmed speculation, however, the real owner of OBN is Ivan Caleta, a media mogul from Croatia who is preparing the network for sale to a larger international player.²⁴ This would explain the extensive staff cuts at OBN in 2005, and the radical change in the character of programming in favour of more commercial material. OBN has also been accused by other local outlets of price-dumping to boost its advertising revenue. This started an avalanche of protests by other broadcasters and advertising agencies, some of which have filed complaints against OBN with the RAK. According to some sources, a war over the advertising market has begun between OBN and rival players in the television sector.²⁵ The RAK has rejected all speculation concerning the change of ownership of OBN, and insists that according to the official court registration documents no changes were made in the ownership structure of OBN. Nevertheless, Dunja Mijatovic, Director of the RAK Broadcasting Section, states that "the Agency is not responsible for the accuracy of court registration files, and other State institutions need to take care of that".²⁶

Unlike in the case of the ownership issue, in mid-April 2005 the RAK fined OBN the sum of KM 10,000 (€5,000) for changing its programme schedule without prior approval and ordered it to revert to the original scheme for which it was licensed before June 2005. OBN immediately paid the fine, and promised to change back the programme schedule before the deadline.²⁷ It is expected that by the end of June 2005 the RAK will re-review the programme schedule and decide whether the OBN has

²³ Udovičić, *The Case of OBN*, p. 8.

²⁴ Caleta owns two Croatian marketing agencies, Global Media and GRP Media, a BiH agency called Omnia, and TV3 in Slovenia.

²⁵ Saida Mustajbegovic, "OBN: Otvoreno pljackanje Bosne", ("OBN: Open Robbery of Bosnia") in *DANI* magazine, 4 March 2005.

²⁶ Interview with Dunja Mijatovic, Director of the RAK Broadcasting Section, Sarajevo, 5 May 2005.

²⁷ "TV OBN kaznjen sa 10.000 KM", ("OBN fined KM 10,000"), in *Nezavisne novine*, p. 12; "OBN kaznjen sa 10.000 KM", *Oslobodjenje*, p. 3; "OBN kaznjen sa 10.000 KM", *Dnevni avaz*, p. 11; all published on 15 April 2005.

complied with its order. According to unofficial information from the RAK, monitoring showed that OBN had complied fully with the order.²⁸ As and when this finding is officially confirmed, RAK will proceed to consider OBN's request to change its ownership structure.²⁹

Mreza Plus Network

In summer 2000, following the collapse of the original OBN, USAID/IREX again tried to create a State-wide commercial television network, this time called Mreza Plus. The network was built around five local stations: TV Hayat, Sarajevo; ATV Banja Luka; TV Tuzla; Oscar C Mostar; and RTV Mostar. Each of these stations owns 20 per cent of Mreza Plus, but the distribution of revenues reflects each station's market share. Donors provided substantial support for infrastructure, purchase of popular programming, and management and marketing training. According to one source, Mreza Plus had a 14 per cent audience share in 2002 and an estimated 25 per cent of available advertising revenues from agencies.³⁰

Mreza Plus broadcasts for several hours each day during peak time, using the frequencies of the five member stations, plus additional affiliates. It offers a mix of films, soap operas and light entertainment, adding a short late-evening newscast in 2004.

2.4 Radio

Some 80 to 84 per cent of the population listens to the radio at least three times a week, for three to four hours at a time.³¹ Due to fragmentation of the sector, with a total of 146 channels on air, only a few stations have an audience share above two per cent.³²

²⁸ Information based on informal talks with officials from the RAK, Sarajevo, 27 June 2005.

²⁹ Interview with Amela Odobasic, RAK spokesperson, Sarajevo, 28 June 2005.

³⁰ Data from: Henderson *et al*, *The Media Environment in BiH*, p. 13.

³¹ Henderson *et al*, *The Media Environment in BiH*, pp. 16–17; see also: MIB, *BH Media Market Monitor*, Sarajevo, 2003, (hereafter, MIB, *BH Media Market Monitor*).

³² Henderson *et al*, *The Media Environment in BiH*, pp. 16–17; see also MIB, *BH Media Market Monitor*.

Table 5. The most listened-to radio stations in BiH (2004)

Radio station	Audience share (per cent)
BH Radio 1 Sarajevo (public broadcaster BHRT)	8.5
RTV BN Bijeljina	6.8
Nes Radio Banja Luka	3.8
BIG Banja Luka	3.5
RTRS Banja Luka (public broadcaster RTRS)	3.3
Radio Stari Grad Sarajevo	2.8
Radio Federacije BiH Sarajevo (public broadcaster RTFBiH)	2.2
RTV Bihac	2.0
Obiteljski Radio Valentino Orasje	2.0
RTV TK Tuzla	2.0
Radio M Sarajevo	2.0
Radio Kameleon Tuzla	2.0
Other	61.1

Source: Mareco Index Bosnia (MIB)³³

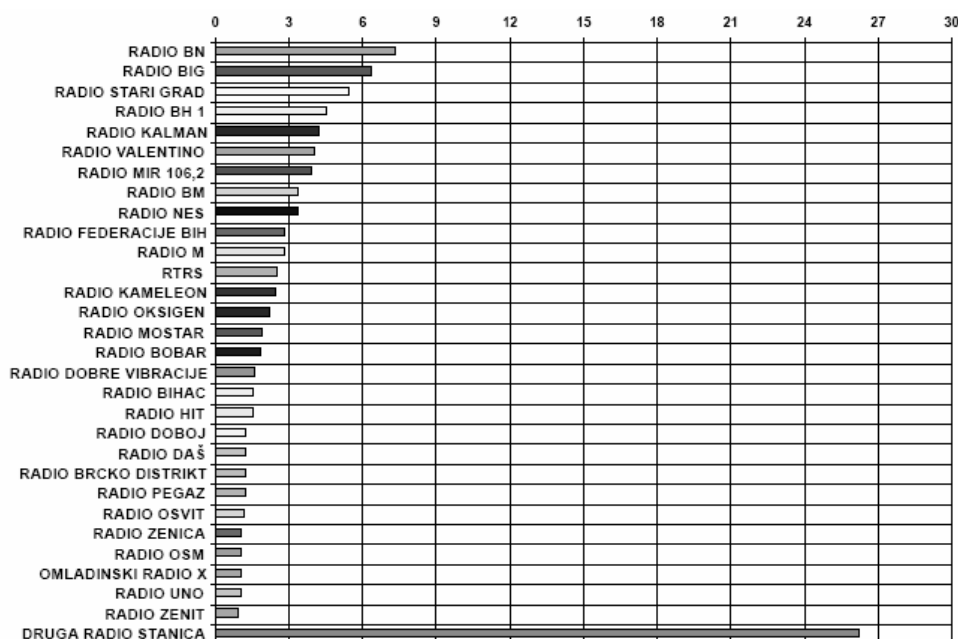
The data for 2004 in Table 5 confirm that the radio market is extremely fragmented and oversaturated. As a consequence, revenues are low, especially considering that the overall size of the radio advertising market was around €0.5 million in 2002. (In neighbouring Croatia, radio advertising was worth an estimated €23 million in 2003.)³⁴ In 2003, there were less than a dozen serious private radio stations in BiH.³⁵ According to the latest research by the market research agency Mareco Index Bosnia, important changes have occurred in the audience share of the top ten radio stations, with the first three positions now occupied by private radio stations, pushing the public broadcaster BH Radio 1 from the top position.³⁶

³³ MIB, *Omnibus Survey, August 2004*, available at <http://www.mib.ba> (accessed 30 June 2005).

³⁴ MediaNet, *Privredni Vjesnik*, Zagreb, 10 May 2004, p. 4.

³⁵ Henderson *et al*, *The Media Environment in BiH*, p. 17.

³⁶ See also: L. Sarajlic-Ramovic, "Uspjeli iako su izabrali tezi put", ("They succeeded although they chose the harder path"), in *Dnevni avaz*, 6 May 2005, p. 42.

Figure 2. Radio audience share in BiH (March 2005)

Source: Mareco Index Bosnia³⁷

3. GENERAL BROADCASTING REGULATION AND STRUCTURES

Although other reforms have not yet succeeded, the creation of the broadcasting regulatory framework was a success story. The key regulatory body is the Communications Regulatory Agency (RAK) that has responsibility for both broadcasting and telecommunications. The legal framework is based on the Law on Communications of BiH. The creation of a robust but independent regulatory agency with extensive powers has proved to be the right approach to regulating the chaotic broadcasting scene after the war.

³⁷ MIB, *Radio Measurement, 14–20 March 2005*, unpublished document.

3.1 Regulatory authorities for the television sector

3.1.1 The Law on Communications and the Communications Regulatory Agency (RAK)

During the first phase of postwar reconstruction in BiH, broadcasting regulation was split between two agencies: the Independent Media Commission (IMC),³⁸ responsible for licensing radio and television stations, programme monitoring and establishing codes of practice, and the Telecommunications Regulatory Agency (TRA), responsible for telecommunications and frequency management.³⁹ The High Representative merged the two agencies in March 2001, creating the Communications Regulatory Agency (*Regulatorna Agencija za Komunikacije* – RAK).⁴⁰

The RAK's role was formalised in legal terms on 21 October 2002, when the High Representative imposed the Law on Communications of BiH⁴¹, after the BiH Council of Ministers⁴² had failed to approve the draft after 18 months. The scope of the law is stated in Article 1: "This Law regulates communications in Bosnia and Herzegovina, and the establishment and work of the Communications Regulatory Agency of Bosnia and Herzegovina". The law stipulates that the BiH Council of Ministers is responsible for policy-making and the RAK is responsible for regulation.⁴³ Article 4 sets out five regulatory principles of broadcasting:

³⁸ On 11 June 1998, the High Representative issued a Decision establishing the Independent Media Commission (IMC). The text of all decisions of the High Representative can be accessed in English on the OHR website at <http://www.ohr.int/decisions/archive.asp> (accessed 30 June 2005).

³⁹ Due to the Parliamentary Assembly's failure to adopt the Telecommunications Law of BiH as submitted by the BiH Council of Ministers, the High Representative imposed the law by a decision: High Representative Decision Imposing the Telecommunications Law of BiH, 11 September 1998, *Official Gazette of BiH (Sluzbeni glasnik Bosne i Hercegovine)* of 29 June 1999, No. 10/99.

⁴⁰ On 2 March 2001, the High Representative issued a decision creating the Communications Regulatory Agency (RAK): High Representative Decision on Combining the Competencies of the Independent Media Commission and the Telecommunications Regulatory Agency, thereby creating the Communications Regulatory Agency, 2 March 2001 *Official Gazette of BiH*, No. 8/01; *Official Gazette of the Federation of BiH*, No. 11/01; and *Official Gazette of Republika Srpska*, No. 12/01.

⁴¹ Law on Communications of Bosnia and Herzegovina, *Official Gazette of BiH*, No. 33/02 of 12 November 2002, (hereafter, Law on Communications of BiH), available in English at <http://www.cra.ba/en/legal/?cid=2427> (accessed 30 June 2005). The Law on Communications of BiH replaced the Telecommunications Law of BiH (*Official Gazette of BiH*, 29 June 1999, No. 10/99).

⁴² The Council of Ministers is equivalent to the cabinet of BiH, run by the Prime Minister and consisting of a number of ministers responsible for specific sectors, such as defence and international relations.

⁴³ Law on Communications of BiH, art. 3.

- The protection of freedom of expression and diversity of opinion while respecting generally accepted standards of decency, non-discrimination, fairness, accuracy, and impartiality;
- The development of professional and viable commercial and public broadcasters with the intention of striking an appropriate balance between the two;
- That broadcasters shall be separate from political control and manipulation, so as to strengthen democratic principles and the foundations of a market economy;
- That licences shall be awarded on the basis of a process by which appropriate professional standards of programme content, technical operation and financing are ensured; and
- That broadcast advertising shall be regulated so as to be consistent with best European practice.⁴⁴

RAK powers derive from the decisions of the Office of High Representative (OHR) and the Law on Communications,⁴⁵ which established the Agency as an independent and non-profit making institution. The Agency's duties are:

- to promulgate rules on broadcasting and telecommunications, and ensure adherence thereto;
- to license broadcasters and telecommunications operators pursuant to the provisions of this Law, and monitor their compliance with licence conditions;
- to plan, manage, allocate and assign the frequency spectrum and monitor the use of it as well as to maintain and publish a frequency usage plan for the whole territory of BiH;
- to require the disclosure of such information as is necessary for the due performance of its regulatory obligations;
- to apply technical and quality standards, for example to ensure interconnection and functionality of public telecommunications networks and telecommunications services;
- to establish and maintain a technical licence fee system for both broadcasting and telecommunications.⁴⁶

⁴⁴ Law on Communications of BiH, art. 4 (a-e).

⁴⁵ Section IX (Communications Regulatory Agency) of the Law on Communications of BiH details its status, organizational and operational principles (art. 36-44), whereas section X provides procedural provisions, such as rules on complaints (art. 45) and enforcement measures (art. 46).

⁴⁶ Law on Communications of BiH, art. 37. This refers to the system of collecting fees for frequencies assigned for broadcasting and telecommunications operations.

The Agency has three internal divisions: Telecommunications, Broadcasting, and the Frequency Spectrum. There are also six departments: Public Affairs; Legal; Finance; Administration; Regional Office Mostar (for the Federation); and Regional Office Banja Luka (for the Republika Srpska).

The RAK Broadcasting Division is responsible for licensing and regulation. The specific activities covered by the RAK's mandate are the following:

- setting regulations for broadcasters;
- issuing broadcast licences;
- dealing with advertising, programme content, and ownership issues;
- applying and enforcing rules;
- monitoring compliance with the Rules and Regulations;
- acting to prevent illegal broadcast operations; and
- protecting copyrights.

3.1.2 Structure and composition of the RAK

The decision-making bodies in the RAK are the Director General and the RAK Council. Until the end of 2004, there was also a provisional Enforcement Panel. (See section 3.3.)

The RAK is headed by the Director General, who is nominated by the RAK Council and approved by the BiH Council of Ministers. The Director is responsible for all the Agency's key functions in accordance with the Law on Communications, and manages day-to-day operations including implementation of relevant laws and policies, technical oversight, industry affairs and staffing.⁴⁷

The Director General's term runs for four years and may be renewed once. According to Article 40 of the Law on Communications, officials with legislative or executive functions at any level of Government, or members of political party organs, are barred from being nominated for the position of Director General. Neither can the Director General have any financial relationship with a telecommunications operator or a broadcaster.

The RAK Council deals with strategic and policy issues. It consults with, and receives reports from, the Director General, and adopts codes of practice and rules for broadcasting and telecommunications. It also acts as an appellate body for decisions of the Director General.⁴⁸ The Council comprises seven members, who are nominated by

⁴⁷ See: RAK website (www.rak.ba); and Law on Communications of BiH, art. 40.

⁴⁸ See: RAK website (www.rak.ba); and Law on Communications of BiH, art. 39.

the BiH Council of Ministers from a list of candidates submitted by the RAK Council and appointed by Parliament. Council members are prominent individuals and experts in relevant fields, and are appointed for a term of four years with the possibility of re-appointment only once. The Council elects its own chairman and vice-chairman. It meets at least four times a year. The Director General reports to the Council and attends all meetings as a non-voting participant. Candidacy for membership is prohibited for officials in legislative or executive functions at any level of Government, as well as for members of political party organs. Also, members must declare any interest in a telecommunications operator or a broadcaster and must avoid any conflict of interest in this respect.

The Council makes decisions by consensus. In exceptional cases, when consensus cannot be achieved, a simple majority decision is enough provided that at least four members are present and vote.

3.1.3 Procedures for Dismissing the RAK Council and Director General

According to the Law on Communications, “The Parliament of Bosnia and Herzegovina shall have the sole authority to dismiss the members of the Council of the Agency before completion of their mandate. The [BiH] Council of Ministers shall have the sole authority to dismiss the Director General before completion of the mandate.” The law provides that such moves by Parliament and the BiH Council of Ministers may happen only in strictly defined and limited circumstances: illness, conviction of a crime punishable by imprisonment, conflict of interest, resignation, failure to perform duties as described in law, and violation of the Agency’s Code of Ethics.⁴⁹

3.1.4 Funding the RAK

The RAK budget relates directly to the BiH Council of Ministers’ policies for communication and transport. The Council of Ministers has to approve the budget submitted by the Director General and previously adopted by the RAK Council for each fiscal year. Under the Law on Financing of State Institutions of BiH, the Council of Ministers cannot reduce the proposed budget by more than 20 per cent.⁵⁰ The funding comes from the periodic fees payable by telecommunications operators and broadcasters, as well as from sundry grants and donations for specific tasks or projects in the public interest. According to the same article of the Law, “fines collected by the Agency in the performance of its right to apply enforcement measures, and levies

⁴⁹ Law on Communications of BiH, art. 42.

⁵⁰ Law on Financing of State Institutions of BiH, *Official Gazette of BiH*, 29 December 2004, art. 9(4).

invoiced as directed by the Council of Ministers are remitted to the Council of Ministers for inclusion in the budget of the institutions of Bosnia and Herzegovina.”⁵¹

3.1.5 RAK transparency

Article 44 of the Law on Communications stipulates that the Agency’s use of funds will be reviewed by the Supreme Audit Institution and audited by an independent auditor every year. The Agency is obliged to prepare an annual report of its finances and activities which is submitted to the BiH Council of Ministers. Also, before making any rules provided for in the Law on Communications, the Agency is obliged to publish the draft rule at least 14 days before the final decision, and invite comments and suggestions concerning the published draft rule.

3.1.6 RAK independence

The RAK’s road to independence was not straightforward. The Agency started as a project of the international community in BiH, and was literally an international agency shielded by the OHR, having supervision over the broadcasting and telecommunications sectors. Nevertheless, during last four years the transformation to a completely local State agency happened as part of the international community’s strategy to fully integrate the RAK into the local institutional framework.

In spite of the difficulty of transforming an international regulatory agency into a local State agency, this process was accomplished successfully. Today the RAK is generally regarded as an efficient, strong and essentially independent regulator. The Law on Communications spells out and underlines its independent status:

The Agency is a functionally independent and a non-profit making institution with the status of a legal person under the laws of Bosnia and Herzegovina. [...] Neither the Council of Ministers, nor individual Ministers nor any other person shall in any way interfere in the decision-making of the Agency in individual cases.⁵²

However, the RAK is not spared from, or immune to, political and financial pressures from a variety of power centres. In recent years, concerns have been raised over its ability to remain independent in the face of financial and political pressures originating in the Council of Ministers. Hence, in December 2002, the High Representative was forced to make the “Decision Amending the Structure of Expenditures of the Communications Regulatory Agency for 2002”. The reason for this Decision was clearly spelled out in the document:

The 2002 budget of the Communications Regulatory Agency, adopted by the Parliament of Bosnia and Herzegovina on 31 May 2002 (Official

⁵¹ Law on Communications of BiH, art. 44.

⁵² Law on Communications of BiH, art. 36.

Gazette of Bosnia and Herzegovina 14/02), was [...] decreased by twenty-five percent (25%) for 2002 compared to 2001. [...] The Council of Ministers has repeatedly refused to adopt a *Decision to Change the Structure of Expenditures of the Communications Regulatory Agency for 2002* proposed by the Ministry of Treasury for the Institutions of Bosnia and Herzegovina, which (would) rectify the reduction of the budget of the Communications Regulatory Agency by redistributing budget lines while keeping the 2002 total budget of the Communications Regulatory Agency within the limits adopted by the Parliament of Bosnia and Herzegovina. [...] As a result of the above, the Communications Regulatory Agency has been without funds to operate effectively since 1 November 2002.⁵³

Nevertheless, financial and other pressures from the Council of Ministers continued even in 2004, as noted in a Council of Europe report:⁵⁴

Concerns were expressed in mid-2004 about the financial situation of the RAK and the project to assimilate its staff to civil servants. Subsequently, additional funding has been released to the RAK. However, a permanent mechanism for consultation with the authorities on the budget proposal would be most useful in the future. As regards the staff situation, contrary to the civil service agency, the RAK Council considers that none of its staff can be qualified as civil servants.⁵⁵

It appears that these problems have been resolved by the Law on Financing the State Institutions of BiH – this prohibits the Council of Ministers from reducing the proposed budget by more than 20 per cent⁵⁶ – and relations between the RAK and the Council of Ministers have improved. Currently, the RAK has no financial problems,

The Agency acquires income by self-financing and in small number by donations which are mainly given for certain projects, i.e. conferences, symposiums, etc. Incomes are being acquired by invoice and direct payment on Agency's account. All State institutions in BiH are connected into unique system of treasury business which among other things means that all institutions have unique bank account. Financial means from this account may be spent only with approval by the Ministry of Finance and Treasury. However, due to the Agency's need for financial independence in terms of

⁵³ High Representative Decision on Amending the Structure of Expenditures of the Communications Regulatory Agency for 2002, 2 December 2002.

⁵⁴ Council of Europe, *Bosnia and Herzegovina: Compliance with obligations and commitments and implementation of the post-accession co-operation programme. (Eighth Report: June-September 2004)*, document presented by the Secretary General following a Secretariat mission to Bosnia and Herzegovina (12-17 September 2004), Secretary General / Information Documents, SG/Inf (2004) 28, 13 October 2004, available at www.coe.int/sg (accessed 30 June 2005), p. 14, (hereafter, Council of Europe, *Secretary General / Information Document 2004*).

⁵⁵ NB. The recategorisation of RAK employees as civil servants would give the Council of Ministers important leverage over the Agency.

⁵⁶ Law on Financing of State Institutions of BiH, art. 9(4).

availability of financial means, by the High Representative's Decision, within this existing system the Agency has its own bank account.⁵⁷

Despite the continuing attempts at political manipulation of the RAK, the Agency currently faces no significant obstacles in its work, according to Dunja Mijatovic, who directs its Broadcasting Division.⁵⁸

The independence of the RAK is clearly set out in the Law on Communications. It is also emphasised as one of the requirements within the EU Feasibility Study⁵⁹ (see section 6), which means that it is closely monitored by the European Commission and the Council of Europe.

Another important factor that should guarantee the RAK's independence from both political and financial pressures is civil society. With respect to developing the institutions of a vigorous civil society, however, BiH lags far behind developed democratic societies, so this important watchdog for monitoring the independence of the RAK and the media sector as a whole remains dormant.

3.2 Licensing

The RAK is responsible for licensing broadcasters. Licences for terrestrial radio and television broadcasting are awarded on a competitive basis, in accordance with Article 3.3(a) of the Law on Communications. They consist of General and Special Terms and Conditions, detailing general principles, and rules of conduct over programming, advertising, sponsorship, change of ownership, copyright finances and technical operations. All RAK rules apply to the licensee. This also means that the RAK monitors licensees' compliance with the terms of their licences.

Also, the RAK,

shall assign the necessary coordinated coverage templates to the public broadcasters and allocate them for use, free of charge, for the essential terrestrial coverage channels of the Public Broadcasting System in television

⁵⁷ From a questionnaire (of late 2004) containing information provided by the RAK to the Council of Europe (unpublished document).

⁵⁸ Interview with Dunja Mijatovic, 5 May 2005.

⁵⁹ European Commission, *Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilization and Association Agreement with the European Union*, Brussels, 18 November 2003, COM(2003) 692 final, p. 6, available at http://europa.eu.int/comm/external_relations/see/docs/com03_692_en.pdf (accessed 30 June 2005), (hereafter, European Commission, *Report on SAA*).

and FM radio. In addition, the primary coordinated AM allocation shall be allocated for PBS B&H radio [i.e. for BH Radio 1].⁶⁰

In 2000, the RAK started the process of issuing long-term (ten-year) broadcast licences to broadcasters. Each broadcaster was required to apply for the licence, submitting detailed information on its financial sustainability, ownership structure, technical capacities and programming profile, and was awarded points for these categories. The licensing process lasted two years, and resulted in a significant reduction in the number of broadcasters. The number of television stations decreased from 71 to 42, while the number of radio stations fell from 210 to 141. The process was completed without any major upsets and was seen as fair, reasonable and transparent. Licences are issued to broadcast specific and agreed programming, and any change that affects more than 20 per cent of the overall output requires written permission from the RAK.

According to Dunja Mijatovic, there are no currently available frequencies for licensing a new State-wide television broadcaster. The RAK explained its general policy in 2003, namely that no new broadcasting frequencies would be made available for an unspecified period as an attempt to stabilise the broadcasting market. "The RAK has decided that, for the immediate future at least, it will not issue any new general broadcasting licences.⁶¹ This is to allow the market to establish and develop".⁶² Even in 2005, the RAK has stuck to its decision, and has not made any new broadcast frequencies available. The RAK has considered offering a number of frequencies in the near future, which would allow for a national commercial network for radio and television.⁶³ This does not mean that it is currently impossible to establish a State-wide broadcasting operation. A company can buy up local and regional licensees, achieving regional or national coverage. As described above, this was how TV Pink BiH achieved coverage of large parts of the country in 2003.

Additionally, in early 2005, the RAK announced a competitive public contest for allocating broadcast frequencies that were not allocated during the last public contest. These are mostly frequencies in rural areas, and were planned for allocation when long-term licences were issued between 2000 and 2002. Hence, these are not new licences.

All in all, it can be said that the RAK has entered a more stable phase. Relations with relevant ministries have improved, its financial and political independence is granted in relevant legislation, and local politicians are starting to accept the necessity of this

⁶⁰ Article 7 of the Law on the Basis of the Public Broadcasting System and on Public Service Broadcasting in Bosnia and Herzegovina, *Official Gazette of BiH*, No. 29/02, available in English at http://www.ohr.int/decisions/mediadec/default.asp?content_id=8445 (accessed 30 June 2005), (hereafter, PBS Law 2002).

⁶¹ "General" means State-wide.

⁶² RAK, *The Future of Broadcasting in B&H*, 20 March 2003, available at <http://www.rak.ba/en/broadcast/reports/default.aspx?cid=2497> (accessed 23 December 2003), (hereafter, RAK, *The Future of Broadcasting in B&H*).

⁶³ RAK, *The Future of Broadcasting in B&H*.

independence – something on which the European Commission, the Council of Europe, the OHR and other international organizations continue to insist. Cooperation by the Council of Ministers, parliaments and other State institutions has improved significantly.⁶⁴

3.3 Enforcement measures

The RAK has come a long way in introducing standards and rules for broadcasters and actually enforcing those rules in accordance with the law. The RAK's enforcement capacity is based on the powers granted by the Law on Communication. Crucially, however, the RAK's exercise of these powers has been upheld by the OHR, along with other international actors and agencies that established the IMC. When requested, all law enforcement agencies in BiH have to assist the RAK in enforcing its decisions.⁶⁵ According to Dunja Mijatovic, the RAK has no need of international support in enforcing its decisions, including financial penalties.⁶⁶ This reflects the high levels of general compliance with its decisions.

The Law on Communications provides the RAK with enforcement powers in line with European regulatory practices. It can take all necessary steps to stop any illegal broadcasting, and – in the case of deliberate or negligent violation of the Law, or of conditions specified in the licence or in the Agency's own codes of practice and rules – it can apply enforcement measures. Article 5 of RAK Rule on Media Concentration and Cross Ownership⁶⁷ spells out the mechanisms and penalties at the RAK's disposal in the event of non-compliance, by referring to its powers under Article 46 of the Law on Communication (see also section 5.2). Hence, the RAK has the authority to apply the following enforcement measures, proportional to the violations:

- oral and written warnings;
- inspection of licensed facilities;
- concrete demands for action or cessation, to be complied with within a specified time limit
- assessment of a financial penalty not to exceed KM 150,000 (€75,000) in case of deliberate or negligent violation of individual provisions of the Law or of conditions specified in the licence or in the codes of practice and rules of the

⁶⁴ Interview with Dunja Mijatovic, 5 May 2005.

⁶⁵ Law on Communications of BiH, art. 46 (Enforcement Measures).

⁶⁶ Interview with Dunja Mijatovic, 5 May 2005.

⁶⁷ RAK Rule No. 21/2003 on Media concentration and ownership of electronic and printed media, Sarajevo, 22 March 2004 (applied as of 1 April 2004), available at <http://www.cra.ba/en/legal/rules-codes/broadcast/rules/default.aspx?cid=3004> (accessed 30 June 2005), (hereafter, RAK Rule No. 21/2003). The Rule is an integral part of the Law on Communications of BiH.

Agency. [...] In case of repeated violations, the financial imposition may not exceed KM 300,000 (€150,000);

- orders to interrupt broadcasting or the provision of telecommunications services for a period not exceeding three months;
- revocation of a licence.⁶⁸

The RAK's original body for dealing with enforcement issues was the Enforcement Panel, comprising six members and established as a transitional body to deal with possible violations of licence conditions, codes or applicable rules and regulations adopted by the Agency in executing its functions. The Panel ceased to exist on 31 December 2004, when its functions were transferred to the Director General.⁶⁹

The RAK has come a long way in reaching the present point where it is able to enforce its decisions and guarantee compliance with broadcasting rules and regulations. The experience of the first postwar years showed there was a need for an efficient regulatory mechanism for the broadcasting sector. From late 1995 to 1998, the BiH media scene was characterised by widespread non-compliance with basic standards of impartial and professional journalism, while the international actors were primarily focused on the military aspects of the DPA in order to ensure at least a minimum of security preconditions for implementing the peace process. As a consequence, the implementation of the civilian aspects of the agreement suffered. Nationalist parties managed to keep their dominance over their respective ethnic groups, and prevented the development of impartial and professional media. Most notably, the local authorities obstructed the creation of cross-entity media networks, the Open Broadcast Network (OBN) and Radio FERN (Free Elections Radio Network), and ignored the work of the Media Experts Commission (MEC), thus undermining the whole concept of the Rules and Regulations Regarding the Media.⁷⁰

Consequently, the media continued with their discriminatory practices: State-owned media such as SRT (*Srpska RadioTelevizija* – later renamed RTRS) and RTVBH (later transformed into RTFBiH) put the political opposition at a disadvantage and gave exclusive support to the ruling parties, the SDS and SDA. Also, the media outlets controlled by the HDZ party admitted no opposition views whatsoever.⁷¹ Moreover, local broadcasters, and in particular SRT, continuously incited hatred and distrust against the international actors and in particular SFOR, even comparing the SFOR/NATO mission in BiH with the Nazi occupation during the Second World War.

⁶⁸ Law on Communications of BiH, art. 46.

⁶⁹ See: RAK website (www.rak.ba); and Law on Communications of BiH, art. 49.

⁷⁰ The MEC and its network of sub-commissions around the country were established by the OSCE Mission to BiH in 1996, to try and ensure media compliance with the international rules and regulations in the run-up to the autumn elections.

⁷¹ ICG, *Media in BiH*, pp. 2–4; Mark Wheeler, *Monitoring the Media. The Bosnian Elections 1996*, London, Institute for War & Peace Reporting / Media Plan, 1997.

The international community changed its approach and policies towards the media in mid 1997,⁷² marking the start of a more decisive involvement in the media scene by OHR and SFOR. They established the IMC as the respected and influential regulatory body in the field of broadcasting. Over time, the IMC and later the RAK imposed its authority, and their decisions have been respected ever since. The crucial test was the issuance of the long-term licences, when almost 40 per cent of the broadcasters lost their licences. All the unsuccessful applicants bowed to the RAK's decisions, ceasing their operations if their appeal was rejected by the RAK Board.

According to the RAK,⁷³ the period 1998–2003 brought the imposition of 144 sanctions in total (see Table 6 below). Financial penalties were applied in 75 cases (52 per cent), warnings were issued in 31 cases (21 per cent), orders were issued in 9 cases (6 per cent), suspensions were issued in 21 cases (15 per cent), termination of a provisional licence was ordered in 3 cases (2.0 per cent), withdrawal of a licence was applied in one case (0.6 per cent), suspension of broadcasting operations happened in three cases (2.0 per cent), and the discontinuation of a re-broadcast programme happened in one case (0.6 per cent). According to the RAK: "Notable is the declining tendency of sanctions throughout the period, with the exception of the year 2000, when the sanctions outnumbered the ones from the year 1999, hence interrupting the chronological decrease noted in comparison with other years of operation."⁷⁴

Table 6. Sanctions (1998–2003)

Sanction	1998	1999	2000	2001	2002	2003	Total
Warning	3	12	7		5	4	31
Financial penalty	–	14	23	20	12	6	75
Suspension	–	6	12	2		1	21
Revocation of temporary licence	–	–	1	1	1	–	3
Ceaseure of direct re-broadcast of programmes	1	–	–	–	–	–	1
Suspension of broadcast of programmes	–	3	–	–	–	–	3
Order		2	2	–	1	4	9
Revocation of licence	–	–		1	–	–	1
Total	4	37	45	24	19	15	144

Source: RAK⁷⁵

⁷² For details of the Sintra Declaration and the struggle between the international community and nationalists in Republika Srpska for the control over RTRS in mid and late 1997, see section 4.1 of this report.

⁷³ RAK, *Report on Cases of Breaches of Rules in 2003*, January 2004, available at <http://www.rak.ba/en/broadcast/reports/default.aspx?cid=2979> (accessed 5 September 2004.) pp. 7–9, (hereafter, RAK, *Report on breaches in 2003*).

⁷⁴ RAK, *Report on breaches in 2003*, pp 7–9; see also: RAK decisions, available at <http://www.rak.ba>.

⁷⁵ RAK, *Report on Breaches 2003*, p. 7.

Table 6 clearly shows how the enforcement capacity of the IMC/RAK has developed since 1998, when the IMC was established, with the number of sanctions growing rapidly up to 2000, and then steadily declining by 2003. The creation of an efficient regulatory body that managed to enforce its rules and standards across this six-year period is the main reason. In addition, the broadcasting sector, numbering around 300 broadcasters at one point, started to shrink in 2002 and concomitantly fewer violations took place.

3.4 Broadcasting independence

Broadcasters in BiH today broadly enjoy a high level of independence from political pressure. According to the 2003 report of the BiH Media Task Force,

In comparison with countries in the region, BiH takes a good position as far as journalists' freedoms are concerned. In the Reporters Without Frontiers Report for 2003 BiH is ranked 37th in the world, above Spain and Italy and well ahead of its regional neighbours Croatia, Former Yugoslav Republic of Macedonia and Serbia and Montenegro.⁷⁶

The Constitution, the European Convention of Human Rights, and the Law on Protection Against Defamation (hereafter, Defamation Law) comprise the legal framework for protecting freedom of speech in BiH. The Defamation Law transfers the defamation statutes from criminal law to civil law. There is also a Freedom of Access to Information Act.

Nevertheless, although considerable progress has been made in improving normative freedom of speech protections, the most important barrier remains the judiciary's treatment of defamation lawsuits.

The insufficient education of legal professionals is a major problem, both in terms of the laws being relatively new to the BiH legal system and the professional standards of journalism practice being unfamiliar to judges. Failure to make use of the standardised practice of involving court-appointed media experts such as ombudsmen or media association representatives in these lawsuits aggravates the situation.⁷⁷

Moreover, the media and journalists are still vulnerable to pressures exerted by their proprietors and the State. There is no collective agreement at the national or even the entity level between journalists' associations and media proprietors. In circumstances where being a journalist means having a low salary and no social or health security, and

⁷⁶ Media Task Force, *Media in South Eastern Europe*, p. 11. The BiH Media Task Force includes journalists, media activists, governmental and non-governmental representatives. Founded in 2000, it is an initiative of the Stability Pact for South-Eastern Europe.

⁷⁷ IREX, *Media Sustainability Index 2004*, p.18, available at <http://www.irex.org/msi/index.asp> (accessed on 12 July 2005).

where unemployment is the rule and not an exception, proprietors have great scope for applying pressure on their employees – especially if they pay them regularly.

According to the Media Task Force report, some 58 per cent of journalists in BiH work without contracts:

The Independent Union of Professional Journalists conducted research on the labour status of journalists. Out of 190 participating journalists, 78 per cent were full-time employees, while 22 per cent work part-time. According to the same survey, 57.8 per cent of the journalists were working without a contract. The 42.2 per cent with contracts are predominantly employed in the public broadcasters. There is no collective labour agreement at the State level in BiH. About half of the journalists are not paid regularly and do not have health insurance.⁷⁸

As there are four journalists' associations in BiH, it is not surprising that journalists cannot ensure their rights through collective agreements. The extreme fragmentation of journalists along ethnic and political lines prevents any form of joint action.

Moreover, some 30 per cent of all existing radio and television stations are owned by, and are almost fully financially dependent on, local or cantonal authorities and governments. This means they could potentially be exposed to many pressures that can hardly be registered, let alone resisted.

The Law on Communications and the Broadcasting Code of Practices⁷⁹ are the instruments that should ensure the editorial independence of commercial broadcasters. Article 4 of the Law on Communications states that the regulatory principles of broadcasting include:

- (1) The protection of freedom of expression and diversity of opinion while respecting generally accepted standards of decency, non-discrimination, fairness, accuracy, and impartiality
- (2) That broadcasters shall be separate from political control and manipulation, so as to strengthen democratic principles and the foundations of a market economy.

The Broadcasting Code of Practices provides provisions for fair and impartial programming:

Broadcasters shall ensure due accuracy, fairness and impartiality in all programming, including news. They must not broadcast programmes that by any reasonable judgement are intended to promote (...), the interests of one political party, or any group or individual to the exclusion of other parties, groups or individuals. Comment should be clearly distinguished

⁷⁸ Media Task Force, *Media in South Eastern Europe*, p. 14.

⁷⁹ Independent Media Commission (IMC), *Broadcasting Code of Practice*, effective as of 1 August 1998, Amended 9 June, 8 September 1999 and 10 February 2000, (hereafter, IMC, *Broadcasting Code of Practice*).

from news. No one opinion or point of view must be allowed to prevail on controversial matters of public policy.⁸⁰

During the mid-2004 election campaign, BiH journalists and media, both print and broadcast outlets, experienced pressure from politicians and clerics. According to the Helsinki Committee for Human Rights in BiH, the campaign before the local elections held on 4 October 2004 was rich in strong verbal attacks on the media. Several outlets came under political attack: in Republika Srpska, the *Nezavisne novine* newspaper and RTRS were accused by nationalist parties of not being “pro-Serb enough” and of being “American satellites”. In the Federation BiH, Bakir Izetbegović, Vice-President of the ruling Bosniak SDA party (Party of Democratic Action, *Stranka demokratske akcije*), accused RTFBiH of not being in favour of SDA, and threatened to remove the responsible individuals at the entity broadcaster.⁸¹ Nevertheless, the Helsinki Committee for Human Rights in BiH “considered that the election campaign was conducted mainly in a democratic atmosphere characterised by fairness and absence of any major incidents, and the media coverage of the campaigns was altogether fair.”⁸²

All in all, the situation in respect of journalists’ independence remains somewhat ambiguous. The lack of contract and union support for print journalists often means that they are susceptible to pressure by owners, whereas broadcasters are relatively independent of pressure from politicians.

4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING

The creation of public service broadcasting has proven to be one of the most complex and most important institution-building processes in postwar BiH. It is also one of the most obstructed processes: obstructed by ethno-nationalist elites that try to retain control over the most influential outlets within their respective ethnic camps. One of the preconditions for preserving the ethnic division of society and the resulting political monopolies, as these are understood by ruling nationalist groups, is to keep control over the State-owned broadcasters and to prevent cross-ethnic communication. In particular, these groups want to block the establishment of State-wide broadcasters that would uphold the highest professional standards of journalism instead of populist propaganda and the rhetoric of fear and hatred. One after another, the decisions and laws imposed by

⁸⁰ IMC, *Broadcasting Code of Practice*, Section 1.4

⁸¹ Helsinki Committee for Human Rights in Bosnia and Hercegovina, (Helsinki komitet za ljudska prava u Bosni i Hercegovini), *Izveštaj o stanju ljudskih prava u Bosni i Hercegovini (analiza za period januar-decembar 2004.)*, (*Report on Human Rights Situation in BiH, analysis of the period January-December 2004*), available at <http://www.bh-hchr.org/Izvjestaji/izvj2004.htm> (accessed 5 June 2005).

⁸² Council of Europe, *Secretary General / Information Document 2004*, p. 8.

the OHR have slowly but steadily changed the broadcasting sector, managing to create basic preconditions for public service broadcasting to be established in accordance with European standards and norms. At this time of writing, the draft Law on the Public Broadcasting System is being debated in Parliament; it has passed the House of Representatives of BiH and is currently in the House of Peoples. The draft law attempts to provide a framework for a unified system of public broadcasters, creating the preconditions for the development of stronger State-wide broadcaster. Under the law, some functions that are currently performed separately by three public broadcasters – BHRT, RTFBiH and RTRS – would be centralised, such as the collection of licence fees and sales of advertising space. Nevertheless, there is still a long way to go.

4.1 The public service broadcasting system

The war in BiH

As regards the creation of a public service broadcasting system, BiH is, as in many other respects, a peculiar case. The process has been marked by setbacks, and shaped by continuous obstruction and obstacles posed by ethno-nationalist ruling elites who have used every available means to keep their grip on the State-owned media and to prevent the creation of cross-ethnic State-wide broadcasters that could challenge their ethnically-based oligopolies.⁸³

The war in BiH actually started with a struggle over transmitters belonging to the State-owned broadcaster, TV Sarajevo. In late 1991, the Yugoslav Army and Serb paramilitary forces occupied several transmitters and started broadcasting their own programming and relaying the output of pro-Milosevic media from Serbia. This led to the violent division of the media space along ethnic lines, reflecting the territorial divisions within the country itself.

At the core of the three new, ethnically-shaped media systems within BiH were the three pro-regime broadcasters:

- In Republika Srpska, SRT (*Srpska radio-televizija*, Serb Radio-Television) was created at the beginning of the war, strictly controlled by the ruling ultra-nationalist Serb Democratic Party (*Srpska demokratska stranka* – SDS), covering Serb-controlled territories and some parts of the Federation, and acting as the propaganda mouthpiece of the SDS party.
- In the Croat-controlled portion of the Federation, the ruling HDZ party (*Hrvatska demokratska zajednica*, Croatian Democratic Community) created EROTEL, which illegally re-broadcast HTV (*Hrvatska televizija*, Croatian TV) programming from Croatia across most of BiH.

⁸³ Jack Snyder and Karen Ballentine, “Nationalism and the Marketplace of Ideas”, in *International Security*, Vol. 21, No. 2, 1996, (hereafter, Snyder and Ballentine, *Nationalism*).

- RTV BiH (Radio-Television of BiH), that was created from what remained of the RTV Sarajevo after the Serb forces occupied its transmitters, was based in Sarajevo, and by 1998 was able to cover some 70 per cent of the territory. During and immediately after the war, RTV BiH was under influence of the ruling Bosniak nationalist party, SDA.⁸⁴

The legal and regulatory vacuum since the early 1990s made it relatively easy to establish a media outlet; and this even continued throughout the war. Backed by political power centres or foreign donors, outlets mushroomed, especially in the Bosniak-controlled parts of the Federation, and, most notably, in Sarajevo. By 1997 Bosnia had 156 radio stations, and 52 television stations.⁸⁵ Despite such media proliferation, the three regime-controlled broadcasters – RTVBiH, SRT and EROTEL – continued their dominance in the media sphere of the country, effectively cementing war-time divisions.

This situation – combined with the fact that the DPA allotted communication and media policy to the level of entities, whereas the Washington Agreement⁸⁶ (which established the Federation in 1994) allotted responsibility for media and communication in this entity to the cantons – created an unfavourable environment for the creation of State-wide public broadcasters. Not only were the State-owned, pro-regime media ethnically biased and loaded with war-mongering propaganda, but no legal or regulatory framework existed to form the impetus to reform these outlets. Moreover, there was no willingness on the side of local authorities to facilitate the creation of genuine public broadcasters and to strip themselves of their control over the most powerful communication channels at their disposal. This has resulted in the failure of any effort directed at promotion of cross-ethnic, State-wide communication, elimination of propaganda and ethnic hatred from public discourse, and creation of independent public broadcasters:

By not convincingly foreclosing any of the contrasting wartime options for Bosnian statehood, the DPA gave the international regimes every incentive

⁸⁴ For detailed analysis of the position, nature of coverage, and role of these broadcasters during and immediately after the war, see for example: Mark Thompson, *Forging War: The Media in Serbia, Croatia, Bosnia and Herzegovina*, University of Luton Press & Article 19, 2000; Kemal Kurspahić, *Prime Time Crime: Balkan Media in War & Peace*, United States Institute of Peace Press, 2003; and Dušan Relljić, *Killing Screens: Medien in Zeiten von Konflikten, (Killing Screens: The Media in Times of Conflict)*, Droste Verlag, Dusseldorf, 1998.

⁸⁵ See Table 2.

⁸⁶ The USA exercised immense pressure to force Bosniaks and Croats to stop fighting each other and to form a joined state, the Federation of BiH. This was finally achieved in March 1994 when the Washington Agreement was signed. By placing Bosniaks and Croats on the same side, into a military alliance against Serbs, the Washington Agreement radically reduced the complexity of the military situation on the battlefield and created a balance of power that largely stabilised the front lines and territorial changes during 1994, effectively establishing the Federation of BiH. It is constituted of 10 Cantons, but in practice it remained divided into two parts, controlled by SDA and HDZ, respectively. There still existed two armies, two police forces, and weak joined Federal institutions. The Washington Agreement is available at http://www.usip.org/library/pa/bosnia/washagree_03011994_toc.html (accessed 10 August 2005).

to preserve their control over influential mass media. It followed that the three Bosnian regimes became in some ways even more hostile to the independence of media after the war than they had been during it.⁸⁷

Any reform of the pro-regime State-owned broadcasters had therefore to be conducted from scratch, with various tasks taken in parallel: eliminating the nationalists' control, removing ethnically biased party propaganda, creating legal and regulatory preconditions for reform, and establishing the technical and organisational preconditions for State-wide public service broadcasting. This was not an easy task, bearing in mind that the DPA provided virtually no basis for such actions.

In autumn 1996, the first postwar elections in BiH were held, in spite of the fact that the conditions were not in place for fair elections and neither did the opposition parties have equal access to the media. The result was devastating: the overwhelming victory of nationalist parties signalled that the international approach to reforming BiH had been too soft. This was also true of the attitude to the media. Internationally sponsored outlets, such as OBN and Radio FERN, posed no challenge to the regime-controlled networks. As Richard Hoolbrooke said, "Advocates of reconciliation in all three communities were intimidated by thugs and overwhelmed by the media that carried nothing but racist propaganda."⁸⁸ After the elections, as the media propaganda engineered by ruling nationalist parties continued, the OHR and other international actors realised that a more radical approach to reforming the media system had to be undertaken.

As a consequence, High Representative Carl Bildt sought stronger international support to reform RTVBiH and SRT. The turning point was May 1997, when the Peace Implementation Council (PIC), meeting at Sintra in Portugal, adopted a Declaration which empowered the High Representative "to curtail or suspend any media network or programme whose output is in persistent and blatant contravention of either the spirit or the letter of the [Dayton] Peace Agreement" (para. 70).⁸⁹

⁸⁷ Thompson and De Luce, *Escalating to Success?*, p. 205.

⁸⁸ Richard Holbrooke, *To End a War*, Random House, New York, 1998, p. 344.

⁸⁹ The Peace Implementation Council and its Steering Board: Following the successful negotiation of the Dayton Peace Agreement in November 1995, a Peace Implementation Conference was held in London on December 8-9, 1995, to mobilise international support for the Agreement. The meeting resulted in the establishment of the Peace Implementation Council (PIC). The PIC comprises 55 countries and agencies that support the peace process in many different ways – by assisting it financially, providing troops for SFOR, or directly running operations in Bosnia and Herzegovina. There is also a fluctuating number of observers. The Steering Board of the PIC works under the chairmanship of the High Representative as the executive arm of the PIC. The Steering Board members are Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States, the Presidency of the European Union, the European Commission, and the Organisation of the Islamic Conference (OIC), which is represented by Turkey. The Steering Board provides the High Representative with political guidance. In Sarajevo, the High Representative chairs weekly meetings of the Ambassadors to BiH of the Steering Board members. In addition, the Steering Board meets at the level of political directors every three months. Information from the OHR website, available at <http://www.ohr.int/ohr-info/gen-info/#pic> (accessed 24 May 2005).

The Sintra Declaration and NATO

The primary target of the Sintra Declaration was SRT, which had continuously attacked SFOR and NATO peacekeepers, comparing them with Nazi occupation forces, spreading ethnic and religious hatred, and generally attacking the Dayton Agreement. After a series of extreme ethno-nationalist propaganda incidents and attacks on international organisations, the OHR and SFOR escalated their pressure on the Republika Srpska government and its mouthpiece, SRT. Eventually, after a series of clashes, on 1 October 1997, High Representative Carlos Westendorp formally requested SFOR troops to take control of crucial SRT transmitters.⁹⁰ This initiated the process of restructuring SRT: OHR established new rules for the network, removing all politicians from the board of directors, re-drafting the editorial charter and appointing an international transitional director to oversee reforms.

This was the turning point for re-structuring the media system overall, and the first step towards the reform of State-owned broadcasters. The symbolic importance of the action against SRT was crucial: it demonstrated that the OHR and SFOR were determined to stop nationalist propaganda and to shield the State-owned broadcasters from political interference.

The next important step was switching off EROTEL transmitters by the IMC (with SFOR support) on 17 February 2000. The crucial precondition for this was the removal of the HDZ party in Croatia from government, after the general elections in Croatia, a few weeks after the death of President Franjo Tuđman in December 1999. This was an important precondition for normalising the broadcasting space in the country, putting the spectrum under full control of the IMC.

After the forced changes at SRT, the High Representative, Carlos Westendorp, turned to Bosniak-controlled RTVBiH, and started negotiations with the Bosniak leader and member of the collective Presidency of BiH, Alija Izetbegović, about transforming this network into a genuine public service broadcaster. The outcome was a “Memorandum of Understanding on the restructuring of RTVBiH”, signed in 1998.⁹¹ The Memorandum called for the transformation of RTVBiH into the public broadcaster of the Federation entity. It also called for the creation of State-wide, cross-entity broadcasting, albeit on the remarkably naïve supposition that such a thing could happen by voluntary agreement between the two entities.

The importance of this Memorandum was the fact that for the first time, local politicians had to think how a genuine public service broadcaster could be created. The reform process finally started; although the Memorandum was boycotted by Republika Srpska politicians and representatives in the joint State institutions of BiH, as well as by the HDZ leadership in the Federation.

⁹⁰ For a detailed description of this episode, see: Thompson and De Luce, *Escalating to Success?*, pp. 208–212.

⁹¹ Thompson and De Luce, *Escalating to Success?*, p. 223.

In June 1998, the Peace Implementation Council (PIC) called for the creation of a single, State-wide, public service broadcasting system. This decision was reinforced by the PIC declaration on media reform at the Madrid meeting in December 1998. This declaration gave even stronger powers to the OHR to facilitate the reform of State-owned broadcasters into public service broadcasters. It also called for legislation to ensure the editorial and financial independence of the public broadcasters and protect the interests of all three “constituent peoples”, i.e. the Bosniaks, Serbs and Croats of BiH. The declaration further calls for the creation of a State-wide transmission corporation to serve all the public service broadcasters.

The newly appointed boards of governors and international supervisors at both networks failed to achieve any significant results in the subsequent period (1998–1999), and the ruling political elites obstructed the reform of State-owned broadcasters in every possible way. Hence, on 30 July 1999, the High Representative decreed the establishment of the Public Broadcasting Service of Bosnia and Herzegovina (today’s BHRT), and of the Federation entity public service broadcaster, called the Radio-Television of the Federation of Bosnia & Herzegovina (RTFBiH).⁹² He also called for the national assembly of Republika Srpska to create one public broadcaster for that entity. This decision opened new ground for the creation of a unified broadcasting space. Crucially, the High Representative ruled for the first time that the DPA Constitution (Article III.1.h) provided for a single media space, stating that the State institutions were responsible for the “establishment and operation of common and international communication facilities”.⁹³

Additionally, on 31 August 1999, the High Representative amended the Law on SRT and renamed the network Srpska Radio-Televizija (Serb Radio-Television) as Radio-Television of Republika Srpska (RTRS), diluting the explicit ethnic identification of the broadcaster.⁹⁴ The amendments called for programming that would represent the ethnic and religious diversity of Republika Srpska and BiH as a whole. Moreover, it provided for editorial independence, financial transparency and cultural pluralism.

Achieving a decision on paper means little for its actual implementation, if willingness, financial preconditions and know-how are lacking. In October 2000, after another frustrating year of obstruction, High Representative Wolfgang Petritsch issued the “Second Decision on Restructuring the Public Broadcasting System in Bosnia & Herzegovina”,⁹⁵ establishing two new public corporations: the Public Broadcasting Service of BiH (today’s BHRT), and the Radio-Television of the Federation of BiH

⁹² High Representative Decisions on the restructuring of the Public Broadcasting System in BiH and on freedom of information and decriminalisation of libel and defamation, 30 July 1999.

⁹³ Thompson and De Luce, *Escalating to Success?*, p. 223.

⁹⁴ High Representative Decisions amending the Law on Radio-Television of the RS, 1 September 1999.

⁹⁵ High Representative Second Decision on restructuring the Public Broadcasting System in BiH, 23 October 2000.

(RTFBiH). The Second Decision provided more detail about the functioning, the structure and the mission of the two public service broadcasters. According to this decision, BHRT would have one radio and one television channel, broadcasting for the whole population. RTFBiH would have two television and two radio channels, in order to ensure a balance between Croats and Bosniaks. For RTRS, the decision stipulated that it would have one radio and one television channel.

PBS Law 2002

Again, nothing substantial happened after this decision, and after Parliament failed to pass the Law on Public Broadcasting System and the Public Broadcasting Service, the High Representative was forced to establish BHRT by decree. In May 2002, High Representative Wolfgang Petritsch imposed the Law on the Basis of the Public Broadcasting System and on Public Service Broadcasting in Bosnia and Herzegovina, (hereafter, PBS Law 2002),⁹⁶ after the Entity governments had stalled reforms of their respective broadcasters for several years.

Also, on 23 May 2002, the High Representative imposed three further decisions regarding public service broadcasting:

- Decision Imposing the Law on Radio-Television of Republika Srpska.
- Decision Imposing the Law on Radio-Television of the Federation of Bosnia & Herzegovina.
- Decision on the Liquidation Procedure to be Applied in Winding-up the Public Enterprise Radio and Television of Bosnia and Herzegovina.⁹⁷

This package of decisions was intended to accelerate the legal and practical transformation of all three networks into genuine public service broadcasters. They had to be imposed because of the refusal of local authorities to adopt the appropriate legislation, and their continuing breach of earlier decisions, agreements and laws.

With these decisions, a key precondition for creating a nation-wide public service broadcaster was finally fulfilled, and the parameters were set for the transformation of the two entity-level State broadcasters into public service broadcasters. The PBS Law 2002 stated that the public broadcasting system of BiH (JRTS BiH) comprised the following broadcasters:⁹⁸

- Public Broadcasting Service of Bosnia & Herzegovina (PBS B&H), which is the public broadcaster of BiH comprising one television channel (BHT) and one radio channel (BH Radio 1) – this was later renamed BHRT.

⁹⁶ High Representative Decision Imposing the Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia and Herzegovina, 23 May 2002.

⁹⁷ The full text of the decisions of the High Representative are available at <http://www.ohr.int> (accessed 7 June 2005).

⁹⁸ PBS Law 2002, art. 3.

- Radio-Television of the Federation of Bosnia & Herzegovina (RTFBiH), which is the public broadcaster of the Federation of Bosnia & Herzegovina entity.
- Radio-Television of Republika Srpska (RTRS), which is the public broadcaster of Republika Srpska entity.

RTFBiH and RTRS are thus the broadcasters for their respective entities (Federation BiH and Republika Srpska, respectively), while BHRT is a State-wide broadcaster for BiH as a whole. As such, BHRT is responsible under the PBS Law 2002 for the international representation of JRTSBiH. All three broadcasters must, in their operations and staff structure, implement the relevant constitutional provisions regarding the equal rights of the “constituent peoples” and “others”.⁹⁹ Nevertheless, so far, not much has been done to implement this provision. Moreover, RTRS and RTFBiH “shall, in line with [their] capabilities, develop and expand [their] programme contents with the aim of broadcasting special programmes in the languages of ethnic minorities” who live within their respective entities, in accordance with the Constitution”.¹⁰⁰

Additionally, Article 9 of the PBS Law 2002 provides for the public broadcasters to create a joint Transmission Corporation to operate the transmission network. However, this Transmission Corporation has not been created.

Proposed new laws

The PBS Law 2002 had only been in effect for a year and a half when two new draft laws went into public discussion in early 2004. While the PBS Law 2002 attempted to provide a joint legal framework both for the overall public service broadcasting system and for the State-wide public service broadcaster, 2004 saw an initiative to pass two separate laws:

- Law on the Public Broadcasting System of BiH (hereafter, the System Law 2004).¹⁰¹
- Law on Public Service Broadcasting of BiH (hereafter, the Law on BHRT).

⁹⁹ Law on the Radio-Television of the Federation of Bosnia and Herzegovina, art. 9, *Official Gazette of FBiH*, No. 40/02; and Law on the Radio-Television of Republika Srpska, art. 9, *Official Gazette of Republika Srpska*, No. 22/03. NB. “Others” is a constitutional category in BiH which includes minority ethnic groups other than the three “constituent peoples” (Serbs, Croats and Bosniaks). “Others” thus includes Jews, Roma, and other groups in the population.

¹⁰⁰ Law on the Radio-Television of the Federation of Bosnia and Herzegovina, art. 8; and Law on the Radio-Television of Republika Srpska, art. 9.

¹⁰¹ The draft System Law 2004 used as the basis for this analysis is the draft of 15 December 2004 (several versions of the draft Law were obtained from, among other sources, the OHR and the Ministry of Communications of BiH). Draft Law on the Public Broadcasting System of BiH, (hereafter, draft System Law 2004).

The preparation of this more detailed and refined legislation reflected the need for a legal framework that would integrate and coordinate the three public service broadcasters as well as the joint corporation. The complex issues of ownership of equipment and facilities, governing bodies, and formulas for sharing advertising revenues and licence fees called for new legislation. The EU has placed strong pressure on the local authorities, through the European Commission, to adopt the new legislation as the only guarantee for the successful creation of public service broadcasting in accordance with European standards.¹⁰²

4.1.1 The European dimension

The EU is keenly interested in the establishment of public service broadcasting, and to a considerable extent these reforms are “owned” by the EU member States as well as the BiH authorities.

Preparation of a future Stabilisation and Association Agreement (SAA)¹⁰³ with the EU is a political priority for BiH and the prospect of further European integration is at present the strongest incentive to accelerate reforms in the country. However, the consensus on further European integration does not always translate into political action.¹⁰⁴

The best example of the lack of political action is the reform of the public broadcasting system, which is one of the 16 preconditions for the completion of the Stabilisation and Association Agreement (SAA). In accordance with this precondition, BiH has to adopt four Laws related to public service broadcasting:

- Law on the Public Broadcasting System (JRTS BiH) – System Law 2004.
- Law on the State-wide public service broadcaster (BHRT) – Law on BHRT.
- A law on each of the entity broadcasters (RTFBiH and RTRS) – Law on RTFBiH and Law on RTRS.

However, according to the Secretary General of the Council of Europe (CoE),

¹⁰² In this context, the so-called “Agreement of Three Prime Ministers” was signed on 6 November 2003 by the President of the Council of Ministers of BiH and the Prime Ministers of both entities. It established basic principles for the Public Service Broadcasting System of BiH, comprising three broadcasters and the joint infrastructures.

¹⁰³ The Stabilisation and Association Process (SAP) was launched by the European Commission in 1999 and endorsed by the European Council in June 2000 as a mechanism for co-ordinating the EU’s relations with Albania, BiH, Croatia, the former Yugoslav Republic of Macedonia (FYROM), and the Federal Republic of Yugoslavia (now Serbia & Montenegro). The process foresaw the negotiation of a Stabilisation and Association Agreement (SAA) with each of these States, in recognition of the progressive implementation of free trade and as a framework for the State’s commitment to assume EU standards in such fields as human rights, rule of law, competition policy and the environment.

¹⁰⁴ European Commission, *Report on SAA*, p. 6.

A joint expertise of revised Draft PBS laws [the System Law 2004 and the Law on BHRT] was issued in June 2004 by the CoE and the European Commission. These laws should create a countrywide and sustainable Public Broadcasting System/Service in line with CoE standards. However, their adoption, which is also one of the 16 points of the EU Feasibility Study, has reportedly been postponed until after the 2 October [2004] local elections. [...] Once the State law is adopted, the Entities will have to adapt their own legislation and TV structures.¹⁰⁵

The European Commission has pressured BiH to adopt solutions that would guarantee functional, sustainable public service broadcasting system across the country, based on the following four principles:

- The complete technical infrastructure (transmitters, mobile technology, studio equipment), and also international functions and relations of public broadcasters, marketing and sales department, and research functions should be unified at the level of the system.
- The income from marketing and licence fees should be redistributed, so that the largest part goes to the State-wide broadcaster, so it can establish itself as the leading channel within the system.
- Financial sustainability should be ensured through an efficient system of collecting the monthly licence fee.
- The role and significance of the RAK should be strengthened, with respect to appointing the members of the governing bodies of the public broadcasting system, and to the limits and redistribution of advertising time allowed on public channels.

The draft System Law 2004 attempts to regulate “the Public Broadcasting System of Bosnia and Herzegovina and the relationship among the three public RTV services and the Joint Legal Entity within the system, as well as its activities and organisation”.¹⁰⁶

4.1.2 The outlook today

The draft System Law 2004 calls for the establishment of a Corporation of the Public RTV Services of BiH (hereafter, the Joint Corporation), to be funded and run by all three public broadcasters.

The Joint Corporation would have a variety of important duties:

- operating, managing and maintaining the transmission network;
- representing RTV services internationally;

¹⁰⁵ Council of Europe, *Secretary General / Information Document 2004*, p. 14.

¹⁰⁶ Draft System Law 2004, art. 1.1.

- ensuring respect for foreign programme rights;
- managing property and technical resources;
- advertising – in accordance with the Decision of the RTV System Board (made by consensus);
- harmonising systems, policies and procedures across the three broadcasters.

Hence, the Joint Corporation would play a more significant role than just a transmission function, as is the case under the PBS Law 2002. The essence of the draft System Law 2004 is that it tries to establish a stronger joint structure through the Joint Corporation, thus creating a framework for more efficient cooperation among the three public broadcasters (see section 4.4.1).

4.2 Services

According to Article 5 of the PBS Law 2002,

The principal responsibility of the public broadcasters is to accurately inform the public, to support democratic processes, to ensure an adequate proportion of news, cultural, artistic, educational, sports, entertainment and children's programming, and to ensure that the highest quality programming is available to the public of Bosnia and Herzegovina by presenting diverse and factual information.

Under Article 40, the activities of BHRT (the law uses the former abbreviation, PBS B&H) are as follows:

- preparation, production, transmission and broadcasting of its own radio and television programmes;
- exchange of and participation in joint programming, and programming, technical, and technological projects with other broadcasting agencies and programme producers;
- acquisition of programming;
- introduction and usage of new technologies;
- publication and distribution of any printed matter related to its programming or to questions of broadcasting in general;
- storage and usage of archives of sound and video recordings;
- organisation of cultural, musical and other events;
- surveying of the media market, marketing and advertising services;
- providing services of teletext and activities related to other fields of broadcasting technology.

Similar provisions exist for RTFBiH and RTRS in their respective laws.¹⁰⁷

Under Article 43 of the PBS Law 2002, which regulates the international exchange of programming and exclusive broadcasting rights, BHRT is obliged to ensure coverage of the most important cultural, entertainment and other events in the country and abroad. Only those broadcasters whose programmes are available to the whole population (i.e. BHT and BH Radio 1) may acquire exclusive rights to the following sports events:

- the Olympic Games;
- World and European championships in football, basketball, handball and other sports which are traditional in BiH;¹⁰⁸
- international competitions which take place in BiH;
- matches within official international competitions where the BiH national team is participating.

According to Article 44, BHRT represents the interests of the public broadcasters in international broadcasting organisations and associations. Within BiH, it has a coordinational and representational role in the public broadcasting system. Article 47, which deals with Production Capacities, states that “[BHRT] shall be obliged to provide services to the entity public broadcasters, on a commercial basis, and on the basis of a contract that will specify this cooperation.”

The draft System Law 2004 proposes to change the relationship between the three public broadcasters and establish the Joint Corporation of BiH, which will do most of the coordination among Public Service Broadcasters. It will take over responsibility for international representation, and also the digital platform and all transmission infrastructures will be based in the Corporation.

4.3 Funding

According to Article 53 of the PBS Law 2002, BHRT is primarily financed from the RTV licence fee, advertising and sponsorship. Additionally, “[iBHRT] may generate revenue by operations within its core activities, including, but not limited to, commercialisation of copyright [...], production and sales of audio and visual works, leasing of premises and equipment, offering teletext and other services.”

Article 54 authorises BHRT to request State budget funds for the following:

¹⁰⁷ Law on the Radio-Television of the Federation of Bosnia and Herzegovina, art. 8; and Law on the Radio-Television of Republika Srpska; art. 9.

¹⁰⁸ Mreža Plus has acquired broadcasting rights for Formula 1 car racing.

- construction of transmission and broadcasting network and key infrastructure sites
- programming projects significant for Bosnia and Herzegovina not included in the annual programme plan of JS BiH
- the costs of archive protection, as a cultural good
- the costs associated with satellite broadcasts [...] shall be funded from the budget.

The same funding sources are available for RTFBiH and RTRS under their respective laws, which are adjusted to the PBS Law 2002. It is important to note that Article 54 clearly states that “funding from the budget may not in any manner influence the programming independence of BHRT”.

Under the draft System Law 2004, the financing of the Joint Corporation shall be done by the three public service broadcasters: BHRT (i.e. BHT and BH Radio 1), RTFBiH, and RTRS. Moreover, the Joint Corporation may generate additional income generated from other sources, such as efficient use of emission infrastructure and its commercial renting.¹⁰⁹

4.3.1 Collection and Distribution of Licence Fees for Public Broadcasters

The situation today

Under the PBS Law 2002, the primary source of funding for the public broadcasters should be the licence fee (apart from advertising and sponsorship), which is levied as a form of tax on possession of television and radio sets. According to the law (Article 11), “All physical and legal entities in the territory of Bosnia and Herzegovina who possess a radio or television receiver are obliged to pay the monthly radio and television licence fee for that receiver.”

One of the principal problems facing the emerging public broadcasters has been the extremely low level of collection of licence fees in recent years. While before the war, the collection of the licence fee was at 80 to 85 per cent, the whole collection system collapsed during the war and was re-introduced from scratch in postwar period. The introduction of the licence fee system in a postwar dysfunctional society proved, predictably, to be troublesome. As a consequence, estimates for 2003 indicate that only 30 per cent of fees were paid in the Federation, while in Republika Srpska, the figure was around 20 per cent.

In early 2004, a system for collecting licence fees through telecom operators was introduced in both entities. According to some sources, the effects were highly

¹⁰⁹ Draft System Law 2004, art. 14.

significant: for the first time, public broadcasters finished the first half of the year without losses.¹¹⁰ Some 50 per cent of fixed telephone owners in the Federation now pay the fee, whereas the figure in Republika Srpska is even higher, at around 60 per cent.¹¹¹ The difference in compliance might be explained as a consequence of the politically motivated boycott of licence fee collection among the majority of the Croat population in the Federation BiH. Taking into account that fixed telephony penetration in BiH is around 95 per cent,¹¹² the significance of the improvement in fee-collection becomes clear. Additionally, for the rural areas which have no fixed phone lines, the public broadcasters have established their own collection service.

Yet it is estimated that the level of licence fee collection needs to reach 80 to 85 per cent if the public service system is to achieve sustainability. Despite the recent improvements in efficiency, the collection system is still weak and vulnerable:

- The socio-economic situation remains extremely difficult.
- The large number of displaced persons and frequent changes of addresses have disrupted the collection of licence fees.
- The State's often poor capacity to enforce its own legislation and regulation creates space for citizens to avoid their duties.
- The existing system of collection through telecom operators leaves wide scope for evasion. If a telephone subscriber refuses to pay the telephone bill, he or she will receive a warning notice with a demand for payment that omits the licence fee. The reason for this omission is that the telecom operators are not prepared to lose income because of the licence fee.¹¹³
- Finally, political and even religious leaders have repeatedly called on their constituencies to boycott the licence fee when they have disagreed with the

¹¹⁰ OSI Roundtable meeting, Sarajevo, November 2004 (hereafter, OSI roundtable comment). *Explanatory note: OSI held roundtable meetings in each country monitored to invite critique of its country reports in draft form. Experts present generally included representatives of the Government and of broadcasters, media practitioners, academics and NGOs. This final report takes into consideration their written and oral comments.*

¹¹¹ OSI roundtable comment.

¹¹² UNDP, *eSEEEurope Regional Information and Communications Technologies Sector Status and Usage Report: Building an Information Society for All*, UNDP, the Stability Pact for SEE and eSEEEurope Initiative, Sarajevo, October 2004, p. 60, (hereafter, UNDP, *Building an Information Society for All*).

¹¹³ According to Belma Becirbasic, "Bitka za 500.000 gledalaca", ("Battle for 500,000 viewers"), in *DANI* magazine, 7 May 2004, only some 5 per cent of the population of Western Herzegovina, predominantly Croat by nationality, pays the licence fee.

editorial policy of public broadcasters, or have been involved in other forms of conflict with its management or journalists.¹¹⁴

Apart from the problems with collection, the public broadcasters often claim that the fee is too low, having in mind the complexity of the public service broadcasting system. At KM 6 (€3) per month, the licence fee is one of the lowest in Europe.

According to Article 22 of the Draft System Law 2004, the RAK proposes the amount of licence fee to the House of Representatives of the BiH Parliamentary Assembly. The House of Representatives decides on the amount of the licence fee within 30 days of the submission of the proposal by RAK. The draft Law does not clarify whether the House of Representatives has to consult with the RAK and the Board of the JRTSBIH on this issue. The RAK can review the amount only once every five years.

Stabilising the fee-collection system and increasing the overall collection rate is imperative if public service broadcasting is to be successfully and sustainably reformed. These steps need to be guaranteed through new legislation and then implemented with the full support of all relevant State agencies.

The sustainability of public service broadcasting through the licence fee would also enable the RAK to review the advertising limits on public broadcasters, thus enabling commercial stations to collect more advertising revenues without being forced into fierce competition with the public broadcasters (see section 2.2 for a fuller discussion of advertising).

In accordance with PBS Law 2002 (Article 17), the licence fee is at present collected in the two entities, as well as in Brcko District, and the revenue is distributed as follows:

- 58 per cent of the licence fee collected in the Federation shall be RTFBiH's share
- 58 per cent of the licence fee collected in Republika Srpska shall be RTRS's share
- 42 per cent of the licence fee collected in the Federation and Republika Srpska shall be BHRT's share.
- The entire licence fee from Brcko District shall go to [BHRT].

The draft System Law 2004 defines a new formula for collecting and distributing the licence fee. Whereas the fee is currently collected separately in the entities and in Brcko District, with the percentage due to BHRT then being transferred to a single account,

¹¹⁴ An article from weekly magazine *DANI* provides details of the boycott of payment of the licence fee by top Bosnian Croat politicians, including Mr. Dragan Covic, a member of the Presidency of BiH. According to this source, these leaders condition their payment of the licence fee by insisting that Federal TV must include an ethnically-defined Bosnian Croat channel in the Croatian language. Eldin Hadzovic, "Hrvatska televizija u hrvatskoj drzavi", ("Croatian television in a Croatian State"), in *DANI* magazine, 4 March 2005).

the draft System Law 2004 envisions collecting the fee at one central account and thence distributing it among the three public broadcasters. According to Article 23 of the draft System Law, the “RTV tax” (i.e. licence fee) would be held in a designated single account. Additionally, all net income from the sale of advertising would be held in the same joint account. The licence fee revenue should be distributed as follows:

- 25 per cent of the net income from advertising and 25 per cent of the total licence fee revenue collected within BiH to be RTFBiH’s share
- 25 per cent of the net income from advertising and 25 per cent of the total licence fee revenue collected within BiH to be RTRS’s share
- 50 per cent of the net income from the sale of advertising and 50 per cent of the total licence fee revenue collected within BiH to be BHRT’s share.

A potentially a serious problem arises with such a distribution of income within the Public Broadcasting System (JRTS BiH). Namely, it is a generally accepted principle in financing all joint institutions in BiH that Republika Srpska and the Federation cover, respectively, one third and two thirds of the costs. This division roughly reflects the population distribution across the country.¹¹⁵ In the specific case of financing the Public Broadcasting System and its three public broadcasters (BHRT, RTFBiH, RTRS), however, this rule has been abandoned without any reasonable explanation.

Under the new formula, BHRT receives 50 per cent of the total collected licence fee, while RTFBiH and RTRS would get 25 per cent each. The problem is that the Federation BiH – with more than twice the population of the other entity – collects approximately two-thirds (65 per cent) of total licence revenue, but only 25 per cent of this total goes to the Federation BiH broadcaster. At the same time, Republika Srpska collects approximately a third (35 per cent) of the total, but also gets 25 per cent of the total, for financing the Republika Srpska broadcaster.

This means that 40 per cent of licence fee revenue allocated to BHRT would come from Federation BiH, whereas only 10 per cent would come from Republika Srpska. In other words, according to this formula, Republika Srpska will contribute only 20 per cent of the total amount of licence fee revenue allocated to the State-wide public service broadcaster, with Federation tax payers meeting the remainder.

¹¹⁵ The Federation of BiH occupies 51.08 per cent of the territory of BiH with 63.32 per cent of the population, while Republika Srpska contains 48.92 per cent of the territory and some 38.68 per cent of the population. Source: EURED, Projekt Evropske unije za regionalni ekonomski razvoj u BiH (The EU project for regional economic development in BiH), *Socioekonomska i SWOT analiza ekonomskog regiona Sjeverozapadna BiH, (Socio-economic and SWOT analysis of the economic region of north-west BiH)*, 2004, p. 12, available at <http://www.eured-bih.org/eng/documents/SEA&SWOT/NWSEA&SWOTloc.pdf2> (accessed 12 July 2005). According to a CIA assessment for 2004, BiH has a population of approximately 4,007,608. Of that number, and based on some local assessments, some 2,318,972 live in the Federation entity and 1,490,993 live in Republika Srpska. Source: Wikipedia, available at http://bs.wikipedia.org/wiki/Bosna_i_Hercegovina#Stanovni.C5.A1tvo (accessed 12 July 2005).

This raises two key questions. First, why should Federation taxpayers pay four times as much as Republika Srpska taxpayers for a BHRT service that should provide equal representation of all three “constituent peoples”, all three of their languages, and both entities? Second, why should Federation taxpayers accept significantly reduced funding for their own entity broadcaster, RTFBiH, while Republika Srpska taxpayers face no such radical reduction for their entity broadcaster, RTRS?

One possible explanation is that the drafters of this law reduced Republika Srpska’s financial contribution to the State-wide public broadcasting system in order to neutralise Republika Srpska politicians’ objections to creating that system. (Indeed, as will be seen in the following section, RTRS will actually earn extra advertising revenue if this draft is adopted.)

Another possible answer might be that Republika Srpska is much weaker economically than Federation BiH, so that conventionally proportionate contributions to BHRT, i.e. one third from Republika Srpska and two thirds from the Federation, would actually be unfair to RTRS because the available funds for RTRS would be too small to sustain it.

Essentially, the conclusion cannot be avoided that a public broadcasting system composed of three broadcasters (BHRT, RTRS and RTFBiH) is simply too expensive, and the cost of running the State-wide broadcaster, BHRT, will have to be financed primarily by Federation BiH licence fee revenue. The proposed solution for redistributing licence fee revenue would saddle one entity with the main cost of State-wide public service broadcasting (i.e. the cost of BHRT), which is in the interest of the entire country, while indirectly subsidising the other entity’s broadcaster, i.e. RTRS. While the greatest losers in this would be RTFBiH, in the longer term, this inequality could undermine the viability of State-wide public service broadcasting as such, and present a source of future crisis within the system.

The current solution under the PBS Law 2002 is probably the best that is now available. It requires each entity to give 50 per cent of its licence fee revenue to BHRT, and reserve the other 50 per cent for its own (entity) public broadcaster. In this way, proportionality would be upheld consistently, from financing, to staffing and programming, and all citizens from both entities would share equally the burden of creating the public broadcasting service at the State level, i.e. BHRT. This would ensure that both entities contribute equally to the creation of BHRT, in proportion to their population size.

Nevertheless, the OHR, as well as the Ministry of Communication and Transport of BiH, claim that the proposed solution from the draft System Law 2004 is adequate if the public service broadcasting system is considered in the round, as a whole, and not in its individual parts.¹¹⁶ The same answer was provided by Sasa Risovic, the Chief of

¹¹⁶ Interviews with: Darja Lebar, Office of Public Relation, OHR, Sarajevo, January 2005; and Zdravko Savija, Advisor to the Minister of the Communication and Transport of BiH, Sarajevo, 24 May 2005.

the Cabinet of the Director General of RTRS, who stated that “The question of financing and distribution is related to the reconstruction plan. In order to provide a more precise answer to this question, it is necessary to look into, and understand, the core of the system and how it functions. This is a law about a system!”¹¹⁷

Beyond the question of the funding formula, the key question is this: are there any valid, non-political reasons why BiH should have public service broadcasters at the entity level (i.e. RTRS and RTFBiH), when the State-wide broadcaster, BHRT, would provide equal treatment of all three constituent people and cover the whole country? The proposed solution tries to shore up RTRS and RTFBiH at any cost, while at the same time creating BHRT, although some of the parts of the country obviously cannot or will not be able to finance it.

In sum, this proposed solution represents such a harmful compromise between the international community and local political structures that it may well defeat its own purpose of establishing public service broadcasting in BiH.

4.3.2 Advertising and Sponsorship Revenues of Public Broadcasters

The PBS Law 2002 allows the public broadcasters to carry six minutes of advertising per hour (up to 10 per cent of daily programme time), with a re-distribution of unused advertising minutes during prime time (17.30–22.30) up to a total of eight minutes per hour. This means that the advertising limits set for the public broadcasters are in accordance with the dominant model of public broadcasting in other European countries, where a mix of public funding with additional advertising revenue is accepted. The PBS Law 2002 provides for the RAK to reassess the advertising limits for public broadcasters once every five years.

Although the redistribution of advertising and RTV tax income proposed by the draft System Law 2004 might look fair at first glance, it may favour less successful broadcasters and punish the more successful ones, especially in the distribution of advertising revenue. According to data for 2002, out of approximately €11 million of net television advertising revenue, FTV was able to collect some €5-6 million – around 50 per cent – whereas RTRS achieved nowhere near that sum. (The Federation is much more populous than the Republika Srpska – having almost twice as many households – as well as being in better economic condition.) The new system would put all advertising revenue in one pot and distribute it evenly, regardless of the market success of each broadcaster. Income from one broadcaster would be transferred to another, based on a formula that cannot be justified by market potential or the quality of the two broadcasters, but only by the political imperative of supporting State-wide

¹¹⁷ E-mail interview with Sasa Risovic, Chief of the Cabinet of the Director General of RTRS, 9 June 2005.

broadcasting and curbing the entity broadcasters. (For FTV currently has a market share several times bigger than BHT.)

Hence, one possible explanation is that the purpose of this approach is to increase support for public service broadcasting in Republika Srpska, by gaining more funding for RTRS than it could collect through the licence fee and advertising. This could have a negative effect on the overall market orientation of the public broadcasters as well as on their mutual competition. Another explanation is that RTRS is economically too weak and would need to survive in the new system without external support. A third explanation is the stance taken by international representatives and relevant State ministries that the proposed revenue distribution mechanism must be considered from the perspective of the requirements of the system as a whole. (The great flaw in this last response is, of course, that it overlooks any fundamental systemic problems.)

Whatever the actual reason, eliminating the market success of broadcasters as the only objective mechanisms for distributing their advertising revenues should be seen as extremely problematic. It means, in effect, that no matter what each of the three public broadcasters produce, how big their audiences are, or the quality or success of their programmes, they will always receive the same share of advertising income.

4.4 Governance structure

The governing bodies of BHRT are the Board of Governors and the Director General.¹¹⁸ The highest body is the Board of Governors, tasked to “protect the interests of the public with regard to radio and television programming, and supervise the entire operation, as well as the usage and disposal of PBSB&H [i.e. BHRT] property.”¹¹⁹ The Board of Governors consists of nine members who all must be citizens of BiH. The members are appointed for a period of three years, renewable only once, and are selected in the following way:

Four members of the Board of Governors shall be appointed by the Parliamentary Assembly of Bosnia and Herzegovina, from each of the constituent peoples and from Others; three members shall be appointed by the outgoing Board of Governors; and the Chairmen of the governing bodies of RTV FBiH and RT RS are members of the Board of Governors by virtue of their office.¹²⁰

Article 60 of the PBS Law 2002 states that candidates for membership are nominated by civil society organisations (cultural, educational, social, scientific, economic, professional, sporting and other institutions and associations), through public contest.

¹¹⁸ PBS Law 2002, art. 57.

¹¹⁹ PBS Law 2002, art. 58.

¹²⁰ PBS Law, art. 59.

The Chairman of the Board of Governors is appointed by the Board itself. Normally five members are required for the Board to make decisions by majority vote. Nevertheless, “the appointment and dismissal of the Director General, adopting the programming policies of both radio and television, as well as the adoption of the financial plans and annual budget will require at least seven votes.”¹²¹

The Board is responsible, among other things, for adopting the Statute and By-laws, deciding on the use of assets, deciding on investments for developing BHRT, adopting reports on financial operations, approving the annual budget, adopting programming policies for radio and television, and appointing and dismissing the Director General.¹²² Additionally, the Board is the coordinating body at the level of the system (JRTSBiH), coordinating activities and facilitating cooperation among three public broadcasters: BHRT, RTRS and RTFBiH.

The same governance structure exists, with similar procedures, at RTFBiH and RTRS. The same body that appoints members is authorised to decide on their dismissal, but only at the initiative of the Board of Governors itself.

The draft System Law 2004 actually proposes some changes to the structure of governing bodies at the level of the JRTSBiH, envisaging that the Board of the JRTSBiH should consist of 12 members, four from the Governing Board of each of the three public broadcasters (BHRT, RTRS, RTFBiH). This also implies that the relevant Laws of BHRT, RTRS and RTFBiH will be adjusted to the new System Law once it has been adopted.

4.4.1 The Corporation of Public Broadcasting Services (Joint Corporation)

The draft System Law 2004 provides for the creation of the Joint Corporation of Public Broadcasting Services (Joint Corporation).

According to Article 13 of the draft System Law 2004, the bodies of the Corporation are the Management Board and the Supervisory Board. The Governing Board of the Public Broadcasting System – JRTSBiH (System Governing Board) – actually has the function of the Supervisory Board of the Corporation of Public RTV Services of BiH, whereas the Management Board should manage the work of the Corporation (see Figure 3 in annex 1, also section 4.1.2). The Management Board should consist of the Director General and the managers of the Corporation’s sectors. The System Board appoints the General Director of the Joint RTV Corporation.

According to Article 6 of the draft System Law 2004, the public broadcasters (BHRT, RTRS and RTFBiH) are required to register a Joint Legal Entity on the State level. On

¹²¹ PBS Law, art. 62.

¹²² PBS Law, art. 65.

behalf of all three public broadcasters, the Joint Legal Entity (i.e. Joint Corporation) shall be obliged to:

- sell television, radio and multimedia advertising;
- coordinate legal policy and delivery of the legal services to the public service broadcasters;
- coordinate the usage and management of technical resources, property and information technology infrastructure;
- cooperate on technical development and the introduction of new technologies;
- ensure joint utilisation of the technical, financial and human resources;
- develop strategy for the multimedia services of the public service broadcasters;
- enable the common use of archive materials, in accordance with the programming needs of the public service broadcasters;
- conduct internal and external communications;
- acquire foreign programming and maintain international relations;
- provide administrative and other support for the governing bodies;
- conduct audience research;
- coordinate resources for collecting content for news broadcasts, including regional IT centres;
- coordinate human resources of the public RTV services;
- coordinate business plans, financial operations and audit procedures;
- enable the joint annual financial audit;
- provide transmission services for the public RTV services;

What this means is that the heart of the new system should be the Joint Corporation, that would actually bind together three public broadcasters, coordinate their activities, offer transmission services, and international representation of JRTS BiH and its three broadcasting components. In effect, this solution is much more advanced than the PBS Law 2002, which had no such strong coordinating body, a situation that led to continuous competition and not cooperation between the broadcasters. Hence, the establishment and start of an effective Joint Corporation would mark the day when JRTS BiH would actually start existing as a system, instead of an uncoordinated group of broadcasters.

4.4.2 Public Broadcasting System of BiH

The public broadcasters at present coordinate their activities through the Executive Committee of the Board of Governors of BHRT.¹²³ The Executive Committee consists of the Chairmen of all three Boards of Governors of BHRT, RTFBiH and RTRS. The Chairman of the BHRT Board of Governors chairs the Executive Committee.¹²⁴ The Executive Committee coordinates the activities of all three public broadcasters.

The draft System Law 2004 would abolish the Executive Committee and establish a JRTSBiH Board composed of all the members of the three public broadcasters' (BHRT, RTFBiH, RTRS) boards of governors, serving *ex-officio*.¹²⁵ Under Article 8, the System Board would, *inter alia*, determine the amount of the licence fee, oversee its collection, and coordinate the three broadcasting services. It would also act as the Supervisory Board for the Joint Corporation.

4.4.3 Responsibilities

According to both the current PBS Law 2002 and the draft System Law 2004, the public broadcasters must comply with RAK rules and regulations. Hence, the public broadcasters are subject to all sanctions available to the RAK for non-compliance, except licence revocation and/or suspension.¹²⁶

For example, the RAK decision of 22 May 2003 fined RTV FBiH KM 5,000 KM (€2,500) for violating Article 1.4 ("Fair and Impartial Programming") of the Broadcasting Code of Practices in its programme *60 minutes*, broadcast on 20 January 2003. Namely,

the broadcast of the programme [...] whilst offering short views of the persons in question, allegations made by the host and reporter are not put to them for their consideration. The insistence on the repeated and tendentious use of allegations against these persons is also unbalanced.¹²⁷

Also, the RAK decision of 18 November 2003 warned BHRT about a violation of Article 1.2 ("Decency and civility") of the Broadcasting Code of Practices.¹²⁸ According to the RAK report,

On 13 August 2003, RAK received a formal complaint related to central news programme 'Dnevnik' of TV BH1, broadcast by PBS on 12 August 2003. [...] Within the central news programme, the station has broadcast a

¹²³ PBS Law 2002, art. 6.

¹²⁴ PBS Law 2002, art. 63.

¹²⁵ Draft System Law 2004, art. 7.

¹²⁶ PBS Law 2002, art. 10.

¹²⁷ RAK, *Report on Breaches 2003*, p. 14.

¹²⁸ RAK, *Report on Breaches 2003*, pp. 12–14.

report on the violent death of Mrs. Safija Mašić. In this report, a direct close footage of the mutilated and completely naked body of Mrs. Mašić has been shown.¹²⁹

It is important to note that one of the key innovations of the draft System Law 2004 is a much stronger role for the RAK in public service broadcasting. The RAK sets limits on advertising and awards licences to public broadcasters. The public broadcasters are restored to the jurisdiction of the RAK and obliged to comply fully with rules and regulations and all relevant decisions of the RAK.

4.5 Programme framework

The programming of the public broadcasters is regulated by their respective Laws, as well as by the obligations stemming from RAK Rule 01/1999 on the Definition and obligation of public RTV broadcasting, as amended in 2003.¹³⁰

Article 20 of the PBS Law 2002 provides the key programming principles for public broadcasters:

1. The public broadcasters' programming shall serve the public interest and shall be in accordance with professional standards and the rules and regulations of RAK. The public broadcasters shall be obliged to ensure diverse and balanced radio and television programmes that meet high standards of ethics and quality, that show respect for human life, dignity and the physical integrity of persons, and that foster democratic freedoms, social justice and international understanding and peace.
2. The public broadcasters' programming shall include information, culture, education and entertainment.
3. The programmes of the public broadcasters shall take into account national, regional, traditional, religious, cultural, linguistic and other specific features of the constituent peoples and all citizens of Bosnia and Herzegovina. The programmes of the public broadcasters shall also serve cultural and other needs of national minorities in Bosnia and Herzegovina.
4. The public broadcasters shall produce and edit programmes in accordance with the highest professional criteria and with respect for artistic and creative licence, independent of the opinions of governmental bodies, political parties and/or other interested groups.
5. The public broadcasters shall have the right to broadcast sessions or parts of sessions of the parliament, i.e., to inform the public on parliamentary activities in any suitable

¹²⁹ RAK, *Report on Breaches 2003*, p. 14.

¹³⁰ RAK Rule No. 01/1999 on the Definition and obligation of public RTV broadcasting, as amended on 22 September 2003 (published on 13 November 2003).

manner, in accordance with its editorial guidelines. For that purpose, the public broadcasters shall have free access to the sessions of parliament.

In order to realise these principles, the public broadcasters are obliged to provide truthful, complete, impartial and timely information on all relevant events in the country and abroad. Public broadcasters must also assist open and free discussion of issues of public interest, and to respect and promote the pluralism of ideas. All political, economic, educational, scientific, religious, cultural, and other issues, should be treated impartially in order to enable the equal presentation of different viewpoints. Additionally, public broadcasters should provide unbiased, independent and correct news, taking care to examine with reasonable care, according to the circumstances, the content, origin and truthfulness of news reports. Commentary must be clearly distinguished from news.¹³¹

According to the official Report on the operations of BHRT for 2004,¹³² between 13 August¹³³ and 31 December 2004, BHT broadcast a total of 102,409 minutes of programming (around 12 hours per day). Of this total, its own production was around 33 per cent, independent production was 4 per cent, and programmes taken from entity broadcasters formed 1.5 per cent. Within its own production, some 70 per cent were premieres, dominated by informative (26 per cent) and sports (22 per cent) programmes. Considering the genres and types of BHT programming in total, as a result of the broadcasts of the Olympic Games from Athens, the main strand was sports (30 per cent), followed by informative content (19.5 per cent), films (17 per cent), documentaries (8.5 per cent), entertainment serials and “collage” entertainment (5 per cent each), and music programming (2 per cent).

During 2004, RTRS broadcast in total 6.942 hours and 48 minutes of programming, of which 56 per cent was its own production, 5.2 per cent was produced by BHT and 38.8 per cent was foreign production (obtained through purchase, exchange or donations). During 2004, RTRS broadcast a daily average of 19 hours and 12 minutes. Table 7 shows the breakdown by types of programming.

¹³¹ PBS Law, art. 21.

¹³² BHRT Management, General Director, (*Izveštaj o radu i poslovanju Javnog Radiotelevizijskog Servisa Bosne i Hercegovine za 2004. Godinu*), (*Report on activity and business of JRTS BiH in 2004*), Sarajevo, April 2005), available at <http://www.pbsbih.ba/onama/izvjestaj2004.html> (accessed 26 June 2005).

¹³³ BHT started broadcasting on its own frequency on 13 August 2004.

Table 7. RTRS programming – breakdown by genre (2004)

Programme strand	Minutes	Share of total (per cent)
Informative	116,082	27.8
Cultural and educational	9,949	2.4
Youth	5,609	1.4
Children's	15,137	3.6
Religious	4,763	1.2
Musical	34,116	8.2
Entertainment	28,697	6.9
Sports	32,491	7.8
Advertising	9,395	2.3
Documentary	15,610	3.7
Other	13,350	3.2
Films	131,369	31.5
Total	416,568	100

Source: RTRS¹³⁴

4.5.1 Programming restrictions

The PBS Law 2002 also imposes certain programming restrictions on public broadcasters. They cannot broadcast any material which incites national, religious or racial hatred, intolerance or discrimination against individuals or groups, or that could incite violence, disorder, rioting or criminal activity. They must respect general community standards of decency and civility in programming content and scheduling, especially taking care to protect the psychological and physical development of children.¹³⁵

The draft System Law 2004 lists some additional restrictions, such as the restriction on broadcasting pornography, and on encouraging citizens and especially children and youth to smoke cigarettes, drink alcohol and use drugs.

4.5.2 Programme quotas

According to Article 23 of the PBS Law 2002, and in accordance with European standards, most of the public broadcasters' audiovisual output should be of European origin.¹³⁶ Also, at least 40 per cent of broadcast time should be reserved for domestically produced programmes across all genres, excluding news and sports. At

¹³⁴ RTRS, *Programme Data for 2004*, data from the RTRS website, available at <http://www.rtrs.tv/kompanija/statistika.php> (accessed 26 June 2005)

¹³⁵ PBS Law 2002, art. 22.

¹³⁶ The law specifies no percentage for the required quantity of European content.

least 10 per cent of broadcast time – apart from news and sports programmes and commercials – should be acquired from independent producers and/or commercial broadcasters. Rather than explicit language and ethnic content quotas, the law states (in Article 20) that,

The programmes of the public broadcasters shall take into account national, regional, traditional, religious, cultural, linguistic and other specific features of the constituent peoples and all citizens of Bosnia and Herzegovina. The programmes of the public broadcasters shall also serve cultural and other needs of national minorities in Bosnia and Herzegovina.

4.6 The Sustainability and Future of Public Service Broadcasting

The question remains: where is public service broadcasting in BiH going, and how will it get there? In 2005, the basic legislative framework for the public service broadcasting system was not yet in place. Even the limited progress made to date would not have been achieved without OHR and EU pressure and decisions (see section 6 for further details). Local authorities have not adopted a single piece of legislation on public service broadcasting at the entity and State levels. All such decisions were made and imposed by OHR.

Participants at the OSI roundtable in Sarajevo expressed doubts as to whether the model of three broadcasters plus a corporation could ever be economically sustainable.¹³⁷ Put simply, the licence fee cannot possibly cover the costs of three broadcasters. Moreover, even if the political will were found to integrate the three public service broadcasters into one framework, in practice they would most likely operate as separate organisations with separate editorial policies – in effect, as separate companies, each with its own programming editors, financial sectors, legal services, and so forth.¹³⁸

A rational and sustainable public service broadcasting system for BiH requires a single company, one legal entity, with multiple channels. As long as there are three separate companies with separate laws for each entity broadcaster, plus another for the State-wide broadcaster, true public service broadcasting will hardly ever happen, especially bearing in mind that the political structures in BiH have yet to understand the very concept of public service broadcasting, let alone accept it.¹³⁹ Three separate broadcasting companies will pursue separate and indeed competitive editorial policies.

The basic problem is that the Public Service Broadcasting System in BiH, as constructed by the international community, is too expensive and unsustainable. Nowhere in the world are there three [public service] radio-television networks. The RTV company in Croatia, for example, has two

¹³⁷ OSI roundtable comment.

¹³⁸ OSI roundtable comment.

¹³⁹ OSI roundtable comment.

channels, and we have three. There is not enough money for this. As long as this lasts, we will have problems and will struggle to survive. The best solution would be to terminate entity televisions and create one normal TV on the BiH level.¹⁴⁰

Additionally, the complex structure of a public service broadcasting system with three broadcasters (each with its own programme strands) and a Corporation that owns all the equipment, makes the day-to-day operation of each broadcaster very complicated.

It is also crucial to emphasise that, in the given circumstances, three existing public service broadcasters (RTFBiH, RTRS and BHRT) function as competitors and not as complementary segments of an inclusive public service broadcasting system. For example, whereas the three public broadcasters each have their own morning programming, the commercial Pink BH uses its studios in Banja Luka, Sarajevo, Podgorica and Belgrade to produce one common morning programme. As a result, all three public broadcasters are losing their battle with more flexible and streamlined commercial networks. Media market research data over the last two years show a steady and rapid migration of viewers from public to commercial TV channels, with market share on the State level shrinking from 37.9 per cent in 2002 to 31.8 per cent in 2004 (see Table 3).¹⁴¹

In a nutshell, the existing solution for public broadcasters – who have no mutual cooperation but act as fierce competitors – is simply unsustainable and, from the taxpayers' perspective, quite irrational.

The situation is further worsened as a consequence of still unresolved problem of oversaffing. There are simply too many employees within three public broadcasters, and those need to be cut down to a reasonable size. The problem is that managers of public broadcasters still do not want to actually do anything about it.

BiH needs to establish a minimum acceptable market share for public broadcasters.¹⁴² Without a benchmark of this kind, it will be impossible to judge whether or not these programmes and organisations justify the use of tax revenue. If the current trend continues, their joint market share on the State level will soon fall below 20 per cent, in which case they will not be able to fulfill their public service function. Moreover, their current market share depends on their populist programming in commercial formats (*Big Brother*, Karaoke Show, sports, and soaps), and not on their public service content. The situation today, where the public service broadcasters act as commercial stations, is a result of the fact that the current system cannot be sustained through the licence fee. As a consequence, the PSBs turn to commercial formats and lack money to invest in

¹⁴⁰ Jasmin Durakovic, Director of Federal TV, quoted in: "Za proizvodnju programa FTV potrosila sest miliona, a RTRS 299.000 KM", ("FTV spent KM 6 million on programme production, and RTRS spent KM 299,000"), in *Dnevni avaz*, 26 February 2005.

¹⁴¹ MIB, *TV Audience Measurement: 2002–2004*.

¹⁴² OSI roundtable comment.

high-quality public service programming. Hence the existing programmes that should be of a public service character are of low quality and reach small audiences. In this way, the true function and purpose of public service broadcasting is undermined by their expensive structure, and their failure to cooperate.

Finally, after much delay, the amended Law on the Public Broadcasting System went to parliamentary procedure in May 2005. The Council of Ministers has said the amendments are in accordance with European standards in public broadcasting. Nevertheless, HDZ and representatives of other Croat parties proposed further amendments to the draft System Law 2004, asking for either of two solutions:

- creation of three State-wide ethno-national channels; or
- creation of the second channel within the RTFBiH, in the Croatian language.

Since these amendments were not accepted, the principal Bosnian Croat party, the HDZ, opposed the new draft System Law 2004. The law was actually adopted by non-Croat parties in the House of Representatives in the first half of 2005, with a majority vote. Nevertheless, the law was stopped at the House of Peoples, where the HDZ invoked the “vital interest” clause in the Constitution, and the decision was referred to the Constitutional Court.¹⁴³ On 23 July 2005, the Constitutional Court ruled that the proposed law does not endanger the vital interest of Croats. This means that the law is now back in regular parliamentary procedures and will be probably adopted within the next two months.¹⁴⁴

The HDZ put forward such amendments in spite of the clear message from the Peace Implementation Council (PIC):

The Steering Board expressed concern that the passage of the BiH Public Broadcasting System Law has been compromised, largely due to amendments tabled by the HDZ. Delay in enacting this law, one of the 16 Feasibility Study requirements, will have an adverse impact on BiH’s chances of launching Stabilisation and Association negotiations and on planned EC assistance for the public broadcasting service in BiH and will undermine the current reorganisation of the system. The Steering Board reiterated that Dayton makes it clear that BiH cannot have mono-linguistic PBS channels, which would only cement ethnic division and subject the public TV service to damaging political influence. It called on the BiH parties to respect Dayton and the [EU’s] Feasibility Study requirements and

¹⁴³ Article 3 (para. 3e) of the Constitution of BiH states that: “a proposed decision of the Parliamentary Assembly may be declared to be destructive of a vital interest of the Bosniak, Croat, or Serb people by a majority of, as appropriate, the Bosniak, Croat, or Serb delegates.”

¹⁴⁴ H. Orahovac, “Predloženi zakon o Javnom RTV sistemu ne ugrozava hrvatski nacionalni interes”, (“The proposed Law on Public Broadcasting System does not endanger the vital national interest of Croats”), in *Dnevni Avaz*, 24 July 2005, p. 4.

enact a law that respects the multi-cultural, professional and politically independent character of the public broadcasting system without delay.¹⁴⁵

According to Zdravko Savija, Advisor to the Minister of the Communication and Transport of BiH, the HDZ initiative is simply not acceptable since the PIC Steering Board was clear on the issue: BiH cannot have mono-lingual public service channels. Milan Trivic, the Director of BHT, has said that the HDZ's demand is incompatible with public service broadcasting, and should be unambiguously rejected by the international community.¹⁴⁶

Moreover, the draft System Law 2004 clearly offers guarantees to all three constituent peoples (Croats, Bosniaks and Serbs) to have equal representation within the Public Broadcasting System of BiH and its four components: the Corporation, BHRT, RTF BiH and RTRS. Hence, it is premature to block the law without giving it chance to go into implementation phase, says Savija. The law requires from public broadcasters to equally represent all three constituent people in respect to language, staffing and programming.

Two other amendments to the law were, however, passed. One established the Corporation in such a way as to have three regional production centers, in Sarajevo, Banja Luka and Mostar (the earlier version had only Sarajevo and Banja Luka), thus creating preconditions for more equal regional representation of staff and coverage. The second amendment requires the BHRT to have equal proportions of programming produced in all three regional production centres. These amendments were primarily adopted in order to offer a compromise solution to the HDZ requests, and to ensure equal representation of Croats throughout the public service broadcasting system.¹⁴⁷

Savija insists that the law provides all mechanisms to guarantee the protection of the national interests of all three constituent people and was endorsed by all relevant local and international institutions and organisations.¹⁴⁸

While the current version of the law mentions no Croatian-language television channel, it clearly opens up a legal space for a second channel in the Federation. Consequently, the only thing that is now clear is that there will be a State-wide BHT channel. In sum, the new law may not after all serve the essential purpose of clarifying and assuring the shape of a viable public service broadcasting system, especially when it comes to organisational issues, cooperation among its three broadcasting components, and funding.

¹⁴⁵ Communiqué by the PIC Steering Board, Brussels, PIC SB Political Directors, 7 April 2005, available at http://www.ohr.int/pic/default.asp?content_id=34456 (accessed 15 May 2005).

¹⁴⁶ Interview with Milan Trivic, Director of BHT 1, The Hague, 16 June 2005.

¹⁴⁷ Interview with Zdravko Savija, Advisor to the Minister of the Communication and Transport of BiH, Sarajevo, 24 May 2005.

¹⁴⁸ i.e. The Council of Ministers, the Ministry of Communication and Transport, the Directorate for the European Integrations of the Council of Ministers, the Ministry of Justice, the Office of the High Representative, the European Commission and the Council of Europe.

5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING

All in all, the commercial broadcasting sector is still underdeveloped and overcrowded. An unfeasibly high number of outlets compete for limited advertising revenues. Many outlets still depend on foreign donations and State subsidies. Inefficient legislative and regulatory mechanisms, as well as the strong administrative barriers that hamper business, deter foreign investment in the media, as in other sectors. In such a situation, the strong competition from public broadcasters is another factor that negatively, although not decisively, influences the development of the commercial broadcasters. The result is that no outlet has been able to develop to the point that it could dominate its segment of the market.

5.1 Public service obligations for commercial broadcasters

The Broadcasting Code of Practice, which became effective on 1 August 1998, sets out the basic principles of broadcasting in BiH, with a focus on programming. It defines key standards regarding decency and civility, religious coverage, fair and impartial programming, political advertising, false and deceptive materials, right of reply, and issues of access to information and freedom to publish. However, it provides no rules or requirements about public service obligations for commercial broadcasters.

The licence for terrestrial broadcasting in BiH as issued by the RAK to any single broadcaster with operations in the country defines the key elements and requirements for commercial broadcasters in respect of programming content. The programme segments are specified under Special Terms and Conditions of the Licence within which the RAK can set out explicit public service broadcasting obligations to provide an adequate service for the population in the area concerned. The licence is given for broadcasting the following programme segments: news, education and entertainment. Applicants for a licence submit a specific programme schedule. If a licensee wants to change the programme by more than 20 per cent of what is defined in Special Terms and Conditions, he or she has to obtain written permission from the RAK. The RAK reserves the right not to approve the change in programming if it decides that the station would then depart from the output for which it received its original licence.

Private broadcasters are not required to comply with any quota regarding the language of minority groups or any other standards.

5.2 Commercial television ownership

BiH has only recently gained clear regulation preventing concentration of ownership in the media market. The Rule on Media Concentration and Cross Ownership was

applied by the RAK Council on 1 April 2004,¹⁴⁹ and has become an integral part of the Law on Communications. These rules are seen as necessary for promoting competition and diversity, ensuring pluralism of content by requiring pluralism of ownership.

The Rule on Media Concentration and Cross Ownership treats three key areas:

- multiple ownership;
- cross-media ownership;
- radio and television licence transferability.

In the first place, the Rule prevents multiple ownership in cases where television or radio stations cover the same area. The RAK can grant exceptions to this on a case-by-case basis, such as when this is required by certain technical standards or international norms but thus far it has not done so. Second, the Rule only allows cross-ownership of print and broadcasting outlets when “a physical or legal entity that owns print media can own one broadcast media [either television or radio] at the same time.” In other words, the Rule prohibits cross-ownership of print and broadcasting outlets with one exception: print proprietors are allowed to own one television or radio station. A similar limitation pertains to radio and television cross-ownership, which is allowed on condition that “one physical or legal entity can own one radio and one television outlet for the population ranges it covers.”¹⁵⁰ Finally, the Rule allows for the radio and television transferability of broadcast licences in accordance with its other provisions.

Apart from this Rule, general issues of market concentration and competition are regulated by the Law on Competition in BiH,¹⁵¹ adopted in December 2001. The Competition Law provided for the establishment of a Competition Council as an independent body at the State level, and an Office of Competition and Consumer Protection under the ministers responsible for trade in each entity. This law, like others, has not yet been implemented: neither the Competition Council nor the related units at the entity level have yet been operational.

5.2.1 Transparency of ownership

For the purpose of guaranteeing transparency of ownership, in accordance with the rules and regulations regarding the issuing of long-term licences, broadcasters are required to report to the RAK any change in ownership structure that exceeds 10 per cent. Additionally, the RAK keeps its own public register of broadcasters, including court registration documents, ownership information, business plans and commercial contracts. Also, entity and cantonal laws on information – such as laws on media

¹⁴⁹ RAK Rule No. 21/2003.

¹⁵⁰ Interview with Zdravko Savija, 24 May 2005.

¹⁵¹ Law on Competition in BiH (hereafter, The Competition Law).

within the Federation and the Republika Srpska – normally require media owners and publishers to list their outlets in the Media Register, detailing the ownership structure, sources of financing, and other relevant information as presented in the Court Register of Companies on the respective State/administrative level. In that context, the media publishing company is normally obliged to report any changes of information provided to the Media Register. For example, the Law on Media of the Sarajevo Canton requires publishers to report any such change within 15 days of the change.¹⁵² Also, the Laws on Commercial Enterprises of the Federation and of the Republika Srpska require each company to be registered in the Court Register at the relevant Court. All information in the RAK Register and Court Registers are open to the public.¹⁵³

Thus, transparency of ownership is formally guaranteed by various laws. Yet, since such information is primarily stored in hard-copy and is not available in a central electronic database, any serious search for information on ownership or on complex relations between companies on several levels is time-consuming and costly. This has served to soften the actual impact of transparency legislation. The example of speculation about the OBN ownership structure is a case in point (see section 2.3).

5.2.2 Media concentration and cross-ownership

A joint conference of the Council of Europe and the RAK in early 2003 concluded that “there are currently no major concentrations of the media in BiH”.¹⁵⁴ This is still the case. In 2004, no cases of significant media concentration and cross-ownership threatened fair market competition and media pluralism in BiH.

This situation is the result of an extremely fragmented media market, with a large number of outlets and very few strong, established companies that could attempt to dominate the market. However, the process of consolidation has started, with the Avaz Publishing Company having a key role in the print sector, and OBN, Pink BH and Mreza Plus being potential market leaders in the television sector. NTV Hayat and ATV seem to have the potential to develop into important players.

5.3 Programme commitments and programme guidelines

The Broadcasting Code of Practices also regulates programmes’ compliance with accepted standards of civility and respect for ethnic, cultural and religious diversity. On the basis of any of the available indicators – whether complaints from third parties or

¹⁵² Law on Media, *Official Gazette of Sarajevo Canton*, Yr. 3, No. 3, 23 July 1998, Sarajevo, art. 15.

¹⁵³ This is precisely stated in the Laws on Commercial Enterprises of both entities, but it also results from the Freedom of Access to Information Act, adopted at the State level in November 2000, in the Republika Srpska a year later, and in the Federation by February 2002. This Act provides that all information available at government and public institutions is available to citizens, except information that had previously been classified as a State secret.

¹⁵⁴ RAK, *The Future of Broadcasting in B&H*.

its own monitoring of programmes – the RAK can punish broadcasters for non-compliance. Broadcasters are strictly prohibited from broadcasting any material which:

- carries a clear and immediate risk of inciting ethnic or religious hatred among the communities of Bosnia and Herzegovina, or which by any reasonable judgement would incite to violence, disorder or rioting, or which could encourage crime or criminal activities;
- carries a clear and immediate risk of causing public harm: such harm being defined as death, injury, damage to property or other violence, or the diversion of police, medical services or other forces of public order from their normal duties.

At least 75 minutes of the television stations' total daily output must be in-house, whereas at least 30 per cent of radio stations' daily output must be self-produced. All broadcasters are obliged to respect copyright. This means that a broadcaster must have a legal contract with the owner before broadcasting copyrighted material.

According to the licence provisions, broadcasters must ensure that advertising and sponsorship respect the Agency's Rule on Advertising and Sponsorship Code of Practice for radio and television.¹⁵⁵ This Code of Practice requires advertising to be legal, decent, honest and truthful, and distinguishable from other programmes.¹⁵⁶ The Code states that "the person or organisation placing an advertisement may not influence the programme concept, content or editorial policy of the broadcaster". The Advertising Code also contains provisions regulating taste and offence, racial and gender discrimination, and pornography.¹⁵⁷

As shown earlier in the section on the implementation of RAK decisions, the provisions outlined in RAK rules and regulations are efficiently implemented, and this also relates to the programming guidelines for commercial broadcasters.

6. EUROPEAN REGULATION

In 2000, an EU "Road Map" identified 18 initial steps to be taken by BiH to prepare for a "Feasibility Study on opening Negotiations on a Stabilisation and Association Agreement".¹⁵⁸ The European Commission's study of November 2003 "investigates BiH's current situation, identifies the requirements inherent in a Stabilisation and

¹⁵⁵ Licence for Terrestrial Broadcast of Radio/TV Programme Pursuant to Article 3.3 (a) of the Law on Communications of Bosnia and Herzegovina, *Official Gazette BiH*, No. 33/02, available on the RAK website at <http://www.rak.ba/en/broadcast/?cid=3065> (accessed 5 September 2004).

¹⁵⁶ IMC, *Advertising and Sponsorship Code of Practice for Radio and Television*, adopted 9 March 2000.

¹⁵⁷ IMC, *Advertising and Sponsorship Code of Practice for Radio and Television*, adopted 9 March 2000.

¹⁵⁸ European Commission, *Report on SAA*, p. 5.

Association Agreement (SAA) and judges whether BiH has progressed sufficiently to allow it to negotiate meaningfully and subsequently implement successfully such an agreement.¹⁵⁹

The broadcast sector was assessed as part of this appraisal. The Commission found that BiH had adhered to the provisions of the Council of Europe's Convention on Transfrontier Television (ECTT).¹⁶⁰ BiH ratified the Convention on 5 January 2005 and it entered into force with respect to BiH on 1 May 2005.¹⁶¹ The joint conference of the Council of Europe and the RAK in 2003, on "BiH Implementation of Council of Europe Standards in the Broadcasting Field", noted that ratification would make the Convention directly applicable as primary legislation in BiH. Namely,

there is already adequate secondary legislation in the broadcasting field in BiH, in the form of RAK rules and regulations. Therefore, in case of ratification of the convention, only minor supplements to existing regulations would be required to meet the obligations stemming from the convention. In view of the rapid changes that are taking place in the broadcasting sector, the advantages of secondary legislation are evident, since it can easily respond to such changes in the sector, as compared to the lengthy and complex process of amending primary legislation.¹⁶²

Although not an EU member State, BiH has also accepted the need to comply with the EU's TWF Directive.^{163 164}

Concerning regulatory bodies, the European Commission assesses BiH as being relatively advanced. However, although the RAK is financially and organisationally

¹⁵⁹ European Commission, *Report on SAA*, p. 5.

¹⁶⁰ Council of Europe, European Convention on Transfrontier Television, 5 May 1989, amended according to the provisions of the Protocol (E.T.S. No. 141) of the Council of Europe of 9 September 1998, which entered into force on 1 March 2002, available at <http://conventions.coe.int/treaty/en/Treaties/Html/132.htm> (accessed 30 June 2005).

¹⁶¹ According to the Council of Europe Media Division website, available at http://www.coe.int/T/E/Human_Rights/media/ (accessed February 2005).

¹⁶² Council of Europe Media /RAK, Conference on "B&H Implementation of Council of Europe's Standards in the Broadcasting Field", highlights available on the RAK website at <http://www.rak.ba/en/broadcast/reports/default.aspx?cid=2296> (accessed 30 June 2005)

¹⁶³ European Commission, *Report on SAA*, p. 35.

¹⁶⁴ EU "Television without Frontiers" Directive: Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Television without Frontiers Directive), OJ L 298, 17 October 1989, as amended by European Parliament Directive 97/36/EC of June 1997, OJ L 202 60, 30 July 1997, consolidated text available on the European Commission website at http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf (accessed 30 June 2005), (hereafter, TWF Directive).

distinct from the Ministry of Communications, the European Commission warns that BiH needs to ensure that the RAK remains independent.¹⁶⁵

The European Commission report points to the two crucial concerns regarding broadcasting sector compliance with EU provisions:¹⁶⁶

- intellectual rights are governed by a BiH Law on Copyrights and Related Rights which was drafted in accordance with European practice, but enforcement remains poor; although the public broadcasting system respects the provisions of the law, the same cannot be said for all commercial broadcasters;
- as regards the creation of the sustainable public broadcasting service itself, the viability of PBS remains threatened by financial weakness and an inadequate legislative basis; hence, BiH is expected to accompany any legislative changes with significant restructuring of the public broadcasting system PBS as a matter of urgency if it is to ensure the survival of the public broadcasting system.

Regarding copyright, no regulatory body could have the capacity to monitor all 180 broadcasters for 24 hours a day and ensure their full respect of copyright. The RAK reacts ad hoc to complaints from interested parties (e.g. copyright owners), and is able to enforce its decisions.

BiH is expected to take steps to promote the European audiovisual industry and encourage co-production in cinema and television. Additionally, BiH is expected to gradually align its policies and legislation with those of the EU, especially over cross-border broadcasting and acquiring intellectual property rights for programmes and broadcasts by satellite or cable.¹⁶⁷

A joint expertise mission of the Council of Europe and the European Commission was organised in Sarajevo on 3 June 2004, providing “Comments on the draft Law on the Public Service Broadcasting System and on the draft Law on Public Service Broadcasting of Bosnia and Herzegovina”.¹⁶⁸ The draft laws were examined for compliance with European standards, such as those deriving from the European Convention on Human Rights¹⁶⁹ (ECHR) and European Union member States’

¹⁶⁵ European Commission, *Report on SAA*, p. 35.

¹⁶⁶ Not a direct citation. European Commission, *Report on SAA*, p. 35.

¹⁶⁷ European Commission, *Report on SAA*, p. 35.

¹⁶⁸ Council of Europe, Comments on the draft Law on the public service broadcasting system and on the draft Law on public service broadcasting of Bosnia and Herzegovina, ATCM(2004)020 Council of Europe, 9 June 2004, (hereafter, Council of Europe Comments on the draft Law on the Public Broadcasting System).

¹⁶⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 3 September 1953, E.T.S. 005, available on the COE website at <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm> (accessed 22 June 2004).

laws.¹⁷⁰ They were also analysed from the perspective of the two main regulatory instruments in the audiovisual sector at the European level: the ECTT and the TWF Directive. According to the expert mission,

In order to be able to ratify the ECTT, BiH is bound to incorporate and apply the provisions set out in this instrument. Alignment of BiH broadcasting legislation with the “Television without Frontiers” Directive should be the ultimate objective of BiH in the perspective of its accession to the European Union. The experts’ analysis was restricted to these two specific areas of regulation.¹⁷¹

The experts found that the drafts conformed to the relevant European standards.

Particular emphasis was placed on the need for consistency between the Law on the Public Broadcasting System of BiH (draft System Law 2004) and Law on Public Service Broadcasting of BiH (draft Law on BHRT) (see section 4.6). Unfortunately, the scope of the review excluded discussion of the all-important political and economic factors that would make the envisaged system unsustainable.

The legal experts of the Directorate for European Integration that functions within the Council of Ministers of BiH have also confirmed that the last version of the draft System Law from December 2005 is predominantly in accordance with the *Acquis communautaire*.¹⁷²

7. THE IMPACT OF NEW TECHNOLOGIES AND SERVICES

According to the Working Group on Digital Terrestrial Television (DTT) within the European Platform of Regulatory Authorities (EPRA), BiH belongs to a group of countries that significantly lag behind in introducing DTT.¹⁷³ It has not yet launched a commercial DTT platform; its DTT penetration is still at zero per cent; it has not yet drafted any regulation or public policy on DTT; and it has not announced a switchover date for DTT.

¹⁷⁰ This refers to the Draft Law on the Public Broadcasting System and the Draft Law on Public Service Broadcasting of BiH, which are both currently in the process of public debate. These laws are discussed in more detail in Section 4 of this report.

¹⁷¹ Council of Europe, *Comments on the draft Law on the Public Broadcasting System*, p. 3.

¹⁷² “Mišljenje o usaglašenosti Nacrta Zakona o Javnom RTV sistemu Bosne i Hercegovine”, (“Opinion on the consistency of the Draft Law on Public Broadcasting System of BiH”), Document No.: 03/A-02-SM-1682/04, Direkcija za evropske integracije/Directorate for European Integration, Vijeće ministara/Council of Ministers, 10 January 2005.

¹⁷³ European Platform of Regulatory Authorities (EPRA), 2004 (all data as of 31 December 2003). The other countries in this group are Israel, Latvia, Malta, Montenegro, Poland, Portugal, the Republic of Macedonia, Romania, and Slovenia.

According to the EPRA study, DTT seems to develop more rapidly in countries where multi-channel television is already established. Increased competition on the television market, with higher cable and satellite penetration, leads to more rapid introduction of DTT. In this respect, during the last several years BiH experienced rapid proliferation of cable and satellite television, with even more pressing competition of broadcasters from neighbouring countries (Serbia and Croatia). Namely, the last few years have seen the rapid expansion of cable television, which is available in more and more urban areas. There are 65 licensed cable network operators in BiH.¹⁷⁴ This means that competition has reached the stage where it already puts strong pressure on local broadcasters, both public and commercial, to accelerate their introduction of DTT.

The public service broadcaster is normally recognised as a key player in the roll-out of DTT. The pre-conditions for such a role result from a regulatory approach that grants technical (bandwidth) and financial resources to public service broadcasting and the proactive approach of the public service broadcaster itself in developing new channels and upgrading its network. In this context, as in others, the case of BiH is specific. Despite the fact that – or indeed because – the country has no financial resources available for supporting DTT, a digital satellite platform has been purchased for public service broadcasting through the European Commission’s CARDS grant programme. However, the public broadcasters do not at present supply any services on these new platforms.

There is no evidence of a serious action plan for switching from analogue to digital signal, and there has been no public debate whatsoever on the digitalisation of broadcasting and the overall introduction of new media technologies. Clearly, this situation is a consequence of two key characteristics of contemporary BiH: it has no regulatory framework for introducing DTT, and its public service broadcasting project has been in such turmoil for years that it has no capacity to engage in such a complex project and become a prime mover of the switchover process.

In the introduction of DTT, as in practically all aspects of broadcasting reform, the RAK will have to play a key role. Hence, the RAK has to intensify its activities, which are currently at the very early and low-intensity stage, and start working on the creation of public policy on DTT, and assist in drafting a regulatory framework for DTT. Also, when the stage of implementation comes, the RAK will have to play a key role in drafting and implementing licensing and frequency allocation procedures.

The data on Internet usage and access to personal computers (PCs) illustrate how far BiH lags behind in introducing new technologies. In 2002, only 13.6 per cent of the adult population had access to a PC at home, some 12.5 per cent had access to one at work, while an additional 9.6 per cent had access to a PC elsewhere. According to the same source, around 40 per cent of the adult population had a mobile phone in 2002.¹⁷⁵ Other sources claimed in 2003 that “in RS there are 20 fixed line and 19

¹⁷⁴ RAK Public Register, available at <http://www.rak.ba/en/telecom/db/?cid=1192> (accessed 5 September 2004). Data on the access to cable TV in BiH households proved impossible to obtain.

¹⁷⁵ MIB, *BH Media Market Monitor*.

mobile telephones per 100 inhabitants. In the Federation, the corresponding figures are 26 for the fixed network and 20 for mobiles.¹⁷⁶ Actually, in contrast to other communication and information technologies, fixed-phone penetration per household is thus rather high – above 95 per cent.¹⁷⁷

Internet access is still limited and estimates suggest that few citizens have direct access, though an increasing number has indirect access. There are 41 licensed Internet service providers (ISPs) in BiH.¹⁷⁸ According to Betts, “The Bosnian rate of Internet usage is far from impressive. Bosnia and Herzegovina is toward the very bottom of the rating list among transition countries, having left behind only Belarus, Macedonia and Moldova.”¹⁷⁹ According to the latest data, Internet providers in BiH provide their services to some 55,000 private users, around 32,000 businesses and approximately 3,000 users in the educational sector (primary and secondary schools and universities). The official data on Internet penetration per 100 citizens is between 1.5 and 2 per cent, with no verified data about the increase rate.¹⁸⁰ A specific aspect of the current situation is the extremely low level of Internet use in public institutions and State administration. More sophisticated Internet-based services such as online banking; online shopping and e-business are still embryonic.¹⁸¹

Table 8. Digital divide indicators
– access to communication technology per household (2004)

	Access to communication technology – share of households in BiH (per cent)	
	Urban	Rural/Semi-rural
Television	97	89
Satellite Television	19	16
Radio	65	72
Computers	10	3
Phone	99	70-75
Internet	11	0.02

Source: UNDP¹⁸²

¹⁷⁶ European Commission, *Report on SAA*, p. 35.

¹⁷⁷ UNDP, *Building an Information Society for All*, p. 60.

¹⁷⁸ Source: RAK, Public Register, *Licensed ISP Providers*, available at <http://www.rak.ba/en/telecom/db/?cid=1191> (accessed 5 September 2004).

¹⁷⁹ David C. Betts, *Convergence and the Digital Divide: A Roadmap for B&H and SEE*, Media Online, 1 November 2001, available at <http://www.mediaonline.ba> (accessed 30 June 2005).

¹⁸⁰ Dunja Mijatović, “Digitalna podjeljenost – sadašnjost i budućnost”, (“Digital distribution – present and future”), in *Novi pogledi*, Vol. 1, No. III, summer 2004, p. 59, (hereafter, Mijatović, *Digital distribution*).

¹⁸¹ Mijatović, *Digital distribution*, p. 60.

¹⁸² UNDP, *Building an Information Society for All*, p. 85.

Three telecom companies operate in BiH: BH Telekom, based in Sarajevo largely operates in the Federation; Telekom Srpske, based in Banja Luka dominates in Republika Srpska; and HPT Mostar largely covers the same area as BH Telekom.¹⁸³ None of the three has undergone privatisation.

Huge investment is needed to bring telecom and broadcast infrastructure up to European standards: “some KM 2 billion (€1bn) would be needed to achieve these norms via conventional analogue means. By far the largest percentage of this money needs to be spent on providing services to the rural population.”¹⁸⁴ Even if these services are provided,

two other issues arise – the ability to pay and, once paid for, the ability to purchase/lease a PC upon which to display the information. These two issues are part of an information ‘vicious circle’. The inability of a given area to pay for a service at current prices, results in no roll-out of the service into that area.¹⁸⁵

8. CONCLUSIONS

The BiH broadcasting sector is ethnically segregated, oversaturated, complex, and financially poor. It is a puzzle how such a large number of outlets survive in such a limited and underdeveloped market. Market dynamics are not the only forces driving the broadcasting sector; donor funding and political subventions still do much to distort it. The multiplicity of outlets does not therefore reflect a vibrant market, with potential for development and capable of offering a diversity of voices and opinions. It is only a matter of time before the sector undergoes significant consolidation. When this happens, only few key players are likely to survive and develop.

The creation of the broadcasting regulatory framework has been a success story. Experience has shown that a robust but independent regulatory agency with extensive powers is the right way to regulate such a chaotic broadcasting sector as in postwar BiH.

Now that the RAK has been successfully transformed from an internationally sponsored agency into a fully local State one, it has entered a more stable period – its independence is no longer a burning issue. Relations with the Council of Ministers, as well as with other State institutions, have improved. Independence from political and

¹⁸³ The current legal framework for telecommunications is the Law on Communications (September 2003), which is compatible with European standards. There is an independent regulatory body, the RAK, and a State ministry dealing with communications (and transport) was established in 2003.

¹⁸⁴ David C. Betts, *Going Digital – Can South East Europe Show the Way to EU?*, 17 September 2001, available on Media Online at <http://www.mediaonline.ba> (accessed 30 June 2005), (hereafter, Betts, *Going Digital*).

¹⁸⁵ Betts, *Going Digital*.

other pressures is also safeguarded by the strong involvement of the European Commission and the Council of Europe in the daily affairs of BiH. However, civil society is still too weak to assume the role of watchdog.

The key process in the broadcasting sector is clearly the reform of the Public Broadcasters and the creation of a single Public Broadcasting System (JRTS_{BiH}) consisting of a State-wide public service broadcaster, BHRT, and two entity broadcasters, RTF_{BiH} and RTRS. The process of creating public service broadcasting is slow and painful, faced with constant obstacles and resistance from power centres whose interest is not to have one State-wide public service broadcasting system. The experience of recent years has confirmed that political elites still seek opportunities to regain control of formerly State-owned broadcasters. Consequently, progress has been very limited in comparison with the time and money invested. The BiH authorities are not up to the task of establishing public service broadcasting; they have not adopted a single piece of legislation on public broadcasting on entity and State level since 1995.

Media professionals and experts generally regard the solution put forward to establish a public broadcasting system out of four legal entities – three broadcasters and one “Joint Corporation” – as too complex, inefficient, and expensive. Moreover, the proposed formula for allocating licence fees and advertising income has the potential to further undermine the plan’s long-term sustainability.

In early 2004, regulation on concentration of media ownership was introduced, finally establishing a framework for promoting competition, diversity and pluralism of ownership in BiH. The Rule on Media Concentration and Cross Ownership regulates multiple ownership, cross-media ownership and radio and television licence transferability. However, since general issues of market concentration and competition are regulated by the Law on Competition in BiH – which has never actually been implemented – the effects of the RAK’s Rule on Media Concentration and Cross Ownership are limited, since the successful implementation of this rule hinges on the implementation of the Law on Competition. Enforcement of this piece of regulation is particularly difficult, due to the lack of a central State register of companies. Formally speaking, ownership transparency is covered by various laws, but the actual search for data is difficult, and the State has no appropriate or efficient mechanisms to control the nature of company ownership, including broadcasters.

EU accession is the agreed goal of BiH internal development as well as its foreign policy. This goal also sets the parameters for media development. The preparation for future EU candidacy affects the television industry and the regulatory treatment of television by ensuring that most of the relevant legislation complies with the key EU documents relating to the broadcasting sector. In essence, BiH adheres to the provisions of the Council of Europe’s Convention on Trans-frontier Television. Moreover, BiH also recognises the need to comply with the EU’s TWF Directive.

There is no serious national action plan for switching from analogue to digital signal, and there has been no public debate whatsoever on the digitalisation of broadcasting

and overall introduction of new media technologies. The key players – the State, the RAK and the public service broadcasters themselves – are still too passive when it comes to introducing new media technologies in BiH.

9. RECOMMENDATIONS

9.1 Policy

Broadcasting policy

1. All relevant players in the communications field – the RAK and individual broadcasters and their associations – should develop a strategy for Bosnia and Herzegovina (BiH) to ensure that its communications industries, including broadcasting, reach sustainability. In particular:
 - The strategy should focus on reducing the number of broadcasters, while stimulating the market environment.
 - Special attention should be given to balancing the market position of public broadcasters, on one side, and the commercial sector on the other, especially by gradually limiting the advertising revenues of the public broadcasters, as the licence fee collection system becomes more efficient.
2. The Council of Ministers and other relevant domestic and international players should lead the effort to develop sound public policy for the media and communications industry, with the ultimate goal of developing a strong and economically viable media sector. In particular, this would mean facilitating the work of Competition Councils at entity and State levels, in close cooperation with the RAK and broadcast associations, in order to eliminate the potential for monopolies and unfair competition.

Legislation

3. The Council of Ministers, and especially the Ministry of Communication, the State Parliament, RAK, OHR and EC, need to work more thoroughly on the new legislation for public broadcasters, creating a framework for truly sustainable public service broadcasting. In particular:
 - A consensus needs to be reached around a solution that would be both economically and organisationally viable and reasonable, but would also guarantee the equality of all three constituent peoples.
 - In the draft System Law 2004, special attention needs to be given to the formula for re-distributing licence fee and advertising revenue among the three broadcasters, given that these are three separate legal entities. The burden of funding BHRT should fall proportionally on both entities in

accordance with their population size. Arguably, advertising revenues should not be re-distributed at all but remain where they are generated, (i.e. be allocated to the broadcaster that has earned them), or at least should be re-distributed in a way that reflects the business success of each broadcaster.

Monitoring

4. The European Commission and the Office of the High Representative (OHR) should, until the final hand-over of sovereign power to the elected authorities in BiH, maintain pressure on, and closely monitor, the BiH authorities – especially the Council of Ministers of BiH, and the State and entity governments and parliaments – regarding legislative reforms, the creation of sustainable public service broadcasting, and defending the independence of the RAK.

Policy

5. International donors should consider supporting a BiH think-tank capable of delivering state-of-the-art policy research, in order to develop a media policy research and advocacy capacity within the media sector. The country urgently needs well-informed analysis and policy papers that could point a possible way out of the current crisis and set a course for the sound development of the media sector as a whole. Additionally, the advocacy capacity of associations of broadcasters and journalists should be improved by the transfer of know-how, training, and by funding policy-oriented initiatives of those associations.

9.2 Regulatory authorities

New media technologies

6. The Communications Regulatory Agency (RAK) should engage more intensively with the issue of new media technologies, as it is the only State agency and regulatory body with the capacity to push forward the debate on introducing new media technologies in BiH. In particular:
 - The first priority is to conduct a comprehensive survey of the current situation with regard to new media technologies in BiH, comparing it with other countries, and setting the agenda for policy development.
 - This should be followed by intensive advocacy, pushing for the more rapid introduction of policies to develop the information society in BiH, through publications, public debate, and contacts with relevant State institutions (ministries and parliaments) and international agencies and organisations (OHR, EC, UNDP).

- Pressure also needs to be placed on the public broadcasters, BHRT, RTRS and RTFBiH, so that they take a more pro-active role in the introduction of new media technologies.

9.3 Public and private broadcasters

Legislation

7. Private and public broadcasters should engage more pro-actively in the debate over the new draft Law on the Public Broadcasting Service (draft System Law 2004), by establishing a working group, facilitating public debate and offering their own proposals for a reasonable solution that would contribute to the development of a viable and sustainable media sector.

Privatisation

8. Private and public broadcasters should engage more intensively with the debate on privatising the remaining State-owned broadcasters at the local, regional and cantonal levels.

9.4 Public service television (BHT, FTV, RTRS)

Reforms

9. The public broadcasters should work to ensure that the process of creating a sustainable public broadcasting system is completed as soon as possible, through the adoption of sound legislation and the complete organisational reform of the existing public broadcasting networks into editorially independent broadcasters. In particular, the public broadcasters should be more involved in the introduction of new legislation, and the management should take the initiative and drive forward the process of internal reform and streamlining of the public broadcasters.

Privatisation

10. The local, cantonal and entity authorities, along with the agencies which manage the privatisation of State-owned companies, should start the process of privatising the State-owned broadcasters at the municipal and cantonal levels. The full transparency of this process must be guaranteed, for it will radically alter the media landscape of BiH.

9.5 Civil Society and the non-governmental sector

Journalists' Union

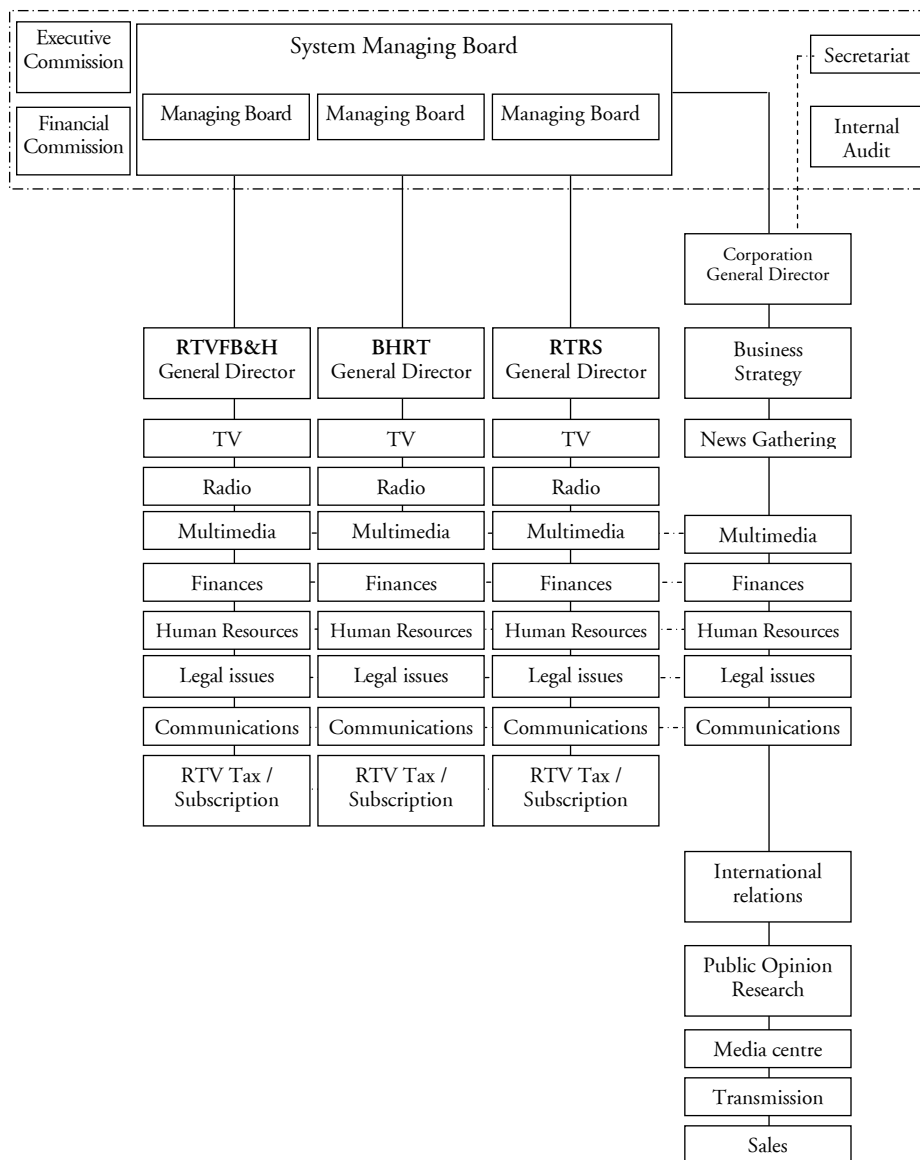
11. Journalists and their associations should work together towards establishing a State-wide journalists' union.

Public Debate

12. Civil society organisations, and especially NGOs active in the field of media and human rights, should encourage public debate on the development of the broadcasting sector, as well as on general issues of independence and professionalism of media across the country.
13. Civil society organisations – including, in particular Media Plan Institute, Media Centar Sarajevo and the Helsinki Committee for Human Rights in BiH – should undertake more coordinated initiatives in this area, for example through joint initiatives. There is also a need for a specialised media watch-dog organisation to be established, that would focus on issues of media independence, media professionalism and ethics, and also be active in safeguarding the basic preconditions of the independence of the RAK and the PSB System

ANNEX 1. Figure

Figure 3. Structure of the Public Broadcasting System in BiH – in accordance with the draft System Law 2004



ANNEX 2. List of legislation cited in the report

Official Gazette of BiH (*Službeni glasnik Bosne i Hercegovine*)

Official Gazette of the Federation of BiH (*Službene novine Federacije Bosne i Hercegovine*)

Official Gazette of Republika Srpska (*Službeni glasnik Republike Srpske*)

General broadcasting laws

Law on Communications of Bosnia and Herzegovina, *Official Gazette of BiH*, No. 33/02 of 12 November 2002. (*Law on Communications of BiH*). Available in English at <http://www.cra.ba/en/legal/?cid=2427> (accessed 30 June 2005)

Telecommunications Law of Bosnia and Herzegovina, *Official Gazette of BiH*, No. 10/99 of 29 June 1999. (*Telecommunications Law of BiH*). Available in English at http://www.ohr.int/ohr-dept/econ/utilities/telecom/default.asp?content_id=5385 (accessed 30 June 2005)

Public broadcasting

Draft Law on The Public Broadcasting System 2004 version of 15 December 2004 (several versions of the draft Law were obtained, among other sources from the OHR and from Ministry of Communications of BiH) (*Draft System Law 2004*)

Draft Law on Public Service Broadcasting of BiH (several versions of the draft Law were obtained in late 2004) (*Draft Law on BHRT*)

Law on the Basis of the Public Broadcasting System and on Public Service Broadcasting in Bosnia and Herzegovina (PBS Law 2002) *Official Gazette of BiH*, No. 29/02. Available in English at http://www.ohr.int/decisions/mediadec/default.asp?content_id=8445 (accessed 30 June 2005)

Law on the Radio-Television of the Federation of Bosnia & Herzegovina, *Official Gazette of FBiH*, No. 40/02. Available in English at http://www.ohr.int/decisions/mediadec/default.asp?content_id=8448 (accessed 30 June 2005)

Law on the Radio-Television of Republika Srpska, *Official Gazette of RS*, No. 22/03

Other laws

Law on Financing of State Institutions of BiH, *Official Gazette of BiH*, No. 61/04, 29 December 2004

Law on the Freedom of Access to Information, *Official Gazette of BiH*, No. 28/00, *Official Gazette of FbiH*, No. 32/01, *Official Gazette of RS*, No. 20/01

Law on Competition in BiH, *Official Gazette of BiH*, No. 31/01 (*The Competition Law*)

Law on Protection Against Defamation, *Official Gazette of RS*, No. 37/01, *Official Gazette of FBiH*, No. 31/01

OHR Decisions

NB. The text of all decisions of the High Representative can be accessed in English on the OHR website at <http://www.ohr.int/decisions/archive.asp>

High Representative Decision on Amending the Structure of Expenditures of the Communications Regulatory Agency for 2002, 2 December 2002.

High Representative Decision Imposing the Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia and Herzegovina, 23 May 2002.

High Representative Decision Imposing the Law on Radio-Television of Republika Srpska, 23 May 2002.

High Representative Decision Imposing the Law on Radio-Television of the Federation of Bosnia & Herzegovina, 23 May 2002.

High Representative Decision on the Liquidation Procedure to be Applied in Winding-up the Public Enterprise Radio and Television of Bosnia and Herzegovina, 23 May 2002

High Representative Decision on Combining the Competencies of the Independent Media Commission and the Telecommunications Regulatory Agency, thereby creating the Communications Regulatory Agency, 2 March 2001, *Official Gazette of BiH*, No. 8/01; *Official Gazette of the Federation of B&H*, No. 11/01; and *Official Gazette of RS*, No. 12/01.

High Representative Second Decision on restructuring the Public Broadcasting System in BiH, 23 October 2000.

High Representative Decisions amending the Law on Radio-Television of the RS, 1 September 1999.

High Representative Decisions on the restructuring of the Public Broadcasting System in BiH and on freedom of information and decriminalisation of libel and defamation, 30 July 1999.

High Representative Decision Imposing the Telecommunications Law of BiH, 11 September 1998, *Official Gazette of BiH*, No. 10/99.

High Representative Decision on the Establishment of the Independent Media Commission, 11 June 1998.

RAK Rules

NB. The text of RAK Rules can be accessed in English on the RAK website at <http://www.rak.ba/en/legal/rules-codes/broadcast/rules/>

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regulation, policy and independence
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List of Abbreviations

BNR	Bulgarian National Radio, <i>Българско национално радио</i> (БНР)
BNT	Bulgarian National Television, <i>Българска национална телевизия</i> (БНТ)
BTC	Bulgarian Telecommunications Company, <i>Българска телекомуникационна компания</i> (БТК)
bTV	Balkan News Corporation (бТВ)
CEM	Council for Electronic Media, <i>Съвет за електронни медии</i> (CEM)
CRC	Communications Regulation Commission, <i>Комисия за регулиране на съобщенията</i> (КРС)
NRTC	National Radio and Television Council, <i>Национален съвет за радио и телевизия</i> (НСРТ)
SAC	Supreme Administrative Court, <i>Върховен административен съд</i> (ВАС)
STC	State Telecommunications Committee, <i>Държавен комитет по далекосъобщенията</i> (ДКА)

1. EXECUTIVE SUMMARY

Over the past 15 years, during its transition from an authoritarian Communist State to a pluralist society with a market economy, Bulgaria has made significant progress in creating a new media environment with independent press and broadcasting. The print sector has passed from total State control to full deregulation. Although it is in some cases influenced by corporate and economic interests, the press is currently driven mainly by market mechanisms. In the electronic media sector, the appearance of commercial media has led to an astonishing number of outlets, thus stimulating market competition and pluralism of ideas.

From this perspective, it can be claimed that the media are increasingly able to play the role of an important pillar of democracy. Nonetheless, the broadcasting industry still faces a number of problems, in particular due to a regulatory framework that is flawed both in principle and, especially, in implementation. This has been reflected in the continuous attempts at political and, more recently, corporate economic interference with the independence of both public service and commercial outlets. The 2003 IREX Media Sustainability Index (MSI) showed beyond doubt that media freedom is being undermined by ongoing political and economic interference.

An overarching problem for the broadcasting sector as a whole is weaknesses in the main broadcasting law, the Law on Radio and Television, and the lack of its correct implementation in practice. Designed to guarantee pluralism, as well as to prevent external intervention (political or economic) in the electronic media, the Law on Radio and Television – adopted in 1998 and amended several times – forms the basis of a legislative framework that has facilitated the liberalisation of the media market in Bulgaria and the adoption of the European Union (EU) *Acquis communautaire*. However, it has been clear for some years that the regulatory system, of which this law is the keystone, cannot tackle the political and economic challenges to media independence.

The lack of proper implementation of the Law on Radio and Television – even with its flaws – casts doubt on the Government's will to grant real independence to both public service and commercial broadcasters. In particular, both Bulgarian National Television (BNT) and Bulgarian National Radio (BNR) are still financed directly from the State budget, rather than from an independent public Radio and Television Fund, as envisaged in the Law on Radio and Television. The Fund should have been partly financed from a licence fee collected as part of the household electricity bill, but no mechanism has been put forward for its collection. There is a lack of political will to implement the (potentially unpopular) new licence fee. The Government has also stated that certain governmental commitments to the IMF – agreements related to the functioning of a Currency Board as an IMF-prescribed tool to stabilise the economy – would in any case prevent its implementation. However, this situation is widely regarded as being intended to keep the public broadcasters dependent on political will.

The lack of independence of the regulatory authority and the poor implementation of the regulatory framework gives rise to a second main area of concern. Directly financed by the State budget, and composed only of members nominated by State authorities (Parliament and the President), the main regulatory authority, the Council for Electronic Media (CEM), has not provided broadcasters with the necessary guarantees for ensuring their independence from external interference. Instead, the CEM has often been used as a tool for bringing political, corporate or personal interests to bear on the electronic media.

Due to continuous political and corporate economic infighting for control of the regulatory system, the broadcast licensing process with respect to terrestrial broadcasters has been virtually paralysed. Although drafted two years ago, the “Strategy for the Development of the Broadcasting Sector” has not yet been discussed by Parliament – although it was specified in the Law on Radio and Television as an important prerequisite for improving licensing procedures. This delay has served to allow some 150 broadcasters to continue using temporary licences, without their being able to obtain a valid permanent licence, in accordance with the Radio and Television Law. This has a negative effect on overall media development, as all those who do broadcast on the basis of permanent licences regard the former as illegitimate.

With respect to public broadcasting, the management crisis at BNT from January to October 2004 revealed not only the management weaknesses, but also the lack of independence of the public broadcaster from economic and political interests. Imitating the entertainment formats of its commercial rivals, BNT has failed to establish a clear programming identity. Debates within the media community on the independence and identity of the public service broadcasters have shown that there is a consensus on the principles that should guide public service broadcasting, but not yet on how these principles should be made operational.

There is a lack of transparency of media ownership and capital in the commercial broadcasting sector, with no public register of ownership. The provisions on media ownership in the Law on Radio and Television – and also the Telecommunications Law and the Law for the Protection of Competition – aim to prevent broadcasters from monopolising or even dominating the market. In practice, however, there are no effective anti-monopoly regulatory mechanisms. Media ownership is often concealed in various ways behind ordinary shares in the company, which do not identify their owners, or offshore companies, in this way creating a non-transparent environment and enabling money with unclear origin to enter the broadcasting industry.

Bulgaria is set to join the EU in 2007, but as yet there has been incomplete compliance with European Standards in the audiovisual sector. Bulgarian media legislation has to a large extent been harmonised with European standards and obligations, although concrete steps are needed in order to harmonise the Telecommunications Law with the EU’s Regulatory Framework for Electronic Communications Networks and Services (2002). The Law on Radio and Television has been fully harmonised with the EU “Television

without Frontiers” (TWF) Directive, but a lot remains to be done with respect to its implementation in practice, particularly with respect to the licensing process.

Finally, the lack of clear official policies on modern technologies and digitalisation needs to be tackled as soon as possible. The lack of officially accepted strategies on new technologies and digitalisation seriously impedes the technical modernisation of BNT and BNR. Although planned to start in 2004, a pilot project to launch the first digital television broadcasts in Sofia has been delayed due to gaps in the Law on Radio and Television, which has not been harmonised with the Telecommunications Law, and also by the blockage of the licensing process.

2. CONTEXT

2.1 Background

Television in Bulgaria grew during the Cold War period into one of the most important tools of the one-party regime. Until 1990, Bulgarian National Television (BNT) was the only television broadcaster in the country, and was entirely controlled by the Communist Party. All the directors were political figures, connected in one way or another to the ruling elite. After 1989, the newly formed political parties wrestled for control of BNT, which remained the only terrestrial television broadcaster with national coverage until as late as 2000.

In the regulatory vacuum that lasted until the passage of the Law on Radio and Television, a large number of unlicensed cable television stations sprang up. Unlike cable stations in other countries, these semi-legal organisations were both distributing and producing programming. In this way, while the politicians were struggling for control over BNT, a vibrant, unregulated, often amateurish alternative television culture started developing in Bulgaria. At one point, Sofia had an estimated 300 separate local companies. Thanks to this boom in illegal cable stations, Bulgaria now has an extremely well-developed cable television system. Early on, several cable channels acquired national programming licences, and in many places the cable television stations are the only local media outlets of any importance. There are more than 100 cable television stations with local coverage – their number mushroomed during the last ten years. As of 31 December 2003, there were over one million cable television subscribers in Bulgaria. The cable infrastructure had almost reached 100 per cent of households in urban areas and 18 per cent in rural regions.¹

¹ Based on information received from 45 per cent of all licensed operators. Communications Regulation Commission (CRC), *Annual Report 2003*, 2004, available at <http://www.crc.bg/v2/eng/index.htm> (accessed 4 August 2005), (hereafter, CRC, *Annual Report 2003*).

Currently, there are three national terrestrial television operators. In addition to BNT, there are two commercial broadcasters – the Balkan News Corporation (bTV) and Nova TV, both owned by large foreign companies. There are presently over 250 commercial FM radio stations in Bulgaria.² However, only two operators have national coverage: the public broadcaster, Bulgarian National Radio (BNR), and the independent commercial station, Darik Radio.

2.2 Structure of the broadcasting sector

2.2.1 The television sector

Commercial outlets and generalist entertainment formats dominate the market. Bulgarian National Television (BNT) is the only public service broadcaster with competitive ratings. Currently, there are three national terrestrial television operators: BNT, plus two commercial operators, both owned by large foreign companies – the Balkan News Corporation (bTV) and Nova TV.

The monopoly of BNT in terrestrial television was broken in 1994 with the appearance of Nova TV, the first private television station. Nova TV was initially only allowed to broadcast in Sofia and the surrounding region. It was then owned by a Serbian businessman, Darko Taminjić, but the ownership structure changed several times over the following years. Due to the lack of effective media legislation, for over five years Nova TV operated without an official licence, using “temporary permits”.³ In 1999, the Balkan News Corporation (bTV), which is fully owned by News Corporation, won the first contest organised for the licensing of a national television operator (see section 3.2.1). bTV was allocated the frequency previously belonging to the second State-owned television channel, Efir 2.

Six months after bTV had been licensed, a new contest for the licensing of a second private national television station was opened (in 2000), which was won by Nova TV. However, the decision of the regulatory authorities was contested by other unsuccessful contestants, and in 2001, following a ruling of the Supreme Administrative Court (SAC),⁴ Nova TV lost its telecommunications licence, and so was forced to stop broadcasting nationally (see section 3.1). The contest was rerun in 2003, with Nova TV again announced the winner, and so the station could start broadcasting nationally again in 2004.

² Council for Electronic Media (CEM), *Експертен доклад на Съвета за електронни медии от месец ноември 2002 г. – Радио- и телевизионна дейност. Медиен профил на сектора. Докладът е Приложение 2 към Решение на CEM (Expert Report – November 2002)*, No. 15-00-144, 7 November 2002, (hereafter, CEM, Expert Report – November 2002).

³ Television licensing procedures only commenced following the entry into force of the Law on Radio and Television and the Telecommunications Law (see section 3.2). Prior to this, broadcasters operated using “temporary permits”.

⁴ Supreme Administrative Court (SAC), Decision No. 5731 of 13 July 2001, case No. 2736/2001.

By the summer of 2004, Bulgaria therefore had three national terrestrial television operators, broadcasting alongside many other cable operators, the most popular of which were Ring TV (sports), Alexandra TV and Diema TV (films), Planeta TV (folk music), MM TV (pop music) and Evropa TV (news).

Table 1. TV Overview (2003)

	Percentage of households
At least one television set	94.8
More than one television set	18.3
Colour television	91.3
Cable subscription	52.1
Satellite (dishes installed)	9.8

National Statistics Institute⁵

Watching television is a major leisure activity for Bulgarians, and television is an important tool for shaping people's outlook on life. According to polls carried out by Alpha Research Agency, the national television audience (age 18 plus) is relatively steady, with viewers generally preferring the national terrestrial broadcasters.⁶ Television viewing is dependent on age, income, gender, level of education and social status.⁷ Although viewing is relatively even by age group, the 55-plus group slightly prevails. Women watch more television than men do. People with secondary education, private sector employees and retirees are the most active viewers, while schoolchildren and students, and also private businessmen and farmers, watch comparatively rarely. With two thirds of the population living in cities, the television public is predominantly urban, but viewing time is relatively high in both big urban centres and smaller towns.

The structure of the regular audiences of bTV and BNT is relatively similar. They have the biggest shares of small-town and rural markets. Younger viewers (aged 15 to 35) tend to be more attracted to cable film and music channels.⁸ BNT and bTV have little appeal to schoolchildren and university graduates, the self-employed and farmers. The audience of Nova TV is mainly urban.⁹

⁵ National Statistics Institute, *Годишник на Националния статистически институт за 2003*, (Yearbook for 2003), Sofia, 2004.

⁶ Data from Alpha Research Agency, cited in CEM, *Expert Report – November 2002*.

⁷ CEM, *Expert Report – November 2002*.

⁸ CEM, *Expert Report – November 2002*, p. 81.

⁹ CEM, *Expert Report – November 2002*, p. 81.

2.2.2 The radio sector

There are currently over 250 commercial FM radio stations operating in Bulgaria.¹⁰ Only two operators have national coverage, the public broadcaster, Bulgarian National Radio (BNR), and the independent commercial station, Darik Radio. BNR has two channels with national coverage, a third one (Radio Bulgaria) aimed at listeners abroad, and five regional radio centres. A total of 27 radio channels are broadcast in various regions via cable.

The development of the terrestrial radio market has been much more dynamic than that of the television market. The first officially registered commercial radio station, FM+, started broadcasting on 15 September 1992, shortly followed by Express Radio, on 1 November 1992, and Darik Radio, on 25 January 1993.¹¹ Until 1998, when broadcasting regulation started to be effectively implemented, radio stations mushroomed, with many operating as pirates. However, gradually their activity was regulated, and currently there are over 250 FM commercial stations, many hooked up in national networks.

In 2000, Darik Radio was the first commercial radio station to be awarded a national telecommunications licence. Partly because of networking arrangements that allow radio stations to cover Bulgaria without a national licence, and partly because of high licensing and transmission costs, there were only two applicants in this contest. There has been no further contest for a national radio licence.

According to the November 2002 expert report of the main broadcasting regulator, the Council for Electronic Media (CEM), radio in Bulgaria is over-concentrated, does not reach smaller markets (there are 198 communities¹² without any radio reception), repetitious in terms of format, and lacking in specialised formats.¹³

The current blockage of the licensing process has affected many stations, which are presently operating under temporary permits, and has also meant that the licensing procedures for BNR have not yet been finalised (see section 3.1.2). In the three largest regions of Bulgaria, in terms of both population and territory – South Central, Southwest and Northeast – there are ten times more commercial operators than public stations, with music/information and specialised programme formats prevailing over general entertainment. In the three smallest regions – North Central, Southeast and Northwest – there are eight times more commercial operators than public stations. General entertainment is the dominant format, and the audience has fewer opportunities for access to specialised radio formats. The fact that the ratio between public and commercial radio operators is tipped so strongly in favour of the latter, in

¹⁰ Data obtained from the CEM in August 2004, upon the reporter's request.

¹¹ For further details, see: P. Punchev, *Първите седем*, (*The First Seven*), Sofia, 2000.

¹² These are remote villages with an ageing population.

¹³ CEM, *Expert Report – November 2002*, pp. 34–36.

both the largest and smallest regions of the country, indicates the extent of the liberalisation of the radio sector.

Radio station networks are only active in the largest urban areas (cities with a population of over 100,000). Although large urban markets are important, the radio sector is still to cover local audiences. In radio station networks, music/information and specialised formatting prevail over news/talk and general entertainment. The audiences of the large networks exceed two million, while those of smaller networks are around one million.¹⁴ Regional and, especially, local markets are outside the reach of radio station networks.

Programme strands are almost evenly distributed across the country. General entertainment, musical and specialised formats are almost equally present, providing the audience with more or less balanced quantities of general and specialised communication. However, all regions lack quality specialised minority-language formats, as well as minority-language programming.

2.3 Market shares of the main players

In 2003, the total revenues from the main activities of the three biggest television operators amounted to BGN 91 million (or approximately €46 million¹⁵), or 15 per cent more than in 2002¹⁶ – this increase may be due to the improved economic situation, but so far there has been no official explanation or analysis. In 2003, over 90 per cent of their total revenue was generated by advertising, a similar share to the previous year.¹⁷ BNT also receives an annual subsidy from the State budget.

2.3.1 Television

In 2004, there were three terrestrial television broadcasters with national licences – Nova TV, BNT and bTV. The Balkan News Corporation (bTV) has the largest audience share for the last three years, followed by BNT and then Nova TV. The three national terrestrial broadcasters dominate the environment, with the local cable broadcasters having relatively insignificant ratings.¹⁸ Local television channels rarely have competitive ratings, and their audience share is much lower than that of the three national channels.

¹⁴ CEM, *Expert Report – November 2002*.

¹⁵ The exchange rate used in this report is 1 BGN (Bulgarian Leva) = €0.51.

¹⁶ CRC, *Annual Report 2003*, p. 45, available at <http://www.crc.bg/v1/eng/index.htm> (accessed 4 August 2005).

¹⁷ CRC, *Annual Report 2003*, p. 45.

¹⁸ CEM, *Expert Report – November 2002*, p. 81.

After broadcasting for more than two years, by 2001 bTV had gained a leading share of over 40 per cent of the television audience. In 2002, bTV entered into an agreement to also broadcast via satellite. As shown below in Table 2, as of April 2004, bTV had a market share averaging 41.1 per cent during working days, as compared to 32.9 per cent at the weekends. It has a 24-hour schedule with a wide variety of programming.

BNT has one national channel, Kanal 1 (Channel 1), and four regional centres, located in the cities of Blagoevgrad, Varna, Plovdiv and Rousse. In addition to Channel 1, BNT also broadcasts the satellite programme *TV Bulgaria*.

Table 2. Audience share of the national television channels (2002–2004)

Channel		Average audience share (per cent)		
		November 2002	April 2003	April 2004
Balkan News Corporation (bTV)	Working days	43.1	43.4	41.1
	Weekends	37.5	37.4	32.9
BNT Channel 1	Working days	27.7	22.7	23.7
	Weekends	31.7	25.7	26.7
Nova TV	Working days	8.4	8.6	8.1
	Weekends	5.4	5.3	7.6

Source: TV Plan/TNS Survey¹⁹

There is a tendency for operators holding a national telecommunications licence for terrestrial television or radio broadcasting to also use alternative forms of transmission – satellite or cable – thereby making use of the networks already established by other licensed telecommunications operators. The first digital television broadcasts in Bulgaria, for the region of Sofia, are expected to become operational in the near future. The licence for the broadcasts was issued to the Bulgarian Telecommunications Company (BTC), following a public tender with secret bidding, in which five Bulgarian enterprises participated (see section 7.)

2.3.2 Radio

The public broadcaster, BNR, broadcasts two 24-hour national channels – Horizont and Hristo Botev. Horizont can also be listened to via the Internet. The potential audience of Horizont is 90 per cent of the population, while that of Hristo Botev is 75 per cent. Horizont has the highest audience share, at 25.9 per cent in April 2004.²⁰

¹⁹ TV Plan/TNS Survey (in Bulgarian) in *Media World* magazines of January 2003, June 2003 and June 2004.

²⁰ TV Plan/TNS Survey (in Bulgarian) in *Media World* magazine of June 2004.

BNR's third channel, Radio Bulgaria, is oriented towards audiences abroad – it broadcasts every day to 100 countries (not to Bulgaria), in ten languages, averaging 55 hours a day. BNR also has five regional channels: Varna (24-hour programme broadcasting) and Plovdiv, Stara Zagora, Shumen and Blagoevgrad (18-hour programme broadcasting).

Darik Radio, the only other radio operator with a licence for national coverage, offers its programmes in real time over the Internet. Its signal is retransmitted via the Intelsat satellite. Darik Radio covers 60 per cent of the territory of the country with its terrestrial broadcasts, and its potential audience is 80 per cent of the population. Its audience share in April 2004 was 11.4 per cent.²¹ Third in terms of audience share, at 9.3 per cent as of April 2004, is Veselina Radio, an entirely Bulgarian-owned commercial operator, which broadcasts a mixture of Balkan folk, rock and roll and pop music.

3. GENERAL BROADCASTING REGULATION AND STRUCTURE

The Law on Radio and Television, the Telecommunications Law and the Law on Copyright and Related Rights provide the legislative framework for the telecommunications and broadcast sectors.

The Law on Radio and Television was first passed in November 1998 after, almost a decade of political stand-offs. The adoption of this law followed several unsuccessful attempts to pass legislation regulating the electronic media market. The best-known of these – referred to as “Clara’s Pride”, after the Member of Parliament who drafted it – failed after some of its most important provisions, especially those regarding the composition of the regulatory authority, had been declared anti-constitutional by the Constitutional Court.²²

The legislative framework introduced in 1998 defined two types of broadcasting licences as mandatory for all the operators in Bulgaria – a *programme licence* (“licence for the realisation of radio or television activity”) and a *telecommunications licence* (“licence for telecommunications activity”). This two-tier licensing system initially depended on two licence-granting bodies. The National Radio and Television Council (NRTC) was responsible for the granting and monitoring of programme licences, while the State Telecommunications Committee (STC), a body within the Council of Ministers, was responsible for issuing telecommunications licences.

²¹ TV Plan/TNS Survey (in Bulgarian) in *Media World* magazine of June 2004.

²² Constitutional Court, Decision No. 21 of 14 November 1996, on CC No. 19/96, available in English at http://www.constcourt.bg/constcourt/ks_eng_frame.htm (accessed 4 August 2005).

In 2001, amendments were made to the Law on Radio and Television²³ and the Telecommunications Law,²⁴ both of which entered into force on 5 February 2002. These amendments reformed the regulatory system and introduced significant changes in licensing procedures. The newly formed Council for Electronic Media (CEM) replaced the NRTC, while the Communications Regulation Commission (CRC) replaced the STC.

Since 2001, the legislative framework regulating broadcasting has comprised three main laws. The Law on Radio and Television regulates all programme aspects of the public and commercial broadcasters and their supervisory body, the CEM. The Telecommunications Law regulates all telecommunications activities, including the statute and functions of the CRC and telecommunications licensing.

Also relevant to the broadcasting regulatory framework is the Law on Copyright and Related Rights, which makes a separate Department at the Ministry of Culture competent for identifying breaches of this law and imposing sanctions.²⁵

3.1 Regulatory authorities for the television sector

3.1.1 The Council for Electronic Media (CEM)

The Council for Electronic Media (CEM) was established in 2001 as a successor to the National Radio and Television Council (NRTC), which was terminated after amendments to the Law on Radio and Television came into force on 5 February 2002.²⁶

Structure and composition

The Law on Radio and Television defines the CEM as an independent specialised body that regulates radio and television activity through the registration or issuance of programme licences (“licences for carrying out radio and television activity”) and the supervision of the activity of radio and television operators.²⁷

The CEM is a legal entity, with headquarters in Sofia. It is assisted by administrative and technical offices, which are part of the CEM. The CEM adopts regulations for its structure and activities.²⁸

²³ Law on Radio and Television, promulgated by SG No. 138/1998, as last amended by SG No. 112/2001, (hereafter, Law on Radio and Television 2001). (SG: State Gazette – the official gazette of Bulgaria).

²⁴ Telecommunications Law, promulgated by SG No. 93/11 August 1998, as last amended by SG No. 112/29 December 2001, (hereafter, Telecommunications Law 2001).

²⁵ The Law on Copyright and Related Rights, promulgated by SG. 56/29 June 1993, as last amended by SG. 28/1 April 2005 (hereafter, the Law on Copyright and Related Rights).

²⁶ Law on Radio and Television 2001.

²⁷ Law on Radio and Television, art. 20.

²⁸ Law on Radio and Television, art. 21.

The CEM consists of nine members, of which five are elected by the National Assembly by simple majority vote, and four are appointed by the President of the Republic. The decision of the National Assembly and the edict of the President come into force simultaneously.

Members of the CEM must be Bulgarian citizens with a permanent address in the country. They must have higher education and professional experience in the sphere of the electronic media and/or telecommunications.²⁹ The Law on Radio and Television establishes the grounds for eligibility, and CEM members must sign a declaration confirming that they meet these legal requirements.³⁰ The law also places tight restrictions on the positions that CEM members can occupy concurrently, during their mandate and also for two years following its expiration.³¹ In fact, these restrictions pose an interesting question as to what a CEM member can do during the two years after his or her mandate has expired. Presently, the law does not envisage any remuneration to members for the period of restriction in order to guarantee the practical implementation of those provisions.

CEM members are elected or appointed for a six-year mandate. By law, a member cannot serve more than two consecutive terms.³² The elections of members are staggered, with elections of some of the members every two years. The idea behind this principle is to avoid any overlapping of the mandate of CEM members with that of their nominating authorities, namely the President and Parliament. It is questionable, however, whether this principle holds true in practice, especially with respect to the parliamentary quota. It should be noted that in 2001, the presidential quota was formed mainly on the basis of the nominees of the NGO sector and appointed at the very end of the presidential mandate.

²⁹ This must include no fewer than five years in a radio and/or television organisation or in the telecommunications industry, or the same period as a lecturer in these areas. Law on Radio and Television, art. 25.

³⁰ The following are not eligible for membership of the CEM: people who have been sentenced to prison for premeditated crime of a general nature; sole entrepreneurs (single traders); owners of the capital of trading companies; partners, managers, procurators or members of managing and control bodies of trade companies; persons who have been employed by (or were collaborators with) the former State Security. Law on Radio and Television, art. 26.

³¹ In accordance with Article 27 of the Law on Radio and Television, during their mandate, and for two years afterwards, CEM members cannot occupy another paid position under legal terms of employment or elective positions in State and municipal bodies, in management bodies of political parties and coalitions and trade unions. They cannot be members of bodies of management, control or supervision of trade companies, or consultants or members of such bodies. They cannot acquire shares or stock in radio and television operators and advertising agencies, or be consultants or members of bodies of management, control or supervision of non-profit organisations that have obtained licences for radio or television operators, or receive in any form whatsoever remuneration from radio or television operators, except according to the legislation for intellectual property.

³² Law on Radio and Television, art. 29.

At the end of 2003, membership of the CEM was rotated and partly renewed. However, the election and appointment of the replacements was done in a rather non-transparent way, and did not take into consideration the nominees proposed by the media industry and the NGO sector.³³ No clear selection procedures or criteria were made public.

The mandate of a member of the CEM can be terminated ahead of time by a decision of the CEM, in cases of resignation or death. Membership is terminated by a decision of the CEM in the case that the person who resigns has filed a written application to the Chair of the CEM, in the event of an actual inability of the member to fulfil his or her obligations for more than six months, if there has been an established incompatibility with the requirements of the law, or for the enactment of a sentence that imposes a punishment of imprisonment for a crime.³⁴ After the premature termination of the term of office of a member, within one month the competent body must elect or appoint a new member, who will serve until the end of the term of the member whom he or she replaces.

Practice has shown, however, that the existing requirements for termination of the mandate of CEM members do not offer any mechanism to hold them accountable for decisions that are proven unlawful.³⁵ In autumn 2001, for example, shortly after its formation, the CEM terminated the mandate of the BNT Director General, Liliana Popova, only a few months before its expiration – on what were widely believed to have been politically motivated grounds. Popova appealed to the Supreme Administrative Court (SAC), which in 2002 nullified the CEM's decision, stating that "Popova's dismissal was a violation of the law".³⁶ Popova was not reinstated, as her mandate had expired in the meantime, although she did receive compensation, but no CEM member has ever been sanctioned for the original decision.

A second example concerns the CEM's decision of November 2003 to close down the cable television station Den TV on the grounds that one of its programmes had incited hatred and was thus in breach of the provisions of the Law on Radio and Television. The station appealed the decision before the SAC, and the media community strongly questioned the appropriateness of the CEM's decision to shut down an entire media outlet because of a single programme. Strangely enough, only a few days later, the same

³³ Nominations for CEM members can be offered by Members of Parliament or by parliamentary groups. NGOs and professional organisations active in the field of media and culture can also propose names, but to become nominations these names must be put forward either by Members of Parliament or by parliamentary groups. Information from an announcement of the Parliamentary Media Committee, published on the Internet.

³⁴ Law on Radio and Television, art. 30.

³⁵ In February 2001, the NCRT's politically motivated decision to elect Ivan Borislavov as Director General of BNR precipitated a crisis at BNR. The NCRT's decision was subsequently appealed before the SAC, which declared it in breach of the law.

³⁶ Supreme Administrative Court Decision No. 2999 of 28 March 2002.

programme started being broadcast on another cable television channel, without any reaction from the CEM. Finally, in June 2004 the SAC rejected the CEM's decision.

This case showed the incapability of the regulatory authority to ensure the consistent implementation of the existing regulatory framework. Amendments to the Law on Radio and Television are clearly necessary to make CEM members fully accountable for their decisions, including those made after the termination of their mandate.

Responsibilities

The terms of reference of the CEM with respect to the supervision of radio and television operators fall into two main lines – general regulation of the broadcasting sector and specific tasks with respect to the public broadcasters, BNT and BNR.

With respect to the general regulation of the broadcasting sector, the CEM is responsible for the following:

- ensuring compliance with the rules for carrying out radio and television activities (Radio and Television Law);
- monitoring the way in which the media cover elections for State and local government bodies;
- monitoring and ensuring compliance with requirements on advertising and teleshopping in the output of radio and television operators;
- monitoring and ensuring compliance with the requirements for sponsorship;
- monitoring and ensuring the protection of classified information in radio and television activities;
- monitoring and ensuring compliance with requirements for programming targeted at minors and underage viewers;
- monitoring and ensuring the protection of consumers' rights;
- monitoring and ensuring observance of the provisions of domestic legislation and of international agreements ratified by the Republic of Bulgaria;
- monitoring and ensuring compliance of broadcasters with the terms of awarded licences.

With respect to the specific regulation of the public operators, BNR and BNT, the CEM is responsible for the following:

- ensuring compliance with the principles governing the activities of public operators;
- electing and terminating the mandates of the Directors General of BNT and BNR;

- approving, upon proposal by the Directors General, the members of the Managing Boards of BNT and BNR;
- adopting annually a statement on the suggested level of State funding for BNT and BNR;
- coordinating the inception and termination of BNT and BNR regional stations.

In a number of cases, however, the CEM has proved unable to cope with critical situations in both BNR and BNT (see section 4.4.3).

The CEM has additional general competencies with respect to the following:

- organising and conducting research on the public perception of radio and television operators and their output – however, the CEM claims that it does not receive sufficient funding to carry this out in practice;
- representing Bulgaria, conjointly with other bodies, in international and inter-governmental organisations on issues regarding the electronic media;
- adopting and publicising a list of events of considerable public interest and securing the audience's access to their coverage – however, the procedure for compiling the list of events has not yet been defined.

In fulfilment of its legal obligations, the CEM adopts regulations, decisions and declarations, and gives opinions in cases stipulated by law.

CEM members are obliged to register any potential conflicts of interest that may influence their decision-making. In taking a specific decision, members must disclose in writing to the CEM any substantial commercial, financial or other business interest that they or members of their families may have.³⁷ Such declarations are kept in a special public register at the CEM. A member who has a direct business interest relating to a certain decision is obliged to declare it and not participate in the discussions and the voting.³⁸

Transparency

The CEM is obliged by law to publicly announce any decisions that it makes that concern the fulfilment of its duties, including those with respect to the application of the law and the grounds for changing any of its practices. The decisions of the CEM should be motivated (i.e. explained in detail, accompanied by a written explanation justifying the decision), and are subject to appeal before the Supreme Administrative Court (SAC).

³⁷ Law on Radio and Television, art. 116(c).

³⁸ Law on Radio and Television, art. 28(a). An injured party, as well as any other interested party, can request the Supreme Administrative Court to revoke any decision taken in violation of this provision.

The CEM issues an Information Bulletin, where it publishes its decisions and current acts (such as procedural regulations on issues relating to the audiovisual sector), results from its monitoring of radio and television operators, and studies of public opinion requested by the CEM. The CEM must also publish (not later than 31 March) an annual report on its activities during the previous year. It also maintains its own public website.

Despite all these provisions, however, in practice the CEM's activities are neither transparent nor well publicised, particularly with respect to its decisions on the election of the Directors General for BNT and BNR. An important factor preventing full transparency is the fact that CEM members have the right to vote secretly. Although this was initially considered a more democratic tool, in terms of preventing influence on how to vote, in practice it works to conceal CEM members' particular interests and intentions from the eyes of the public, as it is not clear who voted for what and why.³⁹

Financing and remuneration

CEM members are recompensed with a monthly remuneration equal to three average monthly salaries of public sector employees, as calculated by the National Institute of Statistics.

The Law on Radio and Television envisages that the CEM – as well as BNT and BNR – should be financed by the Radio and Television Fund. However, as yet the Fund is not operational (see section 4.3). Moreover, no other mechanisms have been devised or discussed that could substitute for the Fund and ensure the regulator's financial independence. The fact that the CEM is currently financed by the State budget poses questions as to its political independence.

Proposed reforms

According to the media community, the CEM has to date concentrated mainly on its constitutive functions – namely electing the Directors General of BNT and BNR – and does not contribute effectively to establishing professional standards.⁴⁰ According to Mr. Petko Georgiev, USAID ProMedia Resident Advisor and Board member of New Europe Radio,

The situation with Bulgarian media regulation would have been radically different if the provisions of the Law on Radio and Television had been implemented in practice. As this is not the case, we simply witness how the

³⁹ OSI Roundtable meeting, Sofia, 18 October 2004, (hereafter, OSI roundtable comment). *Explanatory note: OSI held roundtable meetings in each country monitored to invite critique of its country reports in draft form. Experts present generally included representatives of the Government and of broadcasters, media practitioners, academics and NGOs. This final report takes into consideration their written and oral comments.*

⁴⁰ OSI roundtable comment.

Supreme Administrative Court acts as if it were an upper chamber of the CEM.⁴¹

Since autumn 2001, there have been several attempts to change the regulatory system, including various suggestions for further amendments to the Law on Radio and Television. On 3 February 2003, a completely new draft of the law was deposited in Parliament, by MPs of the ruling coalition, the National Movement Simeon II and the Movement for Rights and Freedoms.⁴² The draft was severely criticised by all key stakeholders. According to Bulgarian NGOs and media professionals,⁴³ as well as international media law experts,⁴⁴ the draft does not provide a basis for the sustainable development of broadcasting in Bulgaria. It has been deemed incapable of solving the problems that the industry has been facing over recent years, or of providing effective guarantees for the independence of the regulatory authorities and the managing bodies of the public media outlets.

The main criticism of the draft law concerned envisaged changes to the composition of the CEM, according to which the number of members would be increased to 11, of which three would compose a “civic quota”⁴⁵ representing nominees of the media non-governmental sector. However, as the Parliamentary Media Commission would have had the authority to select which three potential members nominated by NGOs would be proposed to Parliament, it is clear that their selection and election could still depend on the political will of the parliamentary majority. The envisaged “civic quota” in the regulator thus risks being turned into a political arm of the current ruling parliamentary majority.

⁴¹ Interview with Petko Georgiev, USAID ProMedia Resident Adviser, Sofia, July 2004.

⁴² The draft Law on Radio and Television is available (in English) on the BMC website at <http://bmc.bulmedia.com/EN/English.htm> (accessed 25 April 2005).

⁴³ The draft law has been criticised by the Bulgarian Media Coalition (BMC), the Editorial of the BNR Horizont and Hristo Botev channels, and the Association of Film Directors, Cameramen and Producers. It was also opposed by journalists in Sofia – according to an opinion poll conducted in February 2003 by the Centre for Public Opinion Study, over 80 per cent of the 533 journalists polled were against the draft. Centre for Public Opinion Study, *Draft Radio and Television Law. Journalists' opinion poll results*, commissioned by the Parliamentary Commission on Civil Society Issues, available at <http://bmc.bulmedia.com> (accessed 4 August 2005).

⁴⁴ A joint report on the draft law was prepared by Dr Sandra Bašić-Hrvatini and Dr Karol Jakubowicz, Council of Europe independent experts, together with the European Commission Directorate General for Education and Culture (Audiovisual Policy Unit). This exhaustive report contains in-depth commentary and criticism of individual provisions and articles, and of the draft's overall conceptual and legal framework. See: *Comments on the draft Bulgarian Radio and Television Act*, ATCM(2003)014, 2003, available on the BMC website at <http://bmc.bulmedia.com/EN/English.htm> (accessed 18 March 2005).

⁴⁵ The draft law envisages that the CEM would be composed of 11 members, of which five would be elected by Parliament, three appointed by the President, and three elected by Parliament upon nominations made by NGOs to the Parliamentary Media Commission.

Due to the timely and active response of the professional and NGO communities, with political support from the President and some Members of Parliament (from the ruling majority and from the opposition), the draft law has been effectively blocked. Moreover, as a result of the dialogue held among NGO representatives and politicians, a consensus has now been reached on the need for a new law to be drafted by the professional community. This task was allocated to the Bulgarian Media Coalition (BMC), an umbrella organisation of 11 NGOs working in the media field, the experts of which are currently working on the project together with representatives of the public and private broadcasters.

One of the priorities for the new law will be to ensure that it provides better guarantees for ensuring the political and economic independence of the regulators.⁴⁶ There have been a number of proposals for changing the procedures for selecting CEM members. One of these envisages that members of the quota of CEM members appointed by the National Assembly should be selected through qualified majority voting, rather than simple majority, thus eliminating the possibility of members being nominated and elected only by the governing majority. Such a proposal could hardly become a reality, however, given that at present the Bulgarian Constitution stipulates that “the Bulgarian Parliament takes decisions with a simple majority, unless otherwise stated” (which is not the case on this issue).⁴⁷ An alternative proposal was to set up an obligatory procedure for the two quotas to consider nominations on behalf of the non-profit sector. This would mean that NGOs would be eligible to nominate members, and the Members of Parliament and the President would be obliged to consider them – which is not presently the case.

3.1.2 The Communications Regulation Commission (CRC)

The Telecommunications Law defines the CRC’s role and responsibilities. The former State Telecommunications Committee (STC) played a crucial role in the process of awarding broadcasting licences. Its successor, the CRC, carries out the main activities regarding the management and effective use of the frequency spectrum for civilian use, in particular with respect to planning and management activities.

The CRC is a legal entity, based in Sofia. It comprises five members, including a Chair and his or her deputy. The Chair is appointed and dismissed by a decision of the Council of Ministers (Government) and is appointed by an order of the Prime Minister. Three CRC members are elected by Parliament and one member is appointed by the President. All members are appointed or elected for a period of five

⁴⁶ Minutes of a public meeting organised by the Soros Center for Cultural Policies on 13 February 2004, Sofia.

⁴⁷ Constitution, art. 81(2).

years, and the Telecommunications Law establishes the grounds for eligibility.⁴⁸ The mandates of CRC members may be terminated on grounds similar to those stipulated for CEM members.

The CRC is assisted in its activity by an administration, which is part of the CRC. All decisions that the CRC adopts with respect to the structure, activity and organisation of the work of the Commission and its administration are published in the State Gazette.

The CRC can only issue, amend, supplement, suspend, terminate or revoke a telecommunications licence – for both available and/or new telecommunications networks for terrestrial radio broadcasting – upon a decision of the CEM. The CRC maintains a public register of issued radio and television telecommunications licences⁴⁹ and of certificates issued under the registration regime (for cable and satellite broadcasters).

In exercising its legal capacity, the Commission adopts motivated (i.e. detailed and justified) decisions. These are issued in the form of individual regulations or general administrative acts (published in the State Gazette⁵⁰), which are subject to appeal before the SAC. The CRC prepares an annual report on its activities, which must be published not later than the end of the second quarter of the following year. The report is submitted to the National Assembly, the President of the Republic, the Council of Ministers and the CEM. It is also published in the CRC's Information Newsletter and on its public website.⁵¹

3.2 Licensing procedures

3.2.1 The 1998 licensing regime

The legislative framework introduced in 1998 established a two-tier licensing system – with the NRTC responsible for granting and monitoring programme licences and the STC responsible for issuing telecommunications licences. Although it was possible for a candidate to apply for only one of the two types of licences, in practice contestants always went for both. Having a programme licence would grant the licensee permission to *make* a specific (radio or TV) programme, but not to *transmit* it (whether

⁴⁸ The following are ineligible for membership of the CRC: sole entrepreneurs (single traders), owners, partners, stock-holders, managers (procurators), consultants or members of bodies of management of trade companies, State enterprises and non-profit legal entities in the telecommunications field. Telecommunications Law, art. 21.

⁴⁹ The details of the telecommunications licences of the operators are public, with the exception of the texts and the appendices to the licences containing data pertaining to national security and defence of the country, technical data and parameters of the network, and any financial information that is a commercial secret. Telecommunications Law, art. 30.

⁵⁰ Telecommunications Law, art. 34.

⁵¹ Telecommunications Law, art. 38.

terrestrially or by cable or satellite). Once a candidate had received a programme licence from the NRTC, the Council of Ministers would then take the final decision on whether the candidate could eventually transmit the programme, while the Prime Minister would appoint a commission to carry out the procedure for granting a telecommunications licence.

The licensing process was therefore highly politicised, and there was a lack of transparency in the decision-making process. Moreover, the reasons behind licensing decisions were not made publicly available. The only information about the licensing process provided to the public (published in the NRTC newsletter) was the criteria according to which the NRTC would evaluate and rank the candidate for a programme licence. These criteria were, however, of little consequence, given that the final decision for granting a telecommunications licence was not taken by the NRTC, but by the STC and the Council of Ministers, and that having only a programme licence was in any case only of limited benefit to the applicant.

The first contest for the licensing of a second national television operator was announced in 1999. A number of major media corporations took part in the contest,⁵² and, after reviewing the programme concepts submitted by candidates, the NRTC shortlisted three of them.⁵³ A commission appointed by the Prime Minister then declared the Balkan News Corporation (bTV), fully owned by News Corporation, to be the winner; bTV had pledged an investment of €20 million in the channel.

A second contest, for licensing a second private national television station, followed six months after bTV had been licensed. Most of the applicants in the first competition applied again, and this time the contest was won by “Nova Television – First private TV station”, then owned by the Greek Antenna Group. The scandal that broke out after this decision was announced was due to the fact that the NRTC awarded three programme licences instead of one, effectively ceding the final decision to the STC. Although the NRTC had ranked the three candidates according to criteria published in advance, the STC finally awarded the telecommunications licence to Nova Television, which the NRTC had ranked third. The STC gave no specific reason for its decision. Rumours had identified the winner well before the competition was even announced.

Two of the unsuccessful participants in the process – the Czech-owned Mef Holding and the Media Broadcasting Services – subsequently challenged the decision of the commission appointed by the Prime Minister before the Supreme Administrative Court (SAC), which in 2001 ruled that the STC should suspend the licence of Nova TV.⁵⁴ As a result of this decision, Nova TV lost its telecommunications licence and so

⁵² Including News Corporation, Scandinavian Broadcasting Systems (SBS), Modern Times Group (MTG) and Central European Media Enterprises (CME).

⁵³ The Balkan News Corporation (bTV); TV2 LTD (with SBS participation); and the Media Broadcasting Services, a consortium of MTG, Zodiak VN and LogicInvest (a company with Iranian capital).

⁵⁴ Supreme Administrative Court (SAC) Decision No. 731/13 July 2001, case No. 2736/2001.

had to stop broadcasting nationally, but retained its programme licence for national television broadcasting. In accordance with the SAC's decision, in 2003 the CRC (which replaced the STC) opened a new tender for the telecommunications licence for national television broadcasting. The three candidates with programme licences all participated, but Nova TV was again awarded the telecommunications licence, and so could start broadcasting again in 2004. The other two participants appealed this decision before the SAC, which reviewed the case in 2004. However, this time the SAC ruled in favour of Nova TV.⁵⁵ The reasons for this change in outcome are still not clear to the public.

3.2.2 The 2001 reforms to licensing procedures

In order to avoid political influence over the decision-making process for granting licences – allegations of which had been made with respect to the initial licensing procedures – amendments to the Law on Radio and Television and the Telecommunications Law were passed in 2001 and entered into force on 5 February 2002. These amendments introduced two different regimes, for terrestrial broadcasters and cable/satellite broadcasters:

- for terrestrially broadcast radio and TV operators – licensing procedures (programme licence plus telecommunications licence);
- for satellite and cable operators – a registration regime.

Terrestrial radio and television broadcasters

Although the two types of licences were retained in the amended laws, the procedures for their issuance were reformed and the programme licence became the most important licence. The regulatory system was also changed. The newly formed CEM replaced the NRTC as the body responsible for issuing programme licences, while the granting of telecommunications licences was placed under the authority of the newly formed CRC, which replaced the STC.

An important change under the amended laws is that the CRC is *obliged* to issue a telecommunications licence whenever the CEM decides to issue a programme licence.⁵⁶ This provision enforces the principle of conjoint competence, but with the programme licence as the primary authorisation. Both licences are awarded for 15 years, and the reassignment or termination of one licence is binding on the reassignment or termination of the other.

The procedures are the same for national and regional (local) programme licences. In accordance with the Law on Radio and Television, candidates for programme and

⁵⁵ Supreme Administrative Court (SAC) Decision No. 6759/14 July 2004, case No. 7244/2003.

⁵⁶ Telecommunications Law, art. 52(1),(2).

telecommunications licences must first submit a written application to the CEM.⁵⁷ (The CEM does not open a tender based on its own assessment of needs: the contest only starts with an individual request.) Within 14 days of receiving the application, the CEM must send a written inquiry to the CRC about the technical parameters necessary for terrestrial broadcasting of radio and television programmes for the specific populated area (i.e. national or local coverage).⁵⁸ Within 14 days of receiving the CRC's reply, the CEM must take a decision to open a contest for both licences (although the telecommunications licence is dependent upon the granting of a programme licence), in accordance with the available free radio frequency spectrum. For this contest the CEM appoints an expert commission, which obligatorily includes members of both the CEM and the CRC.

Details of the contest must be published in the official gazette.⁵⁹ The competition papers comprise a draft telecommunications licence, with an appendix detailing technical parameters and requirements regarding creative, financial and technical capacities and experience. The criteria for assessment, and their relative importance, must also be stipulated. The competition must be carried out not earlier than 30 days before the promulgation of the decision to have a contest.

The CEM rates the candidates on the basis of their submitted documents, the report of the expert commission, and a complex assessment of which candidate most completely fulfils the competition requirements. Within three days of the public announcement of its final decision, the CEM must inform the CRC, and within ten days it must issue a programme licence to the candidate rated first. The CRC then automatically issues a telecommunications licence to the successful candidate. If, within ten days of the CEM's final decision, the selected candidate decides not to take up the licence, it is offered to the participant rated second. Upon refusal by the second participant, the procedure is closed.

Cable and satellite broadcasters

The 2001 amendments to the Law on Radio and Television went even further in easing the licensing procedures for cable or satellite broadcasters than they did for terrestrial operators. Under a registration regime⁶⁰ introduced as a step towards the liberalisation of the media industry,⁶¹ operators who do not broadcast terrestrially can be awarded a registration certificate⁶² within a period of just 14 days, a significantly faster process than for licensing. Applicants must conform to a number of general legal,

⁵⁷ Law on Radio and Television 2001, art. 105(1).

⁵⁸ Law on Radio and Television 2001, art. 116(3).

⁵⁹ Law on Radio and Television 2001, art. 116a(2).

⁶⁰ Law on Radio and Television, Section IV.

⁶¹ To help guarantee citizens' constitutional rights to seek, receive and disseminate information, and to practise free enterprise. Constitution, art. 41(1), 44(1).

⁶² Law on Radio and Television, art. 125(a)(5).

financial and copyright requirements, and must submit programme documents (programme concept, profile and scheme) to the CEM. Certificates issued under the registration regime are of an unlimited duration and are not binding with respect to the territorial coverage of the programme. The CEM is not entitled to deny registration to an applicant whose programme documents conform to the law.⁶³

According to some media experts, the amendments introducing the registration regime seem to place operators in an unequal position. The two different regimes – licensing and registration – provide much easier conditions for operators who do not broadcast terrestrially. As a consequence, the control over the broadcasters operating under the registration regime has been reduced, and the quality of their programmes has decreased.

Debate about the licensing and registration regimes led, in 2001, to an appeal being submitted to the Constitutional Court by a group of 50 MPs, who wanted the relevant articles of the Law on Radio and Television (on the registration regime) to be declared unconstitutional. The Constitution Court rejected their appeal.⁶⁴

3.2.3 The paralysis of licensing procedures (2002–)

The 2001 amendments to the Law on Radio and Television and the Telecommunications Law were widely viewed as a major step forward, in that they abolished direct Government involvement in the licensing process and liberalised cable and satellite distribution. Nonetheless, problems with the independence of the broadcast media persist. The current regulatory bodies, the CEM and the CRC, still remain with their hands tied, dependent on political decisions and highly vulnerable to corporate pressure.

Due to political infighting over the control of the regulatory process, in August 2002 Parliament passed further amendments to the Law on Radio and Television,⁶⁵ which had the result of virtually paralysing the licensing process. Under the amended law, before proceeding with any further licensing, the CEM (in cooperation with the CRC) was required to submit to Parliament a strategy paper on the development of the broadcasting sector. This strategy was indeed developed and submitted to Parliament at the beginning of 2003.⁶⁶ However, due to a lack of political confidence in the CEM's independence, and fears that it could fall prey to corporate interests, the strategy paper has still not been reviewed by Parliament, and the licensing process is therefore still on hold.⁶⁷ Although

⁶³ Law on Radio and Television, art. 125(a)(4).

⁶⁴ Constitutional Court Decision No. 1 of 26 March 2002, related to appeal No. 17/2001.

⁶⁵ Law on Radio and Television, as last amended by SG 77/2002 of 9 August 2002 (hereafter, Law on Radio and Television 2002).

⁶⁶ CEM, *Strategy for developing radio and television activities by on-land radio broadcasting*, available at http://www.cem.bg/r.php?sitemap_id=131 (accessed 4 August 2005).

⁶⁷ OSI roundtable comment.

the political motivations underlying this situation are not clear, the public perception is that the Government lost confidence in the CEM, because the CEM members were alleged to have formed associations with various economic interests.

With the licensing process paralysed, the Law on Radio and Television was again amended in 2003 to introduce a provision on the issuing of temporary permits.⁶⁸ On the basis of the Law on Radio and Television 2003, the CRC has issued more than 100 temporary telecommunications permits. Meanwhile, another amendment to the law was adopted in 2004, which allowed the issuing of such permits for a further two months.⁶⁹ All the operators functioning with temporary telecommunications licences do not have their programme licences approved by the CEM, which is in contravention of the Law on Radio and Television.⁷⁰

One of the priorities for the new Law on Radio and Television presently being drafted by the Bulgarian Media Coalition (see section 3.1.1) would be to ensure that it restores an effective process for issuing programme licences.⁷¹

3.3 Enforcement measures

The CEM is responsible for supervising observance of the law and broadcasters' adherence to the requirements stipulated in their programme licence. In accordance with the Law on Radio and Television, the CEM has the right to *terminate* or *revoke* a broadcaster's programme licence. However, given the paralysis of the licensing process and the fact that so many broadcasters are operating with temporary permits, the CEM's real enforcement powers have been severely curtailed.

A programme licence is *terminated* after the expiration of its term. If a broadcaster wishes to extend the term of its licence, it must inform the CEM not later than six months before the expiration of the licence. The CEM considers the request and, in the cases of positive decision, it must (not later than three months before the expiration of the licence) inform the CRC, which extends the term of the broadcaster's telecommunications licence accordingly.

The CEM can also terminate a broadcaster's licence ahead of its term, following the closing down of the corporate body (or the death of the individual/sole entrepreneur) named in the licence, or at the request of the licensee. If the programme licence is

⁶⁸ Law on Radio and Television, as last amended by SG 99/03 (hereafter, Law on Radio and Television 2003). Law on Radio and Television Law 2003, art. 9(a)1-3.

⁶⁹ Law on Radio and Television, as last amended by SG 99/04 (hereafter, Law on Radio and Television 2004). Law on Radio and Television 2004, art. 9(a)4.

⁷⁰ OSI roundtable comment.

⁷¹ Minutes of a public meeting organised by the Soros Center for Cultural Policies on 13 February 2004, Sofia.

terminated, the CEM requires the CRC to also terminate the broadcaster's telecommunications licence.

If a licensed radio or television operator changes from public to commercial broadcasting, the licensee has the right to apply for a new licence as a commercial operator, or to request an amendment of the existing licence. The CEM must then decide whether the licence should be terminated or amended.

In practical terms, there is a legal insufficiency with respect to the regulation of the possibility for a change in the ownership of the operator, which is out of tune with the dynamics of, and hinders the development of, the media market. As the licences are personal (issued to a legal entity or individual/sole entrepreneur), the change in ownership leads to termination of the licence. That is why broadcasters are forced to use different legal techniques in order to hide any transactions for ownership change. This creates the so-called "legal illusion", whereby changes in ownership take place through an increase of the capital of an operator or by the constitution of legal entities, only to answer the requirements of the law, while in fact other legal entities stand behind them and carry out their activities, achieving their aims by evading the law.⁷²

A programme licence is *revoked* for gross violation of the principles of radio and television activity, as stipulated in the licence or in the Law, systematic offences against the provisions of the Law on Radio and Television,⁷³ or the provision of false data in the declarations.⁷⁴ For confirmed offences, the CEM is obliged to consider and discuss the presented documents within one month, and to take a decision on whether to impose fines stipulated under the law and/or to revoke the broadcaster's programme licence.

The revocation of a programme licence is carried out by the CEM following a motivated decision, and upon the issuing of a written warning detailing a definite term for removal of the offence. The CEM revokes the licence if, within the term prescribed, the licensee has not removed the offence. The revocation is obligatory upon the licensee receiving two sanctions for the same offence. The decision for revoking a licence stipulates a minimum term (of not less than two years), during which the licensee cannot apply for a new licence. In the case of the revocation of a programme licence, the CEM must inform the CRC, which, within ten days, must in turn revoke the broadcaster's telecommunications licence. Following withdrawal of the telecommunications licence, the broadcaster is obliged to terminate its radio and television activity immediately.

⁷² OSI roundtable comment.

⁷³ Law on Radio and Television, art. 7, 10, 13(4), 19.

⁷⁴ Law on Radio and Television, art. 111.

3.4 Broadcasting independence

The independence of the electronic media has often been seen as more limited than that of the press, in that the State has devised different ways of controlling the two sectors. This difference is grounded in the State's monopoly over the radio spectrum. In the past, control over broadcasting used to have strong political grounds. However, economic and corporate interests have increasingly prevailed, as some of the sponsors of the political parties have their business interests in the advertising and/or television fields.⁷⁵

For 45 years, the Government exercised complete control over the media. After 1989, the media in general, and the electronic media in particular, have become the site of a struggle between the forces of the old authoritarian way of governing the media and the other two existing models within Western democracies – the “permissive” model, which excludes the Government almost entirely from the media world, and the “paternalistic” model, which provides the opportunity for the creation of public service broadcasting.⁷⁶ In both models, however, it is crucially important to guarantee the political and economic independence of the regulatory authority.

With respect to the *political* independence of the regulatory authority, the present Law on Radio and Television envisages that once the members of the regulatory authority have been elected, they can be dismissed only by a decision of the CEM itself. This should guarantee that, after their election, the members of the regulatory authority are no longer dependent upon those who have elected them, and cannot be dismissed by a political decision. As a result, they should have the freedom to make decisions based only on their professionalism and in the public interest.⁷⁷ Unfortunately, however, each new Government has managed to elude the principle of non-interference in the mandate of members of the regulatory body stipulated in law, which should guarantee the stability of the regulatory framework and the independence of the regulatory authority.

In one case, the Government has managed to discontinue the mandate of members of the regulatory authority before the end of their term, by dismissing one regulatory body and constituting another. This happened following the 2001 amendments to the Law on Radio and Television, which allowed for the transformation of the NCRT into the CEM, as a result of which all the members from the parliamentary quota of the regulatory body were changed. This was in breach of the principles of independence, observance of the term of tenure, and stability of regulatory bodies, explicitly laid down in the Council of Europe Recommendation on the independence and functions of

⁷⁵ OSI roundtable comment.

⁷⁶ For a detailed analysis, see: F. Inglis, *Media Theory*, Basil Blackwell, Cambridge, Mass., 1990.

⁷⁷ This principle motivated the Decision of the Constitutional Court No. 10 of 26 June 1999 with respect to case No. 36/1998, concerning the independence of the regulatory authority.

regulatory authorities for the broadcasting sector (2000).⁷⁸ One of the first acts of this newly formed regulatory body was to prematurely and illegally terminate the mandate of the (then) BNT Director General (see section 3.1.1).

In the course of debates among media professionals in 2004 on proposed further amendments to the Law on Radio and Television, a number of proposals were put forward for changing the procedures for electing members of the regulatory authority, in order to improve guarantees of its political independence (see section 3.1.1). However, as yet it is too early to assess which changes, if any, will be incorporated into any future amendments.

Another aspect closely connected to the political independence of the regulatory authority is its *financial* independence. As the Radio and Television Fund is as yet non-existent (see section 4.3), the CEM is still financed entirely by the State budget and is thus dependent to a great extent on the political will of the Government. This means that either a mechanism should be established as soon as possible to ensure that the Fund starts to function as is stipulated by law, or a new working mechanism should be agreed upon and enforced to abolish the financial dependence of the regulator on the State budget, and thus avoid any political intervention in its activity and decisions.

The Law on Radio and Television also provides certain restrictions intended to guarantee the *economic* independence of the regulatory authority. In particular, there are tight restrictions on the positions that CEM members can occupy concurrently, and also for two years following the end of the term of their mandate (see section 3.1.1).

In accordance with the Law on Radio and Television, members of the CEM (and the expert commission – see section 3.2.2) are also obliged to register any potential *conflicts of interest* that may influence their decision-making (see section 3.1.1). There are similar provisions in the Telecommunications Law guaranteeing the economic independence of CRC members. Nonetheless, these legislative safeguards have failed to guarantee the independence of the regulatory authorities in practice. This has resulted in a lack of independence of the public broadcasters and the politicisation of the licensing process, which has led to the blocking of licensing for both public service and commercial media outlets for the last three years (see section 3.2).

The situation with respect to licensing – and, more broadly, in terms of broadcasters' independence – was reflected in the Freedom House Freedom of Press Index for 2003. The status of Bulgaria was changed from “Free” (in 2002) to “Partly Free”, to reflect increased governmental influence over public media outlets, as well as a rise in the use of libel suits against journalists and publishers. In 2003, Freedom House defined the most significant problems in the Bulgarian media landscape as follows: “political

⁷⁸ Council of Europe, Recommendation Rec (2000) No. 23 of the Council of Europe Committee of Ministers to member States on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the Committee of Ministers on 20 December 2000 at the 735th meeting of the Ministers' Deputies.

control over state broadcasters; a politicised process of allocating licences; and manipulation of advertising, which threatens the position of independent media, especially at the local and regional levels.⁷⁹

The 2003 IREX Media Sustainability Index (MSI), which is determined by Bulgarian media experts, also shows a very slight decrease in average scores as compared to those for 2002, from 2.3 to 2.25.⁸⁰ This rating shows that the major obstacles to media development outlined by media experts and summarised by IREX in 2002 have not been removed, and that the media environment has not improved. The MSI suggests that, although the development of the media sector has been stable over the years, it is still not fully free of political and economic influences. The MSI panellists in 2003 highlighted several important factors that impacted on the level of media sustainability:

- lack of public recognition of the need to defend media freedoms;
- critical deficiencies in the performance of the media regulators;
- an alarming halt to the issuing of new programme and telecommunications licences;
- the (failed) attempt to pass a politically motivated new media bill, without consultation of the media community;
- sporadic attempts to exert political pressure on the media.

4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING

The Law on Radio and Television defines both the general programme framework and the management structure of the public service broadcasters, BNT and BNR. The detailed programme obligations of the broadcasters, in terms of programme strands and quotas, are stipulated in the programme licences issued by the Council for Electronic Media (CEM).

⁷⁹ Karin Deutsch Karlekar (ed.), *Freedom of Press Index for 2003 A Global Survey of Media Independence*, Freedom House, available at <http://www.freedomhouse.org/pfs2003/pfs2003.pdf> (accessed 4 August 2005).

⁸⁰ IREX, *2003 Media Sustainability Index – Bulgaria*, 2004, Washington DC, available on the IREX website at <http://www.irex.org/msi/2003/MSI03-Bulgaria.pdf> (accessed 1 May 2005) (hereafter, MSI 2003).

4.1 The public broadcasting system

The Law on Radio and Television distinguishes between commercial and public radio and television broadcasters. It defines BNR and BNT as the national public radio and public television broadcaster, respectively, and obliges them to do the following:⁸¹

- broadcast political, economic, cultural, scientific, educational and other socially important information;
- provide access to national and global cultural values, and popularise scientific and technological achievements, through the broadcasting of Bulgarian and foreign educational and cultural programmes, for all age groups;
- provide, through their programme policy, protection of national interests and “all-human cultural values”, and programmes on national science, education and culture, for all Bulgarian citizens, regardless of their ethnicity;
- encourage the creation of works of Bulgarian authors;
- promote Bulgarian culture.

The law requires BNR and BNT to create and broadcast radio and television programmes and additional information. Broadcasting can be carried out either by their own telecommunications systems or on the basis of a contract with another licensed telecommunications operator. BNR and BNT are also obliged by law to introduce and offer new radio and television services, and to create the conditions for the distribution and implementation of digital and other new technologies, in the radio and television sectors – however, these duties are not reflected by any additional funding.

The Council for Electronic Media (CEM) is responsible for assessing and regulating the performance of BNT and BNR with respect to their public service remits. The Bulgarian model of public service broadcasting, as implemented by BNT, is not as a niche broadcaster, offering content that commercial operators would not offer, but rather as a mass audience broadcaster with a full range of content. In BNT programming, entertainment dominates over other programme strands.

4.2 Services

BNR and BNT provide national and regional programming. They also provide programmes for Bulgarian citizens living abroad, including those whose mother tongue is not Bulgarian. BNT also broadcasts the satellite channel TV Bulgaria. In 2004, BNR broadcast 73,566 hours of radio programming, while BNT broadcast 18,788 hours of television (see Table 3).

⁸¹ Law on Radio and Television, art. 6(3).

Table 3. BNR and BNT programming (2004)

	Channel	Programme hours	
		(per day)	(per year)
BNR	Horizont (national channel)	24	–
	Hristo Botev (national channel)	24	–
	Radio Bulgaria (international channel) ⁸²	57	–
	Radio Varna (regional programme)	24	–
	Radio Plovdiv (regional programme)	18	–
	Radio Stara Zagora (regional programme)	18	–
	Radio Shumen (regional programme)	18	–
	Radio Blagoevgrad (regional programme)	18	–
	Total	–	73,566
BNT	Channel 1 (national channel)	24	–
	TV Bulgaria (satellite)	12	–
	Four regional programmes (each)	3 h. 50 mins.	–
	Total	–	18,788

Source: Ministry of Finance⁸³

In recent years, BNT has produced or purchased several commercial programmes, including game shows and talk shows (very similar to the most successful ones aired by bTV and Nova TV) and soap operas. Their success has strengthened BNT's competitive position, with respect to audience share, *vis-à-vis* the private channels. In 2004, the BNT news and current affairs programmes *Otkrito* and *Aktualno* ranked among the most popular in the country, while the cultural and educational programmes *Vsiaka nedelia* and *National Calendar* had the highest audience shares.⁸⁴ Unfortunately, however, this is not illustrative of the whole range of BNT programming.

The regional programme services of BNR and BNT report on events of local importance. They are created by regional radio and television centres, and are targeted at both local and national audiences. The Management Boards of BNR and BNT are responsible for approving the territory of the regions covered by the regional channels, the regional programme schemes, and the participation of the radio and television centres in the creation of the national radio and television programmes.

⁸² Average hours of programmes daily in Bulgarian and nine foreign languages.

⁸³ Ministry of Finance, *Report on the 2004 State Budget Law of the Republic of Bulgaria*, available at <http://www.minfin.government.bg> (accessed 4 August 2005), (Ministry of Finance, *Report on 2004 State Budget Law*).

⁸⁴ According to TV plan/TNS People Meter System, research for the period 28 June–4 July 2004, in BNT Information Bulletin No. 27, available at <http://www.bnt.bg> (accessed 4 August 2005).

Table 4. Coverage of BNT national and regional channels (2002)

Channel	Coverage – share of territory with access (per cent)	Reach – share of population with access (per cent)
Channel 1 BNT	100	94.4
Blagoevgrad TV Centre (BNT)	5	3
Varna Centre (BNT)	1	7
Plovdiv Centre (BNT)	1	9
Rousse Centre (BNT)	1	9

Source: CEM and CRC⁸⁵

4.3 Funding model for the public service broadcasters

BNT and BNR are obliged to work out, fulfil, conclude and account for independent budgets. The Management Boards of BNR and BNT approve, within the framework of their overall budget, a budget (or budget account) for the expenses of the regional radio and television centres and other structural units.

The Law on Radio and Television defines the funding model for the national public service broadcasters, and states that the budgets of BNR and BNT should be generated from the following:⁸⁶

- financing from the Radio and Television Fund (*not yet established*);
- a subsidy from the State budget;
- own income from commercials and sponsorship;
- revenue from additional activities related to radio and television activities;
- donations and inheritance;
- interest, and other income related to radio and television activity.

According to the Law on Radio and Television, BNR and BNT are supposed to receive a fixed subsidy from the State budget until 31 December 2003 and from then on an annually decreasing State subsidy, matched by increasing financing from the Radio and Television Fund.⁸⁷ According to the law, the determined amount for 2004 is a subsidy of 40 per cent from the State budget and 60 per cent from this Fund. By 1 January

⁸⁵ CEM, *Expert Report – November 2002*, p. 38; for reach, see: CRC, *Annual Report 2003*, p. 45.

⁸⁶ Law on Radio and Television, Chapter 4.

⁸⁷ Law on Radio and Television, art. 2(2) (transitional and final provisions).

2007, the law envisages that the subsidy from the State budget for BNR and BNT would be entirely replaced by financing from the Fund. In practice, however, as the Radio and Television Fund is still not operational, the public broadcasters must still rely on funding from the State subsidy.

4.3.1 The Radio and Television Fund

The Law on Radio and Television envisages the establishment of a Radio and Television Fund at the CEM, for financing radio and television activity. However, as yet this Fund has not been established.

By law, the Fund should be managed by a Management Board, whose members would be appointed by the CEM. The management of the Radio and Television Fund should comprise one representative each of the Ministry of Finance and Ministry of Transport and Communications, one representative of the public radio and television operators, and one representative of commercial radio and television operators. The CEM would be responsible for adopting regulations governing the structure and activity of the Fund and its management board, and appointing the executive director of the Fund.

Revenue for the Radio and Television Fund should be raised from two main sources.⁸⁸ First, the collected monthly fees for receiving radio and television programmes, to be determined on the basis of every registered electric meter. The Law on Radio and Television defines the mechanism for determining the fee for citizens (with a television set) and corporate bodies, as well as the categories of individuals and institutions that are exempt from payment. However, as yet there is no clear mechanism envisaged for the collection of the fees.

Second, the initial and annual fees collected by the CEM for the issuance of programme licences, for terrestrial broadcasters, and registration fees, for cable and satellite broadcasters (see section 3.2). These programme licence fees and registration fees are determined on the basis of a tariff adopted by the Council of Ministers, upon proposal by the CEM.

Although the CEM has submitted a draft tariff for the fees, and despite repeated memos and notes, it was only officially approved and adopted by the Council of Ministers in May 2004. However, as it envisaged collecting fees for a period prior to its official approval, the tariff was appealed before the Supreme Administrative Court, which partially revoked the decision.⁸⁹

⁸⁸ Other sources of revenue for the Fund determined by law include interest on the resources of the Fund and donations and inheritance.

⁸⁹ Council of Ministers Decision of No. 99 of 17 May 2004 regarding tariffs, entered into force on 25 May 2004. Partially revoked by Decision No. 9028 of the Supreme Administrative Court of 4 November 2004.

Even if the income from the two main sources for the Fund were to be forthcoming, the State (through various State bodies and ministries) and the CEM (the members of which represent the parliamentary or presidential quota) would still have the final say in the management of the Fund. This presents various opportunities for political interference in the activity of both public and commercial electronic media, and impedes the transformation of BNT and BNR from State broadcasters into public broadcasters.

However, according to various media experts, the Radio and Television Fund *cannot* function in the way envisaged by the law, with respect to the collection of the monthly fees. This is both because it is unacceptable from a political point of view and due to certain governmental commitments to the IMF – agreements related to the functioning of a Currency Board as an IMF-prescribed tool to stabilise the economy.⁹⁰ Alternative mechanisms to guarantee the independence of the public broadcasters need therefore to be considered and implemented.⁹¹

To date, BNT and BNR (and the CEM) have had to rely on funding from subsidies from the State budget. This situation seriously questions the political independence of both the public service broadcasters and the regulatory authority. In addition, it deprives media outlets (including commercial broadcasters) of the opportunity to apply for funding from the Radio and Television Fund to implement projects of public interest and national importance, or projects aimed at expanding the broadcasting of radio and television programmes for the population and/or territory.

As a whole, the lack of implementation of the Law on Radio and Television with respect to the establishment of the Radio and Television Fund (or another adequate instrument with similar purposes) has had a negative impact on the development of the media sector in Bulgaria. The country is often criticised by international bodies and institutions, such as the European Commission and the Council of Europe, for its inability to enforce legislative provisions.

The lowest-ranked indicator in the 2003 Media Sustainability Index (MSI) was the one dealing with licensing procedures and the independence of the public broadcasters. The MSI panel of experts claimed that, although BNT and BNR were declared public and both had public boards appointed to oversee them,

in practice they are still run by the State, and they are directly funded out of the Government budget. Political influence over BNT and BNR is still visible and neither station has made much progress in their transition from State to public broadcasters. There is nothing to stop both outlets from serving as Government mouthpieces. Additionally, State subsidies put them in a favourable position *vis-à-vis* the competition.⁹²

⁹⁰ OSI roundtable comment.

⁹¹ OSI roundtable comment.

⁹² MSI 2003.

4.3.2 State subsidies

In 2004, the total subsidy from the State budget provided to BNT and BNR was BGN 81.035 million (or €41.33 million), including a subsidy for capital expenditures of BGN 3.2 million (€1.63 million).⁹³

The State subsidy must be spent on the preparation, creation and broadcasting of national and regional programmes, and also covers salary costs. It is determined on the basis of the average hourly cost of programme production approved by the Council of Ministers, regardless of the types of programming. An additional subsidy for long-term material assets is approved annually, as determined by the Ministry of Finance.

The expenditure part of the budget is made according a special instruction of the Ministry of Finance for expenditures in the State sector. Any surplus of income against expenses at the end of the year is rolled over into the budget for the following year. Such financing of both BNR and BNT undoubtedly shows that their budget is subjected to clearly administrative, rather than public, control. This in turn may give way to political dependence and State interference.

To justify the State subsidy to BNT and BNR, their expenditure should be made task-allocated, for the production of programmes oriented towards the public interest – the present system estimates the State subsidy for an hour of programming regardless of the type of programme – and new concrete and improved mechanisms for control and accountability should be envisaged.⁹⁴ The public goals of BNT and BNR need to be better defined by law, to allow for the better usage and proper public accountability of the State subsidy that they receive.

In 2004, BNR received a State subsidy of BGN 30.7 million⁹⁵ (or €15.66 million), for the preparation, creation and broadcast of 73,566 hours of radio programming, while BNT received a State subsidy of BGN 47.1 million (€24.02 million) for the preparation, creation and broadcasting of 18,788 hours of television programming (see Table 3). However, according to a member of the BNT Management Board, the State budget subsidy in reality only covers 18 hours of the programming of Channel 1, with the remaining six hours being covered by income from advertising revenue.⁹⁶

4.3.3 Advertising

BNT is subject to legal restrictions specified in the Law on Radio and Television and can only sell up to 15 minutes of advertising time daily. It can broadcast up to four

⁹³ Ministry of Finance, *Report on 2004 State Budget Law*.

⁹⁴ OSI roundtable comment.

⁹⁵ Ministry of Finance, *Report on 2004 State Budget Law*.

⁹⁶ Interview with Ivan Takev, member of the BNT Management Board, June 2004, Sofia, July 2004.

minutes of advertising per hour, as compared to six minutes per hour for the commercial broadcasters performing public service functions, and 12 minutes per hour for other commercial broadcasters.

Despite this, BNT is still the third-biggest player in the television advertising market, after bTV and Nova TV, although there is a tendency towards a slight decrease in the share of the advertising revenue on BNT Channel 1 – from 9.3 per cent in April 2003 to 7.5 per cent in April 2004.⁹⁷ The same is valid for the share of voice (SOV), which fell from 12.5 per cent in April 2003 to 9.6 per cent in April 2004. As of April 2004, the gross revenue of BNT Channel 1 was BGN 1.901 million (almost €1 million).⁹⁸

In 2003, the private terrestrial television broadcaster, bTV, appealed against the State subsidising of BNT on the grounds of unfair competition, in that public television both receives a State subsidy and is also allowed to make money from advertising. The case is still pending. The debate about whether BNT should be able to benefit from both State funding and advertising revenue has been ongoing since 1998, when the Law on Radio and Television first came into force. The private broadcasters claim that it is unfair that the public broadcasters are allowed to sell advertising, and accuse BNT of offering higher market prices for acquiring the rights to broadcast particular events, with which they cannot compete. However, BNR and BNT claim that the State subsidies that they receive are insufficient for them to perform their public duties.

4.4 Governance structure of the national public service broadcasters

The Law on Radio and Television defines the governance structure of both BNT and BNR, as comprising the Management Board and the Director General. The Directors General and the members of the Management Boards carry out their activities on the basis of contracts assigning the management duties to them.

4.4.1 The Management Board

Composition

The Management Boards of BNR and BNT each comprise five members. Members of each Board are approved by the CEM on the proposal of the Director General of BNR and BNT, respectively. The Director General chairs the meetings of the Board (in his or her absence, the Director General authorises a member of the Management Board as a substitute).

The term of the mandate of members of the BNR/BNT Management Boards is three years, and a member can serve no more than two consecutive terms. A person cannot simultaneously serve as a member of the Management Boards of both BNR and BNT,

⁹⁷ TV Plan/TNS research in *Media World Magazine* of June 2004.

⁹⁸ Information from a national representative of TV Plan/TNS telemeter panel.

or as a member of one Management Board and also of the CEM. The mandate of a member of the Management Board can be terminated by the CEM at the proposal of the Director General, on the same grounds as for CEM members (see section 3.1.1).

The formulation of the legal requirements for the election of the BNR/BNT Management Boards lacks clarity. The Law on Radio and Television obliges the CEM to approve the Management Boards' members, upon the proposal of the Directors General. The law does not, however, clarify what happens if the CEM rejects the proposed candidates. This legal loophole has been a subject of various interpretations and has had the result of burdening relations between the Director General and the regulator.⁹⁹ In practice, the CEM has refused some proposals for members, as was the case with BNT during some months in 2004. As a result, during this period the BNT Management Board had to hold its sessions (and take decisions) with four members, instead of five.¹⁰⁰

Responsibilities

The BNR/BNT Management Boards are responsible for determining the basic directions of development, and the volume and the structure of the programmes. They also adopt regulations on the structure and organisation of BNT/BNR activities, salaries, payment to external collaborators, editorial activities, advertising activities, keeping and using the funds (the budget and advertising revenue), and external and joint productions.

With respect to the BNT/BNR budget, the Management Board is responsible for adopting the draft budget (including the requested State subsidy) and, following coordination with the CEM, for sending to the Ministry of Finance a proposal for the requested State subsidy, for inclusion in the draft Law on the State Budget. The Management Board is then responsible for approving the Director General's report on the fulfilment of the budget.

At the proposal of the Director General, the Management Board is also responsible for taking decisions on the opening or closing of regional centres, and for determining their status, structure and management, in coordination with the CEM. It must also approve all contracts for advertising and sponsorship, as well as all other contracts above a fixed value.¹⁰¹

Meetings of the BNR/BNT Management Boards are convened by the Directors General, either at the initiative of the Director General or at that of at least two Board members. The Boards take decisions by simple majority voting of all members.

⁹⁹ Tense situations occurred in 1998 after the elections of the BNR Director General, as well as in 2001 and 2004 after the elections of the Directors General of both BNR and BNT.

¹⁰⁰ OSI roundtable comment.

¹⁰¹ Law on Radio and Television, art. 62.

For the duration of their mandate, members of the Management Boards receive (from the BNR or BNT, as appropriate) a monthly remuneration equivalent to three quarters of that received by CEM members.

4.4.2 The Directors General

The Law on Radio and Television sets out the same eligibility requirements for the Directors General, and members of the Management Board, of BNR and BNT as those for CEM members (see section 3.1.1). Candidates must have no less than five years' professional experience at a radio or television station, respectively (and academic or other experience does not count).

The term of the mandate of the Directors General is three years, and they cannot serve more than two consecutive terms. Their mandate can be terminated before the expiration of its term on the same grounds as those stipulated for the members of the CEM. It can also be terminated if it is established that the Director General has committed (or admits to the commission by other persons) gross or systematic violations of the provisions regarding the principles of carrying out the activity of the radio and television operators. In such cases, until a new election can be held within the next three months, the management duties of the former Director General are assigned to a person appointed by the CEM, who meets the eligibility requirements.

The requirements of the Law on Radio and Television on the term of the mandate of the Director General of BNT and BNR have been the subject of ardent debate. The three-year term is widely viewed as too short for a manager to carry out a long-term strategy. This is especially problematic, given that the term of Government in Bulgaria is four years, and politicians often use this as a tool for manipulating, or otherwise exerting pressure over, the activity of BNT and BNR.

In 2001, there were concerns that the procedures for electing the Directors General of both BNT and BNR were both politically manipulated. In the case of BNR, this resulted in a management crisis in 2001, which led to a decision of the Supreme Administrative Court.¹⁰² The CEM's decision in 2001 to oust the (then) Director General of BNT, Liliana Popova, just months before the expiration of her mandate, also prompted widespread concern (see section 3.1.1).

The Directors General of BNT and BNR are responsible for the following:¹⁰³

- carrying out the programme policy;
- carrying out the operative management of BNT/BNR and managing their property;

¹⁰² Supreme Administrative Court Decision No. 2999 of 28 March 2002.

¹⁰³ Law on Radio and Television, art. 68.

- proposing members of the Management Board to the CEM for approval (and proposing to the CEM that the mandate of a member be terminated);
- convening and chairing meetings of the Management Board;
- concluding (and terminating) the employment contracts of employees;
- exercising the right of employers under the Labour Code;
- representing BNT/BNR before all individuals and corporate bodies in the country and abroad;
- organising the preparation of a draft budget and presenting it to the Management Board for approval;
- organising the fulfilment, conclusion and accounting of the budget and presenting it for adoption by the management board.

The Directors General each receive a monthly remuneration equivalent to that of a chair of a standing committee of the National Assembly.

In addition to the Director General and the Management Board, the overall BNT management chart includes¹⁰⁴ the Programme Directorate, Executive Director, Logistics and Control Department, Information Department, Finance Department, Chief Coordinator, Technology and Production Department, International Relations Department, Administration Department, Marketing and Sales Department, Secretary General, Chief Legal Advisor and Public Communication Director. There are also a number of auxiliary bodies with various functions and terms of reference: Artistic Board, Programme Board, Expert Board, Technical Development Board, Budget Committees and an Arbitrage.

Overall responsibility lies entirely with the Director General. In fact, the enormous responsibilities, tasks and duties vested in the person of the Director General by current legislation is problematic on a number of counts. On the one hand, it is the BNR/BNT Management Board that is responsible for taking decisions and authorising the Director General to enforce them. On the other, the entire responsibility for every single act and its consequences lies with the Director General, and there are no adequate mechanisms envisaged for collective responsibility and accountability. As a result, over the last six years each Director General, of both BNR and BNT, has, in one way or another, been sanctioned by the BNT/BNR control and audit authorities.¹⁰⁵ Such a situation is obviously a source of additional demotivation for the Directors General.

The present concentration of power in the figure of the Director General also runs the risk of encouraging an autocratic style of management. There have been cases where the Director General has deliberately ignored the procedure requiring approval by the

¹⁰⁴ BNR's management structure is similar to that of BNT.

¹⁰⁵ Audit Agency and the Chamber of Accounts, *Reports on the activity of BNR/BNT 1997–2004*.

Board members and has not taken their opinions into account, even on issues of strategic importance. For example, during the mandate of Mr. Kiril Gotsev as Director General of BNT (originally for 2002–2005, but terminated in 2004) some Board members complained that their authority had been neglected and that the station was, in practice, governed by one person alone.¹⁰⁶

The above-mentioned management and legislative weaknesses serve only to create additional obstacles to the effective management of BNT and BNR, both of which, it should be noted, are huge organisations in terms of the number of staff employed. In 2002, BNT employed 1,965 staff¹⁰⁷ and BNR 1,547 staff. In comparison, the number of staff employees in bTV is 268.¹⁰⁸

4.4.3 The BNT management crisis

In a number of cases, the CEM has proven unable to cope with critical situations at broadcasters.

One of the most recent examples concerns the public scandal that broke out in early 2004, related to a contract signed by the (then) BNT Director General, Kiril Gotsev, with a Russian advertising agency, Video International. By virtue of this contract, the exclusive rights for sales of advertising on BNT were entrusted to Video International, without the due sanction of the BNT Management Board. After weeks of silence, the CEM took the decision to terminate the mandate of the BNT Director General, for systemic violations of the law. However, as the contract under question is not among the listed violations, the decision is controversial from a legal perspective. The former Director General appealed the CEM's decision before the Supreme Administrative Court (SAC). The first appeal decided in favour of Gotsev, but this was then appealed by the CEM. In January 2005, the final decision of the SAC concluded against Gotsev and in favour of the CEM.

The debate on this case went beyond the validity of the contract. Questions were again raised about many aspects of the public radio and television broadcasters – the effectiveness of their management, their mission, the quality of their programming, the legal guarantees for their economic independence, the relationship between their public and political functions, the financial independence of the regulatory authority, and the regulatory body's failure to produce a unanimous opinion on a key issue.

Meanwhile, the CEM carried out a new competition, and a new BNT Director General, Prof. Emil Vladkov, was selected and appointed in May 2004. However,

¹⁰⁶ Parliamentary Media Committee, Session of 4 February 2004, Minutes of meeting.

¹⁰⁷ 1,658 staff at the Sofia headquarters, 77 in Plovdiv, 73 in Blagoevgrad, and 72 each at Varna and Rousse. CEM, *Expert Report – November 2002*.

¹⁰⁸ They are assigned to the following departments: Technical, Production, Administration, Sales, Programming, Promotions, News and Sports. CEM, *Expert Report – November 2002*.

about 40 days later, he submitted his resignation, on the basis of his inability to carry out his duties in the face of opposition by the BNT Management Board. The CEM accepted his resignation, and a new competition for a Director General was held in October 2004, leading to the appointment of Uliana Pramova as the new BNT Director General in October 2004.

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4.5 Programme framework

4.5.1 Output

The output by genre of BNT Channel 1 in 2003 is as shown below in Table 5, according to EU radio and television definitions and classifications. However, because BNT programme licence definitions are not in line with the EBU (European Broadcasting Union) genre classification, BNT must prepare the same information in several different formats, for the different beneficiaries (i.e. the CEM, the Ministry of Finance, or European institutions).

The share of documentary programmes broadcast by BNT is very low, at 0.6 per cent, while entertainment programmes prevail over educational programmes: 7.4 per cent versus 4.6 per cent. This tends to support the criticism of BNT that questions its status as a public broadcaster and, hence, its eligibility for a subsidy from the State budget.

Table 5. Annual output of BNT Channel 1 – breakdown by genre (2003)

Type of programme	Output	
	Hours	Share of total hours (per cent)
News	470	5.4
Current Affairs	469	5.4
Info-entertainment	830	9.5
Art, humanitarian and natural science	890	10.2
Religious	26	0.3
Art	1736	19.8
Musical	648	7.4
Youth	152	1.7
Information	1134	12.9
Live reporting from Parliament	160	1.8
Human stories	184	2.1
Educational	401	4.6
Sports	687	7.8
Entertainment	646	7.4
Children	275	3.1
Documentaries	52	0.6
Total	–	100

Source: BNT

4.5.2 Programme guidelines

The general programme obligations and guidelines are applicable for both the commercial and public service broadcasters (see section 5.2).

The Law on Radio and Television stipulates additional requirements on the programme content broadcast by the public broadcasters. BNR and BNT are obliged to do the following:¹⁰⁹

- provide programmes for all citizens of the Republic of Bulgaria;

¹⁰⁹ Law on Radio and Television, art. 7.

- assist the development and popularisation of Bulgarian culture and Bulgarian language, as well as of the culture and language of the citizens, in compliance with their “ethnic belonging”;
- provide through their programmes access to the national and European cultural heritage;
- include, in their programmes, broadcasts that inform, educate and entertain;
- apply new information technologies;
- relate the various ideas and convictions of society, by ensuring a pluralism of points of view in each and every news and current affairs broadcast addressing political and economic subjects;
- contribute to mutual understanding and tolerance in the relations between people;
- provide the possibility for citizens to acquire information regarding the official position of the State on important issues of public life.

BNR and BNT are obliged – upon request, immediately and free of charge – to provide programme time for official announcements of representatives of the State bodies in cases of national disasters or direct threats to the life, security and health of the population or of individual persons. The President of the Republic, the Chair of the National Assembly, the Prime Minister, the Chief Prosecutor and the Chairs of the Constitutional Court, the Supreme Administrative Court and the Supreme Court of Cassation have free right of address on BNT and BNR.

BNT and BNR are also obliged to provide programme time, free of charge, for the direct broadcasting of plenary sessions of Parliament.¹¹⁰ This right is very often exercised. However, surveys all indicate that viewers find these broadcasts extremely boring. The broadcasts attract very low audience shares, and they also make the programme scheduling very difficult and burden the budget of the public broadcasters.

BNR and BNT can provide programme time for addresses to religious believers and for broadcasting important religious ceremonies, following a request from the Bulgarian Orthodox Church or other officially registered religions. The conditions and the order of providing programme time are determined by the regulations on the organisation and activity of BNR and BNT.

The Elections Law stipulates the conditions for BNT and BNR to provide programme time during election campaigns.¹¹¹

¹¹⁰ Law on Radio and Television, art. 52(2).

¹¹¹ Law on the Election of National Representatives, SG. 37/13 April 2001, as last amended by SG. 32/12 April 2005, art. 60-69.

BNR and BNT have the right to conclude contracts with other radio and television operators for purchasing ready-made audio and audiovisual production, and for the supply, retranslation or exchange of programmes. They also have the right to create their own programmes and broadcasts, or to assign their creation to external producers or participate in joint productions. The creation of audio and audiovisual production by external producers is carried out through a competition and, subsequently, the conclusion of contract with BNR and BNT.¹¹²

The only exception is that, according to the Law on Radio and Television, only BNT and BNR can produce the news and current affairs programmes on political and economic subjects that they broadcast. This clause has been criticised by Council of Europe experts and media professionals as limiting editorial independence. It has also provided the opportunity for management to exercise full control over the news and current affairs output. However, BNT has frequently violated this rule, as with the magazine show *Vsiaka Nedelia*, in which both economic and political topics are discussed. The great number of such violations has led to various comments about alleged mutual interests shared between the producer of the show and members of BNT's management or of the regulatory authority.

BNR and BNT have the right to include in their news, free of charge, reports and information about events for which another radio or television operator has exclusive reporting rights. In compliance with the Law on Copyright and Related Rights, the source of information must obligatorily be announced.

According to the law, BNR and BNT are obliged to assist the creation and performance of national audio and audiovisual production. BNR must allocate no less than five per cent of its subsidy from the State budget for the creation and performance of Bulgarian musical and radio drama production. BNT must allocate no less than ten per cent of its subsidy for the production of Bulgarian television films.

Implementation of programming guidelines

Following the BNT management crisis at the beginning of 2004 (see section 4.4.3), on 10 March 2004, the CEM adopted a statement regarding the BNT Director General's fulfilment of the obligations of the BNT management contract.¹¹³ On the basis of this contract, the Programme Concept, the Technological Concept for BNT development, and BNT management reports, the CEM reached the conclusion that with respect to

¹¹² The Management Board adopts regulations that define the relations with external producers, including those with respect to contracts signed for joint productions, as well as regulations on the organisation and holding of competitions.

¹¹³ Statement of the CEM on the execution (fulfilment) of the BNT Director General management contract under Article 56 of the Law on Radio and Television, requested by the Parliamentary Media Commission, adopted at the meeting of the CEM of 10 March 2004, (hereafter, CEM Statement 2004), available at http://www.cem.bg/r.php?sitemap_id=92 (accessed 4 August 2005).

BNT's structure and its organisation of activities, the main areas where it had not fulfilled its obligations were as follows:¹¹⁴

- the lack of a Survey Centre – as envisaged in the BNT development concept – which would have a controlling function over the operator of the peoplometer system;
- the fact that BNT still did not have a Programme Director;
- BNT's failure to submit a required anti-corruption programme.

Regarding the programme activity of the operator, the CEM's concerns were related to the effective functioning and programming of BNT's satellite channel, TV Bulgaria. The CEM also concluded that some of the internal and external productions, chosen competitively, had turned out to be unsuccessful (attracting a low audience share) and ceased being broadcast, mainly due to the lack of transparency and competency in the selection process for external producers. The CEM also found that there were some unprofessional decisions with respect to BNT programming, as well as a lack of analysis of current market conditions and tendencies in the development of the BNT regional programmes.

The CEM did conclude that BNT had fulfilled, and even exceeded, the programme obligations specified in its programme licence. It also found that the requirement for ten per cent of the broadcaster's subsidy to be allocated for Bulgarian film production had been met. Nonetheless, BNT failed to meet the basic requirement for an increased income from advertising, sponsorship and other commercial activities, as envisaged in the BNT Development Concept – this decreased from BGN 25.425 million (€12.97 million) in 2001, to BGN 13.940 million (€7.1 million) in 2002, and BGN 11.599 million (€5.92 million) in 2003.¹¹⁵

The CEM also identified examples of non-transparent decisions taken by the Director General, namely that decisions had been taken without the Management Board's being informed, as well as "wrong management decisions and ineffective controlling procedures".¹¹⁶ In its decision of 8 March 2004, the CEM defined the performance of the BNT Director General as "unsatisfactory".¹¹⁷

Proposals for reforms

The continuing management crisis at BNT has prompted public debate within the media community, in the course of which a consensus was reached on the need to reform the management model of the public broadcasters. In particular, there is a need for a model that reflects the principle of a clear separation of programme management

¹¹⁴ CEM Statement 2004.

¹¹⁵ CEM Statement 2004.

¹¹⁶ CEM Statement 2004.

¹¹⁷ CEM Statement 2004.

from administrative management, which would guarantee the political and economic independence of the public broadcasters.

One proposal has been that the new regulatory framework should envisage two separate management bodies. First, a programme council, responsible for formulating the civic values to be respected in the programmes, the members of which would be elected by the regulatory authority, the CEM. Second, an administrative council, responsible for the management of the programmes and of administrative issues, and for electing the Director. An alternative proposal is that an internal controlling board be established at BNT and BNR, which would be responsible for monitoring the economic and financial activity and performance of the public service operator.

A project representing a combination of those two options was drafted by the Bulgarian Media Coalition (BMC) and discussed during its annual meeting in July 2004. However, this proposal was strongly criticised by participants, including foreign experts, who found that it introduced too many governance bodies and, hence, would lead to decisions being taken and implemented at a sluggish pace. The proposal was dropped, but the work of the BMC experts continues and is aimed at defining a simplified and workable management structure for the public service broadcasters.

4.5.3 Quotas

Programme obligations are specified in BNT's programme licence:

- news – not less than 5.1 per cent of the daily programme time, within which not less than 15.6 per cent of the entire news programme time should be dedicated to regional news and not less than 0.7 per cent of the news should be accompanied by a translation for deaf people;
- current affairs programmes – not less than 16.6 per cent of the weekly programme time;
- educational programmes – not less than 3.7 per cent of the weekly programme time;
- cultural, scientific and religious programmes – not less than 4.7 per cent of the weekly programme time;
- programmes for children and youth – not less than 7.6 per cent of the weekly programme time;
- programmes in support of the integration of underprivileged groups and groups at risk – not less than 1.8 per cent of the monthly programme time;
- programmes for Bulgarian citizens whose mother tongue is not Bulgarian – not less than 0.3 per cent of the annual programme time;
- European and Bulgarian production – not less than 74.9 per cent annually, of which the Bulgarian share must be not less than 43.5 per cent;

- BNT own production – not less than 36.7 per cent of the annual programme time;
- independent producers' production – not less than 10 per cent;
- additional programme requirements – news in Turkish;
- additional services – TELETEXT.

BNT's quotas for European and independent production are therefore equivalent, or more stringent, than those set out in the Law on Radio and Television for all broadcasters, in line with the EU "Television without Frontiers" (TWF) Directive¹¹⁸ – on European production (at least 50 per cent) and independent productions (at least ten per cent). (See section 5.5.3.)

BNT has developed internal monitoring mechanisms to ensure that its programmes meet the obligations specified in its programme licence. It submits reports on its programme parameters to the CEM and to the Ministry of Finance.

Nationally, there are very few programmes for Bulgarian citizens whose mother tongue is not Bulgarian, due to both the limited audience¹¹⁹ and the lack of economic incentive for commercial broadcasters to produce such programmes. Since 2 October 2000, BNT has broadcast ten minutes of news in Turkish during the working week. The BNR national channel, Hristo Botev, broadcasts one programme in Turkish (every Monday at 16.00-16.30). The BNR international channel, Radio Bulgaria, also broadcasts one programme in Turkish daily. BNT and BNR do include programming targeting the Roma minority, but this is broadcast in Bulgarian.

With respect to news and current affairs programmes, BNT's output is similar to that of its main competitors, bTV and Nova TV,¹²⁰ a fact that once again places in question the specific role of BNT as a public service broadcaster. In addition, the quality and content of BNT's news and current affairs programmes have also been criticised. A look at the weekly ratings of television programmes in Bulgaria for the period 10-16 May 2004 reveals that the most popular programme was the BNT Channel 1 soap

¹¹⁸ "Television without Frontiers Directive" (hereafter, TWF Directive): European Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, 89/552/EEC, OJ L 298 of 17 October 1989, as amended by European Parliament Directive of June 1997, 97/36/EC, OJ L 202 60 of 30 July 1997, consolidated text available on the European Commission website at http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf (accessed 15 March 2005).

¹¹⁹ According to the 2001 census, only 16 per cent of Bulgarians define themselves as having a mother tongue that is not Bulgarian. National Statistical institute, data available at <http://www.nsi.bg/Census/Census.htm> (accessed 4 August 2005).

¹²⁰ Data from *Media World* magazine of June 2004, on the audience share of BNT news and current affairs programmes, as compared to the audience of the same type of programmes on bTV and Nova TV.

opera, *Dedication*, followed by bTV's evening news. By contrast, the main news on BNT only ranked seventh within BNT's entire programme schedule, and fourteenth within the 50 most popular news programmes.¹²¹ Ranked first was the bTV *News*, followed by the *Slavi Show*. bTV takes the leading position among the three television broadcasters with national coverage with respect to the most-watched news programme. Its programme *Once upon a Time* is the current affairs programme with the highest-rating audience, followed by BNT's *Actualno*.

4.6 Editorial standards

There are a number of obligations imposed, by law, on both public service and commercial radio and television operators, which are intended to guarantee the basic right of the audience to obtain impartial and accurate information.

Radio and television broadcasters have the right to obtain necessary information from State and municipal bodies, provided that it does not contain classified information, and are obliged to use such information precisely and in an unbiased way.¹²² However, this requirement is not always adhered to, as often the information is given far beyond the term when it is of public interest. In some cases, even when a court decision to provide requested information has been issued, it has not been made available.¹²³ Such practices strongly impede the work of journalists.

Radio and television broadcasters are also obliged to ensure that the news, as informational facts, is separated from opinion.¹²⁴

Broadcasters must record the programmes that they have broadcast and keep these recordings for a period of three months from the date when broadcast. If, within this period, a request for a response is received, or a claim is made against the radio or television broadcaster in connection with the contents of a programme, the recording must be kept until the conclusion of the case. A person who claims that he or she has been affected by a broadcast has the right of access to these archives and the right to make a copy of the recording, at his or her own expense.¹²⁵

Radio and television broadcasters cannot create and broadcast programmes containing information related to the personal life of citizens without their consent, with the exception of information of public interest, regarding the personal life of "citizens

¹²¹ Data from TV Plan/TNS People Meter System, in BNT Information Bulletin No. 20.

¹²² Law on Radio and Television, art. 13.

¹²³ For example, a journalist working for the quality weekly newspaper *Capital Weekly* took the Director of the Prime Minister's press office to court to obtain requested information. However, months after the court decided in his favour (in 2003), the information had still not been supplied.

¹²⁴ Law on Radio and Television, art. 17(6).

¹²⁵ Law on Radio and Television, art. 14.

carrying out the legal capacities of State bodies or of citizens whose decisions have an influence on society".¹²⁶ In the case of violations, broadcasters must make a public apology to the affected person (while this does not deprive the affected person from seeking compensation in court). However, although these provisions provide greater opportunities for journalists to exercise more efficient public control over authorities' performance than in the past, this right is still not always exercised, due to journalists' continuing reflexes towards self-censorship.

In 2003, the Media Sustainability Index (MSI) panel of experts determined that, in general, Bulgarian journalistic practices were beginning to comply with international professional standards, but that these developments are quite recent and still dependent on current social and political processes.¹²⁷ Generally, reporting was found to be fair and well sourced, although there were still cases of unverified information being published. BNT was found to still air some blatantly biased items, including news items and current affairs programmes.

The MSI also found that the implementation of professional ethics had still not reached sustainable levels. Although many internal codes of ethics exist, their utility was questionable. As a general rule, there was no firewall between the management, sales departments and editorial departments of many print and broadcast media outlets. As a result, reporting was often biased, news distorted, and the audience had to compare the conflicting versions in order to get a more balanced picture of the actual developments.¹²⁸ The MSI panellists praised the political plurality and non-partisanship of media coverage. The prevailing opinion of MSI experts is that most viewpoints are covered, but they nonetheless raised questions with respect to BNT, which they found to be sometimes biased.

The MSI also found that the transition of state broadcasters to public status has not been completed, as these outlets are still susceptible to pressure from the ruling party.¹²⁹ From such a perspective, self-regulation is still less frequently applied and regulation mechanisms prevail – voluntary codes of ethics still have negligible importance with respect to the editorial decisions of journalists.¹³⁰ This is particularly true for BNT, where pluralism of opinions, as a key editorial value, sometimes still gives way to self-censorship.¹³¹ This results in the situation where a journalist or a management representative would comply voluntarily with a certain political interest, even without being required to do so, in order to avoid any possible complications – for example, being asked to submit a written reply to the editor, explaining a decision.

¹²⁶ Law on Radio and Television, art.16. These restrictions do not apply in cases where the person has been convicted for a premeditated crime of a general nature.

¹²⁷ MSI 2003, p. 6.

¹²⁸ MSI 2003, p. 6.

¹²⁹ MSI 2003, p. 8.

¹³⁰ OSI roundtable comment.

¹³¹ OSI roundtable comment.

5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING

The Law on Radio and Television determines the basic principles that should be observed by both public service and commercial broadcasters with respect to editorial programme content. The programme obligations and quotas of commercial broadcasters are defined in their programme licences, which are issued by the Council for Electronic Media (CEM). However, self-regulatory mechanisms to guarantee editorial independence and the impartial provision of information are the exception rather than the rule. Bulgarian legislation does not restrict media cross-ownership, and there is a lack of transparency regarding the ownership, capital and financing of Bulgarian media. There is no public register of media ownership.

5.1 The commercial broadcasting system

At present there are two terrestrial commercial television operators licensed to broadcast nationally, Balkan News Corporation (bTV) and Nova Television. Both stations are owned by foreign capital, reflecting the lack of restrictions on foreign ownership in Bulgaria. This has encouraged the presence of some of the big media companies in the Bulgarian market – such as News Corporation, Antenna Group and Metromedia Group – which has had a positive effect on the overall development of the media sector. The stronger competition, along with the drive to gain a larger portion of the advertising market, has boosted the development of new genres and resulted in better-quality production, at least with respect to the bigger operators. This is valid for both television and radio, where currently there is a severe competition among the existing hundreds of radio stations. Dominant on the commercial radio market are Darik Radio and Vesselina, as well as a couple of smaller radio stations, which have formed radio networks (based in Sofia, but also but operating in the biggest cities), such as FM + and Fresh.

5.2 Services

The Law on Radio and Television stipulates that broadcasters must be guided by the following principles in carrying out their activities:¹³²

- guarantee of the right to free expression of opinion;
- guarantee of the right to information;
- preservation of the anonymity of the source of information;
- protection of the personal inviolability of the citizens;

¹³² Law on Radio and Television, art. 10.

- non-admission of programmes provoking intolerance among citizens;
- non-admission of programmes contradicting good manners, especially if they contain pornography, praise cruelty or violence, or instigate hatred on the basis of race, sex, religion or nationality;
- guarantee of the right to response;
- guarantee of the copyright and related rights of broadcasts;
- guarantee of the preservation of the purity of the Bulgarian language.

The law stipulates that, in accordance with the Constitution, radio and television programmes must be broadcast in the official language (Bulgarian). The only exceptions whereby programmes or individual broadcasts can be broadcast in other languages are when one of the following applies:

- they are broadcast for educational purposes;
- they are intended for Bulgarian citizens whose mother tongue is not Bulgarian;
- they are designated for listeners or viewers living abroad;
- foreign radio and television programmes are rebroadcast in Bulgaria.

5.3 Commercial broadcasters' ownership and cross-ownership

5.3.1 Media ownership restrictions

There are no restrictions on media ownership as such envisaged in the Law on Radio and Television. However, there are restrictions on the simultaneous possession of both a national and a regional (local) programming licence for the same kind of activity. Thus, a national programme licence cannot be issued to a person (or related persons) or company holding a regional licence for the same kind for radio and television activity. In order to comply with this requirement, the nationally licensed commercial radio operator, Darik Radio, had to give up its licences with local coverage.

Although the Law on Radio and Television does not contain any anti-monopoly limitations or restrictions on foreign ownership in the media, it does invoke the general competition law. The Law for the Protection of Competition aims at ensuring protection against agreements, decisions and cartel practices, abuse of monopolistic and dominant market positions, concentration of economic activities, unfair competition and other actions that may result in the prevention, restriction or distortion of competition.¹³³

¹³³ Law on the Protection of Competition, SG No. 52/1998, as last amended by SG No. 9/2003.

This law is generally permissive, and its impact on the media has been slight. An entity (physical or judicial) may own more than one media outlet of the same type or of different types – for example, several radio or television stations, or a radio and television station, or a broadcast and print media outlet.¹³⁴ Nonetheless, several cross-ownership agreements have been appealed to the Competition Protection Commission, which is the competent regulator for competition and anti-monopoly measures. Some of these concerned the activity of Westdeutsche Allgemeine Zeitung (WAZ), a German company that has large shares in the Bulgarian companies Media Holding and Bulgaria Newspapers Group, and is often referred to as a monopolist, especially in its impact on the advertising market.¹³⁵ There has also been an attempt to use the law to limit vertical concentration in the media by banning the owners of advertising companies from applying for licensing or registration of electronic media.

The regulatory framework for commercial broadcasting – provided by the Law on Radio and Television, the Telecommunications Law and the Law for the Protection of Competition – aims to prevent companies from gaining dominant or even monopolistic positions. Yet, in practice, the legal restraints on would-be dominant or monopolist companies are weak, consisting for the most part of limits on eligibility for licences, which can be easily evaded. The Law on Radio and Television defines a number of circumstances in which legal entities are not eligible for licensing (and registration). These include the following:

- companies that have been refused a permit for insurance activity or have had such a permit withdrawn, as well as all corporate bodies in which these companies own shares;
- legal entities that cannot prove ownership of their property or capital, as well as all other corporate bodies, individuals or sole entrepreneurs whose shares they own;
- corporate bodies with partners or shareholders that are partners or shareholders of corporate bodies engaged in the security business;
- legal entities that have been declared insolvent during the five years preceding their application for a licence, or are under proceedings for declaring insolvency or liquidation;
- legal entities that have received a refusal for the same kind of licensed activity, or from whom an issued licence has been withdrawn during the last year.

¹³⁴ These include Radio and Television Veselina, Nova Television and Radio Express, BBT television and the *Duma* daily.

¹³⁵ Velislava Stoyanova Popova, “Bulgaria Chapter,” in Brankica Petković (ed.), *Media Ownership and its Impact on Media Ownership and Pluralism*, Peace Institute and SEENPM, 2004, Ljubljana, available at http://www.mirovni-institut.si/media_ownership (accessed 4 August 2005), (hereafter, Popova, *Media Ownership in Bulgaria*).

The same exclusions apply to corporate bodies where the partners or shareholders have credits that have not been reimbursed and to telecommunications operators with a monopoly status on the market. These eligibility criteria apply to the initial licensing of a radio and television broadcaster, and also to the situation arising if a licensee requests permission from the CEM for the licence to be transferred to another entity.¹³⁶

This legal laxity over ownership is exacerbated by the lack of transparency about media ownership, capital and financing. Ownership is usually concealed behind ordinary shares in the company (as an alternative to personal shares) or behind offshore companies, because of a lack of specific requirements in this respect.¹³⁷ The only public tender limiting the eligibility of offshore companies to apply was the 2001 tender for licensing the first digital television broadcasts for the Sofia region. The licence was finally granted to the BTC, and digital terrestrial transmission is expected to start in 2004 (see section 7).

The lack of transparency affects the editorial independence of broadcasters. It is also the reason for continuing arguments about the validity of the radio and television ratings offered by different agencies, whose owners allegedly control, or have huge shares in, the electronic media.

Regarding telecommunications, the Telecommunications Law prohibits the simultaneous holding of a national and regional (local) licence.¹³⁸ The same law also defines certain requirements with respect to transferring shares or stocks of capital, and to admitting new partners in trade companies or licensed public operators.¹³⁹ The law defines “telecommunications operators with significant market power” as those who possess a share equal to, or above, 25 per cent of the relevant telecommunications market, in a territorial range determined by the operator’s telecommunications licence.

The CRC is responsible for determining “telecommunications operators with significant market power”.¹⁴⁰ Currently only one operator fits this definition – the Bulgarian Telecommunications Company (BTC). The CRC has the right to impose obligations stipulated by the Telecommunications Law on “telecommunications operators with significant market power”, related to interconnectivity, providing leased lines, special access, and unbundled access to the local loop, shared use of premises,

¹³⁶ Law on Radio and Television, art. 106(2).

¹³⁷ Popova, *Media Ownership in Bulgaria*, p. 98.

¹³⁸ Telecommunications Law, art. 59.

¹³⁹ Telecommunications Law, art. 83.

¹⁴⁰ Article 45 of the Telecommunications Law states that “the conditions and the order of determining operators with significant market power will be defined according to a methodology worked out by the CRC, in coordination with the Competition Protection Commission, and adopted by the Council of Ministers by a decree.”

telecommunications facilities, ducts, towers, etc., as well as an obligation to provide a universal telecommunications service.¹⁴¹

5.3.2 Mapping of television broadcasters

The two main commercial television broadcasters are bTV and Nova Television. Although there are hundreds of other local cable television stations, their impact is very small, mainly due to their poor quality. In April 2004, bTV's average share of the national audience was 90.8 per cent, compared to 74.2 per cent for BNT and 48.7 per cent for Nova TV.¹⁴²

bTV

bTV was the first private national television station in Bulgaria. It was licensed in 2000 and is 100 per cent owned by Rupert Murdoch's News Corporation. When bTV first received its national programme and telecommunications licence, there was public speculation about bTV management's links to a businessman involved in advertising, Krassimir Gergov, and later about his connections and influence to the TV Plan/TNS People Meter System. Therefore bTV's main competitors, BNT and Nova TV, advocated setting up a second peoplemetric system to measure viewership, based on set-top boxes delivered to sample households, but this was never implemented. It was in 2001 that the Balkan News Corporation was first listed as a company owned by News Corporation.¹⁴³ The News Corporation's annual reports for recent years reveal that the channel has developed successfully, and that in 2002 it managed to double its profits to BGN 10 million (over €5 million). According to the 2002 advertising revenue data, the national television station even outstripped the WAZ companies, which own the highest-selling dailies in the country. In 2003, bTV's total advertising revenue amounted to BGN 53.577 million (over €27 million), representing a growth of over 40 per cent.¹⁴⁴ However, the influence of Krassimir Gergov remains controversial, as he has been officially presented as a consultant to bTV by its Executive Director, Albert Parsons.¹⁴⁵

Nova Television

Established in 1994, in 2000 Nova Television became 100 per cent the property of Antenna Bulgaria. Through its media subsidiary, Antenna TV, a Greek company called

¹⁴¹ Telecommunications Law, art. 47.

¹⁴² TV Plan/TNS research in *Media World* magazine of June 2004.

¹⁴³ Popova, *Media Ownership in Bulgaria*, p. 103.

¹⁴⁴ Popova, *Media Ownership in Bulgaria*, p. 103.

¹⁴⁵ Krassimir Gergov owns an advertising company and, as such, is by law not allowed to own shares, or have executive and decision-making positions, in broadcasting media. Although the law does not prevent him from holding the position of consultant, this has nonetheless given rise to concerns that he could influence decision-making at bTV.

Antenna Group bought two media outlets – Nova TV, then holder of a local licence for the Sofia region, and Express Radio. On 18 July 2003, Nova Television was granted a national telecommunications licence and became the second private national television station in the country.

5.3.3 Mapping of radio broadcasters

The Bulgarian radio market is very fragmented, which the professional community regards as an obstacle to its entire development. The reason for this is that small and weak media outlets (a category that includes most Bulgarian broadcasters) often do not contribute to pluralism, but rather become easy prey to political or economic pressures. Hence, concentration – if well defined and existing within certain limits admissible to the professional community – may prove beneficial to the media market.¹⁴⁶

In April 2004 the audience share of Darik Radio was 11.4 per cent, compared to 25.9 per cent for the BNR Horizont channel, 9.3 per cent for Vesselina Radio, and 5.1 per cent for FM Plus.¹⁴⁷

Darik Radio

The first (and only) licensed private radio station with national coverage is Darik Radio. There are three other radio stations considered to be affiliated with the Darik Radio group, because their shareholders include an investment company owned by a former associate (Ivaylo Staevski) of Darik Radio.¹⁴⁸ However, he quit the radio to become a co-owner of Retro Radio and Tangra Radio, which has been transformed into the sports channel Radio Gong, with a programme managed by the Darik sports editor. His company also has shares in the sports cable station Ring Plus.

Radio Networks

In Bulgaria, the licensing process has encouraged the formation of large radio networks. In practice, it is much more cost-effective to collect local licences (for which the broadcaster pays lower fees than for national licences) covering major cities, which ensures coverage of a significant percentage of the city audience – a main target for advertisers. Radio networks can successfully compete with a national radio station. The consolidation of the fragmented radio market in Bulgaria started in 2002 and continued in 2003, with a greater number of deals.

A large radio group has been formed around the first private radio station in Bulgaria – FM Plus. The station was started in 1992 and currently broadcasts in seven cities. The British GWR Group owns 48 percent of FM Plus. The GWR Group also acquired

¹⁴⁶ OSI roundtable comment.

¹⁴⁷ Alpha Research polls, April 2004.

¹⁴⁸ Popova, *Media Ownership in Bulgaria*, p. 104.

shares in Fresh Radio, another network of stations appealing mainly to young urban listeners.

At the end of 2003, the owners of FM Plus and Fresh bought shares in another station, Mila, which represented the beginning of a third.¹⁴⁹

Some of the networks tend to fill in their frequency gaps in some cities by purchasing the shares of local operators, which are holders of similar radio licences, and by agreeing to have their programming, and possibly their radio network brand, copied. Apart from buying shares, agreements called “station management” contracts have also become a popular way of legitimising the financing of a radio station – by a business group or another station. For example, in Sofia, Viva Radio was taken over by such a contract from the owners of a chain of luxury restaurants and nightclubs.

Nova

The Bulgarian company Metroradio, which holds licences for BG Radio and Radio One, also started a third radio station, Nova, in early December 2003. Metroradio is owned by the US Metromedia Group (Metromedia International Telecommunications). In Bulgaria it has invested in exclusively broadcasting Bulgarian music. In July 2004 Metromedia sold all its shares in radio worldwide to an Irish company, CommuniCorp.

Vesselina Radio

The owners of the Bulgarian-owned Vesselina Radio launched a cable television outlet with the same brand name in November 2003.¹⁵⁰

Projected over this complicated media market, the most interesting example in terms of ownership dynamics is the local media market in Varna, which has been severely monopolised by a local economic group, TIM, with shares and interests in tourism, construction, and privatisation. The group owns two cable television channels, a radio station, a newspaper and a cable network.¹⁵¹

5.4 Funding

Advertising and sponsorship are the main sources of income for commercial outlets. Bulgaria’s advertising market is often defined as small, although market data show year-by-year growth. Precise data on advertising expenditure is not available, because publicly available information comes only from market monitoring activities carried out by several marketing agencies. However, these usually show aggregate revenues for

¹⁴⁹ Popova, *Media Ownership in Bulgaria*, p. 105.

¹⁵⁰ Alpha Research polls of April 2004.

¹⁵¹ SEENPN, *Bulgaria Report*, p. 114.

the television market (taking into account only up to ten channels¹⁵²) and for the print media (and again not all newspapers and magazines are included, but only major ones – about 100 publications). Moreover, these revenue figures are calculated on the basis of broadcast or published advertisements, without taking into account discounts, commission fees and barter. Therefore, this data should be treated with caution, as, according to some analysts, it is inflated by as much as 50 per cent.¹⁵³ Information about radio advertisements, outdoor, cinema and Internet advertising is not available, and the CEM does not have the remit to collect such information.

Another factor that significantly influences the advertising market is the dominance of a group of companies gathered around the owner of the one of the first advertising agencies in Bulgaria, Kres Agency (owned by Krassimir Gergov). At a time when BNT was still the only player on the national market, Gergov won contracts for BNT in television advertising, through a series of agreements that were allegedly disadvantageous for BNT.¹⁵⁴

The distribution of advertising budgets plays a decisive role on the policies of all media, especially at the local and regional levels, and strongly reflects their editorial independence. Therefore, transparency of media ownership and advertising revenues should be a goal for future amendments to the Law on Radio and Television.¹⁵⁵

In addition, the existing peplemetric system of TV Plan is not yet considered a credible source of information (for example on audience share) and its data has often been the source of heated arguments, with media outlets questioning its findings. However, there is no alternative method to verify the data coming from TV Plan. No general methodology exists to make possible any comparison between radio and the television audiences. This situation, together with the lack of monitoring of radio advertising and billboards, not only reveals an insufficient development of the media sector in Bulgaria, but also allows for manipulation of the media and, hence, for ways to exert control over the broadcasters.¹⁵⁶

A glance at the distribution of total advertising revenue reveals that almost two thirds of the total revenue are concentrated in the hands of the three national television stations, plus a couple of the stronger cable operators. In April 2004, total gross advertising spending was BGN 33.668 million (€17 million), of which television advertising revenue accounted for 76 per cent – BGN 25.508 million (€13 million), as compared to BGN 8.160 million (€4 million) for the press. BTV has a leading position on the advertising market, with BGN 15.123 million gross revenue (as of April 2004),

¹⁵² For April 2004 TV Plan/TNS research: bTV, Nova TV, Channel 1, M SAT, Diema+, Evropa TV, Alexandra TV, BBT, Diema 2 and MM.

¹⁵³ SEENPN, *Bulgaria Report*, p. 99.

¹⁵⁴ SEENPN, *Bulgaria Report*, p. 99.

¹⁵⁵ OSI roundtable comment.

¹⁵⁶ OSI roundtable comment.

followed by Nova TV, BGN 6.203 million (€3 million), and BNT Channel 1, BGN 1.901 million (€1 million).¹⁵⁷

An identical situation exists in the radio market, where the majority of the advertising revenue is distributed among the radio stations with leading audience shares. Over one third of the total advertising market for radio for 2003, estimated at approximately BGN 20 million (€10 million) net, goes to the five leading operators – Darik Radio, FM Plus, Vesselina, the BNR Horizont channel and BG Radio.¹⁵⁸

5.5 Programme framework

5.5.1 Instruments

The Law on Radio and Television guarantees the independence of radio and television operators, and their activities, from political and economic interference.¹⁵⁹ It also states that “the creation of radio and television programmes in the Republic of Bulgaria is free”, and that “censorship of the programmes in any form whatsoever is not allowed”.

The law also provides some guarantees for journalists’ editorial independence *vis-à-vis* radio and television operators’ management and other interests. Thus, journalists who have concluded contracts with radio and television operators cannot receive instructions and directives for their activity by persons and/or groups other than the management bodies of that operator. They have the right to refuse to fulfil assigned tasks if these are not related to the fulfilment of the provisions of the law or of their contracts, or go against their personal convictions. However, technical and editorial processing of programme material and news cannot be refused. Another instrument detailed in the law is the possibility for an editorial statute to be agreed upon jointly between the owners and/or the managing bodies of radio and television operators and the journalists who have concluded contracts with them.¹⁶⁰

The Law on Radio and Television proclaims the right of radio and television operators not to disclose their sources of information, except in cases of pending court proceedings or pending proceedings related to a claim of the affected person. Journalists have the same right, not only with respect to their audience, but also with

¹⁵⁷ National representative TV Plan/TNS telemeter panel.

¹⁵⁸ Association of Bulgarian Broadcasters (ABBRO), research for 2003, available at <http://www.abbro-bg.org> (accessed 4 August 2005).

¹⁵⁹ Law on Radio and Television, art. 8(1).

¹⁶⁰ Article 11(6) of the Law on Radio and Television defines the concrete definitions and measures that the editorial status must contain: providing the freedom and the personal responsibility of the journalistic work in fulfilment of the assigned task, protection of the journalists, professional and ethical norms of the journalistic activity of the radio and television operators, the ways of taking decisions that concern the journalistic activity, and the establishment of an internal body for the settlement of disputes that have occurred, related to the journalistic work on the creation of the programmes.

respect to their own management. Radio and television operators are legally allowed to broadcast information from an unknown source, but must explicitly announce this, and journalists are obliged to retain the anonymity of the source of information if this is explicitly requested by the person who has provided it.

At first glance, the above provisions would seem to provide the requirements necessary to guarantee journalistic independence. However, their practical application is nonetheless open to various violations. In the commercial electronic media, where the owner is often also the employer, employees often sign contracts that include a clause obliging them “to carry out any other task that might be required of them”. This clause has the potential to limit journalistic independence, in that it provides grounds for the employer to increase the workload of the journalist. In addition, in public electronic media outlets, the practice is to employ in more senior positions (for example, editors, anchors and news presenters) people who are “close” to the management and therefore readily comply with orders. In both cases, such practices have the potential to give rise to violations of the principles of independent journalism.

Another way of limiting editorial independence is self-censorship. Although in comparison with the mid-1990s positive practices have started to emerge in some of the big broadcast media, self-censorship is still practised. In the public media, it is driven by both political and economic influences, while economic interests prevail in privately owned outlets. It can also often be driven by the reflex of being “on the safe side”, due to journalists’ poor knowledge of editorial statutes, existing regulations and norms regulating journalists’ rights.¹⁶¹

5.5.2 Programme guidelines

The radio and television operators bear responsibility for the contents of the programmes that they broadcast.¹⁶² They are obliged not to create or broadcast programmes that do any of the following:

- violate the principles of freedom of speech, the right of the citizens to be informed, or their personal inviolability;
- incite national, political, ethnic, religious and racial intolerance;

¹⁶¹ BBC World Service Trust, *Technical Assistance for Improvement of the Professional Standards in Journalism in Bulgaria*, available at <http://www.mediacentrbg.org/phare-bbc> (accessed 4 August 2005). Expert report of BBC World Service Trust team prepared within the framework of the EU Phare Programme, “Technical Assistance for Improvement of the Professional Standards in Journalism in Bulgaria”.

¹⁶² According to the Law on Radio and Television, radio and television operators do not bear responsibility for disseminated information and its contents if it is obtained by an official order, when it represents quotations of official documents or precise reproduction of public announcements or it is based on materials received from information agencies or from other radio and television operators. Changes are not permitted in quoting documents.

- praise feelings of cruelty or violence;
- are directed at damaging the physical, mental and moral development of minors and underage persons.¹⁶³

Although self-regulatory mechanisms are fairly rare, a good example is an initiative of the CEM, which led to an agreement between the three television broadcasters with national coverage (bTV, BNT and Nova TV) to signpost their programmes as a way to protect minors.¹⁶⁴

A radio or television operator who has the exclusive right to an important event is obliged to provide access to the other radio and television operators for its informational presentation, in compliance with the obligations undertaken by the Republic of Bulgaria under enacted international agreements.¹⁶⁵

When a programme uses part of a programme belonging to another radio or television operator, this must explicitly be pointed out, and comply with the provisions of the Law for the Protection of Copyright and Related Rights.¹⁶⁶ Radio and television operators are obliged to broadcast programmes only after copyright and related rights have been settled.

An operator broadcasting foreign programmes (i.e. programmes produced externally to Bulgaria) is obliged to present to the CEM every six months an updated list of the foreign programmes that have been broadcast, together with documents related to the acquisition of these rights. However, this is rarely the case in practice.¹⁶⁷

Observation of copyright and related rights is a key factor contributing to equal treatment of operators on the market, which affects market competition. However, at present, the CEM does not have the right to impose sanctions for violations of the copyright rules. According to the Law for the Protection of Copyright and Related Rights, it is a Department within the Ministry of Culture that is responsible for the enactment of this law, including sanctioning. The CEM should have its mandate increased in this respect, to contribute to an equal treatment of all the media with local, regional and national coverage, as regards the respect of copyright.¹⁶⁸

¹⁶³ Law on Radio and Television, art. 10.

¹⁶⁴ OSI roundtable comment.

¹⁶⁵ Law on Radio and Television, art. 13(4).

¹⁶⁶ Law for the Protection of Competition and Related Rights, promulgated in SG No. 52/1998, as last amended by SG No. 9/2003.

¹⁶⁷ OSI roundtable comment.

¹⁶⁸ OSI roundtable comment.

5.5.3 Quotas

There are no provisions in the Law on Radio and Television regarding special quotas or minority group representation, and there is a lack of economic incentive for commercial broadcasters to produce programmes for Bulgarian citizens whose mother tongue is not Bulgarian. There are two commercial television operators with regional coverage that broadcast minority programmes. TV Rodopi, in the town of Kurdjali, has five-minute daily news broadcasts in Turkish, at 20.30, which are financially supported under a project by the Open Society Institute – Sofia. TV Roma started operating in 1998, and its programmes are entirely targeted at the Roma community in the town of Vidin. It broadcasts nine hours of programming daily (news, current affairs and entertainment programmes), of which 30 per cent is in Romanes.

The Law on Radio and Television only envisages quotas in line with the EU “Television without Frontiers” (TWF) Directive – on European productions (at least 50 per cent)¹⁶⁹ and independent productions (at least 10 per cent).¹⁷⁰ The quota on independent productions is to be achieved gradually, through the allocation of sufficient funds for new production (i.e. productions that are broadcast not later than five years after their creation). The requirements do not apply to programmes that are designated for a local audience and are distributed by an operator that does not have a national licence.

bTV

The programme obligations listed in bTV’s programme licence are as follows:

- news – not less than 7 per cent of the weekly programme time;
- informational and commentary programmes – not less than 12 per cent of the weekly programme time;
- educational programmes – not less than 7 per cent of the weekly programme time;
- cultural, scientific and religious programmes (etc.) – not less than 2 per cent of the weekly programme time;

¹⁶⁹ “At least 50 per cent of the total annual programme time, excepting the news and the sport broadcasts, radio and television games, the commercials, the teletext and the radio and television market, must be allocated for European productions when practically possible.” Law on Radio and Television, art. 10(2).

¹⁷⁰ “At least 10 per cent of the total annual programme time, excluding the news and the sport broadcasts, radio and television games, the commercials, the teletext and the radio and television market, must be allocated for European productions created by outside producers. This ratio must be achieved gradually by allocation of enough funds for new productions, i.e. productions that are broadcast not later than five years after their creation.” Law on Radio and Television, art. 10(2),(3)

- programmes for children and youth – not less than 10 per cent of the weekly programme time;
- programmes in support of the integration of underprivileged groups – not less than 1 per cent of the monthly programme time;
- European and Bulgarian production – not less than 55 per cent of the annual programme time;
- bTV own production – not less than 26 per cent of the annual programme time;
- independent producers' production – not less than 13 per cent of the annual programme time.

The CEM monitors broadcasters' compliance with the requirements of both the Law on Radio and Television and the broadcasters' programme licences. According to Zhanet Zaharieva, bTV attorney at law, bTV programming was monitored by the CEM throughout 2002, and the CEM concluded that "bTV has met all requirements, including programme quotas".¹⁷¹

The programme development of bTV is closely linked to its leading position in the television market in terms of audience share.¹⁷² The goal of bTV is to keep and increase its main target audience, youth and working people at their most productive age. Interactivity and introduction of new formats are seen as a good way of enhancing programming. The main efforts of bTV go into developing the station's own original formatting, bringing together educational and cultural elements with entertainment. The programme policy of bTV is to aim to reach a larger audience in a "more friendly and unique way".

Nova TV

The programme obligations listed in Nova TV's programme licence are as follows:

- news – not less than 6 per cent of the daily programme time;
- current programmes – not less than 8 per cent of the weekly programme time;
- educational programmes – not less than 5 per cent of the weekly programme time;
- cultural, scientific, religious programmes (etc.) – not less than 5 per cent of the weekly programme time;
- programmes for children and young people – not less than 6 per cent of the weekly programme time;

¹⁷¹ Interview with Zhanet Zaharieva, bTV attorney at law, Sofia, July 2004.

¹⁷² Interview with Zhanet Zaharieva, July 2004.

- programmes in support of the integration of underprivileged groups – not less than 2 per cent of the monthly programme time;
- programmes for Bulgarian citizens whose mother tongue is not Bulgarian – not less than 0.5 per cent of the annual programme time;
- European and Bulgarian production – not less than 65 per cent of the annual programme time;
- Nova TV own production – not less than 32 per cent of the annual programme time;
- independent producers' production – not less than 14 per cent of the annual programme time;
- additional services – Internet.

A comparison between the programme obligations envisaged in the programme licences of the three national television broadcasters reveals an interesting phenomenon – they have very similar responsibilities in terms of thematic programmes and quotas. In fact, in their applications for licensing, both bTV and Nova TV committed themselves to higher quotas for educational programmes than BNT. Nova TV also has higher responsibilities than BNT with respect to cultural, scientific and religious programmes, and programmes for Bulgarian citizens whose mother tongue is not Bulgarian. A similar conclusion was reached by the panel of experts defining the 2003 Media Sustainability Index (MSI),

many of the new private national channels are compensating for the inability of state media to exercise their public functions. Commercial national channels cover the political spectrum in a balanced manner, and the views of opposition parties are objectively and fairly reflected. While State/public television fails to offer a variety of up-to-date cultural and educational programming, commercial operators are meeting demand for such programmes.¹⁷³

5.6 Editorial standards

In conformity with the requirements of the Law on Radio and Television, bTV has adopted internal editorial guidelines to ensure the editorial independence of the News Department from the station's management.¹⁷⁴ Another important practical mechanism is the clear distinction between the functions and the activity of the News Department and those of the Sales Department. bTV has developed and implemented a computerised system for managing the whole broadcast activity of the station, which

¹⁷³ MSI 2003, p. 8.

¹⁷⁴ Interview with Zhanet Zaharieva, July 2004.

does not allow paid or sponsored reports to appear in the news bulletin, thus ensuring a strict distinction between editorial content and any form of advertising.

Another instrument adopted by bTV is the editorial statute, which specifies the criteria for news selection and for including the selected news in the news bulletin.¹⁷⁵ These criteria include the national significance of the news, the implications for citizens' life and health and the social importance of the reported event. To have a news item included in the news bulletin, each reporter has to be able to show that it corresponds to bTV editorial criteria. The criteria are interrelated, and their overall application guarantees in an optimal way the provision of impartial and accurate information.

However, such good practices as shown by bTV in the ensuring editorial independence of both the journalists themselves and the media outlets seem to be the exception rather than the rule. The MSI panel of experts determined that there had been very little change in the professional development of journalists in Bulgaria since 2002 (up to October 2004). Although the panel found mainstream reporting to be relatively fair and objective, it nonetheless found self-censorship to be the most serious problem for professional journalism. When combined, these two tendencies serve to expose one of the most serious shortcomings of Bulgarian news reporting – it is objective, but (politically) selective. Most of the information published is more or less accurate, but information that does not fit the publishers' agendas is usually not published at all.¹⁷⁶

6. EUROPEAN REGULATION

6.1 European policy compliance

Bulgaria has been a member of the United Nations (UN) since December 1955 and of the Council of Europe (CoE) since 1992, and its broadcast legislation is in full compliance with the framework of the UN and the CoE in this sector. Under the Constitution, international law, once it has been ratified by Parliament and has entered into force, is directly applicable and supersedes domestic law.¹⁷⁷

Bulgaria is an EU candidate country. In June 2004, Bulgaria provisionally closed all the negotiation chapters, and is expected to accede to EU membership in 2007. Since 1997, the European Commission's evaluations of Bulgaria's progress towards the adoption of the *Acquis communautaire* regarding the audiovisual sector have been broadly and increasingly positive.

The Commission's 2002 *Regular Report on Bulgaria's progress towards accession* (hereafter, 2002 Regular Report) concluded that Bulgaria had achieved a significant level of

¹⁷⁵ Interview with Zhanet Zaharieva, July 2004.

¹⁷⁶ MSI 2003, p. 6.

¹⁷⁷ Constitution of the Republic of Bulgaria, art. 5(4).

adoption in the audiovisual domain, and provisionally closed the negotiations on Chapter 20, on culture and audiovisual policy, without asking for transitional periods.¹⁷⁸

The Commission's 2003 Regular Report noted that as regards Chapter 19, on telecommunications and information technologies, Bulgaria had achieved reasonable compliance with the EU legal framework, but that implementation of the domestic provisions was still pending. The Commission recommended that decisive action be taken regarding the existing telecommunications monopoly and that the administrative capacity of the regulatory body in post and telecommunications be increased.¹⁷⁹ With respect to Chapter 20, the Commission reinforced the necessity to increase the regulatory authority's capacity – especially for monitoring local and regional outlets – to ensure equal conditions for all licensees.¹⁸⁰ The CEM is currently carrying out a project within the framework of the EU Phare Programme aimed at increasing its administrative capacity, and especially the process of monitoring the operators.¹⁸¹

In its 2004 Regular Report, which is the last one during Bulgaria's EU accession period, the Commission's overall conclusion with respect to Chapter 20 is that,

In its 1997 Opinion, the Commission concluded that provided that the necessary legislative measures were pursued with sufficient urgency and were accompanied by the necessary structural adaptation of the industry, it was reasonable to expect that Bulgaria should be able to meet EC requirements in the audiovisual sector in the medium term. Since the Opinion, Bulgaria has made significant progress. Bulgaria's legislation is in line with the *acquis* and the necessary administrative structures are in place.

Negotiations on this chapter have been provisionally closed. Bulgaria has not requested any transitional arrangements in this area and is generally meeting the commitments it has made in the accession negotiations in this field. In order to complete preparations for membership, Bulgaria's efforts should now focus on strengthening the administrative capacity of the regulator and

¹⁷⁸ European Commission, *2002 Regular Report on Bulgaria's progress towards accession*, SEC(2002), Brussels, 9 October 2002, available on the European Commission website at http://europa.eu.int/comm/enlargement/report2002/bu_en.pdf (accessed 1 May 2005), p. 99, (hereafter, European Commission, *2002 Regular Report*).

¹⁷⁹ European Commission, *2003 Regular Report on Bulgaria's progress towards accession*, Brussels, 2003, available on the European Commission website at http://europa.eu.int/comm/enlargement/report_2003/pdf/rr_bg_final.pdf (accessed 1 May 2005), p. 90, (hereafter, European Commission, *2003 Regular Report*).

¹⁸⁰ European Commission, *2003 Regular Report*, p. 91.

¹⁸¹ Project on Strengthening of the Administrative Capacity of the Council for Electronic Media in Bulgaria, information in English available at http://www.cem.bg/r.php?sitemap_id=153 (accessed 4 August 2005).

ensuring predictable, transparent and effective implementation of the regulatory framework, including licensing.¹⁸²

With respect to Chapter 19, the Commission concludes that,

Negotiations on this chapter have been provisionally closed. Bulgaria has been granted a transitional arrangement until 31 December 2008 as regards the implementation of number portability as required by Directive 98/61/EC. Bulgaria is meeting the majority of the commitments and requirements arising from accession negotiations for this chapter. In order to complete preparations for membership, Bulgaria's efforts should now focus on ensuring entry of new players in the market through swift implementation of effective interconnection and promotion of pro-competitive pricing policies by the larger operators. Bulgaria also needs to focus attention on improving the separation of functions and reaffirming the full independence of the regulatory body. An affordable universal service needs to be ensured and alignment with the *acquis* in the telecommunications and postal services sectors needs to be completed.¹⁸³

6.2 Legal Compliance

In March 1999, Bulgaria ratified the Council of Europe's Convention on Transfrontier Television (ECTT).¹⁸⁴ The Amending Protocol to the ECTT was ratified by Bulgaria in 2001, and the Protocol entered into force at the end of 2003.¹⁸⁵

In October 2000, amendments were passed to the Law on Radio and Television¹⁸⁶ that ensured full compliance of domestic legislation with the EU "Television without Frontiers" (TWF) Directive. The administrative capacity of the main regulator at this time, the NRTC, had been enhanced but remained inadequate, according to the evaluation of the European Commission.¹⁸⁷ The main criticism was related to the composition of the regulatory authority and the continuing possibilities for representatives of the political party in power to dominate it. This, in turn, could allow

¹⁸² European Commission, 2004 Regular Report on Bulgaria's progress towards accession, SEC (2004) 1199, Brussels, 6 October 2004, available on the European Commission website at http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_bg_2004_en.pdf (accessed 1 May 2005), p. 106, (hereafter, European Commission, 2004 Regular Report).

¹⁸³ European Commission, 2004 Regular Report, p. 105.

¹⁸⁴ Council of Europe, European Convention on Transfrontier Television, 5 May 1989, amended according to the provisions of the Protocol (E.T.S. No. 141) of the Council of Europe of 9 September 1998, which entered into force on 1 March 2002, available at <http://conventions.coe.int/treaty/en/Treaties/Html/132.htm> (accessed 30 June 2005), (hereafter, European Convention on Transfrontier Television).

¹⁸⁵ Council of Europe, Protocol amending the European Convention on Transfrontier Television, Strasbourg, 1 October, available at <http://conventions.coe.int/treaty/en/Treaties/Html/171.htm> (accessed 30 June 2005),

¹⁸⁶ Law on Radio and Television, promulgated by SG 138/1998, as last amended by SG 79/2000.

¹⁸⁷ European Commission, 2002 Regular Report; and 2001 Regular Report.

for interference in the decision-making process in both BNR and BNT, the managerial boards of which are elected by the regulator.¹⁸⁸

Nonetheless, as a result of the harmonisation of domestic media law with EU standards, Bulgaria was permitted to participate in the EU MEDIA II programme from 23 November 2000, and access to the MEDIA Plus Programme (2001–2006) was granted in 2001.¹⁸⁹

In 2001, however, a further amendment of the Law on Radio and Television was passed (it entered into force on 5 February 2002), which not only did not tackle the existing deficits of the law, but also introduced further problems with respect to legal harmonisation:

- The priority of “protecting the audience’s interest” was dropped (Article 20).
- Cable and satellite distribution were excluded from the licensing regime and subjected to a simpler registration regime (see section 3.2).
- The changes created legal impediments to licensing and to the further development of digital broadcasting – the law only envisages a procedure for the licensing of analogue broadcasts.

The amendments marked a departure from universally adopted legal industry definitions. For example, “programme” was only defined as broadcast contents transmitted on a given frequency. According to some experts, this definition presented a breach of the principles of technological impartiality and of upholding the new information technologies and digitalisation.¹⁹⁰

With respect to the development of the information society, Bulgaria has also adopted a number of strategic documents. Most notable among these are a Strategy and a

¹⁸⁸ H. Druke, *Notes on the Bulgarian Law for Radio and Television*, Institute for the Media, Dusseldorf, 31 August 2001.

¹⁸⁹ This is a five-year programme that aims at supporting the development and distribution of European audiovisual products in and outside the European Community. The budget of the programme is €400 million, of which €50 million is allocated for the training of professionals in the audiovisual sector and €350 million for development, distribution and support of audiovisual products. Further information on the MEDIA+ programme is available at http://europa.eu.int/comm/avpolicy/media/index_en.html (accessed 4 August 2005).

¹⁹⁰ The EU Framework Directive (2002/21) envisages that all the telecommunications networks and services, including digital broadcasting, must be within a unified regulation framework, that regulation has to be applied regardless of the kind of the technology used, and that the content regulation should not be covered by the European legal framework related to the electronic announcements, as in broadcasting there is a difference made with respect to transfer regulation and regulation of content. Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, (Framework Directive), L108/33, 24 April 2002, Brussels, available at http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820_020424en00330050.pdf (accessed 30 June 2005).

National Programme for the development of the information society (October 1999)¹⁹¹ and an e-Government Strategy (December 2002)¹⁹² aiming at ensuring Government support for the provision of online services by the administration.

Some other laws, administrative provisions and amendments were passed, which point towards the development of the audiovisual sector and the information society. These include the Electronic Document and Electronic Signature Law (October 2001), the Protection of Personal Data Law (December 2002), amendments to the Penal Code (2002), including the introduction of a new chapter on “Cyber Crime”, and a new Telecommunications Law (2003), which provides for the liberalisation of the telecommunications market and the protection of consumer rights under the new circumstances in the industry.¹⁹³

Although not fully compliant with the new EU regulatory framework for electronic communications¹⁹⁴ – the Regulatory Framework for Electronic Communications Networks and Services (adopted in 2002, to be applied by the EU member States as of July 2003)¹⁹⁵ – the law has been harmonised with the previous series of EU directives, which essentially apply to newly liberalised telecommunications markets.

7. THE IMPACT OF NEW TECHNOLOGIES AND SERVICES

The telecommunications market was formally liberalised in early 2003, but competition is only now starting to challenge the former State-owned monopolist, the Bulgarian Telecommunications Company (BTC). In 2003, five new licences were issued for the construction, maintenance and use of the public fixed telephone network, and for providing voice service.¹⁹⁶ With the new licensees and the recent privatisation of the BTC, hopes are high that real competition will soon begin to define the rules of the market. Following the market redistribution, the Telecommunications Law will need to be completely harmonised with both the Law on Radio and

¹⁹¹ *Strategy for the development of the information society*, (in Bulgarian), adopted on 7 October 1999, available at http://www.mtc.government.bg/Communications/InfoSociety/strat_new.htm; and *National Programme for the development of the information society*, adopted on 7 October 1999, available at http://www.mtc.government.bg/Communications/InfoSociety/prog_new.htm (both accessed 4 August 2005).

¹⁹² Council of Ministers Decision No. 866 of 28 December 2002 on the e-Government Strategy.

¹⁹³ Telecommunications Law, promulgated SG 88/7 October 2003, as last amended by SG 19/1 March 2005.

¹⁹⁴ European Commission, *2004 Regular Report*, p. 110.

¹⁹⁵ Further details on the Framework can be found at http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/index_en.htm (accessed 30 June 2005).

¹⁹⁶ CRC, *Annual Report 2003*.

Television and the EU Regulatory Framework for Electronic Communications Networks and Services (2002).¹⁹⁷ The development of a modern and efficient telecommunications infrastructure, reflecting recent technological developments and providing new services, is a priority both for the development of a market economy in Bulgaria and for Bulgaria's integration into the EU. However, the introduction of digital terrestrial broadcasting requires considerable changes to the regulation of electronic telecommunications.

7.1 Digital television

The attainment of a smooth transition to digital terrestrial broadcasting calls for an in-depth analysis, taking into consideration a number of technical and technological issues, including the following:

- different scenarios to advance to Terrestrial Digital Audio Broadcasting (T-DAB) and Digital Video Broadcasting-Terrestrial (DVB-T), through compliance with the international agreements on frequency planning;¹⁹⁸
- available frequency resources;
- funding requirements;
- the financial capability of both consumers and service providers;
- the condition and properties of the existing infrastructure;
- the goals of digital terrestrial broadcasting – such as increasing the number of channels, improving portable, fixed and mobile reception, and developing multimedia services and Internet access.

The introduction of digital broadcasting is to begin with a pilot project in Sofia, but broadcasts have not yet started. A bid for applications was held in 2001. The awarding of a limited licence for experimental digital broadcasting is intended to permit the study of potential problems, analysis of subscribers' capabilities, upgrading of reception appliances, and stepping up of the transition between the two standards. The introduction of digital television needs to be carried out scrupulously, allowing for programmes to be concurrently broadcast in both digital and analogue format at first, and slowly progressing to digital only when at least 75 per cent of households have digital reception.

On 17 November 2003, the CEM adopted a Statement on digital terrestrial broadcasting,¹⁹⁹ which recommended that it would be advisable to make plans to accommodate the development of the following:

¹⁹⁷ European Commission, *2004 Regular Report*, p. 110.

¹⁹⁸ Wiesbaden 1995, Chester 1997, Stockholm 1961 and Maastricht 2002.

- 4 national digital television networks;
- 12 regional coverage digital television networks;²⁰⁰
- 30 local coverage digital television networks – for cities of over 50,000 inhabitants, using digital television multiplexes for the distribution of four to six channels per network.

Also in November 2003, the Ministry of Transport and Communications (MTC) developed a “Draft Strategy for the Planning of Digital Terrestrial Broadcasting in the 174-230 MHz and 470-862 MHz Frequency Bands” (hereafter, draft Digital Strategy).²⁰¹ The draft Digital Strategy analyses the subject from the standpoint of both domestic circumstances and conditions in neighbouring and other European countries, as well as in the light of national and international legislation. It aims to do the following:

- provide recommendations on frequency planning for terrestrial DVB-T transmissions;
- ensure the protection of Bulgaria’s interests at the Regional Radio Communication Conference (RRC) of May 2004;²⁰²
- offer guidance on planning the required spectrum resources to develop terrestrial digital broadcast networks, and on ensuring compatibility with analogue networks until their phase-out.

Part one of the Strategy analyses the technical condition and planning of available analogue distribution networks, as well as the plausibility of upgrades for digital distribution. Part two offers recommendations regarding the future planning of the digital transmission networks.²⁰³ The third part of the Strategy contains the team’s

¹⁹⁹ The statement was adopted at the CEM’s meeting of 17 November 2003.

²⁰⁰ Two for every region as per the country’s division into districts, as laid down in the Council of Minister’s Decision No. 374 of 6 February 1999.

²⁰¹ Ministry of Transport and Communications, *Draft Strategy for the Planning of Digital Terrestrial Broadcasting in the 174-230 MHz and 470-862 MHz Frequency Bands*. The draft Digital Strategy was developed by a team from the Institute of Scientific Research in Telecommunications on the basis of an agreement with the Agency for the development of communications and of information and telecommunications technologies. Ordinance RD-08-516 of 19 November 2003 of the Minister of Transport and Communications, (hereafter, draft Digital Strategy).

²⁰² The Regional Radio Communications Conference (RRC) of May 2004 aimed to develop a new international radio frequency plan for digital television broadcasting to replace the “Stockholm 61” plan.

²⁰³ These relate specifically to the protection of currently operating analogue broadcasting networks, the choice of scenario for the planning of new digital broadcast networks, the preferred approach for the planning of the frequency spectrum, methods for planning the coverage of digital broadcast networks, the choice of network structure, the optimal (maximum) number of regional and local digital terrestrial broadcast systems, and the planning of network parameters.

conclusions, suggestions and recommendations for attainable solutions in the planning of digital terrestrial broadcasting.

There has been only limited public debate on the digitalisation of broadcasting in Bulgaria. Some actions and planning have been undertaken, mainly on a governmental level and by the regulatory authorities (the CEM and the CRC). Also, both BNR and BNT have included some paragraphs on digitalisation in their development strategies, as embedded in the concepts defended by their Directors General in front of the CEM. For example, prospects for the technological development of BNT include the following:²⁰⁴

- development of the existing BNT network;²⁰⁵
- enhancing the coverage of the BNT regional television centres;
- launching digitalisation;
- preparation for stereophonic audio transmission (first in the Sofia region);
- preparation for a second channel (with 12-hour programming, including regional and culture/science programmes), to be part of the future programme multiplex.

Strategies for the transition from analogue to digital television are aimed at updating the legislative basis, increasing the number of the free frequencies, and introducing new standards. In the short run, it is envisaged that a “National Plan for the Development of the DVB-T networks (470-862 MHz)” will be prepared, in accordance with the “Strategy for the Introduction of Terrestrial Digital Television”, as accepted at the First Session of the Regional Radio Communication Conference, in May 2004. In the long run, the gradual transition from analogue to digital television is expected to be completed by 2015, the transition to digital radio within the T-DAB system by 2010, and entire digitalisation within the DRM system by 2015.

7.2 Market conditions

According to the *Bulgarian Sectoral Policy on Telecommunications*²⁰⁶ (updated in 2004), the transition to satellite digital broadcasting in Bulgaria is already complete. What remains is to expand the distribution networks transferred via cable.

²⁰⁴ CEM, *Expert report – November 2002*, pp. 39–40.

²⁰⁵ This requires improving the network in low-coverage and densely populated locations, launching a ten-year digitalisation plan for transition to DVB-T, and the gradual transition from analogue to digital terrestrial transmission

²⁰⁶ *Bulgarian Sectoral Policy on Telecommunications* (in Bulgarian), available at <http://www.mtc.government.bg/Communications/Programs/SEKTORNAPOLITIKA.htm> (accessed 4 August 2005).

Viewers in Bulgaria presently receive television broadcasts via terrestrial broadcast networks, via cable distribution networks and by satellite. Until 1993, the terrestrial broadcast network was the only available means of distribution. However, with the development of cable distribution networks, over-the-air reception began to phase out, due to the many advantages that cable offers – a considerable number of programmes, good technical quality, and no need to maintain an aerial or any kind of receiving appliance. The only drawback is the monthly fee.

The number of cable operators in Bulgaria reached 563 in 2003.²⁰⁷ Cable broadcasting networks have been developed in 234 of Bulgaria's 240 urban areas, and in 942 out of the 5,100 villages in rural districts (18 per cent). An expert evaluation of data received by the Communications Regulation Commission (CRC), revealed that as of 31 December 2003 the total number of subscribers to cable telecommunications networks stood at just over one million, an increase of 37 per cent over 2002.²⁰⁸ The evaluation also found that in 2003 the total income from cable telecommunications services increased by 48 per cent, to BGN 130 million (€66.3 million). Most of this revenue came from radio and television broadcasting.

7.3 Services

By 31 December 2003, the Balkan News Corporation (bTV) reached 97.6 per cent of the population, BNT reached 94.4 per cent and Nova TV 52 per cent.²⁰⁹

Currently, BNT has three national and four regional analogue broadcasting networks. The BNT satellite channel is carried out by EutelSat and is included in the subscription packages of all the cable operators. The national networks of BNT and bTV comprise high-capacity transmitters (basic distribution network) and low-capacity repeater stations (auxiliary network). Nova TV has planned considerably fewer repeater stations than the other two national television channels, and their network is currently under continued construction.

Table 6. The terrestrial television network

	Number of transmitters	Number of repeaters
BNT	26	627
bTV	22	628
Nova TV	11	123

²⁰⁷ CRC, *Annual Report for 2003*, p. 43.

²⁰⁸ The evaluation was based on data received from 45 per cent of licensed operators. CRC, *Annual Report for 2003*, p. 45.

²⁰⁹ CRC, *Annual Report for 2003*, p. 42.

Prior to April 2002, the bTV channel was disseminated via the transmitter and repeater network of the Bulgarian Telecommunications Company (BTC). In May 2002, bTV proceeded to satellite transfer to transmitting units, which allows for more effective planning and development of the network, as well as for stereo, Dolby AC-3 and Dolby Pro Logic video and audio transmission. Satellite distribution also enables bTV to fully integrate the digital transmission from ENG via editing and an on-air control room to the satellite transmission unit, and to every satellite reception appliance. Satellite distribution provides a good grounding in the long run, in view of the impending transition to digital terrestrial DVB-T broadcasting. The upgrading of the existing network calls for the replacement of the basic transmitters, which fail to meet the modern requirements. Balkan News Corp owns the new transmitters, which will be installed on the aerial supports of the BTC.

The existing BNT regional networks currently operate in the following regions: Varna (three transmitters), Rousse (two transmitters), Plovdiv (two transmitters) and Blagoevgrad (one transmitter).

Bulgarian channels are currently also transmitted via several different satellites. However, new programme packages for individual reception via satellite have also begun to take away the audience share from terrestrial broadcasts.²¹⁰ Until the end of 2003, five companies had active networks – the BTC, Teleport Bulgaria, Netera, Telenor Bulgaria and Bulsatcom.²¹¹ The licensed fixed satellite networks can be used for the broadcasting of radio and television programmes, data transmission (including teletext in a digital format) and voice telephone services.

The construction, maintenance, operation and development of satellite telecommunications networks and terrestrial stations for satellite communication are included in the multi-service licence of the BTC. The company provided satellite services using capacity rented from international systems (INTERSPUTNIK, INTELSAT and EUTELSAT). The terrestrial satellite stations are located near Sofia. The complex is digitally connected with the capital over an optical cable line and digital radio relay line. The net is designed for the international transmission of television programmes (when requested by subscribers), national broadcasting of 11 television and radio channels, international telephone transmissions, international data transfer and access to the Internet. In 2003, the overall market share of the stationary satellite networks reached BGN 3.5 million, marking an increase of 23 per cent over 2002.²¹²

Current legislation stipulates that Internet access services are not subject to licensing or a registration regime (with one exception, VoIP – the voice transmission over Internet protocol). This renders difficult both the collection of official data about this

²¹⁰ The Hellas Sat (39° E), which has the three national programmes and is an attractive option for regions uncovered by cable networks, and the new EutelSat package (16° E).

²¹¹ CRC, *Annual Report 2003*.

²¹² CRC, *Annual Report 2003*.

telecommunications market segment and the protection of consumers. Since available information regarding the Internet providers is inaccurate and insufficient for a comprehensive analysis, data from independent Bulgarian and international agencies is used instead.

Nonetheless, the tendency of recent years is towards a stable gradual increase in the number of Internet users. According to data from Alpha Research Agency for November 2003, the number of Internet users in Bulgaria surpassed 20.9 per cent of the population, as compared to 14.6 per cent in January 2003.²¹³ For 2004, the corresponding figures were 20.2 per cent in February, and 19.7 per cent in December.²¹⁴ There is no data available about the exact number of Internet providers. Currently, the CRC acquires data from 170 providers, of which only 11 can be defined as national.²¹⁵ The services that they offer include Internet access, e-mail, web housing and VoIP. In 2004, eight Internet providers were licensed to offer VoIP services. The revenues from this market segment are only 2 per cent less than those from dial-up access and are greater than the revenues from sales of pre-paid cards to use the Internet.

The lack of any licensing regime (only introduced in 2003, and just for VoIP) allowed smaller Internet providers, with fewer subscribers, to offer alternative means of Internet access. Further development of the existing infrastructure is needed to allow for higher penetration of new technologies to the market, along with an improved quality of Internet services. This will be dependent on further investments being made, and hence the majority of Internet providers must rely on attracting capital to further extend their business.

7.4 Funding

The CRC highlighted the following trends for 2003:²¹⁶

- for a third consecutive year the volume of the Bulgarian telecommunications market comprised 6 per cent of the overall value of the GNP, thus increasing more quickly than both the annual GNP increase and the increase of the entire added value;
- the volume of the telecommunications market reached BGN 2.215 billion (approx. €1.133 billion), a 10.7 per cent increase over 2002;
- income from services carried out through the network of fixed telephones amounted to BGN 985 million (€450 million), an increase of 1.9 per cent over 2002;

²¹³ CRC, *Annual Report 2003*.

²¹⁴ GfK Bulgaria research.

²¹⁵ CRC, *Annual Report 2003*.

²¹⁶ CRC, *Annual Report 2003*, pp. 10, 11, 42.

- the volume of the mobile telephone market increased by 19 per cent, with respect to 2002;
- the line-leasing sector of the telecommunications market increased by 1.5 per cent, due to the ongoing demand for those services on the part of the four new satellite operators and the three mobile phone operators;
- there was increased demand for the services offered by the cable networks that distribute radio and television programmes – 245 new licences for these activities were issued, the increase in revenue was 52 per cent, and the increase in the number of subscribers was 43 per cent;
- there was an increase in the revenues of the television operators' main activity of 15 per cent with respect to 2002 (to BGN 91 million, or €46 million), with 90 per cent of income generated from advertisements. The planned investment in the networks for 2004 was nearly BGN 5 million, or 23 per cent higher than in 2003;
- the cable telecommunications services market is developing and restructuring towards capital concentration and mergers. This is a favourable condition for the expansion of investment capacity, the improvement of service quality and the increase of operators' efficiency.

8. CONCLUSIONS

As a country in transition, Bulgaria has experienced highly dynamic development in the political, economic, social and cultural spheres. Over the last 15 years, the changes in the media sector have been remarkable. From being under total State control, the Bulgarian press has been completely privatised and deregulated. There are hundreds of newspapers, offering a variety of points of views and reflecting the entire political spectrum. Moreover, the party-affiliated press is gradually disappearing from the market, giving way to independent newspapers. There is also extensive pluralism in the electronic media, where radio and television stations are now numbered in the hundreds. All these developments have unleashed severe competition, with which the small media outlets find it difficult to cope. It is undeniable that the media industry is slowly, but clearly, becoming dominated by market mechanisms that are gradually overtaking all other factors.

Bulgaria aspires towards full EU membership in 2007. It must not only harmonise its media regulation framework completely with the *Acquis communautaire*, but also take all necessary steps to ensure its full implementation. A key challenge for the Government and Parliament is to find the most effective legal solutions to guarantee the fulfilment of European standards and requirements in the national context. The main problems of the media industry are directly related to the legislative framework for the media and its implementation in practice. Nonetheless, it should not be

overlooked that in June 2004 Bulgaria closed all the accession chapters in its negotiations with the EU, which is an indicator of appropriate development. The EU regulatory framework for the media industry is, however, itself changing rapidly, due to the dynamic development of the audiovisual industry and new technologies. Hence, Bulgaria and its media community must not only address those developments, but also seek to participate proactively and competently in the decision-making process with respect to updating the regulatory framework, and not only adapt the country's media regulation accordingly.

The main problem facing the media industry is the inability of its regulatory system to tackle effectively all the issues related to the political and economic independence of the media – and to allow the public service broadcasters to perform their function as a pillar of democratic society. The IREX 2003 Media Sustainability Index shows unambiguously that in Bulgaria media freedom is undermined by ongoing political and economic interference. In this context, the improvement and efficient implementation of media legislation remains an important factor for the political, economic and financial independence of the main regulatory authority, the Council on Electronic Media (CEM). Over recent years, Bulgarian society has witnessed a number of cases in which the CEM took strange and contradictory decisions, which were subsequently annulled by the Supreme Administrative Court. This has had negative implications for the development of the entire media environment, which still lacks stability and predictability. The CEM still does not have its own Code of Ethics, and nor are there any mechanisms to ensure that its activity is accountable to society at large.

In addition, media legislation currently allows for political and economic interference in the electronic media, which is often also reproduced by the radio and television operators themselves. The possibilities for political interference are, to a large extent, due to the way in which the CEM members are elected and the regulatory authority is composed. At present, five of the nine CEM members are elected by the ruling political party or parties represented in Parliament, which is a prerequisite for direct political influence over the electronic media. The mechanisms for economic interference are usually exercised through financial means, as the CEM relies (as do also BNT and BNR) on funding from a State subsidy, voted by Parliament, thus making it directly dependent on the will of the ruling majority. This financial dependence poses questions not only with respect to its independence, but also with respect to its administrative capacity. For example, the CEM is not capable of effectively monitoring the local and regional radio and television stations, which breaches the principles of equal treatment of the media outlets.

Economic interference in the media sector has become operational through various mechanisms and at various levels. In general, media ownership in Bulgaria remains unclear. Although the Law on Radio and Television contains provisions on licensing procedures, which require clarity about the ownership of the capital of broadcasters, ownership can be easily hidden behind bearers' shares or through offshore companies. There is no public register of media ownership and no effective anti-monopoly

regulatory mechanisms. All this creates possibilities for the establishment of media monopolies or the entrance of money with unclear origin into the media industry.

There is no clarity in Bulgaria about the distribution of advertising revenue, which in turn affects media ownership and the editorial independence of broadcasters. The fact that both BNR and BNT generate advertising revenue creates additional tensions between the public and commercial broadcasters, which in turn sometimes raises barriers to possible united efforts on behalf of the media industry in cases when important questions related to the media regulation issues are at stake.

Self-regulatory mechanisms are still not well known or well developed in the media sector. In spite of numerous attempts over the last ten years to draft and accept a unified code of ethics with defined professional standards, it is only recently that a positive basis to enforce such a code has emerged, mainly due to the assistance of foreign experts through the EU Phare Programme. The Law on Radio and Television envisages some instruments (such as editorial statutes) and requirements to guarantee the audience's right to impartial, accurate and pluralist information, but as a whole the editorial independence of the broadcasters remains problematic.

The public service mission of BNR and BNT is another crucial issue, which relates to both governance structure and programme policies (thematic quotas and quality). Public debate on public service broadcasting in 2004 showed a consensus in the media community with respect to the principles with which public operators should have to comply, but not on how these principles should be made operational. The Bulgarian model of public service broadcasting, as implemented by BNT, is not as a niche broadcaster offering content that commercial operators would not offer, but rather a mass audience broadcaster with a full range of content. The licences of the three national television broadcasters show overwhelming similarities, as far as their thematic quotas are concerned, and entertainment dominates over other programme strands in BNT output. However, a comparison of the number of staff shows that the commercial operators carry out the same tasks with five times fewer employees than BNT.

With respect to the management of public broadcasting, the recent crisis at BNT revealed various deficits that require an urgent revision of the regulatory framework. Practical experience leads to the conclusion that concentrating power in the hands of the Director General leads to "one-man management" and creates the risks of management mistakes (if not of abuse of power) with strongly negative consequences for the media and the person that bears the entire responsibility. To make matters worse, the regulatory authority does not currently have disposal over effective control mechanisms and adequate supervision and checks and balances of the Director General.

The Law on Radio and Television allows commercial operators to define themselves as "public service" outlets, provided that they carry out programme activity and broadcast production aimed at public interest. Regrettably, the number of operators that have taken this opportunity is too limited, due to the small chances that they have of competing in the media market. The non-existence of the Radio and Television Fund

means that they cannot get subsidies for programmes that serve the public interest. This is directly reflected in the negligible number of programmes aimed at citizens for whom Bulgarian is not their mother tongue, as well as in the insufficiency of broadcasts for people with disabilities and underprivileged groups.

Bulgaria lags considerably behind European standards in developing the information society and spreading new technologies and services. A strategy for introducing digital radio and television has been drafted, but has not been accepted as an official document. Although it was planned to introduce digital broadcasting with a pilot project in Sofia, broadcasts are yet to commence. There is no clear vision for funding digital broadcasting, as the transition from analogue to digital television is connected to considerable expenditure.

9. RECOMMENDATIONS

9.1 Media policy

Legislation

1. The Government should ensure that the Law on Radio and Television is completely harmonised with the EU *Acquis communautaire* to ensure predictability, transparency and effective implementation of audiovisual policy.
2. Parliament should, as a priority, accept an updated “Strategy for the Development of Radio and Television in Bulgaria” as is stipulated in the Law on Radio and Television, in order to de-block broadcasting licensing procedures as soon as possible.

Digitalisation

3. The Government should accept a concrete strategy on digitalisation. The draft “Strategy for the Planning of Digital Terrestrial Broadcasting in the 174-230 MHz and 470-862 MHz Frequency Bands” needs to be updated, and, moreover, has never been officially approved.

9.2 Regulatory authorities

Independence

4. Parliament should, following a process of wide consultation with media experts and NGOs, introduce amendments to the Law on Radio and Television to better ensure the independence of the main regulatory body, the Council for Electronic Media (CEM). These amendments should, in particular, do the following:

- introduce a civic quota in the CEM's composition, capable of providing adequate checks and balances;
- introduce mandatory qualified majority voting for the election of the members from the parliamentary quota, in order to guarantee the *economic* and *political* independence of the regulatory authority (even if this might require a change in the Constitution);
- envisage a mechanism to hold CEM members responsible (as individuals or collegially) for those of their decisions that have proven to be in breach of the law as decided by the Supreme Administrative Court;
- create new mechanisms to guarantee the *financial* independence of the regulatory authority as an alternative source of funding to the State subsidy.

Copyrighting

5. The Government should amend the Law on Radio and Television to increase the remit and the responsibilities of the CEM with respect to the observation of the copyright and related rights.

Monitoring

6. The Government should increase the administrative capacity of the CEM, with respect to the monitoring of local and regional broadcasters, in order to ensure equal treatment of broadcasters at the national and local levels. This should include the provision of higher levels of funding.

Professional ethics

7. The regulatory authorities – the CEM and the CRC – should develop a Code of Ethics with detailed clauses on preventing conflict of interests.

9.3 Public broadcasters

Funding

8. The Law on Radio and Television should be changed to envisage new mechanisms that can guarantee the financial independence of public service radio and television, as an alternative to the Radio and Television Fund.
9. The Government and Parliament should amend the Law on Radio and Television to define concrete principles for targeted funding of the public broadcasters, and for the production and broadcast of public service programmes, along with the relevant mechanisms for civic control over their expenditures.

Management

10. The Government and Parliament should amend the Law on Radio and Television to define new mechanisms of election and appointment for the management of BNR and BNT, as well as a new division of rights and responsibilities between the Management Board and the Director General, in order to optimise the effectiveness of their performance and administrative structure.

Programming

11. BNR and BNT should develop new programme schemes that better respond to concrete social needs and public expectations of the public service broadcasters.

9.4 Commercial broadcasters*Transparency and media diversity*

12. A public register for media ownership in Bulgaria should be implemented as a self-regulatory mechanism within the media community.
13. The Government and Parliament should take steps to liberalise all procedures related to changes in the ownership of the broadcasting licences, and make them transparent to the public.
14. Journalists' associations and other media NGOs should debate media concentration in order to try and define thresholds needed to protect pluralism. The Government and Parliament should take account of these proposals when preparing new or amended legislation on this matter.

Public service broadcasting

15. The Government and Parliament should amend the Law on Radio and Television to offer chances for commercial operators to compete for public financing to produce programmes that meet the public interest. The provisions of the Law on Radio and Television on commercial operators defined as public service providers should be reviewed to allow additional stimuli.

Professional ethics

16. All parties signatory to the Ethical Code of the Bulgarian Media should ensure that the Code is respected in practice.
17. The Bulgarian media community should adopt new self-regulation mechanisms with respect to the fair implementation of the peoplemetry system, which is currently argued about and its results disputable in the community.

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List of Abbreviations

CEM	Council for Electronic Media, <i>Vijeće za elektroničke medije</i>
CTA	Croatian Telecommunications Agency, <i>Hrvatska agencija za telekomunikacije</i>
HDZ	Croatian Democratic Union, <i>Hrvatska demokratska zajednica</i>
HR	Croatian Radio, <i>Hrvatski radio</i>
HRT	Croatian Radio-Television, <i>Hrvatska radiotelevizija</i>
HTV	Croatian Television, <i>Hrvatska televizija</i>
SDP	Social Democratic Party, <i>Socijaldemokratska partija Hrvatske</i>

1. EXECUTIVE SUMMARY

The development of a democratic media system in Croatia was slow in the 1990s. The position of the public service broadcaster, Croatian Radio-Television (HRT) was among the main areas of contention between Croatia and the European institutions. Government pressures on HRT and the independent media, as well as the atmosphere of intolerance and arbitrariness in dealing with the media, were among the important reasons for the delay in the pace of Croatia's European integration.

As media freedom, pluralism and independence are considered among the political criteria for democratic development and eligibility for membership of the European Union (EU), this area has been closely supervised by different international organisations, including most notably the Council of Europe and the OSCE. The progress that has been achieved is a result of several combined forces. The international pressure that was put on the Government went hand in hand with the activities of NGOs and civil society and professional organisations in the country. The mounting public consensus regarding the freedom of the media and their independence from the Government was also a necessary ingredient. The year 2000 was a watershed for the new approach to media policy in Croatia, when public consensus on the need for fundamental reforms was coupled with the electoral victory of a coalition of democratic parties.

The body of media regulation was changed after 2000 to include in the media legislation more standards derived from the relevant documents of the EU and the Council of Europe. In spite of important progress in this regard, some adjustments are still needed in the area of broadcasting, in order to fully implement best practice, including the correct transposition into national law of the EU "Television without Frontiers" (TWF) Directive.

Mention also needs to be made of the 1991–1995 war as a factor in the development of media policy. Croatia restored control over most of its occupied territories by military action in 1995, and over the remainder by peaceful integration in 1998. Although the war context was not mentioned in any of the parliamentary debates relating to the adoption of media legislature during this period, it was clear that this context hampered the development of an independent media system. Progress after 1996 was rapid, with increased action by civil society, which, in cooperation with international organisations, succeeded in putting media democratisation high on the agenda of the then opposition parties, which went on to win the parliamentary election in 2000. In July 2005, the OSCE Mission in Croatia found that the development of democratic institutions and civil society, and the enhancement of media freedoms, had reached an advanced stage. However, it highlighted the need for further reform of media legislation, including the need to shield the broadcasting regulators from political interference and involve a stronger role for civil society in media supervision.

Television is the most used medium in Croatia – 87 per cent of the population aged from 10 to 74 watch television every day. A dual broadcasting system was introduced

in the 1990s, but the State-owned public service broadcaster, Croatian Television (HTV), then with three (now two) terrestrial television channels, has remained the dominant outlet during the past decade. The television sector developed during the 1990s to include 14 regional and local television stations, but became more competitive after 2000, with two new commercial television stations at the national level. The sector is now increasingly competitive, diverse and pluralistic at the national, regional and local levels. It will be important to monitor audience concentration in the future, and to undertake measures to promote pluralistic and diverse programme production on the part of HRT and local and regional television stations.

The Law on Electronic Media regulates commercial television and radio broadcasting, and its provisions regarding content also apply to the public service broadcaster, HRT. Since 2003, the Council for Electronic Media (CEM) has been the regulatory body in charge of giving and revoking broadcast licences. Its remit includes the monitoring of broadcasters' contract compliance and programme compliance. Broadcasting independence is ensured by law, but in practice depends on the independence and impartiality of the regulatory bodies, as well as the performance of journalists and editors. While there is room for improvement in this regard, the overall independence of broadcasting from the State has been greatly increased in the last five years.

The Law on Croatian Radio-Television (HRT) defines the legal status of the public service broadcaster as a public institution. HRT is composed of Croatian Television (HTV), with two terrestrial and one digital satellite television channels, Croatian Radio (HR), with three terrestrial radio channels at the national level and eight regional channels, and music production. HRT is funded by the licence fee, and is allowed nine minutes of advertising per hour. The HRT Programme Council protects the interest of the public, and appoints the HRT management. The Council is appointed by Parliament from a list of candidates proposed by civil society.

The public service remit of HRT includes the obligation to broadcast information, educational, cultural and entertainment programmes. Its information programme must be produced in accordance with professional standards of independent journalism. There is also an obligation of public service programming for commercial broadcasters, with quotas for information programmes, Croatian language, and Croatian and European audiovisual works.

The Law on Electronic Media restricts radio and television ownership as well as cross-media ownership, with a view to restricting concentration. A broadcaster (except HRT) can, as a rule, only broadcast radio *or* television programmes. The Law on the Protection of Market Competition applies to the media as well, and press concentration is regulated more specifically in the Law on the Media. The CEM and the Agency for the Protection of Market Competition should cooperate in matters of concentration control. The media have recently been obliged to publish data on ownership structures, audiences and revenues, but ownership transparency is still poor.

The advertising market is growing quickly, and television still holds the biggest share. HTV is losing its position as market leader in advertising, as a significant share is taken by two commercial television stations at the national level. The local television sector is also the loser in the increasingly competitive media market. In 2004, two powerful foreign media companies – RTL and CME – own the two commercial television channels broadcasting at the national level. The daily press sector also has a significant share of foreign owners, with WAZ (Westdeutsche Allgemeine Zeitung) and Styria, from Germany and Austria, respectively, in the leading positions.

The sector of new media platforms – satellite, cable and broadband – is in the portfolio of the Ministry of the Sea, Tourism, Transport and Development, and is covered by the Law on Telecommunications and the Law on Electronic Media. The independent regulatory body for these media platforms is the Croatian Telecommunications Agency (CTA). The CTA deals with the technical aspects of broadcast licences, while the CEM is in charge of the content aspects. However, it is the CEM which issues the broadcast licence. Internet use is increasing, and is expected to reach 30 per cent of the population in 2004. Broadband access is low. Cable has a low penetration rate, of some 18 per cent of households, and satellite is present in 30 per cent of households. There is no public policy for digital switchover. There is a general lack of public policy and strategy in developing the new media sector.

Parliament ratified the Council of Europe's Convention on Transfrontier Television (ECTT) in 2001. Croatia became an EU candidate country in June 2004. However, as of mid-2005, the EU was still reluctant to start negotiations about Croatia's EU membership, because it considered the Government's cooperation with the International Court Tribunal for War Crimes in the former Yugoslavia in The Hague to be insufficient. Croatia's compliance with EU audiovisual and telecommunications policies was evaluated in 2004 by the European Commission, which confirmed that Croatia satisfies the Copenhagen political criteria, and is regarded as a stable democracy with a functioning market economy. Although further harmonisation will be needed, the Commission expects that Croatia will fully comply with EU broadcasting standards requirements in the medium term, provided that the country continues to implement the adopted legislation. However, it notes that a sustained effort is required in order to bring the telecommunications sector (including new media) up to standard.

2. CONTEXT

Television is the most used medium in Croatia – 87 per cent of the population aged 10 to 74 watch television every day, 92 per cent of households own a colour television set

(11 per cent owning more than one), and 45 per cent own a video cassette recorder.¹ Cable is present in 18 per cent of households, while 30 per cent have a satellite aerial.² Internet use is growing fast, although broadband access is still low. Pay-TV has not yet been introduced.

The introduction of broadcasting in Croatia followed closely on its introduction in Europe and the world. Radio Zagreb introduced regular radio broadcasts in 1926, and regular television broadcasting started in 1956. Both radio and television remained a State monopoly until the early 1990s, when, with Croatia's independence from the former Socialist Federal Republic of Yugoslavia and political and economic transition, the changes also included the reshaping of the media system. The State-owned public service broadcaster, Television Zagreb, was renamed Croatian Television (*Hrvatska televizija* – HTV) after independence.

The “Homeland War” of 1991–1995 was also a factor in the development of media policy. Croatia integrated the first part of its occupied territories by military action in 1995 and the rest by peaceful means in 1998. Although the war context was not mentioned in any of the parliamentary debates relating to the adoption of media legislature during this period, it is clear that this context hampered the development of an independent media system. Public attention only turned to issues of media independence and media policy after 1995; before that time, the public was focused on war-related issues. The development of public debate after 1996 was rapid, with increased action by the civil society, which, in cooperation with international organisations, succeeded in putting media democratisation high on the agenda of the then opposition parties.

After the parliamentary elections of January 2000, the new Government was formed by a coalition of six centre to centre-left parties led by the Social Democratic Party (SDP). The SDP was formed in early 1990s by a union of reformed communists with a new small social democratic party. This replaced the ten-year rule of several governments led by the Croatian Democratic Union (*Hrvatska demokratska zajednica* – HDZ). However, the HDZ, in cooperation with several smaller parties, returned to power after the elections in 2003.

Throughout the 1990s, the HDZ had a bad record on media independence, with numerous instances of Government pressure on the independent media. Elements of

¹ Central Bureau of Statistics, (Državni zavod za statistiku – DZS), *Osnovne karakteristike potrošnje i primanja kućanstava od 2000. do 2002. godine. Anкета o potrošnji kućanstava. (Basic characteristics of spending and income of households from 2000 to 2002. Survey on spending by households)*, DZS, 2003, available at <http://www.dzs.hr/hrv/2003/13-2-1h2003.htm> (accessed 15 May 2005).

² GfK, *Hrvatski medijski prostor 2002. Izvodi iz istraživanja GfK Centra za istraživanje tržišta 2003. (Croatian media space 2002. Excerpts from market research in 2003)*, GfK Centre for market research, 2003, available on the GfK website (in Croatian) at <http://www.gfk.hr/press/mediji.htm> (accessed 15 May 2005), (hereafter, GfK, *Croatian media space 2002*).

authoritarianism could also be found in their efforts to retain control of the media. The party now aims at a conservative, Christian-democratic political identity, after starting in the early 1990s as a rightist populist movement. HDZ have members criticised HTV in Parliament on several occasions, for what they perceived to be inadequate reporting of the Government's performance.³ However, opposition representatives have qualified this criticism as thinly veiled attempts to force HTV into close political submission. In June 2005, the NGO Croatian Helsinki Committee for Human Rights warned about the reoccurrence of cases of inflammatory reporting on HTV, directed against the Serbian minority in Croatia.⁴ However, a June 2005 report by the Open Society Institute Croatia, which was based on a panel of 125 experts in different fields, reveals a perception of increased tolerance on the part of the Government, the media and the public, towards Serbs and other ethnic and minority groups in Croatia.⁵

State/public service television was the media sector that remained the longest under direct or indirect Government and/or political control during the 1990s. While the new private print media and some radio stations (notably Radio 101 in Zagreb) pursued an independent editorial policy, HTV and Croatian Radio (*Hrvatski radio – HR*) were heavily influenced by the Government almost until the end of 1999. Their status was probably the most contentious among the media-related issues in Croatia's relations with the OSCE, the EU and the Council of Europe until the late 1990s.

After independence, HTV remained the dominant media force, with three terrestrial television channels. HTV continued during the 1990s in its *de facto* monopolistic position in spite of a growing number of local and regional competitors. Its unique position had a lot to do with a funding model that includes revenue both from a licence fee and from advertising. In addition, HTV's continued domination was also due to the lack of any commercial competition at the national level, its national reach, the traditional loyalty of national audiences, and the overall quality of HTV's programming, which has always been superior to that of its local competitors. The television sector became more competitive after 2000, when two new commercial channels were licensed at the national level.

Television in Croatia is now diverse and pluralistic at the national, local and regional levels. Increased commercialisation is the main trend. Issues of media independence are framed in terms different from those in the 1990s, with a pronounced shift from

³ See, for example: "HDZ-ovi ovi zastupnici u Saboru kritizirali HRT zbog jugonostalgije", ("HDZ members of parliament criticise HRT for 'Yugo-nostalgia'), a report by the State news agency HINA, 8 July 2005, available at <http://www.index.hr/clanak.aspx?id=273698> (accessed 7 August 2005).

⁴ "HHO ustvrdio pogorsanje ljudskih prava u Hrvatskoj", ("HHO claims human rights deterioration in Croatia"), in *Nacional* online 21 June 2005, available at <http://www.nacional.hr/articles/view/18811>, (accessed 7 August 2005).

⁵ Z. Peruško, "Media", in Open Society Institute – Croatia, *Openness of Society. Croatia 2005*, Zagreb, 2005, p. 83.

perception of the State as the main threat to pluralism and diversity, towards the paying of increasing attention to media concentration.

2.1 Background

After the introduction of political pluralism and the first democratic elections in 1990, changes affecting the media were quickly introduced into the legislative and constitutional framework. The Constitution guaranteed freedom of expression, and censorship was forbidden.⁶ The constraints on media ownership from the socialist period were lifted, and Parliament adopted a Resolution accepting the media standards of the Council of Europe. In the period from 1990 to 1995, the new legislative environment for the media system was completed.⁷ A dual broadcasting system was introduced, in which the public service broadcaster existed alongside a growing number of commercial radio and television stations.

The character of the Croatian political system for most of the 1990s can be evaluated as a non-consolidated presidential democracy.⁸ The model includes elements of authoritarianism, including a strong role for the State in the media system. The State monopoly prevails in radio and television, with television being viewed as an element of national sovereignty that should be used to increase national cohesion and propagate national culture. The relationship between the Government and the media is centred on the relationship between the President and television, which is used to legitimate his rule, inform the public about his every move, and generally present him in a positive light.

Unlike authoritarian regimes, presidential regimes usually do not control the printed press. Another characteristic of non-consolidated presidential democracies is that the main type of Government pressure on the media is exerted through economic means –

⁶ Censorship was not present in Croatia and the former Socialist Federal Republic of Yugoslavia (SFRJ) in the manner known in the Soviet bloc countries even before 1990, and the SFRJ Constitution protected freedom of expression, if only rhetorically.

⁷ Three media-specific laws were passed to regulate the media sector: the Law on Public Information, a general freedom of expression law pertaining to all media; the Law on Croatian Radio-Television (HRT), regulating only the public service broadcaster; the Law on Telecommunications, regulating commercial radio and television broadcasting as well as the whole area of telecommunications. These laws have all been subsequently amended.

⁸ J. Chalaby introduces the model of presidential non-consolidated democracy as a type of political regime applicable to those post-socialist regimes in Eastern Europe in which the role of the President is especially pronounced. Although his analysis is based on developments in Russia and Ukraine, his model elegantly fits the Croatian situation in the 1990s. See: Z. Peruško Čulek, "Mediji i demokracija: suvremeno hrvatsko viđenje", ("Media and democracy: a contemporary Croatian view"), in *Erasmus*, No. 25, 1998, pp. 55–61; and Jean K. Chalaby, "Politička komunikacija u predsjedničkim porecima u destrukturiranim i nekonsolidiranim demokracijama: Globalna komparativna perspektiva", ("Political communication in presidential regimes in de-structured and non-consolidated democracies: a global comparative perspective"), in *Medijska istraživanja, (Media Research)*, 1996, No. 2, pp. 115–137.

this was especially evident in Croatia with respect to commercial media – as well as various degrees of arbitrariness in decision-making. The main characteristic of authoritarian regimes, systematic governmental violence, is no longer among the instruments of Government control over the media. Although the legislative environment of the media system is often in line with international standards, Government control over the media is often greater than it should be, according to accepted democratic standards.

Most of the elements of this model correspond to the Government-media relationship in Croatia in the 1990s. Deviations are minor and vary from one period of the 1990s to another. For instance, some control was present also in the printed media (*Večernji list*, *Vjesnik*), while others had independent editorial polices (*Novi list*, *Jutarnji list Slobodna Dalmacija*) in some periods, and there was critical reporting of the Government in the main weeklies, such as *Feral Tribune*, *Globus* and *Nacional*. Radio was not a State monopoly, and commercial television stations also developed at the local and regional levels.

The first legislative restructuring of the media system coincided with the war in Croatia, which was certainly not a favourable context for developing a democratic media system. Although the war had an important influence on the overall media content, it did not explicitly influence the legislative changes. The existence of a military censor on HTV during the war also points to an increased control of the content.⁹ Nevertheless, some journalists who reported on the war for HTV state that they had full freedom of reporting.¹⁰ The war was the reason for the lack of any serious public attention paid to media policy matters until the end of 1995, given that issues on the public agenda were centred on the war effort.¹¹ Journalists, however, took part in the discussions on the new media legislation from the very first changes in the 1990s.

The early thrust of media democratisation and liberalisation, beginning in the early 1990s, and the formal abolition of State control of the media did not, however, progress sufficiently to produce a media system independent of State influence. This was primarily because the Government did not wish to lose its control over the media.

⁹ OSI roundtable comment, Croatia, 16 November 2004, (hereafter, OSI roundtable comment). *Explanatory note: OSI held roundtable meetings in each country monitored to invite critique of its country reports in draft form. Experts present generally included representatives of the Government and of broadcasters, media practitioners, academics and NGOs. This final report takes into consideration their written and oral comments.*

¹⁰ OSI roundtable comment.

¹¹ For an analysis of media policy development in parliamentary debates in 1990–1997, see: Z. Peruško Čulek, *Demokracija i mediji*, (*Democracy and the Media*), Barbat, Zagreb, 1999, (hereafter, Peruško, *Democracy and the Media*). Regarding the role of the Croatian media in the war in relation to the issues of their independence and impartiality, few serious scientific analyses have been performed. There is a growing body of scholarship internationally regarding the topic of media and war. In relation to Croatia, for a comparative view of the role of the media in the 1990s wars in the former Yugoslavia, see: M. Thompson, *Forging War*, Luton, UK, 1999.

One set of problems was related to laws that did not go far enough in ensuring the independence of the media, particularly the public service broadcaster. In addition to a great number of libel suits initiated by Government officials or members of the political elite against the independent media, economic pressure was the main expression of governmental control or intervention. Examples include problematic privatisation practices in some media, selective taxation, arbitrariness and clientelism in the distribution of radio and television frequencies, and the maintenance of distribution and printing monopolies.¹² The media itself had a long way to go towards attaining standards of impartiality and tolerance in public dialogue. The rift in the political consensus was also reflected in the media, with some media promoting or allowing intolerant speech, while others struggled for independence and impartiality of journalistic and public discourse.

The dominant political outlook during the 1990s regarded the media, and especially the State-owned national broadcaster, as a tool of Government. The belief of the ruling polity that the media have a potentially strong and negative impact on society, as well as their, in many respects, populist view of democracy, was responsible for the relationship between the State and the media system during the 1990s.¹³

While the Government and the political realm predominantly influenced the character of media legislation in the first part of the 1990s, after 1996 the push for media democratisation and pluralism came vociferously from civil society. The trigger of public concern was the revoking of the broadcast licence of Zagreb-based Radio 101, which prompted a mass demonstration in Zagreb in November 1996 in support of the radio station. As a result, the then broadcasting regulator, the Council for Radio and Television, had to change its decision. Radio 101 celebrates this day as “Independence Day”, not only as its own victory but also as a kind of victory for civil society in Croatia. Roundtables were organised with huge public attendance, and statements were issued. The first meeting of Forum 21, a group of prominent television journalists within the Croatian Journalists’ Association, in 1997 was a public demonstration of support for freedom of expression and media reform.

The whole mood was changing. Many media organisations – including the Croatian Journalists’ Association, Forum 21, the Association of Croatian Local Media, the National Association of Television Stations, Article 38, the Croatian Law Centre, and the Initiative for Public Radio – and a host of media analysts and academics pointed out continuing problems in dealing with issues related to the right to freedom of information, the position of the journalistic profession and the development of a

¹² Z. Peruško Čulek *et al.* (eds.), “Nova medijska agenda: za europsku medijsku politiku u Hrvatskoj”, (“New media agenda: for a European media policy in Croatia”), in *Medijska istraživanja*, (*Media Research*), vol. 5, No. 2, 1999, (hereafter, Peruško *et al.*, *New Media Agenda*).

¹³ For an account of the Croatian media policy developments in the 1990s, see: Z. Peruško Čulek, “Croatia: the first ten years”, in D. Paletz and K. Jakubowitz (eds.), *Business As Usual*, Hampton Press, UK, 2002. See also: Peruško, *Democracy and the Media*; Peruško *et al.*, *New Media Agenda*.

professional code of ethics, the position of HRT, and the need to transform it into a public service radio and television station, and conditions for commercial electronic media. With the support of the international community and international professional associations that shared their values, these groups' activities contributed *inter alia* to Croatia becoming a member of the Council of Europe in 1996.

The media policy debate within civil society succeeded in putting these issues on the public, as well as the political, agenda of the new, SDP-led Government in 2000. The dominant political climate changed, and with it the understanding of the role of the media in a democracy. A consensus was reached on freedom of expression and the independence of the media as a common positive value. In 2001, media became part of a policy document for the first time, as part of a cultural development strategy for Croatia.¹⁴

The new package of media regulation, adopted between 2000 and 2004, revised the regulatory framework for broadcasting put in place in the mid-1990s.¹⁵ The main rationale for these changes, as the Government stressed, was the need to align legislation with democratic standards and EU requirements.

The new Law on Croatian Radio-Television (HRT)¹⁶ of 2001 (amended in 2003) marked another step towards ensuring institutional independence for the State-owned public service broadcaster. The new Law on Electronic Media of 2003 created a new media regulatory authority, the Council for Electronic Media, and abolished some of the ownership restrictions on broadcasting media, while introducing cross-media concentration controls.¹⁷ The new Law on the Media of 2003 (amended in 2004) pertains to the general freedom of expression, journalists' rights and the right of reply, and printed media anti-concentration provisions.¹⁸

In 2003, however, the Law on the Media of 2003 was declared unconstitutional by the Constitutional Court, because it had not been passed with the absolute majority required for laws that deal with freedom of expression. After the November 2003 parliamentary elections, the conservative HDZ formed a Government with the support of several smaller parties, and the Law on the Media was subsequently amended.¹⁹

¹⁴ Office for the Strategy of Development of the Republic of Croatia (Ured za strategiju razvitka Republike Hrvatske), *Hrvatska u 21. stoljeću. Kultura, (Croatia in the 21st Century. Culture)*, Tonimir, Zagreb, 2001.

¹⁵ Ministry of Culture, *Medijsko zakonodavstvo Republike Hrvatske. Biblioteka kulturni razvitak, knjiga 6, (Media Legislature of the Republic of Croatia. Series on cultural development, book 6)*, Zagreb, 2003, (hereafter, Ministry of Culture, *Media Legislature*).

¹⁶ Law on Croatian Radio-Television (HRT), *Official Gazette* No. 17/01, No. 25/03 (hereafter, Law on HRT). The *Narodne novine* is the official gazette of Croatia.

¹⁷ Law on Electronic Media, *Official Gazette* No. 122/03.

¹⁸ Law on the Media, *Official Gazette* No. 163/03, No. 59/04.

¹⁹ Law on the Media, *Official Gazette* No. 59/04.

2.2 Structure of the television sector

Radio and television developed in Croatia as a State monopoly. Television Zagreb started broadcasting in 1956, and the licence fee was introduced as the main source of funding in 1961. The second channel of Television Zagreb started broadcasting in 1972, and the third in 1989.

In 1990, the State-owned broadcaster was renamed Croatian Radio-Television (HRT), and included Croatian Television (HTV), Croatian Radio (HR), and Transmitters and Links (detached in 2001 into a separate public institution). HRT's development into a public service broadcaster is ongoing.

In the mid-1990s, the dual broadcasting system began to be developed, with the introduction of commercial broadcasting at the regional and local levels. There are today 14 commercial television stations broadcasting at the regional and local levels. The first national commercial television operator, Nova TV, was licensed in 1999 (launched in 2000) and the second, RTL Televizija, in 2003 (launched in 2004). Both Nova TV and RTL Televizija are now foreign-owned, by the US CME and the German RTL, respectively.

Table 1. Legal status of Croatian terrestrial television broadcasters

Broadcaster	Status	Primary funding	Broadcasting level		Duration of broadcast licence (years)
HTV (2 channels)	public	licence fee	National		no limit
NOVA TV	commercial	advertising	National		10
RTL Televizija	commercial	advertising	National		10
Televizija Slavonije i Baranje	commercial	advertising	Regional	Osijek and Baranja County	7
Nezavisna istarska televizija	commercial	advertising	Regional	Istrian County	7
Televizija Moslavina	commercial	advertising	Regional	Sisak and Moslavina County	7
Televizija Jadran	commercial	advertising	Regional	Split and Dalmatia County	7
VTV Vinkovci	commercial	advertising	Regional	Vukovar and Srijem County	7
Varaždinska televizija	commercial	advertising	Regional	Varaždin	7
OTV Otvorena televizija	commercial	advertising	Regional	City of Zagreb and Zagreb county	7
Pro-Media Čakovec	commercial	advertising	City	Čakovec	5
RI-TV Rijeka	commercial	advertising	City	Rijeka	5
Ranal Ri	commercial	advertising	City	Rijeka	5
Slavonsko-brodsko televizija	commercial	advertising	City	Slavonski brod	5
Korak	commercial	advertising	City	Split	5
Gradska televizija	commercial	advertising	City	Zadar	5
TV Nova	commercial	advertising	City	Pula	5

Source: Croatian Institute of Telecommunications²⁰

2.3 Market shares of the main players

The public service broadcaster, HTV, remained the market leader during the 1990s, in terms of both its share of the advertising market and its audience share. The biggest impact of the new national commercial television stations was made on the regional and local stations, reducing their audience share significantly.

²⁰ Croatian Institute of Telecommunications *Nakladnici radija, (Owners of radio licences)*, a report, 2004.

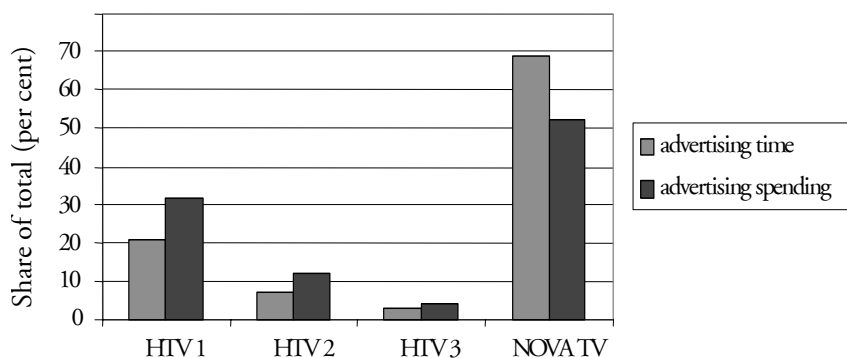
Table 2. Audience share of terrestrial television channels (1998 and 2002)

Channel	Share of audience reached (per cent)	
	1998	2002
HTV 1	74	66
HTV 2	52	41
HTV 3	42	17
NOVA TV	NA	18
Regional and local television channels	20	4

Source: T. Kota; GfK²¹

RTL Televizija, the second television broadcaster with a national broadcast licence, started to broadcast in May 2004. No systematic long-term audience data is available as yet, but some available data indicates that RTL Televizija holds the first place in television audience share at prime time. It is assessed that in only one month of broadcasting, RTL Televizija took 12 per cent of the television advertising spending, and significantly reduced HTV's advertising market share.²²

Chart 1. Advertising spending and advertising time in the television sector – breakdown by channel (2003)



Source: *Privredni Vjesnik*²³

²¹ For 1998, see: T. Kota, *Medijska istraživanja, (Media Research)*, 1999; for 2002, see: GfK, *Croatian media space 2002*.

²² RTL Group, Press release, 19 October 2004, available at http://www.rtlgroup.com/_2005/PressRelease461.htm (accessed 4 August 2005), and in *Privredni Vjesnik*, No. 3351, 10 May 2004.

²³ Advertising time = share of total hours broadcast by these four channels in 2003. Advertising spending = share of total spending by these four channels in 2003. Adapted from “Mediana Fides”, in *Privredni Vjesnik*, No. 3351, 10 May 2004, p. 6.

The number of radio stations grew steadily in the past decade, to reach 140 stations at the national, regional, city and local levels.²⁴ Three radio stations have a national broadcast licence – *Narodni radio* (Peoples' Radio), *Otvoreni radio* (Open Radio) and *Hrvatski katolički radio* (Croatian Catholic Radio, with less than 1 per cent of the national audience share). Radio audiences are fragmented and inclined towards their local or regional radio stations. There are 19 commercial radio stations at the regional level, while others have city or local broadcast licences. Some 60 per cent of the population listen to radio every day, and radio equipment is present in almost every home (90 per cent) and car.

Table 3. Radio audiences at the national level (2002)

Station	Average share of national audience (per cent)	Status	Type of broadcast licence
Hrvatski radio 1	6.5	Public service radio	National
Narodni radio	5.5	Private-commercial	National
Otvoreni radio	4.4	Private-commercial	National
Obiteljski radio	2.7	Private-commercial	Regional (Zagreb city and County)
Radio Sljeme	2.5	Public service radio	Regional
Radio Split	2	Public service radio	Regional
Radio Rijeka	1.9	Public service radio	Regional
Radio Dalmacija	1.9	Private-commercial	Regional (Split and Dalmatia County)
Radio 101	1.4	Private-commercial	Regional (Zagreb city and County)
Hrvatski radio 2	1.2	Public service radio	National
Bbr Bjelovarsko-bilogorski radio	1.1	Private-commercial	Regional (Bjelovar and Bilogora County)

Source: GfK;²⁵ Croatian Institute of Telecommunications²⁶

²⁴ Up-to-date lists of licensed radio, television and cable operators are available (in Croatian) on the website of the Croatian Institute of Telecommunications at <http://www.telekom.hr/> (accessed 1 May 2005).

²⁵ For data on the average share of national audience: GfK, *Croatian media space 2002*.

²⁶ For data on radio station status and type of broadcast licence: Croatian Institute of Telecommunications, *Nakladnici radija, (Owners of radio licences)*, a report, 2004.

3. GENERAL BROADCASTING REGULATION AND STRUCTURES

The Law on Electronic Media regulates commercial television and radio broadcasting, and its provisions regarding content also apply to the public service broadcaster, HRT. The Fund for the Promotion of Diversity and Pluralism of Electronic Media was created under this law, as a pro-active means of public support for diversity in broadcast programmes. The Ministry of Culture established the Fund's statutes in December 2004. However, in spring 2005 there was still an ongoing debate between the Minister for Culture and HRT as to whether the broadcaster was fulfilling its financial obligations towards the Fund. As yet, the regular functioning of the Fund has not been ensured.²⁷ Under this law, the Council for Electronic Media was established in 2003 as the regulatory body in charge of granting and revoking broadcast licences. Its remit includes monitoring broadcasters' contractual and programme compliance. While there is room for further improvement, the overall independence of broadcasting from the Government has greatly increased in comparison to the period before 2000.

3.1 Regulatory authorities for the television sector

The Law on Electronic Media regulates television and radio broadcasting, as well as electronic publications. These sectors were previously part of the Law on Telecommunications, and the amended Law on Telecommunications²⁸ still regulates the technical aspects of broadcasting.²⁹ The Law on Electronic Media applies to commercial and non-profit outlets. It also applies to HRT, unless specific issues are differently stipulated in the separate Law on Croatian Radio-Television (hereafter, Law on HRT). The Law on Electronic Media regulates the obligations of all broadcasters, including HRT, regarding programme requirements, details the procedures for obtaining broadcast licences for private radio and television, and procedures in cases of breach of the law, and defines media concentration thresholds.

The Law on Electronic Media of 2003 created the Council for Electronic Media (*Vijeće za elektroničke medije* – CEM) as an independent regulatory body for television and radio broadcasting. The CEM deals with content and ownership issues, in addition to awarding and revoking broadcast licences. The Ministry of Culture provides administrative support to the CEM. Broadcasting and print media are in the portfolio of the Ministry of Culture. Other bodies with roles in media regulation or supervision are the Ministry of the Sea, Tourism, Transport and Development, and the Agency for

²⁷ HINA, "HRT tvrdi da nema dugova za poticanje pluralizma medija", ("HRT claims to have no debts for promoting media pluralism"), report by the State news agency HINA, 18 May 2005, available at <http://www.index.hr/clanak.aspx?id=265966> (accessed 7 August 2005).

²⁸ Law on Telecommunications, *Official Gazette*, No. 122/03.

²⁹ Ministry of Culture, *Media Legislature*.

the Protection of Market Competition. Prior to 2003, the Council for Radio and Television was the body in charge of the allocation of radio and television frequencies and controlling the programme compliance of broadcasters.

The Croatian Telecommunications Agency (*Hrvatska agencija za telekomunikacije* – CTA) was also established in 2003, and is responsible for the technical aspects of broadcasting, such as governing the frequency spectrum. The CTA is the legal successor to the Institute for Telecommunications (*Hrvatski zavod za telekomunikacije*).

3.1.1 The Council for Electronic Media (CEM)

Composition and structure

The CEM comprises seven members, appointed by Parliament at the proposal of the Government. The CEM was first constituted in 2004, and was preceded by a call to the public for candidates to be proposed for consideration by Parliament. Although the procedure for appointing the first members was lawful, NGOs active in the media sector have criticised the procedure as non-transparent. The final composition of the CEM is a result of the agreement of the political parties represented in Parliament, according to the procedure envisaged in the law.³⁰

Under the Law on Electronic Media, CEM members serve a five-year term and can be re-elected.³¹ However, in the first mandate only, members were appointed for terms of three, four and five years, to ensure the continuity of the CEM and reduce the impact of politics.

CEM members should be experts in the field of media, prominent in the public for their support of democratic practices and the rule of law, the Constitution and the development of civil society, human rights and freedom of expression.³² Members are employees of the CEM. They cannot be employed by, or have an interest in any media or related companies that are regulated by the CEM, and cannot be State officials. They can be removed from office only if they change their professional status in a way that would make them ineligible for membership of the CEM (for example, by becoming a party official), fail to attend the Council's sessions for longer than six months, themselves ask to be relieved of their position, or commit a crime (as defined in Article 59(7) of the Law on Electronic Media).

Remit

The CEM is in charge of awarding and revoking radio and television broadcast licences. It is also responsible for establishing the level of the fee for the licence.

³⁰ OSI roundtable comment.

³¹ Law on Electronic Media, art. 59(3).

³² Law on Electronic Media, art. 59(2).

The CEM is also in charge of protecting ownership diversity in the electronic media. It cannot award a licence to prospective broadcasters if this would conflict with the legal ownership restrictions. The CEM and the Agency for the Protection of Market Competition are both legally involved in the event of any change of ownership or breach of the ownership restrictions, but the law does not define the manner of their cooperation, which does not facilitate their work. A revision of the Law on Electronic Media in this regard would be necessary.³³

The CEM is responsible for monitoring the compliance of broadcasters (including the public service broadcaster) with the Law on Electronic Media. This includes compliance with the Council of Europe's Convention on Transfrontier Television (ECTT),³⁴ as incorporated in the law, as well as the legal programme requirements and the specific programme schedules of individual broadcasters, which are part of their broadcast licence contracts. No data is available on the compliance of Croatian broadcasters with the ECTT.

Although the creation of a programme-monitoring unit would seem necessary to allow the CEM to fulfil its obligations, the CEM is of the opinion that the legal requirement of monitoring content compliance can also be fulfilled in other ways.³⁵

The CEM defines special events of public interest that cannot be restricted according to exclusive broadcasting rights. It also hears complaints from the public and proceeds in accordance with the Law on Electronic Media. However, as yet, there is too little evidence to decide how effective this regulation is in practice.

The CEM has the opportunity to influence the broadcasting sector only within the given regulatory framework. The CEM's remit does not include the opportunity to propose changes to laws or regulations, with two exceptions. First, the CEM can introduce regulations to define measures for determining the "own production" of programme content, and in determining the measures to decide what constitutes Croatian audiovisual works.³⁶ Second, the CEM is also responsible for defining the content and the manner of administering the register of electronic media.³⁷ The Council was expected to adopt these regulations in 2005.

³³ OSI Roundtable comment.

³⁴ Council of Europe, European Convention on Transfrontier Television, 5 May 1989 amended according to the provisions of the Protocol (E.T.S. No. 141) of the Council of Europe of 9 September 1998, entered into force on 1 March 2002, available at <http://conventions.coe.int/treaty/en/Treaties/Html/132.htm> (accessed 30 June 2005).

³⁵ OSI roundtable comment.

³⁶ Law on Electronic Media, art. 23, 26.

³⁷ Law on Electronic Media, art. 38

Funding

The salary of Council members is determined by Parliament, at the proposal of the Government. The Council's budget comes from 0.5 per cent of the gross income of broadcasters in the previous year. Any remaining funds are used to subsidise the Fund for the Promotion of Diversity and Pluralism of Electronic Media (hereafter, the Electronic Media Fund), which was created, within the State budget, (in 2003) by the new Law on Electronic Media.

The Electronic Media Fund will promote the production and broadcasting of electronic media content of public interest at the local and regional levels, especially programmes important for the right of the citizens to public information, national minorities, in the areas of special State care (i.e. war-affected areas), promotion of cultural creativity, development of education, science and art.³⁸ It will also support the employment of highly skilled personnel in the media at the local and regional levels. The Fund will likewise promote pluralism and diversity in radio and television, but will not be used to promote independent production. However, as yet, no grants have been made.

The Minister for Culture determines the procedure for the yearly public tender for broadcasters wanting to receive funding. The CEM is responsible for awarding money from the Fund. HRT is obliged to contribute three per cent of the licence fee revenue to the Fund.³⁹

The fact that the Fund is financed partly from the licence fee of the public service broadcaster raises the question of whether regional stations can also benefit from the Fund. There is also an expectation that those who do get the Fund's support should use it for public service content.⁴⁰ However, opinions also exist that the Fund will only serve to redistribute the public broadcasters' funds to local commercial media.⁴¹

Accountability and transparency

The previous body in charge of licensing, the Council for Radio and Television, ensured transparency of decision-making in its 2000-2004 mandate by opening its meetings to the public, as well as to the interested parties. In the process of awarding the second national television broadcast licence in 2003, a public hearing was arranged where the applicants presented their proposals. The final meeting at which the licence was awarded was also held in public. This process was assessed as an important step towards ensuring transparency in the decision-making process.

³⁸ Law on Electronic Media, art. 55.

³⁹ Law on HRT, art. 54.

⁴⁰ OSI roundtable comment.

⁴¹ OSI roundtable comment.

Parliament confirmed the new Statute of the CEM in July 2004.⁴² This specifies that decisions are taken by majority vote. The procedures for granting and revoking broadcast licences will be specified in the CEM Rules of Procedure, but as of mid-2005 these have not yet been made public. CEM meetings are not defined as public, although the Statute specifies that the work of the Council is public and that the President of the Council is obliged to provide information to the citizens and companies. The CEM must issue a yearly report to Parliament.

3.1.2 The Croatian Telecommunications Agency (CTA)

The technical aspects of broadcasting – such as frequency plans, harmonisation with neighbouring countries, International Telecommunications Union (ITU) and digitalisation – are part of the portfolio of the newly created Croatian Telecommunications Agency (*Hrvatska agencija za telekomunikacije* – CTA), the independent regulatory authority in the field of telecommunications services. The Agency was created by the amended Law on Telecommunications of 2003. The law explicitly states that licences for radio and television broadcasting are not issued by the Agency, but that licensing is regulated by the Law on Electronic Communication.⁴³

The Agency's executive body is the Council for Telecommunications, which consists of professionals who cannot be State or party officials or have political or commercial interests that would make them ineligible for membership of the Council, such as occupying a seat in the board of a commercial enterprise.⁴⁴ The members of the Council for Telecommunications are appointed by Parliament at the proposal of the Government, for a five-year mandate. They can also be dismissed by Parliament if they do not fulfil their obligations, by abstaining from meetings and due to similar technical causes, but not for political reasons.

3.2 Licensing

The Law on Electronic Media defines the basic criteria and procedures for awarding broadcast licences. The CEM awards licences to private radio and television broadcasters. HRT does not compete for licences, as its structure and remit are defined in the Law on HRT. The Minister of Culture, at the proposal of the CEM, issues the tender according to what was proposed by the CEM. The CEM, the CTA (which deals only with the technical aspects of the broadcast licence) and the broadcaster concerned are signatories of the licensing (*concession*) contract.

⁴² Decision on the Confirmation of the Statute of the Council for Electronic Media, *Official Gazette*, 15 July 2004, available (in Croatian) at <http://www.nn.hr/clanci/sluzbeno/2004/1941.htm> (accessed 7 August 2005).

⁴³ Law on Telecommunications 2003, art. 24.

⁴⁴ Law on Telecommunications 2003, art. 9.

A public tender for broadcast licences is issued when there are available frequencies. The updated frequency plan is presented to the CEM every six months by the CTA.

Broadcast licences can be awarded for the national level for which broadcasting must cover at least 60 per cent of the total population, regional level, covering at least 70 per cent of the population in the region, city and/or local level. Non-profit broadcast licences can also be awarded. Licences are given for four to ten years, depending on the size of the broadcasting area.

Applications must include information about programme content and ownership structure, any required technical information, and information about the premises and personnel. Broadcast licences are awarded on the basis of the programme proposal, together with an assessment of the economic, technical and personnel viability of the project. The programme proposal must specify the share of information, entertainment, cultural and other strands in the total schedule, the expected maximum of advertising content, the expected share of own production, and Croatian and European audiovisual content. The programme proposal is part of the licensing contract. A change of more than ten per cent of the programme content must be approved in advance by the CEM.

In the past, the annual fee for the broadcast licences was fixed – as defined by the Minister for Telecommunications.⁴⁵ Under the new law, the CEM decides the price for the broadcast licence. However, the law is not clear as to whether the price is set each time, or whether it will be the same for all, differing only according to the level of the broadcast licence. Until the CEM defines the new price(s), those fixed in 2003 are still valid. These are as follows: €40,000 per annum for television broadcasting at the national level, €24,000 at the regional level, and €17,000 for the city of Zagreb or a smaller regional level, covering fewer than one million inhabitants. The price further decreases with the number of inhabitants in the given area. Non-profit broadcasters pay 20 per cent of the respective fee. There are also fees for taking part in the tender – 5 per cent of the annual price for the tender documentation, and 10 per cent for applying to the public tender.

3.3 Enforcement measures

The Ministry of Culture oversees broadcasters' compliance with the law, while the CEM monitors their compliance with the licensing contract. While the Ministry examines administrative compliance, the CEM should be looking into issues pertaining to content. Although this is probably the CEM's most important function, it requires a programme-monitoring unit that has not yet been created. The Institute for Telecommunications, whose legal successor is the CTA, has in the past monitored technical and financial aspects.

⁴⁵ Regulation on the fee and payment methods for the conducting of telecommunications services and other activities, *Official Gazette*, No. 48, 26 March 2003.

The Law on Electronic Media lists all the conditions in which the CEM can revoke a broadcaster's licence. The licence can only be revoked if, after three successive warnings by the CEM or the Ministry, the broadcaster has not complied with the legal requirements – including those with respect to fees, programme content, technical standards and authors' rights. The CEM does not have the prerogative to levy fines. Only a court can impose fines on broadcasters. Infringements that can be fined are listed in detail in the law.⁴⁶ Fines for media organisations range from HRK 100,000 to 1,000,000,000 (€13,000 to €133,000), while those for the responsible person in the media organisation range from HRK 20,000 to 100,000 (€2,700 to €13,000). However, as yet, there are no examples of proceedings against the media in relation to this law.

3.4 Broadcasting independence

The Constitution, the Law on the Media, and the Law on Electronic Media guarantee freedom of expression, freedom to found media companies, and editorial independence of broadcasters from the state. The Law on HRT defines HRT's legal status, and guarantees its editorial independence.

In particular, the Law on the Media guarantees the freedom of journalists and their protection from the owners. This includes the right of journalists to be consulted over the appointment of editors, the right of editors to compensation in the event of a change of ownership or editorial policy, and the right of journalists to express their opinions and not to comply with orders contrary to professional ethics. There is a general impression in political and media circles that there is a variety of political views and diversity of opinion in the Croatian media, and that divergent political views have a chance to be presented in different media. Regarding pluralism on HTV, opinions are divided as to the true level of political pluralism. Some think that political influence on HTV really is shared among the leading parties,⁴⁷ while others are of the opinion that, although political influence has been less aggressive and noticeable since 2000, it has not disappeared.⁴⁸

There is also general agreement that in commercial media the undue influence of owners is today a far greater risk for the independence and freedom of reporting than State influence. The general trend of "tabloidisation" is evident in the press and in broadcasting, a result of market pressures and increased commercialisation. The Croatian Journalists' Union (CJU) has promoted the idea of a national journalists' collective agreement, which would protect the professional and economic rights of

⁴⁶ Law on Electronic Media, art. 70.

⁴⁷ OSI roundtable comment. The example given for this opinion is the political talk show *Otvoreno* (Open) which is, in turn, hosted by two journalists of opposing political views (right versus left/liberal).

⁴⁸ OSI roundtable comment.

journalists in those outlets that have not yet made such an agreement. The CJU succeeded in the late 1990s in organising collective agreements at the level of eight news organisations.⁴⁹ The contract with the daily newspaper *Jutarnji list* is the only collective agreement in the transition countries with media that are partly owned by the German WAZ corporation. However, this is the case only with one paper, while journalists in the magazines owned by the same corporation are not included.⁵⁰ There are strong complaints by the CJU that the position of journalists and other employees in commercial media under foreign ownership is not satisfactory, because, for instance, social benefits are not included in their income.⁵¹

It is generally believed that there is little or no State influence on national commercial broadcasters, especially now that both are foreign-owned. The situation is different in local communities, where the influence of local political structures can have a negative impact on journalistic freedom and editorial independence in small, privately owned outlets. On the other hand, it is also generally believed that the licensing of radio and television in the 1990s was far from impartial, with the main licences awarded to clients or favourites of the Government. As most of these licensees still hold the same broadcast licences, it is not too difficult to imagine that they would be willing to privilege their political friends in their broadcasts.

The institutional independence of broadcasting in general is related to the independence, transparency and impartiality of the regulatory bodies in the sector. In 2000-2003, the work of the predecessor to the CEM, the Council for Radio and Television, received a much better bill of health for impartiality and political independence than did the regulatory body prior to 2000. The problem of the recent period was that the Council was not truly independent of the other regulatory bodies, such as the Institute for Telecommunications, because it relied heavily on them for support in all matters, from technical, to legal, secretarial and administrative. The budgetary provisions also made it difficult to implement decisions not supported by the Institute for Telecommunications, such as creating a CEM monitoring unit.

The introduction of the Minister for Culture in the licensing procedure is a step backwards. Relations with the Croatian Telecommunications Agency (CTA) have not been clearly defined. As the executive body of the Agency, the Council for Telecommunications was only created a short while ago, and it remains to be seen whether it will become a true regulatory body with a positive impact in the Croatian audiovisual space.

The HRT Programme Council was appointed almost eight months after the new Law on HRT, in a process that was legal and transparent, but highly politicised. Although

⁴⁹ HRT, *Večernji list*, *Jutarnji list*, *Novi list*, *Glas Istre*, *Slobodna Dalmacija*, *Glas Slavonije* and HINA.

⁵⁰ OSI roundtable comment.

⁵¹ OSI roundtable comment.

its members cannot be party members or officials, the composition of the Council is a result of political compromise in Parliament, according to the legal procedure for appointment. After civil society organisations propose their candidates, Parliament adopts a decision based on negotiations among the parties. This clearly leaves a lot to be desired in terms of transparency. In previous drafts of the Law on HRT, it was proposed that Parliament would vote on the candidates with a two-thirds majority. This would have ensured that a high degree of consensus was reached, and would have precluded political trade-offs. The legitimacy of the members would have been higher, and their independent position assured, because their appointment would not have been related to any particular political party.

The institutional independence of HRT improved after 2000. The transition into a public service broadcaster began in the 1990s, but serious evidence of progress in terms of political independence could be seen only after 2000. This was largely due to the fact that the coalition Government, established in 2000, refrained from pressuring the media, thus facilitating the development of their professional standards. News and current affairs reporting became increasingly impartial and balanced.⁵²

In 2004, HTV news and current reporting continued to include regular critical reviews of Government activities. Yet, recently, editorial staff of HTV publicly protested against attempts by some members of the Government to influence their reporting. There is some concern at indications that the new Government is increasing the pressure on HTV again. For example, some reports were pulled at the last minute from the forthcoming evening news. A recent example concerns the HTV evening talk show, *Latinica*. The topic of corruption was explored on *Latinica* in February 2005. The format of the show includes short feature stories that are then commented on by the guests in the studio. The show is taped in advance, and the programme was broadcast without two story items – dealing with accusations of corruption against the present Prime Minister – prepared by a journalist who is a member of the *Latinica* team. As widely reported in the print media, these items were cut out on the decision of the Editor-in-Chief. The programme's presenter, Denis Latin, protested at this censorship. HTV, in its reply, said that the items were cut out because they fell short of basic journalistic professional standards, as they did not report on the full information already known to the public, and the person mentioned in the items was not invited to comment on the accusations.

The Government's increasing use of spin techniques may also exert undue influence on the media. The future positive development of the editorial independence of the public service broadcaster (and other media as well) will largely depend on their ability to resist outside pressures – whether political or commercial – and to raise the professional

⁵² Geza Stantić *et al*, *Politika u programu HTV-a, (Politics in HTV programmes)*, Croatian Helsinki Committee for Human Rights (HHO), Zagreb, 2003, (hereafter, HHO, *Politics in HTV programmes*)

standards of their journalists. The *Latinica* example shows that this is neither easy nor uncontroversial.

The changed political culture, a legacy of the 2000-2003 coalition Government, no longer stands for blatant abrogation of freedom of expression and editorial freedom in the Croatian media. While there is still room for improvement, the standards attained are not to be compared to the period before democratic consolidation. The media situation should now be measured against best practice in developed democracies.

4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING

The Law on HRT defines the legal status of the public service broadcaster as a public institution. HRT comprises Croatian Television (HTV), with two terrestrial and one digital satellite television channels, Croatian Radio (HR), with three terrestrial radio channels at the national level and eight regional channels, and the Music Production Unit.

HRT is funded by revenue from licence fees, but it is also allowed to show nine minutes of advertising per hour. Its public service remit includes the obligation to broadcast information, educational, cultural and entertainment programmes. News and current affairs programmes must be produced in accordance with professional standards of independent journalism. The HRT Programme Council appoints the HRT management, while at the same time it should protect the interest of the public. The Council is appointed by Parliament from a list of candidates proposed by civil society institutions and organisations.

4.1 Remit of Croatian Radio and Television

The Law on HRT defines the legal status of HRT as a public institution, founded by the Republic of Croatia and with founder's rights retained by the Government. The law guarantees HRT's editorial and managerial independence. It also defines HRT's public service obligations, as well as its financing and governing structure. The remit of HRT includes the production and broadcasting of television and radio programmes, and music production.

HRT must provide different programmes for specific regions of the country. It must meet the interest of the public at the national and local levels, and broadcast "adequate" shares of information, cultural, educational and entertainment programming. HRT is obliged to produce programmes for Croatians abroad, and for national minorities in Croatia, with direct funding from the Government for this purpose.

4.2 Services

The Law on HRT stipulates that HTV is expected to produce a quality mix of programmes, to inform, educate and entertain the public. HTV today broadcasts two terrestrial television channels (HTV 1 and HTV 2), and one digital satellite channel (HTV Plus).

Croatian Radio (HR) broadcasts on three terrestrial channels at the national level – HR 1 (information), HR 2 (entertainment and music) and HR 3 (art, culture and science). HR also broadcasts on eight regional stations, and one international programme on short wave and satellite, *Glas Hrvatske* (Voice of Croatia).

HRT also has a music production company, and operates a web page (www.hrt.hr). Its role in film production is also important, as it co-produces the majority of Croatian feature films.

4.3 Funding

The Law on HRT defines its sources of income. As shown below in Table 4, the total revenue of HRT in 2002 was roughly €170 million.

Revenue from the licence fee provides the largest share of HRT's income – in 2002 it accounted for over 57 per cent of the station's revenue. The licence fee is levied on every owner of a radio or television set in the amount of 1.5 per cent of the average net monthly salary in Croatia. Income is also gained from the production or broadcasting of advertisements, production and sale of audiovisual programmes, production of other programme services, production and sale of image and sound carriers, organisation of concerts and other events, and by other activities in accordance with the HRT Statute.

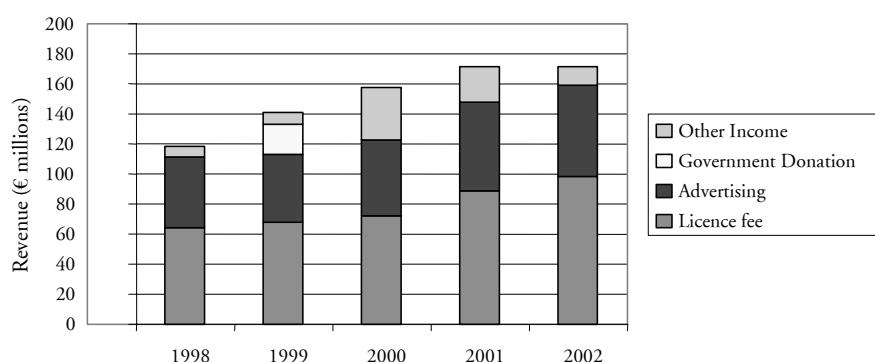
The share of advertising in the income of the public service broadcaster has been growing over the past decade. It climbed from 25 per cent in 1995 – the year when the first commercial competitors started broadcasting – to 36 per cent in 2002. Advertising is limited to 15 per cent of one hour (nine minutes). Films and religious programmes must not be interrupted by commercials, and nor may information programmes, documentaries and children's programmes shorter than 30 minutes. Political parties can only broadcast advertisements during the pre-election campaign.

HRT employs 3,159 people, of whom 1,735 work for HTV. HRT's annual reports to Parliament do not mention the share of programme and administrative personnel, or minority representation. Women constitute 38 per cent of the staff.⁵³

⁵³ HRT, *Izveštće o poslovanju Hrvatske radiotelevizije u 2002. Godini, (Report on the activities of Croatian Radio and Television in 2002)*, Zagreb, 2003.

Table 4. Revenues of Croatian Radio-Television (HRT) (1998–2002)

Revenue source	Revenue (€ millions – at 2004 rates)				
	1998	1999	2000	2001	2002
Licence fee	64.63	68.15	72.52	88.43	98.07
Advertising	46.971	45.174	49.694	59.746	61.40
Government donation	–	20.07	–	–	–
Other income	6.57	7.44	35.11	23.51	11.45
Total Revenue	118.17	140.83	157.32	171.69	170.92

Sources: HRT⁵⁴**Chart 2. Revenue of Croatian Radio-Television (HRT) (1998–2002)**

4.4 The governance structure of HRT

4.4.1 Restructuring of HRT

The public began to show a significant interest in the future of public service broadcasting in the second part of the 1990s, in line with the then ongoing democratisation of the political and public sphere. Public debate exposed conflicting views on the future of public service broadcasting. The first view was related to the optimal structure of HRT for ensuring its institutional independence from political and State interests, and also its editorial freedom. The second view questioned the very

⁵⁴ 1998: *Report on HRT operations for 1999*, 23 February 2000; 1999: *HRT Annual Report 2000*, 12 June 2001; 2000: *HRT Annual Report 2001*, June 2002; 2001: *Report on HRT operations for 2002*, 13 May 2003

need for public service television and radio. This opinion called for the abolition of the licence fee and for HRT to be banned from carrying any advertising whatsoever. A compromise was reached in reducing the advertising time of HRT.

In 2000, the coalition Government proposed to restructure HRT, and launched a public debate on its proposals.⁵⁵ This included turning the HRT Transmitters and Links division into a separate company and reducing the number of HTV terrestrial channels from three to two, so that its third frequency could be offered in a public tender as a platform for a national commercial television station. Although the proposal was met with opposition from HRT, the plan was approved, because of public support for greater market competition.

The public reacted differently to the same type of proposal for the third channel of Croatian Radio, which is renowned for its quality programming in the arts, classical music and science. The logic that existed for television did not apply to radio, and the public outcry swayed the policy makers to allow HRT to retain its full radio service.

The 2001 change to the Law on HRT introduced a democratic procedure for the direct appointment of HRT Council members. Twenty-five members of the Council were appointed directly by civil society associations and organisations. Each organisation chose one representative in the Council, in accordance with its own selection procedure.⁵⁶ At the same time, it introduced an unworkable division of authority between programme production and management, in which the HRT management had no authority over programme production or content, and the programme production unit had no control over the finances. This resulted in a stalemate and precluded the much-needed streamlining of the company. The Council also had great difficulty in functioning, due in part to the large number of members, and in part to the growing political affiliations of some members.

The Law on HRT 2003 changed the management structure of HRT, and gave full authority to the management. As part of the change, programme production was integrated into the management structure. The appointment of the Council became part of the parliamentary procedure, and the number of members was reduced to 11.

Throughout the legislative changes concerning the public broadcasting system, the Government enjoyed support from the OSCE Mission in Croatia and the Council of Europe. Working closely together, these intergovernmental organisations provided

⁵⁵ Ministry of Culture, *Teze za raspravu o zakonu o medijima, (Theses for debate on the media law)*, Working paper, Zagreb, 2002, available on the website of the Croatian Journalists' Association, at <http://www.hnd.hr/zakon/index.php?inc=020212> (accessed 1 May 2005).

⁵⁶ The list of organisations invited to appoint members to the Council was defined in the law. It consisted of the Croatian Writers' Union, the Association of Actors, the Association of Music Performers, the Croatian Academy of Science, national minority organisations, the Catholic Church and other religious communities.

legal expertise and advice as part of their support for democratisation in Croatia, and some of their suggestions were adopted by the authorities.⁵⁷

4.4.2 Present HRT governance structure

HRT is governed by the Programming Council (hereafter, HRT Council), the Management Board, and the General Director.

The HRT Council has 11 members, appointed and recalled by Parliament. Members are proposed by civil society organisations after a public tender. The members must be citizens of Croatia that represent various groups of Croatian society (the youth, pensioners, employers, trade unions, national minority groups, religious communities, universities, civil associations and others). Members cannot be State officials or HRT employees, nor can they be persons that are employed by, or are carrying out any form of activities or business for, radio and television broadcasters, nor can they be members of the management or monitoring committees of such companies, or persons whose occupation may result in a conflict of interest.

The remit of the HRT Council is to protect the public interest by monitoring and reviewing radio and television programming plans. Opinions are divided as to whether the present remit of the Council – restricted in relation to the previous Law on HRT – is better or worse.⁵⁸ Some think that the previous ability of the Council to discuss specific programmes was better, while others consider, on the contrary, that programme decisions should be left to the people who create the programme, not the Council.⁵⁹

The management of HTV and HR includes the HRT Director General, the Directors of Television (HTV) and Radio (HR), the Directors of Television and Radio Programming, and the Editor-in-Chief of Information Programming. The HRT Council appoints the HRT Director General after a public tender, for a mandate of four years – he or she manages HRT in accordance with the HRT Statute. The HRT Council also appoints the Directors of HTV and HR, the HTV and HR Directors of Programming, and the Editors-in-Chief for information programming at HTV and HR, also for a term of four years.

All appointed managers may be dismissed at the proposal of two thirds of the HRT Council members. The possible reasons for dismissal are listed in the Law of HRT, and

⁵⁷ All the media-related legislative expertise in Croatia and other countries is available on the CoE (Media Division) website at http://www.coe.int/T/E/Human_5Rights/media/3_5Assistance_Programmes/Legislative_expertises/ (accessed 7 August 2005). See also a recent report on media development by OSCE missions, including the Mission to Croatia, prepared by the Dutch NGO, Press Now: Press Now, *Media Development by OSCE Field Missions*, available at http://www.pressnow/downloads/Rapport_30062004.pdf (accessed 7 August 2005).

⁵⁸ OSI roundtable comment.

⁵⁹ OSI roundtable comment.

include the following: at the member's own request, for not acting in accordance with the regulations and general acts of HRT, refusal without valid grounds to execute decisions of the HRT Council or Management Board, and any possible situation whereby, through unethical or improper work, the member causes damage to HRT. The reasons for dismissal appear broadly set, and apparently allow the possibility of misuse, although no experiences of this kind exist.

The HRT Management Board consists of the HRT Director General, the Director of HTV, the Director of HR, the Head of HRT Music Production, and one representative from the HRT Workers' Council. Except for the Workers' Council representative, they are all appointed and may be dismissed by the HRT Council.

4.4.3 Responsibilities

The Ministry of Culture supervises the legality of HRT operations and general statutes. HRT is accountable to Parliament, which reviews and adopts its annual report. The Law does not define the consequences in the event that Parliament does not accept the report of the HRT Council.

The Law on HRT does not include sanctions, apart from those that can be imposed on HRT management by the HRT Council, an internal body. The Council for Electronic Media (CEM) has jurisdiction in breaches of the Law on Electronic Media, but as yet there have never been any sanctions imposed on HRT by a regulatory body.

HRT must take account of the public interest and promote it. Public accountability should be ensured by the composition and remit of the HRT Council.

4.5 Programme framework

HTV programming is developed in accordance with its broadly defined public service mission. The yearly programming plan is prepared by the management for review and adoption by the HRT Programming Council.

4.5.1 Programme output

In 2002, HTV broadcast 57 hours daily on its three channels. Of the output, 36 per cent was of foreign origin and 64 per cent was local production; 1.25 per cent of the daily production was acquired from independent producers. In 2004, HTV aired 45 hours of programmes daily on its two channels (24 hours on HTV 1 and 21 hours on HTV 2), and the ratio of domestic and foreign programming is 60:40.

**Table 5. Programme output of Croatian Television (HTV 1, HTV 2, HTV 3)
– breakdown by genre (2003)**

	Share of total output (per cent)
Films and series	34
Information and documentaries	19
Sport	12
Entertainment	10
Music	7
Educational	6
Children and youth	6
Special programmes	4
Advertisements	2

Source: Central Bureau of Statistics⁶⁰

HTV has one programme for national minorities in Croatia – a multinational magazine, *Prizma* (“Prism”). *Korijeni* (“Roots”) is a programme for Croatian minorities living abroad. According to the official 2001 census, 7.47 per cent of the population belongs to national minorities, which is lower than before the war in the 1990s. The Serbian ethnic group is the largest minority in Croatia, followed by Bosniaks, Italians, Hungarians, Albanians, Slovenians, Czechs and Roma. HTV is preparing to start six new monthly broadcasts for national minorities on HTV 1.⁶¹ In addition to *Prizma*, HTV shows news feature programmes, documentaries, and cultural programmes about and for the national minorities in its other programming.

Religious programming includes several programmes for non-Catholic religious communities. For a number of years the celebrations of religious communities are also broadcast (Easter and Christmas, Ramadan and Kurban Bayram, Yom Hashoa, Spirits and Reformation Day).

The different position of the public service television in the television sector is evident in its peak prime times, which differ from other channels. The daytime peak is at 12.00 for the midday news, and at 19.00 for the main evening news.⁶² All the other channels have

⁶⁰ Adapted from: Central Bureau of Statistics, *Radio i Televizija u 2003, (Radio and Television in 2003)*, Zagreb, 2004.

⁶¹ OSI roundtable comment.

⁶² GfK, *Croatian media space 2002*.

a peak at 21.00, when serials and feature films are scheduled. The main evening news, *Dnevnik*, on HTV 1, had an average audience share of around 40 per cent in 2002.⁶³

HR 1, the first channel of public service radio, is still the main radio information source at the national level. Its total daily audience share is 8.6 per cent, with noticeable peaks for its main daily news programmes at 07.00 and 15.00.⁶⁴

HTV started its satellite broadcasts to North America in 2001 and expanded in 2003 to cover Europe, South America, and Australia and New Zealand. This project was developed in cooperation with the Government and the Croatian Heritage Foundation (*Matica iseljenika*). The same project developed an international radio broadcast, *Glas Hrvatske* (“Voice of Croatia”), aimed at Croatians abroad, Croatian minorities and the international public. In 2004, HRT launched a new satellite programme, HRT Plus, a coded digital channel that aims to expand the news and information offer, as well as sports and domestic films.

4.5.2 Programme guidelines

HRT is obliged by the Law on HRT to inform the public about facts, events and occurrences of public interest in the country and abroad, and to do so continuously, truthfully, fully, impartially and in a timely manner. HR and HTV must respect and promote the pluralism of political, religious and other ideas, and inform the public. They must verify the source and content of information before publication, in line with accepted standards of independent journalism, as well as separating information from comment and clearly identifying comments as the author’s personal opinion.

In addition to these legal requirements, the HRT Code of Ethics (1998) includes a section relating to programming principles.⁶⁵ The Code requires journalists to “adhere to the demands of the profession – veracity, objectivity and good faith”. They are also required to “present precise, complete and timely information; to provide the public, with respect to all important matters, with all pertinent points of view, arguments and explanations from various sources, in order that the public may draw their own conclusions and form their own opinions”.

Journalists are not allowed to express political preferences or opinions, and editors-in-chief cannot hold any party political office.

Content analysis of HRT news programmes in 2002 did not indicate that television output was dominated by the ruling political party or parties, as was the case in 1999

⁶³ HRT, *Analiza slušanosti i gledanosti programa i emisija HRT-a u razdoblju od 1. siječnja do 30. studenog 2002. godine*, (Analysis of the audience and viewership of HRT programmes from 1 January to 30 November 2002), HRT Council, Zagreb, 7 March 2003.

⁶⁴ The data on audiences is collected by different agencies, and show different results. The data quoted here is from the recent media audiences study: GfK, *Croatian media space 2002*.

⁶⁵ HRT Code of Ethics (1998), art. 7.

and earlier, and showed no sign of a visible ideological framework. The objective tone of the news was prevalent in 2002, but this was also a finding in 1999 and 1998.⁶⁶ The main strategy of bias in HTV in 1998 was in not allowing the opposition to comment on Government policies and activities. Opposition parties appeared in news programmes only in relation to their own policies. The analysis of MTV news in 2002 indicates that the criteria used for news selection and professional news values remain the main problem for HTV. The analysis pointed to the need to further develop HTV's professional standards in news selection and evaluation criteria.⁶⁷

The same research also found a decrease in hate speech: the 1999 sample found 59 instances of ethnic hate speech (55 in documentary programmes, two in information programmes, and one each in political and entertainment programmes), as compared to ten instances in 2002. Nationalist speech was found in 14 instances in 1999 and in only two instances in 2002. In 2002, in most cases, intolerant speech was opposed by the journalists or presenters.⁶⁸

The debate on the presence of violence in media programmes is also important, especially with respect to programmes that are aired at times when children watch television. Although experts agree that this is an important issue, they also concur that it is not adequately discussed in the public or among media professionals.⁶⁹

4.5.3 Quotas

A share of 55 per cent of HRT broadcasts have to be produced in the Croatian language, while at least 50 per cent of the remaining output must be in one of the European languages or of European production. Croatian original production has to include at least 50 per cent audiovisual works (feature films, documentaries, cartoons and entertainment).

Without mentioning specific quotas, the Law on HRT obliges HR and HTV to produce and/or broadcast programmes dedicated to informing members of national minorities in Croatia. Programmes for national minorities are exempt from the Croatian language quota.

The Law does not prescribe quotas for specific programme strands, such as information, education, entertainment and documentaries; it only indicates that they should be included in the programme. HTV is obliged to observe the specific needs of hearing-impaired persons and others with special needs, and strive to include

⁶⁶ See: Zrinjka Peruško, *Summary Evaluation. Monitoring of the HTV News & Current Affairs Programs, 3-16 December 1998*, PULS Agency for OSCE, unpublished report (15 pages).

⁶⁷ Geza Stantić and Tena Perišin, "Profesionalni kriteriji selekcije vijesti u HTV-u", ("Professional criteria of news selection in HTV"), in HHO, *Politics in HTV programmes*.

⁶⁸ HHO, *Politics in HTV programmes*.

⁶⁹ OSI roundtable comment.

programmes that allow them also to benefit from its public service remit. HTV broadcasts (too few) news programmes that are accompanied by sign language.

At least 10 per cent of total broadcast programmes or annual budgets must be from independent production companies. Information programmes, sporting events, game shows and advertisements are excluded from the quota. HTV has not yet touched on the compliance issue in its yearly reports to Parliament.

4.6 Editorial standards of HRT

HRT programmes have to uphold the highest standards of professional and ethical criteria and professionally recognised standards of independent journalism.⁷⁰ Although these standards have not yet been fully achieved, progress has undeniably been made in the impartiality of news presentation.⁷¹

HRT is expected by law to inform the public in a truthful, comprehensive, impartial and timely manner, and to respect and promote the pluralism of political, religious and other attitudes, and must not in its programmes promote particular interests of any political parties or any other particular interests. It must be impartial in covering political, economic, social, health, cultural, educational, scientific, ecological and other matters, and enable different opinions to be equally represented.

Sources and accuracy of information must be checked, in line with the standards of independent journalism. Comments must be separated from information, and clearly attributed as individual opinion. Hate speech is forbidden. Hate speech includes national, racial or religious hatred and intolerance, anti-Semitism, xenophobia, and incitement to discrimination or hostility to individuals or groups based on their origin, skin colour, political beliefs, worldviews, health status, gender or sexual or other characteristics or persuasions.⁷²

The protection of professional journalistic standards is part of self-regulation within the journalistic community. The Croatian Journalists' Association has an Ethics Council composed of respected journalists. The Ethics Council hears complaints and makes non-binding statements regarding breaches of journalistic standards. They publish their statements regularly in the press as well as on the Association's Internet site.

⁷⁰ Law on HRT, art. 5.

⁷¹ HHO, *Politics in HTV programmes*.

⁷² Law on HRT, art. 8.

5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING

The Law on the Protection of Market Competition also applies to the media. Press concentration is regulated more specifically in the Law on the Media. A company (except for HRT) can, as a rule, broadcast only one radio *or* television channel. The Council for Electronic Media (CEM) and the Agency for the Protection of Market Competition cooperate in matters of concentration control, but ownership transparency is still insufficient. The media have only recently been obliged to publish data on ownership structures, audiences and revenues.

In 2004, the foreign media companies RTL and CME gained ownership of both national commercial television stations. The press sector also has a significant share of foreign owners, led by the German holding WAZ and the Austrian company Styria.

The advertising market is growing quickly, and television still holds the biggest share. HTV is losing its position as market leader in advertising in 2004, as positions are carved up by two commercial television stations at the national level. The local television sector is also the loser in an increasingly competitive media market.

5.1 The commercial broadcasting system

The first tender for commercial radio and television broadcast licences was issued in 1995. Local television stations started to broadcast already in 1989. What started as an experiment in youth television on HTV's third channel later became the first local television station, Open Television (*Otvorena televizija* – OTV), with its own frequency. There were already four local television stations by 1995, created by municipal governments. In the past decade, the number of privately owned local and regional television stations licensed to broadcast in Croatia reached 14.

The first national licence for a commercial broadcaster was granted in 2000 to Nova TV and the second in 2003 to RTL Televizija. Nova TV only consolidated its programming offer during 2002, when it reached some 18 per cent of the audience. Its success followed the introduction of a locally produced reality television game show, called "The Croatian Idol".

5.2 Services

Parliamentary debates about commercial television regulation have shown that commercial television is viewed in Croatia as exploiting a public resource (the frequency spectrum) and hence as being bound to provide a service to the public.⁷³ This is the justification for the low prices of frequency licences. To satisfy the public

⁷³ Peruško, *Democracy and the Media*.

interest, the commercial broadcaster is obliged by law to provide citizens, including ethnic minorities and Croatians living abroad, with news and information.

Commercial broadcasters are also expected to air contents that are important for the exercise of human rights, political rights, the rule of law, and the development of civil society. Broadcasters, including commercial enterprises, are expected by law to contribute to the preservation of Croatian national and cultural identity, the promotion of cultural creativity, the culture of public dialogue, the development of education, science and art, and the protection of nature, the environment and human health.⁷⁴ Broadcasting must be in the Croatian language, with the exception of imported audiovisual works and programmes for national minorities.

5.3 Commercial television ownership and cross-ownership

5.3.1 Ownership restrictions

The Law on Electronic Media regulates commercial television and radio broadcasting, as well as electronic publications. It also regulates ownership in radio and television, as well as cross-media ownership, with the aim of restricting concentration. A broadcaster (with the exception of HRT) can only broadcast one radio *or* television channel in a single geographical area. A company can obtain permission for both radio and television broadcasting from the Council for Electronic Media if the proposed channel will reach different geographical areas.

The Law on Electronic Media (Article 46) defines the following forms of media concentration as impermissible:

- a broadcaster with a national broadcast licence, and shares exceeding 25 per cent in another broadcaster with a national broadcast licence, and *vice versa*;
- a broadcaster with a national broadcast licence, and shares exceeding 10 per cent in another media company that publishes daily newspapers with a print-run of over 3,000 copies, and *vice versa*;
- a broadcaster with a national broadcast licence, and shares exceeding 10 per cent in a legal person who performs the activity of a newspaper agency, and *vice versa*;
- a broadcaster with a national broadcast licence that simultaneously publishes daily newspapers with a print-run of over 3,000 copies;
- a broadcaster with a local or regional level broadcast licence, and with shares exceeding 30 per cent in another such broadcaster with a local or regional level broadcast licence in the same area;

⁷⁴ Law on Electronic Media, art. 9.

- a broadcaster with a local or regional level broadcast licence that simultaneously publishes local daily newspapers in the same or in the neighbouring area.

The CEM and the Agency for the Protection of Market Competition must be notified of every change in the ownership structure of licensed broadcasters. If the Agency finds that the sale produces improper concentration, the broadcaster will be given a period of grace in which to bring the structure within legal limits. In cases of non-compliance, the CEM can revoke the licence, but as yet there have been no such cases in practice.

The broadcast licence can be transferred (i.e. sold) to another legal entity, together with all property, rights and obligations necessary for continuing the licence, with the prior approval of the CEM.

There are no particular restrictions on foreign ownership, and anti-concentration provisions apply equally. Foreign owners must be locally established in order to qualify for broadcasting rights.

Any person or legal entity with more than ten per cent of ownership or voting rights in an advertising agency cannot at the same time be an owner of a radio or television company. Operators of transmitters of radio and television programmes cannot also be broadcasters.

The Law on Media defines prohibited forms of concentration in the press. A publisher is barred from acquiring shares or ownership of political daily or weekly newspapers if this acquisition means that the publisher's share in all the sold copies of daily and weekly newspapers in the country would exceed 40 per cent.

5.3.2 Ownership transparency

Broadcasters are obliged to forward to the relevant ministry, by the end of each year, and to publish in the Official Gazette, a statement on all legal and natural persons who directly or indirectly possess stocks or a share in their enterprise. Data on the percentage of ownership must also be made public. Furthermore, all media companies are obliged to provide information on their income, sources of income, and audience figures. This information should be sent to the Croatian Chamber of Commerce and published in the official gazette.⁷⁵ The obligation to publish audience figures and income was introduced in 2003.

Although the obligation to inform the relevant public authority of any ownership change greater than ten per cent has been in place since the Law on Public Information of 1992,⁷⁶ measures to increase the transparency of media ownership were only broadened in 2003. The practice of disclosing such information has not yet taken root.

⁷⁵ Law on the Media 2004, art. 44.

⁷⁶ Law on Public Information, adopted on 15 April 1992, available in Croatian at <http://www.nn.hr/clanci/sluzbeno/1992/0490.htm> (accessed 7 August 2005)

The Court Register of companies is accessible online and includes information on the directors and other company officials, and each company's basic capital and legal establishment. However, information on owners is not included, and can be procured only from the Commercial Court.⁷⁷ Such information has proved difficult to obtain.⁷⁸

RTL Televizija is 58 per cent owned by the RTL Group, with the remainder owned by major Croatian companies: Agrokor (11.5 per cent), Podravka (11.5 per cent), Atlantic grupa (11.5 per cent) and Splitska banka HVB Split (7.5 per cent). The RTL Group, one of the world's largest media industries, operates television stations in several other Western and Eastern European countries. The RTL Group is 89 per cent owned by the German global media conglomerate Bertelsmann, and 7 per cent by WAZ.⁷⁹

The US Central European Media Enterprise (CME), registered in Hamilton, Bermuda, bought Nova TV in July 2004 for €24 million from several domestic owners. CME owns television stations in several other Central and Eastern European countries.

With the advent of two powerful commercial competitors in 2004, the position of HRT became seriously challenged. The position of commercial local and regional television stations is even more precarious, as their chief source of income is advertising.

Foreign owners also occupy a significant place in the print media sector. The total number of daily newspapers in 2002 was 13, 12 in Croatian and one in Italian. There were 46 weekly newspapers, including one in English, and 39 monthly papers, including one in English and one in German.⁸⁰

Europa Press Holding (EPH), owned 50 per cent by WAZ, is the largest domestic print media company. It publishes two daily papers (*Jutarnji list* and *Dnevnik*) and the political weekly *Globus*, and leads in the magazine sector. Tisak, the press distribution company, is also partly owned by EPH. EPH recently bought the daily *Slobodna Dalmacija*, and was given six months to divest itself of its interest in Tisak in order to do so.

⁷⁷ Croatian Court Register, available (in Croatian) at <https://sudreg.pravosudje.hr/SUDREG3/SudregController?act=start> (accessed 4 August 2005).

⁷⁸ Stjepan Malović, Report on Croatia, in Brankica Petkovic (ed.), *Media ownership and its impact on media independence and pluralism*, Peace Institute and SEENPM, Ljubljana, June 2004, available at http://www.mirovni-institut.si/media_ownership/albania.htm (accessed 1 May 2005).

⁷⁹ Council of Europe, *Report on Transnational Media Concentration in Europe*, CoE Advisory Panel on Media Diversity, Strasbourg, 2004.

⁸⁰ Central Bureau of Statistics, *Izdane knjige i brošure, novine i časopisi u 2002, (Published books and brochures, newspapers and magazines in 2003)*, available on the DZS website at <http://www.dzs.hr/hrv/priopcenja/PrFrameH.htm> (accessed 1 May 2005).

The Austrian Styria owns the mass circulation daily *Večernji list* outright. The German Burda and the Finnish Sanoma Magazines International also own press outlets in Croatia.⁸¹

Six daily newspapers have national reach. *Večernji list* with 19 per cent of the readership is closely followed by *Jutarnji list* at 17 per cent. *Slobodna Dalmacija* has a 7 per cent share, and *Novi list* 4 per cent.⁸² *Vjesnik* and *Dnevnik* each have less than 1 per cent of the readership. Croatia has one national daily paper per 660,000 inhabitants, which places the country in the top part of European newspaper readership data.⁸³

Both *Večernji list* and *Jutarnji list* draw 15 per cent of the advertising in the printed press (including magazines), while *Slobodna Dalmacija* gets 8 per cent, and *Novi list*, *Glas Slavonije* and *Glas Istre* get between 2 and 5 per cent of the press advertising investment. The two main political weeklies, the rivals *Globus* and *Nacional*, both figure in the same category of advertising share. *Vjesnik*, the only Croatian broadsheet and still State-owned, manages only 1 per cent.⁸⁴

Because of anti-monopoly legislation that prohibits horizontal integration in the media industry, companies look for alternatives to reduce costs and strengthen competitiveness. This has been especially so for local and regional media. A network of local television stations was created in 1999: the Croatian Commercial Network (CCN) is a production company whose programmes (mainly news and talk shows) are shown by a network of regional and local stations between 19.00 and 23.00. According to audience survey results published on their website, some 30 per cent of the population of Zagreb, Split, Rijeka and Osijek watch CCN's main daily news programme, *Vijesti dana* ("News of the day"). CCN includes seven local/regional television stations: OTV (Zagreb), STV (Osijek), ATV (Split), VTV (Varaždin), RITV (Rijeka), TV NOVA (Pula) and TV Čakovec.

Twenty regional and local radio stations subscribe to "Media servis", which produces radio and television programmes. The company, linked to Obiteljski radio (Family Radio), was created in 2002. Affiliated radio stations contribute items to the news programme produced in its Zagreb studio. They broadcast *Media servis* news as a

⁸¹ Z. Peruško, "Medijska koncentracija: izazov pluralizmu medija u Srednjoj i Istočnoj Europi", ("Media concentration: the challenge to media pluralism in Central and Eastern Europe"), in *Medijska istraživanja*, (*Media Research*), vol. 9, No. 1, 2003, pp. 39–59.

⁸² GfK, *Croatian media space 2002*.

⁸³ V. Raič, "Oglašivačko tržište u Hrvatskoj. Nadomak 400 milijuna eura", ("The advertising market in Croatia. Close to 400 million Euro"), in *Privredni vjesnik*, Special issue on Media & Advertising, No. 3351, 10 May 2004, p. 4, (hereafter, Raič, *The advertising market in Croatia*).

⁸⁴ D. Kupinić Guščić, "Neminovno okrupnjavanje velikih i udruživanje malih", ("The inevitable growth of the big and cooperation of the small"), in *Privredni vjesnik*, Special issue on Media & Advertising, No. 3351, 10 May 2004, p. 5, (hereafter, Kupinić Guščić, *The inevitable growth of the big*).

separate programme, or include it in their own news programmes. In 2004, the company announced plans to expand into television production.⁸⁵

Both CCN and *Media servis* increase the availability of news with national relevance in local and regional communities. This could have a negative impact if local stations started to abstain from producing their own national news because of the availability of externally supplied services. This, in turn, would decrease editorial diversity.

5.4 Funding

The main source of funding for commercial television is advertising revenue. The advertising market is growing at the moment at a rate of eight per cent a year, reaching €391 million in 2003 (see Table 6 below). In 2004, it is expected to exceed one per cent of GDP, the watershed mark for a developed economy.⁸⁶ Television still receives the largest share of advertising expenditure, although 2003 saw an increase of only one per cent. The highest growth was in billboard advertising (41 per cent) and in print media (19 per cent), while radio also showed a growth of 14 per cent. The trend of advertising growth in the print media suggests that the market is maturing, with television advertising no longer totally dominant.⁸⁷ The increase in spending on Internet advertising also merits attention.

Table 6. The advertising market – breakdown by media (1998–2003)

		1998	2003
Share of advertising market (per cent) – breakdown by media	Television	65	60
	Radio	13	6
	Printed press	15	27
	Billboards	7	7
Total market estimate (€ millions)		96	391

Source: T. Kota; MediaNet⁸⁸

A characteristic of the Croatian media market is low transparency in ownership data, especially with respect to data on circulation, audiences and advertising income. Media proprietors are reluctant to divulge such data, and have only been legally obliged to do

⁸⁵ I. Jurić Kačurić, “Media Servis. Proizvođač radijskog i televizijskog programa”, (“Media Service. TV and radio programme producer”), in *Privredni vjesnik*, Special issue on Media & Advertising, No. 3351, 10 May 2004.

⁸⁶ Raić, *The advertising market in Croatia*.

⁸⁷ D. Kupinić Guščić, *The inevitable growth of the big*.

⁸⁸ For 1998, see: T. Kota, *Medijska istraživanja, (Media research)*, Zagreb, 1999; for 2003, see: MediaNet, in *Privredni Vjesnik*, 10 May 2004, p. 4.

so since 2003, by the new Law on the Media. Some assessments, based on different methodologies, offer a much lower total figure of advertising spending, together with a different distribution of market shares among the media.

5.5 Programme framework

The programme framework of each television station is defined in its broadcast licence. The CEM must approve any change of over ten per cent in the volume of the envisaged programming. Up to now, media outlets have regularly requested approval for changes in the programming scheme, and their requests have always been approved.

The CEM is obliged to supervise broadcasters' adherence to their programme frameworks, but a monitoring unit has not yet been created, so broadcasters' compliance is taken on trust.

Table 7. Programme output of local and regional television stations (12 stations) – breakdown by genre (2003)

	Share of total output (per cent)
Films and series	27
Advertisements	13
Information and documentaries	20
Entertainment	13
Music	11
Special programmes	7
Sport	4
Children and youth	3
Educational	2

Source: DZS⁸⁹

The information collected by the Central Bureau of Statistics in 2003 did not include data on the programming of the television stations with national broadcast licences. Although both Nova TV and RTL Televizija have daily news programmes, the overall programming is notably commercial, consisting of sitcoms, talk shows and game shows. Sport is also present on Nova TV. The quality of information programming is higher on Nova TV than on RTL Televizija, which has only one daily news

⁸⁹ Adapted from: Central Bureau of Statistics, *Radio i Televizija u 2003, 2004, (Radio and Television in 2003, 2004)*, DZS, 2003, 2004.

programme (repeated several times). Nova TV has also started to develop political talk shows (*Drugo lice* and *U sridu*).

Radio stations at the national, regional, municipal and city levels must broadcast at least 12 hours of programming a day, and on a lower level (in small communities) at least six hours a day. Television stations at these two levels must broadcast six and three hours, respectively. National radio and television stations must broadcast information programmes for at least 30 minutes per day. Out of this, 20 minutes of news and current affairs reporting must be presented in a single information programme. Regional level broadcasters have to devote 10 per cent and local level broadcasters 20 per cent of their total weekly programme to news and information about their community.

At least 55 per cent of the programmes must be in the Croatian language. At least 51 per cent of foreign programming must be European audiovisual works.

The broadcasters' own production must amount to at least 20 per cent of the daily programme for television, and 30 per cent for radio. At prime time – between 18.00 and 22.00 – at least 60 per cent of the programme must be self-produced. Television stations must assign at least 10 per cent of their broadcasting time to audiovisual works by independent producers.

Non-profit radio and television stations must self-produce at least 30 per cent of their output, and are limited to three minutes of advertising per hour. All profits must be invested in the development of the company. Salaries and other benefits to employees cannot exceed those in public institutions financed from the State budget.

5.6 Editorial standards

The legally defined conditions for broadcasting include guarantees for the freedom of expression and full editorial freedom for electronic media.

The Law on Electronic Media defines detailed criteria, including the obligation to publish true information, respect human dignity and human rights, and contribute to tolerance of different opinions. Programme content is expected to contribute to the comprehensive and impartial information of the public and free public debate, as well as to the education and entertainment of viewers and listeners. News and current affairs reporting must be impartial, commentaries clearly attributed, and differences of opinion on political or economic matters respected.

The commercial television stations provide an alternative to HTV's news and current affairs programmes, which are still the most popular. Although no systematic monitoring or analysis has been performed in this regard, commercial stations have in the past year aired news items not present on HTV, and in this way have increased the overall diversity of the news on offer.

Programmes that threaten the constitutional order and national security are forbidden. It is also forbidden to promote national, racial or religious hatred, anti-Semitism, fascist, Nazi or other totalitarian regimes, and incitement to discrimination. Forbidden are also programmes against human dignity, especially including immoral or pornographic content, promotion of crime, and incitement of youth to use tobacco, drugs or alcohol. Programmes seriously harmful to the development of the “physical, moral or psychological development of children and youth” are also forbidden, and those that may be harmful in these respects must be scheduled when children are not expected to watch, and must be preceded by an adequate warning.⁹⁰

If the legal requirements for impartiality or prohibiting hate speech are breached, the CEM can intervene by issuing a warning, or it can start a judicial procedure in which the Court can fine the broadcaster. However, none of these instruments has yet been used.

6. EUROPEAN REGULATION

Croatia is a member of the Council of Europe, and has ratified the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR).⁹¹ Parliament ratified the Council of Europe’s Convention on Transfrontier Television (ECTT) in 2001.⁹² Croatia is a member of the World Trade Organization (WTO), and became an EU candidate country in June 2004.

Croatia’s compliance with EU audiovisual and telecommunications policies has been evaluated in the European Commission’s document, *Opinion on the Application of Croatia for Membership of the European Union*.⁹³ The Commission confirmed that Croatia meets the so-called Copenhagen criteria relating to the condition of democracy and rule of law. The Commission concluded that Croatia is a stable democracy with a functioning market economy. The Opinion notes the improvement in the freedom of expression within the media since 2000, and a large degree of political diversity in the press. The opening up of the broadcasting market to a second national private operator was positively evaluated in the light of the expectation that this will increase pluralism in the television sector, as well as strengthening competition.

⁹⁰ Law on Electronic Media, art. 15.

⁹¹ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 3 September 1953, E.T.S. 005, available on the COE website at <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm> (accessed 22 October 2004).

⁹² Law on the Ratification of the European Convention on Transfrontier Television and Protocol on the Changes to the European Convention on Transfrontier Television, *Official Gazette – International Agreements*, No. 11/01.

⁹³ European Commission, *Opinion on Croatia’s Application for EU Membership*.

The Commission expressed concerns about the potential for political influence over the media at the local level. It also noted that press distribution is in the hands of few companies, a situation that could result in the unfair treatment of competitors. The Commission also stressed the need for true independence and pluralism on the part of the regulatory bodies, namely the Council for Electronic Media and the HRT Programming Council. It found the present appointment procedures to these bodies to be non-transparent and not contributing to independence and pluralism.

According to the Commission, the Law on Electronic Media and the Law on HRT will have to be further amended to comply fully with the TWF Directive.⁹⁴ Although the ECTT has been transposed into these laws, “some discrepancies remain in the fields of definitions, jurisdiction, advertising, the promotion of European works, the protection of minors, major events, right of reply and judicial review”.⁹⁵

The Commission expects that Croatia will meet the EU’s audiovisual policy requirements within the next five years if it continues to implement the present legislative framework, while the implementation of the *Acquis communautaire* in the telecommunications sector will require greater legislative changes.

In its latest *Status Report on Croatia’s Progress in Meeting International Commitments*, in July 2005, the OSCE Mission in Croatia found that the development of democratic institutions and civil society, and the enhancement of media freedoms, had reached an advanced stage. However, it highlighted the need for further reform of media legislation, including the need to shield the broadcasting regulators from political interference and involve a stronger role for civil society in media supervision.⁹⁶

7. THE IMPACT OF NEW TECHNOLOGIES AND SERVICES

New media platforms – such as satellite, cable and broadband – are in the portfolio of the Ministry of the Sea, Tourism, Transport and Development, and are covered by the Law on Telecommunications and the Law on Electronic Media. The independent regulatory body for new media platforms is the Croatian Telecommunications Agency

⁹⁴ “Television without Frontiers Directive” (hereafter, TWF Directive): European Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, 89/552/EEC, OJ L 298 of 17 October 1989, as amended by European Parliament Directive of June 1997, 97/36/EC, OJ L 202 60 of 30 July 1997, consolidated text available on the European Commission website at http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf (accessed 15 March 2005).

⁹⁵ European Commission, *Opinion on Croatia’s Application for EU Membership*, p. 98.

⁹⁶ OSCE Mission in Croatia, *Status Report on Croatia’s Progress in Meeting International Commitments*, July 2005, p. 9, available at http://www.osce.org/documents/mc/2005/07/15641_en.pdf, (accessed 7 August 2005).

(CTA). Issues of licensing and content are in the domain of the CTA and the Council for Electronic Media (CEM). (See section 3.1 and 3.2.)

Internet use is increasing, but broadband access is low. Cable has a low penetration rate, of some 18 per cent of households, and satellite is present in 30 per cent of households. There is no public policy for digital switchover, and, in general, the importance of new media technologies and services seems to be underrated by the public authorities.

7.1 New media

In 2000, the Government launched a *Strategy for the Development of Information and Communication Technologies*. In 2003, “e-Croatia” was launched as a multifaceted programme for the development of different aspects of the information society. The programme focuses on Internet and computer technology. It does not expand on other media technologies and services.

The Government’s broadband development strategy is expected as part of the preparation of the “e-Croatia 2007” programme.⁹⁷ The *Strategy Information and Communication Technology – Croatia in the 21st Century*, adopted by the Government in May 2002, does not assign tasks to the Ministry in charge of telecommunications, and nor does it so much as mention the digitalisation of broadcasting.⁹⁸

Croatia has no public policy regarding satellite broadcasting. Satellite uplinks are mentioned in the Law on Electronic Media only in relation to Croatian broadcasting jurisdiction. In spite of the fact that the EU’s Green Paper on the Convergence of the Telecommunications, Media and Information Technology sectors is mentioned as a policy goal in the Croatian replies to the EU questionnaire, policy documents currently available show a lack of public policy and strategy for the development of new media. The Government plans to complete the EU harmonisation process in this sector within six years.⁹⁹

⁹⁷ Central State office for e-Croatia (Središnji državni ured za e-hrvatsku), *Operativni plan provedbe Programa e-Hrvatska 2007. za 2004. godinu*, (Operational plan for the implementation of the Programme ‘e-Croatia 2007’ for 2004), Zagreb, June 2004.

⁹⁸ Government of the Republic of Croatia, *Strategija ‘Informacijska i komunikacijska tehnologija – Hrvatska u 21. Stoljeću’*, (Strategy on “Information and Communication Technology – Croatia in the 21st Century”), 16 May 2002, available at <http://www.nn.hr/clanci/sluzbeno/2002/1753.htm> (accessed 7 August 2005).

⁹⁹ Government of the Republic of Croatia, *Information provided by the Government to the Questionnaire of the European Commission. Government of the Republic of Croatia*, Chapter 19 (Telecommunications and Postal Sector), available at <http://www.vlada.hr/zakoni/mei/Chp19/Chp19.pdf> (accessed 1 May 2005).

7.2 Market conditions and new media services

The use of new communication technologies is growing rapidly, at a rate of over 14 per cent annually. The share of Internet users was expected to reach 27.5 per cent of the population at the end of 2004, bringing the number of users to almost 1.2 million. Broadband Internet connections numbered 4,440 in 2003, an increase of 186 per cent over the previous year.¹⁰⁰ The low number of broadband Internet users is due to its high cost and the lack of services of interest to the general public, but is expected to grow after deregulation in fixed telephone use in 2005.

Seven Internet service providers operate in Croatia, which is a low number for a country of this size and development level. This reflects the strict regulatory requirements and the insufficient market development. The dominant position of 61.7 per cent in telephone access to the Internet and 45 per cent of dedicated channels for business users, among the ISP providers, is occupied by HTnet, the monopolist in the area of fixed telephone use, with the majority share of 51 per cent owned by Deutsche Telekom.¹⁰¹ The second place is held by Iskon, with 17.3 per cent, and 12.4 per cent is held by the academic provider Carnet.

Twenty two per cent of Internet users look for news and information, including reading online versions of newspapers.¹⁰² Most major daily newspapers as well as broadcasters operate a website, but only a few of them include information not published in their main outlet. The development of computer and Internet use (technology, access and content) is the focus of Government strategy to develop an information society.

Cable has a low penetration rate, and is developed only in some of the larger cities. The CTA Council had granted 25 licences for cable by mid-2003. Two operators have national cable licences – Adriatic Kabel and Digital City Media (DCM). Both operators are financed by investment funds with mixed foreign and domestic ownership. Cable operators are also allowed to provide telecommunications services such as the Internet or voice telephone use. In spite of this fully liberalised regime, cable is still just a transmission medium in Croatia, and no cable companies have yet become content producers. The “must carry” rules for domestic television and radio production are only being planned at this time, showing that in the past decade the importance of cable as a media platform has not been appreciated.

¹⁰⁰ According to the recently published study of the regional office of the IDC: IDC, *The Internet Access Market in Croatia 2003–2008*, Press release, Zagreb, 15 June 2004, available on the IDC website (in Croatian) at <http://www.idccroatia.hr/press/2004-07-15.pdf> (accessed 1 May 2005).

¹⁰¹ University of Zagreb, *Strategija razvoja telekomunikacija i Interneta od 2003. do 2005. godine, (Development Strategy for Telecommunications and the Internet from 2003 to 2005)*, University of Zagreb, Faculty of Electronics and Engineering, September 2003.

¹⁰² GFK research, “Internet i stanovništvo u Hrvatskoj”, (“Internet and population in Croatia”), 17 February 2005, available at <http://www.gfk.hr/press/internet5.htm> (accessed 7 August 2005).

Satellite broadcasting is mainly used by HRT, which broadcasts three digital television channels (two free-to-air channels are retransmitted, and the third, HTV Plus, was established in 2004), and three digital radio channels on Hot Bird 6. Two satellite land stations for participating in the European Broadcasting Union (EBU) framework, as well as broadcasting the Croatian programmes on satellites, are owned and operated by Transmitters and Links, a public company created when the HRT Transmitters and Links division was separated from HRT. There are also several VSAT networks. OTV also transmits via satellite.

7.3 Digital television

There is still no public policy or action plan regarding digital broadcasting switchover, apart from activities within international organisations, such as the International Telecommunications Union (ITU). The target date mentioned in this regard is the year 2015. There is some activity regarding digital frequency management within the CARDS framework, an EU support programme for the group of countries classified by the EU as the Western Balkans.

There is little or no true public debate on digitalisation. Researchers have raised the topic in relation to media diversity and pluralism, but the issue is not yet on the public agenda. HRT has started experimental digital broadcasts in radio, and broadcasts television digitally on satellite.

8. CONCLUSIONS

In recent Croatian experience, civil society and professional organisations, as well as the international community, had the greatest impact on advancing media freedom. Freedom of expression, transparency in frequency allocation, and the protection of journalists' freedom to investigate and report controversial Government activity were issues readily supported by all democratically minded political agents.

After basic democratic norms in the field of press freedom had been largely achieved, public debate shifted to more controversial and interest-based issues. There is now the appearance of lobbying by interest groups. Civil society can still be influential in issues related to diversity and pluralism. The impact of Croatia's EU candidacy will certainly show in terms of increased influence on the media system by the EU, in terms of both regulation and best practice.

Television in Croatia is rapidly becoming a competitive sector, with significant foreign ownership. This is a new development, as foreign capital entered the television market only in 2003–2004 – and then with a bang. Both commercial television broadcasters at the national level are fully or predominantly foreign-owned. The increased competitiveness of the sector became possible due to amendments to the relevant laws

in 2003, which lifted the previous limitation of one third in the ownership (foreign and domestic) in one media company.

The role of the Government and the media regulatory bodies is of high importance in ensuring editorial diversity in information programmes, as well as cultural diversity in audiovisual production in general (including local creativity). Unless serious attention is paid to this immediately, the consequences could be grim – there is an evident tendency to lower standards of quality in exchange for greater audience shares. In the context of increased global media concentration, protecting editorial diversity is becoming a global issue. Croatia should take care to ensure the continuation and development of local production, as a way of ensuring local cultural diversity and media pluralism.

Editorial independence and political impartiality have increased over recent years, and it is vital that these gains should not be lost. Indications that old habits of Government intervention in HTV's editorial decisions may have been reacquired call for continued vigilance by the media community, professional organisations and the international community.

Further harmonisation with EU standards and continued attention to the full implementation of laws and procedures will be necessary in the coming years, if the expected standards of media independence and freedom are to be maintained and improved. Especially important is also the development of new media, which is not yet part of public policy. An increased effort on the part of the public authorities and regulatory bodies is necessary in this area, in order to ensure that the policies that are adopted can facilitate the development of digitalisation in television broadcasting, as well as the protection of the pluralism of channels and content in the future networked environment.

The advertising market in the media is growing rapidly. This is still a developing market, with a higher growth potential than in the saturated Western European markets. Growth is slowest in the television sector, which already has the greatest market share. This trend will probably continue, although fresh money and increased competition between the two commercial television stations are expected to increase overall spending in the audiovisual industry and create a more competitive media market.

The public service broadcaster, HRT, will also feel the pressure of competition, and its response will be crucial for the future shape of the audiovisual space. The present response, evident in 2003 as an answer to the challenge of Nova TV, is an increased commercialisation, mass-market programming, and a decrease in programming quality. HRT is increasingly producing franchised game shows (such as *Who Wants to be a Millionaire?* and *The Weakest Link*), and is investing less in educational, documentary and fiction programmes. HRT is trying to compete for advertisers by maximising audiences against commercial broadcasters. If HRT succeeds, it will have abrogated its public service duties. Hence, it is imperative for HRT to devise a smarter defence,

which will always keep in mind the obligations that it has in providing information, culture, education and entertainment as a public service.

At present, the diversity of editorial units in the television sector is good, while the diversity of information programmes should be further improved, with topics outside mainstream politics and economics. Quality programming can still improve, but this is a truism that holds for most contemporary media. The concern is for the future, when the pressures of the market start bearing down on issues such as editorial diversity. For instance, will the new foreign owner of Nova TV keep an independent newsroom, or will Nova TV follow RTL Televizija down the road towards internationally produced, general-interest “infotainment”, with inadequate local news production?

9. RECOMMENDATIONS

9.1 Policy

Media diversity

1. The Government and Parliament, civil society organisations, media professionals and other agents in the media field should continue and enhance their endeavours to expand media independence and freedom in Croatia, especially in the context of ensuring the full compliance of national media legislation with the *EU Acquis communautaire*.
2. The Ministry of Culture should ensure transparency in the working of the newly established Fund for the Promotion of Diversity and Pluralism of Electronic Media.
3. The European Commission and the Council of Europe (CoE) should continue monitoring the Government and other political and business agents in Croatia, with respect to their approach to media independence and diversity.
4. Parliament and the Government should ensure in future that media policy safeguards and enhances the independent position of the public service broadcaster, HRT, both with respect to the assurance of its continued independent financial position and multiple sources of financing (licence fee and advertising), as well as editorial freedom, especially in regard to its role of contributing to the cultural diversity and creativity in the Croatian media space.

Coordination and cooperation

5. The Government should take steps to ensure enhanced networking and cooperation among its ministries in the field of media policy. This should include establishing a Standing Inter-Ministry Media Committee, to include *inter alia*, the Ministries of Culture, Telecommunications and Foreign Affairs (in charge of European integration and multilateral cooperation).

Professional expertise

6. The Government should establish a special media department at the Ministry of Culture to ensure expertise when dealing with the media issues that are under the competence of this Ministry. This new department should, as part of its functions, ensure that the Government stays abreast of the rapid developments in the international media industry.

New technologies

7. The Government should develop policy in the field of new media platforms – such as satellite, cable and digital television – and new services, to ensure the development of the sector in the service of pluralism and diversity. The Government should fully involve non-governmental experts and academia in the development of this policy.

Research

8. The Government and Parliament, academia, NGOs and other interested parties should work together to encourage scientific research resulting in a body of publicly available knowledge about the media system – including media programmes, markets and audiences – as a precondition for informed policy-making in the public interest.

9.2 Regulatory authorities*Monitoring*

9. The Council for Electronic Media (CEM) should establish a unit to monitor the compliance of the broadcasters with their obligations as set out in the broadcasting licence.

Media diversity and transparency

10. The Council for Electronic Media (CEM) should take steps to ensure broadcasters' compliance with legal requirements for transparency of ownership and provision of credible data on their audience share.

9.3 Industrial relations and ethical issues

11. Trade unions representing the interests of media professionals and associations of journalists should work closer together to protect the rights of employees in the media industry, including action to ensure the fair treatment of journalists and other employees in commercial media under foreign ownership. They should also work with media owners to increase professional journalistic standards and ethics.

Independence and unbiased reporting

12. Associations of journalists, NGOs, political agents and other interested parties should continue to work to safeguard the independence of the editorial policy of broadcasters in Croatia, in particular the public service broadcaster. Attempts to influence the broadcasters for particular political or business interests should be exposed to the public.

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Television across Europe:
regulation, policy and independence
Czech Republic

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List of Abbreviations

ČSSD	Social Democratic Party, <i>Česká strana sociálně demokratická</i>
ČTÚ	Czech Telecommunication Office, <i>Český Telekomunikační Úřad</i>
ODS	Civic Democratic Party, <i>Občanská demokratická strana</i>
RRTV	Council for Radio and Television Broadcasting, <i>Rada pro rozhlasové a televizní vysílání</i>
ÚOHS	Office for the Protection of Competition, <i>Úřad pro ochranu hospodářské soutěže</i>

1. EXECUTIVE SUMMARY

When communism fell in 1989, the Czech Republic's electronic media underwent rapid transformation. State-owned radio and television stations became public service entities, private radio stations proliferated and the first national commercial television station, TV Nova, started broadcasting in the early 1990s, swiftly gaining huge popularity.

However, the past decade also witnessed serious turbulence in the development of the broadcasting sector, stemming mainly from lengthy disputes over TV Nova's ownership and a crisis in public service television – which climaxed at the end of 2000 and fomented the largest public protests since communism's collapse.

Inefficient and highly politicised regulation was largely to blame. Parliament's Chamber of Deputies exerts a tight stranglehold over the country's electronic media regulator, the Council for Radio and Television Broadcasting (RRTV). Parties represented in the Chamber both nominate members and hold them accountable; the temptation to “cherry pick” members, and thereby exert control over the Council's decisions, is all too seductive. Moreover, it takes just two votes by deputies to dismiss the entire Council – many of whom are former politicians – by rejecting its annual report. This happened twice, in 1994 and 2003. All media experts and Council members interviewed for this report said that on both occasions the sackings were political rather than done for professional reasons.

Such excessive political control extends to the entire broadcast sector. As well as electing members to the supervisory bodies of public service broadcasters – Czech Television (hereafter, Czech TV) and Czech Radio – the Chamber also decides on how high to set the licence fee, which is both broadcasters' main source of income. The law does not oblige Parliament to take into account economic factors, such as the rate of inflation, when setting the licence fee. The Chamber is therefore free to use the fee as a bargaining chip to control the cash-strapped public broadcasters.

Journalists do not experience direct interference by politicians or private groups. However, broadcasters are aware of pressures on the management and supervisory level, from the Government, political parties and other interest groups.

The Czech media market attracted scores of foreign investors after communism's fall. Weak broadcasting regulation played a vital part in various ownership disputes that came to dominate the Czech Republic's commercial broadcasting scene since 1999. However, at the time this report was written, these wrangles had been resolved, albeit uneasily.

Persistent lobbying by commercial television stations strongly influences how media legislation is shaped. This, say media observers and local advertisers, mainly serves the interests of commercial broadcasters.

Most media observers and players agree that regulation of electronic media must be improved. The broadcasting regulator is not legally entitled to pursue investigations of important issues, such as ownership of commercial television or malpractice in the competition for advertising revenue. The need for a proactive broadcasting regulator is even greater in the Czech broadcasting market, which is characterised by a low level of competition. There are only three national broadcasters: Czech TV, with two channels, and two commercial television stations, TV Nova and Prima TV. In the past, there have been occasional reports in the media indicating that TV Nova and Prima TV have covertly cooperated in various fields, such as advertising sales. However, industry insiders and media observers say that the two stations have recently started to employ different business strategies, and now genuinely compete with one another. This could be attributed to the upcoming digitalisation of broadcasting, which, it is hoped, will boost competition on the market, since this will bring several more national channels.

European standards have been incorporated into Czech media legislation since 2001. Compliance with the EU “Television without Frontiers” (TWF) Directive is embedded in the Broadcasting Act 2001 and is observed by both public and private broadcasters. A new Electronic Communications Act, which entered into force in May 2005, distinguishes between the regulation of signals transmission and content. The Electronic Communications Act was expected to consolidate the entire legislation on communications, including telecommunications, broadcasting and digitalisation. However, the final version of the act did not incorporate existing broadcasting legislation, nor did it contain a clear legal framework for the introduction of digitalisation. Since the industry considers EU norms the highest benchmark, its main actors – who do not see any need to change the current model of regulation – regard formal adoption of EU media legislation as sufficient for regulating the electronic media.

Digitalisation, now a hot topic among experts and professionals, is still poorly understood on wider platforms. The debate among media professionals is currently dominated by the dispute over the regulation of digital licences and the chaos caused by the lack of clear legal guidelines for the launch of digital television. The RRTV launched the tender for granting digital television broadcast licences, even though Parliament had failed to approve new legislation regulating digital broadcasting. It accepted applications for digital licences until late December 2004, but then, under pressure from Members of Parliament, postponed the public hearings of bidders until summer 2005. Parliament is now expected to pass the new legislation in autumn 2005. Meanwhile, the digitalisation debate has yet to reach the general public.

2. CONTEXT

In the past decade, the Czech broadcasting landscape has been marked by an astounding growth. However, scandals and legal disputes surrounding the country's leading commercial station, TV Nova, and crises in Czech public service television, have equally left their mark.

2.1 Background

Two years after the fall of communism, the former Czechoslovakia adopted the dual system of broadcasting – a mixed sector with public and private outlets.¹ The new media market at the start of the 1990s was influenced by the belief that the development of free electronic media was a prerequisite for the democratic process, and would guarantee that the pre-1989 state of affairs would never return. The Government's priority at the time was to privatise State assets, including the broadcast media. The main objective of the Czech broadcasting regulator, the Council for Radio and Television Broadcasting (RRTV), was to award as many radio licences to as many applicants as possible.² As a result, radio stations mushroomed in the early 1990s. Two years after the dual system of broadcasting was introduced, over 40 local and regional radio stations were competing in the country. This number currently stands at 70.

The first commercial television station to challenge the monopoly of the State broadcaster was TV Nova, which was awarded a national broadcast licence in 1993. Within just four months of its launch in 1994, TV Nova had managed to attract over 70 per cent of viewers. Czech audiences quickly learned to enjoy a diet of soap operas, game shows and American crime series. The station's primetime news programme came to attract more viewers than similar programmes on the other national television stations.

TV Nova sparked fierce competition for audience share in the Czech market. Interviewed in 1999, TV Nova's then Director General, Vladimír Železný, said that,

We just show what the market wants. If opera was as popular as guns and naked women, TV Nova would show opera. There was this myth among

¹ The legislative framework that enabled the existence of the dual system was created in 1991, when the Act on the Operation of Radio and Television Broadcasting was passed by the (then) Czechoslovak Federal Assembly. Act no. 468/1991 on the Operation of Radio and Television Broadcasting, *Sbírka zákonů*, part 91 of 22 November 1991 (hereafter, Act on the Operation of Radio and Television Broadcasting 1991).

² "Later, this conception proved to be naïve." Interviews with Václav Moravec, BBC and Czech TV journalist, talk-show host and media observer, Prague, 3 and 8 June 2004; "Liberalization without clear concept and rules almost led to the collapse of [many] private radio stations", citation from: Václav Moravec, *Činnost Rady ČR pro rozhlasové a televizní vysílání a její vliv na provoz privátních rozhlasových stanic v letech 1993–1997*, (*Activity of the Czech Council for radio and television broadcasting and its influence on the operation of private radio stations in the years 1993–1997*), Institute of Communication Studies and Journalism, Charles University, Letohrad 1999.

dissidents during communist times that ordinary Czechs were secretly reading Proust. Our market research showed that Czechs are not refined intellectuals at all. We discovered that they are beer-drinking, working-class Catholics; rather like Belgians, but less cultured.³

TV Nova gradually caught the public's attention thanks to disputes over its ownership (see section 5.3.1).

With the arrival of commercial television, Czech public television, *Česká televize*, (hereafter Czech TV), entered the fray for ratings in the mid-1990s. Czech TV has been beset by financial and institutional difficulties for several years. A series of crises climaxed between December 2000 and January 2001, when some of the station's employees, many of them journalists, opposed the appointment of Jirí Hodač as General Director of the station. Although Hodač resigned after almost a month of protests by the station's staff, the "Czech TV Crisis" – as it became known – is not yet over. The crisis was firmly rooted in a mixture of political interference, lobbying interests by commercial television, as well as the fact that public service television's mission is ill defined (see section 4.4.3).

The public radio broadcaster, Czech Radio, *Český rozhlas*, has not experienced such serious problems. Politicians are less tempted to influence its work because the financial and political stakes associated with radio are lower.⁴

The fervour for liberalising the broadcast market in the early-1990s also resulted in lax broadcast media legislation – to the detriment of the regulatory system. For example, the law does not invest the RRTV with the power to oblige broadcasters to stick to their licence conditions or to disclose their ownership.

2.2 Structure of the industry

The television market in the Czech Republic, a country of 10 million inhabitants, comprises Czech TV, with two channels, ČT1 and ČT2, and two national commercial stations, TV Nova and Prima TV. Prima TV uses a network of 12 regional television stations. TV Praha and TV Hradec Králové, the only local terrestrial television stations, shut down their operations in mid-July due to an "unbearable financial situation".⁵ A total of 78 foreign and Czech broadcasters are currently available through cable television in the Czech Republic.⁶ The four national television channels – ČT1 and

³ "The disappearing Czech intellectual", interview with Vladimír Železný, in *The Economist*, 21 August 1999, p. 65.

⁴ Interview with Jan Pokorný, Prague, 4 June 2004. Pokorný is a journalist, head of the news department at Czech Radio. He was a former Czech TV journalist and talk-show moderator.

⁵ J. Gerbery, "Regionální TV Praha končí vysílání" ("Regional TV Praha ends broadcasting"), in *Marketing & Media*, 14 July 2005, on-line edition (accessed 18 July 2005).

⁶ RRTV statistics, available at <http://www.rrtv.cz> (accessed 2 September 2004).

ČT2, TV Nova and Prima TV – have a national reach of more than 90 per cent in a country of 3.735 million television households.

Table 1. TV Overview (2003)

Specification	Number of households	Reach (per cent)
Terrestrial broadcasting	3,303,000	88.4
Satellite television	331,000	8.9
Cable television	720,000	19.3

Source: ATO-Mediaresearch⁷

Czech Radio has five channels. There are two private national radio stations, Frekvence 1 and Impuls, and another 77 regional and local radio stations.

2.3 Market share of the main players

TV Nova dominates the television market, with an audience share of some 42 per cent in 2004. Prima TV has gained a healthy market share since 2000, while the aggregate audience of both channels operated by Czech TV has been more or less stagnant, hovering at around 30 per cent in 2004.

One of the stations operated by the Czech Radio, Čro1–Radiožurnál, has the largest audience share in the radio market, at around 12 per cent. It is followed closely by commercial Radio Impuls and Frekvence 1, both with audience shares of between 10 and 12 per cent.⁸

The Czech language section of the U.S. Congress-funded Radio Free Europe was shut down in 2002 and “transformed” into Czech Radio 6 (Čro6), a news station run by public service radio, targeting intellectuals and highly educated listeners. The Czech section of the BBC World Service is also considered a good source of unbiased news and analysis.⁹

⁷ IP International Marketing Committee, *Television 2004. International Key Facts*, October 2004, p. 322.

⁸ Audiences of radio stations are published regularly by the specialised news portal www.radiotv.cz (accessed 15 July 2005).

⁹ Interview with Martin Weiss, political analyst and commentator, Prague, 15 August 2004; See also: Martin Weiss, Chapter on the Czech Republic, in *Nations in Transit 2003. Democratization in East Central Europe and Eurasia*, Freedom House, 2004, p. 228, available at <http://unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPAN012418.pdf> (accessed 4 May 2005), (hereafter, Freedom House, *2003 Report on the Czech Republic*).

Table 2. Audience share of Czech television channels – breakdown by target group (2004)

		Annual average audience share (per cent)			
		Children 4-14	Women 15+	Men 15+	Adults 15+
Terrestrial channels	ČT1	24.74	21.31	21.09	21.21
	ČT2	6.94	6.89	12.01	9.17
	TV Nova	42.35	44.09	39.91	42.23
	Prima TV	16.25	22.78	20.09	21.58
Cable and Satellite combined		9.72	4.93	6.90	5.81

Source: ATO-Mediaresearch¹⁰

3. GENERAL BROADCASTING REGULATION AND STRUCTURES

The political nomination of members of the Council for Radio and Television (RRTV) casts doubt on the independence of the regulatory body, which is responsible *inter alia* for awarding broadcast licences and monitoring compliance with licensing conditions and broadcasting legislation. The regulator's powers are limited, however, mainly due to the fact that in its current form, the Broadcasting Act makes it very difficult for the RRTV to impose sanctions. Although journalists working in television do not feel direct pressure from politicians or private companies, the management and journalists at Czech broadcasters are vulnerable to interference by the Government, political parties and other interest groups.

3.1 Regulatory authorities for the television sector

The main broadcasting regulator is the Council for Radio and Television (RRTV). However, a number of other actors also have a regulatory role.

The Czech Telecommunication Office (*Český Telekomunikační Úřad – ČTÚ*) administers the country's broadcasting frequencies. Both the ČTÚ and the RRTV are administrative authorities independent of the Government – the RRTV in the area of radio and television broadcasting and the ČTÚ in the area of electronic communications and postal services. The two institutions cooperate in preparing the plan for allocating frequencies for radio and television broadcasting. The RRTV is established, and its activities

¹⁰ Statistics available online on the website of the Association of Television Organisations (ATO) at <http://www.ato.cz> (accessed 20 May 2005).

regulated, by the Broadcasting Act,¹¹ while the ČTÚ is established, and its activities mainly regulated, by the Electronic Communications Act.¹²

Czech legislation gives the Chamber of Deputies substantial power to control the media. Besides the RRTV, the Chamber of Deputies also appoints the members of the Czech TV, Czech Radio and Czech News Agency councils. (See section 4.4.)

There is also a parliamentary commission, the Permanent Commission for News Media, which deals systematically with media issues. The Commission comprises 17 MPs from parties represented in the Chamber of Deputies, who are appointed on the principle of proportional representation. Defined internally, the Commission's tasks are:

- reviewing and proposing new media legislation or amendments to existing laws;
- preparing hearings on various issues in Parliament for representatives of media outlets; and
- submitting recommendations on media legislation, on the annual reports of the Broadcasting Council, and on the councils of the public broadcasters.

The Commission's recommendations are usually acted on. Most of the media observers interviewed for this report said that most of the proposals with regard to media legislation and its amendments are initiated by the Permanent Commission for News Media.

The Government is also involved in the regulation of radio and television broadcasting through the Mass Media Department within the Ministry of Culture, which is responsible for assessing "the efficiency of legal standards regulating the operation of radio and television broadcasts".¹³ Its officials also participate in preparing amendments to media legislation. The Ministry's Mass Media Department also takes part in negotiations over international treaties and their implementation.¹⁴ Ministry officials cooperate with the Permanent Commission for News Media in Parliament and the Broadcasting Council in adopting media legislation. However, they have very little influence because they are overpowered by Parliament. In recent years, for example, Minister of Culture Pavel Dostál made several attempts to propose changes to media legislation and to influence the decision-making process in the Czech TV Council, but his proposals were usually rejected by Parliament.

¹¹ Act no. 231/2001 of 17 May 2001 on the Operation of Radio and Television Broadcasting and on amending other laws, *Sbírka zákonů* part 87 of 4 June 2001, (hereafter, Broadcasting Act).

¹² Act no. 127/2005 on Electronic Communications and on changes of other acts, *Sbírka zákonů*, part 43 of 31 March 2005, (hereafter, Act on Electronic Communications 2005). For more on the Act on Electronic Communications, see section 7.

¹³ Further information on the Ministry of Culture's competence in the mass media sector is available on the Ministry's website at <http://www.mkcr.cz/en/www/article.php?id=394> (accessed 15 May 2005).

¹⁴ For more information, see the website of the Ministry of Culture (www.mkcr.cz).

3.1.1 RRTV remit and responsibilities

Both public and private electronic media in the Czech Republic are regulated by the Council for Radio and Television Broadcasting, (*Rada pro rozhlasové a televizní vysílání* – RRTV), an administrative authority independent of the Government. The first Federal Council for Radio and Television Broadcasting was established in 1991.¹⁵ It folded at the end of 1992 when Czechoslovakia was split into two States. The first Czech Broadcasting Council took over the competencies of the Federal Council in 1993.

The activities of the RRTV are laid down in the Broadcasting Act of 2001, which replaced the 1991 federal law governing the broadcasting regulator.¹⁶ Its main tasks are to issue broadcast licences and to supervise broadcasters' compliance with legislation. The RRTV is also in charge of maintaining and developing the plurality of programmes and information, as well as monitoring the independence of broadcasters.

The RRTV's most important powers, duties and obligations are summarised in Article 5 of the Broadcasting Act:

- granting, changing and withdrawing radio and television broadcast licences;
- supervising how broadcasters fulfil their legal obligations and how they comply with the conditions attached to their licence;
- granting, changing and cancelling decisions on registration of satellite operators transmitting programmes in Czech territory;
- maintaining archives on broadcasters and satellite operators;
- regularly publishing lists of applications for licensing and registration, and updating lists of licensees, registrations, and frequencies available for radio and television broadcasting;
- imposing sanctions on broadcasters for not complying with licence conditions and broadcasting legislation;
- monitoring broadcasts;
- preparing and maintaining, in cooperation with the Czech Telecommunication Office (ČTÚ), the frequency plan for radio and television broadcasting;
- participating in the creation of media policies, for example by advising the Government on broadcasting policy;

¹⁵ The Council was established under the Act on the Operation of Radio and Television Broadcasting 1991.

¹⁶ Act on the Operation of Radio and Television Broadcasting 1991.

- publishing Council resolutions, annual reports, and minutes of Council meetings; and
- publishing court decisions in lawsuits against Council decisions.

Some media observers, and even members of the RRTV, believe that broadcasting legislation regulates the Council's activities rather than the activities of the broadcasters: "It has more paragraphs indicating clearly when the Council has to decide and how it has to decide, and when it is imperative for them to decide and so forth than what the broadcasters' responsibilities are."¹⁷ Members of the current Council have complained¹⁸ that they are not legally entitled to oblige broadcasters to stick to their licensing conditions, and that the licensing procedure for the re-transmission of programmes within Czech territory by satellite operators is vague.

Legal experts, as well as members of the RRTV, point to serious drawbacks in the Broadcasting Act, which prevent the broadcasting watchdog from doing a better job of regulating the television market. In particular, the RRTV has no legal instrument to force broadcasters to announce changes in their ownership. The current act fails to guarantee transparency in the Czech television market: stations do not have to disclose who precisely owns the licence-holding company, nor do they have to declare their ownership structure. The Broadcasting Act allows both radio and television operators to change the name and the content of their broadcasts. The real owners – for example, an entity owning the company applying for the broadcast licence – do not have to disclose their identity during the licensing procedure.

Jan Potůček, a journalist and media observer, gives an example of a loophole in Czech broadcasting legislation allowing big media holdings to acquire a broadcast licence without having to disclose their identity,

Two years ago [in 2002] Prima TV owners, the [financial] group GES took part in a tender for very lucrative radio frequencies in Prague, Brno and Ostrava. In all three cases they did not participate directly in the tender but through "cat's-paw" firms. GES representatives were in the executive and controlling bodies of these companies. All three winning projects had different programming and different names. However, after these projects were awarded licences, the broadcasters suddenly asked the Broadcasting Council to approve the change of the radio's names and the new three radio stations became the radio network *Hey*.¹⁹

¹⁷ V. Moravec, Interview with Milan Jakobec, member of the RRTV, BBC World Service Czech Section, 2 May 2003 http://www.bbc.co.uk/czech/interview/030502_jakobec.shtml (accessed 11 September 2004).

¹⁸ Interview with Milan Jakobec, June 30, 2004, Interview with Václav Žák, June 4, 2004.

¹⁹ J. Potůček, "Vlastnická struktura českých médií? Detektivka", ("Ownership structure of the Czech Media? Detective story"), in *Krajské noviny Pardubice*, regional paper, August 2004, available at <http://potucek.blogspot.com/> (accessed 31 August 2004).

Commercial broadcasters argue that the RRTV does have enough legal tools at its disposal to oblige private television stations to announce changes in their ownership structure. According to representatives of Prima TV, however, Article 14 of the Broadcasting Act only states that applicants must present information about the ownership structure of their company when *applying* for a broadcast licence; subsequent changes in the ownership structure of the legal entity owning the broadcast licence do not have to be announced.²⁰

Legal experts and members of the council say that the RRTV is only allowed to check the first level of a broadcaster's ownership structure, and cannot go deeper, to check who is in fact behind a station's ownership.²¹ RRTV member Václav Žák explains,

Once the owner of a licence-holding company is a legal entity, the Council cannot ask [representatives of this entity] what its ownership [structure] is. The Council is allowed to control only the first level of the ownership [structure]. It has no right to know what is happening on other levels. Normally, the owner is the subject to whom the final cash flows [...]. However, in comparison to the German system, the Czech Council cannot follow the ownership structure until this last subject.²²

The RRTV has also been criticised by the local advertising industry, which is unhappy with TV Nova's near monopoly on advertising revenues and the drastic limits on advertising time on public television. Critics say that the Council should be more proactive in regulating the market, by making decisions aimed at stimulating competition and reporting dominant positions to the anti-monopoly authority, the Office for the Protection of Competition (ÚOHS). However, according to Prima TV's representatives, the Council should not be blamed for the current limits on advertising time, "because those are established by the law and are decided by lawmakers."²³

The RRTV can fine broadcasters whose programmes are found to have breached the law (see section 4.4). However, broadcasters also criticise the RRTV for how it

²⁰ Article 14 of the Broadcasting Act states that if the applicant for a broadcast licence is a legal entity, it is required to present data on the amount of equity, shares of voting rights and capital deposits of the partners. Article 21 of the Broadcasting Act states that broadcasters must ask the RRTV for written consent with the change in the amount of equity, how voting rights are distributed and partners' capital deposits. Written comments on the draft of this report submitted to EUMAP by: Martin Dvořák, Director General of Prima TV, 26 January 2005; and by Prima TV, 7 March 2005.

²¹ OSI Roundtable meeting, Prague, 24 November 2004, (hereafter, OSI roundtable comment). *Explanatory note: OSI held roundtable meetings in each country monitored to invite critiques of its country reports in draft form. Experts present generally included representatives of the Government and broadcasters, media practitioners, academics and NGOs. This final report takes into consideration their written and oral comments.*

²² Interview with Václav Žák, member of the Council for Radio and Television Broadcasting, Prague, 9 June 2004.

²³ Written comments submitted to EUMAP by Prima TV, 7 March 2005.

regulates television content. One of the most controversial topics is the interdiction of programmes that could endanger “the moral development of the youth”.²⁴ The RRTV has not made clear what this means exactly, and this is one reason why Czech TV has taken it to task: “Its [Czech TV’s] script editors are now, for example, eliminating the broadcast of theatre performances that contain vulgarisms.”²⁵ In 2002, for example, the RRTV imposed a fine of CZK 20,000 (€660) on Czech TV, after finding that its programme *Obrázkáři*,²⁶ aired on ČT 2 on 19 January 2001 at 20.00 had violated the Broadcasting Act.²⁷ The programme was a report about alternative culture, and the people who appeared in the programme continuously drank alcohol and spoke in a colloquial, explicit, vulgar language. However, after Czech TV challenged the decision, the Municipal Court in Prague found that the station had not harmed the moral development of young people and cancelled the fine.²⁸

Media critics in the Czech Republic say that this is a relevant example of just how inadequate the RRTV’s regulation is; the RRTV should judge programmes more carefully, case by case, rather than blindly following the letter of the law. Czech TV did not contradict its public service mission by airing a programme such as *Obrázkáři*, which, despite the vulgarisms, was a fascinating programme targeted at young viewers, according to media critics.²⁹

Finally, broadcasters complain about the RRTV’s lack of expertise and its provincialism. Echoing a viewpoint widely shared in the advertising industry, Michael Richter, of ARBOMedia, Czech TV’s advertising sales house, observes that,

In our environment, the Council only checks that the law is respected; it reacts if the advertising limit was exceeded by 10 seconds, but when they have to make [an important decision requiring some knowledge of the media], they say, ‘we cannot, we are only interpreters [of the law], you have to go to court.’ But that is not enough. Why have such an office at all?³⁰

The broadcasting industry expects the RRTV to take a more active part in the law-making process, chiefly by initiating public debates and consultations with professionals on vital topics such as broadcasting content and cross ownership: “One

²⁴ Broadcasting Act, art. 32(1)(g).

²⁵ OSI roundtable comment.

²⁶ It is hard to find an English equivalent for the word “obrázkáři”, the closest would be “picture makers”.

²⁷ In its Decision Ref. No. Rpo/4/02 of 28 May 2002, the RRTV stated that the programme breached Article 32 of the Broadcasting Act, which forbids broadcasters from airing programmes that “might endanger physical, mental or moral development of minors” between 06.00 and 22.00.

²⁸ RRTV, *Annual Report 2003*, p. 36.

²⁹ OSI roundtable comment

³⁰ Interview with Michael Richter, General Director of ARBOMedia, advertising sales house representing clients such as Czech TV and Czech Radio, Prague, 8 June 2004.

fundamental drawback of the Council is that it has not tried to initiate a public debate to achieve consensus about where to draw the line for what to tolerate and what not in terms of broadcasting content and cross-ownership”.³¹

3.1.2 RRTV composition

The RRTV is composed of 13 members. Members are nominated by the Chamber of Deputies, the lower house of Parliament, and then appointed by the Prime Minister, who can also remove them, based on a proposal of the Chamber. Members’ mandates are for six years and can be renewed only once. Their terms are not staggered. Members are not allowed to exercise functions in political parties or movements, or to act in their favour.³² There are no stipulations concerning the required professional experience of members.

Although all candidates are officially appointed and removed by the Prime Minister, the Broadcasting Act states that the “the appointment shall be carried out immediately after receiving the proposal”.³³ This means that the real power in the system of nomination and appointment is in the hands of the Chamber of Deputies. In reality, the Prime Minister’s approval is only a formality and it is the Chamber of Deputies that appoints and fires RRTV members. This system of nomination is seen as inevitably facilitating political influence over the RRTV. Members are nominated exclusively by the political parties represented in the lower house and then appointed by it, rather than by another entity, such as the Senate, where the distribution of power is sometimes different.

The Chamber of Deputies’ overwhelming control over the system of nomination often results in the appointment of political allies to the RRTV.³⁴ This system originated in media legislation dating from the early 1990s, when the tradition of politicised supervision of the media was established, as Václav Žák explained:

The people who drafted this legislation had absolutely no experience. A compilation of the German model of the media law and society and guidelines of the Council of Europe was used. However the German model is based on a structured civic society which did not exist [in the Czech Republic at the time]. It was hard to include church representatives in the media council since the church was under the control of secret agents, etc. Therefore it was replaced by the parliamentary vote. By doing that, the entire supervision over the media scene was politicised. And what was even worse [was how Czech lawmakers interpreted] a Council of Europe recommendation that the regulatory authorities should be accountable to Parliament. [The lawmakers] interpreted this “accountability” very strongly

³¹ OSI roundtable comment.

³² Broadcasting Act, art. 7.

³³ Broadcasting Act, art. 9(1).

³⁴ Interviews with Václav Moravec, 3 and 8 June 2004.

and implemented this idea in the media system. Thus, the entire regulatory body can be dismissed if Parliament does not approve its annual report twice. [...] This causes great problems and the regulatory authority is therefore directly dependent on the parliamentary majority.³⁵

In 1997, the number of members of the RRTV was increased by four (i.e. to 13), under the pressure of the (then) opposition Social Democratic Party (ČSSD), who wanted to push their own people in the Council.³⁶

The Chamber of Deputies can also easily dismiss the entire Council, by twice rejecting its annual report (see section 3.1.3.) The report is also submitted to the Prime Minister for comments.

3.1.3 RRTV accountability and transparency

The RRTV has become one of the most criticised institutions in the media sector. It is perceived as one of the most lobbied institutions in the country. It is hard for politicians to resist the temptation to handpick the Council members in order to control its decisions and dismiss it whenever it becomes disobedient.

The RRTV has been dismissed twice in its 12-year history. It was first fired in 1994 when its members rejected a recommendation by the Permanent Commission for News Media concerning the licensing procedure for AM radio stations. MPs fought back and took revenge by repeatedly rejecting the Council's annual report in the summer of 1994, recalling all Council members and appointing replacements.³⁷ According to other observers, however, the real reason why the Council was fired at the time was because it did not obey the wish of the Civic Democratic Party (ODS) to refuse TV Nova a broadcast licence.³⁸ The new members were mostly people close to the parliamentary parties. They included the former advisor to the Prime Minister, a former MP, and politicians who had failed to get elected to the Senate.³⁹

³⁵ Interview with Václav Žák, 9 June 2004; the same view has been expressed by independent media observers such as Václav Moravec, Milan Šmíd and Michal Prokop. Interview with Michal Prokop, member of the Czech Radio Council, former deputy at the Ministry of Culture, Prague, 16 June 2004. Milan Šmíd's works are cited in this report.

³⁶ M. Šmíd, *Média, internet, TV Nova a Já, (Media, Internet, TV Nova and I)*, ISV Publishing House, Prague, 2000, p. 71; This increase in the number of members was made possible through a change in legislation: Article 3(1) of Act no. 135/1997 of 12 June 1997, which changes and amends a series of acts, *Sbírka zákonů*, part 48 of 26 June 1997, (hereafter, Act no. 135/1997).

³⁷ Barbara Köpplova *et al.*, *Dějiny českých médií v datech (The History of Czech Media in Data)*, Karolinum, Prague 2003, p. 292, (hereafter, *The History of Czech Media*).

³⁸ Interview with Václav Žák, 9 June 2004.

³⁹ E. Tabery, "Prima rada nad zlato", ("Prima Council better than gold"), in *Respekt*, 12 February 2001, p. 4.

The RRTV was recalled a second time in April 2003, again by MPs rejecting the annual report. Its members were accused of having instigated the legal dispute between the Czech Republic and TV Nova's former investor, CME, which sued the Government in an international court of arbitration, accusing the State of failing to protect its investment in TV Nova (see section 5.3.1). In March 2003, a London-based arbitration court ordered the Czech Republic to pay CME CZK 10.4 billion (€350 million) in damages. The high cost of the arbitration, and the international criticism provoked by the dispute, sparked a heated debate on the need to reform the RRTV.

Opinions about this dismissal vary. While some media analysts blame the RRTV for the dispute, others say that the responsibility does not solely lie with the Council, as politicians pushed it to act as it did (see section 3.3).

Television market specialists point out that it is hard to create a neutral and professional regulator. The country still lacks professionals who have completed a career in broadcasting, have a good understanding of the market and are wealthy enough not to be easily corrupted.⁴⁰ Council members have the status of a Government official and an MP's salary (approximately €1,400 a month).

Following the arbitration decision, attempts were made to depoliticise the RRTV and make it more independent. The Ministry of Culture proposed that members should be nominated not only by the Chamber of Deputies, but also by the President and Senate, in equal parts. Nothing has yet been done, however, and no change is expected in the near future.⁴¹

The current members of the Council, composed of writers, journalists and former politicians, were again nominated on a party basis in spring 2003. Despite accusations of amateurism, they are a little more politically independent than their predecessors. According to Václav Žák, who was appointed a member in 2003,

The new council was nominated with the intention of not being composed of members directly connected to the political parties. So, although they express their political views from time to time during our discussions, it [the political factor] does not play an important role during the decision-making process."

However, observers have warned that the way in which RRTV members are appointed and dismissed still leaves room for political influence over decision-making: "If a member knows that defying 'signals' from the Chamber of Deputies can mean losing

⁴⁰ Interview with Michael Richter, 8 June 2004.

⁴¹ Minister of Culture Pavel Dostál told the daily *Právo* that he did not want the RRTV to be dependent on political parties: "The Council should be respectable, with a high level of respect; the Council should treat everybody in the same way; it should not be just a lever for media moguls. I admit that my vision is a little bit science fiction." Cited in: J. Perglerová, "Mlynář chce odvolat čtyři členy vysílací rady", ("Mlynář wants to recall four members of the broadcasting council"), in *Právo*, 1 February 2002, p. 3.

their decently paid job, it is clear that they will always take account of these signals.”⁴² According to media analysts, these signals can be “advice” from MPs on various decisions, such as awarding of licences or sanctions.

Some representatives of broadcasters believe that the RRTV is still heavily politicised. Martin Dvořák, Director General of Prima TV, states that: “The current Council is more political than ever. The current coalition nominated eight of its members, thus securing a comfortable majority.”⁴³

Media observers believe that the introduction of staggered terms for members would ensure more independence for the regulator, as Council membership would not reflect the current distribution of political power in the Chamber of Deputies. However, although debates on the introduction of staggered terms for the regulator have emerged during the past decade, a provision on this has never been adopted.

Another possible solution for depoliticising the Council and improving its professionalism would be to transfer more competencies to the RRTV Office.⁴⁴ Established by the Broadcasting Act, and consisting of 34 employees, the RRTV Office provides organisational and technical support to the Council. It consists of a Secretariat, an Economic Department, a Department of Information, Communication and Foreign Relations, a Legal Department, a Licensing Department, a Programme Department and a Technical Department. According to Jaromír Talíř, a Member of Parliament, and Head of the Permanent Commission for Mass Media in the Czech Parliament and former Minister of Culture, the status of the Council’s Office is unclear at present, with many unanswered questions about its competencies, facilities and financing. Giving greater decision-making power to the specialists in the RRTV Office could increase the Council’s independence.⁴⁵

3.2 Licensing and registration

3.2.1 Licensing for terrestrial broadcasters

The RRTV is the sole body responsible for awarding and revoking radio and television broadcasting licences. The Czech Telecommunication Office (ČTÚ) has no role in awarding broadcast licences, it just coordinates the frequency plan with the RRTV. The licensing procedures follow the rules laid down in the Broadcasting Act.⁴⁶ The

⁴² M. Šmíd, “Sedm hříchů české Rady pro rozhlasové a televizní vysílání”, (“Seven sins of the Czech Radio and Television Broadcasting Council”), published on www.louc.cz, 2 July 2003 (accessed 1 June 2004).

⁴³ Written comments on this report in its draft form by Martin Dvořák, Director General of Prima TV, 26 January 2005.

⁴⁴ Interview with Jaromír Talíř MP, Deputy Head of the Permanent Commission for Mass Media in the Czech Parliament and former Minister of Culture, Prague, 1 July 2004.

⁴⁵ Interview with Jaromír Talíř, 1 July 2004.

⁴⁶ Broadcasting Act, art. 5(b).

Council is authorised to grant licences for broadcasting through transmitters, satellite and cable systems.

A company applying for a broadcast licence, or its subsidiary, must have its headquarters in the Czech Republic and be registered in the national Register of Companies. Individuals may be granted licences only if they are permanent residents of the Czech Republic or have a company located and registered there.

Radio licences are issued for a maximum of eight years, while television licences cannot exceed 12 years. Commercial radio stations must begin broadcasting within 180 days, and television broadcasters within 360 days, of being awarded a licence, otherwise their licences can be revoked.

The RRTV announces a public tender for a licence, specifying the deadline and location for submitting applications, the timeframe, geographical area and technical parameters of the planned broadcast. Applicants' projects are assessed in light of the following criteria:

- the level of economic, organisational and technical readiness;
- transparency of ownership;
- contribution to broadcasting pluralism;
- presence of European, independent and contemporary productions in the television programming schedule;
- contribution to the development of original domestic programming; and
- contribution to the cultural development of ethnic and other minorities.

Applicants are invited to a public hearing, which also serves as a discussion forum focused on the programming structure.

In the past, the Council was entitled to propose and impose a set of binding licensing conditions during the public hearing. Critics of the current licensing system say that under the current law the Council cannot set such conditions. It can only *evaluate* the proposal and *suggest* some changes. Milan Jakobec, a current RRTV member, states that: "the licensing conditions will consist of whatever is written in the winning project of the licensing tender."⁴⁷ Moreover, the licensing conditions can always be changed by broadcasters.

In the early 1990s, the first post-communist broadcasting legislation (dated 1991) entitled the RRTV to establish additional licensing conditions. For example, the original licence of TV Nova was governed by 31 licensing conditions, prepared in cooperation with the UK's Independent Television Commission and relating to the

⁴⁷ Interview with Milan Jakobec, RRTV member, Head of Diplomatic Academy at the Ministry of Foreign Affairs, Prague, 30 June 2004.

informational, cultural and educational content of the station's programming. The company that applied for TV Nova's licence, CET21, promised to "strive to overcome social and cultural differences among people, to educate its viewers to be tolerant"; to commission original Czech films; and broadcast "community advisory programmes" (whatever that means) in off-peak times, as well as news and current affairs bulletins throughout the day.⁴⁸

After being given the licence, however, TV Nova's management simply ignored many of these conditions, airing downmarket commercial programmes targeted at a mass audience.

During the rush to liberalise the media market in the mid-1990s, Parliament adopted several important amendments to media legislation. The most important involved stripping the Council of the right to bind broadcasters to the licensing conditions.⁴⁹ "Since then the Council could neither order licence holders to adhere to their promises nor to monitor their ownership structure," RRTV member Žák wrote in 2003.⁵⁰

The new Broadcasting Act of 2001 failed to bring any radical changes in this respect. The Council was not granted the right to set up additional licensing conditions. The act also retained a provision permitting stations to make changes to their own licensing conditions – in effect, allowing broadcasters to go back on the pledges they made in their submitted application project.⁵¹

The Broadcasting Act was put together during the period of the so-called "opposition agreement" in 2000–2001, when a Social Democratic Party (ČSSD) minority Government stayed in power only thanks to the support of the opposition Civic

⁴⁸ B. Kenety, "CME enters Hungarian TV bid amidst Czech controversy", in *Central European Business Weekly*, 14-20 March 1997, online version available at <http://www.arts.gla.ac.uk/Slavonic/staff/Kenety2.html> (accessed 29 May 2005).

⁴⁹ The Act on the Operation of Radio and Television Broadcasting 1991 enabled the formation of the dual system of broadcasting. However, an amendment to this act in 1995 (Act 301/1995) cancelled the obligation to apply for licences for cable and satellite transmission and established a registration process instead. The RRTV could no longer determine additional licensing conditions on its own. Act 301/1995, which changes and amends Act no. 468/1991, *Sbírka zákonů*, part 81, 27 December 1995, (hereafter, Act on the Operation of Radio and Television Broadcasting 1995); For more details, see: *The History of Czech Media*, pp. 424 and 431.

⁵⁰ V. Žák, "Deset miliard. Za co?", ("Ten billion. For what?"), in *Ekonom*, 20 March 2003, p. 26.

⁵¹ According to the Broadcasting Act, a broadcaster can ask for approval to make changes to the licensing conditions and, somewhat ludicrously, the RRTV must approve them. The RRTV's only opportunity to withhold approval of the licensing conditions occurs during the licence tender. Once the RRTV approves a project, it can never reject changes in the licensing conditions. If the Council does not respond to a broadcaster's request for changes in these conditions within 60 days of this request being filed, the changes are approved automatically. Article 21(3) of the Broadcasting Act states that the Council has the right to withhold its consent to a change in the licensing conditions, only if such a change would mean that the broadcaster would have not been granted the licence in the first place.

Democratic Party (ODS).⁵² At the time, ODS pushed for a more permissive law (than the act it replaced) for private broadcasters. Media analyst Milan Šmíd comments that the above-mentioned provision of the Broadcasting Act, “deprived the Council of one of the main instruments of regulation.”⁵³ This opinion is widely shared by media observers and some politicians.

RRTV member Milan Jakobec describes the current arrangement for establishing licensing conditions as follows:

The applicant basically writes his own licensing conditions. In case of nationwide broadcasting, for example, the Council has a say, to a certain extent, on how it envisions that nationwide broadcasting. That means some programming specifics [...] such as sports, entertainment or news etc. That is all the Council can put together. But regarding the assignment of a licence, it is up to the applicants what they write into the project proposal. Those will become the licensing conditions.⁵⁴

The RRTV has the right to reject tendered contract conditions. However, this does not give it substantial power at the tendering stage, because the common practice is for the regulator to draft the conditions in cooperation with the representatives of the bidder. The Council has no legal right to impose any additional conditions, such as public service obligations, on the broadcaster. It only has the right to change the licence conditions when this is necessary to “fulfil international obligations” which are binding on the Czech Republic. The RRTV was blamed for not having used this clause in the dispute over TV Nova (see section 5.3).

The Broadcasting Act granted television licensees the right to an almost automatic, unconditional extension of their licences for a further 12 years.⁵⁵ This provision aims to bring the licensing procedure in line with EU standards. However, it is also clearly intended to serve the interests of commercial broadcasters. Media observers agree that during the debate over this provision, lawmakers succumbed to pressure and lobbying by commercial broadcasters. The result is that almost all licences are automatically renewed without any evaluation of the broadcaster’s activity over the years. Media observer and journalist Václav Moravec says, “[In adopting this provision] the interest

⁵² M. Šmíd, “Vysílací rada: bilance jednoho neúspěchu”, (“Broadcasting Council: Recapping a failure”), 15 May 2003, published on Šmíd’s media blog at www.louc.cz (accessed 20 April 2005), (hereafter, Šmíd, *Broadcasting Council: Recapping a failure*).

⁵³ Šmíd, *Broadcasting Council: Recapping a failure*.

⁵⁴ Interview with Milan Jakobec, 30 June 2004.

⁵⁵ Article 12(8) of the Broadcasting Act states that: “Upon the request of licensed broadcaster the Council shall extend the validity of the licence. The period of licence validity may be extended twice; for radio broadcasting for the period of 8 years and for television broadcasting for the period of 12 years. Upon the request of licensed broadcaster the Council may extend the validity of the licence for a shorter period.”

of lobby groups is evident. The public interest is suppressed and particular [individual] interests are being served.”⁵⁶

The fee for a national television broadcasting licence is CZK 200 million (€6.5 million). The RRTV’s representatives criticise the low level of administrative fees for radio and television broadcasting and the very vague and generous system of registering satellite re-transmission providers, which have been used by numerous satellite television operators. Under this system, these operators must formally establish a registered office or branch of their company in the Czech Republic, but they can uplink in another country, and need not cover the Czech market at all.

3.2.2 Registration for satellite and cable broadcasters

There is no requirement for a licence for satellite and cable retransmission. Operators of satellite and television stations via cable must only register with the RRTV in order to broadcast in the Czech Republic.

In the application for registration, operators of satellite television stations must include such data as the broadcast timeframe and territorial coverage, the company’s financial resources earmarked for broadcasting, information on the station’s programmes and, “if possible, also the planned distribution of channels and technical specification of the cable system.”⁵⁷ If the applicant has not provided all the information required, the Council must ask the company to complete the application, providing 15 days after the application’s submission to do so. If the Council fails to make a decision within 30 days of the application’s delivery, the operator is registered automatically.⁵⁸ The Council can reject an application for registration if, during the previous five years, the applicant’s broadcast licence or registration was cancelled “due to violation of law”, if the applicant has a criminal record, or if it results from the application “that the legal standards will be infringed through the retransmission.”⁵⁹

According to Jakobec, the lax registration process for satellite stations and broadcasters transmitting via cable puts the foreign policy interests of the Czech Republic in harm’s way. For example, in 2004 the Council received an application for the satellite programme *Venus*, with obvious pornographic content, targeting a Muslim audience in some Muslim-majority populated countries: “It would not be very nice to develop a relationship with the Muslim world based on this. But Czech legislation permits it.

⁵⁶ Interviews with Václav Moravec, 3 and 8 June 2004.

⁵⁷ Broadcasting Act, art. 27.

⁵⁸ Broadcasting Act, art. 28(1)(2)(3).

⁵⁹ Broadcasting Act, art. 28(4)(a)(b)(c).

According to the current law, the Council would have to approve satellite transmission even if Adolf Hitler applied for it.”⁶⁰

3.3 Enforcement measures

The RRTV monitors the compliance of (public and private) broadcasters’ with the rules enshrined in their licensing contract and with the relevant media legislation.

An operator breaching the obligations specified in the Broadcasting Act or the licence conditions will first receive a deadline to remedy the breach. The grace period to correct the fault is proportionate to the gravity of the breach. If the matter is not remedied by this deadline, the Council can impose a fine, again commensurate with the gravity and kind of fault, the extent and reach of the broadcasting, and the benefits gained from breaching the law. Broadcasters can be imposed with fines of between CZK 5,000 and CZK 10 million (€160 – €322,000).

If the broadcaster repeatedly commits a particularly serious breach of the Broadcasting Act or of the licence conditions, the Council can also withhold the broadcasting licence or disapprove the extension of the licence. An example of a serious infringement of the Broadcasting Act would be broadcasting programmes promoting violence, racial hatred, negatively affecting the mental or moral development of children and youth, or transferring a licence to a third party without the Council’s consent.

Council members and media observers agree that a broadcaster would have to “work” very hard to fail to have their licence extended. There have not been any withdrawals of a broadcasting licence thus far. The RRTV has issued fines in a number of cases. However, the RRTV has itself observed that: “Given the current legislation, sanctions are very difficult to enforce. Operators would rather pursue prolonged court disputes than pay the imposed fine.”⁶¹

The RRTV has in several cases imposed sanctions on the public service broadcaster. After the Czech TV crisis in 2000–2001 (see section 4.4.3), when rebellious staff interrupted the programmes and broadcast their own newscasts, the RRTV fined Czech TV CZK 2 million (€64,000) for biased reporting. The regulator found that broadcasts during the crisis only served the interests of a small group of Czech TV employees. It also accused the station of inserting advertisements in the newscasts and failing to separate advertising from other programmes during the crisis. Czech TV appealed these charges. In the end, the Municipal Court in Prague decided that Czech TV had breached the law, but did not have to pay the fine. The court sent the case

⁶⁰ In the case of *Venus*, the RRTV made the administrative process so unpleasant that the applicant gave up the application for registration. Interview with Milan Jakobec, 30 June 2004.

⁶¹ RRTV, *Report on the state of broadcasting and the activity of the Council for Radio and Television Broadcasting for 2003*, Prague, 27 February 2004, available on the RRTV website at http://www.rrtv.cz/zprava_en/index.html (accessed 29 May 2005), p. 27, (hereafter, RRTV, *Annual Report 2003*).

back to the Council. The regulator's final decision was only to notify Czech TV that it had violated the Broadcasting Act and Czech Television Act.

In 2002, the RRTV fined CZK 500,000 (€16,800), charging the station with breaching its duty "to maintain the principles of objectivity and balance in political programmes and particularly to ensure that no political party or movement is favoured." The incriminated programme was *České hlasování* ("Czech elections"), a satirical programme about Czech regional politicians broadcast on 28 October 2002. The station appealed the decision and a Prague court later decided in Czech TV's favour.⁶²

Czech TV has been also fined for exceeding the limit for broadcasting advertising. In 2003, it paid a couple of fines of CZK 100,000 (or approximately €3,250).⁶³

However, the RRTV's most controversial actions involved a private broadcaster, TV Nova. In 2003, Parliament dismissed the RRTV, because of its rulings in the TV Nova case (see section 5.3.1). The dismissals were sought by the ruling coalition Government in retaliation for the costly, unsuccessful arbitration with the U.S. media investor CME. When, in March 2003, a London-based arbitration court ordered the Czech Republic to pay CME CZK 10.4 billion (or approximately €350 million) in damages, the international arbiters had placed the blame squarely on the RRTV,

As the authority charged with ensuring compliance with the Czech Republic's television broadcasting laws, the [Czech] Broadcasting Council had both the power and the obligation under Czech law to remedy CET21's unlawful actions aimed at severing its exclusive relationship with ČNTS.⁶⁴

Václav Žák, who has observed the case closely from the beginning, explains:

The Broadcasting Council [at the time] understood the dispute [between Železný and CME] absolutely falsely. It understood it as a dispute between two private entities and never wondered whether, as a State authority, it had the right to ask questions about who invested the money [in TV Nova]. [The Council] did nothing to protect CME's investment. On the contrary, it helped Vladimír Železný to spoil that investment. This is the reason why the Czech Republic lost the dispute.⁶⁵

The story shows the technical incompetence of the Council.

⁶² Czech News Agency, CTK, "Česká televize odvrátila pokutu", ("Czech Television reversed fine"), in *Hospodářské noviny*, 3 March 2004, p. 2.

⁶³ RRTV, *Annual Report 2003*, p. 38.

⁶⁴ Ministry of Finance, "Arbitrážní řízení UNCITRAL CME Česká republika B.V. (Nizozemsko) proti České republice", ("UNCITRAL Arbitration Proceedings, CME Czech B.V. versus Czech Republic"), available online at <http://www.mfcr.cz/cps/rde/xbcr/SID-53EDF4E6-A45C5F7A/mfcr/ArbitrazniRizeni.doc> (accessed 15 May 2005).

⁶⁵ Interview with Václav Žák, 9 June 2004.

In May 2003, a parliamentary media commission was created expressly to investigate the CME case, in particular the reasons for the lost arbitration. The commission released its report on the dispute in January 2005. It stated that the Czech State made mistakes during the arbitration process. The commission specifically questioned the selection of the multinational law firm Clifford Chance to defend the Czech State. The Commission did not blame any individual and referred the case to the State Prosecutor. The Commission report stated that some Council members pursued interests which were not in line with the interests of the Czech State at the time.⁶⁶

According to representatives of Prima TV, the RRTV is simply unable to solve many problems that require a certain expertise, such as making decisions in cases when broadcasters breach media legislation. They advise that it would be possible to solve this problem by better dividing the RRTV's competencies. For example, the Council should only be in charge of granting broadcasting licences, while its specialised office should handle the regulator's daily agenda, including observance of offences committed by broadcasters.⁶⁷

3.4 Broadcasting independence

Czech broadcasters are vulnerable to pressure from the Government, political parties and other groups interested in exerting direct or indirect control over news content. Politicians exert significant control over, and interfere with, both public and commercial broadcasters' activities indirectly, through the RRTV – both via the nomination of its members and through control over the RRTV's financing (see section 3.1.3).

Public service broadcasters

Although the Czech public service television is vulnerable to political influence, the station's journalists respect the basic rules for providing impartial and objective reporting, such as protection of sources. All the journalists interviewed for this report, from both public and commercial television, expressed almost the same opinion about their reporting standards. They said that they observe the basic journalistic guidelines, such as checking information from at least two independent sources, respecting the confidentiality of their sources, and the right of opinion for all sides in a dispute. Due to the small size of the media market, many television journalists have worked in at least two out of three national broadcasters in the Czech Republic.

⁶⁶ Parliamentary Commission, *Zpráva Vyšetřovací komise Poslanecké sněmovny pro zjištění skutečností v souvislosti s arbitrážním řízením ve věci CME vs. Česká republika*, (Report of the fact finding Parliamentary Commission on arbitration between CME and the Czech Republic), available at <http://www.ceskamedia.cz> (accessed 12 July 2005).

⁶⁷ Written comments submitted to EUMAP by Prima TV, 26 January 2005.

Journalists working for the public service broadcasters do not experience any serious attempts by the managerial staff or politicians to manipulate the news content in favour of any political party. However, they experience pressure from MPs, who fiercely criticise the station's content and openly condemn investigative journalism. The instruments able to protect editorial independence, such as codes of ethics or codes of conduct, are an intricate issue. In general, journalists do not regard these instruments as powerful and respectable tools ensuring their editorial freedom and professional integrity. Their scepticism can be partly attributed to the journalists' traditional distrust of official guidelines. It is also a legacy of the communist past when official guidelines were generally not respected. It could also be partly attributed to journalists' lack of professional training.

The staff of Czech TV recently took advantage of an opportunity to join the debate on the preparation of the station's internal labour code, which is based on recommendations from the Council of Europe. In the end, however, the Czech TV Council submitted the document for approval to the Chamber of Deputies in July 2003. This was considered by some staff and media experts and observers as another example of continuing political interference in the station's editorial autonomy: "It is humiliating for Czech TV to have its [Ethical] Code approved by the Chamber of Deputies".⁶⁸

The Code is part of the working contract of the station's journalists. There seems to be little awareness of the content and origin of the Czech TV Code among Czech TV employees. There is also a lack of formal training, which would help to establish this awareness. Many journalists as well as other professionals also working on a freelance basis with Czech TV [...] do not have to sign the Code at all.⁶⁹

Politicians do not directly interfere with editorial content. They have, however, resorted to using threats against the stations. For example, on 20 October 2003, Czech TV broadcast an investigative report about the construction of a massive underground garage and system of tunnels to connect several buildings of Parliament.⁷⁰ The programme's producer compared the way MPs planned to expand their territory with how termites expand theirs. After the broadcast, many furious politicians threatened to freeze the station's licence fee indefinitely. Even the Minister of Culture, Pavel Dostál, who had supported an increase in the licence fee, said: "If the reporters, without relevant reasons, compare deputies or senators with those sneaky insects, they cannot expect politicians to welcome them."⁷¹ In this case, neither the station's Director General, Jiří Janeček, nor the Czech TV Council backed the reporters. Some of the

⁶⁸ OSI roundtable comment.

⁶⁹ OSI roundtable comment.

⁷⁰ Programme *Fakta (Facts)*, ČT1, 20 October 2003, 21.40, Producer Petr Hanoušek, Moderator Matek Vítek.

⁷¹ J. Kubita, J. Šídlo, and V. Dolejší, "Poslanci znovu válčí s Českou televizí", ("MPs are again at war with the Czech Television"), in *MF Dnes*, 24 October 2003, p. 2.

station's journalists believe that the reporters concerned should have been granted full protection and support, and that the station's management should have told politicians that it is not in their competence to judge the reporting.

With respect to the influence of the Czech TV Council, journalists and editors do not feel that their journalistic independence is at stake, but admit that, "from a professional perspective, the pressure from the Czech TV Council is unpleasant." According to a journalist working with Czech TV, the Chamber of Deputies is always trying to pull the strings behind public television. He added: "We are a Parliament television."⁷² Jan Pokorný, a journalist who has worked with both Czech Radio and Television states that Czech TV Council members object, for example, when the station's reporters ask members of the Permanent Commission for News Media unpleasant questions.⁷³

Emblematic of the political interference with the editorial policy of the public television are the following comments by an MP from the Permanent Commission for News Media during the debate on the licence fee on 2 February 2005,

I am also not always satisfied with the news reporting [by Czech TV] and I have big reservations about it. However this Chamber of Deputies elects the members of the Czech TV Council and I thought that it [Chamber of Deputies] should work more together with these members. The fact that they are apparently independent does not mean that it is not possible to have a discussion with them and point out the mistakes Czech Television is making.⁷⁴

Commercial broadcasters

The owners of commercial television stations do not exert direct pressure on journalists and do not try to influence directly the reporting.⁷⁵ However, journalists working for commercial television are faced with the interests of the stations' owners and executives.

The reporting by commercial television stations is often seen by media observers and journalists as biased and unprofessional. However, the arrival of commercial broadcasting has had the merit of contributing to the development of news reporting and investigative journalism.

Instruments to protect the editorial independence and integrity of the newsroom at commercial stations are either not in place or have been implemented only recently. Prima TV introduced a Code of Ethics in 2003, which briefly states the fundamental

⁷² Interview with a Czech TV journalist, Prague, 1 July 2004.

⁷³ Interview with Jan Pokorný, 4 June 2004.

⁷⁴ ČSSD (Social Democratic Party) MP Ladislav Skopal, quoted from the official transcript of the parliamentary debate on 2 February 2005, published by the news portal www.ceskamedia.cz. (accessed 5 March 2005).

⁷⁵ From a number of interviews with employees at commercial broadcasters.

principles of the station's editorial policy concerning such issues as conflicts of interests.⁷⁶ TV Nova has not accepted any such codes so far. In the past, the main editorial bias at TV Nova was related to the station's long ownership dispute (see section 5.3.1).⁷⁷ With the arrival in 2003 of a new owner, the financial group PPF, the situation at TV Nova stabilised and those pressures eased. After the arrival of the new owner, "the [editorial] independence is one level higher," said Janek Kroupa, an investigative reporter for TV Nova.⁷⁸

Employment protection exists for journalists under the Labour Code and through contractual protections. However, many journalists are employed on so-called "external contributor" contracts which do not ensure a high level of protection.

4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING

Czech TV and Czech Radio have suffered in the past decade from institutional and financial crises and political interference. The situation climaxed in 2001, when Czech TV journalists openly protested against the political appointment of a Czech TV Director General. Their rebellion became known as the "Czech TV crisis". In recent years, Czech TV has fought with commercial television for advertising. However, Czech TV's potential for carrying advertising is severely limited by the one per cent limit on advertising that was imposed in the mid-1990s with the aim of helping commercial television to establish itself in the market. In summer 2005, Parliament voted for the further restriction of advertising on Czech TV, with the aim of eliminating advertising altogether from the public broadcaster by 2007.

4.1 The public broadcasting system

Czech TV and Czech Radio are organised as independent public service corporations, supervised by councils appointed by the Chamber of Deputies, and financed through revenues from licence fees and advertising.

⁷⁶ *Zpravodajský deník, (News Diary)*, Prima TV internal document.

⁷⁷ "It was very difficult to produce news in a television station that was subject to 80 different lawsuits, where nobody knew who owned the station [...] and where the station was itself making the news. At the time, the rules were looser. [...] The main rule was not to report on it at all, but when we did, we took our side" Interview with Pavel Zuna, Director of Programming and Anchor with TV Nova, Prague, 26 June 2004.

⁷⁸ Interview with Janek Kroupa, journalist working with TV Nova, phone interview, Prague, 5 September 2004.

The activities of Czech TV and Czech Radio are regulated by the Czech Television Act⁷⁹ and Czech Radio Act,⁸⁰ respectively. Both acts were first adopted in 1991 and have subsequently been amended a number of times. In a 2001 amendment of the Czech Television Act (hereafter, Czech Television Act 2001), Parliament adopted more detailed remits and obligations for Czech TV.⁸¹ The primary functions of Czech TV include:

- producing and broadcasting programmes serving as a reference for the whole of society;
- enhancing social cohesion and the integration of all individuals, groups and communities;
- avoiding any form of cultural, sexual, religious or racial discrimination and social segregation.⁸²

According to the Czech TV Code, the other primary functions of Czech public television are:⁸³

- acting as a forum for public debate open to the broadest possible range of opinions and viewpoints, and to provide independent and impartial news, information and commentary;
- creating a plural, inventive and diverse programme schedule that meets high ethical and quality standards, and not responding to the market pressures by lowering the standards of its programming;

⁷⁹ Act no. 483/1991 on Czech Television, *Sbírka zákonů*, part 93 of 29 November 1991, as last amended by Act no. 82/2005, which changes Act no. 483/1991 on Czech Television in its latest version, and Act no. 231/2001 on the Operation of Radio and Television Broadcasting and on the change of other Acts in their latest versions, *Sbírka zákonů*, part 23 of 23 February 2005, (hereafter, Czech Television Act).

⁸⁰ Act no. 484/1991 on Czech Radio, *Sbírka zákonů*, part 93 of 29 November 1991, as last amended by Act no. 192/2002, which changes Act. no. 484/1991 on Czech Radio, in its latest version, and on the Change of Other Laws, *Sbírka zákonů*, part 80 of 22 May 2002, (hereafter, Czech Radio Act).

⁸¹ Act no. 39/2001, which changes Act 483/1991 on Czech Television and on changes of other acts, *Sbírka zákonů*, part 14 of 25 January 2001 (hereafter, Czech Television Act 2001). This act amended the Czech Television Act of 1991. It was approved in an extraordinary session of Parliament organised in reaction to the “Czech TV Crisis”.

⁸² Czech Television Act 2005, art. 2.

⁸³ Czech Television, *Kodex Česká Televize, zásady naplňování veřejné služby v oblasti televizního vysílání*, (*Czech Television Code, principles of fulfilling public service in the area of television broadcasting*), Prague, 2003, available online (in English) at <http://www.czech-tv.cz/english/pdf/code.pdf> (accessed 10 May 2005), pp. 3–4, (hereafter, Czech TV Code).

- creating programme schedules able to attract a large proportion of the public while remaining sensitive to the needs of minority groups;
- reflecting the present-day diversity of philosophical concepts and religious denominations with the aim of fostering mutual understanding and tolerance, and strengthening the cohesion of a multinational and multicultural society;
- actively contributing to a better understanding and dissemination of both national and European cultural activities and heritage;
- ensuring that its programme schedules contain a significant proportion of original programming, especially feature films, drama and other creative exploits, and cooperating with independent producers and the film sector;
- broadcasting a package of programmes which are not normally offered by commercial broadcasters; and
- avoiding focusing on ratings or the speed of disseminating news and information at the expense of quality.

4.2 Services

Czech TV is obliged by the Czech Television Act to fulfil its duties as a public service broadcaster. The station must operate two national channels, ČT1 and ČT2; maintain its own network of reporters; produce and broadcast balanced and objective regional news through its regional studios; create and manage the television's archives; support Czech film production by co-producing local films; broadcast domestic and international productions; and provide non-stop broadcasting on at least one of its two channels. The station must also provide teletext services and be actively involved in developing new technologies and services.⁸⁴

Currently, Czech TV provides 24 hours of broadcasting on both its national channels. It also offers other services such as teletext, closed-captioning and online broadcasting on its website (www.czech-tv.cz). It has broadcast through satellite in digital format via the Eurobird1 satellite since May 2003. Czech TV news programming is supported by ten regional news desks and six foreign news desks, in Slovakia, Poland, Germany, Belgium, the USA and Russia. In May 2005, Czech TV launched the news channel ČT24. This channel is currently accessible via cable but is likely to become one of the four new digital channels Czech TV is expected to operate after the launch of digitalisation in the Czech Republic (see section 7).

Czech TV also provides support and media partnerships to various public benefit activities such as the project "Pomozte Dětem" (Help the Children) aimed at raising funds for poor and sick children; the foundation Člověk v tísni (People in Need),

⁸⁴ Czech Television Act, art. 3(1).

which is involved in humanitarian activities around the world; and the Karlovy Vary International Film Festival.

4.3 Funding

Czech TV has an average annual budget of CZK 4.5 billion (or approximately €145 million). The funding model for Czech TV is described in the Czech Television Act.⁸⁵ The station's supervisory body, the Czech TV Council, approves the draft budget and final accounts. In matters concerning the financial audit, the Council cooperates with the Supervisory Commission (see section 4.4.1).

The main sources of revenues for Czech TV are the licence fee – which currently amounts to CZK 75 (€2.4) per month – and the income from its own business operations, including advertising revenues (see Table 3. below). Licence fees are collected through the country's main postal company. Every household in the Czech Republic is obliged to pay one licence fee regardless of the number of television sets owned. Each company and institution must pay a licence fee per television set.

As for the second source of revenue, Czech TV is allowed by law to pursue commercial activities related to the production and broadcast of television programmes. The largest portion of this income comes from broadcasting advertisements and sponsored programmes. The amount of advertising is limited to one per cent of the daily broadcasting time, up to an hourly maximum of 12 minutes. Between 19.00 and 22.00, the station can broadcast an hourly maximum of 6 minutes. Commercials cannot be inserted within programmes. Television advertising spending in the Czech Republic in 2004 is estimated to be approximately CZK 8.3 billion (€268 million), with Czech TV receiving about CZK 1 billion and the rest swallowed by commercial television stations.

⁸⁵ Czech Television Act, art. 10.

Table 3. Costs and revenues of Czech TV (2003)

		CZK (millions)	€ (thousands)	As a share of total income (per cent)
Income	Total	4,352	140,390	100
	Licence fee	2,903	93,657	66.7
	Commercial income ⁸⁶	1,266	40,822	29.1
	Other income	183	5,911	4.2
Costs	Total	4,482	144,578	100
	Production and broadcasting costs	3,594	115,922	80.2
	Service department costs (wages, fixed asset depreciation)	739	23,835	16.4
	Other non-production costs (taxes, debt write-offs etc.)	149	4,821	3.4

Source: Czech TV⁸⁷

Over the past decade, Czech TV has experienced serious financial difficulties. Since 2000, the station has been constantly in the red. This was due to a combination of institutional instability and chaos, corruption, inefficient operations and other non-transparent business tactics.⁸⁸ Politicians have called Czech TV “a black hole that can absorb any sum of money with no return.”⁸⁹

⁸⁶ Commercial income includes revenues from broadcasting of advertising and sponsored programmes, sale of services and rights, tele-shopping, teletext and programme production.

⁸⁷ Czech Television, *Czech Television 2003*, Prague, published 2004, available (in English) at http://www.czech-tv.cz/ct/publikace/pdf/CT_2003-AN.pdf (accessed 29 May 2005), (hereafter, Czech TV, *Yearbook 2003*), p. 31.

⁸⁸ M. Šmíd, “Komu může vadit silný ředitel ČT?”, (“Who can mind a strong Czech Television General Director?”), 2 February 2003, published on www.louc.cz (accessed 10 August 2004), (hereafter, Šmíd *Who can mind a strong Czech Television General Director?*).

⁸⁹ I. Ryšánková, “Anketa mezi poslanci: Jste pro zvýšení koncesionářských poplatků a reklamy ČT?”, (“Opinion survey among MPs: Do you favour increasing the licence fee and limiting advertising for Czech Television?”), published on the media news portal www.ceska-media.cz, 15 January 2004 (accessed 10 July 2004).

Table 4. Czech TV income and costs (1998–2004)

Year	CZK (millions)		
	Income	Costs	Balance
1998	4,634	4,582	+52
1999	4,666	4,565	+101
2000	4,859	4,877	-18
2001	4,545	4,932	-387
2002	4,560	4,959	-399
2003	4,354	4,530	-176
2004	4,343	4,343	NA

Source: Czech TV⁹⁰

The funding model of Czech television is completely in the hands of politicians. The Act on Radio and Television Fees does not stipulate that the fee must be adjusted to match inflation, so any decision to increase the licence fee can only be taken by amending the act. The last time the licence fee was increased was in 1997.⁹¹

The crucial source of financing for Czech TV – the licence fee – is set as a fixed amount, and is very low compared to foreign countries. The fact that increasing the television fee requires an amendment to the Act [on Radio and Television Fees] means that the understandable lack of popularity of this step among the public is reflected both in the relationship towards Czech TV and towards the deputies in the Parliament. The lack of a solution for financing Czech TV puts the company under constant pressure, which may not be obvious at first sight, but eventually has an impact on the programmes. Finding a solution that would ensure the long-term stability of conditions for the activities of Czech TV is needed to ensure the balance of the dual system of broadcasting.⁹²

The Civic Democrats, who suffered a profile setback after the Czech TV crisis, have, in opposition, pushed for advertising on Czech TV to be further restricted or completely eliminated.⁹³ They have also advocated the privatisation of the station's second channel, which has the profile of a “minority channel”, broadcasting minority programming, documentaries, independent films, dramas and cultural and sporting

⁹⁰ Czech TV, *Yearbook 2003*, p. 31

⁹¹ Act no. 252/1994 on Radio and Television Fees, *Sbírka zákonů*, part 73 of 30 December 1994, as last amended by Act no. 135/1997.

⁹² Czech Television, *History of Czech Television*, available on the Czech Television website (in English) at <http://www.czech-tv.cz/english/history/finance.php> (accessed 29 May 2005).

⁹³ P. Žantovský, “Topolánek: Zrušil bych mediální rady. Interview s předsedou ODS Mirkem Topolánkem”, (“Topolánek: I would cancel the media councils, interview with the president of ODS, Mirek Topolánek”), published on www.ceskamedia.cz, 24 March 2005, available at http://archive.ceskamedia.cz/article.html?id=144881_hp_M&qqqq=Mirek%20topolánek%20Česká%20televize (accessed 29 May 2005)

events. Big changes in the television and advertising markets may therefore occur if the Civic Democratic Party (ODS) fulfils current expectations by winning the next elections, due in 2006.

However, media observers believe that the discussion about the financing of the public service television is going on only among politicians and various lobbying groups. "The professional discussion is missing."⁹⁴

Over the past few years, Czech TV constantly lobbied for an increase of the licence fee, to no avail. However, on 29 June 2005 the Czech Chamber of Deputies passed a bill raising the monthly licence fee for Czech TV, from CZK 75 (€2.4) to CZK 100 (€3.3). According to the bill, the TV licence fees will further increase to reach CZK 135 (€4.4) in 2008 when Czech TV will be allowed to broadcast only advertising linked to major sports and cultural events. However, to become effective the bill still needs to be approved by the Senate and signed into law by President Vaclav Klaus.

The current management of Czech TV claims that financial losses in recent years were caused by the low level of the licence fee. Moreover, while the number of licence fee payers has decreased – due to the poor fee collection system– the tax burden of the station has grown. Simultaneously, advertising sales have remained strictly limited while the cost of broadcasting rights and copyright has risen. Czech TV's management is trying to improve the station's financial situation by collecting licence fees more efficiently. In theory, anyone who does not pay the licence fee can be penalised, but the actual enforcement of the law obliging citizens to pay is very weak.

Licence fees are collected by Czech Post, the national postal office, which also claims a monthly commission for every registered household or corporation. In an attempt to save money by eliminating Czech Post from the chain of payments, Czech TV plans to collect the fees through a specialised department at the station, which is to start operating by January 2005. Since December 2002, households have been offered the option of paying the fee directly to the Czech TV account after registering on the Czech TV's website.

In reaction to institutional instability and criticism, the new management at Czech TV also introduced a cost-cutting plan, "Programme of changes, boosting income and cost cuts". The programme was prepared under the direct supervision of the station's new Director General, Jiří Janeček, who was appointed in 2003. Within a year, about 300 employees were laid off, many employment contracts were revised and the station stopped selling movies co-produced by Czech TV to commercial broadcasters, with the aim of increasing revenue from this activity.

Nonetheless, due to the low licence fee and harsh restrictions on advertising time, the public broadcaster will have to continue to cut its budget and this will most probably affect the quality of programming. Janeček predicted that the first results of this

⁹⁴ OSI roundtable comment.

financial crisis would be seen in the station's programming in 2005 because the station can no longer make long-term plans to invest in dramas and documentaries.

4.4 Governance structure

4.4.1 The Czech TV Council and the Supervisory Commission

The Czech TV Council is the supervisory body of Czech TV. It consists of 15 members, appointed by the Chamber of Deputies for a six-year period. The terms of the members' mandates are staggered, with one third of the members replaced every two years.

Prior to the crisis that erupted in December 2000, the Czech TV Council's members were both proposed and appointed by political parties.⁹⁵ In response to the public protests against the political influence on the public media, the Chamber of Deputies amended the Czech Television Act in 2001⁹⁶ and members are now appointed from representatives proposed by civil society organisations and associations (see section 4.4.3).

There are minimal provisions on conflict of interest for members. For example, members cannot be active in politics. There are no requirements for professional qualifications for members.

The current Czech TV Council consists of professors, journalists, an architect, a catholic priest, a former athlete who is currently a member of the Communist Party, a lawyer, a physician, a ballet dancer and politicians.

The main task of the Czech TV Council is to oversee whether Czech TV meets its public service obligations and fulfils the principles established in the Czech TV Code. The TV Council decides on the draft budget of Czech TV, while its consultative body, the Supervisory Commission, carries out the financial auditing of the station.

The Supervisory Commission was established in 2001 following the Czech TV crisis. Its main duty is to supervise Czech TV's economic performance and inform the Czech TV Council about deficiencies in the administration of funds. The Commission is also in charge of submitting proposals to remedy financial problems. The Commission consists of five members, appointed and removed by the Czech TV Council, who can serve up to two years.

⁹⁵ Czech Television employees "reacted to what they perceived as political interference culminating in the appointment of a new director. The appointment, carried out by a Council dominated by the ODS and ČSSD, led to a revolt by TV staff and mass public protests." EUMAP, *Monitoring the EU Accession Process: Corruption and Anti-corruption Policy*, Czech Report, Budapest, 2002, available on the EUMAP website at www.eumap.org, (accessed 7 July 2005), p. 187.

⁹⁶ Czech Television Act 2001.

Other tasks of the Czech TV Council include approval of proposals by the station's Director General to establish or shut down television studios, the appointment and removal of television studio directors and ethics panels, and the approval of long-term plans concerning the station's programming, and technical and economic development.

The Czech TV Council must submit the Czech TV Code and the station's annual report to the Chamber of Deputies. The Chamber of Deputies can recall the entire Czech TV Council if the Council does not fulfil its obligations under the Czech Television Law or if it does not agree with the Council's annual report twice. The Chamber of Deputies has never fired the entire Czech TV Council.

4.4.2 The Director General

The statutory authority of Czech TV lies with the station's Director General, who is appointed (and can be removed) by the Czech TV Council. The Czech TV Council is responsible for announcing and carrying out the selection procedure to fill the position of Director General, which carries a six-year term. It is also responsible to approve the Director General's salary. According to the Czech TV statute,⁹⁷ the station's Director General must direct the activities of Czech TV, decide on its organisational structure and represent it.

The Board of Directors is the Director General's permanent consultative body. It is composed of all senior employees at the executive level. Another body, the Ethics Panel advises the Director General on ethical issues.⁹⁸ It currently has five members: a law professor, the head of the local Academy of Sciences, two journalists and the head of a non-profit organisation for consumer protection.

Besides the Director General, Czech TV's top management includes the Chief Executive Director, Director of Commerce, Director of Programming, News Director, Director of Production, Head of Legal Department, and the Directors of the station's regional studios.

For the past decade Czech TV has been in search of a Director General with a strong enough personality to counter the attacks and pressure from politicians. Jiří Janeček is the fifth Director General in five years.⁹⁹ Because he came to the station with a plan of drastic cost-cutting, he is known as "the director of savings".¹⁰⁰ Janeček slashed the

⁹⁷ Czech Television, *Statute of Czech Television*, Prague, 25 February 2004, available online at <http://www.czech-tv.cz/english/pdf/statute.pdf> (accessed 6 May 2005), (hereafter, Czech TV statute).

⁹⁸ Czech TV Statute.

⁹⁹ The Czech TV Council appointed Jiří Janeček on 16 July 2003.

¹⁰⁰ D. Macháček, "Ředitel úspor čeká na vyšší příjmy", ("The Director of Savings is expecting higher revenues"), in *Hospodářské noviny*, 22 July 2004, p. 1.

number of employees, while managing to keep the station's revenues at a stable level and reducing the broadcaster's costs. Since his appointment in the summer of 2003, Czech TV has cut spending by about CZK 250 million (or approximately €8.3 million).

Nonetheless, Janeček does not seem to be the strong director that the station's staff have craved for. Like his predecessors, he is viewed as not having stood up to pressure from political and business circles. For example, in 2004, he apologised to the local lottery, Sazka, a major advertiser on Czech TV, for a three-year old report broadcast on Czech TV, which alleged that Sazka was investigated by the police for dubious business practices.¹⁰¹ The report was aired on Czech TV in 2001. Sazka sued Czech TV, but lost the case. After three years, Sazka asked the station to apologise for the report, threatening to move its advertising to a commercial broadcaster. Janeček decided to apologise and the Czech TV Council accepted the director's decision. The reason for the apology, Janeček explained, was the report's lack of accuracy. The general opinion was that through this decision, Janeček jeopardised the independence of Czech TV and the principles of public service broadcasting. Sazka is one of the largest advertisers on Czech TV, providing a tenth of the station's total advertising income.

Czech TV Council member, Alena Svobodová, told the Czech weekly *Respekt*,

I did not investigate it [Janeček's decision to apologise]. I trust the Director. It is necessary to understand the entire issue within context. Tens of millions of crowns come into Czech TV from Sazka every year. It would be a pity if [Sazka's] Director General [Aleš] Hušák cut back the funding because of one report. At a time when Czech TV needs every crown, we have to be able to make a sensible agreement [with them].¹⁰²

However, Czech TV's reporters expressed their disappointment with the behaviour of the station's Council and Director General.

4.4.3 The Czech TV Crisis

At the beginning of 2001 the debate on the future of public television dominated the news. A group of journalists working with Czech TV protested against the appointment of Jiří Hodač as the station's new Director General. Hodač was known for his links with the opposition Civic Democratic Party (ODS), which at the time was helping the Social Democratic Party (ČSSD) to maintain its minority Government in power.

Journalists accused Hodač of being a political appointee who would compromise the public broadcaster's independence. They argued that the speed with which he had been

¹⁰¹ J. Kubita, "Rada ČT prošetří omluvu Sazce", ("CT Council will investigate apology to Sazka"), in *Lidové noviny*, 16 January 2004, p. 1.

¹⁰² O. Kundra, "Sazka na veřejnoprávního koně", ("Sazka for the public horse"), in *Respekt*, 2 February 2004, p. 6.

chosen by the RRTV was illustrative of how politicised the station was becoming. In a statement at the time, one of the rebellious journalists said,

All of us face the danger that before the elections Czech TV will become an obedient instrument of those in power [...] It is not possible within one week to dismiss the managing director, launch a competition for the post, assess all applications and projects submitted by the candidates and choose a new Director General.¹⁰³

Protesting journalists staged a sit-in in the newsroom and started to broadcast their own newscast on big screens in front of the Czech TV headquarters. Hodač's team broadcast its own programmes from the facilities of commercial TV Nova, which offered him space for it. Scores of artists, celebrities, trade unions, small opposition parties and even the country's president, Václav Havel, initiated the civic initiative "Czech TV – A Public Matter" supporting the rebellious journalists. Hundreds of thousands of people took to the streets, expressing support for the strikers. These were the biggest public protests since the fall of communism. They showed the public's general dissatisfaction with the way the ČSSD and the ODS had carved up power in the country in general.¹⁰⁴

Under pressure and fierce criticism from civic society at home and abroad, Parliament agreed to find a solution to dilute political influence over Czech TV. In January 2001, it dismissed the Czech TV Council and, in an emergency session, amended the Czech Television Act, agreeing that the Chamber of Deputies should continue to appoint the members of the Czech TV Council, but at the proposal of civil society organisations.

The 2001 amendment of the Czech Television Act stipulated that any civil society organisation and association representing "cultural, regional, social, union, employers, religious, educational, scientific, ecological and national interests" can submit proposals for candidates to the Czech TV Council. The proposals must be submitted within 15 days of the day when the Speaker of the Chamber of Deputies publicly announces the invitation for proposals.¹⁰⁵ From this pool of proposals the Chamber of Deputies then appoints the members of the Czech TV Council.

While this was a positive step, these changes did not suffice to protect Czech TV from political control. The nomination of members through civil society organisations has not sufficed to prevent political parties from pushing their own, very often controversial, candidates on to the Czech TV Council,

¹⁰³ Statement of the Committee of the striking Czech Television employees, quoted by BBC News, "Fight for control of Czech TV", 25 December 2000, available online at <http://news.bbc.co.uk/1/hi/world/europe/1086223.stm> (accessed 29 May 2005).

¹⁰⁴ According to public opinion research carried out by the Centre for Public Opinion (IVVM) in February 2001, 47 per cent of Czechs interviewed agreed with the striking journalists, 38 per cent did not agree, and 15 per cent were undecided.

¹⁰⁵ Czech Television Act, art. 4(2).

It usually works the other way around. Political parties look for civil society organisations to nominate their candidates. There have been cases of [Czech TV] Council members proposed by organisations such as the Independent Association of Children and Youth for Leisure-time (DUHA), the Association for Youth, Science and Technology, and Hunters or Gardeners Associations.¹⁰⁶

Some Council members do not feel obliged to stay away from politics during their term in office. Such is Alena Svobodová, a Council member who at the same time ran for a seat in the European Parliament as a Communist Party candidate.¹⁰⁷

The Czech TV Council is still appointed by, and accountable exclusively to, only one chamber in Parliament, the Chamber of Deputies. Marek Wollner, a journalist working with Czech TV states that: “The [Czech TV] Council should be appointed by both houses of Parliament to minimise the political pressure. The members should be strong, independent personalities, not easily influenced by politicians.”¹⁰⁸ However, in June 2004, MPs rejected a proposal of the Minister of Culture Pavel Dostál to divide the competences for appointing the members of the Czech TV Council between the Chamber of Deputies, the Senate and the Prime Minister.¹⁰⁹

4.5 Programme framework

4.5.1 Output

According to yearly audience surveys by Czech TV, drama is the most popular genre with the station’s viewers, followed by news bulletins, Investigative journalism, news features and documentaries are the next most popular genres, in that order. Czech TV’s main channel, ČT1, is a generalist channel, airing news, drama, popular series, films, entertainment shows and children programmes. It broadcasts news bulletins every two hours during the weekdays and political talk shows at the weekend.

The station’s second channel, ČT2, focuses on programmes for minorities, sports, music, documentaries and independent films. In 2003, the total broadcasting time for both of Czech TV’s channels was 17,520 hours.

¹⁰⁶ J. Blažková and J. Šídlo, “Vrátí se zpět do televize”, (“Will they come back to television”), in *MF Dnes*, 20 May 2003, p. 4.

¹⁰⁷ Council Member Alena Svobodová stated: “I am independent in the [Czech Television] Council. Outside the television [Council meetings], I have the right to express my political opinion.” Cited in: J. Kopecký, “Radní agituje. Na hraně zákona”, (“A council member is agitating. On the edge of the law”), in *MF Dnes*, 1 June 2004, p. 2.

¹⁰⁸ Interview with Marek Wollner, Czech TV journalist, Prague, 16 June 2004.

¹⁰⁹ Dostál stated that under current conditions, the Czech TV Council is constantly under the threat of being dismissed should two or three parties in Parliament so decide: “A council that has a constant fear of being dismissed, works under the baton of the political parties.” Cited in: Czech News Agency (ČTK), “The Television Council will be still elected exclusively by the Chamber of Deputies”, (in English), 2 June 2004.

Table 5. Czech TV output – breakdown by genre (2003)

Genre	Hours	Share of total hours (per cent)
News	3,432	19.6
Current affairs	2,170	12.4
Documentaries	2,123	12.1
Education	677	3.9
Religion	113	0.6
Sport	1,203	6.9
Drama	4,138	23.6
Music	1,194	6.8
Entertainment	1,248	7.1
Non-commercial promotions, supplements	547	3.1
Tele-shopping	502	2.9
Advertising	173	1.0

Source: Czech TV¹¹⁰

4.5.2 Programme guidelines

Czech TV is legally obliged to offer impartial and accurate information and respect the principles of public service broadcasting as defined in Czech TV's 32-page Code –, a legally binding set of norms for all employees. “The Code should not only provide guidelines for correct decision-making in dealing with concrete questions and problems of television broadcasting, but also embodies a commitment to quality, a binding obligation to the viewers and the general public.”¹¹¹ *Inter alia*, the Code:

- contains rules for recording and protection of sources;
- bans discrimination in reporting;
- requires journalists to presume innocence when dealing with people charged with various accusations; and
- defines the mission of public service television.

Czech TV's institutional instability and financial crises over the past few years are evident in the station's output. Each new management comes to the station with new programmes and formats, but the prevailing opinion was always the same: programmes with low ratings must be moved to typical low-audience timeslots. Eventually, they disappear from the schedules. The presenters, jingles and formats change so often that viewers have almost no chance to get used to them. However, representatives of the

¹¹⁰ Czech TV, *Yearbook 2003*, chapter 4 (Programming and Broadcasting).

¹¹¹ Czech TV, *Czech Television Code*, p. 3.

public television broadcaster insist changes in programming do not mirror changes in the station's management but are the result of deep analysis.¹¹²

The first channel of Czech TV has been vehemently criticised for increasingly resembling commercial stations. Karel Hvižd'ala, a journalist and media analyst, said,

Vladimír Železný [former director of TV Nova] managed to push through – because he is the smartest one – the audience share as the only criterion in the television market. The aspects that are being examined in other countries, such as distorted information, influence on the target group, the factors determining the prestige of the media, have disappeared here. [The audience share] is the most important here. Therefore, they [broadcasters] are competing between [with] each other in the most banal way and therefore they slowly resemble each other.¹¹³

Freedom House's 2004 *Nations in Transit* report stated that "Czech TV does not provide high-quality public service programming. The station's first channel is quasi-commercial and competes openly for ratings with the two private channels, TV Nova and Prima TV. Its news operations are timid and lack informed analysis."¹¹⁴

4.5.3 Quotas

Czech TV is legally obliged to provide at least 70 per cent of all its programmes with closed-captioning, on-screen captioning or sign language for people with impaired hearing.

There are no special quotas for minority programming. One of Czech TV's main tasks, stated by law, is "the development of the cultural identity of inhabitants of the Czech Republic including members of national or ethnic minorities". The station's Code also states that Czech TV must emphasise in its programming the importance of minority genres and topics that other stations do not cover at all or only to a limited extent. Thus, it is obliged to devote part of its broadcasting to topics related to senior citizens, people who are ill or who have disabilities, people living in poverty, young families, and national or ethnic groups.

¹¹² OSI roundtable comment.

¹¹³ Interview with Karel Hvižd'ala, journalist, writer and media analyst, Dobřichovice, Czech Republic, 9 June 2004.

¹¹⁴ See also: Tomáš Klvaňa, Chapter on the Czech Republic, in *Nations in Transit 2004*, Freedom House, 2005, available at <http://unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPAN016574.pdf> (accessed 4 May) 2005), p. 8.

Czech TV meets all quotas of the TWF Directive¹¹⁵ (see section 6).

4.6 Editorial standards

Although it is not a self-regulatory instrument, but a legal provision approved and imposed by politicians, journalists working with the public broadcaster accept the content of the Code as a good basis for their work; however, some media observers argue that the problem is not the content of the Code, but the fact that it is approved by politicians: “Czech TV journalists should push for their own code [of conduct], to ensure editorial independence, to emancipate themselves professionally and force the management and the Council to function according to an internal set of rules.”¹¹⁶

On a daily basis, the desk editor, subordinated to the editor-in-chief of the News Department, is responsible for the editorial standards of the news reports. In the case of a news feature, the editor-in-chief of that particular division, the News Feature Programmes Department, is also responsible for the content of the report.

As already noted, Czech TV’s main problem is that it suffers from long-term financial instability. Both Czech TV and Czech Radio are financed largely by the licence fee and therefore are not dependent on the State budget. This should, in theory, help them to resist both political and commercial pressures. However, politicians can exert pressures on the public broadcasters indirectly, for example by using the licence fee as a tool of control. The licence fee has not been increased in seven years, a situation that has prompted a war of attrition between Parliament and Czech TV’s journalists. On 29 June 2005, the Chamber of Deputies in Parliament approved a bill to increase the licence fee, but to become effective this still needs to be approved by the Senate and signed into law by President Vaclav Klaus (see section 4.3).

Czech TV is also often criticised for biased reporting against MPs whenever an increase in licence fee is being discussed in Parliament.¹¹⁷ By openly citing Czech TV’s unfavourable reporting of politicians as their reason for rejecting demands to increase the licence fee, politicians have openly expressed their willingness to use their power to punish the public service broadcaster.

¹¹⁵ EU “Television without Frontiers Directive”: Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, 89/552/EEC, OJ L 298 of 17 October 1989, as amended by European Parliament Directive of June 1997, 97/36/EC, OJ L 202 60 of 30 July 1997, consolidated text available on the European Commission website at http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf (accessed 15 March 2005).

¹¹⁶ Interview with Karel Hviždála, 9 June 2004.

¹¹⁷ OSI roundtable comment.

Czech TV's current Director General, Jiří Janeček, achieved temporary financial and institutional stability a year after his appointment in the summer of 2003. However, Czech TV's financial crisis is ongoing and it would seem that Janeček's resistance to pressure from politicians and advertisers may be waning (see 4.4.2).

Another tool of control over the public broadcasters is the political appointment of the Czech TV and Czech Radio councils. Although after the Czech TV crisis the members of these councils are nominated by civic and professional organisations, it is still the Chamber of Deputies which appoints them (see section 4.3).

Czech TV has come under ruthless critical scrutiny over the past four years. The station lacks strong leadership and management, and has been marred by non-transparent financing and corruption, including in the tenders for commissioning the production of shows and documentaries.¹¹⁸ Media analyst, Karel Hviždala, observes that: "The station's Director General should protect television from the pressure of politicians and other interest groups. He should be a strong personality with great prestige, very independent, and should serve as a battering ram against lobbyists."¹¹⁹

On the other hand, in terms of programming, competition with commercial broadcasting has improved the performance of Czech TV in some respects. For example, Czech TV is trying to cut costs by importing more economically efficient models of news reporting used by commercial television stations.¹²⁰ It introduced new programmes of investigative reports such as *Klekánice* ("Twilight Witch"), *Fakta* ("Facts"), and *Reportéři ČT* ("Czech TV Reporters"). Martin Mrnka and Marek Vitek, two Czech TV reporters working for *Fakta*, received the 2001 international award of the School of Advanced International Studies at Johns Hopkins University in Washington D.C. for their investigative report entitled "a Dark Story on Fuel Oil". This revealed how a Russian criminal put into practice a scheme to siphon off illegal profits from fuel sales, worth millions of dollars. The report was one of the first examples of collaborative investigative reporting carried out by journalists in the former communist bloc.

¹¹⁸ Šmíd, *Who can mind a strong Czech Television General Director?*

¹¹⁹ Interview with Karel Hviždala, 9 June 2004.

¹²⁰ For example, Zdeněk Šámal, Czech TV's News Director, and a former editor-in-chief at the Slovak news channel TA3, said that he would be able to produce the news in a much smaller physical space, with a smaller news production team. Interview with Zdeněk Šámal, Prague, 1 July 2004.

5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING

The Czech media market attracted scores of foreign investors in the early 1990s. More than a decade after the fall of communism, most of the capital investment in media is foreign. However, because of inadequate regulation of the broadcasting market, commercial broadcasting has been dominated by numerous, lengthy ownership disputes.

5.1 The commercial broadcasting system

The commercial television market is dominated by two national stations, TV Nova and Prima TV. TV Nova was the first national commercial television station to challenge the monopoly of public television in the early 1990s. Launched by the U.S. investor CME in 1994, it soon became the most popular station in the country.

Due to its hefty audience share of around 45 per cent, TV Nova is considered the most influential broadcaster in the country and lobbies more aggressively than any other. In the late 1990s, the station was enmeshed in an ownership dispute, which ended in 2003 when TV Nova's former investor was compensated for losing its investment in the country (see section 5.3).

Prima TV was awarded a regional broadcast licence in 1992. It started broadcasting in 1993 under the brand Premiéra TV. In 1996 Prima covered 55 per cent of Czech households. In 1997, the station's name changed to Prima TV. Its coverage reached about 94 per cent in 2005. Prima TV was also the object of some ownership disputes in the past. The station now enjoys an audience share of 22 per cent.

By the end of 2003, the main broadcasting regulatory authority, the RRTV, had registered 13 local television broadcasters with a regional footprint and 16 television stations with a local footprint. These included (until mid-2005, when they shut down their operations) two local television stations, TV Praha and TV Hradec Králové, operating with their own frequencies. Twelve other local stations share common frequencies with Prima TV, broadcasting within time windows. These shared broadcasting times have been the subject of a prolonged dispute between FTV Premiéra, holder of Prima TV's broadcast licence, and some regional broadcasters, namely Dakr and ZAK TV.

A new project to boost the development of local television has been launched by Regional Television Agency (RTA), a company run by a local businessman and media lobbyist, Jaroslav Berka, who is in the process of purchasing most of the local television stations and grouping them into RTA. Berka's aim is to have eight television studios in different regions of the Czech Republic and to create a network of regional television stations with three main programming pillars: news, news features and magazines. Part of the broadcasts of the planned network will be shared with national stations such as

Prima TV. Some of the regional stations which Berka is trying to buy have fed the programming of national commercial stations in the past. RTA also applied for a digital licence. Prima TV is also planning to build a network of regional stations.¹²¹

5.2 Services

Only minimal public service obligations are imposed on commercial broadcasters. According to the Broadcasting Act, broadcasters must provide the State authorities with the broadcasting time needed for important and urgent announcements serving the public interest. They must also provide open captions for people with hearing difficulties in at least 15 per cent of their output.¹²²

5.3 Ownership

After the fall of communism, the Government's main policy objective was to limit the role of the State as much as possible, and this also encompassed the mass media. Competition on the media market was seen as the best guarantee of news quality and objectivity.¹²³ This more-or-less liberal media policy shaped the outcome of media ownership throughout the past decade.

Foreign ownership is not limited. Any foreign company or citizen can invest in the media if it establishes a legal entity such as a company or organisation in the country. Foreign companies or nationals can own a broadcast licence as long as they establish a company in the Czech Republic (see section 3.2). There is no ceiling for the amount of shares foreign companies can own in broadcasters.

Like other industries, broadcasting is regulated by the Economic Competition Act, which forbids the abuse of a dominant position on the market. The act defines "dominant position" as having a share of 40 per cent of the market or over.¹²⁴ All mass media are considered a single market.

¹²¹ J. Potůček, "Východočeská televize Puls změnila majitele", ("East Bohemian television Puls changed owner"), available at http://potucek.blogspot.com/2004_12_01_potucek_archive.html (accessed 23 December 2004).

¹²² Broadcasting Act, art. 32(1)(2).

¹²³ "Programové prohlášení vlády ČR", ("Czech Government Manifesto"), in *Hospodářské noviny*, 23 July 1992.

¹²⁴ Article 10 of the Act on Protection of Economic Competition defines the dominant position in the following way: "One or more companies jointly are deemed to have a dominant position on the relevant market (joint dominance), if their market power enables them to behave to a significant extent independently of other companies or consumers". Act no. 143/2001 on the Protection of Economic Competition and on changes of other acts, *Sbírka zákonů*, part 58 of 27 April 2001.

Although leading commercial station TV Nova has a 45 per cent audience share and, according to local media analysts, receives some 65 per cent of television advertising spending, its dominant position has never been investigated by the Office for the Protection of Competition. The limit of 40 per cent established by the Economic Competition Act “serves only as an orientation point, because the evaluation of the dominant position proceeds according to many different criteria.”¹²⁵

5.3.1 TV Nova

Over the past decade, TV Nova became the most popular television station and the epitome of successful commercial television in a non-transparent business climate. For Czech intellectuals, however, the station is a symbol of cultural and moral decline.

TV Nova is currently back in the hands of U.S. investor CME, which launched the station in 1993, then lost it after its local partner broke the contract with the investor. The station was subsequently bought by the domestic financial group PPF, which resold it to CME in December 2004. When it entered the station in 2003, PPF settled TV Nova’s legal problems with CME and sacked the station’s controversial Director, Vladimír Železný, who was at the centre of dozens of protracted ownership and legal disputes and three international arbitrations.

TV Nova’s ownership situation has always been extremely intricate. Back in 1993, a group of five Czech intellectuals controlling a limited liability company called CET21 was awarded a broadcast licence to operate the first national commercial television station in the country. In its application for a broadcast licence, CET21 pledged to broadcast educational, high-quality news, commercial and entertainment programmes (see section 3.2). The company also promised to support domestic production and contribute to building a real competitive environment in the Czech media market. CET21 was backed financially by U.S. company CME where the majority shareholder was Ronald S. Lauder, the heir of the Estee Lauder cosmetics empire. Part of the initial investment came from Česká Spořitelna (Czech Savings Bank).

TV Nova started broadcasting in February 1994. In reality the station turned out to be very different from the pledges in the licence application. With a tabloid newscast, soap operas, game shows and American blockbusters, TV Nova gained an audience share of over 70 per cent in its first few years of broadcasting. The station started to turn a profit just a few months after its launch.

CME set up its own company in the country, ČNTS, which was TV Nova’s exclusive service provider. Importantly, however, although it controlled the flow of advertising

¹²⁵ Milan Šmíd, Report on Slovenia, in Brankica Petković (ed.), *Media markets in Southeast Europe and EU accession countries: Mapping patterns of media ownership and their effects on media freedom and pluralism*, Peace Institute and SEENPM, Ljubljana, Slovenia, 2004, available at http://www.mirovni-institut.si/media_ownership/pdf/slovenia.pdf (accessed 26 June 2015), p. 145, (hereafter, PI/SEENPM, Media Ownership Report).

on TV Nova and the station's profits, ČNTS never owned the station's broadcast licence, which was retained by CET21. This is the origin of the intricate ownership of TV Nova and of the ownership disputes over the station. Because CME could not gain majority shares in the licence-holding company, CET21, they decided to instead secure control of the licence indirectly, via TV Nova's former Director, Vladimír Železný. CME gave Železný money to control the majority stake in CET21 and asked him to sign a contract stating that, as Director, he would act in CME's favour.¹²⁶

The dispute between CME and Železný erupted in 1999 when CME's management started negotiations to merge with Swedish broadcasting giant SBS Broadcasting. Fearing that he would lose control and power when the two broadcasting mammoths merged, Železný cut his links with CME and stopped cooperating with the station's servicing organisation, ČNTS. Taking advantage of the station's complex ownership structure Železný then launched his own breakaway TV Nova, leaving CME without a licence. Consequently, SBS Broadcasting called off the deal. CME's Nasdaq-listed shares lost almost all their value and the company teetered on the brink of insolvency. Železný's station started to broadcast from a new location.

The RRTV refused to intervene as long as Železný held the broadcast licence (via his majority share in CET21).¹²⁷ CME initiated several lawsuits. The most important were three complaints in international arbitration courts against Vladimír Železný and the Czech Republic. During the four years of legal wrangling, Železný ceded financial control of TV Nova to MEF Holding, a domestic business group with a credit link to the controversial Czech Investment and Postal Bank (IPB), which collapsed in June 2000.

In 2002, when it was more or less clear that CME would win the case against the Czech Republic, Železný's position weakened. In March 2003, a London-based arbitration court ordered the Czech Government to compensate CME to the tune of \$353 million for its lost investment. In the summer of 2002, TV Nova and its companies had been the target of a hostile take-over bid from the Czech financial group PPF, which settled Železný's liabilities to CME in return for his shares in TV Nova's companies. PPF also bought the station's former service provider, ČNTS,

¹²⁶ "From the viewpoint of Czech law it [the contract] was all right, but from the viewpoint of international law dealing with the protection of investment, it definitely weakened the position of the Americans, because it made them very dependent on the will of one man." Interview with Václav Žák, 9 June 2004.

¹²⁷ "From the viewpoint of the current Broadcasting Act, the CET21 company is unambiguously the broadcasting operator. This company has full, indivisible and non-transferable responsibility over broadcasting. The current dispute between the broadcasting operator, CET21, and the service organization, ČNTS, is a commercial dispute. Only the competent commercial courts may issue decisions in this matter (and they are doing so at the present time). The Council is not competent to predict or prejudice their decision-making." RRTV, *Zpráva o stavu vysílání a činnosti rady ČR pro rozhlasové a televizní vysílání za období 1.1.1999 – 31.12.1999*, (Report on the state of broadcasting and the activity of the Czech Radio and Television Broadcasting Council over the period 1 January-31 December 1999), available (in English) at http://www.rrtv.cz/zprava_en/index.html (hereafter, RRTV, *Annual Report 1999*).

which was the subject of the litigation between CET21 and CME.¹²⁸ CME agreed not to compete in the Czech market for two years, but it also secured a first option on TV Nova if PPF decided to sell.

Finally, in December 2004 CME was indeed able to buy back TV Nova. On 14 December 2004, CME announced that, in a deal worth \$642 million (€535 million), it had purchased 85 per cent of PPF shares in TV Nova, representing 56 per cent of the TV Nova group. CME agreed to pay PPF \$529 million (€441 million) in cash and the rest in company stock, making PPF the second-largest shareholder in CME after Lauder.

5.3.2 Prima TV

Prima TV also experienced ownership uncertainty when its original investor, the Investment and Postal Bank (IPB) collapsed in June 2000 and the Czechoslovak Commercial Bank (ČSOB) took over its assets. At the time, the Broadcasting Council allowed GES Real Investment to buy two thirds of FTV Premiéra, TV Prima's licence holder. FTV Premiéra was fully owned by Domeana, itself fully-owned by GES Holding.

Before the collapse, IPB transferred its shares in FTV Premiéra to Domeana. However, ČSOB asked the Czech Economic Chamber to cancel the transfer, claiming that it was concluded under unfavourable terms for IPB. ČSOB complained at the time that the Council had given the green light to the GES Real Investment deal before the Chamber had come to a decision.¹²⁹ Representatives of Prima TV said ČSOB's complaint was not justified because the Chamber did not have the competence to cancel the transfer of shares. In the end, GES Holding, a company closely linked with IPB's management, became the undisputed owner after it settled an ownership dispute with ČSOB.¹³⁰

The press has often speculated on the close relationship between the two national commercial television stations, TV Nova and Prima TV. In 2001, for example, some Czech newspapers speculated that CME and Železný planned to merge with Prima TV to create a media empire.¹³¹ There was no direct evidence for this allegation. However, the two television stations have been cooperating in certain areas. For example, they use the same company, AQS, for acquiring programmes. Advertisers also claim that

¹²⁸ PI/SEENPM, *Media Ownership Report*, p. 157.

¹²⁹ M. Dragomir, "TV market soap opera to continue", in *Prague Business Journal*, 17 December 2001, p. 1.

¹³⁰ "In the years 1994–2000 the controversial Czech Investment and Postal Bank (IPB) was the main investor in TV Prima. When the Government put IPB under forced administration in June 2000, and IPB was sold to the Czechoslovak Trade Bank (ČSOB), GES Holding, a group with close ties to the management of IPB, managed to gain control over IPB's shares in TV Prima." PI/SEENPM, *Media Ownership Report 2003*, p. 158.

¹³¹ J. Unger and M. Jašminský, "Nova se měla spojit s Primou", ("Nova was supposed to merge with Prima"), in *MF Dnes*, 3 March, 2001, p. 1.

they jointly coordinate other activities, such as sales of advertising – especially after PPF gained its stake in TV Nova.

There have also been allegations in the past about the close connections between Prima TV and TV Nova in ownership matters.¹³² Representatives of both television stations have vehemently denied these allegations. However, advertising industry insiders interviewed for this report indicated that lately, each of the two stations has been employing “unique” sales strategies and have started to behave as genuine competitors. “[...] We can just guess how these media [television stations] are linked by common interests and do not ensure plurality of information,” said Hana Marvanová, a lawyer and former MP, who claims that she tried to push through important changes to the broadcasting legislation after the lost international arbitration related to TV Nova.¹³³

5.3.3 The print and radio sectors

Unlike the commercial television stations, both of which are in the hands of local owners, most of the print media outlets are foreign-owned. The largest investors in the media market include the German publishers Rheinisch-Bergische Verlagsgesellschaft, Passauer Neue Presse, Verlagsgruppe Handelsblatt and the Swiss publishing house Ringier. Out of the five fully-fledged national daily newspapers, *Právo* is the only one still owned by a Czech company. Although the print media are editorially independent, reporters feel pressure from owners and politicians. “This interference is mostly anecdotal and difficult to assess, as is the reportedly considerable influence of public relations and lobbying groups.”¹³⁴

The magazine market is dominated by women’s and lifestyle magazines. There are few political journals or news magazines. Czech intellectuals highly value the independent weekly *Respekt*, which is financed by Duke Karl Schwarzenberg, a Chancellor to former Czech President Václav Havel. *Respekt* has a circulation of around 17,000 copies. It suffers from a lack of advertising revenue, low sales and lacks profitability. Advertisers prefer more glossy news weeklies such as Ringier’s *Reflex*, which boasts a circulation of

¹³² According to Freedom House’s 2003 report: “there are signs that TV Nova and TV Prima might be colluding in programming and ownership matters. Their ownership structures are not transparent, but individuals in related industries have indicated that the two channels are interconnected. Furthermore, they do not compete directly with each other in broadcasting content.” Freedom House, *2003 Report on the Czech Republic*, p. 8.

¹³³ Interview with Hana Marvanová, lawyer and former MP for Freedom Union (US-DEU), Prague, 22 June 2004.

¹³⁴ Freedom House’s 2003 report gives the example of the country’s largest broadsheet daily, *MF Dnes*, that “continued its slide into infotainment in 2003, abandoning comprehensive news coverage to focus on dramatic stories, human interest features and TV-fuelled coverage of celebrities.” Freedom House, *2003 Report on the Czech Republic*, p. 9.

nearly 60,000, and the magazine *Týden*, with a circulation of over 60,000, owned by a Swiss-based Polish entrepreneur, Sebastian Pawlowski.¹³⁵

Overall, despite the absence of strict limits on media ownership, the Czech print media market has not experienced such levels of concentration that would jeopardise media freedom. The SEENPM and Peace Institute report on media ownership stated that,

vertical concentration can be detected in the print media, where the main newspaper publishers own printing plants and control the press distribution companies PNS and Mediaprint&Kappa Presegrosso. The horizontal concentration of media is still at the embryonic stage. However, it is slowly developing, and it cannot be ruled out that a menace to media pluralism will someday come from this direction.¹³⁶

The Czech radio market is fragmented. Three radio stations enjoy healthy audiences, with 10–12 per cent of the total radio audience in the country. These are the first channel of the public broadcaster, Czech Radio (Čro1-Radiožurnál) and two national commercial radio stations, Frekvence 1 and Radio Impuls. The rest of the audience is dispersed among 70 other private local stations. The most powerful player in the radio market is the French investor Lagardère Active Radio International SA, which runs the national station Frekvence 1, the radio network Evropa 2 and the media sales agency Radio Regie Music (RRM). The licensing policy of the RRTV is to maintain a diversity of local stations.¹³⁷

5.3.4 Cross ownership

The broadcast media in the Czech Republic are subject to restrictions on cross ownership. A company or individual is not allowed to hold more than one national radio or television station. A national channel is defined as a set of frequencies covering more than 70 per cent of the country's population.¹³⁸

Radio and television owners must inform the RRTV about any mergers involving their stations. Companies or individuals possessing “substantial interest” in two or more television or radio stations must also notify the Council. (Substantial influence is defined as at least 34 per cent of the voting shares.)

Czech law does not impose any cross ownership limits on broadcast and print media publishing. However, print media have not so far been interested in television or *vice*

¹³⁵ “Pawlowski, whose real-estate business in Prague needs political support, is an example of the new trend in media investing, in which entrepreneurs who come from other industries than the media are interested in having influential media.” PI/SEENPM, *Media Ownership Report*, p. 155.

¹³⁶ PI/SEENPM, *Media Ownership Report*, p. 142.

¹³⁷ PI/SEENPM, *Media Ownership Report*, p. 159.

¹³⁸ See the provision on securing the plurality of information in radio and television broadcasting in Part 6 of the Broadcasting Act.

versa. The television market seems to have stabilised for now. The most famous attempt at cross ownership was made in 2001, when the tabloid newspaper *Super* was launched. *Super* was owned by Epic-Holding, rumoured to be connected with TV Nova's general director at the time, Vladimír Železný. *Super* was also reported to be a political vehicle intended to support the Civic Democratic Party (ODS) before the 2002 elections. Advertisers expressed their fear of an unprecedented monopoly of the media market. *Super* folded in the summer of 2002 after ODS lost the elections, thereby lending weight to the view that it had a political agenda.¹³⁹

TV Prima's owner, GES Holding, has expanded in the television, radio and print business in the past three years. It bought into the local TV Galaxie and has ownership links with the radio network Radio Hey. It also owns three life-style magazines. Another example of cross ownership in the media is the alliance of Mafra, the publisher of mainstream daily *MF Dnes* and local radio station Classic FM. In April 2005, Mafra bought 80.92 per cent of the company Stanice O, which operates music television channel Óčko, transmitted via cable and satellite.¹⁴⁰

5.4 Funding

Advertising revenues are the main source of income for commercial broadcasters. In the first half of 2004, TV Nova had total pre-tax revenues of roughly CZK 5.5 billion (or approximately €180 million). In the same period, Prima TV's income reached CZK 1.9 billion (€62.2 million).

Czech law limits advertising on commercial television to 10 per cent of airtime. Czech TV competes openly for ratings and implicitly for advertising with TV Nova and TV Prima. However, advertising is limited to just one per cent of airtime on Czech TV

The two commercial broadcasters have used common strategies of advertising sales against the public broadcaster, for example by giving preferential treatment to companies that place their advertising campaigns exclusively on the commercial stations.¹⁴¹ Commercial broadcasters also use a joint strategy of very aggressive lobbying.

Some representatives of large advertising spenders have indicated that TV Nova abuses its market dominance by dictating tariffs and pressuring advertisers not to buy slots on

¹³⁹ D. Garkisch and S. Škývarová, " 'Zlý bulvár' Super dneškem skončil", ("Nasty tabloid' Super finished as of today"), in *Lidové noviny*, 17 July 2002, p. 4.

¹⁴⁰ Mafra, "Mediální skupina Mafra koupila hudební TV Óčko", ("Media group Mafra bought the music TV Óčko"), news release of 29 April 2005, available online (in Czech) at http://info.idnes.cz/predstaveni/novinky/mafra_koupila_TV_ocko050429.html (accessed 29 May 2005).

¹⁴¹ Interviews with representatives of advertisers and media buying agencies who did not want to be named; See also: M. Dragomir, "Big advertisers could follow P&G's example, dump Nova", in *Prague Business Journal*, 15 September 2003, p. 1.

public television.¹⁴² Because the national television market is very small, advertisers have to accept TV Nova's aggressive negotiating stance.

Media buyers and advertisers have expressed serious concerns about the commercial networks' quasi monopoly, as well as the concentration of power in the hands of commercial broadcasters. They point out the lack of genuine competition and the relatively small size of the total advertising market.

This has led some media observers to argue that public broadcasters should be allowed to sell more advertising because the advertisers have a high interest in Czech TV's audience. The one per cent limit on advertising was imposed on Czech TV in the mid-1990s to help commercial broadcasters. However, many media observers believe that these broadcasters no longer need such protection.

In reaction to the proposal of the Senate in June 2004, to further reduce the time for advertising on Czech TV (see section 4.3), the World Federation of Advertisers (WFA) – which represents the interests of global advertisers in the Czech Republic – warned of the potential monopolisation of the television market by commercial broadcasters.¹⁴³

As an example of this danger, the Czech media publicised the dispute between the biggest domestic advertiser, Procter & Gamble (P&G), and TV Nova. In 2003, P&G decided to stop buying advertising on TV Nova, claiming that the station was abusing its dominant position on the market and was dictating advertising fees. However, TV Nova declined to lower its advertising tariff, for fear that this would encourage other clients to do likewise. Sources in the advertising industry said that TV Nova was also pressuring advertisers to spend their entire budgets on TV Nova or risk losing their access to the country's most popular station. P&G was the first advertiser to reject TV Nova's conditions and take its custom to Czech TV. P&G spends approximately CZK 900 million (€60 million) on advertising each year,¹⁴⁴ of which some 90 per cent is spent on television.¹⁴⁵

On the other hand, TV Nova's representatives, especially during the reign of Vladimír Železný, have spoken out strongly against competitive forces as well as digitalisation. They argued that an increase in the number of television channels would lead to the fragmentation of the market and result in poor quality broadcasting, as a small market like the Czech Republic cannot support too many stations.

¹⁴² Interviews with representatives of large advertising spenders who did not want to be named.

¹⁴³ The Voice of Advertisers Worldwide, *Advertisers defeat proposals to limit advertising in the Czech Republic*, 29 July 2004, available at http://www.wfanet.org/news/article_detail.asp?Lib_ID=1326 (accessed 1 September 2004)

¹⁴⁴ The exchange rate used in this report is €1 = CZK 30.

¹⁴⁵ Czech News Agency (ČTK), "Procter & Gamble does not reach agreement with TV Nova about Advertising", 5 September 2003, also available at <http://archive.ceska-media.cz/article.html?nw=12329&nw200309> (accessed 5 September 2004).

Digitalisation is eagerly anticipated by companies seeking to enter the broadcast market and by the advertising industry – both view digitalisation as a solution to the concentration of power on the Czech television market. Some advertisers have called for the establishment of another commercial television network to compete with TV Nova. Others say the solution is not so simple because there is no guarantee that a new channel would attract a robust audience.

So far, Czech TV has been the only defence against the dominance of the two commercial television stations on the market. However, big changes in the television and advertising markets may occur if the Civic Democratic Party (ODS) fulfils current expectations by winning the next elections, due in 2006. In opposition, the party had publicly called for the complete elimination of advertising on public Czech TV and the privatisation of one of the public television channels.¹⁴⁶

5.5 Programme framework

The national commercial television stations use the same editorial hierarchy for their news programming. A desk editor, working under the editor-in-chief, is responsible for news content on any given day. There is no set of written internal rules telling reporters and editors how to provide accurate and impartial information.

TV Nova does not require its staff to obey any internal set of editorial rules. Its journalists and editors work under general legal provisions such as the Labour Code and the Broadcasting Act. Basic journalistic guidelines do exist, but they are implemented by word of mouth and have at times been “more flexible”, according to the former editor-in-chief of TV Nova’s News Department, Pavel Zuna.¹⁴⁷

Prima TV recently adopted a formal, very basic code of conduct, which defines basic journalistic concepts such as impartiality and bias in reporting, and conflict of interest. Journalists are barred from active engagement in any political party, and may not work for the Government or “important” industries. Reporters are also obliged to inform senior staff if they are exposed to “provable” pressures by political, economical or other interest groups. The code summarises the most important ethical principles in eight points. Journalists are asked, encouraged and recommended to ask themselves eight questions during their reporting work, namely whether they:

- trust the facts that they want to publicise;
- have checked facts with at least two independent sources;

¹⁴⁶ P. Žantovský, “Topolánek: Zrušil bych mediální rady. Interview s předsedou ODS Mirkem Topolánkem”, (“Topolánek: I would cancel the media councils, interview with the president of ODS, Mirek Topolánek”), published on www.ceskamedia.cz, 24 March 2005, available at http://archive.ceskamedia.cz/article.html?id=144881_hp_M&qqqq=Mirek%20topolánek%20Česká%20televize (accessed 29 May 2005).

¹⁴⁷ Interview with Pavel Zuna, 26 June 2004.

- have cited sources in context;
- have justified the use of anonymous sources;
- are sure no one is insulted or that no member of a minority, race, culture or nation is stereotyped;
- present the names and position of people they report about correctly;
- use correct dates and timeline; and
- have fixed a mistake as soon as possible. Anyone who points out mistakes must be carefully heard.¹⁴⁸

5.5.1 Programme guidelines

Programme obligations are usually specified in the licensing conditions. However, television stations can easily change or adjust these (see section 3.2).

Like the public broadcaster, the commercial television stations are also obliged to observe some basic rights and duties in their programming, as stated in the Broadcasting Act.¹⁴⁹ These duties include responsibility for programme content, avoiding broadcasting programmes which might seriously affect the physical, mental or moral development of minors – in particular pornography and gross gratuitous violence – and avoiding showing people dying or exposed to torture, except in cases where there is a serious justification for doing so.

The RRTV is in charge of monitoring balance and impartiality in the output of all broadcasters. The aim of this monitoring, especially of news and political programmes, is to prevent “unilateral preference of a certain political party or movement”.¹⁵⁰ In its latest report, the RRTV concluded that in the last quarter of 2003 all national television broadcasters granted all political parties and movements represented in the Chamber of Deputies equal access.

Ever since its launch, TV Nova has broadcast U.S. series and films, and entertainment shows produced in-house, engaging mostly mainstream entertainers and singers. An important part of its programming has been represented by domestic films and quiz shows. For many years in the late 1990s, one of the TV Nova’s most popular shows was the weather forecast presented by women, and sometimes men, getting undressed during the programme. Lately, TV Nova changed its tabloid approach somewhat, especially in its newscasts. TV Nova’s primetime news programme enjoys an audience share of about 70 per cent, which is still the station’s highest rating. The high share the newscast attracts is not necessarily because the station’s news items are more trusted,

¹⁴⁸ *Zpravodajský deník, (News Diary)*, Prima TV internal document.

¹⁴⁹ Broadcasting Act, Part 5.

¹⁵⁰ RRTV, *Annual Report 2003*, p. 56.

but because they present reports in a more sensational, dynamic and entertaining manner.

In the past two years, Prima TV has built on a profile of a family channel. Its most popular programmes are those focused on women, such as soap operas or talk shows dealing with women's issues. The station has been also trying in the past years to beef up its male audience by airing, for example, more sports.¹⁵¹ The station is known for featuring sitcoms and hour-long dramas in the afternoons, such as *Melrose Place* or *Commissar Rex*, and knowledge quiz shows. Prima TV's main newscast starts at 19.00 and is the first and shortest news programme of all the three national Czech stations. Prima TV's weekend programming is a combination of sports (Formula One racing, football matches), entertainment shows and dramas. Among the most successful primetime programmes are entertainment shows such as *Nikdo není dokonalý* ("Nobody's perfect") and the Czech soap opera *Rodinná pouta* ("Family ties"), watched on average by 1.8 millions viewers. Both are produced by Prima TV.

In 2004, Czech commercial television stations began to invest in more original productions of soap operas. For example, TV Nova invested generously in the production of the drama series *Pojišťovna štěstí* ("Insurance House of Happiness"), one episode of which cost some CZK 6 million (almost €200,000) to produce.

5.5.2 Quotas

No obligations for regional programming or diversity are imposed on commercial broadcasters, except for the quotas specified in the TWF Directive (see section 6).

5.6 Editorial standards

In general, commercial television owners do not interfere directly with editorial content and journalists try to be objective and impartial in their reporting. However, commercial broadcasters air numerous biased news reports. This is not done deliberately, but is most often the result of journalists' lack of experience and expertise. TV Nova's strategy is to employ people without journalistic experience – people who have not been "spoiled" by common stereotypes and experience from other media – and to train them in-house. However, although these young, enthusiastic people bring dynamism and fresh ideas to the station, politicians and businessmen also often find it easier to manipulate them.

Martin Ondráček, the current editor-in-chief of TV Nova's News Department states that: "In our case, audience share is the only benchmark of success and quality."¹⁵² The

¹⁵¹ Prima TV, written comments submitted to EUMAP, 7 March 2005.

¹⁵² I. Jemelka, "Rozhovor s Martinem Ondráčkem", ("Interview with Martin Ondráček"), 17 September 2003, available at <http://archive.ceska-media.cz/article.html?gs=2384&gs200309> (accessed 20 July 2004).

Department's former editor-in-chief, Pavel Zuna (now head of TV Nova's programming) said there is no need for codes of ethics or internal codes of conduct because the basic rules of journalistic ethics are embedded in the station's journalistic culture: "Our newscast is a commercial product; that is our advantage. If the news was substantially manipulated, the viewer would recognise it and could switch to another programme. That is the advantage of commercial television."¹⁵³ The newscasts of all national television stations run almost simultaneously. TV Nova's main news programme, *Televizní noviny*, starts at 19.30 and ends at 19.55, overlapping with Czech TV's newscast, *Události*, which starts at 19.15 and ends at 19.55.

By contrast, Prima TV's General Director Martin Dvořák observes that: "the measure of success cannot only be the audience share". He added that it is also important how the newscast is viewed by the general public from the point of credibility and balance.

When we create *Zpravodajský deník* [Prima TV's main newscast] we take into consideration many factors such as truthfulness, credibility, objectivity, accuracy, and not only to have the biggest audience share. We, of course, consider the audience share as the most important measure of success [in television]. But in the case of news, it is not the only one.¹⁵⁴

TV Nova's news bulletin starts with a news feature covering broader issues from a "human interest angle", while the most important news story comes only second or third. TV Nova's news producer explains their news programme comes last in the evening, so they have to look for new angles on the news they broadcast in order not to repeat what has been said already on the other stations.

Zuna has worked for both public and commercial television. He started his television career as a Czech TV reporter and anchor. He handpicked a new team of reporters for TV Nova after Vladimír Železný broke with CME. In his opinion, the only effective tool to ensure editorial independence is to "put your professional integrity above any other interest". This, he has said, was his main criterion when recruiting reporters back in 1999.

TV Nova introduced investigative television reporting to Czech viewers. Today it runs programmes such as *Na vlastní oči* ("With one's own eyes"), a 35-minute weekly investigative programme, which uses its own editorial department to cover political and economic issues, but also trivia such as mystery or human interest stories. The programme has featured a series of solid investigative reports uncovering illegal sales of child pornography, and corruption at the Czech Ministry of Foreign Affairs.

¹⁵³ Interview with Pavel Zuna, 26 June 2004.

¹⁵⁴ Prima TV, written comments submitted to EUMAP, 7 March 2005.

6. EUROPEAN REGULATION

Czech legislation is largely in line with EU audiovisual policy. The EU “Television without Frontiers” Directive (TWF Directive) was transposed into national legislation in 2001. In June 2004, the Chamber of Deputies approved some formal amendments to the Broadcasting Act to ensure full alignment with EU legislation. These included definitions of advertising, hidden advertising, tele-shopping and sponsorship.¹⁵⁵

In its 2003 progress report on the pre-accession countries, the European Commission characterised the compliance of the Czech Republic’s broadcasting legislation with the EU norms as “satisfactory”. However, the Commission assessed broadcasting regulation as “controversial” and stated that the main challenge for the Council for Radio and Television Broadcasting (RRTV) was to establish a stable, transparent and effective framework of regulation.¹⁵⁶

In 2001, within the framework of harmonising media legislation with EU legislation (the TWF Directive) and Council of Europe instruments (the European Convention on Transfrontier Television¹⁵⁷), the Government also included in the Broadcasting Act a provision on promoting European production.¹⁵⁸

As shown below in Table 6, all national television stations have implemented the TWF quotas on European works in television broadcasting.

Table 6. Share of European works in television broadcasts (2003)

Channel	Total broadcasts (hours)	European works	
		(hours)	Share of total (per cent)
TV Nova	6,744	3,424	50.8
Prima TV	5,521	3,351	60.7
ČT1	6,697	5,475	81.8
ČT2	5,445	4,836	88.8

Source: RRTV¹⁵⁹

¹⁵⁵ Broadcasting Act, art. 48-49.

¹⁵⁶ The Budapest Observatory, *Extracts from the progress reports on the pre-accession countries adopted by the Commission on 5 November 2003*, available at <http://www.budobs.org/eu-chapter2003.htm> (accessed 10 May 2005).

¹⁵⁷ Council of Europe, European Convention on Transfrontier Television, European Treaty Series no. 132, Strasbourg, 5 May 1989 (text amended according to the provisions of the Protocol (ETS no. 171) which entered into force on 1 March 2002).

¹⁵⁸ Broadcasting Act, art. 46-47.

¹⁵⁹ RRTV, *Annual Report 2003*, p. 89.

In general, European programmes have brought significant benefits to broadcasters. They are cheaper than U.S. television shows and movies, draw large audiences and therefore attract advertisers. European production on Czech television is represented mostly by German serials. One of the popular programmes on Prima TV is the German detective series, *Kommissar Rex*. Due to their success, European productions represented more than 60 per cent of Prima TV's broadcasting time in 2004.

TV Nova met the quota of European production chiefly by airing Czech programmes in primetime, while broadcasting non-Czech, European programmes after midnight.¹⁶⁰ One of the most successful programmes ever aired on TV Nova was a European production, the show *Česko hledá Superstar* ("The Czech Republic looks for a Superstar"), which is the Czech version of the British television contest *Pop Idol*. The show's finale attracted a 65 per cent audience share.

Czech TV also complies with European quotas. It has broadcast European movies, shows and serials, but also programmes aimed at smaller audiences, such as documentaries.

The Broadcasting Act also contains the obligation to broadcast events of major importance for society, as stated in the TWF Directive.¹⁶¹ The act states that a television broadcaster may not exercise any exclusive rights to broadcast an event of major importance to society if it does not cover a "substantial proportion" of the public, which must have the option to watch that event live or recorded, in non-encrypted form and without any surcharge. In 2001, the Ministry of Culture drew up the *List of Events of Major Importance for Society*, in consultation with the Broadcasting Council. The list includes the Summer and Winter Olympic Games, the European and World football Championships (all national team matches, semi-finals and finals), the Ice Hockey World Championship (ditto), and the World Athletics Championship.¹⁶²

7. THE IMPACT OF NEW TECHNOLOGIES AND SERVICES

The Government has defined priorities in the field of new technologies and services, but the implementation of most of these priorities has fallen behind schedule. The digitalisation of television broadcasting is eagerly awaited, but the debate over its future regulation is dominated by disagreement and disputes. All questions related to the future of new technologies and services in the field of broadcasting were expected to be resolved by the new Act on Electronic Communications, which was adopted in February 2005 and entered into force in May 2005. However, although the new act

¹⁶⁰ Interview with Pavel Zuna, 26 June 2004.

¹⁶¹ Broadcasting Act, art. 33.

¹⁶² Decree no. 233/2001 of the Ministry of Culture, by means of which the *List of Events of Significant Social Importance* is published, *Sbirka zákonů*, part 87 of 4 July 2001.

was expected to consolidate all legislation dealing with communications, finally it did not include broadcasting legislation.

7.1 New media

In 2004, the Government adopted a new strategy on modern information and communication technologies for the period up to 2006. The Government's objectives in this field are stated in the Ministry of Informatics' *State Information and Communications Policy e-Czech 2006*¹⁶³ (hereafter, *e-Czech 2006*). This document elaborates the goals and requirements contained in the European Commission's updated *e-Europe 2005* action plan¹⁶⁴ and their application in the Czech Republic.

The Government's main priorities, as stated in the *e-Czech 2006* document, are building modern and secure public administration services available online; continuing the liberalisation of the electronic communications sector; and supporting the development of high-speed Internet access and ensuring its affordability for all groups of the population. Other main priorities are continuing the development of information society legislation; supporting the increase of computer literacy of the population; and supporting the development of e-business, by creating suitable, technologically neutral, conditions.

The Government's action plan to achieve these goals includes the following deadlines: defining the rules for moving from analogue to digital broadcasting (by end 2004); equipping all public administration institutions with high-speed Internet access (by end 2006); and enabling reliable and secure interconnection of public administration bodies and connecting all educational institutions to the Internet (by end 2006). The action plan also includes introducing preferential taxation of home computers and home Internet access; and making services such as filing of income tax, application for identification documents, application for social benefits, and services related to public healthcare available via the Public Administration Portal (by 2006).

In general, the Government is behind schedule in approaching these goals. For example, one of the priorities of the Ministry of Informatics in 2003 was to finalise the bill on Electronic Communications, which was intended to transpose the new European regulatory framework¹⁶⁵ and speed up the liberalisation of the communication services market. However, the bill was only approved by the

¹⁶³ Ministry of Informatics, *State Information and Communications Policy e-Czech 2006*, available at <http://www.micr.cz/scripts/detail.php?id=1288> (accessed 13 September 2004).

¹⁶⁴ European Commission, *e-Europe 2005: An information society for all, An Action Plan to be presented in view of Sevilla European Council, 21/22 June 2002*, Brussels, 28 May 2002, COM(2002) 263 final.

¹⁶⁵ Z. Duspiva, *Zákon o elektronických komunikacích – ČR a EU I, (Act on electronic communications – CR and EU I)*, 7 May 2004, published on <http://www.ceska-media.cz> (accessed 30 July 2004).

Government in September 2004, and adopted by Parliament in February 2005. The Act on Electronic Communications entered into force in May 2005.¹⁶⁶

The Act on Electronic Communications was originally intended to consolidate all existing legislation in the field of broadcasting and telecommunications, including incorporating the provisions contained in the Broadcasting Act and the Telecommunications Act.¹⁶⁷ In addition, it was intended to redefine the competencies in regulating telecommunications and radio and television broadcasting, and also to contain some supplementary provisions defining the rules and mechanisms for the switch to digital broadcasting. The new Electronic Communications Act of 2005 does replace the Telecommunication Act 2000 and other acts. However, in the end, the text of the Broadcasting Act and the new provisions on digitalisation were removed from the final version of the Electronic Communications Act, which was approved without them.¹⁶⁸

The Broadcasting Act therefore remains valid. It is expected that in autumn 2005, Parliament will discuss amendments to the Broadcasting Act, related to the transition from analogue to digital broadcasting. The Electronic Communications Act contains only minimal provisions on digitalisation, such as the automatic granting of licences for four digital channels to the public service broadcaster, Czech TV.

7.2 Market conditions

Internet use has developed fast in recent years. Some 61 per cent of the population use the Internet from home and 45 per cent from their workplace, according to the latest (2003) survey by the Czech Statistical Office. Approximately 12 per cent of citizens use the Internet from home every day. Most of the Internet users – 82 per cent – use a fixed-line Internet connection. High-speed connections are not yet common; only 10 per cent of users have one. Some 62 per cent of all households with a high-speed internet connection use a cable television connection, while only 3 per cent use ADSL or other DSL technologies.¹⁶⁹

Domestic telephone operator Český Telecom offers high-speed Internet connections (ADSL) through a fixed line, attracting 101,000 customers by the end of 2004. About 60,000 households use high-speed Internet offered through cable television, by the cable

¹⁶⁶ Act on Electronic Communications 2005. The act was drafted by the Ministry of Informatics, after consultation with representatives of the RRTV and the Czech Telecommunication Office (*Český Telekomunikační Úřad – ČTÚ*), which administers the country's broadcasting frequencies.

¹⁶⁷ Act no. 151/2000 on Telecommunications and the amendment of other laws, *Sbírka zákonů*, part 47, 13 June 2000.

¹⁶⁸ In 2005, Parliament had aimed to introduce provisions on the regulation of digitalisation in the Broadcasting Act, and then to incorporate this amended act into the new Electronic Communications Act. However, However, Parliament finally decided not to amend the Broadcasting Act and therefore not to incorporate it in the Electronic Communications Act.

¹⁶⁹ Information from the website of the Czech Statistical Office (www.csu.cz).

operators UPC and Karneval.¹⁷⁰ Competition in the high-speed Internet market has increased with the entry into the market of mobile phone operators. The average monthly fee for unlimited use of the Internet through a mobile phone connection is about CZK 1,000 (€35).¹⁷¹ Mobile phone operator Eurotel launched a high-speed Internet connection in 2004. Its main competitor, T-Mobile, launched in November 2004 its own high-speed Internet connection, based on EDGE (Enhanced Data Rates for Global Evolution). The third mobile phone operator, Oskar Mobil, also started offering Internet access via a mobile phone connection in March 2005. The Ministry of Informatics predicts that the number of subscribers will grow “rapidly and continuously.” The backbone networks are usually equipped with relatively new fibre-optic cables.¹⁷²

Table 7. Selected high-speed Internet providers

	Name of the service	Speed (kbit/sec)	Limit for data transfer	Monthly price (€)
České radiokomunikace (Čra)	Bluetone	512/128	none	53.3
Český Telecom	Broadband Profi	512/128	none	114
COL	Volny	512/128	1 GB	21
Eurotel	Nonstop	approx. 50	none	25
UPC	Chello	768/128	5 GB	39.5

Source: Czech News Agency (ČTK)¹⁷³

In 2003, the Czech cable industry enjoyed sustained growth. By the end of the year, there were over 900,000 subscribers, with the leading cable operator UPC boasting nearly 400,000 customers and its closest competitor, Karneval, some 270,000. Karneval was formed through the merger of the cable companies TES Media and Intercable CZ. By the autumn of 2004, the number of cable-Internet homes stood at around 30,000, almost double the number at the beginning of the year.

Cable companies offer on average 30 television channels. The monthly fee ranges between CZK 400 and CZK 1,000 (€13 and €32), depending on the number of channels offered. Cable has not been a popular product in the Czech Republic, first of all because it is not cheap. Moreover, citizens expect television to be free,

¹⁷⁰ Czech News Agency (ČTK), “Karneval zvýšil rychlost kabelového internetu”, (“Karneval increased the speed of cable Internet”), *Právo*, 10 January 2005, p. 17.

¹⁷¹ Czech News Agency (ČTK), “Rychlý internet má osmdesát tisíc Čechů”, (“High speed Internet is used by eighty thousand Czechs”), in *MF Dnes* daily, 2 August 2004, p. 1.

¹⁷² Information from the website of the Ministry of Informatics (www.micr.cz)

¹⁷³ Czech News Agency (ČTK), “České radiokomunikace nabídl rychlý internet na pronajatých linkách od Telecomu”, (“Czech Radiocommunications offered high speed Internet on the lines leased from Telecom”), 6 June 2004. Prices are fixed monthly fees and include VAT tax.

People will spend more if they are earning more. We have regions in the Czech Republic where people only have enough money for basic survival, so they will not spend on luxurious items, and cable television is in fact a luxury. That's why I think their behaviour will change only when the overall economy is doing better.¹⁷⁴

Czech TV currently provides online broadcasting at its website (www.czech-tv.cz). Its programmes are also distributed through satellite in digital format MPEG-2 via the Eurobird1 satellite. The commercial television stations do not yet broadcast via the Internet.

7.3 Digital television

The process of digitalisation began in 2000 when the companies Czech Digital Group and České Radiokomunikace were awarded broadcasting licences for experimental digital broadcasting to test the feasibility of digital broadcasting in the Czech Republic. In July 2001, the Government released a draft proposal for making the transition from analogue broadcasting to digital radio and television broadcasting by 2010. A year later, the Government issued the policy document *Concept of Transition to Digital Radio and Television Broadcasting*.¹⁷⁵ This document was updated several times and, in April 2004, the Cabinet finally issued a resolution giving the green light to the launch of regular digital broadcasting sometime between 2004 and 2006.¹⁷⁶

According to the Government's strategy, the transitional period between 2004 and 2006 will have both digital and analogue television broadcasting. The plan for the actual implementation of digital broadcasting, *The Concept of Development of Digital Broadcasting*, is currently being prepared by the Ministry of Informatics, in cooperation with the Ministry of Culture and the Czech Telecommunication Office (ČTÚ), and is likely to be submitted to the Government in 2005.

Czech TV has announced its intention to operate a public service digital telecommunication network, with up to four public service television channels. The station has already taken part in experimental terrestrial digital broadcasting; in 2003, the signals of its two channels were transmitted in full digital format in Prague and its surrounding area. In May 2005, in preparation for the digital TV market, Czech TV launched an all-news television channel, ČT24, which is transmitted via cable, satellite and the Internet.

¹⁷⁴ M. Dragomir, "Fine Tuning", interview with Zdeněk Vaniček, president of the Association of Cable Communications, in *Prague Business Journal*, 10 December 2001.

¹⁷⁵ Czech Government, *Concept of Transition to Digital Radio and Television Broadcasting*.

¹⁷⁶ Government Resolution no. 395 of 28 April 2004, on the Launch of Digital Television Broadcasting, available (in Czech) at http://www.micr.cz/files/298/Koncepce_pro_roky_2004-2006_uprava.pdf (accessed 1 June 2005).

Digitalisation has given common cause to the three national television stations – otherwise fierce competitors. Czech TV, TV Nova and Prima TV agreed on a strategy to coordinate their progress in digitalisation and make joint recommendations on amending or adopting broadcasting legislation.¹⁷⁷ Representatives of commercial television stations said that they met to discuss the future of digitalisation in an attempt to advise the State on setting up a strategy for digitalisation, in order to avoid errors that other states in Europe have made in the process of launching digital broadcasting. They added that the interests of each of the stations are completely different.¹⁷⁸

Media observers believe that digitalisation will prevent the concentration of power in the Czech television market. The advertising industry is especially enthusiastic for digitalisation, which is expected to increase competition in the television market. However, there is the danger that existing stations will control all the digital multiplexes in the future, hampering competition.

The two parties that are most engaged in the debate on digitalisation are the two main broadcasting regulators: the RRTV, which grants broadcast licences, and the ČTÚ, which manages the frequency spectrum. Both institutions have been wrestling to enlarge their competences in the digitalisation process. The ČTÚ is likely to become responsible for operating the digital multiplexes, which falls exclusively within the sphere of telecommunication, while the RRTV will be entrusted with content regulation.

However, the two institutions have already clashed over some issues relating to digitalisation. In particular, current legislation leaves room for argument over the procedures for, and competencies over, licensing digital broadcasting. The new Act on Electronic Communications was expected to solve this problem. The act was originally intended to include the provisions of the Broadcasting Act 2001.¹⁷⁹ However, as it was finally adopted without the provisions of the Broadcasting Act, the new act fails to clearly define the respective competencies of the two regulatory bodies.

In August 2004, the ČTÚ awarded licences for the operation of terrestrial digital television stations to České Radiokomunikace, Český Telecom and Czech Digital Group, without consulting the RRTV.¹⁸⁰ In the meantime, the RRTV had also started the process of handing out digital television licences, announcing a tender for digital

¹⁷⁷ “Novu, Primu i ČT spojila digitalizace”, (“Digitalisation put together Nova, Prima and C[zech] T[elevision]”), *Právo*, 25 May 2004, p. 6.

¹⁷⁸ Prima TV, written comments submitted to EUMAP on 7 March 2005; Written comments on this report in its draft form, submitted to EUMAP by Milan Šmíd on 1 December 2004.

¹⁷⁹ Interview with David Stádník, president of the Czech Telecommunication Office, BBC Czech Section, 12 May 2004, available at <http://www.bbc.co.uk/czech/interview/stadnik.htm> (accessed 13 September 2004).

¹⁸⁰ “O právo udělit licenci se přou dva státní kohouti”, (“Two roosters are fighting over the right to award the licence”), in *MF Dnes*, 3 August 2004, p. 6.

licences back in November 2004. By the end of 2004, it had received 42 project proposals, from 33 applicants, for digital multiplexes B and C.¹⁸¹

In mid-February 2005, the RRTV decided to postpone the tender until the summer of 2005. It made this decision reportedly under the pressure of MPs, who said that there was no legal foundation for the launch of digitalisation and that digital licences should be awarded only after a new amendment of the Broadcasting Act of 2001 had entered into force.¹⁸²

The proposed amendments to the Broadcasting Act – which RRTV members expect to be adopted by September 2005¹⁸³ – are intended to establish the legal basis for digitalisation. The draft new act is expected to state the number of digital multiplexes in the country; guarantee national stations now broadcasting terrestrially a digital licence; and guarantee the public broadcaster two digital channels.

Representatives of the RRTV said that the existing Broadcasting Act is a sufficient legal basis for the launch of digital broadcasting. The whole process is surrounded by confusion and controversy.

Besides that among professionals and people working in the media sector, there has been no real public debate on television digitalisation. The media has reported sporadically on the issue, but there is no sustained public debate.

7.4 Funding

There is no clear plan for funding the digitalisation of broadcasting. To be able to receive the digital signal, viewers will need to purchase new equipment – either a new digital television set, which is still an expensive product, or a set-top box that can be connected to an ordinary analogue television set. Some media critics argue that digitalisation will fail unless the Government subsidises new digital equipment from the beginning. However, the Government has already announced that it will not consider granting direct financial support for purchasing digital equipment.

According to the Act on Electronic Communications, Czech Television will be awarded digital licences for a four-channel multiplex. There is no separate budget for the digitalisation of public service broadcasting.

¹⁸¹ The digital spectrum in the Czech Republic has been divided into three multiplexes – A, B and C – operated by the companies České radiokomunikace, Czech Digital Group and Český Telecom, respectively. Multiplex A, hosting four channels, is the most attractive, as its frequencies cover 70 per cent of the country's territory. Multiplexes B and C together accommodate 12 channels.

¹⁸² Interviews with employees of the RRTV Office, who did not want to be named, 15 March 2005.

¹⁸³ Interviews with employees of the RRTV Office, who did not want to be named, 15 March 2005.

8. CONCLUSIONS

Television in the Czech Republic confronts three main challenges: inadequate regulation resulting in ownership disputes, lack of competition, and the uncertainty hanging over the future of public service broadcasting.

Problems over regulating the broadcasting market stem mostly from the vagueness of broadcasting legislation and the power that the Chamber of Deputies holds over the national regulator of electronic media, the RRTV – in particular with respect to the nomination of its members. Political nomination by one institution has even been damaging for the reputation of the Czech Republic abroad. In the dispute over commercial TV Nova, the RRTV was viewed as protecting the interests of commercial broadcasters and of the minority cabinet at the time. Its faulty performance and behaviour were considered the main reason why the Czech Republic lost an international arbitration and paid hundreds of millions of dollars in damages.

However, not even this international scandal was a strong enough motivation to change the broadcasting legislation to create conditions for a strong, independent regulatory body that would be respected by broadcasters and work to build a transparent, competitive television market.

Although in line with European standards, Czech broadcasting legislation is not a strong tool for regulation. Candidacy for EU membership, followed in 2004 by accession, has not changed much in the field of broadcasting regulation. The EU legal framework had a significant influence on the provisions in the Act on Electronic Communications, which entered into force in May 2005.

The central challenges to the health of the broadcasting sector are the creation of a competitive television market and the reform of public service broadcasting to ensure its survival. The public service broadcaster remains the only serious rival of commercial broadcasters Prima TV and, especially, TV Nova. A healthy public broadcaster, capable of offering a qualitative alternative to commercial broadcasting, needs legislation that would ensure stable and adequate funding.

Another challenge concerns the lack of transparency of media ownership. Deficient regulation has resulted in non-transparent ownership structures of commercial broadcasters and costly international arbitration. Czech broadcasting law is tailored to the needs of the big commercial broadcasters. There is an absolute lack of control over the connections between the ownership of the different broadcasters, which makes media ownership non-transparent.

Television stations in the Czech Republic can be generally described as free and independent. There have been signs of negative influence of economic pressure jeopardising the independence of the television sector. Some experts also point to the phenomenon of “mediacracy”, signifying the politicians’ dependence on the media. Print media have been more efficient in revealing cases of political corruption. Most of

the recent domestic political scandals were exposed first by the print media. Television stations do not contribute to the refinement of the political environment by providing high-quality information.

9. RECOMMENDATIONS

9.1 Media policy

Digitalisation

1. The Government should initiate a public debate on digitalisation policy.
2. In Government policy on digitalisation, public service broadcasting should be retained under certain circumstances.

Public consultation

3. The Government should develop and implement policy to set up new mechanisms of supervision of broadcasting by the public.

9.2 Regulatory authorities

Independence

4. The Government should put forward legislative changes to increase the independence, sanctioning power and effectiveness of the Council for Radio and Television Broadcasting (RRTV).
5. The Government should initiate a public debate, involving media experts and NGOs, on the issue of nomination of the members of the Council for Radio and Television Broadcasting (RRTV), and should initiate legislative changes to reform the RRTV so that its membership ceases to reflect the distribution of power in the Chamber of Deputies. This reform should ensure a broad social and professional representation.
6. The Government should propose legislative changes to ensure that the Council for Radio and Television Broadcasting (RRTV) has a stable and long-term source of financing. This funding should be sufficient to secure the Council's independence and should not be used by the Government as an instrument to exert influence over the activities of the Council.

Media diversity

7. The Government should propose legislative changes to entitle and oblige the Council for Radio and Television Broadcasting (RRTV) to ensure transparency of ownership structures of the holders of broadcast licences.

Regional and local broadcasters

8. The Council for Radio and Television Broadcasting (RRTV) should develop a strategy for encouraging the development of regional and local television stations.

Media diversity

9. The Government should initiate changes in legislation to entitle the Council for Radio and Television Broadcasting (RRTV) to monitor all tiers of ownership in companies owning broadcasters.

Public consultation

10. The Council for Radio and Television Broadcasting (RRTV) should support the formation of an association of viewers, and oblige television stations to allot them broadcasting time to express their views.

9.3 Public television (Czech TV)*Independence*

11. The Government should initiate a public debate on the issue of nomination of the members of the Czech TV Council and Czech Radio Council.
12. The Government and Parliament should ensure the status of Czech TV as an independent public service corporation, by abolishing the Chamber of Deputies' control over the station's Council and management.

Funding

13. The Government should initiate legislation that would allow Czech TV to carry advertising until the switch over to digitalisation, in order to maintain a certain degree of competitiveness in the television market.
14. The Government should propose changes of legislation to regularly raise the TV and radio licence fee in line with the rate of inflation or the retail price index.

Professional ethics

15. The Government should ensure that the Czech TV Code, especially the part concerning editorial activity, is drafted and agreed upon by the editorial staff, rather than approved by Parliament. The Code should be publicly disseminated.

9.4 Commercial broadcasters

Media diversity

16. Parliament should take steps to amend legislation to impose limits on cross-ownership in the print and broadcasting sectors.

Professional ethics

17. The Council for Radio and Television Broadcasting (RRTV) should require applicants for broadcast licences to submit internal codes of conduct or ethics, as a precondition for receiving a licence to run a commercial television station.

Enforcement

18. Parliament should amend the Broadcasting Act to empower the RRTV to enforce the licensing conditions, based on which television stations have been granted their broadcast licences.

ANNEX 1. Legislation cited in the report

National legislation

General broadcasting legislation

Act no. 468/1991 on the Operation of Radio and Television Broadcasting, *Sbírka zákonů*, part 91 of 22 November 1991. (*Act on Operation of Radio and Television Broadcasting 1991*)

Act 301/1995, which changes and amends Act no. 468/1991 and other laws, *Sbírka zákonů*, part 81 of 27 December 1995. (*Act on Operation of Radio and Television Broadcasting 1995*)

Act no. 231/2001 of 17 May 2001 on Radio and Television Broadcasting Operation and on amending other laws, *Sbírka zákonů* 87 of 4 June 2001. (*Broadcasting Act*)

NB. The Broadcasting Act replaced the Act on Operation of Radio and Television Broadcasting 1991 (subsequently amended)

Act no. 151/2000 on Telecommunications and the amendment of other laws, *Sbírka zákonů*, part 47, 13 June 2000. (*Telecommunications Act 2000*)

Act no. 127/2005 on Electronic Communications and on changes of other acts, *Sbírka zákonů*, part 43 of 31 March 2005. (*Act on Electronic Communications 2005*)

NB. The Act on Electronic Communications 2005 replaced the Telecommunications Act 2000

Acts on Czech Radio and Czech Television

Act no. 483/1991 on Czech Television, *Sbírka zákonů*, part 93 of 29 November 1991 (*Czech Television Act 1991*)

Act no. 483/1991 on Czech Television, *Sbírka zákonů*, part 93 of 29 November 1991, as last amended by Act no. 231/2001 on Operation of Radio and Television Broadcasting and on the change of other acts in their latest versions, *Sbírka zákonů*, part 23 of 23 February 2005. (*Czech Television Act 2001*)

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Television across Europe:
regulation, policy and independence
Estonia

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List of Abbreviations

AEB	Association of Estonian Broadcasters
ER	Estonian Radio, <i>Eesti Raadio</i>
ETV	Estonian Television, <i>Eesti Televisioon</i>
PBK	Baltic Channel One, <i>Pervyi Baltiiski Kanal</i>

1. EXECUTIVE SUMMARY

The Estonian television sector has undergone fundamental changes since 1990. The former Soviet-controlled State television was transformed into a public service broadcaster, private broadcasters blossomed in 1993, and the Russian-speaking population were catered to primarily through Russian programmes rebroadcast through cable networks. However, liberalisation was followed by consolidation as private broadcasters made heavy losses, and private broadcasters came under the ownership of Scandinavian investors.

With 1.36 million inhabitants, Estonia is an extremely small market for television broadcasting. Revenues are further limited by the dominant position of the printed press in the advertising market. However, Estonians are keen watchers of television, while the two communities – the majority ethnic Estonians and the Russian-speaking minority – have radically different patterns of television consumption.

There are three national terrestrial broadcasters: the public service broadcaster Estonian Television (ETV), and two private broadcasters owned by Scandinavian investors. Although private broadcasters made heavy losses in the 1990s, they appear to have reached break-even point, especially since advertising on ETV ceased in 2002, in order to create more favourable conditions for private broadcasters. However, the State has failed to ensure stable and sufficient financing for the public broadcaster.

The Broadcasting Act defines three broadcasting regulators with different competencies: the Ministry of Culture, the Broadcasting Council and the State Communications Board. The Ministry of Culture has proposed the establishment of a single new, independent regulator for broadcasting, but there is no consensus among ministries over the wisdom of establishing the new regulator or its likely remit.

Broadcast licences are issued by the Ministry of Culture on the basis of open contests. A commission of representatives from a variety of institutions recommends a winner; the Minister makes the final decision, which has not always been the same. Television broadcasters must provide “universalist” coverage, satisfy quotas derived from EU requirements and fulfil the commitments they make in their licence application. The Media Division of the Ministry supervises fulfilment by private broadcasters of their obligations, and may impose penalties for violations, including revocation of the licence.

Estonian law both guarantees the independence of broadcasters from the State and prescribes political balance, and this does not appear to have been threatened in practice. The independence of ETV may be indirectly affected by restriction of its budget by politicians, the Estonian Journalists’ Union is weak as most active journalists are not members, and the editorial independence of private broadcasting stations from their owners is unregulated. However, good practice appears to have prevented interference by owners, although more research is needed in this area.

The public service broadcasting sector consists of Estonian Television (ETV) and Estonian Radio (ER), which were separated in 1990. The Government is currently planning to merge the two companies again to yield savings. In the Broadcasting Act, the main law regulating the broadcasting sector, the remit of public broadcasting is stated in very broad terms, and ten years after its adoption the Act does not present an up-to-date concept of public broadcasting. This gap has to some extent been covered by the “Development Plan for ETV and ER for 2003–2005”. However, many of its provisions cannot be implemented due to insufficient financing. The State subsidy that funds ETV’s activities is supposed by law to be based on three-year plans, but Parliament provides substantially less money than the plan envisages (30 per cent less in 2004). The shortfall and unpredictability of ETV funding prevents the broadcaster from fulfilling its remit optimally.

ETV is accountable to the Broadcasting Council, which enforces the provisions of the Broadcasting Act and its own written guidelines for accurate and balanced coverage. Since 1999 the Council has removed two Director Generals of ETV. The Council has initiated cases concerning violation of programming obligations only exceptionally. There is no clear system known to the general public for receiving or dealing with complaints either against ETV or private broadcasters.

ETV has largely succeeded in fulfilling its role as a public broadcaster. It remains Estonia’s biggest producer of original programmes in Estonian and Russian language, and is the main producer of news and political, educational, cultural, sports and children’s programming. Since it ceased selling advertising in 2002 – in order to create more favourable conditions for private broadcasters – it has been enabled to refrain from commercial temptations and its output has become more public service-oriented. Official policy recognises the wisdom of opening a second ETV channel to better serve the interests of non-Estonian speaking audiences and other groups, but this is unlikely to happen given current trends in funding.

The commercial broadcasting sector exhibits considerable vertical and horizontal concentration, especially through the extensive holdings of Norwegian Schibsted. The law currently does not provide for any measures to be taken against concentration that occurs *after* a broadcast licence has been allocated. The Government and regulators have failed to state a clear position regarding concentration, although there appears to be an informal presumption that concentration is inevitable in such a small market. The impact of media concentration has not yet been studied thoroughly. Private broadcasters’ programming consists mainly of entertainment.

The editorial independence of commercial broadcasting companies depends largely on good practice. The Broadcasting Act prohibits sponsorship for news and current affairs programmes. Ongoing research indicates that news programmes are influenced very little by private interests and news content maintains a high degree of independence from PR pressures and other external pressures. The Broadcasting Act also prohibits influence by sponsors on the content or scheduling of other programmes, but in practice such influence is common and visible. Both public and private television claim

to follow the Code of Ethics of the Estonian Press, and the public broadcaster is also governed by formal guidelines set by the Broadcasting Council.

There are only five general programme obligations for television broadcasters, two of which are derived from the EU “Television without Frontiers” (TWF) Directive. The so-called “Euro quotas” have drawn criticism from Estonian industry representatives for not taking into account the specific nature of small markets. In addition, the quotas as translated into Estonian law are in places more restrictive than the Directive itself.

The introduction of new media technologies to the TV sector is at a very early stage. The Government adopted a “Concept of Digital Television” in June 2004, while a strategy for broadband services was approved in April 2005. A test multiplex was launched in Tallinn in May 2004, and is expected to operate until 1 January 2007. The Concept includes a rough timetable for the transition to digital broadcasting, with the final switch over envisaged in 2015. However, the Concept provides insufficient incentives to broadcasters, and the development of digital television therefore remains uncertain.

2. CONTEXT

The Estonian television sector has undergone fundamental changes since 1990. After the end of the monopoly of Soviet-controlled State television, a public service broadcasting system was established, while the commercial television sector went through successive stages of liberalisation and consolidation. With 1.37 million inhabitants Estonia is an extremely small market, and the orientation of the Russian-speaking minority towards programmes produced in Russia effectively makes the market even smaller. There are three national terrestrial broadcasters – the public service broadcaster Estonian Television, and two private broadcasters owned by Scandinavian investors. While the financial situation of private broadcasters has stabilised, the government has failed to ensure sufficient and stable financing for the public broadcaster.

2.1 Background

From 1955 to 1990, television in Estonia formally served as a buttress for the Soviet regime, as the Communist Party defined it as an ideological institution. However, Estonian television also provided a degree of diversity and good journalism. It was often inspired by Finnish television, which could also be watched in Estonia. During the period of *Perestroika* (1986–1990), ETV became a local catalyst for the dismantling of the Soviet regime.

Since Estonia regained independence in 1991, the audiovisual sector has gone through fundamental changes. Even before independence, the Committee of Television and Radio of the Estonian Soviet Socialist Republic was replaced with the State

Broadcasting Company, controlled by the Government. In 1990, this was split into two parts: *Eesti Televisioon*, Estonian Television (ETV) and *Eesti Raadio*, Estonian Radio (ER). The two State broadcasters then embarked on the transition to becoming public service providers, a process formally completed with the passage of the Broadcasting Act in 1994.¹

In 1993 the retransmission by the Broadcasting Transmission Centre of television programmes produced in Russia ceased, the monopoly of ETV was abolished, and a liberal approach to broadcast licensing resulted in nine private broadcasters occupying the three networks which became vacant after ceasing Russian transmission. Most of the broadcasters were part-time programmers sharing the three networks. The advertising market grew rapidly.

The different quality and coverage of the transmission networks caused several “TV wars” for favourable frequencies between the strongest private broadcasting companies: Kanal 2, EVTV and Reklaamitelevisioon or RTV (the latter two later merged in 1996 to form TV 3).² Although private broadcasters were initially established by Estonian companies, in the mid-1990s the Estonian-owned broadcasters were either sold to foreign companies or went into bankruptcy.³ The size of the market dictated consolidation, with all private broadcasters making losses. By 1997 the number of private channels had dropped to three. Concentration of the market was given the official stamp of approval by amendments to the Broadcasting Act in 2002,⁴ which limited the number of national broadcast licences for private broadcasters to two.

In parallel with the expansion of terrestrial broadcasting, cable networks boomed as well, not least because of their ability to rebroadcast Russian-language programmes. Many of them then operated as pirate rebroadcasters of satellite programmes and illegal copies of American movies or films purchased from Russian companies. Persistent pressure from the USA and other film-producing countries, and from the Association of Estonian Broadcasters (AEB),⁵ led to the introduction of licensing and regulation of the cable sector, and piracy was largely eliminated by 2001. Managers of the larger cable companies claim that this form of piracy has returned, as small cable networks often rebroadcast satellite channels without any permit from the channel.⁶ Thus, STV – which

¹ Broadcasting Act, RT I 1994,42,680. RT (*Riigi Teataja*) is the Official Gazette of Estonia.

² H. Shein, “Development Trends of Public Television in Estonia 1991–2001”, in P. Vihalemm (ed), *Baltic Media in Transition*, Tartu 2002, pp. 135–172, (hereafter, Shein, *Development Trends*).

³ Shein, *Development Trends*.

⁴ Broadcasting Act, as amended on 19 December 2001 (entered into force 01 July 2002), RT I 2002,3,5.

⁵ See for example: “AEB Against Piracy”, in AEB Newsletter, I 1998, p. 2; and “Declaration of Estonian TV-channels, the Tallinn Cable TV Company, the Estonian Authors’ Society and the Estonian Union of Filmmakers”, in AEB Newsletter, I 1997, p. 2, both available (in English) on the website of the Association of Estonian Broadcasters at <http://www.ringhliit.ee/eng/oldies.html> (accessed 30 December 2004).

⁶ Interview with Raivo Mihkelsoo, Vice President of STV, Tallinn, 11 January 2005.

in the 1990s was one of the main alleged perpetrators⁷ of audiovisual piracy and is now one of the largest cable companies – now accuses its smaller competitors of piracy.⁸

2.2 Structure of the television sector

The audiovisual market in Estonia is very small by European standards. Furthermore, the market is divided into two distinct viewing groups – the majority Estonian speakers and the minority Russian speakers. In 2003, the Estonian population was 1.36 million, of whom 927,000 are ethnically Estonian and 349,000 Russian; the remainder is comprised of Ukrainians (29,000), Belarussians (17,000), Finns (11,000) and others (23,000).⁹ A total of 98 per cent of the ethnic Estonian population speak Estonian as their first language, and the same proportion of the ethnic Russian population speak Russian as their first language.¹⁰ The majority of Ukrainians, Belarussians and “other” minorities also speak Russian as their first language.¹¹ Correspondingly, ethnic Russians and other minority nationalities speaking Russian as their first language constitute the ‘Russian-speaking audience’ as referred to in this report.

The estimated number of television households is 565,000. Of all households, 97 per cent have at least one television set and 37 per cent of households have cable television, four per cent a private satellite dish and seven per cent have access to satellite television through a collective dish (SMATV).¹²

The total advertising revenue of all commercial television companies in Estonia was EEK 232 million (or approximately €14.8 million) in 2003 (ETV ceased carrying advertising in 2002).¹³ As shown below in Table 1, the share of television in total advertising expenditure has been rising gradually, reaching 26 per cent in 2003. The share of newspapers has been falling, although with 44 per cent of advertising turnover it still accounted for the largest proportion in 2003, and the combined share of all printed media has changed little over time.¹⁴ The total advertising market has been growing strongly, with a 38 percent increase from 1997 to 2003.

⁷ See, for example: “Declaration of Estonian TV-channels, the Tallinn Cable TV Company, the Estonian Authors’ Society and the Estonian Union of Filmmakers”, in *AEB Newsletter*, 1 1997.

⁸ Interview with Raivo Mihkelsoo, 11 January 2005.

⁹ Data of the Statistical Office of Estonia, available from the interactive database at www.stat.ee (accessed 15 June 2004), (hereafter, Statistical Office interactive database).

¹⁰ Statistical Office interactive database.

¹¹ Statistical Office interactive database.

¹² P. Vihalemm (ed.), *Meediasüsteem ja meediakasutus Eestis 1965–2004*, (*Media system and media usage in Estonia in 1965–2004*), University of Tartu, Department of Journalism and Communication, Tartu 2004, p. 363, (hereafter, Vihalemm, *Media system and media usage*).

¹³ The official fixed exchange rate is €1 = 15,6466 EEK.

¹⁴ Data of TNS EMOR (1997–2003), database information provided to EUMAP on 18 June 2004.

Table 1. Net media advertising revenue (1997–2003)

	1997			1999			2001			2003		
	m EEK	m €	%	m EEK	m €	%	m EEK	m €	%	m EEK	m €	%
Newspapers	280	17,9	50	305	19,5	48	360	23	48	402	25,7	44
Television	135	8,6	24	130	8,3	20	166	10,6	22	232	14,8	26
Magazines	48	3,1	8	81	5,2	13	98	6,2	13	108	6,9	12
Radio	57	3,6	10	77	4,9	12	75	4,8	10	81	5,2	9
Outdoor	44	2,8	8	42	2,7	6	34	2,2	5	57	3,6	6
Internet	NA	NA	NA	5	0,3	1	18	1,2	2	28	1,8	3
Total	564	36	100	639	41	100	751	48	100	908	58	100

Source: TNS EMOR¹⁵

Estonians are keen television viewers. The average viewer watched television for three hours 36 minutes per day in the period of March–May 2004;¹⁶ in November 2002 the average daily viewing time was as high as 4 hours 50 minutes.¹⁷ However, these two indexes are not directly comparable, as since January 2003 the diary-based methodology of audience measurement was changed to a meter-based methodology.¹⁸

Television is the main source for obtaining world and national news, while the importance of television as the carrier of local news is low. In 2003, 90 per cent and 78 per cent of survey respondents rated television as a very important source for getting world and national news respectively, while only 35 per cent regarded it as a valuable source of local news.¹⁹

¹⁵ TNS EMOR, database information received by EUMAP on 18 June 2004.

¹⁶ Data of TNS EMOR (March–May 2004), database information provided to EUMAP on 18 June 2004.

¹⁷ T. Paju, *Estonia* Chapter, in B. Petković (ed.), *Media Ownership and its Impact on Media Independence and Pluralism*, Peace Institute, 2004, available on the Peace Institute website at http://www.mirovni-institut.si/media_ownership/pdf/Estonia.pdf (accessed 15 March 2005), p. 187, (hereafter, Paju, *Media Ownership – Estonia*).

¹⁸ Comment provided by Margo Veskimägi, the Baltic regional integration manager of TNS EMOR, at the EUMAP Roundtable, Tallinn, 4 November 2004. *Explanatory note: OSI held a roundtable meeting in Estonia to invite critique of its country reports in draft form. Experts present generally included representatives of the Government and of broadcasters, media practitioners, academics and NGOs. This final report takes into consideration their written and oral comments.*

¹⁹ The proportion rating TV as a “very important” source for getting local news is higher in bigger cities (Tallinn – 54 per cent, Tartu and Pärnu – 41 per cent), while in rural regions the rate is down to 17 per cent. This also characterizes the selection of news by the national TV channels. Data from: *Meie, maailm, meedia, (We, World, Media)*, research by Department of Journalism and Communication, University of Tartu, 2003 (hereafter, University of Tartu, *We, World, Media*); research conducted on a sample of 1,500 people from December 2002 – January 2003.

Overall trust ratings in the media in general have been falling since 1996. While in 1996 around 60 per cent of survey respondents expressed trust in the media, by 2002 this had fallen to 44 per cent and in 2004 to 42 per cent.²⁰ According to Eurobarometer surveys, television and radio enjoy the highest trust ratings of any media in Estonia: in spring 2004, 75 per cent of respondents stated they generally or entirely trust both TV and radio, compared to 52 per cent for newspapers.²¹ In 2003 the trust rating for television was even 81 per cent.²²

According to polling research carried out by the University of Tartu, as shown below in Table 2, public television enjoys the highest trust rating of all media, and its ratings are consistent across different age, gender, language and education groups.

Table 2. Trust ratings towards the media (2003)

	Percentage of polled respondents											
	All	Language		Age						Education*		
		Est	Rus	15-19	20-29	30-44	45-54	55-64	65-74	P	S	H
ETV	52	61	34	58	51	46	51	52	61	58	50	50
Private TV	35	44	19	46	38	36	30	31	29	38	33	34
Newspapers	34	37	30	41	32	33	34	33	40	41	34	30
ER	49	58	35	47	45	45	50	55	58	50	49	49
Private radio	31	37	19	33	33	32	27	30	27	34	29	31
Internet news portals	20	19	22	32	23	23	19	12	8	22	20	16

*Education: P – below secondary; S – secondary; H – higher.

Source: University of Tartu, 2003.²³

Although viewers consider national television news programmes to be important sources of information, agenda setting in the Estonian media is carried out primarily by

²⁰ However, the Saar-Poll reported that in 2004 the trust rating in the media in general was 47 per cent. Data from: Saar-Poll (1996, 2002): Chart “Eesti riigi institutsioonide usaldamine” (“Trust in the state institutions of Estonia”) available in Estonian at http://www.saarpoll.ee/riik_ja_rahvas/kevad2004graafik3.gif (accessed 15 March 2005); Faktum (2004), “Avalik arvamus ja riigikaitse” (“Public opinion and national defence”), Tallinn, 2004, p. 10, available (in Estonian) on the Estonian Ministry of Defence website, <http://www.mod.gov.ee/static/sisu/files/natoaruanne0204.pdf> (accessed 15 March 2005).

²¹ “Eurobarometer 2004.1. Avalik arvamus kandidaatriikides. Rahvuslik aruanne: Eesti”, (Eurobarometer 2004. 1. Public opinion in candidate countries. National report: Estonia), available at <http://www.saarpoll.ee/eurobaro2004.pdf> (accessed 30 December 2004).

²² Vihalemm, *Media system and media usage*, p. 413.

²³ “*Meie, maailm, meedia*”, (“*We, World, Media*”) data from research by the Department of Journalism and Communication Department of Journalism and Communication, University of Tartu, 2003.

national newspapers.²⁴ Television news programmes often just broadcast the main newspaper stories. This results in a paradox: although the influence of television on public opinion is very significant – at least in terms of the importance Estonians attribute to it as a source of news – television channels do not appear to take advantage of this position.

Terrestrial broadcasters in Estonia have been unable to react adequately to the radically differing media consumption patterns of the Estonian and Russian-speaking communities. While Estonians tend to prefer programmes produced in Estonia, the Russian-speaking population pay little attention to Estonian production and rather watch programmes broadcast from Russia. For example, *Pervyi Baltiiski Kanal*, Baltic Channel One (PBK) – a Russian-language service broadcast by satellite from Latvia and distributed in Estonia through cable networks – holds an audience share among the Russian-speaking population of 27 per cent (see Table 2). The audience share of all Estonian television channels combined among the Russian speaking audience has been less than ten per cent since 2001/2002 and has been falling constantly.²⁵ Around one-third of the Russian-speaking audience does not watch Estonian television channels at all or watches once a month or less,²⁶ and only around four per cent of total programming even on ETV is in Russian (see Section 4.5.3). The shares of Estonian terrestrial television channels among the Russian speaking audience are approximately equal at about four to five minutes per day.²⁷ This effectively makes the market for Estonian television production even smaller, and the two communities are usually monitored separately to obtain an accurate picture of media consumption. It also means that the programme content watched by Russians is largely out of the control of domestic regulators. Finally, it poses a challenge to ETV concerning what its role should be *vis-à-vis* the Russian speaking minority.

2.3 Market shares of the main players

Since 2001 there have been three television broadcasters operating nationally with one terrestrial programme service each: the public broadcaster, ETV, and the private companies *Kanal 2* and TV 3. Predominantly due to the small size of the market, no regional or local terrestrial television networks have been launched. There is currently only one terrestrial local television channel.

²⁴ Estonian Journalists' Union, *EALi juhatuse aruanne kongressile*, report of the Estonian Journalists' Union management board, presented by the (then) chairman of the board of the Journalists' Union, Allan Alaküla to the congress of the Journalists' Union in Tallinn on 30 January 2004, available at <http://www.eal.ee/?f=uudised&cid=227>, (accessed on 7 June 2005), (hereafter, Estonian Journalists' Union, *Annual Report 2003*).

²⁵ Data of marketing research and consulting company TNS EMOR in: Vihalemm, *Media system and media usage*, p. 364.

²⁶ Data from: University of Tartu, *We, World, Media*.

²⁷ Data of TNS EMOR (January-May 2004), provided to EUMAP on 18 June 2004.

The number of cable television providers is 42. Two of these hold national licences. The rest are limited to small coverage areas. In total 79 technical licences have been issued by the State Communications Board for cable operators, while the Ministry of Culture has issued only 13 broadcast licences for cable programming.²⁸ All satellite and terrestrial programmes broadcast in Estonia are also rebroadcast by cable; indeed, rebroadcasting of all terrestrially broadcast programmes is a legal obligation for cable operators. Cable operators do not provide much original programming.

In addition to domestic channels, the television landscape includes all Finnish television stations, whose penetration rate is about 40 per cent (concentrated in the north of the country), Latvian television (near the southern border), and more than 60 channels (including over 30 Russian television channels) that are available via cable networks.²⁹

The main development in patterns of viewing between 1998 and 2003 was a steady fall in the audience share of ETV, as shown below in Table 4. Table 3 shows the average total audience shares for the major channels in 2003.

Table 3. Average total audience shares for most watched television channels (2003)

Channel	Audience share (per cent)
TV 3	24.4
Kanal 2	20.0
ETV	16.7
PBK	8.4
Other	31
Total	100.0

Source: State Communications Board and Ministry of Culture³⁰

²⁸ Data of State Communications Board and Ministry of Culture (December 2004), provided to EUMAP on 30 December 2004.

²⁹ See: Shein, *Development Trends*, p. 156.

³⁰ TNS EMOR, database information received by EUMAP on 18 June 2004.

Table 4. Average audience shares of the national television channels in the main season (September–May) – for the Estonian- and Russian-speaking populations

	Audience share (per cent)						
	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
Estonian-speakers							
ETV	36.5	29.5	27.0	25.8	26.0	24.8	24.6
TV 3	22.1	26.0	24.9	26.5	29.2	33.8	36.4
Kanal 2	19.6	17.7	20.2	18.2	22.8	27.5	27.7
TV 1	5.1	12.7	13.5	15.5 ³¹	–	–	–
Other channels (and video)	16.7	14.1	14.4	14.0	22.0	13.9	11.3
Russian-speakers							
ORT (PBK)	36.7	29.9	28.3	25.2	30.1	21.1	26.0
RTR	11.7	13.2	17.0	17.6	14.6	12.6	13.6
NTV	–	13.1	17.7	15.9	12.0	?	?
Estonian terrestrial channels	13.1	11.7	11.1	10.8	9.5	8.3	5.8
Other channels (and video)	38.5	32.0	25.8	30.5	33.8	58.0	54.7

Source: TNS EMOR³²

Although the beginning of the gradual decrease in ETV's audience share in 1998 coincided with the first attempt at terminating advertising on the public channel (see Section 4.3), the primary reason for the fall in audience ratings is more likely to be found in the considerable investment by the owners of private broadcasters in popular programming to attract audiences (see Section 5.4).³³ This also coincides with the influx of foreign capital into the Estonian TV sector. The end of advertising on ETV helped to make such investments possible by improving the financial situation of private broadcasters. One of the reasons for the decline of the ratings was also ETV's decision to redefine its target audience towards viewers with higher education.³⁴ According to ETV, within this segment its audience share has increased (see Section 4.2).

³¹ TV1 went bankrupt in 1999.

³² Calculated by H. Shein, based on data of EMOR, in: Vihalemm, *Media system and media usage*, p. 363.

³³ Shein, *Development Trends*, pp. 148–157.

³⁴ Comments from EUMAP Roundtable, Tallinn, 4 November 2004.

The financial benefits to private television companies resulting from the end of advertising in ETV have not been matched by benefits to the public broadcaster itself. One of the most important issues facing the Estonian audiovisual sector remains the financing of ETV, which remains unstable and appears to be limited due to political considerations.

As shown above in Table 4, the consumption patterns of the Russian-speaking population are very different to the Estonian population: Estonian channels hold only a six per cent audience share among the Russian-speaking population.

3. GENERAL BROADCASTING REGULATION AND STRUCTURES

The Broadcasting Act defines three broadcasting regulators with different competencies: the Ministry of Culture (supervises adherence to the Act and fulfilment of licence conditions), the Broadcasting Council (regulates public television and radio) and the State Communications Board (supervises adherence to the technical conditions of broadcasting licences). The Ministry of Culture has proposed the establishment of a new, independent regulator for broadcasting, but there is no consensus among ministries over the wisdom of establishing the new regulator or its likely remit. Broadcasting licences are issued by the Ministry of Culture on the basis of open tenders, although the Minister has sometimes issued decisions against the recommendation of the commission that examines bids for broadcasting licences. The independence of broadcasters from the State is guaranteed by law and this does not appear to have been threatened in practice. The independence of ETV may be indirectly affected by the restriction of its budget by politicians. While mechanisms for protecting journalists or securing editorial independence in private broadcasters are weak or non-existent, on the limited evidence available good practice appears to prevail in this area.

3.1 Regulatory authorities for the television sector

The Broadcasting Act defines three broadcasting regulators: the Ministry of Culture, the Broadcasting Council and the State Communications Board. The Ministry of Culture regulates primarily the activities of private broadcasters,³⁵ the Broadcasting Council is responsible for regulating the public broadcaster,³⁶ and the State

³⁵ Broadcasting Act, RT I 1994,42,680, as last amended on 17 December 2003 (entered into force 8 January 2004), (hereafter, Broadcasting Act), available (in English) at <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022> (accessed 1 April 2005), Chapter 6 (licensing) and 7 (supervision).

³⁶ Broadcasting Act, art. 32.

Communications Board supervises compliance with the technical requirements of broadcasting.³⁷

Ministry of Culture

The Ministry of Culture is responsible for allocating broadcast licences, and its Media Division³⁸ supervises adherence to licence conditions and other duties imposed by the Broadcasting Act.

The Ministry has the authority to regulate the public broadcasters only in terms of their adherence to the general provisions of the Broadcasting Act, for example on quotas and principles of broadcasting activities. It has done so rarely, and on such occasions has been accused by ETV of interfering in a sphere outside its competence – for example, when the Ministry requested from ETV a report detailing spending of its State subsidy.³⁹ This reflects a strong resistance to direct political interference in the media. On the other hand, private broadcasters have criticised the Ministry for not doing *more* to enforce provisions of the Broadcasting Act against ETV.

The Ministry's role with respect to private broadcasters is to supervise compliance with the Broadcasting Act and the conditions of their broadcasting licence. Some media experts and ETV executives believe that the Ministry should also enforce the law more strictly with respect to private broadcasters.⁴⁰

Broadcasting Council

The Broadcasting Council is the prime body responsible for supervision of the public broadcasters, ETV and ER. The Council supervises their performance in discharging their public broadcasting functions and decides the number of programme services transmitted by public radio and television. It approves the policies, development plans and detailed budgets of the public broadcasters and supervises their implementation. It has also produced a set of "Principles of Programming Impartiality and Balance in Public Broadcasting", which are legally binding (see Section 4.5.2).

The Broadcasting Council consists of nine members. According to the Broadcasting Act, on the proposal of the Cultural Affairs Committee of the Estonian Parliament

³⁷ Broadcasting Act, Chapter 7 (supervision); Act on Electronic Communications, RT I 2004, 87, 593, (passed on 8 December 2004, entered into force 1 January 2005), (hereafter, Act on Electronic Communications), Chapter 3 (Management of Radio Frequencies), Chapter 14 (responsibilities).

³⁸ The Media Division of the Ministry of Culture is a unit of the Department of Media and Copyright Issues and employs three officials to carry out these tasks.

³⁹ The request by the Ministry was based on the fact that the subsidy allocated to ETV occurs as an item in the State budget allocation for the Ministry of Culture.

⁴⁰ Comments from EUMAP Roundtable, Tallinn, 4 November 2004.

(*Riigikogu*), Parliament appoints five members of the Council from among the members of the Parliament on the basis of the principle of political balance. The content of the latter concept is not defined, but as of June 2005 all but the smallest of the six parties represented in Parliament were also represented on the Council. Their term lasts as long as that of the Parliament. On the proposal of the same Committee four members of the Council are appointed from among recognized specialists in fields related to public broadcasting. Specialists are appointed for a term of five years. The politicians on the Council therefore outnumber the specialists; however, the current chairman of the Council Andres Jõesaar is a specialist.

The Broadcasting Council is accountable to Parliament, so must submit a report once a year. The management of ETV must submit an overview of the broadcaster's "economic activities and financial situation" to the Broadcasting Council once every three months and inform the Council immediately of "any material deterioration of the broadcaster's economic situation".⁴¹

State Communications Board

The State Communications Board issues permission for broadcasters to put their technical equipment into operation and supervises compliance of public and private broadcasters with their technical obligations – the frequencies and channels used, the basic technical parameters for transmitters used for broadcasting and maximum permitted radiation levels. Two officials are responsible for these tasks for the broadcasting sector. The Board also specifies the frequencies allocated to licence holders.

Under the new Act on Electronic Communications,⁴² which from 1 January 2005 replaced the Act on Communications and Cable Television, the State Communications Board also allocates frequencies to the public broadcasters (see Section 3.2); previously this was done formally by the Ministry of Culture.

Proposed changes

The "Action Plan of the Ministry of Culture for 2002–2006"⁴³ envisages the establishment of a single regulator to carry out the role of licensing private broadcasters, supervising the adherence of all broadcasters to the Broadcasting Act, and in addition of private broadcasters to their license conditions; the State Communications Board's functions with respect to broadcasting would also be handed over to the new regulator. In this scenario the Broadcasting Council would remain only

⁴¹ Broadcasting Act, art. 32, Section 10.

⁴² Act on Electronic Communications, art.11-12.

⁴³ Ministry of Culture, *Kultuuriministeeriumi tegevuskava aastateks 2003–2006, (Action Plan of the Ministry of Culture for the period 2003–2006)*, Tallinn 2002, pp 104–105, (hereafter, Action Plan 2002–2006).

as the highest authority for governance of the public service broadcasters – formulating ETV's remit and other main guidelines (such as broadcasting standards), hiring its management etc.

According to the Plan, the new regulator would be based on the model of a separate State institution not subject to direct governmental influence (for example in appointments). It would issue licences and monitor the entire broadcasting sector. The status and remit of the new institution would be introduced in amendments to the Broadcasting Act. However, no such amendments have been drafted to date. The alternative options for concentrating the supervision tasks into one institution would be to widen the competency of the State Communications Board or the Broadcasting Council.⁴⁴

The new institution would also play a key role in laying out a clear media policy, which is so far lacking in Estonia. Not even the Action Plan 2002–2006 provides a comprehensive vision of the Government's intentions for media policy, and the lack of such a policy has also been repeatedly underlined by the AEB.⁴⁵

Planning and preparations for a new regulator have proved tough, as there is no consensus about the new regulator and its remit among different ministries. For example, a number of officials have argued that the creation of a new institution in a country as small as Estonia will result primarily in further bureaucracy and wasted resources. Also, the Ministry of Culture states in the Action Plan 2002–2006 that the State currently lacks sufficient resources to supervise the audiovisual sector effectively⁴⁶, and it is unclear whether the solution that is finally chosen will ensure that adequate resources are provided.

An independent research project in 2003 indicated that most experts broadly support the establishment of an independent regulator.⁴⁷ However, a number of legal experts doubt that the Estonian Constitution would allow such an institution to be created, on the grounds that a regulator not subordinated to the government or any other constitutional institution must be established by the Constitution.⁴⁸ According to the Ministry of Culture they are currently awaiting for scheduled improvements in the

⁴⁴ Action Plan 2002–2006, pp. 104–105.

⁴⁵ See for example letter of the AEB to the Ministry of Culture of 18 April 2001, available from the Ministry on request.

⁴⁶ Action Plan 2002–2006, p. 103.

⁴⁷ Uurimisprojekt "*Euroopa Liiduga liitumise mõjud Eesti audiovisuaalsektorile*", (Research project "*Impact of joining the European Union on the audiovisual sector of Estonia*"), riigihange 003668VT, lõpparuanne (final report), by Concordia International University, Tallinn 2003, (hereafter: "Impact of joining the EU").

⁴⁸ Interview with Halliki Harro-Loit, Head of the Department of Journalism and Communication at University of Tartu, Tartu, 7 June 2004; comments from EUMAP Roundtable, Tallinn, 4 November 2004.

field of broadcasting regulation on the EU before moving forward with regulatory reform.⁴⁹

3.2 Licensing

Broadcasting licences are issued by the Ministry of Culture on the basis of an open contest.⁵⁰ The Ministry must issue a notice of its intention to issue a licence in a daily national newspaper, specifying the type, number and other conditions of the licence or licences. Entities interested in acquiring the licence complete an application form and attach required documents about themselves and detailing their vision for the channel. Applications for a broadcast licence must be reviewed by the Ministry of Culture within three months of the deadline for applications.

Until 31 December 2004, the broadcast licence specified both the details of the programme (name, content, number of hours or transmission etc.) and the technical conditions (frequency, location of transmitter etc.). As of 1 January 2005, the latter are to be specified in a separate frequency licence issued by the State Communications Board – a purely technical matter that has no substantive impact on the broadcast licensing process.

The Ministry of Culture has formed a permanent Commission to examine bids for broadcast licences and recommend winners.⁵¹ The Commission consists of seven voting members from institutions involved in regulating or organizing the broadcasting sector: the Ministry of Culture (two members), Ministry of Economy and Communications, State Communications Board, Consumer Protection Board (a state body under the Ministry of Economy and Communications), Office of the President and Association of Estonian Broadcasters (AEB). The AEB is the only non-public institution represented in the Commission. Until 2002, the Commission was chaired by the Chancellor of the Ministry of Culture (the second highest official), and since then by the head of the Department of Media and Copyright Issues. The Commission examines the applications for, and discusses the terms of, the licences (both before and after announcing the issuance of the licences) and makes its recommendations to the Minister of Culture who makes the final decision.

Applications for a broadcast licence have to meet certain general requirements. It follows from Article 1 of the Broadcasting Act that the television channel has to be “universalist”, that is to cover all kinds of audiences and topics, and the Ministry of

⁴⁹ Interview with Peeter Sookruus, Head of the Department of Media and Copyright Issues, Ministry of Culture, Tallinn, 2 June 2004.

⁵⁰ The terms for issuance of broadcasting licences are specified in the Broadcasting Act, Chapter 6.

⁵¹ Ministry of Culture, rules of procedure for the Commission issuing broadcasting licenses, approved by decree No 44 of the Minister, 17 February 2000, available in Estonian on the website of the Ministry of Culture, <http://www.kul.ee/index.php?path=40&DocID=24> (accessed 15 March 2005).

Culture applies this rule in licensing activities. National TV broadcasting license holders must also observe other programming requirements contained in the Broadcasting Act, such as quotas (see Section 4.5.3). In addition, all commitments about intended programming made by the applicant are written into the licence. There have been occasional discussions of the possibility of imposing additional “cultural” programming obligations on private television broadcasters, for example obliging them to produce films,⁵² but these have not led to any changes.

Usually the Minister of Culture accepts the recommendations of the Commission, but on at least two occasions has issued a different ruling. In 1994, after the Broadcasting Act was adopted, the Minister Peeter Olesk decided to swap frequencies between two national television channels (RTV/EVTV and Kanal 2). This resulted in bitter attacks on the Ministry of Culture and the AEB, conflict between the rival stations and several court cases. The dispute ended when a new transmitter for one of the stations was launched in south-eastern Estonia.⁵³

The second case occurred in 1999 and concerned radio licensing. The (then) Minister Signe Kivi ignored the recommendation of the Commission to licence a talk format radio station in Pärnu and instead complied with the request of the station’s owner – who happened to be a colleague from the same political party as the Minister – to receive a licence for a pop music station instead. The AEB asked the Minister to explain her decision and set out the Ministry’s policies defining the relative weight of public interest and business interests in licensing decisions. The Minister answered that in her opinion the broadcasting companies know better than anybody else where and what to broadcast.⁵⁴

Until 2002 private broadcasters did not pay any licence fee. Since 1 July 2002 they have paid a fee established in return for ETV ceasing to broadcast advertising (see Section 4.3). In 2004, the broadcast licence fee was EEK 20 million (€1.28 million), and is supposed to increase by EEK 1.25 million (€80,000) per year.

3.3 Enforcement measures

Compliance with broadcast licensing obligations is monitored by the Media Division of the Ministry of Culture. However, due to limited capacity (the Division is staffed by three officials), supervision has to date been random and limited, according to Peeter Sookruus, Head of the Ministry of Culture Department of Media and Copyright

⁵² See, for example: M. Adamsoo, “Alanud aasta käejoontest. Mida oodata eesti filmilt 2005?”, (“Palm-reading for the new year. What can we expect of Estonian film in 2005?”), in *Sirp*, 7 January 2005. M. Adamsoo is Director General of the Estonian Film Foundation.

⁵³ H. Shein, *The Landscape of Estonian Television 1991–2001. Research Papers, Discussions, Databases*, Tartu, 2002, pp. 376–377 (hereafter, Shein, *Landscape of Estonian Television*).

⁵⁴ Letter of the AEB to the Minister of Culture Signe Kivi, 23 Nov 1999 and reply from the Minister of Culture, 3. Jan 2000, letters available from Ministry of Culture on request.

Issues.⁵⁵ Beginning in 2004, the Ministry has hired market research company, TNS EMOR, to monitor the compliance of television broadcasters with the rules on advertising placement and quotas and programming quotas.

In cases where the Broadcasting Act is violated, the Ministry of Culture can impose one or more of the following measures: a reprimand (a warning with a requirement for specific steps to be taken) not to repeat the offence, fines, suspension of a broadcast licence for up to 14 days and ultimately revocation of a broadcast licence. In case the broadcaster disagrees with the Ministry decision it may appeal to a court. In the case of the public broadcaster the Ministry may impose a sanction only for violation of the Broadcasting Act, whereas for private broadcasters it may also do so where license obligations are breached.

Fines of up to EEK 40,000 (or approximately €2,556) may be imposed for violation of the provisions of the Act, and up to EEK 50,000 (€3,195) for breaching the terms of a broadcast licence.⁵⁶ Similar fines are prescribed by the Act on Electronic Communications in cases of illegal transmission or use of nonconforming equipment.

The Ministry of Culture has issued warnings and reprimands to almost all private broadcasters for non-compliance with the law. TV 3 was fined in 2000 after its popular talk show *Kahvel* broadcast a scene that was declared pornographic. The Tallinn Administrative Court imposed a fine of EEK 10,000 (€639).⁵⁷ In 2004 the Ministry of Culture issued four reprimands to Kanal 2 and five to TV 3 for exceeding permitted advertising quotas.⁵⁸

Theoretically, the Ministry of Culture could apply fines to the public broadcasters but this measure has never been used. However, the Consumer Protection Board has imposed fines on ETV (see section 4.4.3).

A broadcast licence may be revoked if a broadcaster:⁵⁹

- applies itself to have its licence revoked;
- submits false information in order to obtain the licence;
- fails repeatedly to fulfil the conditions of the licence;
- violates the requirements of the Broadcasting Act.

In short, a broadcasting licence may be revoked if the broadcaster violates the Broadcasting Act once or breaches its licence conditions repeatedly. The only case of

⁵⁵ Interview with Peeter Sookruus, 2 June 2004.

⁵⁶ Broadcasting Act, art. 43.

⁵⁷ H. Harro, "Development of Media Regulation in Estonia 1988–2001", in Vihalemm, *Media system and media usage*, pp. 225–240.

⁵⁸ Data of the Ministry of Culture, received by EUMAP on 3 February 2005.

⁵⁹ Broadcasting Act, art. 41.

revocation occurred in 2001, when TV 1 lost its licence due to its inability to restore transmission within three weeks after the Estonian Broadcasting Transmission Centre switched their transmitters off – a measure imposed because of debts owed to the Centre by the broadcaster. TV 1 went bankrupt shortly thereafter.

Although the activities of broadcasters are now being observed more closely – especially when there is a specific complaint or publicised case of a suspected violation – comprehensive monitoring, supervision and enforcement have not yet been established. Managers of private channels have expressed doubt about the monitoring methodology and its ability to draw clear distinctions between advertising, information on sponsors and programme trailers. However, according to Ministry of Culture officials private broadcasters have become more disciplined as a result of supervision.⁶⁰

3.4 Broadcasting independence

Estonian law lays down a number of provisions to guarantee the independence of broadcasters from the State. Censorship is prohibited by the Constitution.⁶¹ The Broadcasting Act states that broadcasters have the right to decide freely on the content of their programmes and programme services in compliance with the law and the conditions of a broadcasting licence, and that violation of this freedom is punishable under administrative or criminal procedures.⁶² However, this statement is merely declaratory, as the provision does not define what constitutes infringement of broadcasting freedom. The Act also states that the public broadcasters are independent in the creation and broadcasting of their programmes and programme services are guided only by the requirements of the law.⁶³

In the absence of evidence to the contrary, it appears that good practice rather than regulation has resulted in a relatively high degree of independence. According to experts and industry representatives interviewed in the context of this report, there have been no major intrusions by the State against broadcasting independence. However, the public broadcaster may have been subject to more pressure, although this pressure appears indirectly through the restriction of ETV's budget. Discussions in the Parliament sometimes involve criticism of particular programme's content and format.⁶⁴ However, it should be stressed that although insufficient financing probably affects the level and quality of service that ETV is able to provide, this does not

⁶⁰ Interview with Peeter Sookruus, 2 June 2004.

⁶¹ Constitution of the Republic of Estonia, RT 1992,26,349; RT I 2003,29,174; 2003,64,429, available in English at <http://www.legaltext.ee/en> (accessed 14 June 2005), art. 45.

⁶² Broadcasting Act, art. 6.

⁶³ Broadcasting Act, art.28.

⁶⁴ Remarks of this kind can be found for example in verbatim reports of the Estonian Parliament (the *Riigikogu*) of 5 December 2001 and 14 May 2002.

constitute *direct* interference in editorial independence. Media experts agree that the independence of journalists from the State in Estonia is not threatened.⁶⁵

As Section 5.6 shows in more detail, the independence of editorial staff from owners of private broadcasting companies is not established in law or through any formal internal company rules. One possible source of protection of journalists' independence from the owners of broadcasters is the Estonian Journalists' Union. However, the Union has a weak position in the media sector and limited resources to protect individual journalists, and most active journalists are not even members. Individual independence is therefore in formal terms a matter for individual employment contracts, which leads to a risk of self-censorship to meet the expectations of the employer.

Managers of private TV companies claim that good practice has guaranteed such independence and that the owners of private stations, in particular, are too far removed to have a private or personal interest in interfering with programming.⁶⁶ There have been no publicised cases of owners' intervention into programming content, although further research in this area would be required to facilitate clear judgments.

4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING

The public service broadcasting sector consists of Estonian Television (ETV) and Estonian Radio (ER), which were separated in 1990. The Government is currently planning to merge the two companies again to yield savings, although there is a lack of commitment to provide the necessary funds for a successful merger. In the Broadcasting Act, the remit of ETV is stated in very broad terms, and even ten years after its adoption the act does not present a clear concept of public broadcasting. This gap has to some extent been covered by the "Development Plan for ETV and ER for 2003–2005" drafted by ETV, ER and the Broadcasting Council and approved by Parliament on 19 June 2002. However, Parliament has provided substantially less money than the Development Plan envisages, which prevents ETV from fulfilling its remit optimally.

ETV is accountable to the Broadcasting Council, which enforces the provisions of the Broadcasting Act and its own written guidelines for accurate and balanced coverage. The Council has initiated cases concerning violation of ETV's programming obligations only exceptionally; the Chairman of ETV's Management Board has been removed twice by the Council. There is no clear system known to the general public for receiving or dealing with complaints against either ETV or private broadcasters.

⁶⁵ EUMAP Roundtable, Tallinn, 4 November 2004.

⁶⁶ Interviews with Toomas Vara, Managing Director of TV 3, Tallinn, 28 May 2004; Urmas Oru, Director General of Kanal 2, Tallinn, 31 May 2004.

ETV appears to have increasingly fulfilled its role as a public service broadcaster, especially since it ceased to broadcast advertising in 2002. Official policy envisages the opening of a second channel to better serve the interests of minority audiences, but this is unlikely to happen given current trends in funding.

4.1 The public broadcasting system

Since 1990, public service broadcasting consists of two separate entities — Estonian Television (ETV) and Estonian Radio (ER). Legally, the ETV and ER are public institutions (organisations), established by the Broadcasting Act.

In 2004, a working group composed of members of the Broadcasting Council, experts from both the public and private media sector, and economists developed a “Development Strategy for the National Broadcasting Company for 2005–2008”, (hereafter, Development Strategy 2005–2008), which recommended the re-merging of ETV and ER.⁶⁷ A previous audit conducted by KPMG concluded that while short-term improvements in the financial situation of the two public broadcasters would not result from a merger, in the longer term, synergies would lead to significant savings⁶⁸ — a viewpoint shared by politicians and State officials. However, the expected economic benefits from merger are only expected if significant investment is carried out in new broadcasting premises and equipment. While a site has been found for such premises, Ministry of Finance officials have made public statements that there will probably be no money available from the state budget to finance the construction.⁶⁹ The Development Strategy itself is not legally binding, and has not been approved by Parliament.

Although the formal transformation of ETV into a public service broadcaster was completed in 1994 with the adoption of the Broadcasting Act, ETV still does not fulfil all the recognised standards of public broadcasting. In particular, the continuing system of discretionary and short term State funding prevents the broadcaster from fulfilling its remit entirely and opens possibilities for political interference. Many State officials and MPs still refer to ETV as “State television”, and experts still do not regard ETV as having become a fully-fledged public broadcaster.⁷⁰

⁶⁷ *Eesti Rahvusringhäälingu arengustrateegia aastateks 2005–2008, (Development Strategy for the National Broadcasting Company for years 2005–2008)*, available (in Estonian) at <http://www.etv.ee/index.php?popup=download&id=2254> (accessed 30 June 2004), (hereafter, Development Strategy 2005–2008).

⁶⁸ KPMG Estonia, *Ühtse rahvusringhäälinguorganisatsiooni moodustamise otstarbekuse uuring. Projekti lõppraport, (Expediency-analysis of constituting uniform national broadcasting company. The final report of the project)*, Tallinn, October 2003.

⁶⁹ A. Maimets and U. Seaver, “Tele- ja raadiojuhid plaanivad uut peamaja”, (“TV and Radio heads plan new headquarters”), in *Postimees*, 27 August 2004.

⁷⁰ Comments from EUMAP Roundtable, Tallinn, 4 November 2004.

4.2 Services

According to the Broadcasting Act the “basic requirements” of public service broadcasting are to preserve and develop the Estonian nation, language and culture, strengthen Estonian statehood and advance Estonia’s international reputation.⁷¹ The “functions” of public service broadcasters are to:

- advance and promote Estonian national culture and record, preserve and introduce its greatest achievements;
- present the greatest achievements of world culture to the public;
- create and transmit multifaceted and balanced programme services at high journalistic, artistic and technical standards;
- satisfy the informational needs of all sections of the population, including minorities;
- create primarily informational, cultural, educational and entertainment programmes.⁷²

ETV has one national channel, while ER has four national channels: a channel for adults (Vikerraadio), a youth channel (Raadio 2), a classical music channel (Klassika-raadio) and a Russian-language channel (Raadio 4).

The Broadcasting Act describes the remit of the public service broadcaster in very broad terms. In 2002, Parliament adopted the “Development Plan for ETV and ER for 2003–2005”, (hereafter, Development Plan 2003–2005), in which the remit of ETV and ER was set out in more detail⁷³; the Plan was drafted by a working group of members of the Broadcasting Council and representatives from ER and ETV, then approved by the Council and submitted to Parliament. The Plan, which is legally binding, lays down a strategy for the public broadcasters in the field of programming, technical development, archiving, personnel management and financing. It also defines partnership with different interest groups in society as a defining feature of public service broadcasting, stating that:

ER and ETV shall create a public forum for exchange of opinions about the development of the Estonian state. Public broadcasting shall promote, distribute and store Estonian culture, by that becoming an integral part of Estonian theatre, film, music, art, and literature. Thus, ER and ETV shall serve as partners for the creators of national culture as well as for the state – the carrier of the national identity.⁷⁴

⁷¹ Broadcasting Act, art. 26.

⁷² Broadcasting Act, art. 25.

⁷³ “Eesti Raadio ja Eesti Televisiooni arengukava aastateks 2003–2005” (“Development Plan for ETV and ER for 2003–2005”), RT I, 26.06.2002, 52, 328, (hereafter, Development Plan 2003–2005).

⁷⁴ Development Plan 2003–2005, Section 3.2.

In the area of programming, the Development Plan 2003–2005 defines news, cultural, educational and children’s programmes as priorities. It also details plans for introducing new formats or developing old ones.⁷⁵ By the end of 2004, some of these plans had been implemented successfully, for example launching daily children’s programmes in prime time, developing an analytical format for sports coverage, placing correspondents in Brussels and Pärnu (but still not in Moscow as planned) and introducing new formats for talk shows. Other plans have been implemented poorly or not at all, notably increasing the number of cultural and educational programmes, recommencing the recording and broadcasting of theatre performances and television film production (the first television film appeared only at the beginning of 2005, in addition to ETV’s one and only domestic television serial), increasing the number of programmes in Russian language (see Section 4.5.3) and especially producing programmes with archivable value.

As described in Section 4.3, Parliament has not observed the Development Plan 2003–2005 while adopting the annual budgets for 2003, 2004 and 2005, despite the fact the Plan is legally binding. Much of the Plan has been cut by ETV due to insufficient funding – illustrating the effect that unpredictable funding might have on ETV’s fulfilment of its remit.

The Broadcasting Council expressed an unofficial opinion⁷⁶ that in 2004 ETV should seek to secure an audience share of at least 18 per cent. This market share has not been achieved since 2002,⁷⁷ except for a few months in 2004 (for example, 22.6 per cent in August and 18.3 per cent in September).⁷⁸ ETV’s management have pointed out that public television has redefined its target audience as viewers with higher education, reflecting its aim of influencing the judgements of opinion-makers. In this audience segment ETV’s audience share was 32.6 per cent in 2003.⁷⁹ Another aim of ETV’s management is to increase its “quotability”, and to this end ETV holds media conferences and training of television professionals and runs an Internet news portal. During 2004 many other Internet news portals (including Delfi) and even newspapers began to refer to ETV as a news source, something that was rare previously. ETV also produces DVDs and VHS cassettes with old films and television dramas from its

⁷⁵ Development Plan 2003–2005, Appendix 5.

⁷⁶ Interviews with Ainar Ruusaar, ETV Programme Director, Tallinn, 11 June 2004; Andres Jõesaar, Chairman of the Broadcasting Council, Tallinn, 27 May 2004.

⁷⁷ The share has been achieved among the Estonian population – in 2003 the share was 24.1 per cent. Among the whole population the share was 16.7 per cent. The corresponding rates for prime time share were 27.8 (Estonians) and 19.8 per cent (the whole population). Data from ETV, “*Estonian Television at a Glance 2003*” (ETV brochure), Tallinn 2004.

⁷⁸ Data of TNS EMOR (2004). Database information, provided by ETV to EUMAP on 18 June 2004

⁷⁹ Data of TNS EMOR (2003). Database information provided by ETV to EUMAP on 11 June 2004.

archives. Again however, funding is insufficient to produce fresh material with long-term commercial value.

A second channel?

According to Ainar Ruusaar, ETV's Programme Director, having only one channel makes it difficult to provide a programme service that would meet equally the needs of different groups in society.⁸⁰ The unofficial requirement for ETV to secure a minimum 18 per cent audience share over the year also makes it necessary to broadcast programmes of general interest in prime time. As a result most programmes on more specific themes, and programming in Russian in particular, have been moved out of prime time and in some cases discontinued.

The launching of a second channel has been under discussion for some time. It was supported in June 2004 by the ETV Extended Programme Council (see section 4.5.1).⁸¹ It is also strongly recommended in the "Concept of Digital Broadcasting".⁸² Due to limited financial resources the second channel is envisaged as an outlet for repeats and minority programming. However, it seems unlikely that sufficient resources will be made available for this service to be launched.

4.3 Funding

4.3.1 The end of advertising on ETV

As ETV was the market leader in the late 1990s, it had a decisive influence on advertising rates and at the time was accused by private broadcasters of dumping.⁸³ Moreover, due to insufficient financing by the State, advertising accounted for 38 per cent of ETV's total income in 1997. This led to severe constraints on the potential revenues of private broadcasters, increased the orientation of ETV programming towards the interests of advertisers, and consequently represented a major constraint on the public service broadcaster's ability to pursue its public service mandate.⁸⁴

As a result, a first attempt was made to terminate advertising on ETV in late 1997, when the director general of ETV signed a private agreement with the (then) three

⁸⁰ Interview with Ainar Ruusaar, 11 June 2004.

⁸¹ Interview with Ainar Ruusaar, 11 June 2004.

⁸² "Digitaalringhäälingu kontseptsioon" ("Concept of Digital Broadcasting"), adopted by the Government of Estonia on 15 June 2004, available in Estonian at <http://www.levira.ee/digikontseptsioon.pdf> (accessed on 1 June 2005), (hereafter, Concept of Digital Broadcasting), Section 2.3.2.

⁸³ These allegations were investigated, but never confirmed, by the State Audit Office and the Competition Board. Private broadcasters claim that the State authorities did not have sufficient knowledge about the TV sector to make this finding. Information from interviews with Toomas Vara and Urmas Oru.

⁸⁴ Shein, *Development Trends*, pp. 140–145.

private channels under which they paid ETV directly a fixed annual fee not to accept advertising.⁸⁵ The experiment – carried out from 1 January 1998 – was evaluated positively by private TV companies, and the orientation of ETV programming became less commercial. However, in mid-1999 one of the private stations (TV 1) failed to pay its contribution to ETV in time, and this served as a pretext for the public broadcaster to begin selling advertising space again.⁸⁶ ETV's return to the advertising market shook both private TV broadcasters and radio advertising, as its advertising rates were almost as low as the larger radio stations. In addition, ETV programmes regained their commercial format (see Section 3.4).

However, the experiment proved that advertising-free public broadcasting could be achieved, pointing the way towards a partial solution of the economic unsustainability of private broadcasters. Accordingly, on 30 April 2001, the Ministry of Culture, the Broadcasting Council, the Association of Estonian Broadcasters (AEB) and the Estonian Association of Television Production Companies signed a joint agreement to again end advertising on ETV.⁸⁷ The private broadcasters agreed to pay a comparatively high annual broadcasting licence fee – EEK 15 million (€0.9 million) each in 2003, and the agreement to cease advertising on ETV and establish the fee was formalised in the 2001 amendments to the Broadcasting Act.⁸⁸ In 2004, the fee grew to EEK 20 million (€1.28 million) and according to an amendment to the Broadcasting Act passed in December 2003⁸⁹ will increase by EEK 1.25 million (€80,000) every following year. The latter amendment was passed despite strong opposition from private broadcasters, who argued that the increase was introduced too early and was set too high, not in accordance with the actual development of the television market. Moreover, as there is no direct legal link between the broadcast licence fee and the principles of financing the public broadcasting (the money generated in this way goes directly to the State), ETV and ER did not in fact benefit from the increased fees.

4.3.2 Present funding of ETV

The total budget for ETV in 2004 was EEK 210.9 million (or approximately €13.5 million). Of this, 93 per cent (EEK 197 million or €12.6 million) was provided by

⁸⁵ A. Straumanis. "Estonia Going Ad-free", in *Transitions* 5/1998, pp. 79–80; and "Public Television Became Ad-free", in AEB Newsletter, I, 1998 (III), pp. 4–5, available (in English) on the AEB website <http://www.ringhliit.ee/eng/oldies.html> (accessed 30 December 2004).

⁸⁶ Shein, *Landscape*, pp 384–385; "Relations with public advertising", in *AEB Newsletter*, released for the AER Information Day in Brussels, 15 October 2003.

⁸⁷ "Kultuuriministeeriumi juures tegutsenud töörühma ettepanekud 'Ringhäälinguseaduse' muutmiseks", ("Proposals of the working group at the Ministry of Culture for amending the Broadcasting Act"), 30 April 2001, available (in Estonian) at http://www.ringhliit.ee/paevakorral/tooryhma_ettepanekud.html (accessed 1 June 2005).

⁸⁸ Broadcasting Act (2001), art. 37. Initially the fee was agreed at EEK 10 million, but after the bankruptcy of TV 1 it was raised to EEK 15 million.

⁸⁹ Broadcasting Act (2003), art. 37.

direct subsidy from the State budget.⁹⁰ Other income sources are donations, project financing, grant of use of assets (including programmes), profit received from the organisation of public events necessary for the performance of the ETV by law and of training programmes, production of recordings and audiovisual materials.

The State subsidy is approved annually by Parliament. The Broadcasting Council proposes a budget to the Ministry of Culture, which itself operates within the constraint of an initial draft limit imposed by the Ministry of Finance. If the Broadcasting Council's proposal does not fit into the budget limit imposed on the Ministry of Culture by the Ministry of Finance, the Ministry of Culture alerts the Broadcasting Council. The Ministry of Finance submits a proposed subsidy to the Government, and its proposal is seldom changed much by Parliament during final approval. In practice, ETV has little influence on its budget, and according to the Chairman of the Broadcasting Council, Andres Jõesaar⁹¹ the Ministry of Finance has never taken into account the Council's budget request when determining ETV's budget. Parliament approves a single budget allocation for both ETV and ER together. On the basis of this approved subsidy and the broadcasters' own projected revenue, the Broadcasting Council then approves the annual budgets for ETV and ER.

Of the EEK 197 million (€12.6 million) provided for ETV by the State in 2004, EEK 30 million (€1.9 million) was covered by the above-mentioned broadcasting licence fees paid by private TV channels, although there is no explicit official link between these fees and the size of the State subsidy. There was some discussion of the option of introducing a licence fee paid by viewers in the early 1990s, but the widespread consensual view is that in addition to being an unpopular move, collection of the licence fee would cost more than the revenue it would yield. In other words, ETV depends for the vast majority of its funding on direct State subsidy, most of which is not covered by licence fees.

In order to ensure stable and sufficient funding, the above-mentioned 2001 agreement to end advertising on ETV also envisaged financing ETV on the basis of three-year plans. This model is reaffirmed both in the Development Plan 2003–2005 and in the Broadcasting Act.

According to the legally binding Development Plan 2003–2005, the total State subsidy for the public broadcasters in 2004 should have been EEK 447 million (€28.6 million).⁹² However, as is already apparent from the figures mentioned above, the process by which the actual annual budget of ETV is approved has led to a different outcome. The actual total subsidy approved for both public broadcasters for 2004 was

⁹⁰ By comparison, the total budget for 2004 for ER is EEK 107.5 million (or approximately €6.9 million), of which EEK 89 million (€5.7 million) is from the State subsidy. Data from the Annual Budgets for ETV and ER, provided by the Broadcasting Council to EUMAP on 27 May 2004

⁹¹ Interview with Andres Jõesaar, 27 May 2004.

⁹² Development Plan 2003–2005, Section 3.2.4.

EEK 283 million (€18.1 million), a 30 per cent shortfall on the legal commitment previously adopted.

The Development Plan 2003–2005 envisages a total subsidy of EEK 477 million (€30.5 million) for the public broadcasters in 2005.⁹³ However, the Development Strategy 2005–2008 envisages substantially less for 2005 – EEK 359 million (€22.9 million). On top of this, most of the losses suffered by ETV during the 1990s remain on its balance sheet, constraining the broadcaster further.

It is worth noting here that the relative weights of the Development Strategy (adopted by the Broadcasting Council) and Development Plan (adopted by Parliament) are in fact unclear, contributing to the unclear financing situation of public broadcasting. Given the failure of Parliament to observe its own Plan when approving the annual budget, the Broadcasting Council appears to try and adopt the Strategy to reflect the realities of financing.

According to Hagi Shein, Dean of the Media School at International University Concordia Audentes and a member of the Broadcasting Council, the current level of financing is sufficient for ETV to fulfil short-term tasks and make programmes of short-term value, but insufficient to produce programmes of permanent value (television, theatre and films), investigative journalism, or to carry out investment in technical development and sustaining archives.⁹⁴ For example, ETV conducts virtually no investigative journalism at all, making it doubtful that it carries out any key role in scrutinising the conduct of public affairs – something that is normally assumed to be an important task of public broadcasting in a democracy.

State officials and private broadcasters have often questioned whether the public broadcaster needs more funding. No clear explanation exists for the lack of sufficient stable financing for ETV. At the very least, providing sufficient funding is not a political priority, and more generally there is no consensus among political parties on the role and mission of public broadcasting.

Altogether, if ETV's funding is judged according to four standard criteria – stability/predictability, independence, sufficiency for fulfilment of tasks, and transparency⁹⁵ – problems remain in all four areas. Financing is not stable or predictable, as three-year planning is not observed by Parliament. Financing is not independent, as it comes directly from the state budget and depends on the momentary political mood of Parliament. It is also not sufficient to fulfil ETV's own remit. Finally, it is not transparent as the criteria by which funding is decided are unknown either to ETV itself or the public.

⁹³ Development Plan 2003–2005, Section 3.2.4.

⁹⁴ Interview with Hagi Shein, Dean of the Media School at International University Concordia Audentes, Member of the Broadcasting Council, Tallinn, 31 May 2004.

⁹⁵ Criteria suggested at EUMAP Roundtable, Tallinn, November 4.

Concerning the future of public broadcasting, there has been virtually no public debate on this issue since ETV ceased carrying advertising – reflecting the disappearance of conflict between public and private broadcasters. While Chairman of the Broadcasting Council, Andres Jõesaar, believes private broadcasters lack interest in the issue,⁹⁶ the private broadcasters allege irrational resistance from senior figures in public broadcasting to any criticism from politicians or private broadcasters.⁹⁷

4.4 Governance structure

4.4.1 Composition and appointments

ETV and ER are each governed by a Management Board consisting of up to five persons. The Broadcasting Council appoints the Management Boards of both ETV and ER. As a rule, the members of the boards are chosen by public contest. Members are usually persons with relevant professional experience, and there have been few allegations of political considerations taking priority in appointments. The tenure of the chairman and members of the Management Board is up to five years. The actual tenure is defined by contract, and is usually four to five years.

Concerning the transparency of ETV, both State officials and private broadcasters have accused the broadcaster of not producing sufficiently detailed accounts.⁹⁸ However, many experts believe that in recent years reporting has become more detailed and accessible to the public. At the time of compiling this report, the Ministry of Finance stated it had not carried out sufficient analysis to evaluate the transparency of ETV.⁹⁹ The Ministry stated that it is currently working on a new “financing concept”, without specifying exactly what this means. According to Andres Jõesaar all questions from the Ministry of Finance and others concerning ETV’s finances have received exhaustive answers, and all plans and accounting reports are publicly available on the web (www.etv.ee).¹⁰⁰

4.4.2 Responsibilities

The law does not prescribe any sanctions to be imposed on the public broadcaster for violating the Broadcasting Act, except – in theory – fines, although these have almost never been imposed in practice.

⁹⁶ Interview with Andres Jõesaar, 27 May 2004.

⁹⁷ Interview with Toomas Vara, 28 May 2004.

⁹⁸ See, for example: D. Vaarik, “Valgust ETV ekraanile”, (“Light onto ETV’s screen”), in *Postimees*, 23 May 2001. D. Vaarik was at this time an adviser to the Ministry of Finance.

⁹⁹ Interview with Maria Fedina, Chief Specialist of the Ministry of Finance Public Relations Department, Tallinn, 4 June 2004.

¹⁰⁰ Interview with Andres Jõesaar, 27 May 2004.

However, the Broadcasting Act does set down the conditions under which the Council may remove members of ETV management. Until the Act was amended in 2000, the only ground on which a member of the Management Board could be removed was a criminal conviction. At that time, the Broadcasting Council attempted to fire Director General Toomas Lepp on grounds of distrust, due to financial losses at ETV. The Council lost the case in court, although Lepp quit by agreement in 2000.¹⁰¹ After this case, Parliament amended the Broadcasting Act to specify the grounds for dismissal of ETV managers, and also to specify the liability of individual members of the Broadcasting Council for Council decisions that cause wrongful damage to ETV, ER or their creditors.¹⁰²

Since 2000, the Chairman (the new title for the former Director General) or a member of the Management Board can be removed in the following cases:¹⁰³

- if the Broadcasting Council expresses no confidence in the chairman or a member of the Management Board by a two-thirds majority of its members;
- if a member of the board is convicted of a criminal offence;
- on grounds provided for in the member's contract.

In other words, essentially the Broadcasting Council may draw ETV management's attention to breaches of the Broadcasting Act, and in the most extreme situation dismiss the managers.

In accordance with the amended Act, in January 2002 the Broadcasting Council dismissed the Chairman of the Management Board, Aare Urm. He was accused by the Council of neglect of public service programming principles, actions against the Council, violation of the Broadcasting Act and unwillingness to cooperate with the Council.¹⁰⁴ In particular ETV had allegedly continued selling advertising in breach of the new no-advertising policy approved by Parliament.¹⁰⁵

Apart from the personnel measures described above, the Broadcasting Council may not interfere in ETV's programming, as this field is considered to be independent.

¹⁰¹ Shein, *Landscape of Estonian Television*, pp. 386–389.

¹⁰² Broadcasting Act, (passed on 8 March 2000, entered into force on 29 March 2000), RT I 2000,25,143, art. 32(1), (hereafter, Broadcasting Act (8/3/2000)).

¹⁰³ Broadcasting Act (8/3/2000), art. 32(2).

¹⁰⁴ Shein, *Landscape of Estonian Television*, p. 397.

¹⁰⁵ See for example: "TV 3 juhi sõnul võiks ETV juhtidega tegeleda uurimisorganid" ("According to the manager of TV 3 ETV's management should be investigated by the authorities"), *Eesti Päevaleht Online* news item, 10 January 2002, available (in Estonian) at <http://www.epl.ee/artikkel.php?ID=186240> (accessed on 8 June 2005).

In 2003 one case of product placement was discussed by the Council.¹⁰⁶ ETV's management was alerted to the fact and specific employees were given oral reprimands. In one case the Broadcasting Council submitted a complaint about ETV to the Consumer Protection Board (which supervises the compliance of advertisers with the regulations of the Advertising Act), after ETV had broadcast a parody reality show before 21.00 which had a vodka brand as a sponsor. The Board forwarded the case to the Tallinn City Court, which in December 2001 found that a brand cannot be a sponsor, and judged that the sponsorship announcement constituted alcohol advertising broadcast at a prohibited time. The court imposed a fine of EEK 80,000 (or approximately €5,112) on the broadcaster, which was upheld on appeal to a district court.¹⁰⁷ The Broadcasting Council also decided to redirect this fine against the (then) ETV Chairman Aare Urm personally. However, as of September 2004 the Council had not applied to a court to impose this decision, as its implementation appears to be highly complicated in legal terms; moreover, the (then) chairman of the Board of ETV had in any case been dismissed.

The Broadcasting Council's "Principles of Programming Impartiality and Balance in Public Broadcasting",¹⁰⁸ (hereafter, Broadcasting Council Guidelines), also envisage the establishment of an independent ombudsman or jury to analyse cases of violation of the rules of impartiality and balance and propose penalties. However, this has not happened, nor did ETV currently participate in any other system of independent self-regulation at the time of writing this report. From 1997 to 2002, ETV was a member of the independent Estonian Press Council, which examined complaints against television channels. However, in 2002 the Newspaper Association accused the chairman of the Estonian Press Council of mismanagement, left the Council, called on broadcasters to leave the Council too and created a new Estonian Press Council of its own. The broadcasters left the Council to avoid conflict with publishers, but did not join the new Council (as it dealt almost exclusively with complaints against newspapers) or form any of their own.¹⁰⁹ Only in late spring of 2005, i.e. three years after leaving the original Press Council, did ETV join the self-regulatory body of the Newspaper Association – mainly by accepting its adjudications, while the organisation itself is being run by the print media industry.

¹⁰⁶ Interview with Andres Jõesaar, 27 May 2004.

¹⁰⁷ Shein, *Landscape of Estonian Television*, p. 397.

¹⁰⁸ Broadcasting Council, *Avalik-õigusliku ringhäälingu programme erapooletuse ja tasakaalustatuse põhimõtted (Principles of Programming Impartiality and Balance in Public Broadcasting)*, approved by the Broadcasting Council on 29 March 2001, available in Estonian at <http://www.er.ee/index.php?lang=est&linker=true&cid=376> (accessed 1 June 2005), (hereafter, Broadcasting Council Guidelines).

¹⁰⁹ H. Harro-Loit and E. Lauk, "Self-regulation: watchdog's collar or shelter for the guild?" cited in N. Malmelin (ed.), *Writings on International and National Communication*, in *Viestinnän julkaisu*, 8, Department of Communication, University of Helsinki, 2003, pp. 98–108.

The original Estonian Press Council has received only two to three complaints a year against broadcasters – far fewer than the number of complaints against newspapers. Currently, ETV deals with these complaints through the office of its programme director, and if requested provides an answer to the Press Council. In major cases the Programme Council (consisting of ETV employees, mainly chief producers) would also be involved in handling the complaints, although this has never occurred.¹¹⁰ In general, the system appears unlikely to be used or to work adequately without a clear complaints procedure and institutional structure for receiving and examining complaints.

4.5 Programme framework

4.5.1 Output

The annual output of the ETV in 2003 was 5,863 hours.¹¹¹ This is one of the smallest among members of the European Broadcasting Union (EBU)¹¹² and is due to the fact that only one channel is broadcast. ETV has the largest share in Europe of own production and European works as a proportion of total programming – 95 per cent. Own production accounts for 53 per cent of total programming.¹¹³

The breakdown of programme output of ETV by genre in 1997 and 2003 is shown below in Table 5. ETV appears to largely fulfil its role as a public broadcaster. It remains Estonia's biggest producer (in terms of output) of original programmes in Estonian and Russian, and is the main producer of news and political, educational, cultural, sports and children's programming.¹¹⁴ Since it ceased selling advertising (first in 1998, then definitively in 2002) it has been enabled to refrain from commercial temptations and its output has become more public service-oriented.

The overall design of the programme service is conducted by the management of ETV. The broadcaster is accountable to the Broadcasting Council, which supervises its fulfilment of its functions as laid down in the Broadcasting Act, and observance of other obligations under the Act. The Council also supervises ETV's adherence to the programming outline derived from the Development Strategy 2005–2008.

¹¹⁰ Interview with Ainar Ruusaaar, 11 June 2004.

¹¹¹ Data of ETV (2003) provided to EUMAP on 11 June 2004.

¹¹² Interview with Ainar Ruusaaar, 11 June 2004

¹¹³ Data of ETV (2003) provided for EUMAP on 11 June 2004.

¹¹⁴ Interview with Hagi Shein, 31 May 2004.

Table 5. Annual output of ETV – breakdown by genre (1997 and 2003)

Annual output		1997	2003
Total hours		4,012	5,863
Breakdown by genre – as a percentage of total annual output	Fiction	28.9	28.7
	“Infotainment”	6.0	15.1
	News	8.9	12.3
	Culture, science	10.5	6.5
	Education	1.7	0.9
	Music	5.6	6.2
	Information	6.6	6.0
	Sports	8.2	5.3
	Entertainment	5.5	2.7
	Human interest	6.4	11.5
	Religion	0.8	0.1
	Promotion	6.1	4.7
	Advertising	3.4	0
	Other	1.4	0

Source: P. Vihalemm¹¹⁵

A consultative Extended Programme Council discusses the output of ETV three times a year and makes suggestions regarding programming. The Council is composed of external experts and advisers in addition to chief producers and other internal ETV employees.

There has been no systematic monitoring and analysis of TV output to provide a breakdown of the programming of ETV or any other channel. Course projects of the Media School at the International University of Concordia Audentes surveyed the programme structures of the Estonian terrestrial television channels in spring 2002 and February 2003.¹¹⁶ According to their findings, the structure of ETV's output is distinct from those of commercial broadcasters. During the period of observation, ETV had the largest proportion of factual programming; 62 per cent, as compared to 41 per cent on Kanal 2 and 16 per cent on TV 3. On commercial channels, programmes about the activities of Parliament, culture and fine arts, religion and classical music were absent, while by contrast ETV did not screen any entertaining talk shows. Also, comparing the programme structure of ETV with the previous year (for spring 2002, when advertising was still broadcast), the volume of factual programming had increased and the volume of entertainment and music had decreased.

¹¹⁵ Vihalemm *Media system and media usage*, p. 359.

¹¹⁶ T. Rajaleid, *Estonian Television Stations' Readiness to Follow the Principles of EU Television without Frontiers Directive*, Course Project II, manuscript, Media Department, Concordia International University Estonia, Tallinn 2003, available on the University's website at <http://www.hot.ee/twf> (accessed 17 February 2005), (hereafter, Rajaleid, *Estonian Television Stations*).

Experts interviewed for this report¹¹⁷ broadly believe that ETV has increasingly fulfilled its role as a public service broadcaster, especially since advertising disappeared from the channel. Previously, commercial entertainment prevailed,¹¹⁸ while subsequently the share of programmes which address ETV's non-commercial remit (for example children's programmes¹¹⁹ or covering life in rural localities) has increased. There is a general perception among media experts and professionals that ETV's programming has moved closer to what is generally expected from a public service broadcaster. That said, given ETV's current remit and even within the current level of financing, the share of education, culture and science programmes in ETV's output should probably be larger.

4.5.2 Programme guidelines

Programme obligations and guidelines for both ETV and private broadcasters come from several sources: general programme requirements stemming from the Broadcasting Act, quotas (derived mainly from European requirements), obligations concerning journalistic standards deriving from other provisions of the Broadcasting Act, and the Broadcasting Council Guidelines.

In case of a threat to public security or the constitutional order, broadcasters are required to promptly transmit official announcements of Parliament, the President and the Government in all their services at their own expense. The broadcasters must also transmit without delay information which is necessary for protection of the life, health and security of persons or for the prevention of damage to property or of danger, or for the prevention of environmental damage. The public broadcasters are required to broadcast all official announcements of constitutional state authorities, without delay. The broadcasters are not allowed to change these announcements and therefore are not liable for their content.¹²⁰

The Broadcasting Council Guidelines do oblige the management of ETV to ensure that the programme service covers, along with current affairs and political issues, so-called "timeless" themes – that is, themes that are not connected to current affairs. They also state that thematic variety helps satisfy the informational needs of different groups of audience and performs diverse social and cultural functions.

¹¹⁷ Interviews with Hagi Shein, 31 May 2004; Peeter Sookruus, 2 June 2004; Halliki Harro-Loit, 7 June 2004; Toomas Vara, 28 May 2004; Urmas Oru, 31 May 2004; Aune Unt, Lecturer at the Department of Journalism and Communication at University of Tartu, Tartu, 10 February 2005.

¹¹⁸ See, for example: I. Taska, T. Lepp, O. Sõnajalg, "Enne vaimutoit, siis meelelahutus", ("Mental food first, entertainment afterwards"), in *Eesti Päevaleht*, 22 June 1996.

¹¹⁹ In 1997 1.2 per cent and 2.5 per cent in 1999, as compared to 5.8 per cent in 1998 (this was the first advertising free year in ETV), or 7.2 per cent in 2003. Data from: Shein, *Landscape of Estonian Television*, p. 58, and data provided by ETV to EUMAP on 27 August 2004.

¹²⁰ Broadcasting Act, art. 10.

As Section 4.3 describes, since July 2002 ETV has not carried advertising. The Broadcasting Act also prohibits using sponsorship to facilitate programme acquisition, production or transmission.¹²¹ ETV may accept donations and project financing, the source of which has to be disclosed only by name and without logos or trademarks, background sound or audiovisual background.¹²² ETV may broadcast advertising and information concerning sponsors if such material accompanies broadcasting rights to events acquired through the European Broadcasting Union (EBU); major international sporting events are a possible example. In addition the Ministry of Culture may, on the basis of a specific and reasoned request of the Broadcasting Council, permit ETV to broadcast advertising and information concerning sponsors, if these accompany broadcasting rights to events which are of major importance for society; the sponsorship information has to be presented in the same way as information about donations and project financing, unless otherwise stated in the broadcasting rights.¹²³ Managers of private broadcasters claim that the Minister tends to issue these permits too easily. After this legal provision came into effect, the Ministry established a working group to discuss the propriety of ETV's requests. However, the group soon ceased to meet, after discussions about particular cases led to fundamental disagreements between the private and public broadcasters.

Objectivity and balance

Under the Broadcasting Act, executive producers must ensure the compliance of programmes with 'fair press practice' and the principle of freedom of speech. However, neither the Act nor any other legal provision defines what constitutes "fair practice". The Act contains provisions mandating political balance, according to which all political parties must have equal access to transmission opportunities.¹²⁴ Upon granting broadcasting time to a political party or a political movement to present its positions, a broadcaster must also provide an opportunity for time to be granted in the same programme service, under equal conditions and without undue delay, to other political parties or movements requesting it.

The Broadcasting Council Guidelines allocate the responsibility for compliance with the guidelines to individual journalists, reporters, editors, directors and photographers.¹²⁵ Editorial control is exercised by executive producers, and responsibility for the balance and impartiality of the programme service as a whole lies with the Management Board. The Guidelines establish rules of good conduct and contain specific obligations regarding thematic balance, objectivity, coverage of controversial issues, political coverage, interviewing, and editing. They state that impartiality and balance must play an essential

¹²¹ Broadcasting Act, art. 20.

¹²² Broadcasting Act, art. 29 and 35.

¹²³ Broadcasting Act, art. 29.

¹²⁴ Broadcasting Act, passed on 16 June 1999, entered into force on 24 July 1999, RT I 1999, 59, 613.

¹²⁵ Broadcasting Council Guidelines, Chapter 14, art 6(1),

part of the service provided by the public broadcasters. The broadcaster should provide equal opportunities to speak to all parties (institutions, political parties, professional and social groups) involved in an issue that is covered, whether they be decision-makers or those affected by decisions.

The Broadcasting Council Guidelines also lay down the principle of objectivity, stating that opinions must be based on facts and that prejudice must be avoided. Commentary must be justified and conclusions that do not logically derive from presented facts should be avoided; in other words, all relevant facts that underpin a presented conclusion must themselves be presented.

A chapter in the Guidelines is dedicated to political balance. This prescribes equal treatment for all politicians regardless of their position, and the avoidance of psychological, situational or contextual preferences by the journalist. Where political issues are covered, different viewpoints must be heard. The use of politicians as hosts or interviewers must be well justified, and representatives of other parties must be given the same opportunity. Politicians may not be used as news anchors, interviewers or reporters. During election campaigns ETV must state how many debates it will hold, who will be invited and according to what criteria. No problems have been noted in implementation of these provisions.

4.5.3 Quotas

There are no special quotas for representation of languages or minority groups in Estonia. The issue of programming for the Russian-speaking minority has recently again become the subject of disagreement. There has been a general perception that the overall volume of these programmes has decreased in recent years. ETV denies this, pointing out that the volume of output in Russian (including Estonian programmes with Russian subtitles and language training programmes) has remained steady for the last three years at around four per cent of total programming: 203 hours per year in 2001, 207 in 2002 and 230 in 2003.¹²⁶ However, according to ETV Programme Director Ainar Ruusaar the placing of programmes in Russian in prime time has ceased (with the exception of the news in Russian), because – in his view – the concentration of Russian programmes in this period would cause the overall audience share of ETV in that period to drop to three per cent.¹²⁷ This is one of the main arguments for introducing a second ETV channel.

The Development Plan 2003–2005 states that ETV aims to attract more Russian viewers, and prescribes a big increase in Russian language feature programmes (excluding news and repeated programmes) from 55 hours per year in 2002 to 96 hours by 2003, accompanied by an increase in financial resources for Russian

¹²⁶ Interview with Ainar Ruusaar, 11 June 2004.

¹²⁷ Interview with Ainar Ruusaar, 11 June 2004.

programming of 2.7 times.¹²⁸ However, neither the increase in resources nor the increase in programming have materialised, and the volume of Russian programming stayed the same in 2004 as well.

Most of the finances for producing programmes in Russian comes from various foundations, for example the Integration Foundation. According to Ainar Ruusaar, Russian programming in 2005 will be increased “to some extent”, with assistance from EU Phare funds of approximately EEK 2 million (or approximately €128,000) to produce some bilingual programmes. Some professionals are critical of this practice,¹²⁹ arguing that project financing is likely to produce output designed to promote particular opinions rather than balanced journalism.

The problem of serving the needs of the Russian-speaking minority is a complex one, requiring detailed analysis and clear policy. Currently, Russian-language programmes in Estonia are watched predominantly by ethnic Estonian viewers.¹³⁰ Russian-speakers prefer watching programmes broadcast from Russia; a notable proportion of the Russian-speaking population does not understand Estonian or their knowledge of Estonian language is poor, and programming in Russian is not continuous, making such programming vulnerable to the tendency of viewers to leave one channel running. The Russian-language service of Estonian Radio has a substantial audience in Estonia, but this may be partly because programmes from Russia cannot be received on FM except near the border. It may be argued in addition that ETV has no ability to compete in terms of quality with Russian-language channels broadcast from Russia, especially with the rich variety of light entertainment programmes available.

In addition, the Russian-speaking minority is varied in terms of social and cultural background, age, education, occupation and place of residence, and according to media experts this creates a complicated target audience.¹³¹ The lower middle class, mainly not speaking the official language, identifies itself more with Russia, and also watches Russian television channels. More Western-oriented viewers tend to know foreign languages and are able to watch Western channels even without dubbing. Most of the latter can easily watch programming in Estonian, and therefore need no special programming in Russian. Also many other nationalities which speak Russian as their first language (such as Ukrainians and Belorussians) and who have cultural autonomy under Estonian law, have different patterns of media consumption as they tend more than average to identify

¹²⁸ Development Plan 2003–2005, Appendix 5.

¹²⁹ P. Ivanov, “Siin Tallinn: ste-ste-stereo, stereotüübid” (“Tallinn calling: ste-ste-stereo, stereotypes”), in *Eesti Päevaleht*, 8 April 2004. P. Ivanov is the former ETV chief producer of Russian programmes.

¹³⁰ The bilingual talkshow *Unetus* [Insomnia] gained 72,000 Estonian viewers and 4,200 Russian speaking viewers; *Subboteya* [Saturday Show] of Kanal 2 gained 30,000 Estonian viewers and 3,500 Russian speaking viewers. I. Raag, “Potjomkinluse lõpp”, (“End of the Potjomkin approach”), in *Eesti Päevaleht*, 7 April 2004, (hereafter, Raag, *End of the Potjomkin approach*).

¹³¹ Interview with Halliki Harro-Loit, 7 June 2004.

themselves with Estonia.¹³² ETV managers claim that this fragmented audience is hard to serve effectively, especially under circumstances of limited finances and with only one channel. In this situation, the argument runs, placing Russian-language programs in Estonian prime time would only lower ETV's audience share without bringing any noticeable benefit to the Russian-speaking community.

Chair of the Board of ETV, Ilmar Raag, for example argues that the production of programming in Russian is expensive and needless because Russian programmes have an extremely small impact on their target audience.¹³³ He characterized the attempts to attract a Russian-speaking audience that is predominantly interested in entertainment as a complete failure.¹³⁴ Such views are mainstream. The counterargument is that the Russian-speaking population are also taxpayers and that ETV should produce Russian-language programmes with the aim of integrating them into Estonian society.¹³⁵

In order to reach consensus on such issues and design programming accordingly, more research is needed on the information needs of minority communities. Such research as has been conducted indicates there is room for improvement in catering to the Russian-speaking audience. One academic thesis indicates, for example, that Russian-language news on ETV focuses very little on life within the Russian-speaking community and tends rather to report on "official issues", as the established routines for collecting preliminary information do not facilitate the inclusion of issues of direct relevance to the Russian-speaking community.¹³⁶ In other words, journalists know little about the life of the Russian-speaking community and presumably do not value its newsworthiness.

Regarding other quotas, the following requirements exist:¹³⁷

Minimum weekly transmission

The required minimum weekly transmission time is 56 hours for a national terrestrial television broadcaster, and 21 hours for a local terrestrial television broadcaster or cable network. At least five per cent of daily transmission time has to be allocated for news

¹³² See, for example: T. Vihalemm and A. Masso, "Russian speaking minority on different cultural flows: media orientation, social attitudes and collective identity", in E. Lauk *et al* (eds), *Media and National Identities*, by Hampton Press, (forthcoming).

¹³³ I. Raag, "Memo rahvusringhäälingu asjus", ("A memo about public broadcasting"), in *Sirp*, 20 February 2004; and Raag, *End of the Potyomkin approach*.

¹³⁴ Comments at EUMAP Roundtable, Tallinn, 4 November 2004.

¹³⁵ L. Keedus, "Kallid ja mõttetud venelased?" ("Expensive and senseless Russians?"), in *Eesti Päevaleht*, 14 April 2004.

¹³⁶ D. Vasilyev, *Uudiste valik venekeelses Aktuaalses Kaameras*, (*Choice of News in the Russian Language Aktuaalne Kaamera*), Bachelor's Thesis, manuscript, University of Tartu, Department of Journalism and Communication, Tartu, 2004.

¹³⁷ Broadcasting Act, Chapter 1.

produced by the channel itself, except for Sundays and public holidays when there is no quota.

European works

At least 51 per cent of transmission time (excluding news, sports events, games, advertising, teleshopping and teletext services) has to be reserved for the transmission of European works, defined precisely in the law according to the EU TWF Directive.¹³⁸

At least ten per cent of transmission time (with the same exceptions) must be allocated to the transmission of European works created by producers who are independent of the broadcaster, and the works must include works transmitted within five years of production. (The required proportion of such works is not specified.)

Own production

At least ten per cent of monthly transmission time (excluding the time appointed to news, sports events, games, advertising, teleshopping and teletext services) has to be allocated for “own production”, defined as programmes relating to contemporary Estonia or Estonian cultural heritage, produced by the broadcaster or in cooperation with producers from the member states of the EU commissioned from an independent European producer. At least 50 per cent of the minimum quota for own production must be broadcast during prime time, defined as the period from 19.00 to 23.00.

Exclusive broadcasting rights

The Broadcasting Act provides restrictions on the exercise of exclusive broadcasting rights. The Government has established a list of events which are regarded as being of major importance for society and which are therefore to be transmitted such that a substantial proportion of the general public has the possibility of following such events for free on terrestrial television. The events listed are the National Singing and Dancing Festival, Olympic Games, World and European Football and Athletics Championships, World Skiing Championships, Skiing World Cup, and all World and European championships held in Estonia.¹³⁹

¹³⁸ EU “Television without Frontiers” Directive (hereafter, TWF Directive): European Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, 89/552/EEC, OJ L 298 of 17 October 1989, as amended by European Parliament Directive of June 1997, 97/36/EC, OJ L 202 60 of 30 July 1997, consolidated text available on the European Commission website at http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf (accessed 15 March 2005).

¹³⁹ Government Decree on the List of events of major importance for society of Estonia, which need to be transmitted in free television, No. 138, RT I, 2003,40,276, adopted on 6 May 2003.

Implementation of quotas

ETV has fulfilled its programming quotas easily: in 2003, 82.8 per cent of programming was European works, 51.2 per cent from independent producers and 52.7 per cent own production.¹⁴⁰ Since the beginning of 2004 the fulfilment of quotas has been monitored by TNS EMOR. Previously, the Ministry found it difficult to monitor adequately because the quotas for European works and independent producers are set per calendar year, the quota for own production per calendar month and the news quota on a daily basis, yet recordings of transmitted programmes which would enable the Ministry to track output, only have to be preserved for 20 days under the Broadcasting Act.

Some experts believe national audiovisual production should be encouraged to a greater extent, either by having stricter quotas for production by Estonian producers or by providing resources to domestic producers.¹⁴¹ Such opinions are based on the fact that domestic production is negligible, with one or two films, a few documentaries and/or animated films per year. After amendments to the Broadcasting Act passed in 2003, the conditions for television broadcast licences also include the requirement that at least three hours per week are to be allocated to audiovisual works supported by Estonian film foundations.

4.6 Editorial standards

As Section 4.5.2 describes, both the Broadcasting Act and the Broadcasting Council Guidelines provide external regulation of broadcasting standards. In addition, the Code of Ethics of the Estonian Press is another potential source of regulation of the activities of TV journalists.¹⁴² The Code is based on similar codes found in Northern European countries, prescribing rules for the provision of impartial and accurate information and states the moral obligations of journalists and editors separately. However, the Code is of greater relevance to newspaper journalists, as the printed press is subject to almost no legal regulation. The Broadcasting Council Guidelines refer to the Code in some clauses and the general approach of the two documents is similar. According to information provided by the Estonian Press Council, ETV has not yet signed the Code of Ethics due to formal disagreement with one clause; at the time of writing this disagreement had been resolved, but no opportunity had occurred for the public broadcaster to sign the Code. Both ETV and private broadcasters (for whom the Code is potentially more important as these broadcasters are not regulated by the Principles) acknowledge the importance of the Code.

¹⁴⁰ Database information, provided by the Ministry of Culture to EUMAP on 3 February 2005.

¹⁴¹ "Impact of joining the EU", pp. 31–33.

¹⁴² The Code of Ethics may be found (in English) on the website of the Estonian Press Council at http://www.asn.org.ee/english/code_of_ethics.html (accessed 15 March 2005), (hereafter, Code of Ethics of the Estonian Press).

5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING

The commercial broadcasting sector in Estonia exhibits considerable vertical and horizontal concentration, especially through the extensive broadcasting and press holdings of Norwegian Schibsted. The Broadcasting Act fails to provide for any measures to be taken against concentration that occurs *after* a broadcasting licence has already been allocated. Neither the Government nor the regulators have adopted a clear position regarding concentration, and the impact of media concentration has not yet been studied thoroughly. The editorial independence of private broadcasting companies depends largely on good practice. While independence is not thought to be threatened in practice, the absence of a definition of good editorial practice in the Broadcasting Law and of clear mechanisms for processing complaints against broadcasters raises some doubts in this area.

5.1 The commercial broadcasting system

Terrestrial

There are two private terrestrial TV broadcasters in Estonia: Kanal 2 and TV 3. There is currently only one terrestrial local television channel, Alo TV, operating in Tartu and providing mainly text news, amateur videos and music videos.

The commercial broadcasting system – and indeed the Estonian TV market as a whole – is strongly affected by the existence of two main groups with very different TV consumption patterns, and in particular a substantial Russian speaking minority that hardly watches Estonian channels at all, preferring to watch Russian channels redistributed in Estonia via cable. (See also Section 2).

In addition to the two licence paying private broadcasters, another competitor entered the market in 2001, Baltic Channel One (PBK). PBK is the Baltic version of Russian State-controlled Pervyi Kanal, with a mixture of Russian-language programmes produced in Russia (two thirds) and locally (one third).¹⁴³ PBK is produced and broadcast via satellite from Latvia and disseminated in Estonia through cable networks. The news programmes of PBK have 52,000 Russian-speaking viewers, while only 11,000 watch ETV's news in Russian.¹⁴⁴

From 2004, PBK has introduced local news produced in Estonia. As the company operates under Latvian jurisdiction, the provisions of Estonian broadcasting law do not apply to the channel and it does not pay the broadcasting licence fee. Estonian private

¹⁴³ M. Rebane, "Eestlased ei võta Baltimaade Vene telekanalit omaks" ("Estonians do not adopt the Baltic Russian channel"), in *Eesti Päevaleht*, 30 October 2003.

¹⁴⁴ Data of TNS EMOR (March-May 2004), provided to EUMAP on 18 June 2004.

broadcasters regard the operations of PBK to be a legalized form of piracy.¹⁴⁵ PBK holds approximately 8 per cent of both the Estonian audience and advertising market (see Section 2.3).

In addition to the fair competition issue, PBK has raised national security concerns in Estonia linked to its potential distribution of false information among the Russian population of Estonia. For example, on the eve of Estonia's accession to the European Union (EU), PBK aired reports about expected increases in prices of salt and other essential commodities, leading to panic buying among the Russian-speaking community.¹⁴⁶ The fact that the PBK's owner (Russian Pervyi Kanal) is tightly controlled by the Russian State authorities¹⁴⁷ fuels worries that it may serve as a propaganda tool for influencing the local Russian population.

The Estonian Ministry of Culture has been powerless to interfere in PBK's activities: the law guarantees freedom of reception and retransmission, and the channel has not broadcast items that might serve as grounds for imposing restrictions (infringement of morals, inciting hatred, pornography or gratuitous violence). The Ministry has contacted the Latvian authorities and recently raised the issue with the EU Council of Ministers to attempt to find a solution.¹⁴⁸

Cable

There are currently 42 cable television operators in Estonia. Only four of these produce their own programmes. Two companies – Starman and Esdata – possess national cable licences. Starman, which has been operating since 1992, purchased one of its competitors – several companies under the Tele 2 trademark – in 2004 and integrated the networks. Esdata is currently building its network. In reality, Starman and STV – which holds a set of local licences covering most of the larger cities – are the two largest cable operators.

Starman still runs only one own-produced channel, Information Channel TV 9, containing a mixture of miscellaneous programmes and text news (including chat). STV runs three own-produced channels: Mirovoye kino (World Films), STV (news, feature programmes and films), and Video-radio STV. STV caters primarily to the Russian-speaking audience, while Starman's channel is in Estonian.

¹⁴⁵ Interviews with: Urmas Oru, 31 May 2004; Toomas Vara, 28 May 2004.

¹⁴⁶ See for example: "Venelane tahab vene uudist", ("A Russian wants Russian news"), Baltic News Service, 3 April 2004, available (in Estonian) at Delfi Internet Portal <http://www.delfi.ee/archive/print.php?id=7558969> (accessed on 7 June 2005).

¹⁴⁷ See for example: Center for Anticorruption Research and Initiative Transparency International Russia, *Monitoring the Misuse of Administrative Resources during the Campaign for the December 2003 Russian Federal State Duma Elections*, Center for Anti-corruption Research and Initiative, Transparency International – R, Moscow, 2004, pp. 59–60.

¹⁴⁸ Interview with Peeter Sookruus, 2 June 2004.

Not all of the own-produced programme packages for which broadcast licences have been issued are actually operating. For instance, STV has been issued five broadcast licences, but their Internet homepage reports on only three programmes.¹⁴⁹ Starman possesses six broadcast licences (including those of the former affiliates of Tele 2), but only one can be found on their homepage.¹⁵⁰ Not commencing broadcasting as stated in the licence is grounds for sanctions, but the absence of monitoring means that no penalties have yet been imposed. The Ministry of Culture has promised to supervise the activities of cable broadcasters more closely.¹⁵¹

5.2 Services

Commercial broadcasters in Estonia are not subject to any public service obligations with the exception of the requirement that at least five per cent of daily transmission time has to be allocated for news, except for Sundays and public holidays (see Section 4.5).

Private television channels broadcast primarily foreign films and entertainment, although they have also been able to produce competitive news, infotainment and fiction. Table 6 shows the breakdown of output for the two private broadcasters.

¹⁴⁹ Homepage of the STV website, available at <http://www.stv.ee> (accessed 30 January 2005).

¹⁵⁰ Homepage of the *Starman* website, available at <http://www.starman.ee> (accessed 30 January 2005).

¹⁵¹ Follow-up interview with Peeter Sookruus, 3 February 2005.

Table 6. Programme output of the two national terrestrial commercial television stations – breakdown by genre (2003)

		Kanal 2	TV 3
Total output in 2003 (hours)		6,844	7,181
Breakdown of output by genre (as a percentage of total output in 2003)	Fiction	38.1	59.2
	“Infotainment”	5.1	4.0
	News	3.7	4.8
	Culture, science	3.7	0
	Education	0	0
	Music	8.9	1.2
	Information	1.2	0
	Sports	3.4	2.1
	Entertainment	19.9	9.2
	Human interest	2.2	5.0
	Religion	0	0
	Promotion	1.9	3.6
	Advertising and teleshopping	11.5	10.8
Other	0.4	0	
Programmes for children as a percentage of total output in 2003		1.3	7.4

Source: Kanal 2 and TV 3¹⁵²

Research carried out by the International University of Concordia has revealed big differences between the programme content of private broadcasters and ETV. During the period of observation (February 2003), Kanal 2 and TV 3 had no programmes on the work of Parliament, culture and fine arts, religion, and serious music, while Kanal 2 offered entertaining talk shows and interactive chat rooms which were absent on the public channel.¹⁵³ TV 3 is notable for its extremely high proportion of fictional programming (70 per cent in February 2003), while the proportion of news and any other form of factual programming is rather low.

Casual observation of programming in 2004 yields the impression that the proportion of news and informational programmes shown by private channels has decreased further, while purchased or locally produced reality shows have appeared and gained popularity.

¹⁵² Reports of Kanal 2 and TV 3, filed to the Statistical Office of Estonia – provided to EUMAP on 1 September 2004.

¹⁵³ Rajaleid, *Estonian Television Stations*, Section 3.2.

Table 7. Examples of most watched programmes on Estonian television channels (October 2004)

Channel	Programme	Description of programme/ format	Rating (in October 2004 ¹⁵⁴)	
			(1) Ranking ¹⁵⁵	(2) Audience share ¹⁵⁶ (per cent)
ETV	Pealtnägija ("Eyewitness")	Series of short journalistic features, often of an investigative nature.	1	25.4
	Õnne 13 ("13, Luck Street")	Original domestic TV drama serial.	3	18.1
	Aktuaalne Kaamera	News	6	15.3
TV3	Kes tahab saada miljonäriks?	International TV quiz format of Who Wants To Be A Millionaire, produced in Estonia.	4	17.6
	Naistevahetus	Reality show, international format of Wife Swap, produced in Estonia.	7	15.1
	Raport ("Report")	Weekly crime newsreel	9	14.4
Kanal 2	Tähed muusikas	International format of Lyrics Board, produced in Estonia.	8	14.6
	Reporter	Extended news programme with inserts of infotainment and entertainment.	13	12.2
	Ärapanija ("Mocker")	Ironical-humorous reconstrung of the week's events, simulated newscasts.	14	12.2

Source: TNS EMOR¹⁵⁷

¹⁵⁴ Programmes included were on air during the whole period of October 2004. Single highly rated performances of films or other programmes are not included in the 'Description of programme/format' column.

¹⁵⁵ Ranking of a particular programme in the ranking list for all channels combined

¹⁵⁶ Percentage of the total potential audience.

¹⁵⁷ TNS EMOR Database information provided to EUMAP on 22 February 2005.

5.3 Ownership of commercial broadcasters

5.3.1 Ownership

Ownership of terrestrial channels

Under Estonian law, programmes may be broadcast by any individual or legal entity that holds a broadcast licence. Until 2000 broadcasters could only be owned by Estonian citizens with permanent residence in Estonia, or by legal persons (entities) in which the majority of votes belonged to Estonian citizens. This provision was repealed as it contradicted the equal opportunities requirements of EU directives.

The only restrictions on ownership remaining in the law are anti-concentration clauses. Under the Broadcasting Act, the Ministry of Culture may not issue a broadcast licence under either of the following two circumstances:¹⁵⁸

- The allocation of the licence would result in a press or information monopoly or cartel in the territory planned for the broadcasting activity, or the broadcasting in the planned territory or part of the territory of Estonia would accumulate in the hands of persons who cooperate with each other. Unfortunately, neither the concepts of monopoly or cartel are defined in the law.
- A person operating as a television and radio broadcaster would become simultaneously the publisher of a daily or a weekly newspaper in the planned territory or part of the territory of Estonia, or *vice versa*. This restriction does not apply to the TV guide published by a broadcaster itself.

The Ministry of Culture has so far never invoked the above provisions. The broadcasting market nevertheless exhibits a considerable degree of concentration and particularly cross-ownership of private broadcasters and press publishers, as will be seen below. Such concentration appears to be legal as it occurred subsequent to the acquisition of the broadcasting licence in question.

The national private televisions belong to Scandinavian companies. TV 3 is 100 per cent owned by the Swedish MTG Group (Viasat Broadcasting AB). Kanal 2 is 100 per cent owned by the Norwegian Schibsted ASA. TV 3, which also operates national terrestrial channels in Latvia and Lithuania, enjoys the largest audience share of the three Estonian TV channels (24.4 per cent in 2003) as well as absorbing the majority of TV advertising revenue (56 per cent). Kanal 2 held a 20 per cent audience share in 2003 and 35 per cent of advertising revenue (see Section 2.3. and Table 8 below).

¹⁵⁸ Broadcasting Act, art. 40.

Table 8. Breakdown of the television advertising market (2003)

	Share of television advertising market (per cent)
TV 3	56.0
Kanal 2	35.0
PBK	8.0
Other	1.0
Total	100

Source: AEB¹⁵⁹

Cable television ownership

The largest cable company is Starman, owned by Royalton Partners (65 per cent) and individuals including management (34 per cent).¹⁶⁰ In 2004 Starman purchased one of its competitors – several companies under the trademark Tele 2, mainly owned by Swedish Kinnevik (also the owner of MTG Group) – and integrated the networks. Currently they also provide other data communication services.

STV launched its operations in 1991, and is owned by three individuals. The company has recently started providing other data communication services.

Esdata – which has not fully entered the cable television business yet – has been an affiliate of the biggest national telephone company, Elion, since 2003. Elion is itself owned by Baltic Tele AB (TeliaSonera, 50.00004 per cent) and the Estonian state (27.2 per cent), with 23 per cent listed on the stock exchange. Esdata was the first company to provide Internet services in Estonia (as of 1993), and received a licence for cable television operations in April 2004.

5.3.2 Cross-media ownership

As is clear from the licence conditions mentioned above, a broadcast licence may not be awarded if the recipient would also be the publisher of a printed publication. However, despite this provision the Estonian market displays considerable cross-media ownership.

MTG Group owns also a radio company in Estonia – Mediainvest Holding, which operates two radio stations: Star FM (in major cities) and Power Hit Radio (in Tallinn and Pärnu). These stations play mainly music. Their share in the radio advertising

¹⁵⁹ AEB database information provided to EUMAP on 2 March 2005.

¹⁶⁰ Data provided by Starman.

market is around 12 per cent¹⁶¹ and their audience share three per cent.¹⁶² MTG Group does not hold any stakes in the printed press.

By contrast, Schibsted ASA owns 93 per cent of the shares of Eesti Meedia (Estonian Media), the largest media group in Estonia, which owns newspapers, magazines and radios.¹⁶³ The group publishes the daily newspapers with the biggest circulation, owning 100 per cent of the shares of the largest morning paper *Postimees* (with circulation of 63,000) and 50 per cent of shares of popular tabloid *SL Õhtuleht* (with circulation of 64,100). These publications enjoy 26 per cent and 23 per cent coverage respectively, and 27 per cent and 14 per cent of the daily newspaper advertising market. Eesti Meedia also owns stakes in five local newspapers, including 100 per cent in the largest – *Pärnu Postimees*; stakes in the others vary from 42 to 56 per cent.

Eesti Meedia also owns a 50 per cent stake in *Ajakirjade Kirjastus*, the largest magazine publishing house; the company publishes 14 different titles including the five largest and controls 75 per cent of the magazine market. In autumn 2003, Eesti Meedia purchased 32 per cent of the shares of Trio LSL Radio Group, which operates six radio stations, including the only country-wide talk format *Radio Kuku*, two country-wide music stations (the all-Estonian language music format *Radio Elmar* and pop/hit format *Radio Uuno*), and two Russian language music stations. Trio LSL controls 35 per cent of the radio advertising market¹⁶⁴ and enjoys a combined audience share of 27 per cent.¹⁶⁵

In addition to these holdings, Eesti Meedia owns a printing house and newspaper delivery ventures. Figure 1 provides an overview of all the Estonian holdings of Schibsted ASA.

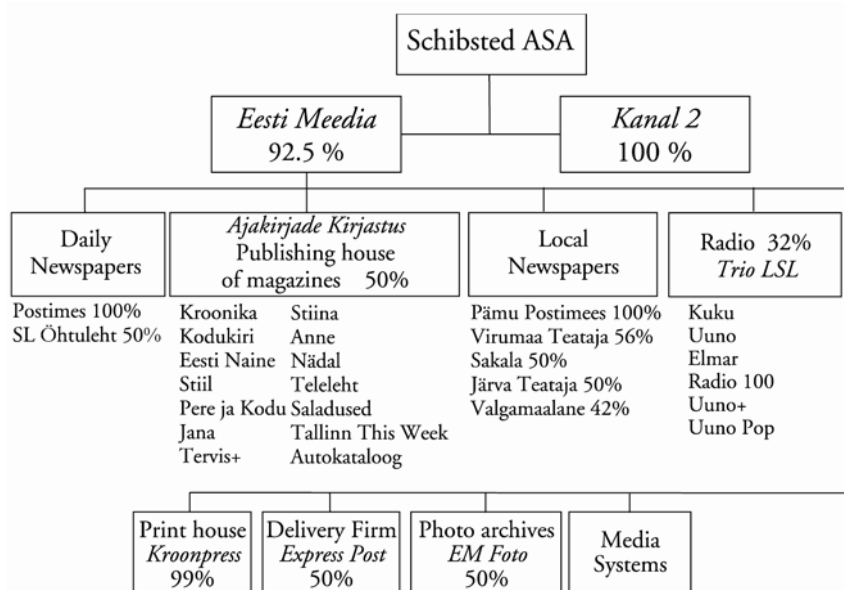
¹⁶¹ Calculated on the basis of data for 2003 provided by TNS EMOR and Mediainvest Holding.

¹⁶² Data of TNS EMOR (2003), provided to EUMAP on 18 June 2004.

¹⁶³ Data in this paragraph originates from the website of *Eesti Meedia*, <http://www.eestimeedia.ee> (accessed 30 June 2004). Data about circulation (May 2004) and advertising market share (2003) originate from the Estonian Newspaper Association, for circulations, see: <http://www.eall.ee/tiraazhid/index.html> (accessed 30 June 2004). Data about coverage from TNS EMOR (2003) provided to EUMAP on 18 June 2004.

¹⁶⁴ Calculated on the basis of data of TNS EMOR and Trio LSL Ltd (2003), both provided to EUMAP on 18 June 2004.

¹⁶⁵ Data of the TNS EMOR (2003) provided to EUMAP on 18 June 2004.

Figure 1. The structure of Schibsted ASA ventures in Estonia

The second largest print media group is the Ekspress Group, which owns the second largest daily newspaper, the largest weekly, and 50 per cent of the tabloid SL Öhtuleht and of Ajakirjade Kirjastus. It is not involved in broadcasting.

Schibsted's holdings in Estonia are regarded as clearly constituting heavy cross-media concentration by the independent media experts interviewed.¹⁶⁶ However, after consultation with lawyers the Ministry of Culture argues that under the Broadcasting Act concentration provides grounds only for refusing to issue a broadcasting licence, not for revoking a licence. Monopoly or cartel conditions are not listed as one of the reasons for which a licence may be revoked, nor is there any general statement prohibiting concentration in the media market.

Moreover, although the relevant provision of the Broadcasting Act refers to the 'responsible publisher of a daily or a weekly newspaper' as the entity to which the concentration provisions apply, this term is not defined clearly. Inter alia this may allow the argument that Schibsted's holdings do not exhibit concentration according to the law, as Kanal 2 is registered as the property of Schibsted, but Postimees as the property of Eesti Meedia.

¹⁶⁶ See for example: Estonian Journalists' Union, *Annual Report 2003*; H. Shein, "Is Media Concentration Avoidable in a Small Country?", unpublished paper, presented (in English) at a conference on "Media Concentration and Regulation of Cross-Ownership", held in Vilnius, 13-14 May 2004, (hereafter, Shein, *Media Concentration*).

A further consequence of the absence of an overall media policy is that Estonia lacks a clear policy regarding media concentration, making it impossible to tell what the government's viewpoint on the issue is.

In fact, the pros and cons of concentration in a country of Estonia's size are complex, and there is a marked lack of research into and analysis of the impact of media concentration; a recent report on media ownership in Estonia devotes a section to the "silence on media concentration".¹⁶⁷ There are strong arguments for the view that a level of concentration that might be perceived as impermissible in a larger television market may be necessary in Estonia in order for commercial broadcasting to be viable. All private broadcasters made losses in the 1990s when the number of broadcasters was larger, and even the attainment of a 17 per cent audience share among Estonians for TV 1 did not prevent bankruptcy. Indeed, it appears likely that only two private terrestrial national television channels are viable economically – hence the legal restriction of the number of licences to two.

While concentration of the television market and cross media ownership may facilitate commercialization, reduce choice and reduce the opportunities of access to public communication for persons or institutions not favoured by the dominant media owners, it may also increase the quality and depth of coverage through the merging of newsrooms and journalism output units. For example, the newsrooms of Kanal 2 and *Postimees* have to some extent been integrated. In addition, concentration of the private broadcasting media and cross ownership might provide added impetus for public television and radio to remerge in order to yield similar synergies.¹⁶⁸ In other words, in such a small market, competition between consolidated and efficient private broadcasters on the one hand, and a consolidated public broadcaster on the other, might be seen as more desirable than competition between weaker private broadcasters and a public broadcaster that is thereby exposed to less competition. Given the ban on advertising on ETV, the public broadcaster would in this situation be encouraged to fulfil its public service remit as well as possible.

The actual impact of concentration and cross-media ownership on the Estonian television market has still not been researched much, although academic research on this topic is currently in progress.

5.4 Funding

The primary source of income for private television is advertising revenue: in 2001 and 2002 this accounted for 94 per cent of total revenue of private broadcasters.¹⁶⁹ As of July 2002 ETV has been free of advertising. The ending of advertising on ETV appears

¹⁶⁷ Paju, *Media Ownership – Estonia*, p. 182.

¹⁶⁸ I. Raag, "Memo rahvusringhäälingu asjus", ("A memo about public broadcasting"), in *Sirp*, 20 February 2004.

¹⁶⁹ Vihalemm, *Media system and media usage*, p. 358.

to have stabilised the market, boosting the revenues of private broadcasters. The annual expenditure of the then four national televisions in 1999 was about EEK 400 million (€25.5 million) while their total revenue was only EEK 288 million (€11.2 million).¹⁷⁰ By 2002 revenue covered expenditure in the sector as a whole for the first time. In 2003 the leading private television company, TV 3, earned a profit of EEK 30 million (€1.9 million), while the second – Kanal 2 – still made a small loss of EEK 3 million (€0.2 million).¹⁷¹ The improving financial situation of commercial broadcasters has been facilitated by heavy investment by foreign-owned channels in popular programming, to attract audiences.

5.5 Programme framework

5.5.1 Instruments

As explained in Section 3.4, the independence of commercial broadcasters from the State is guaranteed by law and implemented through what appears to be well-established good practice. Current legislation addresses the independence of broadcasters from the state and includes provisions to prevent the influence of commercial interests on programming.

As Section 4.5.2 notes, the Broadcasting Act requires executive producers to observe “fair press practice”. However, there is no legal definition of what constitutes fair practice, and the Ministry of Culture has not taken any enforcement measures that might establish a precedent. As far as independence from the influence of advertisers and commercial interests on programme content is concerned, the Act prohibits sponsorship of news and current affairs programmes. This provision appears to work well: while news departments are flooded with PR materials,¹⁷² the research carried out for this report and other academic research indicate that news programmes are influenced very little by such materials or the interests behind them.¹⁷³

The Broadcasting Act also prohibits the influence of sponsors on the content or scheduling of programmes. Promotional references to products and services of a sponsor are forbidden during the sponsored programme. However, the influence of sponsors is obvious and can be observed in many programmes, for example in the form of product placement in “thematic” programmes about road safety (with particular makes of car featured heavily), construction (building materials), health, beauty and

¹⁷⁰ Shein, *Development Trends*, pp. 156–157.

¹⁷¹ H. Kaio, “TV3 majanduslikult edukaim meediafirma”, (“TV3 – the most successful media company”), in *Äripäev*, 14 April 2004.

¹⁷² H. Harro-Loit and K. Saks, “The Dim Border Between Advertising and Journalism. The Case for re-defining the Border in Estonian Media Products”, manuscript submitted to *Journalism Studies*, Tartu 2003, (hereafter: Harro-Loit and Saks, *The Dim Border*).

¹⁷³ Ongoing comparative research “Baltic Media World”, by University of Bergen, Vytautas Magnus University, Vidzeme University College, and University of Tartu, 2004.

fashion.¹⁷⁴ Managers of television channels admit that this is a problem. It is made more difficult to address by the fact that such programmes are produced by independent production companies who associate with sponsors directly, and broadcasters usually do not intervene in the production matters. However, no one has been prosecuted for violation of the Broadcasting Act. The same is true of the Advertising Act, which prohibits “surreptitious advertising” (i.e. hidden advertising¹⁷⁵).

In addition to the above provisions, the Broadcasting Act also includes provisions to protect journalists’ source of information, and the right of reply of persons affected by media items.¹⁷⁶ Nobody may force a broadcaster to reveal its sources of information, nor may the broadcaster do this itself if a source has requested anonymity. Persons affected by media coverage have the right to reply if their lawful rights – in particular their reputation – have been damaged by the assertion by a programme of incorrect information. A request for a reply must be filed to the broadcaster within 20 days of the alleged offending programme, and the broadcaster must broadcast the reply within 20 days of receiving the request. A request may be rejected if it is not well-founded, if its broadcast would itself involve an illegal assertion, bring about civil liability to the broadcaster, or transgress generally recognised moral standards. If the broadcaster refuses to broadcast a reply, the complainant may submit a claim to a court.

Apart from the above provisions, the only external guidelines for accurate and balanced coverage available to private broadcasters are contained in the Code of Ethics of the Estonian Press.¹⁷⁷ These provisions are the only written rules governing journalistic programme content. The Code prescribes rules for impartial and accurate information, setting up moral obligations for both journalists and editors to preserve journalistic independence, protect sources, provide covered persons with a right to reply and so on. However, there is no institution in place to supervise adherence to the Code. Broadcasters neither employ an ombudsman nor have joined or created an independent media complaints council or equivalent organization. As Section 3.4 explained, there is currently no clear system for addressing complaints against private broadcasters, especially since all broadcasters left the Estonian Press Council in 2002.

5.5.2 Programme guidelines

Section 4.5 describes programme obligations and guidelines for all broadcasters. Relating to private broadcasters only, the placement of advertising is regulated

¹⁷⁴ Harro-Loit and Saks, *The Dim Border*.

¹⁷⁵ Advertising which, regardless of the manner or means of publication and, given ordinary attention by the public, is not readily recognised as advertising or is not readily separated from other information published simultaneously in the same advertising medium. Advertising Act, RT I 1997,52,835; as last amended on 16 December 2004, art. 8.

¹⁷⁶ Broadcasting Act, art. 7, 8.

¹⁷⁷ Code of Ethics of the Estonian Press.

according to the EU TWF Directive. However, Estonian law appears to be overly strict in its implementation of the provision in the Directive which states that the transmission of audiovisual works may be interrupted “once for each period of 45 minutes”.¹⁷⁸ The Broadcasting Act states that interruption may occur “once after every period of 45 minutes”, a stricter provision which led to intense disputes between broadcasters and the Ministry of Culture. According to the Head of the Ministry’s Department of Media and Copyright Issues the Ministry recently issued a clarification that in case of possible conflict the Directive shall take precedence.¹⁷⁹

In addition, under the Language Act,¹⁸⁰ foreign language television programmes broadcast terrestrially or by cable have to be translated into Estonian; this is usually done with subtitles. Satellite programmes rebroadcast by cable do not have to be translated. Ten per cent of total programming time may remain untranslated, to allow, for example, the appearance of foreign languages in live shows. In September 2004 the Language Inspectorate, the government body responsible *inter alia* for supervising adherence to the Language Act,¹⁸¹ issued a reprimand to Orsent TV (a production company) for not including Estonian translation in a programme. In December, Starman (the largest cable operator) ceased broadcasting Orsent TV’s programmes. On New Years Eve 2004, Orsent TV ‘was given one more opportunity’ by Starman,¹⁸² whereupon Orsent’s director accused the authorities of political interference in programming.¹⁸³ Overruling this claim, the Ministry of Culture stated that the programme simply did not comply with the law. Similar failures to comply with the law have been reported on other Russian-language cable channels, but no similar measures have been taken against them yet.

5.5.3 Quotas

Commercial broadcasters are subject to the same quotas for programming content as the public broadcaster (see Section 4.5.3). The same quotas also apply to cable companies with national coverage, with the exception of the quotas of European works and independent producers. However, currently no cable companies have achieved national coverage as defined by the law; that is that they cover over 80 per cent of the territory of Estonia.

¹⁷⁸ TWF Directive, art. 11, para. 3.

¹⁷⁹ Interview with Peeter Sookruus, 2 June 2004.

¹⁸⁰ Language Act, RT I 1995,23,334; as last amended on 15 December 2004.

¹⁸¹ For details on the Language Inspectorate see the Inspectorate’s website, <http://www.keeleinsp.ee/index.php3?lng=1> (accessed 30 June 2005).

¹⁸² L. Šein, “Keeleseaduse eiramise tõttu suletud Orsent kaebles Vene meedias” (“Orsent, closed due to violating the Language Act, mourned in Russian media”), in *Eesti Päevaleht*, 11 January 2005.

¹⁸³ N. Adashkevich, “Russian-language TV channel taken off the air in Estonia”, in *RIA Novosti* news item in English, 29 December 2004.

Only TV 3 failed to meet the requirements of European works quota in 2003, according to data provided by the Ministry of Culture (see Table 9). However, figures provided by broadcasters to the Ministry of Culture for programme content in 2004 differ considerably from figures received from TNS EMOR, and the former should therefore be treated with some caution.¹⁸⁴

Table 9. Implementation of programming quotas (in 2003)

	Share of total programme output (per cent)		
	European Works	Independent producers	Own production
ETV	82.8	51.2	52.7
Kanal 2	53.9	23.9	35.8
TV 3	39.7	39.7 ¹⁸⁵	24.7

Source: ETV, Kanal 2, TV 3¹⁸⁶

In practice, Estonian broadcasters often achieve formal compliance with the European quotas by “adding material” to American content and then classifying it as “own production” or “European production”. For example, one American show *60 Minutes* was presented on Kanal 2 by an Estonian host who briefly introduces features that are produced in America. Such content counts as “own production”, and some other “infotainment” shows have been arranged in the same way.

5.6 Editorial standards

Until 1999, the Broadcasting Act guaranteed the freedom of broadcasting stations; however, among the changes introduced in that year the word “station” in this clause was replaced with “broadcasting organization” – in effect changing the law to define freedom as that of the owner. The change was retained despite objections from the Association of Estonian Broadcasters (AEB). The independence of editorial staff from owners is thus no longer covered by legislation, but is addressed directly or indirectly by internal procedures and the Code of Ethics of the Estonian Press. The effect in practice of this change has not been researched; however, it reinforces the point that

¹⁸⁴ Interview with Peeter Sookruus, 2 June 2004. As Section 4.5.3 explained, monitoring was effectively outsourced to TNS EMOR from the beginning of 2004.

¹⁸⁵ Data provided by broadcasters to the Ministry may be misleading as different broadcasters do not necessarily use the same methodology. For example, TV 3’s share of programming from ‘independent producers’ apparently includes purchased European works as well. Omitting the latter, calculation based on the data provided by TV 3 (filed to the Estonian Statistical Office) would result in 18.4 per cent for the share of works by ‘independent producers’.

¹⁸⁶ ETV, Kanal 2, TV 3, reports filed for the Ministry of Culture, provided to EUMAP by Ministry of Culture.

independence of editorial staff from owners of private broadcasting companies in Estonia depends mostly on good practice rather than legal provisions, regulations and enforcement.

The two biggest television-companies – Kanal 2 and TV 3 – do not have in place any formal in-house rules to ensure the independence of editorial staff from the owners of the companies. In most cases, employment contracts impose duties on journalists and editors to observance of rules for presenting impartial and accurate information. According to the Director General of Kanal 2, the editorial board is separated from economic management.¹⁸⁷

The news department of TV 3 practices a “double-consent system” according to which topics to be covered are decided by the department itself and confirmed by both the chief editor of news and the editor of the day, but this procedure is not formalized in written form. According to Toomas Lepp, Chief News Producer at Kanal 2 items for news coverage are chosen at a staff meeting every morning on the basis of professional criteria.¹⁸⁸

6. EUROPEAN REGULATION

Estonian legislation for broadcasting complies with the European Union *Acquis communautaire* – all the provisions were incorporated into national broadcasting law in 1999 and 2000. By 2001, the audiovisual policy chapter within the accession talks was closed.

Implementation of the “Euro-quotas” has generated some controversy. Managers of private broadcasters in particular claim that programme decisions should be based on the interest of the audience, not on quotas, which they suggest serve the interests of filmmakers rather than the objective of ensuring quality. For example the managing director of TV 3 cited the example of “compulsory” German serials enjoying lower ratings than Hollywood serials.¹⁸⁹

Another concern expressed by broadcasters is that Estonia has implemented the EU TWF Directive more strictly than the wording of the directive itself would require. This appears to have been the result of imprecise translation. For example, the directive states that: “Member States shall ensure *where practicable* and by appropriate means, that broadcasters reserve for European works [...] a majority proportion of their

¹⁸⁷ Interview with Urmas Oru, 31 May 2004.

¹⁸⁸ Interview with Toomas Lepp, Chief News Producer, Kanal 2, Tallinn, 10 June 2004

¹⁸⁹ Interview with Toomas Vara, 28 May 2004.

transmission time”¹⁹⁰ (emphasis added). However, the Broadcasting Act sets a rigid 51 per cent quota, leaving no flexibility for implementation.

Estonian experts also have reservations concerning the applicability of some of the provisions of the Directive to a country with such a small television market. Among other issues, they believe that the quotas in the Directive do not take into account the distinctive character of the audio-visual sector of a small country,¹⁹¹ especially when the production capacity of domestic producers (both intellectual and financial) is limited and broadcasters cannot afford to buy more expensive local production. In particular, the exclusion of news and sports coverage from the definition of own production and of European works raises the quota for European works *de facto* to 60-70 per cent. The Estonian Government has raised this issue at sessions of the EU Council of Ministers, arguing that the Directive should be altered, so that the quotas for European works and independent production both include news and sports events in which Estonian athletes participate.¹⁹²

7. THE IMPACT OF NEW TECHNOLOGIES AND SERVICES

The implementation of new media in the television sector is at a very early stage. The Government adopted a “Concept of Digital Television” in June 2004, which includes a rough timetable for a transition to digital broadcasting by 2015. However, the Concept provides insufficient incentives to broadcasters to invest in new technologies, and the development of digital television remains uncertain as a consequence.

7.1 New media

On 15 June 2004 the Government approved the “Concept of Digital Television”, formulated by a multilateral working group at the Ministry of Economic Affairs and Communications. The Concept envisages implementation in Estonia of the Digital Video Broadcasting Terrestrial (DVB-T) and Handheld (DVB-H) standards, which are considered the most promising in Estonia.¹⁹³

Other types of broadcasting are not expected to be introduced in Estonia in the near future. High Definition Television (HDTV) is expected to be implemented later within the DVB-T network, as it involves higher launching costs for broadcasters, providers of transmission services and consumers. Digital satellite broadcasting (DVB-S) probably has no future for transmitting Estonian national programmes, as the country’s territory is small and the

¹⁹⁰ TWF Directive, art. 4, para. 1.

¹⁹¹ “Impact of joining the EU”, p. 32.

¹⁹² Interview with Peeter Sookruus, 2 June 2004.

¹⁹³ Concept of Digital Television, Section 1.5.

terrestrial broadcasting infrastructure is more than adequate. According to the Concept, the DVB-S standard will remain in use for receiving foreign programme services for individual use or retransmission through cable networks. Digital cable broadcasting (DVB-C) has not been implemented in Estonia, and the Concept expects this standard to be more widely used after the launch of DVB-T.

There is as yet no State policy regarding Internet television. Broadband standards were also worked out by a multilateral working group in the Ministry of Economic Affairs and Communications and were approved by the Government in April 2005.

7.2 Market conditions

The rate of computerisation and Internet penetration in Estonia is comparatively high. There are 21 computers per 100 inhabitants and 52 per cent of home computers and 75 per cent of office computers have permanent connection to the Internet. Some 52 per cent of the population aged 15 to 74 uses a computer every day (including the Internet), 34 per cent of the population uses online banking or financial services.¹⁹⁴ There are around 40 providers of broadband services.¹⁹⁵

Regarding digital television, the estimated number of digital receivers owned by Estonians is currently only around 50, which have been mainly used in Northern Estonia to receive test programming from Finland.¹⁹⁶ This raises serious questions concerning the viability of the government's vision of the transition to digital television (see Section 7.5).

7.3 Services

Internet television is in its infancy. Some providers¹⁹⁷ make the archives of the broadcasters available on Internet but no independent programming has occurred yet.

Regarding digital television, a test period for the implementation of DVB-T began in May 2004 with the launch of the AS Levira test multiplex in Tallinn. The multiplex was planned to broadcast ETV on a test basis until 1 January 2007. However,

¹⁹⁴ 2003 data from the Estonian Informatics Centre (a government institution responsible for coordinating state information policy and public sector IT development), available in Estonian at <http://www.ria.ee/atp/index.html?id=379> (accessed 30 June 2004).

¹⁹⁵ February 2002 data from the Estonian Informatics Centre, available in Estonian at <http://www.ria.ee/atp/index.php?id=217> (accessed 30 June 2004).

¹⁹⁶ Shein, Media Concentration.

¹⁹⁷ For example <http://tv.ee> provides selected programmes of TV 3 and Kanal 2; www.itv.ee provides programmes of ETV on a paid basis (both accessed 30 June 2004).

broadcasting was terminated at the beginning of 2005 for financial reasons.¹⁹⁸ ETV objects that it had to pay unreasonable fees for the test transmission, even though digital television test transmission was the state's project and not ETV's exclusive interest, and moreover that AS Levira (the former Estonian Broadcasting Transmission Centre) is 51 per cent state-owned and makes substantial profits as the sole provider of transmission services in Estonia.

According to the Concept of Digital Television, an expert group will be formed to discuss and resolve problems that appear during the test period and propose corresponding legislative measures. The Broadcasting Act clearly needs amending, as it limits the number of terrestrial national or international television broadcasters to two, making the parallel operation of analogue and digital television illegal.

7.4 Funding

The Concept of Digital Broadcasting does not include any estimates of the cost of transition to digital broadcasting, nor any specific related financial allocations to fund the transition. According to some experts, the absence of any financial analysis or strategy may serve as a constraint on transition.

7.5 Digital television

The Concept of Digital Broadcasting envisages a rough timetable for the transition to digital television. Private broadcasters would not be forced to switch over to the new standard but would be motivated financially, as for the first five years (the Concept does not specify exactly when this would begin) there would be no broadcasting licence fee for digital broadcasting. The state would ensure parallel broadcasting of the public television programme service in both analogue and digital networks. All programmes currently accessible for free would be accessible for free in digital form (excluding digitally added services). After the end of analogue transmission the private broadcasters would be provided the possibility of broadcasting at least one digital programme service.

The Concept envisages the final switch over to fully digital television broadcasting to take place in 2015, after 75 per cent of terrestrial television receivers have become digital. However, in reality the prospects for digitalization do not appear promising, for two reasons. First, as Section 7.2 notes, the proportion of the population equipped to receive digital television is very small. Second, the Concept does not provide sufficient incentives that would motivate broadcasters to invest in digital broadcasting facilities in the absence of prior consumer demand.

¹⁹⁸ T. Tänavsuu, "Majandusminister Ansip müüiks riigi osaluse Levira saatekeskuses", ("Minister of Economy Ansip would sell off the State's shareholdings in Levira transmission centre"), in *Eesti Päevaleht*, 8 February 2005.

As a result of these factors, private broadcasters have adopted a wait-and-see attitude, and many of the details of transition remain unclear to them. The basic issue for broadcasters is that the renewal of studio and transmission facilities remains economically unjustified without an increase in the number of digitally equipped viewers or interest among advertisers in digital broadcasting.

If the market fails to resolve the transition – that is, if consumers fail to purchase digital receivers in the absence of sufficient services, and broadcasters refrain from investment until enough of the population possesses digital receivers – the Concept proposes to address the solution by legal regulation. However, it does not specify what this would mean in practice. The lack of significant incentives in the Concept as it stands may prove to be a major barrier to transition.

8. CONCLUSIONS

Television in Estonia has undergone fundamental transformation since 1990, through the creation of a public service broadcaster, a (now) profitable private broadcasting sector and a thriving cable sector. However, the sector still faces significant problems. Estonia still lacks a clear and comprehensive policy for the broadcasting sector, and specifically on the role of broadcasting in general and the rights and relations of citizens in relation to broadcasting. This is reflected in a number of specific unresolved issues in the sector.

First, the regulation and supervision of television broadcasters remains very light. In particular, the Ministry of Culture does not play a sufficiently active role in monitoring broadcasters and enforcing fulfilment of their legal and licence obligations. While the Ministry of Culture initiated proposals for the establishment of a new independent regulator to carry out all supervision and licensing, leaving the Broadcasting Council only to carry out regulatory activities specifically needed for ETV, the reform process has stalled as a result of lack of consensus between different ministries.

Second, the financial situation of ETV remains a source of concern. Funding is unstable, non-transparent and insufficient, preventing ETV from being a fully-fledged public service broadcaster. Constraints on funding – in breach of legal commitments made in 2001 – prevent the broadcaster from fulfilling its public service obligations to the highest quality and with a longer-term perspective. Both plans to remerge ETV and ER and recommendations to open a second public channel lack clear rationale in the absence of a clear commitment to adequate funding.

Third, while ETV has retained a vital position in the sector, its strategy concerning minority programming – and especially programming for the Russian-speaking minority – remains unresolved. This is partly the result of financial constraints (preventing the establishment of a second channel), but also of the lack of a clear broadcasting policy *vis-à-vis* this minority.

Fourth, while the consolidation of private broadcasters into two companies fully controlled by Scandinavian media companies has enabled them to achieve profitability, consolidation has also exposed the lack of clear restrictions on media concentration and cross-ownership. The Estonian Government and broadcasting regulators have failed to issue a clear opinion on the limits of concentration.

Fifth, mechanisms for processing complaints are inadequate or missing at both the public and private broadcasters. In particular, since all broadcasters left the Estonian Press Council, this has left a situation where there is no clear process by which citizens may file complaints and have a clear right to their processing.

Finally, while EU directives have been fully implemented in Estonia, some provisions have been implemented more strictly than the EU TWF Directive requires. However, the size of the Estonian television market may create room for debate on the wisdom of applying some of the directive's provisions identically in different sized markets.

9. RECOMMENDATIONS

9.1 Media policy

Broadcasting policy

1. The Government, the Broadcasting Council and media experts should organise a public debate on the role of broadcasting in general, focusing on the rights and relations of citizens in relation to broadcasting.
2. The Government should formulate and implement a clear broadcasting policy that outlines a vision for public and private broadcasting, includes participatory mechanisms for citizen inclusion, and *inter alia* defines clearly the role of public broadcasting *vis-à-vis* the Russian-speaking minority. This policy should define tasks and goals that are measurable and whose fulfilment is therefore assessable.
3. The Government should amend the “Concept of Digital Broadcasting”, in order to address the issue of how to finance the transition to digitalisation and motivate citizens and broadcasters to participate.

Research

4. Academic and other research institutions should examine the performance of the broadcasting sector. This should focus, in particular, on the issues of balance and objectivity; the distinction between public and commercial services; the fulfilment of the public service remit of Estonian Television (ETV); and the impact of State authorities and owners on programming

output. The Government and media industry should fund independent research in this field.

9.2 Regulatory authorities

Reform of regulatory structures

5. The Government should initiate amendments to the Broadcasting Act to clarify regulatory structures. These should preferably establish an independent regulator to supervise compliance of broadcasters with the requirements of the Broadcasting Act and other requirements and standards applying to all broadcasters, while leaving the Broadcasting Council to supervise the daily management of public broadcasters. Such amendments, and the activities of the resulting regulatory structures, should be directed at establishing systematic and permanent monitoring of the broadcasting sector, including programme content, to ensure compliance by broadcasters with their legal and license obligations.

Licensing

6. In the absence of changes in regulatory structures, the Minister of Culture should be required to fully and transparently justify any licensing decision that conflicts with the recommendation of the Commission established to examine license bids.

Complaints procedures

7. The Broadcasting Council, broadcasters and media organisations should establish a transparent and publicly accessible procedure for dealing with viewers' complaints against both public and private broadcasters.

9.3 Public and private broadcasters

Media diversity and transparency

8. The Government should initiate amendments to the Broadcasting Act to establish more clearly the principle of independence of editorial staff *vis-à-vis* owners.

Quotas

9. The Government should initiate amendments to the Broadcasting Act to modify quotas derived from EU requirements in order that they are not stricter than the EU TWF Directive.

9.4 Public broadcasters

Independence

10. The Government and Parliament should adopt legislation or adopt clear rules to ensure financing for Estonian Television (ETV) that is stable, independent, transparent and sufficient for it to fulfil its tasks.

Minority programming

11. The Broadcasting Council should specify in detail ETV's remit with respect to programming for the Russian-speaking minority.

9.5 Commercial broadcasters

Media diversity and transparency

12. The Government should initiate amendments to the Broadcasting Act to clearly address the issue of ownership concentration.

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