



OPEN SOCIETY INSTITUTE  
EU MONITORING AND ADVOCACY PROGRAM

NETWORK MEDIA PROGRAM

# Television across Europe:

regulation, policy  
and independence

*Volume 3*

REPUBLIC OF  
MACEDONIA  
ROMANIA  
SERBIA  
SLOVAKIA  
SLOVENIA  
TURKEY  
UNITED KINGDOM

Monitoring Reports

2005

*Published by*

OPEN SOCIETY INSTITUTE

Október 6. u. 12.  
H-1051 Budapest  
Hungary

400 West 59th Street  
New York, NY 10019  
USA

© OSI/EU Monitoring and Advocacy Program, 2005  
All rights reserved.



TM and Copyright © 2005 Open Society Institute

EU MONITORING AND ADVOCACY PROGRAM

Október 6. u. 12.  
H-1051 Budapest  
Hungary

*Website*  
<[www.eumap.org](http://www.eumap.org)>

ISBN: 1-891385-35-6

Library of Congress Cataloging-in-Publication Data.  
A CIP catalog record for this book is available upon request.

Copies of the book can be ordered from the EU Monitoring and Advocacy Program  
<[eumap@osi.hu](mailto:eumap@osi.hu)>

*Printed in Gyoma, Hungary, 2005*  
*Design & Layout by Q.E.D. Publishing*

## Acknowledgements

The EU Monitoring and Advocacy Program of the Open Society Institute would like to acknowledge the primary role of the following individuals in researching and drafting these monitoring reports. Final responsibility for the content of the reports rests with the Program.

<b>Overview</b>	Marius Dragomir	<i>(main writer)</i> <i>Independent Consultant</i>
	Dušan Reljić	<i>Senior Researcher, German Institute for International and Security Affairs, Berlin</i> <i>Editorial Consultant</i>
	Mark Thompson	<i>Independent Consultant</i>
	Andreas Grünwald	<i>(for the legal section)</i> <i>Media Law Expert, Attorney at Law at Hogan &amp; Hartson, L.L.P., Berlin office</i>
<b>Albania</b>	Ilda Londo	<i>Research Coordinator,</i> <i>Albanian Media Institute</i>
	Mirela Shuteriqi	<i>Lawyer</i>
<b>Bosnia and Herzegovina</b>	Tarik Jusić	<i>Program Director,</i> <i>Mediacentar Sarajevo</i>
<b>Bulgaria</b>	Assya Kavrakova	<i>Program Director,</i> <i>European Integration and Regional Stability Program, Civil Society Program, Open Society Institute - Sofia</i>
<b>Croatia</b>	Zrinjka Peruško	<i>Senior Research Fellow, Department for Culture and Communication, Institute for International Relations, Zagreb</i>
<b>Czech Republic</b>	Eva Rybkova	<i>Journalist,</i> <i>Project Manager, TOL</i>
<b>Estonia</b>	Urmas Loit	<i>Managing Director,</i> <i>Association of Estonian Broadcasters</i>
<b>France</b>	Thierry Vedel	<i>CNRS Senior Research Fellow,</i> <i>Center for Political Research at Sciences-Po, Paris</i>
<b>Germany</b>	Runar Woldt	<i>Media Expert, Frankfurt, Germany</i>
<b>Hungary</b>	Péter Bajomi-Lázár	<i>Researcher,</i> <i>Hungarian Press Freedom Center</i>

<b>Italy</b>	Gianpietro Mazzoleni	<i>Professor, Faculty of Political Science University of Milano</i>
	Giulio Enea Vigevani	<i>Professor, Faculty of Law University of Milano-Bicocca.</i>
<b>Latvia</b>	Sergei Kruk	<i>Lecturer, University of Latvia</i>
<b>Lithuania</b>	Marius Lukosiunas	<i>Associate Professor, Vilnius University Institute of Journalism</i>
<b>Poland</b>	Andrzej Krajewski	<i>Independent Consultant</i>
<b>Republic of Macedonia</b>	Vesna Šopar	<i>Head of Centre for Communications, Media and Culture, Institute for Sociological, Political and Juridical Research, Ss. Cyril and Methodius University, Skopje</i>
	Veton Latifi	<i>Lecturer, SEE University Freelance political analyst</i>
<b>Romania</b>	Manuela Preoteasa	<i>Managing Director, EurActiv Romania</i>
<b>Serbia</b>	Snježana Milivojević	<i>Associate Professor , Faculty of Political Science University of Beograd</i>
<b>Slovakia</b>	Rasto Kuzel	<i>MEMO 98</i>
	Ivan Godarsky	<i>MEMO 98</i>
<b>Slovenia</b>	Marko Milosavljević	<i>Faculty of Social Sciences, University of Ljubljana</i>
<b>Turkey</b>	Bulent Capli	<i>Professor, Faculty of Communication, Ankara University</i>
<b>United Kingdom</b>	David Ward	<i>Centre for Media Policy and Development, London</i>

We would like to also thank the following organisations for their invaluable contribution to the reports through their partnership throughout the process of developing the reports:

Albanian Media Institute (Albania); Mediacentar Sarajevo (Bosnia and Herzegovina); Open Society Institute – Sofia (Bulgaria); Institute for International Relations (Croatia); CEES Center for Media Studies at Charles University (Czech Republic); Meediaseire, University of Tartu (Estonia); CEVIPOF, the Center for Political Research at the National Foundation for Political Sciences (France); Center for Independent Journalism (Hungary); Providus (Latvia); Lithuanian Journalism Centre (Lithuania); Macedonian Institute for Media (Macedonia); Center for Independent

Journalism (Romania), Concept Foundation (Romania); Belgrade Media Center (Serbia); Memo 98 (Slovakia); Mirovni institut/Peace institute (Slovenia); Istanbul Policy Center at Sabanci University, Open Society Institute Assistance Foundation – Turkey (Turkey).

We would also like to particularly acknowledge the following people for their contribution to the reports: Prof. Karol Jakubowicz, Dr. Alina Mungiu-Pippidi, Guillaume Chenevière, Peter Noorlander.

In addition, we would also like to acknowledge the following people and institutions for their contribution to the reports: IP International Marketing Committee, for permission to publish their data; Mirjana Milošević, the Communications Regulatory Agency (Bosnia and Herzegovina); Goethe-Institute Prague (Czech Republic); TNS Latvia (Latvia).

## EUMAP

Penelope Farrar	<i>Program Director</i>
Miriam Anati	<i>Deputy Program Director</i>
Katy Negrin	<i>Project Manager</i>
Alphia Abdikeeva	<i>Website Manager</i>
Joost Van Beek	<i>Website Manager</i>
Andrea Gurubi Watterson	<i>Program Coordinator</i>
Csilla Tóth	<i>Program Assistant</i>
Marius Dragomir	<i>Independent Consultant</i>
Dušan Reljić	<i>Senior Researcher, German Institute for International and Security Affairs, Berlin Editorial Consultant</i>
Mark Thompson	<i>Independent Consultant</i>
Quentin Reed	<i>Independent Consultant</i>
Danail Danov	<i>Independent Consultant</i>

## NETWORK MEDIA PROGRAM – OPEN SOCIETY FOUNDATION

Gordana Jankovic	<i>Program Director</i>
Stewart Chisholm	<i>Senior Program Manager</i>
Morris Lipson	<i>Legal Advisor</i>
Miguel Castro	<i>Program Coordinator</i>
Gernot Eberle	<i>Former Program Manager-Media Law</i>

## 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](http://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, dis-serving, 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  
Republic of Macedonia

## Table of Contents

1. Executive Summary .....	1169
2. Context .....	1170
2.1 Background .....	1171
2.2 Structure of the television sector .....	1174
2.3 Market shares of the main players .....	1176
3. General Broadcasting Regulation and Structure .....	1177
3.1 Regulatory authorities for the television sector .....	1178
3.1.1 The Broadcasting Council .....	1178
3.2 Licensing .....	1183
3.3 Enforcement measures .....	1185
3.4 Broadcasting independence .....	1186
4. Regulation and Management of Public Service Broadcasting .....	1188
4.1 The public broadcasting system .....	1188
4.2 Services .....	1191
4.3 Funding .....	1193
4.4 Governance structure .....	1196
4.4.1 Composition .....	1196
4.4.2 Appointments .....	1197
4.4.3 Sanctions that can be invoked against public service broadcasters .....	1198
4.5 Programme framework .....	1198
4.5.1 Output .....	1198
4.5.2 Quotas .....	1201
4.6 Editorial standards .....	1203
5. Regulation and Management of Commercial Broadcasting .....	1204
5.1 Public service obligations for commercial broadcasters .....	1204
5.2 Commercial television ownership .....	1205
5.3 Cross-media ownership .....	1206

---

5.4 Funding .....	1209
5.5 Programme standards .....	1211
6. European Regulation .....	1216
7. The Impact of New Technologies and Services .....	1219
7.1 Policy on new media .....	1219
7.2 Conditions for new platforms .....	1220
8. Conclusions .....	1222
9. Recommendations .....	1224
9.1 Policy .....	1224
9.2 Regulatory bodies .....	1226
9.3 Industrial relations and ethical issues .....	1226
Annex 1. Laws and regulations cited in the report .....	1227
Annex 2. Bibliography .....	1229

## Index of Tables

Table 1.	Audience shares of the television channels (2004) .....	1176
Table 2.	Audience shares of the radio channels (2004) .....	1177
Table 3.	Licence fee collection rates (1993–2005) .....	1194
Table 4.	MRT budget revenue sources (2004) .....	1195
Table 5.	MTV programme framework – breakdown by genre and type of programme (2003) .....	1200
Table 6.	Quotas for minority language programming on the national public service broadcasters .....	1202
Table 7.	Quotas for minority language programming on the local public service broadcasters .....	1202
Table 8.	Gross advertising spending in the television advertising market – breakdown by channel (2003) .....	1209

## List of Abbreviations

BC	Broadcasting Council, <i>Sovet za radiodifuzija</i>
ESM	Electro-economy of Macedonia, <i>Elektrostopanstvo na Makedonija</i>
MB	Macedonian Broadcasting, <i>Makedonska radiodifuzija</i>
MR	Macedonian Radio, <i>Makedonsko radio</i>
MRT	Macedonian Radio & Television, <i>Makedonska radio-televizija</i>
MTV	Macedonian Television, <i>Makedonska televizija</i>

## 1. EXECUTIVE SUMMARY

The reform of the media system in the Republic of Macedonia has been underway for more than a decade. At the outset, due to the absence of appropriate laws, changes were rather abrupt and somewhat improvised. The media landscape was flooded with more than 300 private radio and television stations. To suppress the chaos on the airwaves, the Government introduced a moratorium on issuing new licences for frequencies. Major laws – such as the Law on Broadcasting Activity, and the Law on the Establishment of the Public Enterprise Macedonian Radio & Television (MRT) – were passed six years after the country became independent and are still in force. In 2005, a new Law on Broadcasting Activity was drafted and should be adopted before the end of 2005. By contrast, changes in the print media were slower and the first privately owned dailies appeared much later. However, foreign capital is now present in the print media, which is not the case with broadcasting.

Today, there are three segments in the broadcasting sector – terrestrial public service broadcasting, with 47 radio and television stations; terrestrial commercial broadcasting, with 148 stations, including five national television channels and three national radio stations; and cable radio and television networks, with 66 registered operators, of which 54 distribute radio and television programmes. On the national level, two private television stations, A1 and Sitel, compete with the first and third channels of Macedonian Radio & Television (MRT). There is fierce competition among stations, yet the content of the programmes is rather poor, consisting of mainly news bulletins, soap opera serials, and other light entertainment programmes. The broadcasting industry has serious problems when it comes to protecting independent editorial policy. There is no collective bargaining and there are no collective agreements between media owners and journalists.

A major novelty in the broadcasting sector was the establishment, in 1997, of the Broadcasting Council, as the independent regulatory authority. Parliament elects all the members of the Broadcasting Council and its composition reflects the strength of the major political parties in Parliament and the Government. The Council is financially independent, with its expenditure paid from licence fees and revenues collected from private broadcasters for the licences they were granted. However, there is concern because of the Council's limited competencies. It chiefly offers proposals and opinions, and it is the Government that actually makes all major decisions such as granting and cancelling licences or sanctioning broadcasting companies. This deprives the Council of its autonomy and so of its responsibility for the performance of the audiovisual sector.

MRT presents the most difficult problems. Reforming this company is a difficult process, mostly because of the Government's unwillingness to give up control of the national broadcaster. The MRT management is appointed from the ruling political structures, which, in turn, influences how the company is run and also its programme profiling. At the same time, MRT has serious financial problems because many viewers

refuse to pay the licence fee, while operating costs remain sky-high due to outdated equipment and technology, inefficient organisation, and a high number of superfluous employees, together with a lack of highly qualified professionals. All of this inevitably also has consequences for programme quality. The situation is even worse with local public broadcasting organizations, where reforms have not started yet. The biggest problem is the lack of financing and the undefined ownership status.

Commercial broadcasting is constrained by unduly restrictive regulation and economic and political pressures. Broadcast licences are granted to those applicants who fulfil prescribed conditions regarding the programme framework and technical equipment. The founder of a commercial broadcasting company can only be a single legal or natural person. The founder may be granted only one licence at the national level, and two at the local level. The licence cannot be transferred to a third party. Foreign legal entities are only allowed to act as co-founders and to own up to 49 per cent of the founding capital. Owners of print media, holders of public office and political party officials are not permitted to establish a broadcasting company. Owners of radio or television stations, especially the major ones, are often backed by influential business or political structures. Smaller stations barely manage to survive, and do so often thanks to external donors.

Broadcasters use outdated equipment and technology. Shifting from analogue to digital signal is not yet envisaged. Capacity and resources required for developing new media platforms are scarce. Owing to the poor overall economic situation and low standards of living, the number of Internet users in Macedonia is low.

Ethnic diversity is a determining feature of society in the Republic of Macedonia. Especially after the major ethnic clashes in 2001, the issue of representing ethnic diversity in the media was high on the political agenda. Several monitoring projects showed that especially in times of tensions and looming intra-State conflicts, media of different ethnic communities tend to report ongoing developments in different, often contradictory terms. Often it is said that viewers and listeners in the Republic of Macedonia receive a different image of reality, depending on the “ethnicity” of the newspapers and broadcasters they prefer, especially with respect to reporting on news and current affairs. Essentially, there are two parallel public spheres – one created by Macedonian-language media and another by the Albanian-language media.

## **2. CONTEXT**

The restructuring of the media sector in Macedonia commenced in 1991 and has now reached its fourth phase of development. The first stage, until 1997, was the longest and most difficult, with broadcasting lacking a consistent legal framework. It was marked by the appearance of numerous unlicensed private radio and television stations. The Government tried to resolve this situation by introducing a moratorium on the



licensing of new frequencies. It also suspended a certain number of radio and television stations. The second stage, until 1999, saw the passage of major broadcasting laws, the institutionalisation of public service broadcasting, and the granting of the first frequencies to private radio and television stations. The third stage, until 2003, saw the consolidation of the broadcasting market. There was an increase in the range of programmes and competition, and cable networks were also regulated. The fourth stage (since 2003) has been marked so far by the consolidation of private broadcasting and transformation of public service broadcasting.

## 2.1 Background

In August 2001, the political leaders of the country signed the Ohrid Framework Agreement, brokered by the EU and the USA. This accord ended an armed uprising by groups of ethnic Albanians in the Republic of Macedonia. It provided a new legal and political basis for resolving ethno-political issues in the country through decentralisation and power sharing, as well as further democratisation and strengthening the rule of law. An essential element of this agreement and the accompanying political initiatives, both domestic and external, is to foster an atmosphere of interethnic tolerance and dialogue in which news media should play a central role.<sup>1</sup>

There is unquestionably an impressive number of news media and, in particular, broadcasters – almost 300 – for a country of Macedonia's size (25,713 sq. km) and population (2,022,540, according to the 2002 census). The ethnic composition of the country is as follows: 64.18 per cent are Macedonians, 25.17 per cent Albanians, 3.85 per cent Turks, 2.66 per cent Roma, 1.77 per cent Serbs, 0.84 per cent Bosnians and 1.97 per cent others.<sup>2</sup>

Macedonia has presently 518,003 registered radio and television receivers, of which 369,292 are owned by households and 48,711 by legal persons.<sup>3</sup> Some 9,000 households are exempted from the licence fee due to poor reception of the broadcasting signal.<sup>4</sup>

On becoming independent in 1991, the Republic of Macedonia embarked on political and economic reforms, including media restructuring. It commenced in the broadcasting sector, followed somewhat later by the print media. The media system was built without a consistent normative legal and institutional framework, and with limited economic, technical and human resources. Changes, although radical, were

<sup>1</sup> The 2001 Ohrid Framework Agreement, 13 August 2001, available at [http://faq.macedonia.org/politics/framework\\_agreement.pdf](http://faq.macedonia.org/politics/framework_agreement.pdf) (accessed 10 June 2005)

<sup>2</sup> State Statistical Office, *Statistical Yearbook of the Republic of Macedonia 2003*, pp. 44–48.

<sup>3</sup> MRT internal database, information for July 2004.

<sup>4</sup> An additional 250 households are exempted as the head of the household is a blind person. Broadcasting Council, unpublished documentation, July 2004.

often improvised and lacked rules. Within a few years the country was flooded with private broadcasters. This was a serious blow to the State broadcaster, Macedonian Radio & Television (*Makedonska Radio-Televizija* – MRT), which until then had been the only legal electronic media outlet. Today, however, the media system operates within a clearly defined institutional frame.

The first private radio and television stations appeared in 1991–1992: TV Tera, TV Teko, TV A1, Radio Kanal 77 and Radio Kanal 4. Over the next few years, media outlets multiplied rapidly in almost all major cities and even in remote towns throughout the country. In 1991, Parliament transformed MRT into a “public broadcasting enterprise”. MRT’s major activities were the production and broadcasting of radio and television programmes, as well as construction, maintenance, and development of the broadcasting network in the country. Later, in 1996, the first private printed media appeared, and in 2001–2002 the first cable operators were launched.

There have been four distinct stages in the development of the media in Macedonia since the State became independent. The *first stage* (1991–1997) was the “big bang”, marked by the rapid spread of new private radio and television stations, reaching more than 300 in total. Most of these stations were entered in the registry of the Secretariat for Information (later the Ministry of Information, and today the Information Agency), but they lacked any legal documents. They operated on the principle of “registration” without strict rules or criteria regarding their output or their organisational, financial and technical resources. At the same time, 12 out of the 29 local public service radio stations launched their own television programmes, but without having either a broadcast licence or a broadcasting frequency assigned to them in a legal way.

So it was no surprise that the Ministry of Transport and Communications did not know (or did not want to know) the total number of private electronic media, most of which had no clearly defined status or purpose. They lacked basic technical working conditions and, not surprisingly, their broadcasting depended on randomly chosen and illegally used frequencies. It was evident that the State was tolerating chaos on the airwaves.

From time to time, governments attempted to resolve the undefined legal situation through drastic actions. The former Ministry of Information began the process of putting the media sector in order in 1994, when it imposed a moratorium on granting frequencies (which lasted until 1997), on the ground that the airwaves were overcrowded. This stopped the entry of private radio and television stations into the registry. The following year, the Ministry of Transport and Communications continued this campaign and issued a decision to close down 24 private radio and television stations in Skopje, but did not carry out its threat to extend the campaign

throughout the country. The major criterion in these measures was violation of the technical standards set out in the Law on Communications, Radio and PTT.<sup>5</sup>

The *second stage* (1997–1999) included the passage of two major laws in the field of broadcasting: the Law on Broadcasting Activity (1997)<sup>6</sup> and the Law on Telecommunications (1996).<sup>7</sup> A law establishing MRT was also adopted, the Law on the Establishment of the Public Enterprise Macedonian Radio-Television (1998).<sup>8</sup> By January 1998, all the basic laws that govern this area had been adopted.<sup>9</sup>

The first frequencies were granted for private radio and television stations. As a result, 170 public and private broadcasters started to *legally* air their programmes. A few months after its establishment in 1997, the Broadcasting Council, together with the Ministry of Transport and Communications, determined the number of broadcast licences that could be granted in Macedonia. The Council then successively announced two public tenders. The first was for four national broadcast licences (two each for radio and television) and 203 local broadcast licences (123 for radio and 80 for television). The second tender was for one national licence (radio) and 28 local licences (12 for radio and 116 for television). In total, 140 broadcast licences were granted at this time – three national licences (one for radio and two for television) and 137 local licences (80 for radio and 57 for television).<sup>10</sup>

However, the creation of a legal framework did not solve the accumulated problems; it merely relieved some pressure. Pirate broadcasters, including those that were denied frequencies, continued broadcasting and their number changed often on a daily basis – new stations appeared, while others just evaporated. In practice, the declared postulates of a dual broadcasting system, namely public service broadcasting combined with a limited number of private and radio television stations, were ignored. Commercial radio and television stations (140 in total) became dominant on the market and public service broadcasting (MRT and the 29 local public service broadcasters) was pushed to the margins.

The *third stage* (1999–2003) brought gradual consolidation to the broadcasting market. There was an increase in programme choice and competition. Specialised outlets were launched focusing on news and current affairs, entertainment, sports,

<sup>5</sup> Law on Communications, Radio and PTT, *Official Gazette of RM* No. 14/79. Sections of this law pertaining to broadcasting were later replaced by the Law on Broadcasting Activity (1997).

<sup>6</sup> Law on Broadcasting Activity, 16 July 1997 *Official Gazette of RM* No. 20/97.

<sup>7</sup> Law on Telecommunications, *Official Gazette of RM*, No. 33/96;

<sup>8</sup> Law on the Establishment of the Public Enterprise Macedonian Radio-Television, *Official Gazette of RM*, No. 6/98 (hereafter, Law on MRT 1998).

<sup>9</sup> Also relevant are: Law on Concessions, *Official Gazette of RM*, No. 42/93; Law on Copyright and Related Rights, *Official Gazette of RM*, No. 47/96; Law on Public Enterprises (1994) *Official Gazette of RM*, No. 38/96; Law on Trade Companies (1996), *Official Gazette of RM*, No. 28/96.

<sup>10</sup> Broadcasting Council, *Bulletin No. 2*, 1998, pp. 4–12, available in English at [http://217.16.71.152/en/Files/Bilten2\\_angl.pdf](http://217.16.71.152/en/Files/Bilten2_angl.pdf) (accessed 6 July 2005).

music and other strands. Political pluralism also increased. The public was finally able to choose among different views and opinions and to develop its own judgement. Yet many media outlets did not necessarily produce high quality as well. It was no surprise that some licences were soon cancelled because the operators did not respect their legal obligations. Subsequently, new tenders for broadcast licences were announced. In 2000, for example, on 7 March, 22 radio and ten television broadcast licences were cancelled<sup>11</sup> mostly because fees for broadcast licences had not been paid or because the broadcasters did not start the programme within the time frame determined by the contract. Yet on 16 June 2000, 15 new broadcast licences were granted, eight for radio (one national) and seven for television.

The status of cable broadcasters was regulated. Illegal cable television had existed since 1995, the first one in the town of Strumica. By 2000, the number of cable operators had reached 30.<sup>12</sup> Although a first tender was announced in March 2000, the first broadcast licences to 66 distributors of radio and television programmes were only granted between July 2001 and March 2002, after the tender procedure was completed. By the end of 2002, 54 cable operators had started the distribution of programmes.<sup>13</sup>

In the *fourth stage* (since 2003), commercial broadcasting matured and the national public service broadcaster, MRT, started its transformation. Also, the first steps were taken to introduce digital broadcasting technologies. The passage of a new Law on Broadcasting Activity is in the final stage and it is expected that Parliament will adopt it before the end of 2005. This new law should contribute to the further liberalisation of the media market, and reform the whole system for regulating broadcasting (see section 6).

## 2.2 Structure of the television sector

The television sector is highly fragmented. The public television broadcaster, MRT, comprises Macedonian Television (MTV) and Macedonian Radio (MR). MRT operates three national television channels, three national radio channels and 29 local radio stations (of which 12 also broadcast television programmes).

The third channel of Macedonian Television (MTV3) and the second channel of Macedonian Radio (Mac. Radio2) broadcast programmes in minority languages –

<sup>11</sup> Government Decision on 7 March 2000, Broadcasting Council, *Bulletin No. 5*, 2000, pp. 35–40.

<sup>12</sup> B. Nineski (ed.), *Pecatenite i elektronskite medijumi vo Makedonija*, (*Printed and Electronic Media in Macedonia*), Tribuna makedonska, Skopje, 2000, pp. 180–185.

<sup>13</sup> Broadcasting Council, *Bulletin No. 5*, 2000, Skopje, available in Macedonian at [http://217.16.71.152/mk/Files/bilten5\\_mk.pdf](http://217.16.71.152/mk/Files/bilten5_mk.pdf) (accessed 6 July 2005), pp. 45–54 (hereafter, Broadcasting Council, *Bulletin No. 5/2000*); and Broadcasting Council, *Izvestaj na Sovetot za radiodifuzija na Republika Makedonija za juli 2001 – dekemvri 2002*, (*Report for July 2001 – December 2002*), available on the BC website at <http://www.srd.org.mk> (accessed 6 July 2005).

Albanian, Turkish, Romanes, Vlach, Serbian and Bosnian – in accordance with the share of these minorities in the overall population of the country (see section 4.5.3).

Four local stations broadcast programmes in Macedonian, Albanian and Turkish (Tetovo, Gostivar, Struga, Debar); one station in Macedonian, Albanian and Romanes (Kumanovo); two stations in Macedonian and Vlach (Štip and Krusevo); and one in Macedonian and Albanian (Kičevo).

There are 126 commercial terrestrial broadcasting outlets, including two national television channels and three national radio stations. There are 67 local radio stations and 54 local television stations. Of these, 13 local television stations broadcast in Albanian and two in Romanes, while ten local radio stations have programmes in Albanian, three in Romanes, and one in Turkish. One radio station in Skopje has parallel, bilingual, programmes in Macedonian and Albanian.

There are 66 cable operators, of which 65 distribute radio and television programmes. Most of them are in Skopje (12 operators). They are obliged to offer in their programme package at least 20 television channels, including foreign, national and local private and public broadcasters. They also have to obtain a broadcast licence, as for terrestrial broadcasters (see section 3.2).

MRT and the commercial station A1, in Skopje, transmit satellite-based programmes. Present legislation (the Law on Broadcasting Activity) does not determine the conditions required for other media outlets to obtain permission for satellite broadcasting.

The question of the viability of so many media outlets concentrated in such a small country is never raised, even by those who are in charge of the broadcasting industry, namely the Government and the Broadcasting Council. In spite of warnings that the market is too fragmented and cannot accommodate more competitors, on 9 February 2004 the Broadcasting Council announced a new tender for granting radio and television broadcast licences. It justified its move by the need to enhance pluralism and consumer choice, especially by providing new national broadcasters. TV Sitel and some of the other existing radio and television stations reacted vehemently to the notion of introducing four additional national television stations, as this would mean more competition for them.

Expectations that the market itself would correct the unrealistic expansion of broadcasting organisations were not fulfilled. It is questionable whether the market is even capable of achieving this, given that it is the Government, not the Broadcasting Council, which is still in charge of granting broadcast licences. Currently, the Government decides on such detailed provisions as the area to be covered by broadcasts, the permitted time of broadcasting and even the ratio of own and external content in the programme, and it is also the Government that decides if a broadcaster should lose its broadcast licence (see section 3.1). This may change once the new Law

on Broadcasting Activity comes into force, but it is still too early to predict the final content of the new law.

In the meantime, the mid-term development of the television industry seems to be mapped. On 5 July 2004, the Government decided that new national broadcast licences should be granted to TV Telma, TV Kanal 5, and Alsat-M, and new local licences granted to five television and 14 radio stations.

### 2.3 Market shares of the main players

According to television and radio polls in early 2005, the top position in television ratings goes to A1, a private national station, followed by MTV 1 and MTV2, the first and second channels of MTV. Fourth comes Sitel, a private national station. Among radio stations, the top position is taken by Antena 5, a private national radio station, followed by the first channel of Macedonian Radio (Mac. Radio1) and Kanal 77, a private national radio station.

**Table 1. Audience shares of the television channels (2004)**

	Audience share (per cent)
A1	42.3
MTV1	11.4
MTV3	9.3
Sitel	8.9
Koha	2.7
Kanal 5	2.4
Era	1.7
MTV2	1.3
Foreign (31)	10.5
Local ones (36)	9.5
Total	100

Source: BRIMA-Gallup<sup>14</sup>

<sup>14</sup> BRIMA-Gallup, Day After Recall, poll conducted at request by APEMM and IREX/ProMedia, 4-18 May 2004, with a sample of 5,292 polled persons in the Republic of Macedonia (hereafter, BRIMA-Gallup poll).

**Table 2. Audience shares of the radio channels (2004)**

	Audience share (per cent)
Antena 5	14.5
Mac. Radio1	11.4
Kanal 77	10.5
Aracuba	5.2
Ros	5
Visar	4.3
Tetovo	4.3
Fortuna	2.3
Mac. Radio2	2.1
Arbana	2.1
Foreign (5)	0.8
Local ones (68)	37.5

Source: BRIMA-Gallup<sup>15</sup>

The major problem remains the lack of serious competition as far as programme content is concerned. Both public service broadcasters and commercial stations offer mostly news, serials, and advertisements. There is little ground to expect improvements in this situation.

### 3. GENERAL BROADCASTING REGULATION AND STRUCTURE

When the Law on Broadcasting Activity established the Broadcasting Council in 1997, it was the first time that the Republic of Macedonia had had an independent regulatory authority to represent the interest of citizens in the audiovisual field. However, the Council has limited competencies. It only provides *opinions* and *proposals* on major issues, such as the management of licence granting, the granting and cancelling of licences, economic control and sanctioning of broadcasters. The Government has retained the power to take *decisions* in these areas. Licences are granted to those stations that offer a better quality and range of programmes as well as ensuring better technical capacity. Entities participating in the public tender for licences have no right to file appeals against the Government's decisions.

---

<sup>15</sup> BRIMA-Gallup poll.

The issue of editorial independence is dealt with in the Law on Broadcasting Activity and the Anti-monopoly Law, but only in a declarative manner. There are no concrete mechanisms to protect the broadcasting industry. There are no collective agreements between associations of journalists and media owners, and media employees are not unionised.

### 3.1 Regulatory authorities for the television sector

Several State bodies and independent agencies in the Republic of Macedonia share the responsibility for regulating the television sector. The most important are:

- The Broadcasting Council;
- The Ministry for Transport and Telecommunications;
- The Agency for Electronic Communications;
- The Ministry of Culture;

The Broadcasting Council prepares the decisions to issue or revoke broadcast licences, proposes the allocation of funds collected from the licence fee, monitors broadcasters' compliance with the terms of their broadcast licences, monitors the development of the broadcasting sector, and prepares initiatives concerning media policy in the field of broadcasting. The Ministry for Transport and Telecommunications is in charge of the technical telecommunications infrastructure in the country. The Agency for Telecommunications governs the frequency spectrum, including the issuing of technical broadcasting licences and monitoring of the use of allocated frequencies. The Ministry of Culture enforces copyrights and other intellectual property rights.

#### 3.1.1 The Broadcasting Council

The 2005 draft Law on Broadcasting Activity foresees important changes to the powers and responsibilities of the Broadcasting Council (see section 6). However, as yet it is still too early to assess whether this draft will be passed without further changes.

##### *Composition*

The Broadcasting Council (*Sovet za radiodifuzija*) comprises nine members, who are supposed to be experts in the field of public information, business, education, culture, and other related sectors. Members of ethnic minorities should be equitably represented in the Council.<sup>16</sup> In the first line-up of the Broadcasting Council, the Vice-President was an ethnic Albanian and one of the members a Roma. Today, the Vice-President is an ethnic Albanian.

---

<sup>16</sup> Law on Broadcasting Activity, art. 23.



The Council's members are chosen, and can be removed, by Parliament.<sup>17</sup> Their term of office is six years, with the right to be re-appointed. Adopting a practice widespread in Europe, the terms of the members are staggered, to avoid them all coinciding with the parliamentary cycle. The first line-up of the Council includes three members appointed for a two-year term, three members for four years, and three members for six years. This solution ensured that in future the mandate of the Council would remain staggered, while at the same time, as new members are appointed every two years, this would ensure continuity in the work of the Council. The Government's 2005 draft for the new Law on Broadcasting Activity foresaw that a completely new Broadcasting Council should be elected within eight months of the adoption of the law. However, the members of the present Council opposed this idea.

Council members elect the President and Deputy President from their own ranks – both receive a monthly salary for their work and are the only professional officers of the Council, the other members receive a fee.<sup>18</sup> Members cannot be recalled from their position during their term of office, unless a member resigns.<sup>19</sup> They can only be removed from their office if they are sentenced for an offence which renders them unworthy of performing the office and for which there is a sentence of not less than six months in prison, or for unjustified absence from the work of the Council for more than six months.

The appointment procedures leave the possibility for direct Government influence on the composition of the Council. Namely, the proposed list of the members of the Council is first established in the Parliamentary Commission for Appointments and Elections, a body composed of representatives of the political parties in Parliament. Parliament has the final say<sup>20</sup> and civil society, professional organisations and academia have little influence on the composition of the Council.

The following cannot be members of the Council: members of Parliament, Government Ministers, employees of broadcasting organisations or State agencies, members of the leadership of political parties, or individuals who own shares, capital or have other economic interests in broadcasting organisations.<sup>21</sup> However, no such ban applies to members or activists of political parties. The lack of an explicit ban is harmful in the over-politicised Macedonian environment. For example, even before the first Council was constituted, it was public knowledge who would be proposed, and from which party – some candidates were senior party officials.<sup>22</sup> This later had a huge impact on the work of the Broadcasting Council, especially when it came to granting

---

<sup>17</sup> Law on Broadcasting Activity, art. 23.

<sup>18</sup> Law on Broadcasting Activity, art. 25.

<sup>19</sup> Law on Broadcasting Activity, art. 29.

<sup>20</sup> Law on Broadcasting Activity, art. 23.

<sup>21</sup> Law on Broadcasting Activity, art. 24.

<sup>22</sup> One of the reporters for this report, Vesna Šopar, experienced this during her tenure in the Council from 1997–1999.

broadcast licences. The influence of party politics is also felt in other fields, such as the nomination of members of boards of public enterprises. The Council's independence and integrity are thus directly imperilled. Its credibility and authority in the eyes of the general public, and *vis-à-vis* broadcasting companies, also suffers.

Indeed, no member would admit that he is a member or follower of a political party; but it is sufficient that she or he defends during Council meetings the interests of some owner of a broadcast licence who is close to the same political option or party. If one looks at the composition of the Council, it becomes clear that in some cases, party affiliation, rather than competence and professionalism, plays the major role.

### *Tasks and responsibilities*

The Broadcasting Council is an independent regulatory authority created with the intention of ensuring the public interest in this field.<sup>23</sup> It was established immediately after the passage of the Law on Broadcasting Activity on 16 July 1997. So far it has assumed a large number of tasks:<sup>24</sup>

- preparing proposals to the Government for granting broadcast licences;
- preparing proposals to the Government for determining the licence fee;
- preparing proposals to the Government for the regulation of cable radio and television programmes;
- monitoring the content of broadcasting in the country;
- promoting new communication technologies;
- ensuring the reception of high-quality broadcasting signals throughout the country;
- managing the financing of broadcasting projects in the public interest;
- establishing market conditions for new opportunities in the broadcasting sector; and
- providing support to electronic media, through recommendations, seminars, workshops and roundtables.

The Council holds limited competencies on key issues in the broadcasting sector. This situation is disturbing and contradicts EU standards. For example, it is the Ministry of Transport and Communications that grants and manages frequencies. The Council only offers *proposals* for granting licences, while the Government makes the final

<sup>23</sup> Law on Broadcasting Activity, art. 23.

<sup>24</sup> V. Šopar, Z. Andreovski and D. Kolar-Panov (ed.), *Mediumite vo procesot na politička i socijalna transformacija vo Republika Makedonij*, (*Media in Process of Political and Social Transformation in RM*), Institute for sociological, political and juridical research, Skopje, 2001, pp. 27–45.

decision. It is also the Government that signs the licensing contract, while the Council monitors its implementation. The Council's lack of authority devalues its supervisory role over broadcasting companies. The Republic of Macedonia is one of the few countries in Europe in which the Government grants licences, technical permits and authorisations for private broadcasters.

Correspondingly, the Council has no authority to impose sanctions on broadcasting companies. It can only take steps such as delivering written warnings for violations, requesting the relevant inspectorate to impose sanctions (as per the supervisory procedure), or proposing to the Government that a broadcast licence be cancelled (see section 3.2). This means that it is the competent inspectorates within the ministries which, either on their own initiative or upon proposals from the Council, carry out concrete measures against broadcasting companies that violate laws.<sup>25</sup>

Legally, the Council is entitled to:<sup>26</sup>

- consider issues in the field of broadcasting;
- draft proposals for granting or cancelling broadcast licences;
- monitor the implementation of the licensing contracts;
- monitor the implementation of legal provisions relating to the production and broadcasting of programmes;
- propose the distribution of funds collected from the licence fee that are earmarked for projects of public interest;
- provide opinions and suggestions relating to the development of the broadcasting sector.

The Council is not entitled to appoint members of the MRT Board or the directors of local broadcasting companies. Its influence is reduced to monitoring and issuing warnings about perceived violations. The recommendations that the Council provides on its own initiative – on issues such as the media coverage of elections, teleshopping or re-broadcasting of foreign-made programmes – are not binding on the broadcasting companies.

There is also reason for concern because the Council can only provide non-binding “opinions and proposals” on developing broadcasting policy.<sup>27</sup> This implies that the Government and Parliament do not have to consult the Council on important issues. In the absence of legal guarantees, the Council therefore only operates as an advisory

<sup>25</sup> These are: the Inspectorate of Transport and Communications at the Ministry of Transport and Communications; the Inspectorate of Culture in the Ministry of Culture; and the Market Inspectorate in the Ministry of Economy.

<sup>26</sup> Law on Broadcasting Activity, art. 22.

<sup>27</sup> Law on Broadcasting Activity, art. 22.

body. In turn, this practically deprives the Council of its responsibility for the state of affairs in the audiovisual field.

The fields in which the Council is independent are its finances and organisation. The funding of the Council comes from a portion of the broadcast licence fees paid by private broadcasters.<sup>28</sup> Nevertheless, experience suggests that financial independence from the Government is not sufficient as a genuine defence against possible political pressure if the Council is not committed to transparency in its work.

The issue of transparency<sup>29</sup> is critical when the Council decides about proposing to grant licences to commercial terrestrial broadcasters and cable operators, or when it comes to granting funds for projects of public interest. Regular press conferences have been part of the Council's effort to ensure transparency, as well as the publishing of its revenues and expenditures. Nonetheless, the Council avoids offering the public full insight into its deliberations when, for example, it examines requests for broadcast licences, licences for cable operators, or funding projects of public interest. Providing transparency in this procedure is important, as there have been cases when the Government, without any explanation, has refused to endorse proposals from the Council. This was, for example, the case in 1999 with the second tender for television projects of public interest. Perhaps, if the Council's sessions had been open to the public, this would not have occurred. In other words, the Government would have found it difficult to explain why it had decided to alter or even disregard the Council's proposals.

In its effort to enhance the development of the broadcasting sector, and to win the confidence of the media and the general public, the Council has initiated different forms and types of external communication. These include various meetings with broadcasting companies on issues of concern to the broadcasters, scientific seminars, panel discussions, and workshops on all topical problems related to the broadcasting business.<sup>30</sup> The Council has also established contact with NGOs, even if they are in many cases among the Council's most outspoken critics. The Council has also established a commission for complaints from viewers and listeners, and monitoring groups made up of viewers and listeners. Additionally, there is an e-mail address to

<sup>28</sup> Law on Broadcasting Activity, art. 28; For instance, for the period July 1998 – July 1999, the Broadcasting Council had total incurred expenses of Macedonian Dinar (MKD) 24,021,976 (or approximately €387,000). The exchange rate used for this report is €1 = 61,95 MKD. Broadcasting Council, *Bulletin* No. 4, 1999, Skopje, available in Macedonian at [http://217.16.71.152/mk/Files/bilten4\\_mk.pdf](http://217.16.71.152/mk/Files/bilten4_mk.pdf) (accessed 6 July 2005), p. 43, (hereafter, Broadcasting Council, *Bulletin No. 4/1999*).

<sup>29</sup> Law on Broadcasting Activity, art. 28.

<sup>30</sup> The Broadcasting Council organised several seminars, with domestic and foreign experts, including: "Application of NT and Programme Service Broadcasting in Digital Era" (1999); and "Against Piracy on Macedonian Airwaves" (1999); also a workshop on "Broadcasting Laws" (2000); a forum on "Protection of Children and Youth from TV Violence and Pornography" (2000); and a forum on "Radio and TV Programmes and Cultural Identity" (2001).

which people can send remarks on the programmes offered by radio and television stations. The Council regularly publishes documents related to broadcasting, research data, and tender documentation on granting licences, work reports and plans.

### 3.2 Licensing

Previously, the Broadcasting Council had responsibilities for terrestrial, cable and satellite broadcasting, but after the new Law on Telecommunications was adopted, in June 2004, cable television should be supervised by the Directorate of Telecommunications, which is now responsible to grant licences to cable operators (see section 7.1).

There are different conditions for a national broadcast licence and a local one.<sup>31</sup> National broadcasters must reach at least 70 per cent of the total population with their signal.

Broadcasting companies must apply for a broadcast licence, but it is not specified in the law whether this only applies only for terrestrial broadcasting, or also for cable or satellite broadcasting.

Three laws govern the procedure for granting licences: the Law on Broadcasting Activity, the Law on Telecommunications, and the Law on Concessions.<sup>32</sup> There are some contradictions between these laws. For example, a provision of the Broadcasting Law states that broadcast licences can only be awarded after a public tender, whereas the Law on Concessions allows the Government to also issue a licence without a public competition. The 2005 draft Law on Broadcasting Activities concentrates all powers with respect to the issuing of broadcasting licences within this law.

In accordance with the current Law on Broadcasting Activity, the Government is responsible for granting licences<sup>33</sup> – it announces the public tender, determines the conditions, and selects the successful contestant for the broadcast licence.<sup>34</sup> The Broadcasting Council is in charge of the whole administrative aspect of the procedure connected to licences.<sup>35</sup>

The Law on Broadcasting Activity states that a licence is granted to those commercial broadcasting companies that offer “better conditions”.<sup>36</sup> These conditions are determined according to what the company proposes in terms of its programme content. In particular, with respect to: programmes serving the needs of a certain minority in a specific region; the fulfilment of technical standards, including working

<sup>31</sup> Law on Broadcasting Activity, art. 17, 18.

<sup>32</sup> A “concession” here means a broadcast licence.

<sup>33</sup> Law on Broadcasting Activity, art. 4.

<sup>34</sup> Law on Broadcasting Activity, art. 10, 11, 12

<sup>35</sup> Law on Broadcasting Activity, Ch. III Granting Broadcasting Concession, art. 13-18.

<sup>36</sup> Law on Broadcasting Activity, art. 13.

conditions at its premises; the editorial and technical staff; and the financial resources for carrying out the programme.<sup>37</sup> Provided that all “formal and essential conditions are fulfilled in the public notice”,<sup>38</sup> the Council will propose to the Government that the broadcast licence is granted.

Except for the final decision, all activities connected to granting or cancelling a licence are in the hands of the Council. Consequently, it should be the Council that grants or refuses a licence, not the Government.

To date, the Government has only granted licences to those broadcasting companies that were proposed by the Council. However, the procedure is not transparent. Only a list of those who have been granted licences is published, not of all those proposed by the Council.

According to the Law on Concessions, participants in the tender do not have the right of appeal if their application is rejected. However, the new draft Law on Broadcasting Activity foresees that participants in a tender may appeal to the Broadcasting Council if their application is rejected. Furthermore, if they are not satisfied with the Council’s decision, they would have the right to bring a legal action in front of a court.

For every tender, the Broadcasting Council engages outside experts who assess whether the applicants fulfil technical, economic, programming, staff, and financial conditions for work. According to the Law on Broadcasting Activity, there is no legal possibility to transfer the licence to a third party. This provision impedes the development of the broadcasting sector – for example, in case of bankruptcy or the death of the broadcast licence holder,<sup>39</sup> there is no other option but for the Council to propose cancelling the licence.

Further problems stem from other ambiguities. These include who is allowed to appear as licence holder. It could be the founder of the commercial broadcasting company, the contractor, the holder of the operation permit, or the commercial broadcasting

---

<sup>37</sup> In accordance with Article 15, the legal or natural person, taking part in the public competition, should submit the following data: full name, nationality, type of organisation, expert staff and ownership structure, data about participation of the applicant in other broadcasting enterprises, type and content of planned programmes, duration of daily news, technical report on the studio, studio equipment, permanent or planned equipment for broadcasting, detailed work plan, and documents on the financial capacity to carry out the work plan. In accordance with Article 14, the public tender should contain the following elements: the type of broadcasting service (radio, television, other), and the area of operation; technical parameters for the broadcasting of the programme (such as frequencies, power and location.); starting date of the activity and duration of the licence; the amount and manner of payment of the licence fee; duration of the broadcast programme (daily, weekly, etc.); the time frame and address for submitting the application for participating in the competition; and other conditions which need to be met by the licence holder. Law on Broadcasting Activity, art. 14, 15.

<sup>38</sup> Law on Broadcasting Activity, art. 16.

<sup>39</sup> Law on Broadcasting Activity, art. 19.

company. Also in question is how to win a licence, whether it is just on the basis of a public bid or also on the basis of a request or offer from interested parties. The former option is provided in the Law on Broadcasting Activity and the Law on Concessions, while the latter is included in the Law on Telecommunications.

Furthermore, there is only one procedure for granting licences. The procedures do not foresee special procedures adapted to the various types of broadcasting – terrestrial, satellite or cable. There is also no possibility for licences to be of different classes and for different activities, such as university radio stations that would enjoy a special legal status, pursuant to their role and nature.

### 3.3 Enforcement measures

In the case that the licence holder does not respect the contractual obligations, the Broadcasting Council is entitled to:<sup>40</sup>

- issue a notice of warning;
- issue a notice of warning with a request to the licence holder to publish it;
- request that the competent inspectors from the Directorate of Telecommunications of the Ministry of Telecommunications undertake measures foreseen in the law;
- propose to the Government to cancel the licence.

As foreseen in the Law on Broadcasting Activity and extended in the licence contract,<sup>41</sup> the Government may, upon the proposal from the Council, cancel the licence in the following circumstances:

- if the licence holder does not commence performing the activity by the deadline established in the contract;
- if the licence has been granted on the basis of inaccurate information;
- if the licence holder does not conform to the requirements for performing the activity determined by the contract and the law;
- if the licence holder does not take action within a set time at the demand of the authorities to solve irregularities;
- if the legal entity is bankrupt.

So far, many written notices have been issued to the broadcasters, but there have been few proposals to cancel a licence.<sup>42</sup> Indecent programme content and over-stretched

<sup>40</sup> Government Decision on broadcasting licences, *Official Gazette of RM*, No. 22/98, art. 34.

<sup>41</sup> Law on Broadcasting Activity, art. 19, 35.

<sup>42</sup> Broadcasting Council, *Bulletin No. 5/2000*, pp. 23–34.

advertising time are among the most frequent causes for such warnings. However, in spite of warnings, many broadcasters continue with breaches of their broadcast licence. There is no provision in the law that would sanction such behaviour, although the Council has threatened to take into account the number of warnings issued to a broadcaster when considering their application for a prolongation of their broadcast licence.

### 3.4 Broadcasting independence

After monitoring the coverage of the presidential elections in 2004, the Broadcasting Council concluded that,

most media, during the elections, fully respected the rules on objective, fair and impartial coverage of the elections. It is worthy to mention here the conduct of the public service broadcaster on national level MRT that showed [...] editorial independence and professionalism. The same goes for most commercial media, but not for the public service broadcasters on the local level, whose dependence on the ruling parties and groups is still noticeable.<sup>43</sup>

Nonetheless, many media pundits in the Republic of Macedonia consider that media independence is still imperilled. Roberto Belicanec, Director of the Media Development Center, a NGO based in Skopje, has said that the legal provisions for the independence of the media are, in their present form, the most serious obstacles to media independence.<sup>44</sup>

The Constitution and several laws provide the legal framework for broadcasting independence. The printed media are governed by general provisions in the Constitution<sup>45</sup> and the Journalists' Code.<sup>46</sup> The electronic media are regulated by provisions in the Law on Broadcasting Activity, but these contains few concrete protection mechanisms. The issue of editorial independence is dealt with in the Law on Broadcasting Activity and the Anti-monopoly Law.<sup>47</sup> However, the effects of this legislation remain most of the time at the level of mere declarative statements. The experience of viewers and listeners is that in spite of the media's legal obligations to provide objective news and reports, they are routinely confronted with the overt bias of many media outlets towards particular political options and personalities.

---

<sup>43</sup> Broadcasting Council, *Elektronskite medijumi i pretsedatelskite izbori vo 2004 godina*, (*The electronic Media and the Presidential elections in 2004*), a report, in the Broadcasting Council, *Bulletin No. 15/2004*.

<sup>44</sup> Interview with Roberto Belicanec, director of the Media Development Center, Skopje, 6 July 2004.

<sup>45</sup> Constitution, art. 16.

<sup>46</sup> *Kodeks na novinarite na Makedonija*, (*Code of Journalists of Macedonia*), published by the Association of Journalists of the Republic of Macedonia (Združenie na novinarite na Makedonija), Skopje, 20 January 2002.

<sup>47</sup> Anti-monopoly Law, *Official Gazette of RM*, No. 5/04.



The Law on Broadcasting Activity stipulates that (for both public and private broadcasters) broadcasting is based on the principle of the “independence and autonomy of the broadcasting organisations”,<sup>48</sup> a norm which should protect media outlets from Government influence. The same article also prevents “the monopoly of individuals or groups on broadcasting companies”, a norm that should protect journalists from proprietors. It goes on to articulate the principle of “appropriate and impartial treatment of political entities in the programmes of the broadcasting companies, which shall not serve the sole purpose of any political party, group or acquired rights of individuals”, which should provide for editorial independence and impartiality. Furthermore, the law elaborates the same issues in additional articles, practically repeating these principles. The law also states that a programme must not serve the sole purpose of a particular political party or particular interests,<sup>49</sup> and that State officials and municipal administrations and their representatives may not influence the production of radio or television programmes, or their work activities.<sup>50</sup>

However, the real situation clearly shows that ways are nonetheless found to turn broadcasters into political tools. Political pressures can take different forms – sometimes transparent, sometimes subtle, deep behind the scenes.

What raises particular concern is the absence of regulations on the editorial independence of the broadcaster from the owner of the media company. Regulation for industrial relations in the broadcasting sector, in particular the protection of the rights of employees, is also missing. Journalistic independence is obviously closely related to their professional status and to the rights of journalists. There are almost no collective agreements that protect some of the fundamental rights of workers, such as the obligation for media owners to participate in the costs of social security and other benefits for employees. In general, journalists are not willing to talk about their contractual relations with their employer. The public service broadcaster, MRT, introduced collective agreements only as late as 2003.<sup>51</sup> There is no trade union activity in radio and television stations. The protection of social and labour rights of journalists and other media workers has not been a sufficient priority for the Macedonian Association of Journalists, which is more concerned with protecting the political rights of journalists, and freedom of expression in general.

With regard to commercial broadcasters, it is hard to talk about independence when many media owners (or members of their immediate family) are politically active, and when many media outlets are minor parts of bigger business conglomerates. Živko Andreovski, a media analyst based in Skopje, is not alone in holding that there are

<sup>48</sup> Law on Broadcasting Activity, art. 8.

<sup>49</sup> Law on Broadcasting Activity, art. 32.

<sup>50</sup> Law on Broadcasting Activity, art. 34.

<sup>51</sup> Until the introduction of collective agreements in MRT, employees’ rights were governed by the old Labour Law (*Official Gazette of RM*, No. 80/93. The Law amending and appending the Labour Law, *Official Gazette of RM*, No. 3/94, No. 14/95, No. 53/97, No. 59/97, No. 21/98).

strong grounds for concern about the factual independence of journalism, not only in the broadcasting sector in Macedonia.<sup>52</sup>

## 4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING

The transformation of MRT from a State broadcaster to a public service broadcaster has proven to be a difficult process. This is mainly due to the lack of adequate regulation, although, the lack of adequate debate on the mission of public service broadcasting at the national level has added to the difficulty. However, the quality of MRT's output has improved since some internal reforms were introduced and the MRT Declaration on Professional and Ethical Principles (hereafter, MRT Declaration) was enacted in 2003.<sup>53</sup> In the Broadcasting Council's monitoring reports on coverage of the 2004 presidential elections, MRT was commended. However, the challenge remains how to reduce further the dependence of public service broadcasting on public authorities and other political influences.

The local public radio stations are far behind the national broadcaster in terms of the transformation process. Making matters worse, the draft new Law on Broadcasting Activity lacks concrete visions on the mission and legal status of the local public service broadcasters. Many local public service broadcasters have occasionally suspended operations for several weeks because of financial problems. Often, they fail to fulfil the basic programme criteria, as over the past decade they have not become immune to the attempts by local politicians to control them.

### 4.1 The public broadcasting system

Public service broadcasting is currently being established. This is not an easy task, because Governments, and even the broadcasters themselves, are reluctant to accept change. The public service broadcasting system comprises three entities, all publicly owned broadcasting enterprises:

- Macedonian Radio & Television (MRT), the national public service broadcaster, comprising MR and MTV.<sup>54</sup>

---

<sup>52</sup> Interview with Živko Andrevski, media analyst, Skopje, 13 July 2004.

<sup>53</sup> MRT Declaration on Professional and Ethical Principles for Programmes, adopted in 2003, internal MRT document, available in the MRT archives, Skopje, (hereafter MRT Declaration).

<sup>54</sup> MRT has the following organisational units: MTV; MR (Macedonian Radio); production services resources; administrative and financial services; news desk for all MRT channels; and common programme activities.

- A total of 29 public local radio stations – 12 of these also broadcast television programmes, although this is not legally regulated.
- Macedonian Broadcasting (MB), the company in charge of the transmission infrastructure.<sup>55</sup>

The transformation of MRT is proving to be a long and difficult process. As in other South-eastern European countries, there is increasing resistance to the ongoing process, for several reasons. First, there is unwillingness on the part of the political elite to lose control of influential media outlets. Second, there are difficulties in changing the mentality of the political class, with regard to general social reforms. Finally, there is a need to restructure, and reduce the number of employees in oversized, publicly owned companies such as MTV.

MRT is a publicly owned enterprise founded by Parliament.<sup>56</sup> The tasks of MTV are established by the Law on the Establishment of the Public Enterprise MRT (hereafter, Law on MRT) of 27 January 1998. This law contains only a few articles, some of them providing basic requirements for the broadcaster, but it does not precisely define the tasks of MRT. For instance, Article 7 states that MRT is obliged to immediately broadcast statements by the authorised bodies and organisations – for example, announcements referring to catastrophes, outbreaks of disease, mass unrest, and other events which present a danger to the life, health or property of citizens, or to the security of the State. Article 8 states that MRT is obliged, in case of public events organised by the Government, and for which it has obtained the exclusive rights to transmit and broadcast, to provide other broadcasting organisations (public and commercial companies) with the opportunity to re-transmit these events.

The new draft new Law on Broadcasting Activity contains a more precise explanation of MRT's tasks. In order to meet the public interest, MRT is obliged to:<sup>57</sup>

- ensure that programmes are protected from the influence of political organisations or economic interests;
- 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;
- preserve and foster the cultural identity of the ethnic communities;

<sup>55</sup> After the passage of the Law on Broadcasting Activity on 24 April 1994, MRT was split into two entities – Macedonian Broadcasting and MRT. Law on Broadcasting Activity.

<sup>56</sup> Operation of Macedonian Radio (MR) commenced on 28 December 1944 (as Radio Skopje), by live coverage of the Second Session of ASNOM (then the national assembly). MTV (then TV Skopje) was launched on 14 December 1964.

<sup>57</sup> Draft Broadcasting Law, art. 121.

- promote public dialogue, tolerance and the advancement of the multicultural character of the country;
- promote the respect of basic human freedoms and rights, democratic values, privacy and dignity;
- respect speech and language standards of both majority and non-majority communities;
- foster domestic audiovisual creativity which contributes to the development of culture in the Republic of Macedonia;
- provide adequate and impartial treatment of all political subjects during election campaigns;
- meet contemporary technical standards in broadcasting;
- provide archives of radio and television recordings and other audiovisual works, materials, and documents.

The present management of MRT took office in 2002 and introduced several reforms to improve the performance of the organisation. It introduced several documents on strategies to restructure MRT, including decreasing the number of employees and slashing of running costs. The management achieved progress in the unification of the editorial policy of various news departments' radio and television. Nevertheless, experts think that much more should be done, especially in the ranks of middle management.<sup>58</sup>

The transformation of MRT is progressing in several directions:<sup>59</sup>

- statutory and organisational changes;
- introducing programmes produced by independent producers;
- streamlining economic activities;
- drafting internal regulations and rules on job descriptions, organisation and wages;
- reorganising and strategies for dealing with redundancies.

There is no concept for the local radio services, with regard to their mission, number and types of such broadcasters, their legal status and the manner of financing.

The division of power between the ethnic Macedonian majority and the ethnic Albanian minority remains a highly divisive issue, occupying centre-stage in political

---

<sup>58</sup> R. Lyne, *Report to MRT General Manager Gordana Stošić*, Skopje, 28 June 2004. R. Lyne is manager of the OSCE/TF project on MRT reconstruction.

<sup>59</sup> Programme on MRT Transformation, Authority for MRT restructuring and transformation, March 2003, internal MRT document, available in the MRT archives, Skopje.

debate in the country. It also reflects on the media situation and, especially, on how the public service broadcaster is regulated and governed.

Until spring 2003, the Macedonian and the Albanian language news desks of Macedonian Television operated independently of each other. This was also the case for the editorial offices for culture or education. This led to differences in setting the news agenda, so that at some points in time there was little similarity in how the programmes in Macedonian and Albanian presented reality, especially the political agenda. According to one empirical research, less than 50 per cent of the content of the news broadcast in the two languages covered the same items.<sup>60</sup> An obvious feature in the selection of the news priorities, according to this research, was to pay much more attention to events in the “own” community, even of minor significance, than in the whole of the country. The activities of the Macedonian or, respectively, Albanian party in the ruling coalitions were closely covered in the corresponding news programmes.

At present, there is a central news desk preparing news broadcasts in Macedonian available to the news desks of all sections of MRT. The editors of the programmes in the languages of the ethnic communities are free to choose from the news offered by the central desk and to add their own input. Usually, the head of the Albanian language news desk is also deputy head of the news programme of all news programmes of MRT. Nonetheless, both initial empirical research and anecdotal evidence show that both the news agenda itself and the overt or latent tendency of the news in the various languages, differ.

## 4.2 Services

The Law on MRT determines the services to be provided by the national broadcaster, including:<sup>61</sup>

- producing and broadcasting radio and television programmes with informative, educational, cultural, scientific, sports, music, entertainment and other content;
- broadcasting in Macedonian and the languages of the ethnic minorities that live in the Republic of Macedonia;
- offering programmes on cultural and historical heritage and traditions;
- maintaining relations with emigrants from the Republic of Macedonia abroad;
- broadcasting radio and television programmes of other broadcasting organisations and independent producers;

<sup>60</sup> Sefer Tahiri, *The transformation of the news programmes of Macedonian Radio and Television, unpublished research paper*, University of Skopje, July 2004.

<sup>61</sup> Law on the Establishment of the Public Enterprise Macedonian Radio-Television, *Official Gazette of RM*, No. 6/98, last amended by the Law amending and appending the Law on the Establishment of the Public Enterprise Macedonian Radio-Television, *Official Gazette of RM*, No. 78/04, (hereafter, Law on MTV), art. 6.

- producing and selling audio and video cassettes and tapes, compact discs, films, viewtext, and other audio and video activities;
- producing, arranging, keeping, registering and exploiting television recordings and other audiovisual products, materials and documents of national interest.

In total, MTV broadcasts 73 hours daily on its three terrestrial channels and one satellite channel. The first channel, MTV1, broadcasts non-stop programmes, with news and current affairs reporting, cultural, documentaries, education and scientific content. MTV2 broadcasts 12 hours daily, featuring entertainment and shows, sports and programmes in the languages of other communities translated into Macedonian. MTV3 presents programmes for 13 hours – in Albanian for 9.5 hours, in Turkish for 2.5 hours, and three times per week for 30 minutes in Serbian, Romanes, Vlach, and Bosnian.<sup>62</sup>

At the end of 2004, Parliament resolved to reduce the output of MTV significantly, by deciding that the third channel, MTV3, would in future broadcast the entire proceedings of the parliamentary sessions,<sup>63</sup> with its present content moved to the MTV2. MTV3 started with an experimental Parliament programme on 29 March 2005.

MRT lacks adequate staff for producing the different programming strands for multiple radio and television channels. Many young employees, usually hired on a part-time basis, were in recent years the driving force behind producing genre programmes. However, they are now leaving MRT, because the station cannot provide them with resources and funds.

Due to huge financial problems, the majority of local public service broadcasters have difficulties in supplying their own programmes. Some of them (including Radio Gevgelija, Radio Debar and Radio Prilep) were deprived of their power supply for a while in 2002 and 2003, after having failed to pay electricity bills, and had to stop broadcasting.<sup>64</sup> On average, the local public radio stations have between 8 to 16 hours of programming daily. Twelve of them also broadcast television programming, also between eight and 16 hours per day. Local public television stations usually focus on

<sup>62</sup> The third channel existed from 1991 to 2000, initially as an experimental channel. Since August 2002, the third channel has broadcast programmes in the languages of the ethnic minorities.

<sup>63</sup> Parliament has decided to produce the new Parliament Channel itself, rather than MTV. MRT just has a one-time obligation to assist Parliament in selecting and installing the required equipment, and is also expected to choose five people who will provide initial training for Parliament TV team. Comment from OSI Roundtable, Skopje, 17 January 2005 (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.*

<sup>64</sup> Broadcasting Council, “Radio i televiziskata programa”, (“Radio and TV Programmes”), Annual monitoring report, in *Bulletin No. 14/2003*, Skopje, p. 9, (hereafter, Broadcasting Council, *Radio and TV Programmes*).

entertainment and commercial content, which means that they do not fulfil even the basic programme criteria for public service broadcasting.<sup>65</sup>

### 4.3 Funding

Macedonian public service broadcasting has for a long time been confronted with a very difficult financial situation. This is mostly due to the poor collection rate of the licence fee, which is MRT's main source of income. It is also a result of high costs incurred by working with outdated equipment and organisational structures – MRT is overstaffed, but lacks high-quality editorial staff and specialists in information technology. The funding model of the public service broadcaster is determined by Parliament and its funding rules are stipulated in the Law on Broadcasting. The Law on MRT sets out that MRT is financed by:<sup>66</sup>

- a portion of the licence fee;
- advertising services;
- sale of programmes;
- income from other services and activities, sponsorships and donations;
- funds provided by the Republic of Macedonia for financing programmes produced for Macedonians in neighbouring countries, Europe and overseas;
- sale of news and current affair reports and other features to external customers.

The Law on Broadcasting Activity determines the distribution of funds generated through collection of the licence fee:<sup>67</sup>

- 61 per cent is allocated to MRT operative costs;
- 7.5 per cent is allocated for the technical development and technical equipment of MRT;
- 16.5 per cent is allocated to Macedonian Broadcasting, the company in charge of telecommunications;
- 5 per cent is allocated for public local radio and television stations;
- 10 per cent is allocated for private radio and TV and independent producers for the creation of programmes of public interest – allocated through a tender administered by the Broadcasting Council (see section 5.5).

<sup>65</sup> Emilija Petreska and Snežana Trpevska, "Darstellung der Mediensysteme: Mazedonien", ("The media landscape in the Republic of Macedonia"), in *Internationales Handbuch Medien 2004/2005*, (*International Media Handbook 2004/2005*) Hans-Bredow-Institut, Nomos Verlagsgesellschaft, Baden-Baden, 2005, pp. 451–463, (hereafter, Petreska and Trpevska, *Media landscape in RM*).

<sup>66</sup> Law on MRT, art. 24.

<sup>67</sup> Law on Broadcasting Activity, art. 77.

The licence fee should be paid every month together with the electricity bill, by all consumers except those who are exempted.<sup>68</sup> At the moment the licence fee is set at to €4.78.<sup>69</sup> However, there are problems with collection, with as many as 35 per cent of viewers avoiding paying it. The reluctance to pay can be attributed to viewers' dissatisfaction with MRT, but even more to their difficult personal financial situation, with low standards of living and a high unemployment rate. As shown below in Table 3, the licence fee collection rate was 56 per cent.

**Table 3. Licence fee collection rates (1993–2005)**

	Collected fee (millions)	Collection rate (per cent)
1993	333.9	64.7
1994	561.1	46.8
1995	617.4	49.8
1996	531.7	41.8
1997 (Jan to May: compensation)	185.1	36.4
1997 (June to Dec: licence fee)	453.6	65.7
1998	741.2	65.6
1999	615.2	68.1
2000	612.7	64.6
2001	503.2	56.6
2002	502.3	50.8
2003	563.6	52.8
2004	622.6	56.6
2005 (Jan-March)	53.3	56.0

Source: MRT<sup>70</sup>

The licence fee is the main source of MRT's revenue (see Table 4). The poor collection rate therefore further aggravates MRT's weak financial standing. In 2004, MRT's total

<sup>68</sup> The new draft Law on Broadcasting Activity 2005 provides that the broadcasting fee should continue to be collected through the Electro-economy of Macedonia (ESM), regardless of whether ESM is privatised or not.

<sup>69</sup> The licence fee is set at 2.5 per cent of the average net monthly salary in the Republic of Macedonia for the previous three months.

<sup>70</sup> MRT, Databases of the MRT, Broadcasting Council, Ministry of Transport and Communications and others, Skopje, May 2005.



income was MKD 844.23 million (or approximately €13.73 million), which is 7.2 per cent higher than for the previous year.<sup>71</sup> MRT's revenue from the licence fee amounted to €9.19 million in 2003, an increase of 12.2 per cent over the previous year. This was partly due to an increase in the fee (from €4.47 per month in 2002). Even with this increase, however, this revenue fell short of the projected total by 15.3 per cent; the station's average monthly inflow was €766,170 as opposed to the projected amount of €904,503.

**Table 4. MRT budget revenue sources (2004)**

Revenue source	Share of total revenue (per cent)
Licence fee	80.2
Revenue from advertising	12.1
Bank interest and positive exchange rates	1.4
Other revenue	6.3

Source: MRT<sup>72</sup>

Generally speaking, the level of financing of MRT, is not sufficient to maintain three radio channels and three television channels. The unresolved issue of ensuring sufficient financing remains the biggest challenge for MRT.<sup>73</sup> There has been insufficient debate in the Republic of Macedonia on the future of public service broadcasting<sup>74</sup> and it seems that there is no public awareness about the role and mission that it should assume. More public deliberations are required to overcome the belief that MRT should be the mouthpiece of the State.<sup>75</sup> Some debates took place during the drafting of the new Law on Broadcasting Activity in 2003 (see section 6), but few conclusions were drawn. Government representatives did not indicate any interest in debating the future mission of public service broadcasting.

<sup>71</sup> The total revenue of MRT in 2003 was MKD 942.37 million (or approximately €15.37 million).

<sup>72</sup> MRT, *Godišen izveštaj za 2004 godina, (Annual financial statement for 2004)*, accepted by the MRT Board, Skopje, February 2005.

<sup>73</sup> OSI roundtable comments.

<sup>74</sup> It is interesting to note that all media experts interviewed for this report agreed that Macedonia lacks sufficient debate on the future and mission of public service broadcasting. Some thought that there has been no debate at all.

<sup>75</sup> According to David Quinn, there is still such a perception, and greater effort needs to be made to eliminate it. Interview with David Quinn, member of the OSCE Media Development Team in the Republic of Macedonia, and assistant to the Thomson Foundation "Project on MRT reconstruction", Skopje, 12 July 2004.

Although there has been some improvement in recent years, media experts still assess that politicians exert too much (direct or indirect) control over public service broadcasting. One of the media experts interviewed for this report stated unambiguously that, “the public service broadcaster is deliberately maintained by the Government in such reaction, in chaos, and in misery, so that it can be conditioned when there is need for that. Ironically, on the other hand, they do not want to close down this national broadcasting company.”<sup>76</sup>

## 4.4 Governance structure

### 4.4.1 Composition

MRT is governed by the Board, the Financial Supervisory Board, and the General Director.<sup>77</sup>

There is also a Programme Council, whose top executive officers are the Director and the Editor-in-Chief of Macedonian Radio, and the Director and Editor-in-Chief of MTV. The Programme Council monitors the implementation of the programme framework of MRT. It also responds to the complaints and proposals of viewers and listeners, and offers its comments and suggestions regarding the programmes to the MRT Board.

The MRT Board is the governing body of MRT. The Board is obliged to submit an annual report to Parliament on the work of MRT. The General Director is in charge of executing the decisions of the MRT Board and is responsible to ensure efficiency and legality of the operations of the company. The General Director is legally obliged to provide an annual report to Parliament, which Parliament can accept or refuse – however, Parliament has not refused a report to date.

Neither the Law on Broadcasting Activity, nor the Law on MRT, halted the tradition of political partisanship in MRT management. It is established practice to appoint managers who are close to the ruling parties. Due to the “party spoils” system, many of the top and middle managers at MRT lack professional training, organisational and personal skills to manage and upgrade a complex public broadcasting service. According to the law, the General Director and the Board are directly accountable to Parliament. In practice, however, MRT directors are usually accountable to the ruling political parties that originally recommended and supported their election in the Parliament.

The draft new Law on Broadcasting Activity foresees significant changes to the Board’s remit, and also changes with respect to the General Director. The Board would have the following remit:<sup>78</sup>

---

<sup>76</sup> Interview with a person who wished to remain anonymous.

<sup>77</sup> Law on MRT, art. 12.

<sup>78</sup> Draft Law on Broadcasting Activity 2005, art. 133.

- appointing and dismissing the MRT General Director, with a two-thirds majority vote;
- implementing the public interest – for example, by ensuring editorial autonomy and independence from the State or any other interests, and programming quality and diversity;
- enforcing editorial independence and the institutional autonomy of MRT;
- approving programme policy;
- approving the development plan for MRT;
- adopting the statutes of MRT;
- approving the annual MRT work-plan;
- approving the annual financial plan.

#### 4.4.2 Appointments

The Board consists of 11 members, who are supposed to be eminent scholars, artists and professionals. Parliament appoints seven of the members. The other four members, also appointed by Parliament, are MRT employees who are proposed by the MRT Council of Employees.

The present law prohibits any conflict of interest for the MRT Board members. For example, Board members are not allowed to be owners of, or associated with, companies that have commercial relations with MRT. Those considered not eligible for board membership also include members of the Government, other public officials or officials of political parties, and owners or employees of other broadcasting organisations.<sup>79</sup>

Parliament also appoints and dismisses the General Director and the Deputy General Director, who both serve four-year-terms. The appointment of the General Director and his or her Deputy is confirmed by a majority vote of the parties represented in Parliament, which means that the decisive votes usually come from the ruling parties.<sup>80</sup> In the mid-1990s, a practice was introduced of appointing an ethnic Albanian as Deputy General Manager, nominated by the Albanian political party in the governing coalition.

The Director and Editor-in-Chief of Macedonian Radio and Macedonian Television are appointed and dismissed by the Board, upon the proposal of the General Director. The General Director can dismiss the managers of the radio and television programmes.

---

<sup>79</sup> Law on MRT art. 14.

<sup>80</sup> Law on MRT, art. 17, 19.

The draft new Law on Broadcasting Activity provides for the General Director to be elected by the Board, with a two-thirds majority vote, after a public competition. However, even if this change is enacted, seen realistically, the situation will not change, as political parties will certainly continue their attempts to ensure that their proxies are appointed to the Board. It also contains a provision that the Board can dismiss the General Director.

The draft law also foresees that the mandate of the members of the Board can be terminated before the regular deadline in the following cases (this is not specified in the present law):<sup>81</sup>

- if a member is absent from the meetings of the Board for more than for three months;
- if a member resigns;
- if reasons occur that prevent a person from being elected a member of the Board;
- if a member is sentenced to more than six months of imprisonment.

In future, MRT would be governed by a Council (51 members), an Executive Board and the General Director. The members of the Council would be appointed by Parliament, through a majority vote. The Executive Board would have seven members, appointed by the MRT Council after a public competition. The Executive Council would elect the Director General, and would report to the Parliament.

#### 4.4.3 Sanctions that can be invoked against public service broadcasters

The present Law on Broadcasting Activity allows charges to be brought for minor offences against commercial and public service broadcasters. These are standard procedures in accordance with other laws. The present law only foresees reporting an offence or filing a request for charges by the Broadcasting Council as the supervisory body in the broadcasting sector.

### 4.5 Programme framework

#### 4.5.1 Output

The structure of MRT's output by genre has not been updated for many years and lacks creative energy from authors and producers.<sup>82</sup> This is often explained as an outcome of MRT's financial difficulties (see section 4.3).

---

<sup>81</sup> Draft Broadcasting Law, art. 104.

<sup>82</sup> Broadcasting Council, *Bulletin No. 14/2003*, p. 8.

Recently, MTV programmes have been increasingly of a commercialised nature, with, in particular, more music and entertainment shows. This new direction of MTV has, in recent months, led to debate amongst media experts and elicited criticism from commercial broadcasters, who accuse MTV of competing with them in entertainment and other “light” programmes.<sup>83</sup> They argue that the public service broadcaster has an obligation to show different genres for all segments of the public.

About 13 per cent of MTV local radio output consists of re-broadcasting external radio services such as BBC, VOA, and Deutsche Welle.<sup>84</sup>

Some local television stations, after signing off in the evenings, rebroadcast programmes of foreign satellite channels. This is because they are not financially capable of producing their own programmes or paying for legally imported content. According to the Broadcasting Council, this is done without permission.

---

<sup>83</sup> Snežana Trpevska, and Emilija Janevska, “Indikatori za evaluacija na funkcite na javniot radiodifuzen servis”, (“Indicators on evaluation of functions of public service broadcasting”), in Broadcasting Council, *Bulletin No. 12/2003*, Skopje, p. 30.

<sup>84</sup> Broadcasting Council, *Bulletin No. 14/2003*, p. 9.

**Table 5. MTV programme framework – breakdown by genre and type of programme (2003)**

Types of programme		MTV1	MTV2	MTV3	Total (all 3 channels)	Share (per cent)
1. Own and foreign programmes	Information programme	90,364	90,118	107,884	288,366	20.4
	Documentary programme	6,696	3,929	4,393	15,018	1.1
	Culture and arts programme	89,947	49,754	33,955	173,656	12.3
	Educational programme	13,004	4,610	3,695	21,309	1.5
	Foreign programme with translation	16,238	15,984	–	32,222	2.3
	Programme announcements	7,460	5,224	1,472	14,156	1.0
	<b>Total</b>	223,709	169,619	151,399	544,727	38.6
	Marketing programme	16,783	583	168	17,534	1.2
	Remaining programme (test card)	8,988	11,203	6,291	26,482	1.9
	Own Satellite programme	10	296	–	306	–
	<b>Total</b>	25,781	12,082	6,459	44,322	3.1
	<b>Total 1</b>	249,490	181,701	157,858	589,049	41.7
2. Repeats etc.	Repeats of recent shows, mostly from the same week	259,186	172,083	120,591	551,860	39.1
	Repeats of old shows, from past years	2,975	3,047	4,982	11,004	0.8
	Foreign programme without translation	14,723	3,679	9,790	28,192	2.0
	Foreign satellite programmes, such as BBC, VOA and DW	–	398	230,871	231,269	16.4
	<b>Total 2</b>	276,884	179,207	366,234	822,325	58.3
<b>Total broadcast television programmes</b>		526,374	360,908	524,092	1,411,374	100.0

 Source: MRT<sup>85</sup>

<sup>85</sup> MRT, *Izveštaj za rabota na MRT, Godišen finasov izveštaj na MRT za 2003 godina*, (Report on MRT work, after the Annual financial statement of MRT for 2003), accepted by the MRT Board, February 2004, Skopje. In 2003, the average broadcasting times were 24 hours for the first TV channel; 16 hours and 30 minutes for the second; and 24 hours for the third; and 24 hours for MTV-SAT.

On MTV1, the most watched channel of MTV, news accounts for 20 per cent of the output, education for 10.73 per cent, and entertainment and sports for 18.06 per cent.<sup>86</sup> There is a widespread impression that MRT programming is becoming increasingly similar to that which the commercial broadcasters offer. The reason for this is most probably the depressing financial situation of the public service broadcaster. As there is insufficient funds for the production of documentary and educational programmes, MTV resorts to showing light entertainment programmes in an attempt to retain audiences and fight off competition from the many commercial broadcasters.

#### 4.5.2 Quotas

The Law on Broadcasting Activity only foresees obligatory quotas for national and local public service broadcasters, for programmes in the languages of the ethnic communities in the Republic of Macedonia. Other quotas, such as for domestic or European works, are included in the 2005 draft Law on Broadcasting Activity, with the purpose of bringing the country's media legislation in line with European standards.

Ethnic diversity is a determining feature of society in the Republic of Macedonia. Especially after the major ethnic clashes in 2001, the issue of the representation of ethnic diversity in the media has been high on the political agenda. Several monitoring projects have shown that, particularly in times of tensions and looming intra-State conflicts, media of different ethnic communities tend to report ongoing developments in different, often contradictory terms.<sup>87</sup> However, in spite of many projects, mostly financed from abroad, aimed at improving the performance of the media when reporting ethnic diversity, media in the different languages remain one of the core agents of creating different, and often conflictual, public spheres in the country.

MRT is obliged to offer content in minority languages as well as Macedonian.<sup>88</sup> The public service broadcaster has respected this principle, and the length of every programme for minorities corresponds to that minority's share of the population. The same is prescribed for local public broadcasters in regions that have a local majority or a "significant percentage" of minority population, though there is no clear definition of what a significant percentage is. MRT programmes contain special quotas for minority

<sup>86</sup> Broadcasting Council, *Radio & TV Programmes*, p. 8.

<sup>87</sup> IWPR, "Same world, parallel universes: The role of the media in the Macedonian conflict", in *Obrid and beyond*, IWPR, Skopje, 2002, p. 73; Veton Latifi, *Macedonian challenges in the process of the democratization and stabilization*, KAS, Skopje, 2003, p. 197; International Press Institute, *2001 World press freedom review*, IPI, Vienna, 2001, p. 186, available at [http://www.freemedia.at/wpfr/Europe/wpfr\\_eu.htm](http://www.freemedia.at/wpfr/Europe/wpfr_eu.htm) (accessed 6 July 2005); Macedonian Institute for Media, *Macedonia: the Conflict and the Media*, Skopje, 2003.

<sup>88</sup> Law on Broadcasting Activity, art. 45.

ethnic communities. Programmes are broadcast in seven languages: Macedonian, Albanian, Turkish, Serbian, Romanes, Vlach and Bosnian.<sup>89</sup>

The MRT Declaration asks journalists working in the public broadcasting service to show respect for values of all ethnic groups and to report in an unbiased manner.<sup>90</sup>

**Table 6. Quotas for minority language programming on the national public service broadcasters**

	Total weekly output (hours)					
	Albanian	Turkish	Serbian	Roma	Vlach	Bosnian
MTV3	65h	17h 30m	2h 30 m	1h 30 m	1h 30m	1h 30m
Mac. Radio2	59h 30m	38h 30m	–	3h	3h	–

Source: MRT and the Broadcasting Council<sup>91</sup>

**Table 7. Quotas for minority language programming on the local public service broadcasters**

	Total weekly output (hours)				
	Albanian	Turkish	Roma	Vlach	Serbian
Radio Tetovo	47.5	16	–	–	–
Radio Gostivar	6	6	–	–	–
Radio Debar	24.5	2.5	–	–	–
Radio Kičevo	12	–	–	–	–
Radio Struga	14	3	–	1	–
Radio Kumanovo	12	–	12	12	–
Radio Krusevo	–	–	–	1	–

Source: MRT and the Broadcasting Council<sup>92</sup>

<sup>89</sup> Programmes in Albanian and Turkish started in 1967.

<sup>90</sup> MRT Declaration, art. 55.

<sup>91</sup> Database of MRT and the Broadcasting Council, Skopje, June 2004.

<sup>92</sup> Database of MRT and the Broadcasting Council, Skopje, June 2004. This data relates only to the radio programming of the local public service broadcasters. Those which broadcast television programmes do not do so in languages of the ethnic minority communities. However, most of the cited local broadcasters do not broadcast any television programmes.



The MRT Declaration also commits the organisation to carry programmes for persons with special needs.<sup>93</sup> For example, MTV broadcasts news and other information programmes for deaf people.

#### 4.6 Editorial standards

Public service broadcasting is guided by the Constitution, national laws (especially the Law on Broadcasting Activity), international conventions and codes of ethics. However, the MRT Declaration serves as the main guideline for editorial standards.

In 2003 and 2004, there were cases when journalists from the MTV news desk were fined for mistakes in their work that led to inaccurate information being broadcast and, so, to the violation of the MRT Declaration. The general impression of the public was that the fines were for professional failures and, therefore, were correct and not politically motivated. The exact number of such cases has not been established. According to a senior editor of the news sector of MRTV, several journalists have been fined by having to take a cut of ten to 20 per cent in their salaries for one month.

The MRT Declaration contains a provision on “Standards for Information Programmes”, which obliges employees and MRT to respect impartiality and accuracy.<sup>94</sup> This stipulates that “information should be impartial, and facts and views be presented in a balanced and ethical form” and that information “may not be inaccurate”.<sup>95</sup> Slovenian Television, the BBC and other public service broadcasters have adopted more elaborate documents than the MRT Declaration. Nonetheless, there has been improvement in providing impartial and accurate reporting since the declaration was adopted in 2003. Experts say this was best shown by MRT’s coverage of the 2004 presidential elections in Macedonia.<sup>96</sup>

Decentralisation is a key outcome of the Ohrid Framework Agreement. However, MRT’s coverage of the November 2004 referendum on decentralisation – a highly contentious event that could have had dramatic repercussions on the stability of the country – was not as extensive as its coverage of the presidential elections. Indeed, the Broadcasting Council concluded in its monitoring that MRT had not fulfilled its obligation to inform the audience about the legal background of the referendum, the

---

<sup>93</sup> MRT Declaration, art. 61.

<sup>94</sup> MRT Declaration, art. 8-18. Article 7 refers to other guiding documents on impartial and accurate reporting, such as the Code of Ethics of Macedonian Journalists, and the Code of Ethics of the International Federation of Journalists.

<sup>95</sup> MRT Declaration, art. 8, 13.

<sup>96</sup> Interview with Snežana Trpevska, coordinator of Sector for Programme Affairs of the Broadcasting Council, Skopje, 24 June 2004.

issues to be decided in the referendum, and the technical aspects of voting.<sup>97</sup> An analysis of MTV's news broadcasts found news on MTV1, in Macedonian, to have been informed and balanced. However, this was not the case for news on MTV3, in Albanian, which the Broadcasting Council found to contain significant imbalance in favour of the option to vote against the proposal of the referendum's initiators to stop the decentralisation plan.<sup>98</sup> In the end, the referendum against decentralisation failed because the turnout fell below the required 50 per cent.

## 5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING

By international standards, the regulation of commercial broadcasting in the Republic of Macedonia is unduly restrictive. Only one legal or physical person may be the founder of a commercial broadcasting company and the present law makes it difficult to transfer ownership of broadcasting organisations to other people. The founder may be granted only one broadcast licence at the national level, and two at the local level. The licence may not be transferred to a third party. Founders of a commercial broadcasting station may not be persons engaged in print media, political parties, and public or party officials. Foreign entities may only be co-founders and hold at most 49 per cent of the founding capital of the company.

Owners of commercial broadcasters are often individuals backed and sponsored by powerful industrial or trade businesses, or by powerful individuals who were, or are, top political party officials, Government Ministers or Members of Parliament. Advertising profits and revenues are mainly divided among the major broadcasters, while small, local commercial broadcasters often operate on the basis of donations, subsidies and assistance from NGOs. Journalists in commercial electronic outlets complain about low and late salaries, and the non-payment of social security contributions and other taxes by media owners. Such practices are mostly the outcome of the poor overall economic situation in the country.

### 5.1 Public service obligations for commercial broadcasters

Commercial broadcasters are obliged to fulfil general and specific conditions for obtaining a broadcast licence. There are different conditions for local and national broadcasters (see section).

---

<sup>97</sup> The Broadcasting Council found that MRT had not fulfilled the obligations stressed in the Recommendations for broadcasting specialised programmes for informing the citizens regarding the law regulating referendum issues, the content of the referendum initiative, and for the way and the techniques for voting. See: Broadcasting Council, *Bulletin* No. 17, Skopje, 2005, pp. 50–58.

<sup>98</sup> Broadcasting Council, *Bulletin* No. 17, 2005, Skopje, p. 17.

Participants promising a better programme structure have a better chance of obtaining a licence (see section 3.2). This is clearly stated in the tender documentation. In other words, if two or more applicants for a national licence promise equal conditions, preference will be given to the applicant who plans to ensure 40 per cent or more of their own production. A more diversified programme scheme differing from the offer of existing television stations will also be regarded favourably. Emphasis should be on quality entertainment, educational content, culture and art. At the local level, applicants who offer at least 40 per cent of their own production will enjoy an advantage. Similarly, advantages accrue to applicants who promise to produce more local programme content than is required in law. Finally, applicants aiming for a different type of content than already offered by existing stations will be favoured.

After obtaining a broadcast licence, a commercial broadcasting company must conclude a broadcasting contract with the Government. This contract stipulates the type and structure of the envisaged broadcasting; the technical and programme-related conditions; the amount of the licence fee and the manner of its payment; the obligation of a licence holder to submit certain data to the Broadcasting Council; supervision; liability for failure to respect the terms of the licence; the circumstances in which a licence can be terminated; and the manner in which disputes should be solved or the licence agreement terminated.

The Broadcasting Council monitors the programmes aired, in order to determine if the law and contract are respected. It may, for instance, assess whether the mandatory census of own production is honoured. If the Council finds violations, it may propose sanctions. However, the Council is not in a position to react if a broadcaster fails to live up to its promised volume of self-produced programming. The Council has no sanctioning mechanisms. Also, a broadcaster may not honour the time ratio set out for broadcasting in different languages, simply because there are no legal obligations for this.

## 5.2 Commercial television ownership

The law provides for a restrictive policy regarding private ownership in the broadcasting industry.

First, the Law on Broadcasting Activity limits concentration within the sector. A legal entity or a natural person may establish only one commercial broadcasting company. They can be the co-founders of only one more broadcasting enterprise, with up to 25 per cent of the total capital of this company.<sup>99</sup> Moreover, a commercial broadcaster can be granted only one national broadcast licence for a radio station or for a television station. For broadcasting at the local level, at most two licences can be granted, in separate, non-contiguous areas – one for radio and one for television.<sup>100</sup> In practice, however, there are cases when legal entities are the owners of a radio and a television

<sup>99</sup> Law on Broadcasting Activity, art. 10.

<sup>100</sup> Law on Broadcasting Activity, art. 17.

station in the same area, although the licence contracts bear different names, usually the names of married couples.

The law states that a granted licence cannot be transferred to a third party, and provides for a fine if this takes place.<sup>101</sup> However, until now this has not happened in practice. Without Government approval, it is illegal to change the ownership structure.<sup>102</sup>

The 2005 draft Law on Broadcasting Activity does not retain such restrictions with regard to ownership.

### 5.3 Cross-media ownership

Similarly, there are restrictions limiting horizontal concentration and also possible political influence. Legal entities and natural persons engaged in print media, political parties, as well as holders of public office or officials of political parties cannot be co-founders of a broadcasting company.<sup>103</sup> They also cannot be owners or co-owners of broadcasting companies. Public or party officials may not be appointed director or editor-in-chief of a broadcasting company.

Journalists reacted vehemently when the Law on Broadcasting Activity was passed, in 1997, objecting especially to provisions prohibiting the simultaneous ownership of a newspaper and a radio or television station. They argued that throughout Europe ownership restrictions were not so severe. What ensued was exactly what the law had attempted to prevent, namely concentration of control over media in few hands. So-called “secret partnerships” exist – meaning, connections of a radio, television station and a newspaper, or between television and a newspaper – and such arrangements are hard to stop. One example is the partnership between TV A1 and the private daily newspaper *Vreme*.<sup>104</sup>

There are also restrictions on foreign capital in the broadcasting sector. A foreigner can be co-founder of a commercial broadcasting company with up to 25 per cent of the total capital. The combined investment of several foreigners in a commercial broadcasting company cannot exceed 49 per cent of the total capital.<sup>105</sup> Consequently, there is no foreign investment in the broadcasting sector in the Republic of Macedonia, although interest has been expressed.

---

<sup>101</sup> Law on Broadcasting Activity, art. 21, 85.

<sup>102</sup> Law on Broadcasting Activity, art. 35.

<sup>103</sup> Law on Broadcasting Activity, art. 11.

<sup>104</sup> Viewpoint expressed by Goran Gavrilov, Director of the first Macedonian private radio station, Kanal 77, and widely supported by other participants at the roundtable on “Media Concentration and its Influence on Pluralism and Freedom of Expression”, 2 July 2004, Skopje, organised by the Broadcasting Council and the Macedonian Institute for Media.

<sup>105</sup> Law on Broadcasting Activity, art. 10.

The 2005 draft Law on Broadcasting Activities abolishes these restrictions and provides for equal treatment of foreigners in the broadcasting industry of the Republic of Macedonia.<sup>106</sup> The draft law also contains restrictions to limit ownership concentration. The owner of a national broadcast licence cannot own more than 50 per cent of the capital or voting rights of another organisation with a national broadcast licence. This owner can possess one more regional broadcast licence and two more local broadcast licences (in non-adjacent areas). The owner of a regional broadcast licence can own only one other regional broadcast licence (for a non-adjacent area) and two more local broadcast licences (also for non-adjacent areas). The owner of a local broadcast licence can own only two more local broadcast licences (but for non-adjacent areas).<sup>107</sup> The implementation of these restrictions in such a small country as the Republic of Macedonia will be difficult.

Currently, the law has omitted a requirement for broadcasting companies to reveal data on their ownership structure and other data about their operation. Therefore, it is not easy to determine the owners of the media and their individual capital share. In order to overcome this inconsistency, the broadcast licence contract obliges the licence holder to provide the Broadcasting Council with all requested data, including information about the ownership structure.<sup>108</sup> According to the Broadcasting Council, individuals are most often registered as owners. Information about the ownership structure is also provided by the Court Registry of Trade Companies. The Law on Securities<sup>109</sup> obliges broadcasters to publish data on changes in the ownership structure in the daily press or on the website of the Macedonian Stock Exchange. In practice, however, this requirement is usually ignored.

Data on the ownership structure of the major television stations support the assumption that some powerful political and business figures are among the owners of some major radio and television stations. Also, in the case of small stations, there are many examples of owners who have joined together to run the business. The following are some examples:

- TV A1 – the owner, Velija Rankovski, also controls a large trading company. He is also founder of two more companies, one of them devoted to cinema production.
- TV Sitel – owned by Sileks in Kratovo, a shareholding company for mining and industry. Main shareholders are Ljubisav Ivanov, the Chairman of the Socialist Party, and his son, Goran Ivanov, who is Director of the station and also owns five other companies in different businesses.

<sup>106</sup> Draft Law on Broadcasting Activities 2005, art. 19.

<sup>107</sup> Draft Law on Broadcasting Activities 2005, art. 14.

<sup>108</sup> Law on Broadcasting Activity, art. 32.

<sup>109</sup> Law on Securities, *Official Gazette of RM*, No. 34/01.

- TV Kanal 5 – owned by the Print Company BS, which is named after Boris Stojmenov, Finance Minister in the former coalition Government led by the conservative VMRO-DPMNE party. His son, Emil Stojanov, is founder of the Holding Company BS and founder or co-founder of other trading companies.
- TV Telma – owned by Makpetrol Inc., the main business activity of which is the import and sale of oil and oil products; it has established six other trading companies.<sup>110</sup>

However, none of the owners of these major media outlets has any shares, at least on paper, in other media companies. So, it is difficult to prove concentration in the broadcasting sector.

Different tendencies are visible in print media. The October 2003 liquidation of the then biggest national newspaper and printing company, Nova Makedonija, which published several dailies, weeklies, reviews and magazines, saw the end of one monopoly. However, the market penetration by the German media concern WAZ was extensive, with its purchase of all three major private dailies in the Republic of Macedonia: *Utrinski Vesnik*, *Dnevnik* and *Vest*.<sup>111</sup> WAZ entered the market at a moment when the dailies *Nova Makedonija* and *Večer* had collapsed and *Makedonija denes* had only a small circulation.

The Anti-Monopoly Authority of the Republic of Macedonia published data according to which, in the first half of 2003, WAZ controlled 89.21 per cent of the market. The start of a new private daily paper (*Vreme*) in early 2004 and the relaunch of the two daily papers formerly belonging to Nova Makedonija Company (*Nova Makedonija* and *Večer*) changed the picture. By February 2004 the share of WAZ-owned papers decreased to 54.87 per cent. The Anti-Monopoly Authority assessed this as “proof that there is sound competition, and not a monopoly, in the print media market”.<sup>112</sup> In many European countries, anti-monopoly rules are invoked when a medium outlet controls more than 30 per cent of the audience or readership.

As with private electronic media, it is not hard to detect the influence of politics. Namely, Srgjan Kerim, the country director of WAZ, is the former Foreign Minister in the Governments led by VMRO-DPMNE and LP. The other owner of *Utrinski Vesnik* is Trifun Kostovski, a powerful businessman and the Mayor of Skopje.

<sup>110</sup> For more information on the ownership structure of television stations, see: Macedonia Institute for Media, *Mediumskata sopstvenost i nejinoto vlijanie vrz nezavisnosta na mediumite i pluralizmot*, (Media ownership and its influence on independence of media and pluralism), Skopje, 2004, pp. 63–68.

<sup>111</sup> V. Šopar, *Press in Macedonia: Still in Process of Transition*, in Orlin Spasov (ed.), *Quality press in Southeast Europe*, Southeast European Media Center (SOEMZ), Sofia, 2004.

<sup>112</sup> Monopoly Authority Decision of 16 April 2004, (internal document). The decision allows the merger of three dailies (*Utrinski vesnik*, *Dnevnik*, and *Vest*), through WAZ by acquiring a controlling package.

## 5.4 Funding

Macedonia is a small country with limited economic resources and with many media outlets, so that competition is fierce. Outlets still mostly receive advertising from clients who are affiliated to the same informal political or business interests. After foreign capital began to be invested in print media in the late nineties, advertising slowly began to go to those print outlets that achieve bigger audiences. The distribution of gross advertising spending in the television sector is as shown below in Table 8.

**Table 8. Gross advertising spending in the television advertising market – breakdown by channel (2003)**

Channel	Share of television advertising market (per cent)
A1	33.9
MTV1	15.1
Sitel	12.1
MTV3	4.0
MTV2	3.5
Network+	3.1
Local	13.1
Foreign	15.2
Total	100

Source: SEENPM and Peace Institute.<sup>113</sup>

There are several kinds of competition in the media market: commercial broadcasters compete among themselves; commercial and public service broadcasters compete; and media outlets in different languages compete. With new market players arriving on the national media scene after fresh broadcast licences were granted in 2004, there will inevitably be stiffer competition for advertising orders. Prices will fall and radio and television stations will be forced to depend even more on other sources of income. In turn, this will have a negative impact on news and current affairs reporting and other quality programmes. Already, most of the advertising carried by some major television stations, such as A1 and Sitel, is for the products of their own mother companies or enterprises connected to them, mostly in the trade sector.<sup>114</sup>

<sup>113</sup> Snežana Trpevska, Chapter on Macedonia, in Brankica Petkovic, *Media ownership and its impact on media independence and pluralism*, SEENPM and Peace Institute, Ljubljana, 2004, available at [http://www.mirovni-institut.si/media\\_ownership/pdf/macedonia.pdf](http://www.mirovni-institut.si/media_ownership/pdf/macedonia.pdf) (accessed 6 July 2004), p. 292.

<sup>114</sup> Interview with R. Belicanec, director, Media Development Center, Skopje, 2 July 2004.

The battle for advertising revenue between the public and the commercial broadcasting sector has never ceased. For many years, private radio and television stations have criticised what they perceive to be the monopoly for advertising by the public service broadcaster MTV. They accuse the market leader of dumping, even though MTV has been provided by Parliament with stable financing sources in the form of the licence fee. According to the draft new Law on Broadcasting Activity, advertising in public service broadcasting will still be limited to seven per cent per hour of broadcasting. However, on commercial channels, it will be limited to 20 per cent per hour of programming combined with commercials and teleshopping. At the moment, there is a 20 per cent per hour limit for advertising and a maximum of one hour per day for teleshopping (see section 5.5).

Finally, the market is also divided along ethnic lines. Several private radio and television stations as well as newspapers broadcast or publish in the languages of minorities, mostly in Albanian. As the Macedonian and Albanian languages are mutually unintelligible, and very few ethnic Macedonians can understand Albanian, this factor exacerbates the fragmentation of the audience and thus of the market. Some newspapers and electronic media in Albanian obtain an important share of their income from foreign donors and from ethnic Albanians from Macedonia living abroad. This is also true of media outlets in some other minority languages, such as TV BTR (in Romanes) and TV Šutel (also in Romanes), both in Skopje. Obviously the market for such media outlets is limited, so they would have problems establishing themselves on the market in the Macedonian language. For the last five or six years, international donors contributed considerable sums to the survival of such media. The question arises how they will survive if and when such subsidies cease.<sup>115</sup>

Evidently, sound finances are the key to sustainability. It is difficult to imagine quality journalism without decent salaries, yet journalists often complain about low salaries, especially in public service broadcasting. In private outlets the late payment of salaries is a problem, and generally there are huge differences in salaries among media outlets. Also, some media owners evade social security contributions for the journalists in their employment. However, there are no indications that any of the sides involved will take voluntary action to remedy the situation. Journalists' associations have not discussed these issues as among their members are media owners, editors and journalists and it is almost impossible to harmonise their different and sometimes conflicting interests.<sup>116</sup>

The miserable situation of the journalistic profession in terms of income and social security is usually explained by low advertising revenues and the disastrous general economic conditions. In this context, leading figures in the media tend to become resigned,

---

<sup>115</sup> OSI roundtable comments.

<sup>116</sup> OSI roundtable comments.



If you report negatively on some company, then you risk that this company will never commission advertising in your outlet. This will have an impact on the media and on your salary. So you go around and around in a vicious circle and you become dependent on a group of companies. Journalists, editors, and owners find themselves in the same position. Practically, you are encircled by a small group of strong businessmen and there is no way out.<sup>117</sup>

## 5.5 Programme standards

The Law on Broadcasting Activity defines some basic standards that affect programme content. These refer to advertisement, sponsorship, the right of reply and correction, access to information, and protection of sources.

There are different obligations on national and local broadcasters. All broadcasting companies are obliged to ensure that their reporting respects the rights, dignity and reputation of all citizens.<sup>118</sup> They are expected to ensure that:

- opinions and beliefs are freely expressed;
- listeners and viewers are offered comprehensive and objective information, as well as cultural content and entertainment;
- the cultural traditions of Macedonia and of the nationalities that live in the Republic of Macedonia are sustained and enhanced, and their participation in cultural life is represented;
- the spirit of tolerance, mutual respect and understanding between individuals from various ethnic and cultural background is promoted;
- international understanding and cooperation is promoted, along with public understanding of issues that affect justice and democratic freedoms;
- equality, freedom and rights are promoted, irrespective of gender, race, colour of skin, national and social background, political and religious belief, wealth and social position;
- children and mothers enjoy special protection;
- the environment and nature are protected.

All broadcasters are asked to fulfil the following obligations:<sup>119</sup>

<sup>117</sup> A representative view of a private media owner. See: IREX, Media Sustainability Index, 2003, Macedonia, available at <http://www.irex.org/msi/2003/MSI03-Macedonia.pdf> (accessed 6 July 2004), pp. 55–63, (hereafter, IREX, *MSI 2003 Macedonia*).

<sup>118</sup> Law on Broadcasting Activity, art. 31.

<sup>119</sup> Law on Broadcasting Activity, art. 33.

- ensuring a truthful presentation of events, with equal treatment of different approaches and opinions;
- ensuring a truthful, unbiased and professional presentation of news and events;
- promoting the free formation of opinion concerning various events and issues;
- ensuring that opinions and comments are easily recognisable as such, clearly indicating whose opinions and comments they are.

The law provides that broadcasters should be allowed, without any payment, access to information when covering the work of public authorities, or cultural, sport, and other events.<sup>120</sup> However, contrary to this provision, broadcasters do not dispose of concrete instruments to provide legitimate information to the public. One of the most important laws relating to access to information – which is crucial both to citizens and journalists – has not been passed. The Ministry of Justice is currently preparing the draft Law on Freedom of Access to Public Information, but it is not yet possible to tell whether it will be adopted in 2005.

The law also lists some restrictions. Content promoting the violent overthrow of the constitutional order is prohibited, as well as calls for military aggression.<sup>121</sup> Obscene programmes are not allowed, especially those containing pornography and violence, nor are programmes that could harm the physical, spiritual or moral development of children and young people. Films and other content that could disturb the general audience may be shown between midnight and 06.00. Broadcasters must announce in their programmes, free of charge, information, press releases and urgent warnings issued by the public authorities relating to natural disasters or epidemic diseases.<sup>122</sup>

The law also defines the time framework for broadcasting. National commercial radio broadcasters must provide programming for at least 18 hours daily, and national commercial television broadcasters for at least eight hours daily. Local commercial broadcasters must transmit at least ten hours of radio programming, or three hours of television programming daily.<sup>123</sup> Stations for regions with less than 3,000 inhabitants are exempted. In such areas, local radio programme must last at least three hours and local television programmes at least two hours. National broadcasters must reach at least 70 per cent of the total population with their signal.<sup>124</sup>

News and current affair reports are regulated by specific obligations. News reports must be presented every day by all national private radio and television stations.<sup>125</sup> Local stations

---

<sup>120</sup> Law on Broadcasting Activity, art. 64.

<sup>121</sup> Law on Broadcasting Activity, art. 35.

<sup>122</sup> Law on Broadcasting Activity, art. 36.

<sup>123</sup> Law on Broadcasting Activity, art. 37.

<sup>124</sup> Law on Broadcasting Activity, art. 18.

<sup>125</sup> Law on Broadcasting Activity, art. 41.

are exempted from this duty. Nevertheless, many local stations in Skopje and other major towns do broadcast news. News programmes may not be interrupted by advertising and may not be sponsored, through advertising or in other commercial ways.<sup>126</sup>

National broadcasters must ensure that at least 40 per cent of their programmes are self-produced.<sup>127</sup> Local broadcasters must ensure that at least 30 per cent of their programmes are self-produced, covering events and developments in the region. However, analysis by the Broadcasting Council indicates that these requirements concerning own production, are often not met, especially by local radio stations.<sup>128</sup>

The law generally defines Macedonian as the country's broadcasting language but it does not provide clear criteria for programmes in minority languages, stating only that there is a "possibility" for commercial broadcasters to offer programmes in minority languages. According to the present Law on Broadcasting Activity, the language of broadcasting in the country is Macedonian, but media outlets may also broadcast programmes in the language of the ethnic communities.<sup>129</sup> The 2005 draft Law on Broadcasting Activity does not introduce any other, more precise, criteria. It merely states that the language of broadcasting is Macedonian, but that if the programme is not aimed at the majority community it can also be aired in the languages of the non-majority ethnic communities.<sup>130</sup> The draft law stipulates that more precise provisions concerning the language of broadcasting should be contained in the broadcasting licence.

In spite of the imprecise wording in the current Law on Broadcasting Activity – and although there is no a legal obligation for it to do so – in practice, the Broadcasting Council has from the start paid significant attention to the criterion of broadcasting minority languages when granting licences to commercial broadcasters. In municipalities such as Tetovo, Gostivar, Kičevo and Struga, licences have been granted to local broadcasters that offer programmes both in Macedonian and in the local minorities' language(s). For example, after the first and the second tender in 1998 in Kumanovo, of the four licences granted for television broadcasting, two were for broadcasting in Macedonian and two in Albanian; in Kicevo, of four television licences, two were for broadcasting in Macedonian and two in Albanian; and in Tetovo, of four television licences granted, one was for broadcasting in Macedonian, one in Albanian, one in Albanian and Turkish, and one in Albanian, Turkish and Romany languages.

The Broadcasting Council has also proposed that the Government should grant broadcast licences to commercial outlets which, in addition to programmes in

<sup>126</sup> Law on Broadcasting Activity, art. 55, 61.

<sup>127</sup> In the first year of operation, own production must be 20 per of all programmes, rising to 30 per cent in the second year, and 40 per cent in the third year. Law on Broadcasting Activity, art. 41.

<sup>128</sup> Broadcasting Council, *Bulletin No. 5/2000*, pp. 23–34; and *Bulletin No. 7/2000*, pp. 11–19.

<sup>129</sup> Law on Broadcasting Activity, art. 45.

<sup>130</sup> Draft Law on Broadcasting Activity 2005, art. 85.

Macedonian, also broadcast programmes in minority languages, in regions with several ethnic groups, such as Tetovo, Gostivar, Kičevo, Struga, Kumanovo and Debar.<sup>131</sup>

As there are no precise regulations, private broadcasters currently decide themselves on how much programming in minority languages they wish to produce. Some stations interpret broadly the provision on the “possibility” to also broadcast in the languages of ethnic minorities, and air programmes exclusively in the language of their local ethnic community, especially in Albanian.

With respect to quotas for specific programmes, such as works of European origin, the law does not presently foresee such provisions. However, the new draft Law on Broadcasting Activity incorporates European standards and contains several clauses that will regulate this issue (see section 6). The current law only insists that foreign programmes, shown in whole or in part, have to be translated into Macedonian and into the relevant minority languages.<sup>132</sup> Exceptions are allowed only for live coverage of music, theatre performances and religious ceremonies, as well as programmes intended for those studying foreign languages or for foreigners.

The law does include some other provisions that impact, directly or indirectly, on the programmes of private broadcasters. In particular, of the total revenue collected through the licence fee – which are mainly used to finance public service broadcasting – ten per cent is allocated for so-called “projects of public interest” (see section 4.3). Only commercial broadcasters and independent producers may be beneficiaries. To implement this provision, the Broadcasting Council, announces a public competition at least once a year, for granting funds for such projects. The Government makes the final decision as to who will receive funds. The interest of filmmakers and other media companies is high, especially because significant funds are earmarked. For example, in December 1999, MKD 200 million (approximately €3.5 million) was distributed. Assuming that 75 per cent of the licence fee is actually collected, MKD 100 million (€1.0-1.5 million) would accrue annually. However, media pundits complain that the quality of programmes financed through this funding has been unsatisfactory, because the media outlets lack adequate human and other resources.

The promotion of independent productions aired by commercial broadcasters has stirred a debate on whether this action has imposed a public service character on commercial broadcasting, while public service broadcasting has been partly commercialised, because it can carry advertising.

There are also recommendations from the Broadcasting Council that influence programme content. These include directives on the protection of minors from indecent and harmful programmes; on how to report in situations of social tension, and military and other types of armed conflicts; on covering election campaigns; or on the technical parameters in radio and television stations. These recommendations

---

<sup>131</sup> OSI roundtable comments; Broadcasting Council, *Bulletin No. 2/1998*, pp. 4–16.

<sup>132</sup> Law on Broadcasting Activity, art. 46.

prohibit the exploitation of programmes for political purposes and also any attempts by public authorities to influence editorial policies. Yet, practice has often proved the opposite. Almost all media outlets hardly hide their political inclination or affiliation, especially in news and current affairs reporting.<sup>133</sup>

Journalists do not deny that there is censorship and self-censorship by media outlets. Editors and owners impose censorship, while journalists censor themselves.<sup>134</sup> There are some well-known examples of pressure on journalists from media owners. For example, in 2003 Velika Ramkovski, the owner of A1 television, attempted to influence the news on his programme. As a result, the Editor-in-Chief, Aco Kabranov, moved to another television station, Kanal 5.<sup>135</sup> In spring 2005, the new Editor-in-Chief at A1, Sabina Fahić, and her Deputy, German Filkov, also resigned because of conflicts relating to editorial policy. Ramkovski told journalists, “It is normal that I interfere. This is my television and the editorial policy is my own business. I do not interfere on a daily basis, but I determine the general line.”<sup>136</sup> The same thing happened later in the year, when two more journalists left the same television station. As a result of a lack of any collective agreements between associations of journalists and media owners, the latter have unchecked power to influence programme content.

The Law on Broadcasting Activity details several obligations concerning advertising. For example, advertisements must be clearly recognisable and distinct from other parts of the programme.<sup>137</sup> The messages contained in an advertising break should not exert influence on the contents of the programme in such a way as to diminish the independence of the broadcaster and its responsibilities in relation to the show.<sup>138</sup> There are also restrictions on advertising. News and other information programmes, as well as religious and other events with a duration of less than 30 minutes, may not be interrupted with advertisements.<sup>139</sup> Feature films exceeding 45 minutes (not including serial films, entertainment programmes and documentaries) may be interrupted with

<sup>133</sup> This has been obvious during successive election campaigns – including the parliamentary elections in 1998 and 2002, and the presidential elections in 1999 and 2004 – as confirmed by surveys and research carried out by: the Institute for Sociological and Political-Juridical Research, the European Institute for Media, the OSCE, and the Broadcasting Council. See: Broadcasting Council, Bulletins No. 3, 6, 8 and 13; and Institute for Sociological and Political-Juridical Research (Institut za sociološki i političko-pravni istraživanja), *Parlamentarni izbori 98 vo Republika Makedonija, (Parliamentary Election in the Republic of Macedonia 1998)*, Skopje, 1999.

<sup>134</sup> IREX, *MSI 2003 Macedonia*, pp. 55–63.

<sup>135</sup> “A1 bez urednikot broj 1”, (“A1 without its No. 1 editor”), in *Utrinski Vesnik*, Skopje, 6 November 2003.

<sup>136</sup> “Sabina Fahić i German Filkov zaminaa od A1”, (“Sabina Fahić and German Filkov resign from A1”), in *Utrinski Vesnik*, Skopje 4 April 2005.

<sup>137</sup> Law on Broadcasting Activity, art. 52.

<sup>138</sup> Law on Broadcasting Activity, art. 54.

<sup>139</sup> Law on Broadcasting Activity, art. 55.

advertisements only once every 45 minutes.<sup>140</sup> There is a 20 per cent per hour limit for advertising, and a maximum of one hour per day for teleshopping.

Sponsored programmes face more or less the same restrictions. Namely, the sponsor may not influence the contents and the sequence of the sponsored programme in a way that violates the responsibility, and independence of the broadcaster's editorial policy with regard to programme content.<sup>141</sup> News and other information programmes may not be sponsored, nor programmes with a political or religious character.<sup>142</sup>

With respect to access to information and protection of the sources of information, the law only contains one relevant article. Broadcasting organisations should be granted access to information by State agencies, agencies of local self-government, and other public authorities. Similarly, broadcasting organisations should be free to carry short reports on cultural, sports and other events without having to pay the organisers of such activities. The source of information for journalistic reports may be disclosed only after a court decision.<sup>143</sup>

## 6. EUROPEAN REGULATION

Broadcasting legislation has not yet been harmonised with European standards. The Broadcasting Council, media associations and media outlets have repeatedly warned that this task is still pending. The draft new Law on Broadcasting Activity offers solutions that should rectify numerous omissions and inconsistencies in the present laws. It should, for example, provide for the full independence of the Broadcasting Council, a precise definition of obligations of public service broadcasting, and the introduction of non-profit broadcasting as a special category. After the adoption of the Law on Broadcasting Activity in 1997, the Broadcasting Council, media experts, NGOs, professionals and non-professionals alike, all called for Macedonia's media legislation to be fully harmonised with EU benchmarks. The State was also reminded of its obligations stemming from the Stabilization and Association Agreement with the EU, such as preparation for the implementation of the EU "Television without Frontiers" Directive (TWF Directive).<sup>144</sup> As a member of the Council of Europe since 9 November 1995, the

<sup>140</sup> Law on Broadcasting Activity, art. 56.

<sup>141</sup> Law on Broadcasting Activity, art. 59.

<sup>142</sup> Law on Broadcasting Activity, art. 61.

<sup>143</sup> Law on Broadcasting Activity, art. 64.

<sup>144</sup> EU "Television without Frontiers" Directive" 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, consolidated text available on the European Commission website at

Republic of Macedonia is also obliged to enact the Council of Europe's Convention on Transfrontier Television<sup>145</sup> (ECTT), but has only partly done so.

In late 2000, the National Media Working Group of the Stability Pact for South-eastern Europe launched an initiative for a new broadcasting law in Macedonia. Successive Governments have shown no enthusiasm for addressing the inconsistency of Macedonian national laws with international standards. However, after the Republic of Macedonia applied for EU membership in spring 2004, the overhaul of media legislation became unavoidable. On 12 August 2004, the Ministry of Transport and Communications decided to establish a working group for preparing the draft new Law on Broadcasting Activity. The working group, numbering 20 members, consists of representatives of the Ministries of Justice, Culture, and Finance, the Monopoly Directorate, the Broadcasting Council (three members), MRT (the General Director and Deputy General Director), Macedonian Broadcasting (MB), the Directorate of Telecommunications, the Association of Private Electronic Media, and the Association of Public Local Broadcasters.

According to the decision on establishing this working group, the final official draft text of the new law must take into account the working text proposed by the National Media Working Group of the Stability Pact, and other expert opinions.<sup>146</sup> European documents will be considered as well. The text of this draft law has been reviewed at many public events and Council of Europe experts have also provided recommendations for improving it. The final draft of the law was handed to the Ministry of Transport and Communications on 15 October 2004, but after a silence of six months, it was finally made public.

In June 2005, the Ministry of Transport and Communications announced on its website a proposal for adopting the Law on Broadcasting Activity.<sup>147</sup> It appears that this sudden haste reflects the Government's ambition to do as much "homework" as possible ahead of further talks with the EU about the country's prospects for accession. According to the Government, this newest draft is harmonised with the new Law on Electronic

---

[http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en\\_1989L0552\\_do\\_001.pdf](http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf) (accessed 30 June), (hereafter, TWF Directive).

<sup>145</sup> 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).

<sup>146</sup> On behalf of the European Commission and the Stability Pact for Southeast Europe, Dr. Karol Jakubowicz analysed the new draft Law on Broadcasting Activity. His review also contains references to the previous discussion about the media laws reform in the Republic of Macedonia. Available in Macedonian at <http://www.mtc.gov.mk/mak/AnalizaZakonDifuzija.pdf> (accessed 25 August 2005).

<sup>147</sup> Available in Macedonian at [http://www.mtc.gov.mk/mak/zakoni/rdif/predlog\\_radiodifuzija.pdf](http://www.mtc.gov.mk/mak/zakoni/rdif/predlog_radiodifuzija.pdf), (accessed 25 August 2005).

Communication passed in February 2005<sup>148</sup> and submitted to the European Commission and the Council of Europe for expert evaluation. The Government also says that it has paid attention to making the draft law compatible with all recommendations by the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE), as well as EU media regulation.

The draft new Law on Broadcasting Activity makes a number of important changes. In particular, the Broadcasting Council will have the power to make decisions instead of only offering proposals to the Government. The draft anticipates the following changes:

- The Broadcasting Council will be authorised to supervise the implementation of the Broadcasting Law.
- The Broadcasting Council will be empowered to initiate misdemeanour procedures and to impose sanctions.
- The possibility to initiate a court procedure against the Broadcasting Council's decisions will be introduced.
- Alongside public service and commercial broadcasting, a third, non-profit broadcasting sector will be established.
- The remit and the programme obligations of public service broadcasting will be determined clearly and in detail.
- The law will be harmonised with the TWF Directive.

The new draft law came as a surprise to many experts in the country. It was prepared behind closed doors in the ministries and did not include recommendations from previous public debates in which domestic academic experts and civil society organisations, as well as experts from international organisations, were invited to express their opinions. The draft included some suggestions by domestic and international experts, but also changes that had not previously been discussed. For example, whereas the Council of Europe recommended, in 2000, ensuring continuity between the present Broadcasting Council and its future composition by adhering to the staggered mandate of the present Council, the draft foresees the nomination of an entirely new team.<sup>149</sup> Also, according to the draft, the Director of the Broadcasting Council's expert team would have expanded competencies, whereas the competencies of the Council itself would be reduced. Furthermore, the status of local public service broadcasting organisations is left unresolved. Particularly worrisome is that the MRT

---

<sup>148</sup> Law on Electronic Communications, February 2005, *Official Gazette of RM*, No. 13/05.

<sup>149</sup> Council of Europe, *Explanatory Memorandum to Recommendation Rec (2000) 23 on the independence and functions of regulatory authorities for the broadcasting sector*, Part II, Appointment, composition and functioning, Item 22, available on the CoE website at <http://www.humanrights.coe.int/media/documents>, (accessed 6 July 2005).



Council would be expanded from 21 to 51 members, which may block the election of this body.

The Stabilisation and Association Agreement (SAA) signed with the European Commission on 9 April 2001 and ratified on 23 February 2004 committed Macedonia to reforming its laws and approximating them with EU standards.<sup>150</sup>

## 7. THE IMPACT OF NEW TECHNOLOGIES AND SERVICES

The Republic of Macedonia hosts a low number of Internet users. Other new technologies and services are also not widespread and at the moment, there is no strategy for the application of new media technologies. All broadcasting companies in Macedonia still use analogue systems and digitalisation is sporadic. The absence of a legal framework hampers the spread of new technologies and services. The draft new Law on Broadcasting Activity is expected to define an approach to the introduction of new technologies.

### 7.1 Policy on new media

The Republic of Macedonia has no elaborated political strategy for introducing new media. No serious efforts have been undertaken to introduce new technologies such as digitalisation. The country has not kept up with current developments relating to satellite and cable television, nor subscription or pay-per-view channels.

The draft Law on Broadcasting Activity places an obligation on the Broadcasting Council to draft a national strategy to develop broadcasting, taking account of new technologies and services.<sup>151</sup> New business opportunities and jobs in a new market would bring significant benefits to Macedonia's weak economy. The new Law on Telecommunications, adopted in June 2004,<sup>152</sup> determines that cable television should be supervised by the Directorate of Telecommunications.<sup>153</sup> This authority will grant licences to cable operators, thereby depriving the Broadcasting Council of its authority to regulate the cable market.

<sup>150</sup> Council of the European Union, Stabilisation and Association Agreement between the European Communities and their member states, and the Former Yugoslav Republic of Macedonia, Title VI, available at [http://europa.eu.int/comm/external\\_relations/see/fyrom/saa/saa03\\_01.pdf](http://europa.eu.int/comm/external_relations/see/fyrom/saa/saa03_01.pdf) (accessed 7 July 2005).

<sup>151</sup> Draft Law on Broadcasting Activity 2005, art. 32.

<sup>152</sup> Law amending and appending the Law on Telecommunications, *Official Gazette of RM*, No. 37/2004.

<sup>153</sup> Pursuant to Articles 65-69 of the Law on Broadcasting Activity, the Broadcasting Council had taken responsibility for regulating cable television.

Satellite television is still a new business in the Republic of Macedonia, so the Government has no clear concept in this field. In the last several years, only MTV was offering a satellite programme, through Mktv Sat.<sup>154</sup> One of the countrys biggest commercial television stations, A1, also offers a satellite channel. On 1 November 2004, however, a new satellite programme of TV BTR-National, the first Roma TV medium, was launched with 24-hour programmes, consisting mainly of music spots and a few self-produced programmes.<sup>155</sup>

There are not enough companies in the Republic of Macedonia that would wish to advertise their products and services worldwide, through satellite programmes. Cable and other operators recently tried to offer Internet services through cable networks, but the Directorate of Telecommunications stated that cable operators were prohibited from introducing such services until the end of 2004, due to the monopoly granted to the publicly-owned company, Macedonian Telecommunications. Consequently, although there were expectations that the market for Internet services would be liberalised in 2005, as yet little has happened in this respect.

## 7.2 Conditions for new platforms

Macedonian citizens cannot afford high expenditure on telecommunications and other services based on new technologies.<sup>156</sup> With the exception of fixed telephones and, to some extent, cellular telephones, other communication equipment is rare.<sup>157</sup> The official number of households with multi-channel television connected to cable networks is 75,000.<sup>158</sup> Experts assume that the real figure is above 100,000, due to illegal connections and unlicensed operators. Cable television in Macedonia enables viewers to watch more than 130 analogue satellite channels.<sup>159</sup> Cable television is offered by 55 companies, and according to the Broadcasting Council, the largest cable networks are Mobi (Bitola), Sprint (Veles), Zora Kabel (Skopje, Karpos) and Tele Kabel 1 (Skopje, Aerodrom).

<sup>154</sup> OSI roundtable comments. One participant pointed out that this was not MRT's satellite channel, but a satellite channel of the State of the Republic of Macedonia.

<sup>155</sup> OSI roundtable comments.

<sup>156</sup> Strategic Marketing & Media Research Institute (SMMRI), *Research on conditions with information and communications technologies in RM, 2003–2004*, commissioned by Metamorphosis and the Open Society Foundation-Macedonia, Open Society Institute Foundation, 2004.

<sup>157</sup> According to surveys by IKT in 2003–2004, in Macedonia 89.9 per cent of the people have home telephone, 59.3 per cent have cellular phone, 35.3 per cent have cable television connection in their household, 13.3 per cent have satellite television antenna, 27.4 per cent have home computers, and 8.9 per cent have credit cards: Bardil Jashari (ed.), *General data on information and communications technology in the Republic of Macedonia 2003–2004, (Opšti podatoci za sostojbite so informaciskite i komunikaciskite tehnologii vo Republika Makedonija 2003–2004)*, Skopje, 2004, Open Society Fund of Macedonia, p. 11.

<sup>158</sup> Information from the database of the Broadcasting Council.

<sup>159</sup> Broadcasting Council, *Bulletin No. 14/2003*, p. 5.

Macedonia has a low number of Internet users.<sup>160</sup> This is a consequence of the poor economic situation and low living standards.<sup>161</sup> According to official statistics, in the first half of 2004, out of 2.1 million inhabitants, 395,00 people were registered as unemployed. There are more than 5,000 web sites in the domain “mk”, but little data about Internet usage has been collected. Pundits estimate that between 15 and 35 per cent of the population use the Internet occasionally or regularly. So far, 15 licences have been granted for providing online services. MtNet, Unet, OnNet and MOL are the major providers.

The public service broadcasters have not ventured far in providing Internet-based services. Radio channels can be received – for example, Radio Macedonia has 24-hour programming, with content from its first, second and third channels – but television cannot. The website of MTV ([www.mkrtv.org.mk](http://www.mkrtv.org.mk)) operates poorly, with many failures, delays, and often with outdated information and text.

The Internet is still not regulated. According to the Law on Electronic Communications 2005, any legal entity can provide electronic communications services, including interactive, online services, and Internet, on the basis of a notification made to the Agency for Electronic Communications. There are no special regulations concerning the content of these services.<sup>162</sup> The Law on Electronic Communications succeeded the 1996 Law on Telecommunications. It introduced a new body – the Agency for Electronic Communications – as an independent regulator in the field of telecommunications. It regulates and monitors the technical and economic aspects of the use of the frequency spectrum, including the prices for telecommunications services.

While some private commercial broadcasters already offer teletext, MTV is still in the planning stage. The RDS service (Radio Digital system) of Macedonian Radio has been operational for some time, as part of MTV. Staff blame a lack of financial resources for the lack of progress in digitalisation. There is no budget to develop new media technologies and services. The few services offered by MTV are financed from its own resources, mainly the licence fee.

Public debate on the digitalisation of broadcasting has not yet started. Unless prompt action is taken over the next two to three years, the inevitable future switch to digital technology will occur abruptly. This will be hard to achieve financially, leaving

---

<sup>160</sup> According to information from Internet providers (cited in: Petreska and Trpevska, *Media landscape in RM*) there are 100,000 Internet users in the Republic of Macedonia. According to the same source, the number of small businesses that use the Internet is also small, only a few hundred of the some 55,000 registered small businesses.

<sup>161</sup> OSI roundtable comment. Apart from the low standard of living, another significant reason mentioned at the roundtable was the authorities’ wish to preserve the monopoly in the field of telecommunications services.

<sup>162</sup> Law on Electronic Communications, February 2005, *Official Gazette of RM*, No. 13/05.

Macedonia as an analogue island in a digital ocean.<sup>163</sup> An action plan on digitalisation needs to be introduced, after defining the legal framework, involving both public service broadcasting and private broadcasters.

The publicly owned company Macedonian Broadcasting (MB) started experimenting with digital television broadcasting at the end of 2004. The Committee to Develop the Broadcasting Network, operating as part of MB, is presently the only body concerned with this digitalisation. Its role is to monitor and pursue digitalisation in technical terms, but there is little information about its activities. What is lacking is consideration of the economic, social, and cultural aspects of this new technology. To address this, the Committee should be transformed into a public authority responsible for drafting a digitalisation strategy. So far, however, there has been no initiative in this direction.

## 8. CONCLUSIONS

Attempts to locate tendencies and challenges in the audiovisual field in the Republic of Macedonia always return to the key question – what is the development strategy for this sector? Future expansion is not possible without a prior consensus on the nature of the broadcasting system. If there could be agreement that the country wants a dual broadcasting system, it would be easier to define the scope of public service broadcasting, what the starting point of commercial broadcasting should be, and the best way to develop cable and satellite broadcasting. An overarching priority as to what are the plans and prospects of digitalisation?

The most urgently needed step is the formulation of a development strategy for public service broadcasting. This would also reflect the level of democracy in the country. No palliative, short-term solutions should be allowed. There should be firm and stable legal guarantees for the independence of public service broadcasting in Macedonia and, especially, a concrete action plan to implement these guarantees, complete with specified obligations fixed in annual plans containing strictly defined goals, target groups, and a financial framework. Bylaws and statutory provisions are needed to eliminate all possibilities for political influence over the appointment of the General Manager, following a public competition, and the members of the broadcasting boards, who should be distinguished representatives of the community accountable to the general public.

---

<sup>163</sup> Dimitri Ivanov, “Sostojbata na mrežata na JP Makedonskata radiodifuzija, izvesni nasoki, stepeni i prednosti od nejnina digitalizacija”, (“Situation with the network of PE Macedonian Broadcasting, certain guidelines, levels and advantages from its digitization”), in *Primena na novite tehnologii i programskite radiodifuzni servisi vo digitalnata era, (Application of NT and Programme Broadcasters in the Digital Era)*, Broadcasting Council, Skopje, 1999, p. 67.

The second priority is commercial broadcasting. Ambiguity over essential standards should be eliminated from the regulation of private radio and television stations. Of all anomalies in this sector, the ownership structure of media outlets is the source of most of the problems, since it has a direct impact on editorial policies and the performance of journalists. The draft new Law on Broadcasting Activity has the potential to improve this situation. However, the final responsibility for the level of editorial autonomy depends on the relationship established between owners and employees in the broadcasting sector.

Cable radio and television networks play an important role. Important problems remain to be solved, such as the introduction of clear rules and standards to protect cable operators from Government influence, and individual consumers from the cable operators. Satellite broadcasting is an area, which will have to be looked into by public authorities and regulatory bodies.

Finally, there is the matter of new digital technology. The introduction of new media technologies in the Republic of Macedonia will be a litmus test of the Government's ability and willingness to get involved with contemporary global media trends. It requires that concrete steps be taken to ensure harmonisation with accepted international standards. First, a national strategy on new technologies should be drafted, with clearly defined plans and programmes. Second, the responsibility for regulating digital broadcasting should be clearly allocated to one regulatory body – such as the Broadcasting Council, the Committee for the Development of Broadcasting (presently operating under the auspices of Macedonian Broadcasting) and/or the Agency for Telecommunications. This body should engage highly specialised experts who would make strategic decisions. Third, new provisions for an appropriate digital platform should be introduced, preparing Macedonia for imminent changes and avoiding the airwave chaos that prevailed before the Law on Telecommunications was adopted. Finally, a clear definition is needed, in accordance with international standards, of what constitutes new, online services.

The quest to sustain broadcasting pluralism in the Republic of Macedonia remains incomplete. However paradoxical it may sound, the unsustainable number of media outlets did enable the spread and competition of different ideas and prospects during the 1990s, although there were numerous attempts, especially during pre-election campaigns, to influence and even to silence certain outlets. There were anonymous threats, mysterious power failures, unannounced company audits, summary court decisions against journalists, and other forms of intimidation. This is not uncommon even today. However, despite such recent gains, some media outlets, perhaps exhausted by the unending economic crisis and political games, have succumbed to the logic of trying to win a public following by “dumbing-down” their content and relying on soap operas, cheap feature films, quiz-shows, bingo and such like.

Even though it is still not clear when Parliament will debate the draft new Law on Broadcasting Activity, the draft is already burdened with high expectations. The present law exhausted its purpose long ago and its continued existence can only be

harmful. If the new bill does indeed provide for the implementation of European standards, it will seriously strengthen the freedom of media outlets, especially their freedom from the Government. Bearing in mind the experience to date with successive governments, a lot more effort will have to be invested if the bill is not to be watered down before its eventual adoption.

An important question is whether the State possesses sufficient democratic capacity to pursue these processes. Presently, there are signs that democratic reforms are stagnating, in politics and the media alike. The influence of political parties on major actors in the broadcasting sector is evident. This applies equally to the Broadcasting Council, the MRT Board, and the directors of public local broadcasters. Directly or indirectly, this has caused widespread politicisation of the sector. Divided along political, ethnic and economic lines, media outlets are under constant pressure from Government and State institutions. Nevertheless, Macedonia's application for EU membership will certainly push forward the harmonisation processes of national laws with EU benchmarks in the broadcasting sector. This will contribute, in turn, to wider democratic progress in the country.

The Stabilisation and Association Agreement (SAA), ratified in 2004, committed Macedonia to reforming its laws and approximating them with EU standards. Together with other countries participating in the Stability Pact for South-eastern Europe, the Republic of Macedonia has also pledged itself politically to reforms in the media sector. It is in the best interests of the Republic of Macedonia to accelerate the reform process, also in the media sector. While the most active promoters of the process have to be Parliament and the Government, responsibility also lies with civil society organisations, academia, journalists and the media industry itself.

## 9. RECOMMENDATIONS

### 9.1 Policy

#### *Media legislation*

1. Parliament and the Government should pass the new Law on Broadcasting Activity as soon as possible. This obligation is noted in the Government's "Answers to the Additional Questions for the Economic Criteria" and the Chapters of the *Acquis* for European membership.<sup>164</sup>

---

<sup>164</sup> Government of the Republic of Macedonia, "Answers to the Additional Questions for the Economic Criteria and the Chapters of the *Acquis* for European membership", available at <http://www.sei.gov.mk/prasalnik> (accessed 14 August 2005).

2. Civil society, the media industry and academia should insist on the fulfilment of this obligation and intensively monitor and assist the parliamentary procedure.
3. Parliament and the Government should ensure the full implementation of the new Law on Broadcasting Activity after its passage, in particular with respect to the establishment of the institutions in Macedonian Radio and Television (MRT) foreseen by the law, and to securing legal and political guarantees for its independence.

### *Broadcasting policy*

4. Parliament, as the founder of the Macedonian Radio and Television (MRT), should organise a parliamentary debate about the future of the public service broadcaster. The main purpose of this debate should be to establish a strategy for financial consolidation, modernisation of its technical equipment and the strengthening of its human resources.
5. The Broadcasting Council, together with the Committee to Develop the Broadcasting Network, should organise, as soon as possible, a broad public debate about the National Strategy for the Broadcasting Sector.
6. The Government should ensure that a national Strategy for the broadcasting sector is drafted, incorporating both national experiences and European standards and trends.
7. Parliament should, as a priority, ensure the passage of the Strategy and its full implementation in practice.
8. The Government should adopt a plan to introduce new legislation in the area of the information society, to introduce regulation for the Internet and other new technologies.
9. The Government should adopt a National Strategy for Electronic Communication and Information Technology. Particular attention should be given to fostering the introduction of new information technologies and services. Together with experts from universities and research institutes, public authorities should also involve private enterprises in this task.

### *International support*

10. International organisations supporting media development, such as the OSCE Media Development Unit-MDU, should continue their financial, technical and professional support, particularly to those media who cover the interests of marginal target groups in society.
11. The Stability Pact for Southeast Europe, through its Media Task Force and together with the Media Working Group in the Republic of Macedonia,

should initiate the monitoring of the implementation of the new Law on Broadcasting Activity, after this new law has been passed.

## **9.2 Regulatory bodies**

### *Public service broadcasting*

12. The Broadcasting Council, together with Macedonian Radio and Television (MRT) and civil society organisations, including journalists associations, trade unions and the academia, should organise public debate about the future of the public service broadcasting in Macedonia, to support the process of further transformation in this sphere.

### *Minority representation*

13. The Broadcasting Council, the broadcasters – Macedonian Radio and Television and commercial broadcasters – as well as media experts and other interested parties, should launch a debate about ethnicity and the public sphere, to determine how the media contribute to creating understanding or division among the various communities in the country. The debate should focus on how the media could enhance their professional performance in creating understanding among the communities.

## **9.3 Industrial relations and ethical issues**

14. The Association of Journalists of Macedonia (AJM) and other professional associations of journalists should establish a system of regular debates about journalistic professional standards.
15. The Association of Journalists and other professional associations should start negotiations with media owners about media standards, codes of ethics and other self-regulatory instruments designed to protect the editorial integrity of journalists.
16. The Association of Journalists and other professional associations should immediately establish co-operation with Trade Unions and formulate a platform for the protection of employees' rights in the media industry.



## ANNEX 1. Laws and regulations cited in the report

### Main broadcasting laws

Draft Law on Broadcasting Activity, Ministry of Transport and Communications, June 2005.

Law on Broadcasting Activity, 16 July, *Official Gazette of RM* No. 20/97.

Law on Electronic Communication, February 2005, *Official Gazette of RM*, No. 13/05

Law amending and appending the Law on the Establishment of the Public Enterprise Macedonian Radio-Television, *Official Gazette of RM*, No. 78/04. (*Law on MTV*)

Law amending and appending the Law on the Establishment of the Public Enterprise Macedonian Radio-Television, *Official Gazette of RM*, No. 98/2000. (*Law on MTV*)

Law on the Establishment of the Public Enterprise Macedonian Radio-Television, *Official Gazette of RM*, No. 6/98. (*Law on MTV 1998*)

Law amending and appending the Law on Telecommunications of June 2004, *Official Gazette of RM*, No. 37/2004.

Law amending and appending the Law on Telecommunications, *Official Gazette of RM*, No. 88/2002.

Law amending and appending the Law on Telecommunications, *Official Gazette of RM*, No. 57/2001

Law amending and appending the Law on Telecommunications, *Official Gazette of RM*, No. 28/2000.

Law amending and appending the Law on Telecommunications, *Official Gazette of RM*, No. 17/98.

Law on Telecommunications, *Official Gazette of RM*, No. 33/96.

### Other laws

Law for Protection the Competition, *Official Gazette of RM*, No. 5/04.

Anti-monopoly Law, *Official Gazette of RM*, No. 5/04

Law on Securities, *Official Gazette of RM*, No. 34/01.

Law Against Restriction of Competition, *Official Gazette of RM*, No. 80/99.

Law on Copyright and Related Rights, *Official Gazette of RM*, No. 47/96.

Law amending and appending the Law on Copyright and Related Rights, *Official Gazette of RM*, No. 3/98.

Law amending and appending the Law on Copyright and Related Rights, *Official Gazette of RM*, No. 98/2002.

Law amending and appending the Law on Copyright and Related Rights, *Official Gazette of RM*, No. 04/2005.

Law on Trade Companies, *Official Gazette of RM*, No. 28/96.

Law on Public Enterprises, *Official Gazette of RM*, No. 38/96.

Law on the Establishment of the Public Enterprises Macedonian Broadcasting, *Official Gazette of RM*, No. 6/98.

Law amending and appending the Law on the Establishment of the Public Enterprises Macedonian Broadcasting, *Official Gazette of RM*, No. 98/2000.

Law on Concessions, *Official Gazette of RM*, No. 42/93.

Law amending and appending the Law on Concessions, *Official Gazette of RM*, No. 25/2002.

Law amending and appending the Law on Concessions, *Official Gazette of RM*, No. 24/2003.

## Decisions

Government Decision of 7 March 2000, in Broadcasting Council *Bulletin* No. 5, 2000, pp. 35–40.

Government Decision on concessions, *Official Gazette of RM*, No. 22/98,

## ANNEX 2. Bibliography

### *In English*

- International Press Institute, *2001 World press freedom review* (Vienna: IPI, 2001)
- IWPR, “Same world, parallel universes: The role of the media in the Macedonian conflict”, in *Obrid and beyond* (Skopje, IWPR, 2002).
- Latifi, Veton, *Macedonian challenges in the process of the democratization and stabilization* (Skopje: KAS, 2003)
- Šopar, V., “Press in Macedonia: Still in Process of Transition”, in Orlin Spasov (ed.), *Quality press in Southeast Europe* (Sofia: Southeast European Media Center (SOEMZ), 2004)

### *In Macedonian*

- Broadcasting Council, *Bulletin No. 2* (Skopje: BC, 1998)
- Broadcasting Council, *Bulletin No. 4* (Skopje: BC, 1999)
- Broadcasting Council, *Bulletin No. 5* (Skopje: BC, 2000)
- Broadcasting Council, “Radio i televiziskata programa”, (“Radio and TV Programmes”), Annual monitoring report, *Bulletin No. 14* (Skopje: BC, 2003)
- Broadcasting Council, *Izvestaj na Sovetot za radiodifuzija na Republika Makedonija za juli 2001 – dekemvri 2002, (Report for July 2001 – December 2002)* (Skopje: BC, 2003)
- Institute for Sociological and Political-Juridical Research, *Parlamentarni izbori 98 vo Republika Makedonija, (Parliamentary Election in the Republic of Macedonia 1998)* (Skopje: BC, 1999)
- Ivanov, Dimitri, “Sostojbata na mrežata na JP Makedonskata radiodifuzija, izvesni nasoki, stepeni i prednoti od neјzina digitalizacija”, (“Situation with the network of PE Macedonian Broadcasting, certain guidelines, levels and advantages from its digitization”), in *Primena na novite tehnologii i programskite radiodifuzni servisi vo digitalnata era, (Application of NT and Programme Broadcasters in the Digital Era)* (Skopje: Broadcasting Council, 1999).
- Macedonian Institute for Media, *Macedonia: The Conflict and the Media* (Skopje: MIM, 2003)
- Macedonia Institute for Media, *Mediumskata sopstvenost i neјzinoto vliјanje vrz nezavisnosta na mediumite i pluralizmot (Media ownership and its influence on independence of media and pluralism)* (Skopje: MIM, 2004)
- MRT, *Godišen izveštaj za 2004 godina, (Annual financial statement for 2004)*, accepted by the MRT Board (Skopje: MRT, Feb. 2005)

MRT, *Izveštaj za rabota na MRT, Godišen finansov izveštaj na MRT za 2003 godina, (Report on MRT work, after the Annual financial statement of MRT for 2003)*, accepted by the MRT Board (Skopje: MRT, Feb. 2004)

Nineski, B. (ed.), *Pecatenite i elektronskite mediumi vo Makedonija (Printed and Electronic Media in Macedonia)* (Skopje: Tribuna makedonska, 2000)

Šopar, V., Z. Andrevski, D. Kolar-Panov (ed.), *Mediumite vo procesot na politička i socijalna transformacija vo Republika Makedonij, (Media in Process of Political and Social Transformation in RM)* (Skopje: Institute for sociological, political and juridical research, 2001)

State Statistical Office, *Statistički godišnik na Republika Makedonija, (Statistical Yearbook 2003)* (Skopje: State Statistical Office, 2004)

Šopar, V., Z. Andrevski and D. Kolar-Panov (ed.), *Mediumite vo procesot na politička i socijalna transformacija vo Republika Makedonij, (Media in Process of Political and Social Transformation in RM)* (Skopje: Institute for sociological, political and juridical research, 2001)

Strategic Marketing & Media Research Institute (SMMRI), *Research on conditions with information and communication technologies in RM, 2003–2004*, commissioned by Metamorphosis and the Open Society Foundation-Macedonia (Skopje: Open Society Institute Foundation, 2004)

Trpevska, Snežana, Chapter of Macedonia, in Brankica Petković, *Media ownership and its impact on media independence and pluralism* (Ljubljana: SEENPM and Peace Institute, 2004)

Trpevska, Snežana, and Emilija Janevska, “Indikatori za evaluacija na funkciite na javniot radiodifuzen servis”, (“Indicators on evaluation of functions of public service broadcasting”), in Broadcasting Council, *Bulletin No. 12* (Skopje: BC, 2003)

### *In German*

Petreska, Emilija and Snežana Trpevska, “Darstellung der Mediensysteme: Mazedonien” (“The media landscape in Macedonia”), in *Internationales Handbuch Medien 2004/2005 (International Media handbook 2004/2005)* (Baden-Baden: Hans-Bredow-Institut, Nomos Verlagsgesellschaft, 2005)

Television across Europe:  
regulation, policy and independence  
Romania

## Table of Contents

1. Executive Summary .....	1235
2. Context .....	1237
2.1 Background .....	1237
2.2 Structure of the television sector .....	1240
2.3 Main players .....	1243
3. General Broadcasting Regulation and Structures .....	1245
3.1 Regulatory authorities for the television sector .....	1245
3.1.1 The National Audiovisual Council (CNA) .....	1245
3.1.2 Inspectorate General for Communications and Information Technology (IGCTI) .....	1247
3.2 Licensing procedures .....	1249
3.3 Enforcement measures .....	1252
3.4 Broadcasting independence .....	1254
4. Regulation and Management of Public Service Broadcasting .....	1257
4.1 The public broadcasting system .....	1258
4.2 Services .....	1258
4.3 Funding .....	1259
4.4 Governance structure .....	1262
4.5 Programme framework .....	1266
4.5.1 Output .....	1266
4.5.2 Programme guidelines .....	1267
4.5.3 Quotas .....	1269
4.6 Editorial standards .....	1271
5. Regulation and Management of Commercial Broadcasting .....	1276
5.1 The commercial broadcasting system .....	1276
5.2 Public service obligations .....	1278
5.3 Commercial television ownership .....	1279
5.3.1 Ownership restrictions .....	1279

5.3.2 Ownership of the main commercial broadcasters .....	1280
5.3.3 Restrictions on media cross-ownership .....	1286
5.4 Funding .....	1289
5.5 Programme framework .....	1291
5.6 Editorial standards .....	1293
6. European Regulation .....	1295
7. The Impact of New Technologies and Services .....	1296
7.1 New media .....	1296
7.2 Market conditions .....	1297
7.3 Services .....	1300
7.4 Funding .....	1301
7.5 Digital television .....	1301
8. Conclusions .....	1303
9. Recommendations .....	1305
9.1 Policy .....	1305
9.2 Regulatory authorities (CNA and IGCTI) .....	1305
9.3 Public and private broadcasters .....	1306
9.4 Public service broadcasters (SRTV and SRR) .....	1306
9.5 Private broadcasters .....	1307
Annex 1. Tables .....	1308
Annex 2. Legislation cited in the report .....	1309
Annex 3. Bibliography .....	1312
Annex 4. EUMAP Questionnaire .....	1314

## Index of Tables and Figures

Table 1.	Key figures on TV penetration in Romania (2003) .....	1241
Table 2.	TV Overview (2003) .....	1241
Table 3.	Evolution of audience shares (all day) of the three most watched TV channels (2002–2004) .....	1244
Table 4.	Television audience shares (2004) .....	1244
Table 5.	Key figures on TV licences .....	1251
Table 6.	Debt situation (to the State budget) of the main commercial television stations (2003–2004) .....	1257
Table 7.	Total income of SRTV (2002–2003) .....	1261
Table 8.	Total costs of SRTV (2003) .....	1262
Table 9.	Output broadcast production by TVR – breakdown by genre (2003)	1266
Table 10.	Ownership structure of the main national television and radio broadcasters (2004) .....	1288
Table 11.	Total advertising spending – breakdown by media type (2003) .....	1289
Table 12.	Total advertising expenditures (2003) .....	1289
Table 13.	Total television advertising spending (gross) – breakdown by channel (2003) .....	1290
Table 14.	Television production companies in Romania (2002) .....	1293
Table 15.	TV Distribution (2003) .....	1298
Table 16.	Key Figures on Internet development (2003) .....	1300
Table A1.	Structure of the main national television channels (2002) .....	1308
Table A2.	Regional private channels (2003) .....	1308
Figure 1.	The regulatory system .....	1248

## List of Abbreviations

CNA	National Audiovisual Council, <i>Consiliul Național al Audiovizualului</i>
PSD	Social Democratic Party, <i>Partidul Social Democrat</i>
SRR	Romanian Radio Broadcasting Corporation, <i>Societatea Română de Radiodifuziune</i>
SRTV	Romanian Television Broadcasting Corporation, <i>Societatea Română de Televiziune</i>



## 1. EXECUTIVE SUMMARY

The power of television in Romania is – like the medium itself – more glamorous than consistent. Although accused in some quarters of superficial coverage of political major events, television continues to be the primary source of political information for a large part of the population.

At first glance, Romania's media landscape is dominated by a high number of media outlets, a healthy level of foreign investment, strong legislation in line with EU provisions, and independence warranted by law. Judging by the number of outlets, pluralism is ensured. Freedom of expression, the right to be informed and to express opinion, is guaranteed by the Constitution and by specific legislation. The Law on Radio and Television Broadcasting, the main law on broadcasting, states that “censorship of any kind upon audiovisual communication is forbidden”, and that “editorial independence of broadcasters is acknowledged and warranted.”

A closer look at the broadcasting landscape reveals, however, weak independence and low credibility of broadcasters. In fact, speaking about the whole media landscape, it happens often that political and business interests are behind the media agenda rather than viewers' interest. Asked if television has become a tool to satisfy its owners' interests, a great majority of the respondents to an EUMAP questionnaire, including the head of the broadcasting regulator, replied that Romanian television is largely used nowadays as a tool to gain influence. Editors enjoy enough freedom as long as they safeguard the interests of their owners and their owners' partners who in many cases are politicians, according to many respondents.

Another peculiarity of Romanian television today seems to be the tabloidisation and trivialisation of the news programmes, which have become less orientated towards politics. This trend was further exacerbated by the new election legislation adopted prior to the 2004 elections, which forbade all television stations in the country to air news about candidates running for Parliament or Presidency other than electoral coverage. In their news programmes, stations were allowed to air only election-related reports, and, apart from that, only news that did not show candidates running for Parliament and Presidency. Political debates were allowed only if they were in line with a complicated calculus of distributing the broadcasting time to political parties. As a result, in trying to avoid pressures from a large number of political parties, many small regional stations simply chose not to cover election-related topics and politics at all. The same law obliged Romanian public television to allow all political parties to air electoral messages, according to a formula defined by a parliamentary commission. This law turned the public broadcasting media into a mouthpiece of politicians. Neither the broadcasters nor the broadcasting regulator, the National Audiovisual Council, were consulted by Parliament when it adopted the election laws.

Primetime programming, chiefly news, bristles with what has become known in the industry as “non-events”, that is, events that are sometimes irrelevant to the wider

community such as car accidents or cases of domestic violence. Profit-driven, the commercial television stations usually take the position that as this kind of programme attracts audiences, it must be what viewers want. Nonetheless, the public broadcaster, the Romanian Television Broadcasting Corporation (SRTV), whose mission is also educative and informative, does not make a difference in the whole media landscape. Moreover, from 2000–2004 there were strong allegations that it suffered from a lack of independence, which are even more worrying given that first channel of the public television, TVR1, has for some years been the only beneficiary of full nationwide technical coverage. Besides the two channels of SRTV, only three commercial television channels reach over 70 per cent of the country's territory. For a long time in the 1990s, half of the country's population, especially those living in rural areas, only had access to a single television station, the public broadcaster. Scarce technical coverage has seriously hampered the universal access to electronic information, having a negative impact on the pluralism and diversity of broadcasting media.

In the past two years, niche television stations have mushroomed. Some focus on news programming, other have a generalist format or specialise in music, sports, movies, documentaries and religious programmes. In terms of audience share, the three largest television channels in the country – TVR1, Pro TV and Antena 1 – together hold 50 per cent of the total nationwide audience. They also take the bulk of advertising revenue, although this was still modest, at around €90 million annually (net) in 2004.

From 2000–2004, both public and commercial stations deliberately avoided covering sensitive political topics, especially critical reports on the ruling parties and political leaders. Instead of news and investigative programmes, television stations filled their programming with entertainment such as variety shows and light talk-shows. Due to biased coverage of the ruling party and the trivialisation of political coverage in general, viewers' interest in politics waned dramatically. Banking on cheap entertainment, television got what it wanted, namely higher ratings but a lower interest in good television.

Over this period, however, the media also experienced a process of what local experts call “berlusconisation”. Realising that the media help to build careers, more politicians became owners of television stations, especially local ones. However, the television proprietors have made a habit of concealing the ownership status of their stations by registering in a tax haven or in a Western European country such as Switzerland where legislation allows for the anonymity of offshore shareholding. Consequently, the Romanian media seem to have a significantly higher rate of foreign investment than any other sector of the economy. In fact, no authority knows or checks who is really is behind the capital coming from tax havens.

Ownership concentration has increased as a result and five main players now dominate the broadcasting market. Some of these are more or less involved in the print sector. However, unlike the print media industry, which is totally unregulated, broadcasters operate under strict regulation, in line with EU legislation. Nonetheless, despite its special status, SRTV was still considered, in early 2005, to be far from fulfilling the tasks and role of a public service television broadcaster. While it benefits significantly

from television and radio licence fee revenues, the public broadcaster has been sharply criticised for its political bias. It is the only station which enjoys full territorial reach, and benefits from other sources of funding such as Government subsidies and advertising. However, there have been wide suspicions about the lack of a system of programme production based on cost efficiency, and a bloated payroll that seriously undermines the financial health of the station.<sup>1</sup> Following the parliamentary and presidential elections in 2004, a special parliamentary commission was established in March 2005 to investigate the performance of the public broadcaster, including the spending of its budget, the management of the station and the implementation of the rules applying to the public service broadcaster.

Television operators expect Romania's accession to the EU, scheduled for 2007, to increase competition in the media market. Because it is cheap even by Romanian standards, cable television has burgeoned. As digital television is concerned, in 2002, the first experimental digital television project was launched by the Ministry of Communications. The project consists of a communication centre digitally transmitting three television programmes. However, introduction of digitalisation lags behind other European markets. Besides the digital pilot project, there is no clear policy or feasibility study on digitalisation and public debate is non-existent.

## 2. CONTEXT

During communism, television meant a few hours of state propaganda broadcast daily by State television. More than a decade after the fall of communism, one third of the population still has access only to one television station, the public broadcaster. However, even for those 70 per cent of the viewers who have access to at least five channels, the available media output is not very diverse. It amounts, in fact, to the three leading players, TVR1, Pro TV and Antena1. Despite increasing concentration of ownership, political interference and trivialisation of content, Romanian viewers continue to trust television a lot.

### 2.1 Background

On 24 May 2004, two Romanian journalists lost their lives while covering a truck accident in the small town Mihăilești, Buzău county. When the two journalists, Elena Popescu and Ionuț Barbu, first learned about the accident, it was a simple truck accident with no victims. However, they went to the spot, hoping to produce an interesting story for their editors in Bucharest. In the end, they made the news. The

---

<sup>1</sup> Hearing of SRTV's employees by a parliamentary commission investigating SRR's and SRTV's activity, Bucharest, 29-30 March 2005.

truck, which was transporting chemicals, exploded, killing several people, including the two journalists.

The two journalists had in effect become “victims of the mania for sensationalism on our television screens”.<sup>2</sup> The Romanian Academic Society (SAR), a well-known local think tank, commented that:

During the last two years, TV news bulletins became less political and more tabloid, inclined towards sensational news, rapes, murders, car accidents. Although the editors claim this procedure secures high ratings, the news are less and less watched, as they lost 20 per cent of the audience they had in 2000.<sup>3</sup>

The first attempt to create an alternative to the State owned Romanian Television after the fall of communism was the Romanian Society for the Creation of an Independent National Television Company (*Societatea Română pentru Înființarea unei Companii Naționale de Televiziune Independentă* – SOTI), set up in 1990. SOTI’s founders and supporters included some of the best-known Romanian journalists, intellectuals, dissidents and civic leaders. It enjoyed the financial support of the Washington D.C. based International Media Fund, an association of international donors, but it was very short-lived mainly due to disagreements among its leaders.<sup>4</sup>

In reality, the history of commercial television was written mainly between 1993 and 1998 when the major private players entered the television market: Antena 1 in 1993, Pro TV in 1995, Prima TV in 1997, and Acasă TV in 1998. More than a decade after the arrival of commercial television in Romania, the first launched stations, Pro TV and Antena 1, are now the leaders in the television market. From among the first launched television stations, only Tele7abc lost almost totally its once healthy audience share. The station was founded in 1994 by a group of local businessmen, Marcel Avram, Paul Opreș, Mihail Cârciog, who invested about \$20 million in the station, which enjoyed sweet success in its first years on the market.

The market has become more fragmented as new stations continued to appear over the past years. Some three years ago, most of the television stations looked more or less the same. They were all geared on a generalist format, broadcasting news, movies, sports, soap operas and light entertainment. But in the past three years, niche channels have appeared at a fast pace. In April 2004, Pro TV launched the Pro Cinema channel dedicated exclusively to movies. Antena 1’s management announced that it would start

<sup>2</sup> C. Crisbășan, “Kitsch-ul modern” (“The modern kitsch”), in *Ziarul Financiar – Ziarul de duminică*, 16 July 2004, p. 8.

<sup>3</sup> SAR, *Raport de analiză și prognoză – România în 2004 (Policy Warning and Forecast Report – Romania in 2004)*, Romanian Academic Society, Bucharest, 30 January 2004, p. 10, available online at [http://www.sar.org.ro/files\\_h/docs/publications\\_pr/final%20romana%20anual.pdf](http://www.sar.org.ro/files_h/docs/publications_pr/final%20romana%20anual.pdf) (accessed 16 April 2005).

<sup>4</sup> V. Arachelian, cited in I. Rad, “Schimbări în Europa, schimbări în mass-media”, (“Changes in Europe, changes in mass-media”), in *Limes*, Cluj-Napoca, 2004, pp. 177–185.

three new channels in autumn 2004: Antena 2 for music, Antena 3 for non-stop news, and Antena 4 for teleshopping. However, as of 10 June 2005, none of these channels has yet been launched. Realitatea TV, launched in 2001, used to be the only all-news television channel in the country, with a 2.0-2.9 per cent national audience share; a new news channel, N24, was launched in the fall of 2004. Established in 2002, B1 TV has a special focus on the capital, Bucharest.

Several years after their launch, some of the big commercial players began expanding by setting up new channels. In 1997, the public television broadcaster started TVR International, a satellite channel for the Romanian Diaspora. In 1998, Pro TV's American investor Central European Media Enterprises (CME) launched Acasă TV, a channel intended for female viewers.

In its early stages, post-communist television exerted a huge influence on the public and decision-makers alike. The live broadcasting of the Romanian anti-communist revolution in December 1989 had a tremendous influence on events. By the mid-1990s, however, television had rather turned into an entertainment medium. In 1996, television entered a new age of soap opera and bingo shows. Even public television followed suit. In this version of televisual reality, "the heroes and especially the heroines of soaps operas became of special importance. By 1998, every station was broadcasting bingo shows".<sup>5</sup>

The past two years were characterised by numerous media mergers and acquisitions as part of a sustained concentration process. However, many of these deals were marred by lack of transparency. Investment in the human capital of the news departments, as well as in serious investigative journalism, remains low.

Television is the main source of political information for 73 per cent of the population, while the press is the primary source of information for only 8.2 per cent.<sup>6</sup> Public trust in the media remains high, although it has decreased by ten per cent in recent years. In 2004, some 70 per cent of citizens polled in a survey responded that they placed considerable trust in the media.<sup>7</sup> By contrast, the Government was trusted by only 42 per cent of respondents polled in a separate survey in 2003.<sup>8</sup> Nonetheless, over 70 per cent of the respondents in a

<sup>5</sup> M. Ibram, "Romania in the Television Era or the Prison of Fading Reality", in Mihaela Czobor-Lupp and J. Stefan Lupp (eds.), *Cultural Heritage and Contemporary Change*, Series VIA. Eastern and Central Europe, vol. 22, Romanian Philosophical Studies, IV, 2001.

<sup>6</sup> Centre for Urban and Regional Sociology (CURS), a local private social research and marketing company, *Influența mass-media asupra comportamentului civic și electoral* (Mass-media Influence on the Electoral and Civic Behaviour), a survey commissioned by the National Audiovisual Council (CNA), April 2004, p. 50.

<sup>7</sup> Institute for Marketing and Polls (IMAS), *Percepția publicului asupra campaniei electorale pentru alegerile locale, desfășurate la radio și televiziune* (Public perception of the electoral campaign for local elections on radio and television), July 2004, Bucharest, p. 5, (hereafter, IMAS, *Public perception*).

<sup>8</sup> SAR, *UNDP Project Early Warning System*, Bucharest, January 2003, p. 4, available at [http://www.sar.org.ro/files\\_h/docs/publications\\_ewr/ewr1en2003.pdf](http://www.sar.org.ro/files_h/docs/publications_ewr/ewr1en2003.pdf) (accessed 16 April 2005).

recent survey said that television influenced them very little or not at all in their voting decisions.<sup>9</sup> If at the local level, the influence of media outlets is rather low (because people know each other better in smaller communities), at the national level, the influence of great players is quite high, and people can be easily misinformed and manipulated, according to Mona Muscă, the Minister of Culture.<sup>10</sup>

Still, 16 years after the fall of communism, media policy in Romania lacks consistency. Virgil Nițulescu, Secretary of State with the Ministry of Culture, observes that: “A unitary vision, a strategy for audiovisual development is missing. Political influence has replaced any strategy, and public debate is still missing”.<sup>11</sup>

## 2.2 Structure of the television sector

Initially, commercial television stations used only analogue broadcasting. Later, they started to also use satellite and cable transmission.

Only the first channel of the public broadcaster enjoys full coverage of Romanian territory. Pro TV and Antena 1 each cover 70-80 per cent of the country's households, terrestrially and via cable. Prima TV covers some 70 per cent of the territory.<sup>12</sup> Because the public broadcaster is the only station with a terrestrial infrastructure able to cover the entire country, cable television is very important as it represents the main means of transmission for commercial stations.

However, the low level of cable penetration in the countryside significantly restricts the majority of the commercial stations' coverage. In 2003, in the urban areas 80 per cent of households were connected to cable television, but in villages only 13 per cent of households had cable television. Nationwide cable penetration reached 58 per cent in 2003.<sup>13</sup>

In late 2004, the companies RCS-RDS launched the first direct to home television service, Digi TV, which transmits television signal via satellite dishes, thus facilitating

---

<sup>9</sup> IMAS, *Public perception*, p. 11.

<sup>10</sup> Statement by Mona Muscă at the launching conference of the “Monitoring Report on Local and TV stations”, Media Monitoring Agency (AMP), 25 August 2004. Mona Muscă was a member of the Commission for Culture and Mass-Media in the Chamber of Deputies.

<sup>11</sup> Statement by Virgil Nițulescu in August 2004. Nițulescu worked as a media expert with the Commission for Culture and Mass-Media in the Chamber of Deputies. In January 2005, he became Secretary of State with the Ministry of Culture.

<sup>12</sup> EUMAP research (based on data offered by AGB TNS in 2004).

<sup>13</sup> EUMAP research (based on data offered by AGB TNS).

access to television for people living in areas not covered by cable. In early 2005, Eastern Space Systems followed suit with its Focus Sat television package.<sup>14</sup>

**Table 1. Key figures on TV penetration in Romania (2003)**

Total population (millions)	21.8
Average technical reach for the main private operators (millions)	15.7
Cable Penetration 2003 (per cent)	58
Per Capita GDP (€)	2,320

Sources: EUMAP research for this project<sup>15</sup>

**Table 2. TV Overview (2003)**

Total number of TV Households (millions) – TVHH		6.763
In per cent of all households		91.5
Number of channels received by 70 per cent of the population		5
TV equipment (in per cent of TVHH)	Colour TV	41.2
	Multiset (homes with more than 1 TV set)	12.6
	VCR	11.8

Source: AGB TNS International<sup>16</sup>

In terms of coverage, the radio landscape is similar to television. The first channel of the Romanian public radio (SRR) is the only channel covering the entire country. As in the case of television, licences for commercial radio stations were granted locally and then nationwide radio networks were created by linking local programming and signals. Such were the radio networks Pro FM, Radio 21 and Radio Kiss FM, which have developed networks of 21 to 25 stations each in urban areas. There are only two nationwide radio licences. The first was granted in 1999 to Europa FM, which reaches

<sup>14</sup> Information available (in Romanian) on RCS-RDS website, see [http://www.rcs.ro/digitv/Ce\\_este/Ce\\_este.htm](http://www.rcs.ro/digitv/Ce_este/Ce_este.htm), and on Romanian Digital Info website, see [http://www.rdi-sat.com/canale\\_dth.php](http://www.rdi-sat.com/canale_dth.php) (accessed 15 April 2005).

<sup>15</sup> Data provided by: the National Institute for Statistics, Ministry of Communications and Information Technology, and TNS AGB.

<sup>16</sup> IP International Marketing Committee, *Television 2004. International Key Facts*, October 2004, p. 394.

around 60 per cent of the population. The second nationwide licence was granted only in April 2004 to Info Pro.

There are only five significant players in the television market:

- Romanian Television Broadcasting Corporation (SRTV), known also as TVR, with its four channels: TVR1, TVR2, TVR Cultural and TVR International
- Pro TV and its second channel Acasă TV
- Antena 1
- Prima TV
- Realitatea TV

There are also several local stations that depend on retransmitting programmes from a nationwide station, airing only a few programmes of their own. None of the commercial stations has a national licence. They transmit through stations operated under local broadcast licences; for example, Pro TV covers 77 per cent of the territory, through a network of 22 local licensees. Their national coverage is in fact a network of local broadcast licences awarded to one main operator. The broadcasting regulator has issued 326 television broadcast licences to date. A total of about 150 licensees are operating.<sup>17</sup>

A unitary peplemeter system of measuring television audiences, the TV National Audience Measurement Service, was introduced in 2004. It measures audiences of 14 television channels. As required by the Law on Radio and Television Broadcasting 2002<sup>18</sup> (hereafter, the Audiovisual Law), the measurement must be carried out by a company chosen in a public tender, by a 15 member commission whose members represent equally television broadcasters, advertising agencies and the country's broadcasting regulator, the National Audiovisual Council (CNA). In mid 2003, the commission selected a joint venture of two traditional competitors, TNS and AGB, to measure television audiences. They signed a four-year contract with the Romanian Association for Audience Measurement (ARMA), an organisation grouping the main television stations, advertisers and advertising agencies in Romania.

Previously, the agencies carrying out television and radio audience measurements have often come under fierce criticism because their results have been perceived as biased.<sup>19</sup> When in February 2004 the Government appointed Alin Teodorescu – director of the

---

<sup>17</sup> Data as of 24 January 2005, the National Audiovisual Council, document submitted to EUMAP.

<sup>18</sup> Law no. 504/2002 on Radio and Television Broadcasting, *Monitorul Oficial* 534 of 22 July 2002, art. 45(1-4), (hereafter, Audiovisual Law 2002).

<sup>19</sup> IREX, *Media Sustainability Index 2003*, Romania country chapter, International Research & Exchanges Board, Washington, 30 June 2004, available on the IREX website at <http://www.irex.org/msi/index.asp> (accessed 1 April 2005), p. 13, (hereafter, IREX, *MSI 2003*).



IMAS agency, which measures radio audiences – to head the Prime Minister’s Office, the objectivity of the IMAS’ work came under vehement criticism.<sup>20</sup>

In general, the people-meter measurements have been criticised as not transparent enough, as data on television and radio are not shared with a larger audience.<sup>21</sup> Only members of ARMA have access to data, as they pay for the research. The CNA receives this data free of charge, but seldom publishes it, and if it does, then only as part of various, larger studies.

### 2.3 Main players

As shown below in Table 3, together, the first channel of the public broadcaster TVR1 (previously named Romania 1), Pro TV and Antena 1 hold a combined 50 per cent national audience share. The next group of stations, with audience shares hovering between five and seven per cent each, are the second channel of the public broadcaster, TVR2, and the commercial stations Acasă TV and Prima TV.

TVR1 was the dominant broadcaster in Romania for a long time. Four years ago, it enjoyed a yearly average 40 per cent nationwide audience share. However, although it is still the leading channel – chiefly due to its broader technical availability – as shown below in Table 4, its audience shrank by more than ten percentage points between 2002 and 2004. TVR1 also lost its dominant position in urban areas, where Pro TV and Antena 1 were leading in 2004. According to an April 2005 survey, TVR1 came fourth among television channels, in a survey of the most important sources of information for urban viewers.<sup>22</sup>

<sup>20</sup> IREX, *MSI 2003*.

<sup>21</sup> Mihai Pavelescu, owner of Media Expres, a publishing house specialising in the coverage of the audiovisual industries, EUMAP questionnaire, Bucharest, August 2004.

<sup>22</sup> Asked from which television station they learn most of their information, 30.5 per cent of the respondents questioned in the survey selected Pro TV; 26.4 per cent, Antena 1; 18.3 per cent, Realitatea TV; and only 14.9 TVR1. INSOMAR, *Politus 2005*, research for the period 12-17 April 2005, Bucharest, 26 April 2005, p. 29. INSOMAR is a local company specialised in marketing and polls.

**Table 3. Evolution of audience shares (all day) of the three most watched TV channels (2002–2004)**

	Nationally			Urban		
	2002	2003	2004	2002	2003	2004
TVR1	34.3	28.1	22.1	16.9	15.0	12.8
Pro TV	15.2	15.3	15.8	18.7	18.6	18.0
Antena 1	13.5	13.2	12.3	16.2	14.0	12.9

Source: EUMAP research<sup>23</sup>

**Table 4. Television audience shares (2004)**

	Channel	Audience Share (per cent)		Technical reach (per cent)
		All day	Prime time	
Nationally	TVR1	22.1	24.1	98.0
	Pro TV	15.8	17.3	77.0
	Antena 1	12.3	16.1	72.9
	Acasă TV	7.4	7.7	53.7
	TVR2	7.0	6.9	85.0
	Prima TV	4.9	4.6	71.0
	Realitatea TV	2.9	2.1	60.0
	B1 TV	1.4	1.2	NA
	Other	26.2	20.0	–
Urban areas only	Pro TV	18.0	20.1	
	Antena 1	12.9	17.6	
	TVR1	12.8	15.1	
	Acasă TV	10.2	10.8	
	Prima TV	5.4	5.2	
	TVR2	4.2	3.8	
	Realitatea TV	4.1	3.0	
	B1 TV	1.9	1.6	

Source: EUMAP research<sup>24</sup>

<sup>23</sup> Based on data provided by TNS AGB and CSOP-TNS (for the 2002 data).

<sup>24</sup> Based on data provided by: TNS AGB and the CNA.

### 3. GENERAL BROADCASTING REGULATION AND STRUCTURES

The degree of autonomy of the bodies involved in the process of issuing and granting broadcast licences has increased in the past years. However, suspicions about the fairness of the whole licensing process still occur. In 2004, politicians continued to meddle in the media business, mainly by granting some preferential aid, in camouflaged forms such as State aid, to some media outlets, based on subjective criteria.

#### 3.1 Regulatory authorities for the television sector

##### 3.1.1 The National Audiovisual Council (CNA)

The National Audiovisual Council (*Consiliul Național al Audiovizualului* – CNA) is the only regulatory authority in the field of audiovisual programme services. Created in 1992, the CNA regulates both public and private broadcasters. The CNA is an autonomous public authority responsible for protecting the public interest in the audiovisual field. Its activities are governed by the Law on Radio and Television Broadcasting, (hereafter, the Audiovisual Law). It has prerogatives in the adoption of media policies as well as in the regulation and monitoring of the broadcasting market.

The CNA's goals include:<sup>25</sup>

- ensuring the observance of a pluralist expression of ideas and opinions in the programme aired by the country's broadcasters;
- ensuring pluralism of sources of information and the free competition in the broadcasting field;
- protection of the Romanian culture and language and the culture and language of the national minorities;
- protection of human dignity and of children; and
- ensuring transparency of the broadcasting sector.

The tasks of the CNA include:<sup>26</sup>

- establishing the conditions, procedure and criteria for granting broadcast licences;
- issuing broadcast licences and retransmission authorisations for radio and television programmes;
- observing broadcasters' compliance with the Audiovisual Law; and
- issuing recommendations regarding the broadcasting policy and development.

---

<sup>25</sup> Audiovisual Law 2002, art. 10.

<sup>26</sup> Audiovisual Law 2002, art. 17.

One of the CNA's most important missions is to observe, and seek to improve, broadcasting content by continually and attentively monitoring the stations' programmes. For example, between September 2003 and June 2004, the CNA monitored a total of 32 channels (19 television and 13 radio) throughout the country. The regulator carries out general monitoring, thematic monitoring and monitoring following complaints by viewers and listeners. Based on the monitoring reports drafted by its own experts, the CNA then undertook a number of actions including meetings with the broadcasters to discuss the breach of legal provisions, issuing of press releases containing the CNA's position in major broadcasting issues, issuing of recommendations, warning letters and summons addressed to broadcasting licensees, and imposing fines.

In 2003, the number of fines increased to 33 and 125 summons, six times more than in the previous year.<sup>27</sup> Most of these fines were not substantial, but broadcasters in general fear the CNA because the broadcasting regulator can impose on them drastic sanctions that would badly hurt them (see also section 3.3). In early 2005, television station Realitatea TV received a record fine of €4,000 (150 million ROL) for airing hidden advertising.<sup>28</sup> The main breaches were related to the infringements in the regard of protection of minors in programming; advertising and teleshopping restrictions; protection of human dignity; right of reply and rectification; accuracy of information; retransmission of programme services; observance of programming schedule; and the right to use broadcast licences. The CNA Activity Report 2003 reads that "the monitoring of the news programmes reveals a concerning increase of exaggerated concessions paid to sensationalism, gratuitous violence, which go beyond decency".<sup>29</sup>

The CNA must also notify the competent authorities, specifically the local antitrust authority known as the Competition Council, of any cases of restriction of competition, abuse of dominant position and economic concentration in the broadcasting market. It must also inform other State authorities about any breaches of the law which do not fall under its competence. The CNA has done so in several instances. However, it is not extremely active in this area.

### *Composition*

The CNA consists of 11 members. The country's President nominates two of them and the Government, the Chamber of Deputies and the Senate propose three members each. Members are then appointed by Parliament, for a six-year mandate. Their terms are staggered. The chair is selected by the vote of the Parliament from among the members of

---

<sup>27</sup> CNA, *Raport 2003 (Annual Report 2003)*, p. 14, available (in Romanian) at [http://www.cna.ro/activitate/raport\\_cna\\_2003.pdf](http://www.cna.ro/activitate/raport_cna_2003.pdf) (accessed 16 April 2005).

<sup>28</sup> CNA press release, 15 April 2005, Bucharest, available (in Romanian) at <http://www.cna.ro/comunicare/comunic/2005/c0419.html> (accessed 16 April 2005).

<sup>29</sup> CNA, *Activity Report 2003*, cit., p. 14.

the Council, on their proposal for a single six year mandate. The chair has a Minister-level position, but this status does not usually tend to turn him or her into a high-level government official or to threaten his independence. The CNA's decisions and recommendations must be approved in the presence of at least eight members and voted on by at least six members. The CNA must submit an annual report to Parliament.

The specialised personnel of the Council are civil servants and staff employed with an individual labour contract. They cannot be members in the board of directors of public or private broadcasters, in the management bodies of broadcasters and they cannot hold positions or shares in a company owning a broadcast licence. Besides the experts based in the CNA's headquarters, the broadcasting watchdog employs 24 local inspectors to monitor broadcasting. They face administrative problems. In 2003, only nine of them had appropriate offices.

The CNA's work is analysed and monitored by Parliament, which can request at its discretion reports on specific issues from the CNA's President. If Parliament rejects the annual report, the CNA must propose measures for a solution within 30 days, which is then debated by the Media Commission in Parliament. The Council must also publish regular reports about its activities. For instance, it must publish information on the licensing process (number and type of the licence and the list of beneficiaries), a list of fines and warnings sent to broadcasters.

### 3.1.2 Inspectorate General for Communications and Information Technology (IGCTI)

The Ministry of Communications and Information Technology (MCTI) used to be the authority administering the broadcast frequency spectrum, through the General Inspectorate for Communications and Information Technology (IGCTI).

In November 2004, IGCTI was transformed into an autonomous public institution fully financed from its own revenues, and directly subordinated to the Romanian Government. IGCTI's board consists of a president and a vice-president, both named by the Prime Minister.

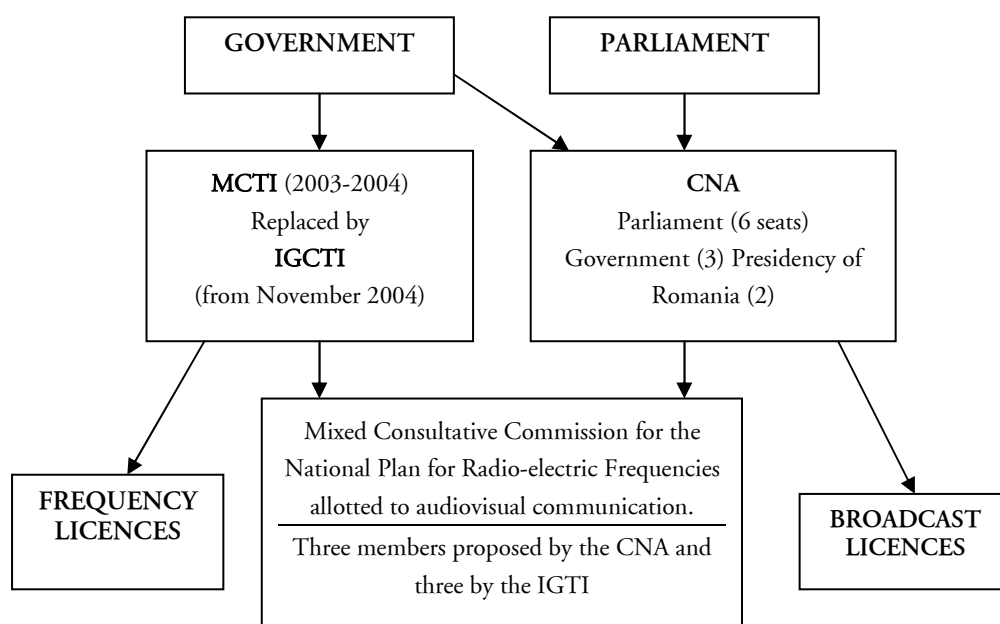
The main tasks of the IGCTI are:

- to plan and allocate frequencies;
- to manage the radio frequencies bands according to a national strategy;
- to draw up plans of technical regulation of the frequency spectrum;
- to represent the country with international organisations; and

- to monitor the observance by the radio frequency users of the conditions of using the frequencies.<sup>30</sup>

A Mixed Consultative Commission of the IGCTI and the CNA (see figure 1, below) was created in 2002 to work on adopting a national strategy for the use of the country's frequency spectrum – the “National Plan for Radio-electric Frequencies allotted to audiovisual communication” – which was approved in September 2003.<sup>31</sup> The Commission consists of six members, three representing the CNA and three from the IGCTI.

**Figure 1. The regulatory system**



<sup>30</sup> Law no. 510/2004 with regard to the reorganisation of the Inspectorate General for Communications and Information Technology, *Monitorul Oficial* 1082 of 22 November 2004, art. 3(1-2).

<sup>31</sup> Order of the Minister for Communication and Information Technology no. 232/2003 with regard to the approval of the national table of allocation of the frequencies bands, *Monitorul Oficial* 641, 9 September 2003, available (in Romanian) at <http://www.igcti.ro/igcro/Legislatie.htm> (accessed 1 June 2006).

### 3.2 Licensing procedures

The regulations regarding the issuing of the licences have often changed. The Audiovisual Law of 2002, made it clear that the CNA is the sole authority in charge of granting licences for broadcasters. However, according to the same law, a broadcaster needs two licences to start a television station: the broadcast licence, *licența audiovizuală*, which is granted by the CNA; and a technical licence, allowing a broadcaster to use a broadcasting frequency, *licența de emisie*, (hereafter, frequency licence), which is issued by IGCTI.

Because of its connection with the Ministry of Communications, broadcasting operators and civil society criticised IGCTI in the past, fearing that the Ministry would exert substantial control over the broadcasters. The dispute ended with a compromise. Parliament agreed that the CNA should have the key role in granting the right to broadcast while IGCTI, a rather technical body in charge of managing the country's frequencies, retains the right to approve certain purely technical aspects of the broadcasting.<sup>32</sup>

To summarise, the process of obtaining the broadcast and frequency licences comprises the following steps:

- CNA announces a public contest for a broadcast licence. Bidders must obtain a “technical notice” from IGCTI, confirming that IGCTI has checked the basic data of the company applying for the licence, such as its registration and its activities.
- The applicant takes part in the public contest held by CNA.
- CNA grants the broadcast licence.
- If awarded the broadcast licence by the CNA, the applicant must then ask the IGCTI for a frequency licence, which states the main technical conditions for broadcasting.
- With the frequency licence, the applicant comes back to the CNA, which will give the applicant a final authorisation allowing the station to operate.

IGCTI can reject an application for a frequency licence if the application form was incomplete or if the bidder failed to attach a copy of the broadcast licence. The frequency licence is granted free of charge. However, broadcasters must pay IGCTI a fee for using the frequency spectrum.<sup>33</sup>

<sup>32</sup> Government Decision no. 744/2003 on the organisation and functioning of MCTI (as amended by Government Decision 927/2004), *Monitorul Oficial*, 494, 9 July 2003, art. 2(c).

<sup>33</sup> In accordance with: Order of the Minister of Communication and Information Technology no. 403/2003 regarding the procedure of the requiring and issuing of the licences for the radio-electric frequencies, *Monitorul Oficial* 100 of 3 February 2004, para. 25(c).

An application for a broadcast licence in a public tender organised by the CNA must include:

- the application form
- the statutory documents of the corporation applying for the licence
- an excerpt from the Commercial Register containing the company's shareholding structure at the time of application
- a legalised affidavit confirming the status of each shareholder of the company, and their percentage of stock holdings in corporate funds of other broadcasting companies
- criminal records of the shareholders owning at least ten per cent of the company's stock or vote rights in the company
- the "technical notice" issued by IGCTI
- a technical and editorial project on the planned programme services, describing the main programmes, quotas of the genres in the programming chart, a business plan, the structure of the editorial personnel, the network of correspondents, the equipment to be used
- a list of other audiovisual services provided by the applicant.

The main criteria taken into account in the process of granting the licence include:

- the degree of observance of the public interest
- the suitability of the proposed programming in the broadcasting market
- fair balance between national, regional and local programming
- the avoidance of dominant position and of practices hindering free competition in the industry
- applicant's experience in broadcasting
- criteria related to programming structure such as observance of fundamental human rights and minors' protection, of political and social pluralism, of cultural, linguistic and religious diversity; the protection of the Romanian culture and language and of the languages of ethnic minorities; the duration and type of programming, the timetable and the duration of broadcasting and re-broadcasting of the programming; the daily and weekly volume of the programmes made by independent producers.<sup>34</sup>

---

<sup>34</sup> CNA Decision 146/2002 regarding the granting of the broadcasting licence and the issuance of the broadcasting authorisation decision for broadcasting by terrestrial radio-electric way of programme services, *Monitorul Oficial* 899 of 11 December 2002, art. 7(1-2).



Licences are granted free of charge for a nine-year period and can be extended for another nine years.

There are still concerns that the administration of the frequency spectrum by a body connected to the Government allows for undue political influence.<sup>35</sup> Although, formally, it can turn down an application for a broadcast licence for only two reasons, IGCTI nonetheless has substantial influence in the licensing process because, as an administrator of the frequency spectrum, it can keep frequencies unavailable to the users. As its president and vice-president are still appointed by the Prime Minister, IGCTI may still be put under political pressure. New players can enter the market only within the limits of the frequencies announced as available by IGCTI.

Government control of the regulatory bodies may take various forms. One used to be the lack of transparency about the availability of frequencies and on their technical power. In the mid-1990s, broadcasters repeatedly accused the government of inventing “technical restrictions” in order to prevent broadcasting companies from launching new stations. Since 2000, private broadcasters have aggressively lobbied the government to release a “huge” number of frequencies kept secret and unused for years. At the time, they accused the government of manipulation when it said there were not enough frequencies available. The Romanian Association for Audiovisual Communications (ARCA)<sup>36</sup> has revealed that due to a lack of information, in the past many frequencies – those registered in international agreements on broadcasting frequencies assignment, such as the “Geneva Plan” and “Stockholm Plan” – remained unknown and, hence, useless.<sup>37</sup>

With the adoption of the Audiovisual Law in July 2002, foreign investors faced no restrictions in owning broadcast licences. However, the law obliges licence holders to be owned by the same company as that operating the station.

**Table 5. Key figures on TV licences**

Analogue terrestrial broadcast licences	Total granted	326
	Total in operation	119
Satellite television broadcast licences	Total granted	82
	Total in operation	31

Source: CNA<sup>38</sup>

<sup>35</sup> Dan Georgescu, former advisor to the Ministry of Communications, currently director of the Romanian Association of Telecommunications Operators, (founded in 2003), “An autonomous institution must administer the frequencies, not a Government one, as in the days of the MCTI, but only if it is truly independent”. Response to EUMAP questionnaire, August 2004.

<sup>36</sup> The Romanian Association for Audiovisual Communications (ARCA) is an association of 61 broadcasters owning a total of 223 television and radio stations.

<sup>37</sup> Information from ARCA’s website, available at <http://www.audiovizual.ro/englishversion.htm> (accessed 8 February 2005).

<sup>38</sup> Document submitted to EUMAP on 24 January 2005.

A total of 141 broadcast licences, for both terrestrial and satellite television, have been withdrawn by the CNA because they were not being used.

### 3.3 Enforcement measures

Generally, the CNA applies the same sanctions to both public and private broadcasters. If broadcasters breach the Council's decisions or relevant legislation, the sanctions stated in the Audiovisual Law are imposed. These sanctions are similar for all operators. Before levying fines, the CNA summons the broadcaster to remedy the fault. Only if the broadcaster fails to remedy the breach, can the CNA impose a fine ranging between ROL 25 million and ROL 250 million (or approximately €625 to €6,250).<sup>39</sup>

The CNA is the sole regulatory authority entitled to withdraw a broadcast licence, under the following circumstances:

- When a licensee does not start broadcasting within 12 months of the licence being awarded.
- When a licensee ceases broadcasting for more than 45 days due to technical reasons, or for more than 96 hours due to any other reason.
- If a licensee breaches the standards of the ownership regime.<sup>40</sup> (See section 5.3). The licence is withdrawn until the licensee meets the legally admitted share limits.
- When a broadcaster repeatedly<sup>41</sup> instigates the audience to national, racial or religious hatred.
- When a broadcaster explicitly instigates public violence or actions that undermine State authority, or lead to terrorist actions.<sup>42</sup>

The decision to strip a broadcaster's licence can be appealed in any court up to the Supreme Court of Justice. The IGCTI has also the right to confiscate a station's technical equipment or fine a broadcaster that used a frequency with a wider footprint than the one it was granted.

In 2002, the CNA withdrew the licence of the Bucharest metropolitan television station OTV, which aired a talk-show hosting a leader of an extreme right-wing party. During the show, the guest made a series of serious accusations about the leaders of the

---

<sup>39</sup> The exchange rate used throughout this report is €1 = 40,000 ROL.

<sup>40</sup> For example, when one owner holds the majority stake in a certain broadcaster and also more than the legal 20 per cent share in a different broadcasting outlet. Audiovisual Law 2002.

<sup>41</sup> However, the law does not specify what "repeatedly" means.

<sup>42</sup> Law no. 402 of 7 October 2003 on the modification and completion of Audiovisual Law no 504/2002, *Monitorul Oficial* 709 of 10 October 2003, (hereafter, Audiovisual Law 2003), available at <http://www.cna.ro/english/legislation/law402.html> (accessed 1 June 2005).

ruling party, together with a list of attacks against different categories of people.<sup>43</sup> The CNA explained that the station was stripped of its licence because it had severely damaged the public interest, by airing discriminatory, anti-Semitic and xenophobic statements. Concerns were voiced that prohibiting such programmes contravened European standards of freedom of expression<sup>44</sup> and that the television station was not to blame for the speech of the right-wing leader. However, CNA representatives argued that the EU, “Television without Frontiers Directive” (hereafter, TVWF Directive)<sup>45</sup> should clearly specify the obligation upon programme makers to discourage incitement to hatred even during talk-shows, and that moderators should try to dissuade their guests from breaching legal provisions.<sup>46</sup>

The decision to withdraw OTV’s licence was followed by hot debate. Although OTV did not enjoy much credibility and support among other media at the time, media experts expressed fears that a dangerous precedent was being set. A year and a half after the decision, a newly created company applied and received a broadcast licence from the CNA and then re-launched OTV.<sup>47</sup> However, OTV has never reached a significant audience.

Another controversial decision was in 2003 when the US investor CME – the owner of the Pro TV and Acasă TV channels – started to transfer all its television broadcast licences from its Romanian partner, Adrian Sârbu, to its own company. The operation was made possible by the adoption of the Audiovisual Law in 2002, allowing television operators to own broadcast licences. Initially, the Council rejected CME’s request because the combined audience covered by CME licences would exceed the 30 per cent maximum audience share imposed on broadcasters by the Audiovisual Law. CME responded that the combined audience share of all its licences did not exceed this threshold and it was duly allowed to transfer the licences.<sup>48</sup>

<sup>43</sup> At the time, the company First Media Advertising held OTV’s licence.

<sup>44</sup> Namely, Article 10 of the European Convention on Human Rights. 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 1 March 2005).

<sup>45</sup> “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/eurlex/en/consleg/pdf/1989/en\\_1989L0552\\_do\\_001.pdf](http://europa.eu.int/eurlex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf) (accessed 15 March 2005).

<sup>46</sup> Explanation provided by CNA representatives during a Stability Pact seminar on the programme-monitoring functions of national authorities, Warsaw, 3-4 October 2003.

<sup>47</sup> Ocrăm Televiziune srl, owned by Merchiori in Romagnoli Maria, became the new OTV licence holder.

<sup>48</sup> CME, *Annual Report 2003*, filed with the Securities and US Exchange Commission, Washington, 12 March 2004, p. 11, (hereafter, CME, *Annual report 2003*).

### 3.4 Broadcasting independence

Political pressure on broadcasters is substantial. Many media specialists interviewed for this report agreed that proprietors usually consider their businesses as a tool to fulfil their political and business interests. The management of the television stations prefer to keep silent on the matter, but media experts and journalists working with television stations have publicly denounced the increasing pressures on the media. Even the current president of the CNA, Ralu Filip, admitted that, “pressure does exist, especially at the local level, coming both from the ruling party and from the opposition.”<sup>49</sup> Cristian Ghinea, a journalist with the highly respected cultural weekly *Dilema veche*, observed that:

I would describe the media situation during the last few years as a nightmare. The dominant position of [the ruling Social Democratic Party] PSD after 2000 gave enough resources to this party to buy, attack, or blackmail the media, depending on the attitude of the journalists working there. [...] Unfortunately, the majority of the media got used to this situation, which became a kind of ugly normality.<sup>50</sup>

The independent coverage of politics by television stations was further crippled by the new election legislation<sup>51</sup> adopted prior to the 2004 elections, which prohibited all television stations in the country from broadcasting news about candidates running for Parliament or Presidency other than electoral coverage. As the law allowed television stations to air only election-related reports in their news programmes, and political debates that were in line with a complicated calculus of distributing the broadcasting time to political parties, many small regional stations chose not to cover election-related topics and politics at all. Thus, they were trying to avoid pressures from a large number of political parties. At the same time, Romanian public television was obliged by the same law to allow all political parties to air electoral messages, according to a formula defined by a parliamentary commission, which turned the public broadcasting media into a mouthpiece of politicians.

Television stations lack financial resources for more in-depth news programmes and prefer to produce light entertainment, which is not necessarily cheaper to produce, but scores healthy ratings. For television, this is the way to avoid controversial reporting that would disturb officials and their cronies who in the end can cause the station a lot of trouble. Television is thus focused on “people who either became stars overnight or made a lot of money – nobody knows how. The dominant model is the model of

<sup>49</sup> R. Filip, CNA president, response to EUMAP questionnaire, 3 August 2004.

<sup>50</sup> C. Ghinea, political journalist, response to EUMAP questionnaire, 5 August 2004.

<sup>51</sup> Law no. 373/2004 on the election of the Chamber of Deputies and the Senate, *Monitorul Oficial* 887 of 29 September 2004; and Law no. 370/2004 on the election of the President of Romania, *Monitorul Oficial* 887 of 29 September.

instant success”.<sup>52</sup> The change of political power during the December 2004 elections brought an alleviation of the political pressures on the media. The new Government, which ended the dominance of PSD, has said that the freedom of the media is among its top priorities.

Lack of financial resources for in-depth or investigative programmes severely hinder the independence of television stations. Financial weakness makes media outlets vulnerable and easily controllable by certain interest groups. For example, huge debts or reliance on State advertising made the media vulnerable. Cosmin Gușă, former general secretary and spokesman of PSD, then an MP representing the ruling Democratic Party (PD), and now an independent MP states that, “The media is manipulated in favour of certain PSD members, mostly ministers, who can decide how to spend money from the State budget”.<sup>53</sup> Both print media and electronic media enjoyed State financing through advertising contracts.<sup>54</sup> The State advertising, coming from institutions and companies subordinated to Government is estimated at up to eight per cent of the total advertising spending in the media. It increased to €17 million in 2004, almost double the total spending in 2000.

The distribution of the State advertising was not done based on the stations’ ratings. In 2004, Prima TV and Realitatea TV, which do not rank among the stations with the highest audience share, received the largest part of the State advertising, 14.7 per cent (€2.5 million) and 11.7 per cent (€2 million) of the total State advertising spending, respectively. They were followed by Pro TV (ten per cent), Antena 1 (7.3 per cent), TVR1 and Național TV (3.7 per cent each).<sup>55</sup> It is worth mentioning that Național TV has a Lilliputian audience. The State advertising represents between one per cent and five per cent of the income of a commercial television station, according to industry estimates.<sup>56</sup>

A notorious case of State advertising is the Romanian National Railway Company, SNCFR, which in the past bought advertising in several print media. The use of State advertising to stifle media independence is reportedly very well coordinated at government level. The daily *Evenimentul Zilei*, citing an internal Government document, reported that all the State advertising contracts had to be seen by the former

<sup>52</sup> I. Avădani, “Modele culturale”, (“Cultural models”), in *Dilema veche*, 20, 28 May-3 June 2004, p.8. Ioana Avădani is executive director of the Centre for Independent Journalism in Bucharest.

<sup>53</sup> A. Pora, “Televisions, free to manipulate” (“Televiziunile, liber la manipulare”), *Evenimentul Zilei*, 17 February 2004, available (in Romanian) at [http://www.expres.ro/politica/?news\\_id=146168](http://www.expres.ro/politica/?news_id=146168).

<sup>54</sup> C. Ghinea, “Transparency for an independent media – How do public institutions spend the money for publicity?”, SAR Report, 29 September 2003, available on the SAR website at [http://www.sar.org.ro/files\\_h/docs/advocacy\\_foia/1\\_publicitate\\_en.pdf](http://www.sar.org.ro/files_h/docs/advocacy_foia/1_publicitate_en.pdf) (accessed 11 March 2005), p. 3, (hereafter, Ghinea, *Transparency for independent media*).

<sup>55</sup> C. Hurdubaia, “Imaginea miniștrilor lui Năstase ne-a costat un Mercedes pe zi”, (“Public image of Năstase’s Ministers Cost Romanians one Mercedes a day”), in *Cotidianul*, 10 March 2005, p. 8.

<sup>56</sup> Comments submitted to EUMAP by Pro TV, November 2004.

Prime Minister, Adrian Năstase, in person: “Who [receives] and how much money [is received] depends only on the Prime Minister Adrian Năstase”.<sup>57</sup>

The Bucharest based Centre for Independent Journalism (CJI) reacted and was forced to sue the Government in order to make all the State advertising contracts transparent.<sup>58</sup> The litigation ended in March 2005 after the new Government provided the CJI with the required data and started to work closely with the CJI and other NGOs on ensuring transparency of the State advertising contracts.

The problem with State financial support to the media lies in the hidden mechanisms of funding some media, which may become a major source of political pressure.<sup>59</sup> Such a case is the Ministry of Transport’s manoeuvre to gain influence over the owner of commercial Prima TV in 2001 by using a group of State owned companies subordinated to the ministry. The companies employed an extremely complex financial mechanism involving companies established abroad and unusual bank transfers. When the deal was exposed one year later, it turned into a major scandal, with parliamentary groups asking the Government to resign. In the end, nothing happened, although the Government, which folded in the end of 2004, did promise to launch an official investigation, but never did. Some more results are expected from the Government formed in December 2004. (See section 5.3.)

Another concern is the lack of transparency concerning the launching capital of television stations, which in most cases remains secret. This is the case with Realitatea TV, which was sold in November 2004 for a symbolic ROL 5.5 million (Romanian Lei), which is roughly €150 to Bluelink Comunicazioni, a company which would not reveal the sources of the money it plans to invest in the station.

Broadcasters’ reluctance to criticise politicians and businessmen also stems from the stations’ fear that government would retaliate by seeking back taxes that stations could not pay in the past or ordering audits of the stations’ finances. In early 2004, four companies running television stations had outstanding debts to the State budget. Meanwhile, several private stations have paid their old debts.

---

<sup>57</sup> O. Dobre, “Năstase, tătucul publicității de stat”, (“Năstase, the daddy of state advertising”), in *Evenimentul Zilei*, 20 July 2004, available (in Romanian) at [http://www.evenimentulzilei.ro/topstory/?news\\_id=161081](http://www.evenimentulzilei.ro/topstory/?news_id=161081) (accessed 17 September 2004).

<sup>58</sup> D. Tăpălagă, “Cine cenzurează presa?”, (“Who is censoring the media?”), in *Evenimentul Zilei*, 10 August 2004.

<sup>59</sup> Ghinea, *Transparency for independent media*, p. 3.

**Table 6. Debt situation (to the State budget) of the main commercial television stations (2003–2004)**

	Debts to the State budget (€ million)			
	Prima TV (Amerom Television)	Pro TV (previously Media Pro International)	Antena 1 (Corporația pentru Cultură și Artă Intact)	Național TV
30 September 2003	6.8	6.248	1.54	2.4 (Național TV's owners)
30 June 2004	6.99	5.4	0.644	0
31 December 2004	2.7 (rescheduled)	0	0.450	0
31 May 2005	2.8 (rescheduled)	0	0	0

Sources: Ministry of Finance and SAR<sup>60</sup>

#### 4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING

TVR still depends on Parliament, which has the legal power to sack the station's entire management by rejecting the broadcaster's annual report. The President-Director General (PDG) is politically appointed. The newsroom has enough financial resources, but lacks independence. From 2000–2004, its directors were often employed in unstable, interim positions. Contests for the position of directors were delayed as long as possible, as the interim directors were easier to control. The headlining programmes are soap operas, commercial movies and light entertainment. The situation is expected to improve after the change of political power in December 2004 as the new government initiated in early 2005 a laborious investigation of the activities of the public service broadcaster. Nonetheless, the simple replacement of the management, without the adoption of a new law on public service broadcasting is not expected to bring major improvements. The adoption of the law has been postponed until autumn 2005.

<sup>60</sup> Sources for the 2004 data: Ministry of Finance; sources for the 2003 data: SAR, *Raport de analiză și prognoză – România în 2004 (Policy Warning and Forecast Report – Romania in 2004)*, Romanian Academic Society, Bucharest, 30 January 2004, p. 10, available online at [http://www.sar.org.ro/files\\_h/docs/publications\\_pr/final%20romana%20annual.pdf](http://www.sar.org.ro/files_h/docs/publications_pr/final%20romana%20annual.pdf) (accessed 16 April 2005).

## 4.1 The public broadcasting system

Public service broadcasting consists of the Romanian Radio Broadcasting Corporation (SRR) and the Romanian Television Broadcasting Corporation (SRTV), which carry out their activities under the control and supervision of Parliament. They are both governed by the Law on the Organisation and Operation of the Romanian Radio Broadcasting Corporation and of the Romanian Television Broadcasting Corporation, (hereafter, Law on SRR and SRTV).<sup>61</sup> According to this law, the public broadcaster must ensure the pluralism and freedom of information, ideas and opinion, and inform the audience in a correct and accurate manner. The content of the public broadcasting must meet 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. The main functions of the public broadcaster are to inform, educate and entertain. Because of its special status and complete coverage of Romanian territory, the public television is assigned a more important role and responsibilities in society than commercial stations.

## 4.2 Services

On 31 December 1956, Romanian national television broadcast its inaugural transmission. In 1972, the public broadcasting television launched its second national channel, TVR2, which covered only the capital Bucharest and its surroundings. TVR2 interrupted broadcasting in 1985 and restarted in 1990. During communism, television was a mere vehicle of the regime's ideology. In the 1970s, the output was dominated by political propaganda shows. The 1980s were a "satanic decade" for television, as professor and writer Mircea Zaciuc characterised it. In December 1989 when the anti-communist revolution erupted, the public broadcaster was airing only 27 hours a week. Some 66 per cent of the total programmes consisted of political propaganda.<sup>62</sup>

After 1989, the public television broadcaster changed its programming entirely and began covering social and economic issues, religion and history, education and science, programmes for children and youth, music and entertainment. Two more channels, TVR International and TVR Cultural, were launched in 1995 and 2001, respectively. But despite its continual expansion of programming, broadcasting time and channels, the public broadcaster experienced a severe identity crisis a decade after the fall of

<sup>61</sup> Law no. 41/1994 on the organisation and operation of the Romanian Radio Broadcasting Corporation and of the Romanian Television Broadcasting Corporation, last amended by Law 124/1998, republished in *Monitorul Oficial* 636 of 27 December 1999, (hereafter, Law on SRR and SRTV).

<sup>62</sup> Ilie Rad, "The Intrusion of the Political Factor in the Programs of the Romanian Television Before and After the 1989 Revolution", published on [http://www.vlw.euv-frankfurt-o.de/CACES2002/Beitrag\\_rad.htm](http://www.vlw.euv-frankfurt-o.de/CACES2002/Beitrag_rad.htm) (accessed 15 September 2004.) Ilie Rad is a lecturer at the Faculty of Journalism at the University of Cluj, Romania.



communism. In 2004, the public broadcaster hired the marketing companies English & Pockett and Brandient, in an attempt to redefine SRTV's new position on the market.<sup>63</sup>

The public broadcaster's core channel, TVR1, focuses on "contemporary issues, life experiences, technology and everything happening in the world".<sup>64</sup> TVR1 is a channel with a generalist format, targeting all segments of the population and trying to cover all major events of importance for the nation.

TVR2 aims to be "an intelligent station" targeted mostly at urban viewers. Its programmes should offer a modern, avant-garde vision in keeping with the mentality of the young viewership. It also airs "programmes about pets and gardening and family movies".<sup>65</sup> TVR2 is considered TVR1's complementary channel, airing cultural and sports programmes that do not have room on the first channel.

TVR Cultural is conceived as a niche channel, addressing intellectuals, with programmes on the arts, culture and business. Cultural programming is present in all channels of the public broadcaster, but in a limited proportion and in formats adapted to the station's generalist formula. TVR Cultural broadcasts ample cultural programmes, in-depth debates on cultural issues, documentaries, art movies, symphonic concerts, ballet and opera.

TVR International airs a selection of what its programming directors consider the best content of all TVR's channels. It targets the Romanian public abroad. Its main aim is to "promote the image, internal and external policies of Romania in the world". The channel can be viewed in Europe, the Middle East and North Africa via the Hot Bird satellite and across the U.S. and Canada via Intelsat and Telstar satellites.

Besides the national channels, TVR operates four regional studios: TVR Cluj (launched in 1990), TVR Iași (1991), TVR Timișoara (1994) and TVR Craiova (1998). The regional studios produce programmes for the national channels.

### 4.3 Funding

The public broadcaster has three sources of finance, the licence fee<sup>66</sup>, State subsidies and advertising revenues. The Law on SRR and SRTV also establishes the station's financing regime. The Government can decide on the station's funding model, but its

<sup>63</sup> English & Pocket contract with SRTV was worth €300,000; Brandient's contract with SRTV was worth \$29,000, both for the years 2003 and 2004.

<sup>64</sup> M. Iordan, "Rebranding Romanian Television", interview with Aneta Bogdan, Brandient's manager in charge of re-branding SRTV, *Business Review*, no. 30, vol. 6, 11-17 august 2003, available at [http://www.brandient.com/ro/noutati\\_si\\_opinii/interviuri\\_si\\_articole/rebranding\\_romanian\\_tele\\_vision.html](http://www.brandient.com/ro/noutati_si_opinii/interviuri_si_articole/rebranding_romanian_tele_vision.html) (accessed 27 April 2005), (hereafter, Iordan, *Rebranding Romanian Television*).

<sup>65</sup> Iordan, *Rebranding Romanian Television*.

<sup>66</sup> In Romania, the licence fee is officially called a "tax for public television service".

decisions need to be approved by Parliament. For example, the Government can make changes in the structure of financing the PSB via Emergency Ordinances, which are then submitted to Parliament for approval. Parliament adopts them, with various modifications, as Laws of approval of Government Emergency Ordinances. This was the case in February 2003 when the Government improved the collection of the licence fee by adopting an Emergency Ordinance that included the fee in the electricity bill.<sup>67</sup> Although the amount remains almost the same, ROL 480,000 (or approximately €10-12) per year, the number of payers has doubled since February 2003.<sup>68</sup> Now, almost all 6.8 million households pay the licence fee. At the same time, the Government decided to impose an annual television-radio fee of ROL 1.8 million (€45) for small companies and ROL 6 million (€150) for mid-size and large companies. After lively debate, the Government agreed to exempt certain categories of business, such as cemeteries, from this fee.

Thanks to the increase in the licence fee, TVR's total income grew by 16.6 per cent in 2003 as compared to the previous year. But more restrictions on broadcasting advertising on TVR, such as the ban on commercial breaks during programmes, reduced advertising revenues by €3.6 million in 2003.<sup>69</sup> The changes in the station's advertising revenues and licence fee stirred hot controversies. TVR's supporters consider that the fee, which is currently more efficiently collected, helps the public broadcaster to produce professional news, educational and cultural programmes. TVR's critics accuse the management of inefficiency in spending its budget as the station produces programmes qualitatively similar to those aired by commercial television stations, or even worse.<sup>70</sup> Commercial stations accuse public television of unfair competition because it benefits from several sources of funding. For example, Maria Apostol, Pro TV's PR Director, states that: "If the public television did not carry

---

<sup>67</sup> Ordinance no. 978 of 22 August 2003 on the tax for public television service, published in *Monitorul Oficial* 607 of 27 August 2003. According to this ordinance, all households in the country must pay the licence fee. According to this Ordinance, those without a television set are exempted from the fee only after submitting to SRTV a declaration on their own responsibility that they do not own a TV set.

<sup>68</sup> The Ordinance no. 978 was then approved by Parliament. Before the change of legislation, the licence fee for public radio and television, which has remained unchanged in the past years, at ROL 480,000 (€10-12) a year, used to be collected as a separate payment made through the post-office. At the time, only 50 per cent of the existing 6.8 million households paid the fee.

<sup>69</sup> IMCA, "Paysage audiovisuel et politique publique dans le secteur audiovisuel – Roumanie", ("The broadcasting landscape and public policy in the broadcasting sector – Romania"), International Media Consultants Associés, Brussels, March 2004, pp. 17–18, (hereafter, IMCA, *The broadcasting landscape*).

<sup>70</sup> Interview with Horea Murgu, Bucharest, August 2004. Horea Murgu is the deputy president of the Society of the Television and Movie Industry Technicians. Between 1990 and 2000 he was head of the Romanian Delegation at the Strasbourg-based Council of Europe's Media Committee. He also founded the Multimedia/Image Editing/ Computer Assisted Animation Department at the Faculty of Film in Bucharest.

advertising, the licence fee may be justified for financing the creation of programmes of real public interest”<sup>71</sup>.

On top of the revenues from the licence fee and advertising, the public broadcaster receives State subsidies. As shown below in Table 7, in 2003 these accounted for 14.3 per cent of its total income in 2003 of €96 million. The station’s total income is comparable to the entire net advertising spending of the television sector. (See Section 5.4). Some 1.83 per cent of the station’s total revenues come from its own occasional business activities, such as sales of programme copyrights.

**Table 7. Total income of SRTV (2002–2003)**

	Total Income (€ million)	Source of income (as a percentage of total income)		
		Licence Fee	State subsidies	Advertising
2002	80	66.6	16.8	14.6
2003	96	75.5	14.3	8.38

Source: SRTV, *Annual Report 2003* and IMCA<sup>72</sup>

A substantial part of TVR’s income is spent on maintaining the station’s huge real estate properties and the salaries of its 3,000 staff. According to the station’s collective agreements, redundancies are not allowed. This has affected the employees’ motivation. Moreover, management “is not willing to implement any restructuring process” and the Government “does not dare to take any measures [such as lay-offs] because it fears a massive strike, which would menace its political position”.<sup>73</sup> Thus, both the Government and the public service broadcaster’s representatives have an interest in preserving the *status quo*, which badly undermines the efficiency and independence of the station. The specialised commission in Parliament, set up after the parliamentary and presidential elections in 2004 to investigate the performance of the public service broadcaster, is expected to analyse this matter as part of an anticipated larger reform of the public service broadcaster.<sup>74</sup>

<sup>71</sup> M. Apostol, Pro TV’s PR Director, response to EUMAP questionnaire, Bucharest, August 2004.

<sup>72</sup> IMCA, *The broadcasting landscape*, p. 17.

<sup>73</sup> IMCA, *The broadcasting landscape*, p. 75.

<sup>74</sup> The parliamentary commission investigating SRR’s and SRTV’s activity held hearings with SRR’s and SRTV’s employees in Bucharest in March and April 2005.

**Table 8. Total costs of SRTV (2003)**

Total Costs (€ million)		87.5
Breakdown of costs (as a percentage of total costs)	Operating costs <sup>75</sup>	57
	Human resources	21.5
	Provisions	13.6
	Taxes	5.5
	Amortisation	2.4

Source: SRTV, *Annual Report 2003*<sup>76</sup>

In 2003, the Government started to pay TVR's foreign correspondents in eight capitals in Europe and in the U.S. from a special annually determined fund administered by a Government department. The fund was created to promote Romania's image abroad.<sup>77</sup> In 2004, TVR's foreign correspondents, including journalists and cameramen, were given diplomatic status. The National Liberal Party and Democratic Party-controlled Government that took the helm in December 2004 stopped this practice, because it offended the principle of independent public broadcasting while creating a situation of unfair competition for the commercial stations.

#### 4.4 Governance structure

The public service television is governed by the Council of Administration, which is regulated by the Law on SRR and SRTV.<sup>78</sup>

The main responsibilities of the Council of Administration include:<sup>79</sup>

- approval of the general strategy and structures of programming;
- ensuring that the broadcaster fulfils the duties imposed in the licence conditions issued by the broadcasting regulator;
- approval of the rules governing the competitive examination for the appointment of the board of directors;

<sup>75</sup> This refers only to spending for the building's maintenance, rent, insurance, payment of the collaborators, copyright, copyright for feature films and programmes, telephone, and infrastructure costs.

<sup>76</sup> SRTV, *Annual Report 2003*, (hereafter, SRTV, *Annual Report 2003*), section 19, chapter 1, SRTV Financial Results.

<sup>77</sup> There were four Government Decisions on paying TVR's correspondents abroad: Decision 1445/2002, *Monitorul Oficial* 929 of 18 December 2002; Decision 391/2004, *Monitorul Oficial* 282 of 31 March 2004; Decision 1112/2004, *Monitorul Oficial* 662 of 22 July 2004; and Decision 1181/2004, *Monitorul Oficial* 690, 30 July 2004.

<sup>78</sup> Law on SRR and SRTV, art. 20-27.

<sup>79</sup> Law on SRR and SRTV, art. 27.

- approval of the organisational structure of the station and of any economic and personnel restructuring;
- approval of the station's draft budget and its plan of investments, and supervision of the budget spending;
- approval of the internal norms of organisation;
- approval of cooperation with private or State companies, and of proposals for signing agreements with similar broadcasters abroad; and
- approval of sales of programmes and other commercial activities.

The Council members are appointed by Parliament for a four-year mandate. They are forbidden to sit on councils of other corporations or have shares in companies that have business relationships with SRTV during this time. The law does not stipulate criteria on the members' relevant experience. Candidates are proposed as follows:<sup>80</sup>

- eight by the joint parliamentary groups in the Parliament's two chambers, in accordance with the political configuration and their representation in Parliament;
- one by the President of Romania;
- one by the Government;
- two by the station's personnel based on the results of an internal poll; and
- one by the national minorities parliamentary groups.

The Council's President is appointed directly by Parliament for a four-year period. Even if it proves that the President is incompetent, the Council of Administration has no legal tool to fire its President.

Amendments to the Law on SRR and SRTV in 1998<sup>81</sup> brought some important changes to the procedure for appointing Council members.

The amended law transferred the entire power over the station into the hands of the president of the Council of Administration who became at the same time the station's general director. His direct election by Parliament provoked controversy and criticism by media observers, who accused the State of intruding even more into the station's independence. "Parliament goes so far as to directly appoint the president of the public

---

<sup>80</sup> Law on SRR and SRTV, art. 20.

<sup>81</sup> Law no. 41/1994 on the organisation and operation of the Romanian Radio Broadcasting Corporation and of the Romanian Television Corporation; last amended by Law 124/1998, republished in *Monitorul Oficial* 636 of 27 December 1999.

service television”, observed Alina Mungiu-Pippidi, a media expert and the executive director of the Romanian Academic Society in Bucharest.<sup>82</sup>

Moreover, the amended law stated that the public broadcasting corporation’s budget must be submitted to Parliament for approval, together with the station’s annual report. If either the report or budget is not approved, the Council of Administration is sacked right away. The same rule applies to the public radio broadcaster SRR, which has its own Council of Administration. SRR experienced the firing of its council back in December 2001, shortly after the 2000 legislative elections, when the then newly-elected Parliament removed the public radio station’s Council of Administration. The move was considered political as the former PDG of the public radio SRR, Andrei Dimitriu, and the members of the Council, were in majority representing the opposition.<sup>83</sup> Dimitriu and the Council of the Administration were dismissed in the middle of their four-year mandate. Dragoş Şeuleanu, known for his close connections to PSD, was appointed instead.

TVR’s Managing Committee is composed of the Director General and of seven members. Its duties are:<sup>84</sup>

- to carry out the resolutions and decisions of the Council of Administration;
- to draw the programme strategy and submit it for approval;
- to approve the appropriation and spending of the station’s money and the commercial and financial transactions within the limits of the competencies approved by the Council of Administration; and
- to endorse the employment and personnel standards for approval by the Council of Administration.

The Managing Committee includes the following officials: PDG, News Director, Programming Director, Director of Production, Finance Director, Marketing Director, Technical Director, and IT&C Director. The Council of Administration appoints, via a contest, the members of the Managing Committee and the management of the TVR’s regional stations. The appointment of other managers in TVR is made directly by the PDG.<sup>85</sup>

---

<sup>82</sup> Alina Mungiu-Pippidi, “From State to Public Service: The Failed Reform of State Television in Central Eastern Europe”, in Miklos Sukosd and Peter Bajomi-Lazar (eds.), *Reinventing Media – Media Policy Reform in East-Central Europe*, Central European University Press, 2001, p. 45, (hereafter, Mungiu-Pippidi, *From State to Public Service*).

<sup>83</sup> IREX, *Media Sustainability Index 2002*, Romania country chapter, Washington, International Research & Exchanges Board, June 2003, available on the IREX website at <http://www.irex.org/msi/index.asp> (accessed 1 April 2005), (hereafter, IREX, *MSI 2002*), p. 4.

<sup>84</sup> Law on SRR and SRTV, art. 31-33.

<sup>85</sup> Valentin Nicolau, SRTV’s PDG, in comments submitted to EUMAP on the present report in draft form, Bucharest, 18 November 2004.

A closer look at the television's current organisational chart will reveal that all the key directors of channels TVR1, TVR2, and TVR International occupy interim positions. Brîndușa Armanca, a former TVR journalist and regional director, observes that, "Two main explanations can be drawn up: first, being interims, these directors can be appointed without public contests; second, they can be made dependent on the PDG's goodwill."<sup>86</sup> This practice has ceased recently.

Suspecting that in 2004 Valer Chiorean was illegally appointed, without a contest, the news editor in chief of the Cluj-based TVR regional studio, a local journalist, Mihai Miclăuș, asked the station's management to explain the move. Because Miclăuș did not receive any answer, he sued SRTV for lack of transparency at the European Court of Human Rights in Strasbourg. He suspects that the appointment of some employees of the Cluj studio, including its director, was based on political criteria. Fearing that the station would become politicised, several news editors and reporters left the station in 2004.<sup>87</sup>

The tasks of the PDG are:<sup>88</sup>

- to manage the corporation, together with the Managing Committee;
- to implement decisions of the Council of Administration; and
- to approve the hiring of specialists for a limited period to carry out various studies and work necessary for the television.

Alina Mungiu-Pippidi, former director of TVR, states that: "The most important issue regarding the independence of public service television concerns the appointment (and dismissal) of managers and the limits of their authority".<sup>89</sup>

The Law on SRR and SRTV does not provide for any specific fines and sanctions to be imposed on the public broadcaster. Generally, they are similar for all the broadcasting operators (see section 3.3). The level of fines is low. For example, during the broadcasting of the European Football Championship in 2004, the CNA warned TVR several times about broadcasting commercials during the transmission of the game, which is forbidden. In another case, the CNA warned TVR on 24 May 2004 that it had breached the Law on the Election of Local Public Administration, which states that both public and commercial television stations are forbidden to broadcast political

<sup>86</sup> Interview with Brîndușa Armanca, director of TVR Timișoara 1997–2003, currently editorial coordinator director of *Ziua* daily, Bucharest, 20 June 2004.

<sup>87</sup> OSI roundtable comment, Bucharest, 18 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 non-governmental organisations. This final report takes into consideration their written and oral comments.*

<sup>88</sup> Law on SRR and SRTV, art. 28.

<sup>89</sup> Mungiu-Pippidi, *From State to Public Service*, p. 41.

statements in programmes other than the specialised election broadcasts.<sup>90</sup> On 26 May 2004, TVR1 and TVR2 each received a minimum level fine of ROL 25 million (€625) for having broadcast a political advertising spot featuring the leader of the right-wing Greater Romania Party, Corneliu Vadim Tudor, which lasted 39 seconds, nine seconds longer than the legal limit on the length of political advertisements on television.

## 4.5 Programme framework

### 4.5.1 Output

In 2002, news and information, talk-shows and interviews accounted for 16.3 per cent of the public television programming. Some 26.7 per cent of the output was devoted to entertainment programmes and 17.6 per cent to movies and series.<sup>91</sup> As shown below in Table 9, in 2003, entertainment filled a hefty portion of the public television schedules. For example, there were 44 per cent more entertainment programmes than social and economic reports.

**Table 9. Output broadcast production by TVR – breakdown by genre (2003)**

	Number of hours/year
Entertainment	2,200
Social and Economic	1,466
Religion, history	520
Education-science	234
Children, youth	166

Source: SRTV<sup>92</sup>

In 2003, SRTV stated in its annual report that it broadcast a total of nine talk-shows September – December 2003 because such programmes helped the station fulfil its public service mission to uphold pluralism and free expression of ideas.<sup>93</sup> One of these talk-shows was “*Maşina de tocat*” (“Grinding Machine”) with Stelian Tănase, a debate on social and political issues, which was taken off the air overnight by SRTV’s management at the end of 2003 ostensibly because of low ratings. However, there were suspicions that it was scrapped for political reasons. (See section 4.6). Other talk-shows included “*Cafeneaua politică*” (“The Political Café”), focusing on topics of general interest, “*TVR în direct*” (“TVR Live”) and “*Interes General*” (“General Interest”)

<sup>90</sup> Law no. 67/2004 on the election of the Local Public Administration, *Monitorul Oficial* 271 of 29 March 2004, art. 60.

<sup>91</sup> Carat, *The Year Book 2002*, in IMCA, *The broadcasting landscape*, p. 24.

<sup>92</sup> SRTV, *Annual Report 2003*, chapter 6.B (The Editorial Activity in SRTV. Production Structure and Programming Strategy).

<sup>93</sup> SRTV, *Annual Report 2003*, Section 3, “Services offered by the public television”, chapter 1.



dealing with issues such as protection of consumers, local administration, economic and financial issues.

Besides TVR Cultural, which has by definition an exclusive cultural programming, the first and second channels of the public television also hosted programmes devoted to art and literature, such as *“Ex Libris”*, and to science and technology, such as *“Teleenciclopedia”* (“Tele-Encyclopaedia”). However, the most popular programmes on public television are the local reality-show formats such as *“Surprize, surprize”* (“Surprises, surprises”), which snaps up an average 30.7 per cent audience share.

#### 4.5.2 Programme guidelines

TVR is governed by more regulations than any commercial television station. These include several internal sets of norms regulating the organisation and functioning of the public broadcaster as well as the status of journalists working with TVR. Such regulations include norms on bringing technical equipment into TVR’s headquarters, selling copyrights on various programmes and even norms on reporting thefts in the institution. The station has also an internal Commission for Ethics and Arbitration (CEA) and an Ombudsman (see section 4.6).

In terms of programming, the station has in place a set of rules on editorial production containing the main principles regarding budget spending on in-house production and technical investments for each of the station’s four channels. It also has rules on the organisation and functioning of the station’s council of programming, an internal body in charge of approving the generic programme schedules, offers of broadcasting various events and shows and the list of special events and extra costs for producing and broadcasting programmes.

The impartiality and accuracy of the news programmes are required by the Audiovisual Law and by a CNA Decision of 2004,<sup>94</sup> with which all broadcasters must comply. Apart from this, TVR’s editorial activity is governed by the Law on SRR and SRTV, which requires the public broadcaster to protect the station’s journalists from attempts to impair their professional independence and harm their rights; to ensure they can do their job under “conditions of professional, moral or juridical responsibility”; and to enable them to settle arguments regarding application of the station’s statute by internal arbitration.<sup>95</sup> The SRTV Journalists Statute articulates some principles for providing accurate and impartial news and forbids journalists to be involved in any way with political parties, or to manipulate and misinform people. There are no “how-to” guidelines, nor any methodology on how the accuracy and impartiality principles should be applied.

<sup>94</sup> CNA Decision no. 40/2004 concerning the necessity to ensure that the public is correctly informed, *Monitorul Oficial* 234 of 17 March 2004.

<sup>95</sup> Law on SRR and SRTV, art. 10.

Despite this multilayered system of set of norms and commissions, independence and objectivity in the station's output is, however, still lacking. Brîndușa Armanca, an award-winning journalist who worked with TVR commented that "all these regulations are nothing but appearance",<sup>96</sup> adding that, despite TVR's obligation to broadcast unbiased and accurate information, its entire activity is influenced by the political will and interests of the persons in managing positions. Armanca highlights in particular that the Council of Administration is a body created by political calculation:

According to the law, the Council of Administration should include members who are equally accepted by all parliamentary parties, but who are not politically involved. In fact, they are all dependent on politicians either for certain benefits or simply because they have to pay for old debts.

The key position in the Council, the President-Director General (PDG), is usually filled by someone close to the political machinery. SRTV's current PDG, Valentin Nicolau, is well known for his close ties to the political establishment. In 2000, he took over at TVR's helm directly from the position of Prime Minister Adrian Năstase's advisor on cultural issues. However, in an interview with the Romanian State news agency Rompres in April 2003, the Cabinet's spokeswoman, Despina Neagoe, denied Government interference in television business, arguing that the Councils of Administration of both SRTV and SRR had been appointed by Parliament.<sup>97</sup>

Another issue is that some of TVR's staff responsible for coordinating programmes are relatives of public servants working with former Government bodies.<sup>98</sup> For example, when a prime-time news-host, Dana Războiu, became the wife of a PSD Minister in the former Government, her presence on the TV screen stirred controversy. It was not the only case of journalists working for the public broadcaster who had family members in Government institutions.

Also, the protraction in clarifying the situation of TVR's employees who collaborated with the former communist secret police *Securitate* has marred the station's reputation. Alina Mungiu-Pippidi highlights that "revealing the identity of TVR's employees who used to work for the former [communist secret police] *Securitate* is an important issue".<sup>99</sup> In July 2004, some domestic media reported that many of TVR's employees used to collaborate with the Romanian former secret police. Some of them now hold high rank in the station's editorial department. According to the daily newspaper *Evenimentul zilei*,

<sup>96</sup> Interview with Brîndușa Armanca, 20 June 2004.

<sup>97</sup> Associated Press report, "Journalists resign over editorial diktat", available on the Press Association website at [http://pamediapoint.press.net/services/media\\_news/livenews/romania080403.htm](http://pamediapoint.press.net/services/media_news/livenews/romania080403.htm) (accessed 18 September, 2004).

<sup>98</sup> Comment from the roundtable "TVR, the image of your time?", organised by Freedom House, the Centre for Independent Journalism and Media Monitoring Agency (AMP), in Bucharest on 19 July 2004 (hereafter, Roundtable – "TVR, the image of your time?").

<sup>99</sup> Roundtable – "TVR, the image of your time".

this includes Paul Șoloc, editor-in-chief of the Social and Economic Newsroom and coordinator of the electoral programmes, and Nicolae Melinescu, TVR1's correspondent in Washington, D.C.<sup>100</sup> To these accusations, TVR's PDG has replied:

Until now, the CNSAS [the National Council for the Study of *Securitate* Archives] didn't deny or confirm the information written in *Evenimentul zilei*. In this respect, the Romanian Television employees wrote a statement on their own responsibility about their potential collaboration with the former political police. These declarations were centralised by the Human Resources Department and are included in the personal files of the TVR's staff.<sup>101</sup>

According to the SRTV's Organisational and Functioning Regulations (ROF),<sup>102</sup> former employees and collaborators with the *Securitate* are forbidden from working for SRTV, and all SRTV employees must sign a declaration stating that they did not work with the *Securitate*. If an employee does not do that, the SRTV must ask the CNSAS to reveal whether that employee worked with the *Securitate* and according to the Law 187/1999, the CNSAS is obliged to offer this information.<sup>103</sup>

#### 4.5.3 Quotas

Legislation specifically obliges the public broadcaster to host programmes dedicated to national minorities, but no quota is imposed. The Law on SRR and SRTV states that national minorities should have a representative in the public radio and television councils of administration, a requirement which has been complied with. This is the only requirement regarding employment of representatives of ethnic minorities by the public broadcaster.

Romania has 18 legally recognised ethnic minorities. The Hungarian community is the largest, with 1.5 million, followed by the Roma minority. Other ethnic minorities are Ukrainians, Germans, Russians, Serbs, Turks and Tatars.<sup>104</sup> Minority programmes

<sup>100</sup> A. Pora, "Televiziunea și Securitatea lui Ceaușescu", ("Television and Ceaușescu's Security"), *Evenimentul Zilei*, 24 May 2004. (Note: On 24 May 2004, the daily *Evenimentul Zilei* started publishing a series of articles revealing the identity of former collaborators with the Romanian secret police.)

<sup>101</sup> Valentin Nicolau, SRTV PDG, in comments submitted to EUMAP on the present report in draft form, November 2004.

<sup>102</sup> SRTV Organizational and Functioning Regulations, Chapter V.2. Incompatibilities, (hereafter, SRTV Organizational and Functioning Regulations).

<sup>103</sup> Law no. 187/1999 on the access to the personal file and the disclosure of the *Securitate* as a political police, *Monitorul Oficial* 605 of 9 December 1999, (hereafter, Law on access to personal files). The text of the law is available at <http://www.cdep.ro/legislatie/eng/vol44eng.pdf> (accessed 10 April 2005).

<sup>104</sup> According to the most recent census released by the National Institute for Statistics INSSE, *Recensământul populației și locuințelor*, (*Census of population and dwellings*), 18-27 March 2002), National Institute for Statistics, 18-27 March 2002, available on the INSSE website at <http://www.insse.ro/rpl2002rezgen/14.pdf> (accessed 18 September 2004).

represent on average one per cent of all TVR's programmes. The bulk of broadcasting time devoted to minority programming is represented by programmes for the Hungarian minority. The Hungarian department in TVR produced and broadcast about 210 minutes of programmes per week in 2003. For the German minority there are two programmes on TVR1 and TVR2 channels (together 145 minutes a week). The Roma minority has 60 minutes per week.<sup>105</sup> The other minorities are devoted a fluctuating number of broadcasting minutes, depending on the events TVR is invited to cover. SRTV also has editorial offices for minorities in its regional studios in Timișoara and Cluj.<sup>106</sup>

A controversial legal proposal, initiated in 1997 but not yet approved, calls for dubbing or subtitling of all programmes broadcast in minority languages, including dispatches from various scenes and live broadcasts. This proposal drew criticism from staff as dubbing or translating live programmes is very costly and technically difficult. Already most of the minority programmes are subtitled. For example, some 95 per cent of programmes in Hungarian were subtitled in 2003, according to the station's own report.

Since mid 2002, the Audiovisual Law obliged television broadcasters to devote ten per cent of their programming to European independent production. Also, they must allocate at least ten per cent of their programming budgets to independent production. After Romania joins the European Union (accession is scheduled for 2007), European works must fill over 50 per cent of the stations' broadcasting. Until then, "a significant proportion" of the stations' programming must be Romanian productions. Obligated since 2002 to meet the quotas of European works, SRTV complies with all these regulations. It produces 75.5 per cent of its broadcast programmes, imports 20 per cent from Europe and only nine per cent from the U.S. As for its own production, 77 per cent of SRTV's content is produced in-house, 20 per cent is purchased, and four per cent represents co-productions.<sup>107</sup>

---

<sup>105</sup> SRTV, *Annual Report 2003*, section 6, "SRTV Editorial Activity", chapter B "Production Patterns and editorial strategy".

<sup>106</sup> Valentin Nicolau, SRTV PDG, in comments submitted to EUMAP on the present report in draft form, November 2004.

<sup>107</sup> TBI Yearbook 2003, quoted in IMCA, *The broadcasting landscape*, p. 56.

## 4.6 Editorial standards

Journalists working with the public television are obliged, according to the Code of SRTV Journalist to:<sup>108</sup>

- be guided by truth and public interest in their reporting;
- reject any political, social or economic intrusion intended to misinform or manipulate people;
- guarantee citizens' right to receive accurate information, and to reject any propaganda or attempts at ethnic, racial or sexual discrimination;
- use the presumption of innocence in its reporting;
- ensure the coverage of all sides involved in a dispute;
- not broadcast false or not thoroughly verified information; to check information by using several independent sources;
- air a reply or rectification in the same conditions as the original report if some broadcast information is proven false;
- separate facts from opinion; factual coverage will respect the principle of accuracy and the broadcasting of opinion must be guided by the "principle of honesty";
- not air charges against anyone without the possibility for the incriminated person to present their point of view; and
- not use any illegal or immoral means to obtain information.

Until recently, both the Code of SRTV Journalist and the TVR Organisational and Functioning Regulations forbade the station's journalists from publicly expressing "negative opinions" and "critical opinions" about the station in general and about the functioning of the public service television, unless they addressed the SRTV's internal management first. The management of TVR's regional studio in Timișoara, western Romania, used these articles to dismiss the journalist Brîndușa Armanca, who had reported that there were political pressures on public television. The Media Monitoring Agency (AMP) considers that,

all the stipulations within the SRTV Organizational and Functioning Regulations and Television Journalist Code that limit the journalists' right to express critical opinions about the public station are abusive and run counter the public interest. These stipulations disregard the fact that SRTV

---

<sup>108</sup> Code of the SRTV Journalist, March 1999, available at <http://www.tvr.ro/org/ombudsman/statut.php> (accessed 17 April 2005).

is a public institution, thus the right to free expression of its employees should come first in public interest matters.<sup>109</sup>

Very few journalists in TVR have the courage to speak openly about the situation in the public television, while internal rules forbid them to publicly express “critical opinions”. Some of them told EUMAP, on condition of anonymity, that the professionals at the station who try to do their job impartially often choose to avoid political coverage.

The body at SRTV that is responsible for maintaining editorial standards is the Commission for Ethics and Arbitration (CEA), created in March 1999. It comprises seven members: one representing the Council of Administration, one representing the PDG, and five proposed by the journalists at the public television and accepted by the Council of Administration. The CEA is independent from the station’s Council of Administration and has its own Organisation and Functioning Regulatory Paper. Viewers can send complaints about programmes directly to the producers of the broadcasts, who are obliged to reply. If the complaint is not answered, the viewers can complain again directly to the CEA, which has to investigate the issue independently. Complaints related to breaches of the Code of SRTV Journalist can also be sent directly to the CEA.

Besides the CEA, SRTV has an Ombudsman Office, which is formally supposed to monitor independently the infringements of the Code of SRTV Journalist. It also receives and analyses complaints from viewers.

Although the two bodies, the Commission and the Ombudsman, work independently, their activity is interrelated as the Ombudsman submits its reports to the Commission, which files its own reports that are then submitted to the Board of Directors and the PDG. Only in very serious cases does the Commission submit its reports to the Council of Administration. Neither body has shown itself to be clearly in favour of eliminating censorship. On the contrary, TVR journalists feared the eventual sanctions which CEA might impose, on the basis of internal regulations, upon unruly staff. A parliamentary commission appointed in early 2005 to expressly look into the activities of the public service broadcaster was expected to find whether the Ombudsman and the CEA have done their job professionally and independently. However, SRTV insiders told the parliamentary commission in March 2005 that the Ombudsman did not truly fulfil its tasks.

On 6 December 2004, a week before the run-off in the presidential elections, the situation at SRTV became explosive. A reporter working in TVR’s news department, Alexandru Costache, sent an open letter sent to the daily newspaper *Evenimentul Zilei*, denouncing the censorship inside TVR, writing that, “We got tied, like with an umbilical cord, to PSD. And not so much to PSD, but to [Prime Minister] Adrian

---

<sup>109</sup> AMP–FreeEx Programme, *Libertatea Presei în România 2003*, (*Press Freedom in Romania in 2003*), Bucharest, March 2004, p. 15, (hereafter, AMP–FreeEx Programme, *Press Freedom*).

Năstase, in fact”.<sup>110</sup> Costache’s testimony added to many other accusations of censorship by former SRTV’s employees. TVR’s PDG, Valentin Nicolau, the former Programming Director, Titi Dincă, and the news director, Lucian Sârb, strongly denied any kind of censorship at TVR.

Five other journalists joined Costache in his protest, despite SRTV’s internal regulations forbidding the station’s employees to publicly express any kind of “critical opinions”.<sup>111</sup> Raluca Stroe Brumariu, a news producer with TVR1, was quoted in the local media as saying that control by management over the programming content in the public television is the general practice. Reporters usually come to producers asking if they can air that report.

Prior to the presidential elections in November and December 2004, various local media watchdogs accused the public broadcaster of biased, negative coverage of the opposition candidate for presidency, Traian Băsescu.<sup>112</sup> In February 2005, organisations such as the Media Monitoring Agency (AMP) and the Convention of Mass-media Organisations (COM), grouping over 40 media NGOs in the country, asked SRR’s and SRTV’s management to resign, according to a joint press release on 4 February 2005. COM asked Parliament to investigate the allegations of bias and SRTV’s accusations and set up a working group to propose new SRR and SRTV legislation. At the time of writing, a special Parliamentary commission was working on looking into the allegations. A preliminary report by the SRTV’s CEA stated in December 2004 that Costache’s accusations were supported by 22 out of the station’s 30 news reporters. However, the conclusion drawn by CEA was somewhat vague. CEA’s report revealed “faulty internal communication management”, the station’s head Valentin Nicolau stated in an informal meeting with COM’s representatives on 25 January 2005 attended by EUMAP.

After taking office as President of Romania, Traian Băsescu vehemently denied reports in the media that he planned to replace the public broadcaster’s management, which had the reputation of sympathising with the previous regime. Băsescu said that firing SRTV’s leadership was not among his presidential duties. On 3 February 2005, as a symbolic gesture expressing the rupture with the past, he ordered the Special Telecommunication Services (a State-controlled unit specialising in gathering telecommunications-related intelligence for the public authorities) to cut the “red line” between the presidential office and SRTV’s PDG, which has functioned since

<sup>110</sup> A. Şchiop and G. Trandafir, “Censorship in TVR” (Cenzura din TVR), *Evenimentul Zilei*, 6 December 2004, available (in Romanian) at [http://www.expres.ro/topstory/?news\\_id=173427](http://www.expres.ro/topstory/?news_id=173427) (accessed 30 March 2004).

<sup>111</sup> SRTV Organizational and Functioning Regulations, Chapter V.7, point 9; and Chapter V.8, point 5. Also the Code of the SRTV Journalist, art. 26.

<sup>112</sup> Băsescu won the presidential run-off on 12 December 2004 and became Romania’s new president. He beat in the second round of the presidential elections the then Prime Minister Adrian Năstase.

communist times. On 7 February 2005, Nicolau asked Parliament to accept his resignation starting from the day when a new Law on SRTV will be promulgated.<sup>113</sup> After talks with the Parliamentary Media Commission in the Senate, Nicolau pledged that he would resign by the end of 2005.

Despite the Code of the SRTV Journalist and a collective labour contract guaranteeing staff rights, at least in theory, respected professionals at TVR have been fired in the past because they refused to obey various kinds of pressure exerted within the station. For example, Brîndușa Armanca, former head of the station's local studio TVR Timișoara, saw her labour contract with TVR terminated in early 2004 "on disciplinary grounds". Ironically, a few months later, she received the prize for the best Romanian-European co-production (by TVR2 and Danish DK4) awarded by the Romanian Association of Television Professionals (APTR).<sup>114</sup> Armanca sued SRTV's management and won three separate lawsuits against the station. Another legal dispute concerning the termination of her labour contract is ongoing.

Armanca's case is not unique. Stelian Tănase, a well-known political commentator, saw his talk-show "*Mașina de tocat*" (Grinding Machine) taken off the air on public television. He said that the show was scrapped due to political pressures. SRTV's Nicolau said that Tănase was well paid for his show, but according to the contract he signed with TVR, his show had to bring a high audience.<sup>115</sup> However, press freedom advocates, such as Mircea Toma, director of the Media Monitoring Agency, still claim that the move was politically motivated.

Jena Gheorghiu, former TVR2 director, stated in 2004 that lack of transparency is the rule rather than exception at TVR.<sup>116</sup> As director of the second channel, she was forbidden to talk to journalists from other stations. She summed up her experiences by saying, "power has been concentrated in the hands of a single person who surrounded himself with former political police, people in charge of securing a good image for the governing party in an election year [2004]". Gheorghiu noted that the station even censored a telephone poll carried out during a live programme, because the results were unfavourable to the Government at the time. TVR's management contacted the programme's producers, ordering them to stop the phone poll. In 2004, Gheorghiu observed, "In my opinion, a law of silence is functioning at TVR, it's a kind of clique, a psychological blackmail."

Problems related to lack of editorial independence were also reported at the public radio. SRR General Director, Dragoș Șeuleanu was accused of influencing and

<sup>113</sup> V. Nicolau, TVR Press Release, Bucharest, 7 February 2004, available (in Romanian) at [http://www.tvr.ro/org/comunicate/crp\\_comunicate.php?id=413](http://www.tvr.ro/org/comunicate/crp_comunicate.php?id=413) (accessed 31 March 2005).

<sup>114</sup> APTR awards prizes for the best television works every year.

<sup>115</sup> Valentin Nicolau, SRTV PDG, in comments submitted to EUMAP on the present report in draft form, November 2004.

<sup>116</sup> Roundtable – "TVR, the image of your time".



controlling editorial policy. In 2003, Rodica Madoşa, a former journalist with the news department in SRR stated that:<sup>117</sup>

The atmosphere in Radio Romania has seriously deteriorated. This degraded environment, characterised by suspicion, tension and fear is one of the ‘accomplishments’ of the present management. [...] Many of the 07:00 news bulletins are exclusively produced by Mr. Şeuleanu. [...] The bulletin’s topics are dictated by Mr. Şeuleanu.

In December 2004, after the elections, a group of 11 journalists from SRR denounced the censorship within SRR. They set up the Professional Initiative Radio Romania (IPRR), whose main aim is to improve the professional standards in the public radio. At a press conference on 19 January 2005, the group of protesting journalists made public an audio recording of PSD senator Adrian Păunescu telling an SRR reporter how to write the news report about him.<sup>118</sup> Şeuleanu rejected all the accusations and said that he had no intention of resigning. According to monitoring reports carried out by IPRR in February 2005, during the management of Şeuleanu, SRR’s credibility went down.<sup>119</sup> IPRR accused SRR’s management of carrying out “pseudo-reforms”, instilling fear among employees who want to do independent, unbiased reporting, and employing people close to political circles. IPRR also alleged that there were irregularities in spending public money by SRR’s management.

The European media freedom organisation Reporters Without Borders has revealed a series of cases of censorship in the Romanian media and concluded that “the problem of information pluralism is particularly sensitive within the State-owned radio sector”.<sup>120</sup> However, the CNA president Ralu Filip replied that no evidence for this has been offered. For his part, Şeuleanu explained that the allegations were made by a minority of journalists who were uncomfortable with his policy for reforming and modernising SRR.<sup>121</sup>

In a report issued on 25 February 2004, the US Department of State sharply criticised the pressures on Romanian media and in particular “the pro-government bias and self-censorship inside the State-owned Radio Romania”.<sup>122</sup> Senior foreign officials and

<sup>117</sup> R. Turcescu, “Radio România a devenit Radio Şeuleanu” (“Radio Romania has become Radio Şeuleanu”), in *Evenimentul Zilei*, 17 August 2003.

<sup>118</sup> Audio recording presented by IPRR at a press conference, Bucharest, 20 January 2005.

<sup>119</sup> IPRR, press release, Bucharest, February 2005.

<sup>120</sup> Reporters without borders, *Caught between Old Habits and Democratic Strides: Romanian Press at a Crossroads*, Paris, April 2004, p. 13, (hereafter, RWB, *Caught between Old Habits and Democratic Strides*).

<sup>121</sup> RWB, *Caught between Old Habits and Democratic Strides*, p. 16.

<sup>122</sup> US Department of State, *2003 Human Rights Report on Romania*, 25 February 2004, (hereafter, US Department of State, *2003 Human Rights Report*), Section 2.a. Respect for Civil Liberties – Freedom of Speech and Press, available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27860.htm> (accessed 30 March 2005).

diplomats working in Romania have also expressed great concern regarding the worsening situation of the media.<sup>123</sup> Eventually, in February 2005, CNA representatives agreed that the resignation of SRR's PDG could solve the internal crisis in the public radio.<sup>124</sup> The station's management did not react to these comments.

## 5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING

Despite strict restrictions on ownership concentration, the commercial television market in Romania has become more and more polarised, with owners enjoying dominant positions or steered by political interests suspected of hiding behind broadcasting companies' trustees. Besides two existing powerful media conglomerates, new media groups started to consolidate around television stations. More regulations of the accuracy of television coverage have been enforced, but balanced reporting is hard to achieve in a hostile economic and political environment. Cross-ownership concentration can hardly be monitored while the vertical concentration is not regulated.

### 5.1 The commercial broadcasting system

Estimated at around €4-6 in net value, annual per capita advertising expenditure in Romania is modest. According to the business weekly *Capital*, the total net advertising spending reached €128 million in 2003, of which 56 per cent went to television. According to information from television operators offered to EUMAP, television pulled in €70 million in 2003 and €90 million in 2004.<sup>125</sup> There is a significant imbalance between the low amount of advertising spending and the relatively high number of media outlets in the country. To cover costs, many outlets resort to threatening advertisers with negative coverage, and accept ads from State-owned companies and public institutions or "sponsorships" from business moguls who usually have close ties to political parties. Most owners are not necessarily profit-driven, but use their outlets to influence the government in their favour and to attack their economic and political foes.<sup>126</sup>

---

<sup>123</sup> Conference organised by Romanian Think Tank, an NGO aiming to improve the Romanian public's understanding of the fundamental institutions of a free society, in Bucharest, 7 July 2004.

<sup>124</sup> CNA, press release, Bucharest, 9 February 2004.

<sup>125</sup> CME, *Annual Report 2004*, filed with the Securities and US Exchange Commission, Washington, 15 March 2005, p. 5. (NB. Sources from other private televisions in Romania confirmed the estimation for EUMAP).

<sup>126</sup> IREX, *MSI 2003*, p. 12.

Media outlets are subject to the same tax regulations as other private companies. The absence of any financial incentives or economic protection makes the Romanian media vulnerable to political and economic interests. The 2003 Media Sustainability Index published by IREX notes, “Romanian media generally are not profitable businesses; in an overcrowded market where the public has low purchasing power, media outlets struggle to survive”.<sup>127</sup> Owners who operate other businesses usually use the revenues from their profitable firms to subsidise their media operations, according to the same source. This applies rather more to local television stations. Most of the 140 local television stations retransmit programmes of the national channels, airing only a few hours of their own programming, chiefly live talk-shows, which are less expensive to produce, and short local news bulletins. In many cases, politicians are behind these channels. In the town of Constanța, the mayor Radu Mazăre, a former journalist turned MP, remained one of the most influential media owners locally, although he transferred in 2004 the ownership of his media empire to his friend Sorin Strutinsky. In Bacău, former PSD mayor Dumitru Sechelariu bought in 2002 Alfa TV and Alfa radio stations. In Piatra-Neamț, a small town of about 100,000 inhabitants, two politicians still own most of the local television stations. In March 2004, almost half of the companies operating local television stations had direct links with politicians.<sup>128</sup>

Desperately lacking financial resources, local television stations have become open to all kinds of compromises, which in the end encroach upon their editorial independence. A local television station in the town of Cluj has become notorious for charging money from the guests to its talk-shows. In many cases, local stations are under the thumb of local governments. There are examples of programmes on local stations that were scrapped at the order of certain regional leaders. In February 2004, Ioan Romeo Roșianu, the editor in chief of the local station Canal 7 TL+ in the town of Baia-Mare, saw both his talk-show and labour contract terminated after he broadcast a series of reports on how the public money was spent by the mayor Cristian Anghel. After Roșianu was fired, the station received an advertising contract from the town hall.<sup>129</sup>

On the other hand, despite the high number of outlets in the country, the increasing number of mergers has led to cross-ownership concentration. In its 2003 Regular Report on Romania’s progress toward accession, the European Commission stated that: “The number of genuinely independent media sources is limited and ownership is

<sup>127</sup> IREX, *MSI 2003*, p. 12.

<sup>128</sup> P. Barbu and P. Obae, “Televiziunile locale se mișcă după telecomanda PSD” (“Local television stations play according to PSD’s remote control”), in *Capital*, 18 March 2004.

<sup>129</sup> Convention of Mass-media Organisations (Convenția Organizațiilor de Media – COM), press release, Bucharest, 18 February 2005.

highly concentrated, which has resulted in a degree of self-censorship”.<sup>130</sup> One year later, the Commission expressed even more serious concerns:

Many media organisations are not economically viable and their continued existence can depend on the support of political or business interests. External studies have concluded that journalists’ reporting can often be influenced by financial inducements leading to self-censorship.<sup>131</sup>

Most television stations on the market were launched with the aim of gaining influence in politics and business. Only a few stations had strong business plans. Journalists often have to fight management restrictions or censorship and scarce resources for intellectual property. Journalists’ low wages also contribute to the media’s general instability and lack of independence. Unlike some television entertainment stars, who may earn up to €150,000 annually, a news reporter may work for €3,000 a year. Moreover, some staff are not legally employed as their employers do not want to pay for back taxes or holidays. Although the Labour Code protects employees, it did not help the television staff, as a large part of the stations’ employees do not have working contracts, but choose to work for the station via their own, small companies, set up expressly for this purpose.

## 5.2 Public service obligations

Freedom of expression and the right to information are guaranteed by the Constitution and enforced by specific laws and regulations. As Romania has committed itself to respect international democratic standards, media content must guarantee the unrestricted flow of information and ideas. Monica Macovei, former president of the Romanian Helsinki Committee, now Minister of Justice, notes that: “In a democratic society, media freedom is crucial for an informed citizenry and the audiovisual media have means of conveying through images meanings that print media are not able to impart”.<sup>132</sup>

All Romanian broadcasters must ensure objective information by correctly presenting facts and events. They are also obliged to “favour” free formation of opinions by the Audiovisual Law, which requires broadcast programmes to uphold political and social pluralism, cultural, linguistic and religious diversity, information, education and public entertainment. It also forbids censorship of any kind in broadcasting and any kind of

<sup>130</sup> European Commission, *2003 Regular Report on Romania’s progress toward accession*, Brussels, 5 November 2003, p. 26, available on the European Commission website at [http://europa.eu.int/comm/enlargement/report\\_2003/pdf/rr\\_ro\\_final.pdf](http://europa.eu.int/comm/enlargement/report_2003/pdf/rr_ro_final.pdf) (accessed 18 September 2004).

<sup>131</sup> European Commission, *2004 Regular Report on Romania’s progress toward accession*, Brussels, 2004, p. 25, available the European Commission at <http://www.euractiv.ro/www/storage/analize/128.pdf> (accessed 7 February 2005).

<sup>132</sup> M. Macovei, “An Analysis of Media Law and Practice”, ARTICLE 19 Report, Chapter 2, Romania’s Obligations Under International Law (on-line version), July 1997, the Internet link has since been closed.

interference of public authorities or any Romanian or foreign natural or legal persons in the content or form of broadcast programmes.

A recent CNA decision forbids broadcasters to air programmes edited, presented, moderated or produced by members of Parliament, representatives of central and local public administration, staff of the presidential administration, leaders of political parties or their spokespersons, candidates running in local, parliamentary or presidential elections.<sup>133</sup> In 2003, before these restrictions became effective, Realitatea TV aired a talk-show hosted by the poet and senator, and member of the Media Commission, Adrian Păunescu who had moderated similar programmes on other television stations before.

### 5.3 Commercial television ownership

#### 5.3.1 Ownership restrictions

Current broadcasting legislation aims at limiting horizontal media concentration while permitting vertical media concentration, meaning the integration of ownership and capital across various phases in the supply chain for a media product (for example, integration of media companies and their associated production and distribution markets).

A company can own a maximum of 30 per cent of the market of the broadcasting companies nationwide, measured in audience share. More than that is considered to be a “dominant position”, which is illegal. An individual or company that becomes, directly or indirectly, a majority investor or shareholder in a broadcasting company may hold a maximum of 20 per cent of the share capital in other companies, according to the Audiovisual Law. A Romanian or foreign citizen or company may hold a maximum of two broadcast licences of the same type within the same administrative and territorial unit or area, but they are not allowed to have a monopoly.

There are no restrictions on foreign ownership. Any citizen or company can hold a broadcast licence, no matter what the origin of their capital is. This rule only came into force in 2002. Before that, for more than 12 years, foreign ownership was restricted so that only Romanian citizens and companies could control a broadcast licence. Foreigners were allowed to own only the majority stake in the station’s operating company. Romanian managers and owners benefited most from this legislation as they consolidated their position within the media outlets, most of them operated by foreign companies.

The case of the US investor Central European Media Enterprises (CME) is relevant in this respect. Until 2002, CME controlled the companies operating some commercial television and radio networks such as Pro TV and Pro FM radio. The company

<sup>133</sup> CNA Decision 40/2004 concerning the necessity to ensure that the public is correctly informed, *Monitorul Oficial* 234 of 17 March 2004, art. 3.

owning the stations' broadcast licences was controlled by two local businessmen, Adrian Sârbu (also the general manager) and Ion Țiriac. Following the 2002 legislation permitting foreigners to own both the broadcast licence and the station's servicing company, CME increased its stake in Pro TV's licence holder (nowadays Pro TV SA, previously Media Pro International), from 44 per cent to 66 per cent and then to 80 per cent, with the option to take over the entire stake by the end of 2009. In addition, CME holds a 70 per cent voting interest and share of profits in the production and subtitling company Media Vision.<sup>134</sup>

Because of these restrictions on horizontal concentration, CME had to sell 24 per cent of its radio holdings, Pro FM and Pro AM, in order to comply with the 20 per cent ceiling mentioned above. The majority owner of CME's radio holdings remained Adrian Sârbu, who is General Director with Pro TV.

Foreign media investors had to operate under the umbrella of local companies for more than a decade. According to CME's 2003 annual report, this obligation created "a risk of unfair treatment by local regulators or local courts in the event of disputes with local shareholders."<sup>135</sup> In accordance with the Audiovisual Law, the transfer of ownership in broadcasting companies is permitted only with the approval of the broadcasting regulator.

### 5.3.2 Ownership of the main commercial broadcasters

Despite the relatively high number of broadcasting outlets, there are only two powerful poles of power within the commercial television field. One was created around the businessman and politician Dan Voiculescu. The other is the partnership of American CME and the local businessmen Adrian Sârbu, who was an advisor to the Prime Minister on media issues for a short period in the early 1990s, and Ion Țiriac, a renowned former tennis player.

#### *Antena 1*

The holder of the broadcast licence for the television station Antena 1 is the company *Corporația pentru cultură și artă Intact* (CCAI), owned by the Voiculescu family. Dan Voiculescu is the key owner in the company. He is also the leader of the Humanist Romanian Party (PUR), of social-liberal orientation, which was too small to reach the five per cent threshold for entering Parliament<sup>136</sup>. Therefore, PUR joined the ruling Social Democratic Party (PSD) on 5 September 2004. PUR managed to obtain promises

<sup>134</sup> CME, *Quarterly report Q1 2004 for the period ended 31 March 2004*, filed with the Securities and Exchange Commission, Washington, 5 May 2004, p. 13

<sup>135</sup> CME, *Annual Report 2003*, pp. 50–86.

<sup>136</sup> Brankica Petković (ed.), *Media Ownership and Its Impact on Media Independence and Pluralism*, Peace Institute and SEENPM, Ljubljana, 2004, pp. 408–409, (hereafter, SEENPM, *Media Ownership – Romania report*).

for a significant number of seats in Parliament. In exchange, the daily *Evenimentul Zilei* alleged that, “the party Antena 1 will broadcast for PSD.”<sup>137</sup> The Voiculescu family has a fortune of some €200 million, which places them among Romania’s 10 richest.<sup>138</sup> Besides media, the family runs industrial, trade and other businesses. After the 2004 elections, PUR left the alliance with PSD and joined the government formed by the former Opposition. In November 2004, Voiculescu became a senator.

In mid 2004, Dan Voiculescu appointed his daughter Camelia Voiculescu to run the station. On 5 July 2004, she became Antena 1’s board chair and general manager. Before the 2000 elections, she had worked as chair of Antena 1’s board, but she did not run the station. Antena 1’s licence operator CCAI was controlled by Dan Voiculescu, with over 40 per cent, and the company Crescent Commercial and Maritime registered in Cyprus, with 46.59 per cent of the licence-holding company<sup>139</sup>. In Ceaușescu’s times, Crescent was the communist company of choice for external trade and Dan Voiculescu used to be director. Being based in Cyprus, it was hard to find the station’s real owners who were hiding behind the company’s trustees. However, in early 2005, the station’s ownership became more transparent. The CNA revealed that Dan Voiculescu is the major owner of the station, with about 84 per cent direct and indirect equity interest. Dan Voiculescu became a senator in December 2004 and his party ostensibly joined the center-right Government coalition. Voiculescu remained the major owner of Antena 1.<sup>140</sup> Antena 1 is a generalist station targeting a family audience.

### *Pro TV group*

Pro TV is a nationwide television broadcasting network reaching approximately 77 per cent of Romania’s population of 21.8 million. It covers the entire urban population. It was launched by the US company CME, which because of the rules in place at that time needed local businessman Adrian Sârbu as licensee. Sârbu is the only cameraman who had filmed the December 1989 revolution in Bucharest and produced the first documentary film on the events for Romanian Television. Entitled “December 1989”, the documentary was broadcast on 27 December 1989. After Ceaușescu’s fall, Adrian Sârbu joined the first structure of the emerging State power and acted as advisor to then Prime Minister Petre Roman on media issues. Between July 1990 and October

<sup>137</sup> A. Mihai and D. Tăpălagă, “Partidul Antena 1 va emite pentru PSD” (“The party Antena1 will broadcast for PSD”), in *Evenimentul Zilei*, 6 September 2004, available at [http://www.expres.ro/political/?news\\_id=165573](http://www.expres.ro/political/?news_id=165573) (accessed 6 September 2004). (Note: PSD stands for the Social Democratic Party, which formed the Government from December 2000 until December 2004).

<sup>138</sup> Capital, *Top 300 Richest People 2003*, Ringier Romania, November 2003, p. 75, (hereafter, Capital, *Top 300 Richest People 2003*).

<sup>139</sup> CNA, *Cine sunt proprietarii de radio și televiziune (Who are the owners of the television and radio stations)*, a document published and regularly updated on the CNA’s website, [www.cna.ro](http://www.cna.ro), (hereafter, CNA, *Who are the owners*) and EUMAP research (based on data as of August 2004 from the National Trade Register Office).

<sup>140</sup> CNA, *Who are the owners*, as of 30 March 2004.

1990, he was Secretary of State for Media Affairs. Then he resigned and set up, with the help of other journalists, the first private daily newspaper in Romania, *Curierul Național*, and then the company Media Pro, which has become a media empire.<sup>141</sup>

After the change in legislation allowing foreign entities to own broadcast licences, Sârbu's influence in the company started to fade. After two rounds of share purchases, CME controls 82 per cent of the licensee. The other Romanian partner, Ion Țiriac, agreed in 2003 to sell all his shares in television (Media Pro International, Pro TV and Media Pro) to Adrian Sârbu, following completion of a multi-year series of payments. In 2004, Adrian Sârbu remained with less than 20 per cent of the licence company and has the "put option" (i.e. the right to sell stock to the writer of the option at a specified price and date) to sell his shares to CME.<sup>142</sup> The Pro TV network's programming strategy appeals to a mass market audience through a wide range of programming, including movies and series, news, sitcoms, telenovellas, soap operas and game shows.

One of the most influential stations in the country, Pro TV has been criticised for its obedience toward government due to the station's significant debts (€5.4 million in mid 2004) to the State budget. Pro TV was the only television station specifically criticised in the European Commission 2002 Regular Report on Romania's Progress toward Accession, which stated that the channel's operation was "dependent on the goodwill of the Romanian authorities".<sup>143</sup> Meanwhile the television has paid off its old debts, which means that the station is less susceptible to being dependent on the State authorities.

In February 1998, Pro TV's owners launched the television channel Acasă TV reaching through cable approximately 56 per cent of television households. Like its mother station, Pro TV, Acasă TV covers almost 100 per cent of the urban population via satellite and cable. The station targets a female audience, broadcasting South American telenovellas, soap operas, news, talk-shows and entertainment programming. Pro TV International, launched in 2000, broadcasts a selection of Pro TV's and Acasă TV's programming abroad via satellite.<sup>144</sup>

### *Prima TV*

Prima TV was founded in 1997 by businessman Cristian Burci who bought Amerom Television, a station with a small audience at the time. The station was re-branded and launched as Prima TV in 1997. It broadcasts news, light entertainment, movies and

<sup>141</sup> CME website, Profile of Adrian Sârbu, available at <http://www.cetv-net.com/management-board.asp?article=33> (accessed 15 April 2005).

<sup>142</sup> CME, *Quarterly Report Q3 2004 for the period to 30 September 2004*, filed with the US Securities and Exchange Commission, Washington, 4 November 2004, p. 14.

<sup>143</sup> European Commission, *2002 Regular Report on Romania's Progress toward Accession*, Brussels, 9 October 2002, p. 33, available on the European Commission website at [http://europa.eu.int/comm/enlargement/report2002/ro\\_en.pdf](http://europa.eu.int/comm/enlargement/report2002/ro_en.pdf) (accessed 18 September 2004).

<sup>144</sup> CME, *Annual Report 2003*, p. 15.



sports. It specialises in reality formats such as “*Fratele cel mare*” (“Big Brother”) or “*Vreau să fiu miliardar*” (“I want to be a billionaire”).

Cristian Burci is a Romanian businessman who left for the U.S. during communism and returned in the early 1990s. He set up an advertising business and soon extended to media business, broadcasting production houses, advertising campaigns (including ads for State-owned institutions).<sup>145</sup> He was said in the media to have close ties with PSD leaders. But Prima TV’s lawyer Alin Drinceanu denied this, saying that “as a businessman, Cristian Burci is profit-oriented.”<sup>146</sup> Burci is the station’s main shareholder. Until 1 March 2005, the Scandinavian Broadcasting System (SBS) held a 37.2 per cent stake in Amerom Television, the licensee and operating company of Prima TV; it then increased its stake in the station. Other minority shareholders included East Europe Investment & Development, SGG Investments, the Romanian businessman Dan Fischer and the cartoonist Emil Nell-Cobar.<sup>147</sup>

### *Others*

Besides the “big fish” in the television market, more and more businessmen and politicians looking for new “toys” have opened broadcasting shops. Such are the Micula brothers, owners of the company European Drinks, which produces alcoholic and soft beverages. In 2003 Ioan and Viorel Micula set up a media business, running television and radio stations and newspapers. Their main investment was Național TV, which started broadcasting in 2003. By May 2004, the station hardly reached an urban audience share of 2.3 per cent. On 1 September 2004, the Micula brothers launched an all-news channel, N24, to compete with Realitatea TV, which was the only station servicing the all-news television niche market. The brothers invested €4 million into N24, which did not reach a significant audience. Their other media interests include regional Transilvania TV, radio networks Național FM and Favorit FM, and the dailies *Realitatea Românească* and *Realitatea Bihoreană*. They own also banks, hotels, and food manufacturers. Their fortune is valued at €500 million.<sup>148</sup> The Micula brothers reportedly decided to go into the media business because they were tired of pumping millions of dollars into advertising on other television and radio stations. Some 77 per cent of the advertising broadcast on their station in the first five months of 2004 was related to their own businesses, according to *Capital*.<sup>149</sup>

<sup>145</sup> *Capital*, *Top 300 Richest People 2003*.

<sup>146</sup> Comments submitted to EUMAP in written form by Alin Drinceanu, partner in the company Șova, Rațiu, Drimceanu & Partner representing Prima TV, and Nora Marcovici, former Prima TV’s Sales and Marketing Director, in comments submitted to EUMAP on the present report in written form, Bucharest, 26 February 2005.

<sup>147</sup> CNA, *Who are the owners*; EUMAP research (based on data as of August 2004 from the National Trade Register Office)

<sup>148</sup> *Capital*, *Top 300 Richest People 2003*, pp. 34–35.

<sup>149</sup> P. Obae, “Din ce trăiesc televiziunile mici?”, (“From which money do small televisions live?”), in *Capital*, 20 May 2004.

The all-news television station Realitatea TV was launched in 2001. It was owned by Rosal, a street cleaning and rubbish collecting company. Realitatea TV was purchased by an obscure company registered in Switzerland for the sum of €150. The identity of its majority owner is not known and despite beneficial ownership not being allowed under Romanian law, this does not apply to foreign companies where beneficial shareholding registered in jurisdictions is permitted. As a result, there is an increasing tendency for Romanian or foreign businessmen investing in Romania to hide their traces in tax havens<sup>150</sup> and in Western jurisdictions such as Switzerland, where secret ownership of offshore companies is accepted.

The results of a media ownership project released by the Centre for Independent Journalism (CJI) in Romania<sup>151</sup> prompted the broadcasting regulator CNA to ask television and radio owners to disclose their ownership structure. In mid 2004, the broadcasting regulator asked broadcasters to disclose not only the companies operating the television stations, but also the owners behind those companies. B1 TV was fined in mid 2004 because it sent CNA data only about the first level of shareholders. The fine was not substantial, but it was significant for a station such as B1 TV, which does not enjoy a large audience and thus a healthy financial situation.

There are still cases when the real owners of television stations manage to hide behind fictitious names. Realitatea TV's majority holder, Bluelink Comunicazioni, registered in Switzerland, reported to CNA that its founders are Dario Colombo and Anna Croci, although it is not clear who these people are.<sup>152</sup> Except for these mysterious names, the ownership of Realitatea TV remains obscure. There were also reports that the Swiss company that bought the station is a fictitious firm grouping Romanian former PSD Government cronies.<sup>153</sup> Besides Bluelink Comunicazioni, the other owners of Realitatea TV include the federation of oil unions (*Federația Petrom a Sindicatelor Libere Independente a Asociațiilor și Ligilor Apolitice din Ramura Industriei Petroliere – România – FSLI PETROM*) and Petrom Service, which jointly own 35 per cent per cent of the station. Another obscure partner, Radoway Limited, based in Cyprus, holds the remainder of the 6.5 per cent.

Realitatea TV's competitor, Antena 1, reported that a Romanian businessman, Sorin Ovidiu Vîntu, who investigated by the police for suspected involvement in one of the biggest financial bankruptcies in the country, might also be behind Realitatea TV. This story has not been confirmed by independent sources.<sup>154</sup> However, it is confirmed that Liviu Luca – who reportedly collaborated with Sorin Ovidiu Vîntu in the oil business,

<sup>150</sup> The “tax havens” are jurisdictions such as Cyprus, Netherlands Antilles, Virgin Islands and the Bahamas, where off-shore companies benefit from low taxation and secret ownership. Those companies may be represented by a “fiduciary” or “trusted agents”.

<sup>151</sup> SEENPM, *Media Ownership – Romania report*.

<sup>152</sup> CNA, *Who are the owners*, as of 30 March 2005.

<sup>153</sup> AMP–FreeEx Programme, *Press Freedom*, p. 15.

<sup>154</sup> Antena 1 reported on this on 26 August 2004, TV Evening News, 19.00 – 19.30.

and also heads Petrom Service – is also one of the heads of Realitatea TV's. FSLI and Petrom Service are directly linked to the largest domestic oil producer, SNP Petrom. It is majority-owned by Petrom's trade unions. In an interview hosted by Realitatea TV, Luca has stated that the unions control Realitatea TV, as well as Alpha TV, radio Total, the daily *Ziua* and several local radio stations.<sup>155</sup> Vintu did not clearly say whether he was behind Realitatea TV or not.<sup>156</sup>

Prima TV is also relevant for the shady ownership structures in the Romanian broadcasting. In mid 2001, Prima TV became majority owned by Cristian Burci through RID company, owned by another company, Albany Holdings, registered in New Jersey, USA. One year later, RID got enmeshed in a huge scandal when it was revealed that “the company received \$5.6 million from a State-owned company, MTC-TV (Maritime Training Centre Television).”<sup>157</sup> The money was to be used for buying advertising in the media. Soon after it received the money, RID purchased a majority stake in Prima TV for an amount similar to that received from MTC-TV.<sup>158</sup> There was speculation that the money was, in fact, moved through various accounts to help Prima TV, which was facing serious financial problems at the time. Prima TV's Drinceanu said that it has never proved that the money reached Prima TV accounts or covered the station's operations. Meanwhile, MTC-TV has been reimbursed the whole amount it sent to RID's account, Drinceanu told EUMAP.

In early 2004, the RID's former owner Albany Holdings was replaced by M.G. Media Group International Holding, a company headquartered in Lugano, Switzerland, although it turned out to be in fact owned by Burci.<sup>159</sup> In theory, the media ownership is dominated by “foreign investors”. However, a closer look reveals that, in fact, Romanian businessmen are behind many media outlets.

The radio sector is plagued with the same business practices and non-transparent ownership structures. For example, Prima TV's Burci announced his intention to take over Contact radio network in autumn 2003. However, Contact Radio, which meanwhile had become KISS FM, reported to CNA that as of August 2004, Anthony William Ghee owned 99.9 per cent of the station through the London-based European Radio Investment. Burci was highly rumoured to be behind this company, as well as

<sup>155</sup> R. Turcescu, interview with Liviu Luca, talk-show “100%”, *Realitatea TV*, 11 October 2004.

<sup>156</sup> E. Istodor, interview with S. O. Vintu, “S. O. Vintu: Nu afacerile sunt vocatia mea. Am vocatie pentru scris”, (“S. O. Vintu: Not business is my talent. But writing”), in *Academia Cațavencu*, 23 February-1 March 2005, p. 4.

<sup>157</sup> P. Barbu, “Șeful Prima TV, finanțat de Mitrea”, (“Prima TV's Boss Financed by Mitrea”), in *Capital*, 20 June 2002.

<sup>158</sup> SBS Broadcasting, *Annual Report 2002*, as filed with the US Securities and Exchange Commission, Washington, 15 May 2003, p. 29.

<sup>159</sup> CNA, *Who are the owners*, August 2004.

behind Unipus Radio.<sup>160</sup> In such cases, CNA does not have the legal right to go deeper into ownership structures. All the broadcasting watchdog could do was to ask “the mysterious Mr. Ghee” for a statement that he does not hold more than 20 per cent in other radio or television stations. In the end, it turned out that Ghee is a U.K.-based lawyer and former director of SBS Broadcasting between 1994 and 2003. He visited the CNA in February 2005, but there remain suspicions that he was only a trustee.

On 1 March 2005, SBS Broadcasting announced that it had increased its ownership in Prima TV to 86 per cent, and acquired two of the largest Romanian radio networks, Kiss FM and Radiostar for a total of €30.3 million.<sup>161</sup> At the same time, SBS changed Prima TV’s management and replaced Cristian Burci with Christoph Buerge and Peter W. Thrane, former members of SBS’s management in Hungary and Denmark, respectively.

French group Lagardère, which has a majority stake in the nationwide radio station Europa FM, used to own 47.5 per cent of Radio XXI. When ownership rules changed in 2002 and broadcasters’ owners were not allowed anymore to own more than 20 per cent in other stations, a significant stake of 27.5 per cent in Radio XXI was transferred to Hullenberg Holland Holding, a company which was revealed in August 2004 to be owned by the Czech citizen Adam Blecha through the company Hoax. Since 1994, Blecha has served as Vice-President of the Lagardère Group. He also chairs the Supervisory Board of the Czech radio station Frekvence1 and is Lagardère’s advisor in the Czech Republic.

### 5.3.3 Restrictions on media cross-ownership

Cross-media ownership is restricted only within the broadcasting sector. Romanian media legislation does not refer to the possibility of owning a broadcaster and a print media outlet. Most media owners capitalised on the loose regulation and, with very few exceptions, expanded in as many media as possible. The Pro TV’s founders, American CME and Adrian Sârbu, for example, have built during the past decade a huge multimedia empire. The video production company MediaPro set up by Adrian Sârbu in 1990 has fathered a large group of interrelated companies. Pro TV network, Pro FM radio (Media Pro), Mediafax news agency (Mediapro BV), Pro-Fi audio and Media Vision video companies, the film distribution company Media Pictures International, the Pro book publishing house, the Pro International Press Group, Media Graph computerised printing company,

<sup>160</sup> P. Barbu and P. Obae, “Posturile radio-TV obligate să-și prezinte patronii” (“The radio and TV stations, obliged to reveal their owners”), in *Capital*, 27 August 2004.

<sup>161</sup> SBS Broadcasting Press Release, 1 March 2005, available at <http://www.sbsbroadcasting.com/content.php?rubrik=Y29ycG9yYXRlIGNvbW11bmljYXRpb24=&ANSICHT=MEHR&ArtikelID=221> (accessed 11 March 2005).

Media Print publishing house, Publimedia International (publisher of *Ziarul Financiar* and several regional weeklies) are part of this group.<sup>162</sup>

The second largest player in the television market, Antena 1 is part of a “family” composed of Radio Romantic, the television production house Intact Advertising, and the daily newspaper *Jurnalul Național*. Although these outlets are operated through different vehicles, they have similar ownership.

In early 2004, two other large media groups announced a possible merging. One, controlled at the time by Cristian Burci, is composed of Prima TV, Kiss FM and Radiostar. The second is controlled by SNP Petrom trade unions headed by Liviu Luca and includes Realitatea TV, Alpha TV, Radio Total, 16 local TV stations and nine local radio stations, the local daily *Telegraful de Prahova* and the national daily *Ziua*. However, the merger is not likely to happen in the near future, at least not in a transparent manner, according to industry insiders. Former State-owned SNP Petrom, the largest Romanian company, was privatised in the summer of 2004. The Austrian oil company OMV bought a majority stake of 51 per cent in SNP Petrom.

Print media owners have yet not ventured into the television business, but they are open to cooperation with broadcasters. For example, the Swiss publishing house Ringier – which publishes the daily *Evenimentul Zilei*, the tabloid *Libertatea* and the business weekly *Capital* in Romania – co-produces the economics programme “Capital TV” on Prima TV. There are no special provisions regarding ownership of print media.

---

<sup>162</sup> Profile of Adrian Sârbu, available on the CME website at <http://www.cetv-net.com/management-board.asp?article=33> (accessed 7 February 2005).

**Table 10. Ownership structure of the main national television and radio broadcasters (2004)**

Broadcaster	Licence holder	Main Owner <sup>163</sup>	Other important owners
Pro TV	Pro TV SA	Central European Media Enterprises (CME) (82 per cent)	Adrian Sârbu (12.82 per cent); Rootland Trading Limited (5 per cent)
Pro FM/Info, Pro Clasic	Compania de Radio Pro	Adrian Sârbu (40 per cent); Rootland Trading Limited <sup>164</sup> (40 per cent)	CME (20 per cent)
Antena 1 / Romantic FM	Corporația pentru Cultură și Artă Intact (CCAI)	Dan Voiculescu (84 per cent)	Fundația Umanistă Dan Voiculescu (4.53 per cent)
Prima TV	Amerom Television	SBS Broadcasting (86 per cent) <sup>165</sup>	
RADIOSTAR	Uniclub Multimedia	SBS Broadcasting <sup>166</sup>	
Radio Kiss FM	Prima Broadcasting Group SA (formerly Radio Contact Romania)	SBS Broadcasting <sup>167</sup>	Until 1 March 2005, Anthony William Ghee owned 99 per cent
Realitatea TV	Realitatea Media	Bluelink Comunicazioni (Switzerland) (54.99 per cent)	Federația Petrom a Sindicatelor Libere Independente Petrom (FSLI) (25 per cent); Petrom Service (10 per cent); Global Video Media <sup>168</sup> (10 per cent)
Alpha TV – Global TV/ Radio Alpha Star/ Radio Global	Global Video Media	Radoway Limited (Cyprus) <sup>169</sup> (64.99 per cent)	Petrom Service (35 per cent)
Radio Total	Expresiv	Comac Limited <sup>170</sup> (Cyprus) (51 per cent)	Federația Sindicatelor Libere Independente (FSLI) (39 per cent); Cornel Nistorescu (7 per cent)

Sources: CNA<sup>171</sup>

<sup>163</sup> The ownership interest is indirectly held and represents ultimate proportionate ownership in a certain TV station (total equity interests or shares owned by an individual directly or through other companies). For example, Dan Voiculescu directly holds 46.59 per cent in Antena 1 and 76.5 per cent in Grivco SA, a company with 48.86 per cent shares in CCAI (Antena 1); as a result, we considered that Dan Voiculescu has ultimate proportionate ownership of 84 per cent in CCAI (Antena 1).

<sup>164</sup> Rootland Trading Limited is controlled by Adrian Sârbu. CME, *Quarterly report for the period ended 30 June 2004*, filed with the Securities and Exchange Commission, Washington, August 2004, p. 9.

<sup>165</sup> At the time of writing, the announced transaction was still not officially registered in the public records. Until the official registration, Cristian Burci remains the majority owner.

<sup>166</sup> The transaction is still subject to approval by the Competition Council. Burci was suspected to have been behind the station, as his company, RID, was identified as main owner in March 2003.

<sup>167</sup> The transaction is still subject to approval by the Competition Council.

<sup>168</sup> Global Video Media SRL is composed of Radoway Limited (Cyprus) – 65 per cent and Petrom Service SA – 35 per cent.

<sup>169</sup> Radoway Limited is represented by Spyridon Hadjinicolaou – 99.29 per cent. Its real owners are unknown.

<sup>170</sup> Comac is owned by a chain of trustees and nominees agents.

<sup>171</sup> CNA, *“Cine sunt proprietarii de radio și televiziune” (Who are the owners of the television and radio stations)*, August 2004; National Trade Register Office; EUMAP research (based on data on ownership as registered with international chambers of commerce).

## 5.4 Funding

Commercial television's main source of funding is advertising. Television grabs the lion's share of the advertising spending in the country, absorbing more than 50 per cent of total net advertising expenditures. However, statistics on advertising spending in Romania are approximate, due to a lack of reliable information on the size of television advertising revenues. Several sources in the industry say that in reality, the television advertising market was worth €90 million in 2003, which represents only 56 per cent of the total net advertising spending in the country. Significant differences in figures on advertising spending, especially between gross and net amounts, arise mainly because of some economic practices by television stations, such as huge discounts (up to 80 per cent of their rates) and barter contracts.

**Table 11. Total advertising spending – breakdown by media type (2003)**

	Share of total advertising spending (gross) (per cent)	Share of total advertising spending (net) (per cent)
Television	86.3	56
Print media	11.5	28
Radio	2.0	5.6
Internet	0.2	-
Outdoor advertising	-	10.4

Source: AGB TNS International, Alfa Cont, MediaWatch<sup>172</sup>

**Table 12. Total advertising expenditures (2003)**

Total advertising spending (gross)		Total advertising spending (net)	
ROL (million)	€ (million)	ROL (million)	€ (million)
48,606,660	1,300	4,785,792	128

Source: AGB TNS International, Alfa Cont MediaWatch<sup>173</sup>

<sup>172</sup> IP International Marketing Committee, *Television 2004. International Key Facts*, October 2004, p. 401; *Weekly Capital*, no.5, 29 January, 2004.

<sup>173</sup> IP International Marketing Committee, *Television 2004. International Key Facts*, October 2004, p. 401; *Weekly Capital*, no.5, 29 January, 2004.

**Table 13. Total television advertising spending (gross) – breakdown by channel (2003)**

Channels	Share of total television advertising spending (gross) (per cent)
Prima TV	26.6
Pro TV	25.1
Antena 1	15.2
Romania 1	13.3
Acasă	5.9
MTV Romania	4.1
B1 TV	3.9
TVR2	1.4
Other	4.5

Source: AGB TNS International, Alfa Cont MediaWatch<sup>174</sup>

Table 13 shows the share of gross advertising spending for the main television channels. However, sources in the industry said that in net figures, the share of television advertising revenues is different, with Media Pro International channels, Pro TV and Acasă, together grabbing 44.5 per cent of the total television advertising, followed by Antena 1 (22.2 per cent), Prima TV (12 per cent) and TVR (eight per cent).

The costs of running a national television station are believed to be higher than their advertising income. Annual operating costs of a commercial television station can exceed €24 million, according to financial balance sheets submitted to the local tax authorities. CNA's chair, Ralu Filip, estimates that a generalist nationwide channel needs an annual budget of about €14.4 million to operate, which is still high compared to the net advertising spending in the country.<sup>175</sup> Mark Percival, head of the Romanian Think Tank organisation noted, "The pressing need to raise advertising revenue is a major problem affecting editorial freedom at both local and national level."<sup>176</sup>

The public television, TVR, attracts healthy advertising revenues mainly because it is the only significant broadcaster with full coverage of the country. However, advertisers are very interested in the audience share of specific groups of viewers such as urban dwellers. Moreover, commercial stations rank better in all-day audience. TVR's privileged financing from several sources, including State subsidies, licence fee and

<sup>174</sup> IP International Marketing Committee, *Television 2004. International Key Facts*, October 2004, p. 401.

<sup>175</sup> Interview with Ralu Filip, 16 November 2004, Bucharest.

<sup>176</sup> Meeting of the Convention of Mass-media Organisations (COM), Sinaia, (31 October – 2 November 2003).



advertising, is found to be unfair by the commercial players. Pro TV's PR Director, Maria Apostol states,

TVR's [technical coverage] monopoly should be eliminated. It is the only television outlet benefiting from both nationwide coverage and regional licences. More nationwide broadcasting licences should be granted in public tenders.<sup>177</sup>

Both commercial and public broadcasters are allowed to sell advertising up to 15 per cent of their broadcasting time. Five per cent of broadcasting time may also be used for teleshopping. There is an additional limit that during one hour of broadcasting on commercial stations only 12 minutes can be given to advertising and teleshopping. On public television, advertising cannot exceed eight minutes an hour. Some programmes such as newscasts and children programmes shorter than 30 minutes cannot be interrupted by commercial breaks.

### 5.5 Programme framework

The main instruments for ensuring impartial and accurate information on commercial television are contained in the Audiovisual Law, which forbids censorship of any kind, guarantees the editorial independence of broadcasters, and prohibits any kind of interference by public authorities or citizens in the content and form of programming. The same law guarantees political and social pluralism, cultural, linguistic and religious diversity, information, education and public entertainment in programming.

However, these instruments are not very effective in practice, according to media NGOs such as the AMP and the CJI, which reported that the primetime newscasts of the four largest television networks (TVR, Pro TV, Antena 1, and Prima TV) are generally biased in the Government's favour.<sup>178</sup> In early 2002, AMP revealed that throughout an entire week, none of the four television stations aired any critical news about the Government.<sup>179</sup> After the 2000 elections, there was a general tendency by television stations to embellish Government activities. Until 2004, the country's prime minister and president were omnipresent in television news.<sup>180</sup>

#### *Programme guidelines*

CNA Decision 40/2004 obliges the broadcast media to ensure fairness, equilibrium and to encourage free formation of opinions by presenting all sides of the story and

<sup>177</sup> M. Apostol, Pro TV's PR Director, response to EUMAP questionnaire, Bucharest, August 2004.

<sup>178</sup> US Department of State, *2003 Human Rights Report*, Section 2.a. Respect for Civil Liberties – Freedom of Speech and Press, available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27860.htm> (accessed 30 March 2005).

<sup>179</sup> AMP, *Political Actors: Media Analyses, week 7-14 May 2002*, Media Monitoring Agency (AMP), Bucharest, 19 May 2002.

<sup>180</sup> IREX, *MSI 2003*, p. 10.

different viewpoints.<sup>181</sup> Pro TV's programming strategy is based on the tastes and preferences of the mass market audience. It includes a broad range of programmes including movies and series, news, sitcoms, telenovellas, soap operas and game shows. Pro TV broadcasts 24 hours of programming daily. More than 40 per cent of Pro TV's programming consists of local productions such as the variety and comedy shows "Vacanța Mare" ("Summer Holiday"), "Râdeți cu oamenii ca noi" ("Laugh With People Like Us") and "Leana și Costel" ("Leana and Costel"), which are among the station's most popular programmes.<sup>182</sup>

The quasi-generalised mediocrity of the shows on commercial television stations became a topic of cultural debate in the country. In May 2004, the French Cultural Centre in Iași organised a roundtable on television as a "tool of brainwashing". Here, Robert Șerban, a journalist with Analog TV Timișoara, commented that: "Cultural television programmes are almost nonexistent while stupid productions attract the majority of viewers".<sup>183</sup>

Reality shows and television contests also draw large audiences while newscasts concentrate on gory images, crimes and stories about pilfering. Broadcast in prime-time, the reality show "Fratele cel mare" (Big Brother) on Prima TV became for many months the most important event nationwide, with huge coverage in most of the country's newspapers. Another successful formula is Acasă TV's housewives-oriented television diet based on South American telenovellas, commercial films and soap operas. The station also airs news programmes, and locally-produced talk-shows and entertainment programmes targeted to women and family such as "Povestiri adevărate" (Real Stories) and "De 3Xfemeie" (Three Times A Lady).

### Quotas

Commercial television stations more or less follow the regulations imposed in mid 2002 by the Audiovisual Law regarding the ten per cent European independent production quota. They are also trying to comply with the 50 per cent quota of Romanian production prior to Romania's accession into the EU when they will have to respect the European production quota. Pro TV currently airs 40 per cent local production and 60 per cent imports from France, the U.K., U.S., Australia and Italy.<sup>184</sup> Approximately 29 per cent of Acasă's total programming is locally produced.

There is no data available for the rest of the broadcasters. The CNA has asked broadcasters to report on their compliance with the quota of European works and independently

<sup>181</sup> CNA Decision 40/2004 concerning the necessity to ensure that the public is correctly informed, *Monitorul Oficial*, 234/17 March 2004, art.1 (1) (a).

<sup>182</sup> CME, *Annual Report 2003*, p. 15.

<sup>183</sup> R. Șerban, journalist with Analog TV Timișoara, comment at roundtable organised by French Cultural Centre in Iași, May 2004, in *Dilema Veche*, 20, 28 May – 3 June 2004.

<sup>184</sup> TBI Yearbook 2003, quoted in IMCA, *The broadcasting landscape*, p. 56.

produced programmes. However, the CNA only provided the broadcasters with more specific instructions on how to calculate these quotas in March 2004.

**Table 14. Television production companies in Romania (2002)**

Company	Annual turnover (€ million)	Programmes
Media Pro Pictures (for Pro TV)	4.5	Light entertainment ("Teo Show", "Vacanța Mare")
Intact Advertising (for Antena 1)	WND	No
Creative Vision (for Prima TV)	2.4	Light entertainment ("Who wants to be millionaire?", "Banc Show", "Kids say crazy things")
PTWB (for TVR1)	1.08	Light entertainment ("Iartă-mă", "Ploaia de stele", "Surprize, Surprize")
SAGITARIUS (for Antena 1, B1TV)	1.01	Light entertainment ("All you need is love", "Big Deal", "Babilonia", "Mașina adevărului")

Source: IMCA<sup>185</sup>

Media legislation does not oblige commercial broadcasting operators to air minority programmes or to employ representatives of minorities. According to the Decision 40/2004 of CNA regarding the obligation of commercial broadcasters to correctly inform their public, private television stations must present the viewpoints of all sides in cases of news and debates concerning ethnical, religious and sexual minorities. In towns where a minority represents more than 20 per cent of the local community, cable operators must also ensure that retransmitted programmes are done in the minority language.<sup>186</sup> The CNA is not constantly monitoring these matters.

## 5.6 Editorial standards

In depth political and current affairs programmes and talk-shows have been steadily disappearing from the programming of commercial television stations. They were replaced by chintzy comedy programmes and low quality political shows. Commercial stations first resorted to this kind of programming because it was a subtle way to avoid

<sup>185</sup> Carat, The Work Book 2002, in IMCA, *The broadcasting landscape*.

<sup>186</sup> Audiovisual Law 2002, art. 82, para. 4.

criticising influential politicians and businesses. They justify their strategy by saying that the audience was the only universal yardstick in the television industry. Moreover, due to lack of resources, news programmes and investigative reporting had little chance to improve.

Investigative reporting is almost inexistent on television, with only a few exceptions. These include “*60 de minute cu Dana Deac*” (“60 minutes with Dana Deac”), and previously “*Cutie neagră*” (“Black Box”) on Antena 1, a one-hour programme broadcasting investigative reports, that gained in credibility and reputation within less than a year of its launch in October 2003. However, although the programme’s reports have often been cited in print media, including foreign newspapers, and in June 2004 received the APTR’s award for the best investigative programme in 2003, it used to be broadcast at off-peak hours on Sunday afternoon, and at variable times. The programme was finally taken off the air in December 2004, with show-biz and comedy shows being given the primetime slots.

Another example of investigative journalism was “*Reporteri Incognito*” (“Undercover Reporters”) by Prima TV, jointly produced with the daily newspaper *Evenimentul Zilei*. However, this programme was taken off the air earlier than scheduled, in mid-2004 (it was scheduled to end on 1 July 2004). One last report, shot with a hidden camera but never broadcast, was about the PSD Mayor of Constanța, Radu Mazăre, filmed in unfavourable circumstances. The Romanian online investigative publication [www.anchete.ro](http://www.anchete.ro) claimed that the report was censored at the intervention of the influential mayor. According to the same source, Prima TV decided to suspend the report without consulting the programme’s partner, *Evenimentul Zilei*.<sup>187</sup> Prima TV’s representatives said that the station decided not to air the report because it feared that the mayor would retaliate in the court,<sup>188</sup> invoking a CNA decision on the use of hidden camera shots on television and winning a lawsuit against the station.<sup>189</sup> However, although the station had largely used a hidden camera to make the report, the decision to cancel the report was made before the CNA’s regulation on hidden camera reports came into force. Moreover, the rule only applies to entertainment programmes, while the report was scheduled to be aired on Prima TV’s investigative programme. Hidden cameras are still widely used in news programmes, whether or not they are necessary, being considered a “sexy” technique of reporting. Except for these programmes, in-depth news coverage is reduced to scandals and sensationalism.

<sup>187</sup> Anchete.ro, “Cenzură la Prima TV” (Censorship at Prima TV), 2 July 2004, available online at <http://www.anchete.ro/sectiune.php?s=13> (accessed 18 September 2004).

<sup>188</sup> Comments submitted in written form by Alin Drinceanu and Nora Marcovici, Bucharest, 26 February 2005.

<sup>189</sup> CNA Decision 248/2004 concerning the protection of human dignity and the right to one’s own image, *Monitorul Oficial*, 668 of 26 July 2004, para. 11.

## 6. EUROPEAN REGULATION

Amended several times, Romanian broadcasting legislation is considered to be in line with the EU *Acquis communautaire*.<sup>190</sup> In 2003, a new amendment was made to the existing Audiovisual Law, incorporating almost all observations by the European Commission with regard to jurisdiction, definition of the local broadcast licence, restriction of the right of free retransmission of a programme service from an EU Member State, and advertising limits. According to the new provisions, changes in the ownership of licence-holding companies, and the transfer of broadcast licences are both permitted within the limits preventing media concentration and with CNA's agreement. Under the new provisions, there is no restriction on foreign ownership.

The TVWF Directive was also incorporated into Romanian legislation, which obliges broadcasters to reserve at least ten per cent of their air time and of their programming budget for European works created by independent producers. After Romania's accession to the EU, European works will fill the bulk of the stations' broadcasting time, but until then, Romanian works must form the majority. Media expert Virgil Nițulescu states:

[The Directive] should not be a shock for television as the obligation will be introduced step by step. However, the costs allocated to foreign programmes are expected to increase while programmes produced in the country will be cheaper because of the bigger offer.<sup>191</sup>

Pro TV's Maria Apostol believes that the Directive will not influence the station's strategy much, because a significant amount of Romanian productions are already broadcast.<sup>192</sup> Journalist Radu Gafta finds that,

European works may be a bit expensive compared to the American or South-American ones, but they will definitely stimulate the creativity of Romanian programme directors who now do nothing but import packages of movies and accept only formats they have already seen at their competitors. Any original proposal is rejected from the very beginning.<sup>193</sup>

<sup>190</sup> According to the Government Report to Brussels on Romania's progress toward accession, released in July 2004, only one formal modification is still needed. It concerns Audiovisual Law 2002, art. 2 (4): "Radiobroadcasters to whom none of the criteria stipulated in paragraph (3) apply are considered to be under the jurisdiction of Romania provided they find themselves in one of the following situations: they use a frequency granted by Romania through the competent public authority; they use a satellite capacity appertaining to Romania; they use a satellite up-link located on Romania's territory". (Government Report to Brussels on Romania's progress toward accession, released in July 2004).

<sup>191</sup> V. Nițulescu, secretary of State at the Ministry of Culture, response to EUMAP questionnaire, August 2004.

<sup>192</sup> M. Apostol, Pro TV's PR Director, response to EUMAP questionnaire, Bucharest, August 2004.

<sup>193</sup> R. Gafta, N24 news editor, former journalist with BBC radio, response to EUMAP questionnaire, Bucharest, 4 August 2004.

The Audiovisual Law also includes criteria for broadcasting “events of major importance”, in accordance with the TVWF Directive. Such events must be aired by the stations with significant technical coverage.<sup>194</sup> The exclusive rights for certain events, especially sports, are a very sensitive topic, as such events significantly increase ratings. For instance, in mid 2004, the Professional Football League in Romania granted exclusive rights to broadcast matches in the domestic league for a period of four years without organising a tender. The rights were purchased by Telesport, a satellite channel received in a very small area in Romania. Telesport then sold the rights to TVR, Antena 1 and Național TV. The issue became fiercely controversial, forcing the CNA to intervene and alert both the Competition Council in Romania and the EU Directorate-General for Competition about this “restrictive” practice contravening competition laws and regulations.<sup>195</sup>

Although it is considered in line with the EU’s cultural and audiovisual policies, Romanian media legislation still contains some controversial provisions. For instance, the penal sanctions for slander were maintained in the new Criminal Code (adopted in 2004 and due to take effect on 29 June 2005), despite the Council of Europe’s standard-setting resolutions to the contrary, and recommendations by the European Commission to eliminate them.<sup>196</sup>

## 7. THE IMPACT OF NEW TECHNOLOGIES AND SERVICES

Although it is highly concentrated, cable television remains the sole option for commercial broadcasters to reach a significant portion of the population. Commercial television stations do not invest much in the new media technologies. On the other hand, some online outlets have started multimedia projects such as the first web-TV studio. A digital television centre has been launched, but real perspectives of launching digital broadcasting are still remote.

### 7.1 New media

Most of the new communication services such as data transmission and Internet, mobile telephony and cable television have been already liberalised. From a legal standpoint, substantial progress has been made in implementing the EU *Acquis*

<sup>194</sup> Comments submitted to EUMAP by the CNA, 16 November 2004.

<sup>195</sup> Letter submitted by Ralu Filip, CNA president, to Mario Monti, Commissioner responsible for Competition Policy, 7 July 2004, available on the CNA website at <http://www.cna.ro/comunicare/comunic/2004/c0707.html> (accessed 25 February 2005).

<sup>196</sup> Law no. 301/2004 (Criminal Code), *Monitorul Oficial* 575 of 25 June 2004. See also: Council of Europe, Resolution 1123/1997 on the honouring of obligations and commitments by Romania; and European Commission, Regular Country Report on Romania for year 2003, November 2003.

*communautaire*. Several laws and regulations have been modelled on the EU directives. On 8 November 2002, after two years of negotiations with the EU, Romania provisionally closed chapter 19 dealing with telecommunications and information technology.

But despite an ambitious strategy to develop information technology and communication, the Romanian authorities do not have a concrete plan for developing the new platforms. In this respect, the national strategy is based only on a set of general objectives. It mentions the introduction of digital television services and the spread of the Internet, but it does not provide specific details about the actual implementation of these services. The majority of broadcasters agree that, in the absence of a clear action plan, a public debate is absolutely necessary.

## 7.2 Market conditions

In 2003, the Ministry of Communications and Information Technology (MCTI) strengthened its control over the cable television industry through a Government decision that the operators' communication equipment must be homologated by the ministry. On the other hand, the ministry offers cable television operators new and more convenient opportunities to register their operations. For example, it announced the launch of a new Internet portal where operators of cable television can register and complete the entire authorisation process. By launching this portal, the ministry aimed to increase transparency, reduce bureaucracy and better administer the database of operators. The portal was expected to become operational in autumn 2004, but it was delayed.

Concentration in the cable television market is relatively high. Two operators, RCS-RDS and Astral Telecom, have a combined total of 1.5 million subscribers. In 2003, the top five cable television companies, Astral Telecom, RCS-RDS, UPC Romania, Terra Sat Comp and Romsat Cable TV & Radio, controlled 80 per cent of the market, according to Dan Nica, former Minister of Communications and Information Technology.<sup>197</sup> One year later, the market became even more concentrated as Terra Sat Comp and Romsat were swallowed by their competitors: RCS-RDS bought Terra Sat and a consortium of RCS-RDS and Astral took over Romsat. The packages of television channels offered by cable companies are very similar. The basic package has about 40 channels. The major danger in the cable television industry is the potential monopoly at regional level and in the range of programming offered. The consequences are already being felt by TVR International, which cannot reach its subscribers in several towns because two large cable operators, RCS-RDS and Astral Telecom, decided not to carry the channel's signal. A group of the channel's supporters sent a memo to the prime minister and to CNA, asking them to oblige the cable operators to make the programme available again. CNA replied that TVR

<sup>197</sup> C. Stegărescu, "Trei sferturi dintre orașeni au televiziune prin cablu" ("Three quarters of urban people have cable television"), in *Cotidianul*, 11 November 2003. Nica resigned as minister in July 2004 and was hired by the ruling PSD party to coordinate its electoral campaign.

International targets its audience abroad, so cable operators are not obliged to carry the station's signal, and that anyway, CNA cannot interfere with the private operators of cable television.

“The concentration [in the cable television market] has its advantages, but it started to show more negative aspects such as the ‘bottleneck effect’, meaning the creation of a dominant position or the so-called ‘natural monopoly’,” said Horea Murgu.<sup>198</sup> Journalist Radu Gafta<sup>199</sup> said that each of the country's large cable operators enjoys a monopoly in certain areas. Because these operators have a quasi-monopoly in their areas of operation, negotiations with cable companies have become a nuisance for broadcasters, especially for newcomers in the broadcasting market who need to reach their audience mainly through cable. Any telecommunication supplier retransmitting broadcasters' programmes are legally obliged to carry the signal of TVR and the other free-to-air broadcasters, without any technical or financial conditions.

The cable television service remains one of the cheapest in Europe. The monthly subscription costs around ROL 160,000 (€4). Penetration hovers above 58 per cent of households. The telecommunication market was worth roughly €2.88 billion in 2003, and the market rose in 2004 to €3.64 billion, according to the European Information Technology Observatory (EITO) statistics, quoted by Zsolt Nagy, the minister of communications and information technology. It is expected to reach €4.15 billion in 2005.<sup>200</sup>

Satellite television is underdeveloped in Romania. There are no statistics on usage, but media experts estimate that the satellite market is irrelevant.

**Table 15. TV Distribution (2003)**

	In per cent of TVHH
Cable connected	58.0
Satellite private dish/DTH	2.9
Satellite collective dish/SMATV	0.9
Only terrestrial	42.0

Source: AGB TNS International<sup>201</sup>

In 2003, Internet penetration in Romania was estimated at about 18 per cent. It was expected to top 23 per cent in 2004. Internet is mainly accessed from offices, according

<sup>198</sup> H. Murgu, response to EUMAP questionnaire, Bucharest, August 2004.

<sup>199</sup> R. Gafta, response to EUMAP questionnaire, cit, 4 August 2004.

<sup>200</sup> Comments at the ANRC Conference, *Comunicațiile românești, înainte și după 2007*, (Romanian Communications, before and after 2007), Bucharest, 6 April 2005.

<sup>201</sup> IP International Marketing Committee, *Television 2004. International Key Facts*, October 2004, p. 394.



to MCTI statistics. Unlike the average television viewer, the average Internet consumer has higher revenues and education, and usually works in a high position. Such a profile is attractive to advertisers who have begun to spend more on Internet marketing. However, the Internet is still a marginal sector in the advertising market. Although it has experienced the fastest growth in terms of penetration and revenues, the Internet had gross advertising revenues of €2.7 million.<sup>202</sup> Journalists have become more open to new, less controllable and less manipulable means of communication, which allow them to develop alternative media such as TvWeb, the first multimedia studio in Romania broadcasting exclusively via Internet, according to Deutsche Welle.<sup>203</sup> The government's strategy paper on new communications promised to encourage cheaper and faster Internet access with a special focus on education and culture. It pledged to consolidate a national Information Infrastructure, develop a high speed Internet network for research and education, educate human resources for the Information Society, and stimulate the use of Internet by accelerating e-commerce and e-government, electronic access to public services, and Internet-based medical services.

According to the Government's strategy, there are encouraging signs of Internet development such as increasing sales of computers and a growing number of mobile phone users in the past two-three years. The average growth of the IT sector is 15 per cent, compared to the worldwide rate of eight per cent, the Government has claimed. Moreover, the optical fibre infrastructure is developing at a fast pace, reaching 19,570 kilometres in 2002. However, Internet growth is still hampered by the low level of access to Internet services due to high prices, people's low purchasing power, small profit margins, slow implementation of legislation regarding copyright in the IT field, which is still scarred by galloping piracy, and low Internet penetration in secondary schools and high schools.

---

<sup>202</sup> According to data from AGB TNS International, AlfaCont MediaWatch, IP/RTL Group, gross Internet spending on advertisements is about 0.2% of total gross advertising.

<sup>203</sup> C. Ștefănescu, *Deutsche Welle*, "Libertatea presei cere azil pe Internet" ("Media Freedom Looks for Asylum on the Internet"), 20 May 2004, available on the DW website at <http://www2.dw-world.de/romanian/corespondente/1.76949.1.html> (accessed 23 May 2004.)

**Table 16. Key Figures on Internet development (2003)**

Total Internet hosts <sup>204</sup>	47,428
Hosts per 10,000 inhabitants	22.59
Internet Users	4,000,000
Internet Users per 100 inhabitants	19
Estimated number of PCs	1,800,000
Estimated number of PCs per 100 inhabitants	8.3

Source: EUMAP research<sup>205</sup>

### 7.3 Services

In 1995, TVR International became the first Romanian television station to begin broadcasting via satellite. Pro TV International followed suit in 2000. Now, the majority of Romanian stations also broadcast via satellite. Some newer stations are starting to broadcast exclusively via satellite transmission. For instance, the Telesport channel is available only through satellite. Because commercial television frequencies are low power, they cannot compete efficiently with TVR. The most popular channels are transmitted through satellite, cable and terrestrial antennas. Some of them, such as TVR Cultural and Acasă TV, broadcast only via satellite and cable.

Most television stations maintain Internet websites, chiefly for promoting their services. TVR1 publishes daily news on its site and the commercial television station Realitatea TV updates its portal several times a day with fresh news and information. Most commercial television websites have special sections dedicated to movies, their famous anchors and moderators and short descriptions of the programmes. Antena 1's website also publishes stories about the private life of their star employees.

Prima TV was the first station in the country to cast a television show live on the Internet. The web-cast of Big Brother was produced by the company ARtelecom and lasted 122 days, as long as the participants in the show spent in the Big Brother house. Public television TVR is the sole broadcaster with a permanent web-cast service, which was launched in March 2003. Although it does not broadcast in real time, all TVR's news bulletins and the main talk-shows can be seen via the Internet. Public television also offers teletext service. Antena 1 used to broadcast a recorded version of its evening newscast

<sup>204</sup> Note: According to ITU's methodology, the term "Internet hosts" refers to the number of computers directly connected to the worldwide Internet network. Internet host computers are identified by a two-digit country code or a three-digit code generally reflecting the nature of the organisation using the Internet computer.

<sup>205</sup> Based on data provided by the International Telecommunication Union (ITU).

*“Observer”* on the Internet. However, when it relaunched its portal in June 2004, Antena 1 gave up Internet casting. Only the station’s most popular talk-show, *“Marius Tucă Show”*, is available live and in a recorded version on the talk-show’s web-site.

#### 7.4 Funding

Broadcasters’ investment in the new technologies is still very small. Television stations do not spend much on the new platforms because they are not yet bringing them revenues. Most of these new technologies are used by broadcasters more for marketing and promotion of their staff and programming.

#### 7.5 Digital television

National Radio-communications Company (SNR) is a State-owned communication operator subordinated to the Ministry of Communications. It was set up in early 1990s by restructuring the former communist postal operator, Rom Post Telecom. SNR’s main tasks include providing and selling communications services, operation, maintenance, development and modernisation of the national technical system of communications (which covers shortwave network, radio and television broadcasting, mobile radio communications and satellite communications). It carries out the technical process of broadcasting the programmes of SRTV within the country and abroad. It also carries the free-to-air signal of the main private players, Media Pro Group and Antena 1. SNR ensures the full technical coverage of TVR1 (98 per cent of the territory) through 46 terrestrial transmitters of high power.

In 2004, the Ministry of Communications approved a substantial budget to modernise SNR’s infrastructure. An investment of €56 million is to be used for updating the technical equipment ensuring transmission of TVR1 and extension of TVR2’s coverage, which was estimated at only 47 per cent, according to a May 2003 statement by the Ministry of Communications in front of the members of the Parliament. Actually, due to cable operators, TVR2’s penetration level has been reported as significantly higher, up to about 80 per cent.

In 2002, the Ministry of Communications launched an experimental digital television project worth €700,000. In January 2002 it inaugurated a Communication Centre in the village of Cheia, which transmits digitally three television programmes and occasionally special events such as sports championships. Currently, the programmes transmitted from the Cheia-based centre can be received in the U.S. and Canada. Former minister Nica announced the preparation of similar projects, transmitting up to four television channels and four radio channels in some big cities where it is believed that people earn more money and will be interested in purchasing more expensive television sets designed for digital services. There are no details available about the planned projects. “Romania may introduce digital television by 2007,” Nica

forecast.<sup>206</sup> It is not clear if he meant switching off analogue broadcasting and introducing digital television or just launching new experimental digital projects. As a player competing in the telecommunications market, SNR should be controlled by an independent, neutral authority, some experts argued. As long as it controls SNR, the State can be suspected of creating advantages for its companies. In fact, the main problem is the lack of autonomy of the National Regulatory Authority for Communications (ANRC), which directly controls SNR. The ANRC president is appointed by the prime minister.

Communications technology and broadcasting experts in Romania are not optimistic about the launch of digital broadcasting. They say that digitalisation needs more substantial investment. Moreover, it must be preceded by a serious debate involving all parties, television, regulators, civic organisations and government. Besides the launch of the pilot project in Cheia, no government plan, feasibility study or strategy for digitalisation has been released. Moreover, public debate on digitalisation of broadcasting is nonexistent.

The debate on digital broadcasting among professionals and media experts is characterised by two opposite opinions. On the one hand, a group of optimistic experts believe in the fast growth and penetration of the new technologies. For example, Pro TV's directors believe that digitalisation will break through. "Digital television has great chances to develop in Romania as the broadcasting market here is very receptive to innovations," PR Director Apostol told EUMAP.

On the other hand, many media professionals say that digitalisation will be prolonged by the lack of money for implementing such an expensive system. Digitalisation requires hefty investment not only in the broadcasting infrastructure, but also by the users. Dan Georgescu, former counsellor in the Minister of Communication and Information Technology, and now chair of the Association of Telecommunication Operators, pointed out that the introduction of digital television will mean that all users will have to replace their television sets with more sophisticated, much more expensive receivers. This is the main obstacle to the introduction of digital television, he added. Because it is widely acknowledged that digitalisation means too great an investment at three levels – State-infrastructure, television broadcasters and consumer – the Romanian authorities have not launched any debate on this subject. The CNA chair, Ralu Filip, stated that "it is too expensive".

On 19 April 2005, the iNES Group launched a pilot project for a new digital television service, called IPTV pilot project. Thanks to the Fiber to the Home (FTTH) technology that it uses, IPTV provides high definition images, virtually unlimited number of channels and digital content, video-on-demand (VOD), nPVR (network

---

<sup>206</sup> No by-line, "SNR promite televiziune digitală" (SNR promises digital television), in *Comunicații Mobile*, available at [http://www.comunic.ro/article.php/SNR\\_promite\\_televiziune\\_digital%C4%83/747/](http://www.comunic.ro/article.php/SNR_promite_televiziune_digital%C4%83/747/) (accessed 17 April 2005).

Personal Video Recorder) and multiple programming possibilities.<sup>207</sup> At the same time, Astral launched a pilot project providing digital signal transmitted via cable for its clients in 12 towns, and announced that this system will allow pay-per-view.

## 8. CONCLUSIONS

In a society where the political system and business environment are plagued by pervasive corruption, independent media outlets can hardly survive and must make all kinds of compromises to stay afloat. None of the private television stations is a lucrative business in a market with scarce advertising revenues and not a very stable socio-economic environment. Investors fear abrupt changes in government policies. Legal and regulatory systems, for example, can always be subjected to political influences. All these factors increase the general level of business risk.

A major problem remains the lack of transparency regarding the capital behind television stations. None of the private broadcasters publishes a financial report. The only figures available are the fiscal balance sheets, which do not say much about the station's sources of income. Some two years ago, information about the debts to State budget of the television stations was considered taboo. Eventually, the Ministry of Finance made this information public. However, there is no system for checking the stations' sources of cash. Quite often the origin of the stations' money is to be found in the accounts of the stations' foreign investors. For example, the media discovered the dubious transfers of cash from the Romanian State budget to the coffers of the local media mogul Cristi Burci from the annual reports released by SBS, one of Prima TV's owners.

To conceal their ownership more effectively, an increasing number of media outlets have registered offshore jurisdictions where ownership is very difficult to uncover. There are serious suspicions that the true owners are hiding behind fictitious names that appear in the offshore ownership of some newly arrived broadcasters, such as Realitatea TV, Global Media or Radio Kiss FM. Lack of ownership transparency can become dangerous. First, because it may hide political connections or questionable businesses; and second, because without real information on ownership structures, concentration can no longer be controlled, despite the clear provisions of the law in this regard. Concentration in the broadcasting market is expected to increase even further over the coming years. It is likely that only two or three private companies will come to control the whole market during the next ten years, but who will be able to check on them?

Specialised television formats covering niche audiences have more chances of surviving, but their development will depend on whether their owners will really create conditions for their growth based on pragmatic long-term strategies. So far, niche

---

<sup>207</sup> iNES launch, Bucharest, 19 April 2005.

channels have not enjoyed much success. For example, the all-news station Realitatea TV hardly reaches a three per cent audience share in urban areas and a two per cent nationwide share.

Another sure bet in the television market in the near future is the local television, which suffers now from scarce resources and lack of professionalism. However, in the coming years local television is expected to become a good investment option.

The pressure for advertising revenue has a negative impact on editorial freedom. Moreover, advertising of State-owned enterprises in the media is another tool for keeping media outlets dependent on political and economic interests.

The advertising market is among the fastest growing in Eastern Europe, with a television advertising growth of 25 per cent to 30 per cent in 2003. The market is expected to grow even faster when Romania joins the EU in 2007–2008, if all the accession criteria are met. With EU accession, the business and political environment is expected to stabilise thanks partly to the EU legislation. Also, the broadcasting players expect steady growth during the years before EU accession, on the pattern already set by the countries that acceded in 2004.

Growth of the advertising market and more investments in the media will strengthen the broadcasters' financial situation. The healthier and more stable the economy becomes, the more interested businesses operating in Romania will be in objective news and investigative programmes. But a healthy economy is not possible without a strong, credible and sustained anti-corruption policy. Building a healthy democracy in Romania should begin with the media. Television outlets should intensify their efforts to become transparent and credible, but this will be the most difficult challenge: establishing objective, in-depth reporting on the screens. However, this is the only way to secure the watchdog role that media should play in a democratic society.

All these efforts will not be sufficient without maximum transparency of data on media ownership and revenues. Increasing the output of independent production could also significantly raise people's trust in the media. Supporting freelance journalism is an important issue. Now, underpaid employees would easily accept any compromise and therefore are censored through various confidentiality agreements.

## 9. RECOMMENDATIONS

### 9.1 Policy

1. The National Audiovisual Council (CNA), should organise public debate involving all relevant actors, including civil society, before adopting any important decision affecting television broadcasters.
2. Parliament should consult with the National Audiovisual Council (CNA), and also with civil society actors, when adopting or amending media legislation,
3. Regulators and lawmakers should adopt a new strategy which would specify procedures for the introduction of digitalisation that would secure free dissemination of information.

### 9.2 Regulatory authorities (CNA and IGCTI)

#### *Media diversity and transparency*

4. The National Audiovisual Council (CNA) should oblige applicants for broadcast licenses to disclose their ownership, especially the identity of their shareholders.
5. The National Audiovisual Council (CNA), in cooperation with the local Competition Council, should enforce restrictions on the concentration of media ownership and cross-ownership. The two institutions should be held accountable for not fulfilling this task.
6. The National Audiovisual Council (CNA) should monitor transfers of broadcast licences, and movements of shares of companies owning such licences, to prevent unlawful concentration of ownership.
7. The National Audiovisual Council (CNA) should publish the audiences shares of all television stations every month, to strengthen the transparency of the broadcasting market.

#### *Independence*

8. The Government should ensure the autonomy of the body administrating the frequency spectrum, the Inspectorate General for Communications and Information Technology (IGCTI), by changing the procedure of appointing its chair so that the Prime Minister no longer makes the appointment.

#### *Local television*

9. The National Audiovisual Council (CNA) should monitor the ownership structures and sources of financing of local television stations.
10. The National Audiovisual Council (CNA) should monitor the content of the local television market to ensure compliance with their remit.

### 9.3 Public and private broadcasters

11. Broadcasters should support educational and cultural policy in broadcasting, by creating a fund for the support of quality television programming, which should be administered by an independent, private body.
12. Parliament should initiate amendments to Law 187/1999 to oblige public and private television stations to make public the names of their employees who were former collaborators with the communist secret police (the *Securitate*).<sup>208</sup>

### 9.4 Public service broadcasters (SRTV and SRR)

#### *Independence*

13. Parliament should take steps to amend the Law on SRTV and SRR to ensure the independence and efficiency of public broadcasters.
14. Parliament should adopt changes in legislation to ensure the independent position of the public service broadcasting. All segments of the society should be represented in the SRTV's and SRR's Councils of Administration.
15. Parliament should adopt changes in legislation to introduce criteria of professional competence in appointing members of SRTV's and SRR's Councils of Administration, as well as at the executive level of the management of Romanian Public Radio (SRR) and Romanian Television Broadcasting Corporation (SRTV).
16. Parliament should put forward changes in legislation aimed at separating the positions of the SRTV's Council of Administration's President and Director General.
17. Parliament should initiate amendments to the Law on SRR and SRTV to forbid former collaborators with the communist secret police (the *Securitate*) to be employed in PSB.<sup>209</sup>

<sup>208</sup> Article 2 (n) of the Law on access to personal files, states that the public: "has the right to be informed, on request, in connection with the position of agent or collaborator of the *Securitate*, as a political police, of the persons who occupy or aspire to be elected or appointed" to dignities or offices including "member on the board of directors of the public radio and television corporations, employer, director, chief editor, editor in the public or private television, radio or written press services, political analysts and the comparable categories". However, the law does not oblige broadcasters to disclose the names of their employees who collaborated with the *Securitate*.

<sup>209</sup> According to the SRTV's Organisational and Functioning Regulations (ROF), former collaborators or employees of the *Securitate* are forbidden from working with the SRTV. However, this internal regulation has been employed arbitrarily so far.



*Auditing*

18. Parliament should adopt legislation to ensure an independent financial auditing of the management and editorial independence of the Romanian Public Radio (SRR) and the Romanian Television Broadcasting Corporation (SRTV).
19. Civil society should continue to organise regular debates on how the public broadcaster fulfils its mission, inviting all political parties, representatives of regulators, Parliament, other relevant institutions to participate.

**9.5 Private broadcasters***Transparency*

20. The National Council of Audiovisual (CNA) should oblige private broadcasters to reveal their sources of financing.<sup>210</sup>

*Local broadcasters*

21. Professional associations of journalists should support local television stations in denouncing pressures and censorship by public authorities and various business and political groups of interests.
22. Local broadcasters and advertising agencies should cooperate in setting up a unified system for measuring the audiences of the local broadcasters, and share the costs of its implementation. Introduction of such a system would help local television stations qualify for advertising orders.

---

<sup>210</sup> According to the Romanian Constitution: “the media may be obliged by law to disclose their sources of financing”. Constitution of the Republic of Romania, article 30, para. 5.

## ANNEX 1. Tables

**Table A1. Structure of the main national television channels (2002)**

	Number of employees	Turnover (€ million)	Advertising income (€ million)	State subsidies (€ million)	Other (€ million)	Status
ANTENA 1	750	24.2	22.3	None	None	Private
PRO TV	313	31.3	27.9	None	None	Private
PRIMA TV	200	6.0	5.6	None	None	State
TVR1	2,704	77.9	14.5	11.2	6.3	State

Source: IMCA<sup>211</sup>**Table A2. Regional private channels (2003)**

Channel	Diffusion	Programming
57 Plus	C	Generalist
C 41	T	Generalist
CBN	T	Generalist
Europa Nova	T, C	Generalist
P+	T	Generalist
RCS	T, C	Movies
RTT	T	Generalist
TV Neptun	T, C	Generalist
3 TV Craiova	C	Generalist
3 TV Deva	n.a.	Generalist
Canal Plus	n.a.	Generalist
RTV Arad	n.a.	Generalist
RTV Sibiu	n.a.	Generalist
TV Etalon	n.a.	Generalist
TV Galați	T, C	Generalist
TV Vâlcea 1	n.a.	Generalist
Super Nova	n.a.	Generalist

Source: AGB TNS International<sup>212</sup><sup>211</sup> Carat, *The World Book 2003*, in IMCA, *The broadcasting landscape*, p. 24.<sup>212</sup> IP International Marketing Committee, *Television 2004. International Key Facts*, October 2004, p. 395.

## ANNEX 2. Legislation cited in the report

### Constitution

Constitution of Romania of 21 November 1991, *Monitorul Oficial* (Part I) 233 of 21 November 1991, voted by national referendum on 8 December 1991, amended by Law no. 429/2003 on the revision of the Constitution of Romania, *Monitorul Oficial* (Part I) 758 of 29 October 2003, voted by national referendum on 18-19 October 2003.

### Laws

Law no. 510/2004 with regard to the Reorganisation of the Inspectorate General for Communications and Information Technology, *Monitorul Oficial* 1082 of 22 November 2004.

Law no. 373/2004 on the Election of the Chamber of Deputies and the Senate, *Monitorul Oficial* 887 of 29 September 2004.

Law no. 370/2004 on the Election of the President of Romania, *Monitorul Oficial* 887 of 29 September 2004.

Law no. 301/2004 on the Criminal Code, *Monitorul Oficial* 575 of 25 June 2004.

Law no. 67/2004 on the Election of the Local Public Administration, *Monitorul Oficial* 271 of 29 March 2004

Law no. 402 of 7 October 2003 on the Modification and Completion of Audiovisual Law no 504/2002, *Monitorul Oficial* 709 of 10 October 2003. (*Audiovisual Law 2003*)

Law no. 504 of 11 July 2002 on Radio and Television Broadcasting, *Monitorul Oficial* 534 of 22 July 2002. (*Audiovisual Law 2002*)

Law no. 533 of 11 December 2003 on the radio-TV fee, *Monitorul Oficial* 895 of 15 December 2003.

Law no. 591/2002 on the approval of the Emergency Government Ordinance 79/2002 concerning the general framework of the communication regulation, *Monitorul Oficial* 791 of 30 October 2002.

Law no. 41/1994 on the organisation and operation of the Romanian Radio Broadcasting Corporation and of the Romanian Television Broadcasting Corporation, last amended by Law 124/1998, republished in *Monitorul Oficial* 636 of 27 December 1999. (*Law on SRR and SRTV*)

Law no. 187/1999 on Access to Personal files and the Disclosure of the *Securitate* as a Political Police, *Monitorul Oficial* 605 of 9 December 1999. (*Law on access to personal files*)

## Government Decisions and Ordinances

Governmental Decision no. 316/ 2004 on the Radio-TV fee, *Monitorul Oficial* 297 of 5 April 2004.

Government Decision no. 978/2003 regarding the Fee for the Public Television Service, *Monitorul Oficial* 607 of 27 august 2003.

Government Decision 744/2003 on the organisation and functioning of MCTI (as amended by Government Decision 927/2004), *Monitorul Oficial*, 494, 9 July 2003.

Decision no. 1445/2002 on Paying TVR's Correspondents Abroad, *Monitorul Oficial* 929 of 18 December 2002; Decision 391/2004, *Monitorul Oficial* 282 of 31 March 2004; Decision 1112/2004, *Monitorul Oficial* 662 of 22 July 2004; and Decision 1181/2004, *Monitorul Oficial* 690, 30 July 2004.

Emergency Government Ordinance no. 71/2003 on the Modification of Article 40 of Law 41/1994 regarding the organization and functioning of SRTV and SRR, *Monitorul Oficial* 606 of 26 August 2003.

Decision no. 1/2004 of the IGCTI's President, *Monitorul Oficial* 23 of 7 January 2005.

## Orders of the Minister of Communications and Information Technology

Order no. 126/2003 of the Minister of Communication and Information Technology, on the modification of the Annexes included in Order 365/2002, *Monitorul Oficial* 276 of 19 April 2004.

Order no. 403/2003 of the Minister of Communication and Information Technology, regarding the procedure of the requiring and issuing of the licences for the radio electric frequencies, *Monitorul Oficial*, 100 of 3 February 2004.

Order no. 423/2003 of the Minister of Communications and Information Technology, on the categories of radio frequencies whose use is free and the harmonised regime of their use, *Monitorul Oficial* 890 of 12 December 2003; as amended by MCTI Order no. 137/2004.

Order no. 164/2003 of the Minister of Communications and Information Technology, on approving the tariff procedure and the register including the spectrum using tariffs, yearly owed to the Inspectorate General for Communications and Information Technology, *Monitorul Oficial* 384 of 4 June 2003.

Order no. 365/2002 of the Minister of Communication and Information Technology, regarding the procedure of authorisation of the broadcasting and retransmission of the audiovisual programme services, *Monitorul Oficial* 921 of 17 December 2002.

## Relevant CNA Decisions

- CNA Decision no. 249/2004 on the protection of the children regarding the broadcasting programmes, *Monitorul Oficial* 668 of 26 July 2004.
- CNA Decision no. 248/2004 concerning the protection of human dignity and the right to one's own image, *Monitorul Oficial* 668 of 26 July 2004.
- CNA Decision no. 254/2004 concerning advertising, sponsorship and teleshopping, *Monitorul Oficial* 668, 26 July 2004.
- CNA Decision no. 40/2004 concerning the necessity to ensure that the public is correctly informed, *Monitorul Oficial* 234 of 17 March 2004.
- CNA Decision no. 17/2004 on the alteration and completion of Decision no. 123/2003 concerning advertising and teleshopping, *Monitorul Oficial* 126 of 12 February 2004.
- CNA Decision no. 260/2003 concerning the transfer of the audiovisual licence, *Monitorul Oficial* 677 of 24 September 2003.
- CNA Decision no. 262/2003 for the modification of CNA Decision 12/2003 on the issue of the retransmission authorization, *Monitorul Oficial* 675 of 24 September 2003.
- CNA Decision no. 261/2003 concerning the retransmission of programme services on the territory of Romania, *Monitorul Oficial* 675 of 24 September 2003.
- CNA Decision no. 257/2003 on the modification of CNA Decision 146/2002 concerning the granting of the audiovisual licence and the issuing of the audiovisual technical authorization for terrestrial radio electric broadcasting, *Monitorul Oficial* 675 of 24 September 2003.
- CNA Decision no. 258/2003 regarding the broadcasting of the European audiovisual works, *Monitorul Oficial* 677 of 24 September 2003.
- CNA Decision no. 234/2003 concerning the broadcasters' obligations of recording radio and TV programmes, *Monitorul Oficial* 517 of 17 July 2003.
- CNA Decision no. 122/2003 concerning the broadcast of the local programmes, *Monitorul Oficial* 480 of 4 July 2003
- CNA Decision no. 86/2003, concerning the control activity *Monitorul Oficial* 298 of 6 May 2003
- CNA Decision no. 52/2003 the obligation of broadcasters to inform the audience on summons and sanctions applied by the National Audiovisual Council, *Monitorul Oficial* 147 of 6 March 2003.
- CNA Decision no. 146/2002 regarding the granting of the audio-visual licence and the issue of the audio-visual authorization decision for broadcasting by terrestrial radio-electric way of programme services, *Monitorul Oficial*, 899 of 11 December 2002.

## ANNEX 3. Bibliography

### *In English*

- AMP, *Political Actors: Media Analyses, week 7-14 May 2002* (Bucharest: Media Monitoring Agency (AMP), 19 May 2002)
- Capital, *Top 300 Richest People 2003* (Bucharest: Ringier Romania, November 2003)
- European Commission, 2004 Regular Report on Romania's progress toward accession (Brussels: European Commission, 2004)
- European Commission, *2003 Regular Report on Romania's progress toward accession* (Brussels: European Commission, 5 November 2003)
- European Commission, *2002 Regular Report on Romania's Progress toward Accession* (Brussels: European Commission, 9 October 2002)
- Ghinea, C., "Transparency for an independent media – How do public institutions spend the money for publicity?" (Bucharest: Romanian Academic Society (SAR), 29 September 2003)
- IREX, *Media Sustainability Index 2003* (Washington: International Research & Exchanges Board (IREX), 30 June 2004)
- IREX, *Media Sustainability Index 2002* (Washington: International Research & Exchanges Board (IREX), 30 June 2003)
- Mungiu-Pippidi, Alina, "From State to Public Service: The Failed Reform of State Television in Central Eastern Europe", in Miklos Sukosd and Peter Bajomi-Lazar (eds.), *Reinventing Media – Media Policy Reform in East-Central Europe* (Budapest: Central European University Press, 2001)
- Macovei, M., "An Analysis of Media Law and Practice", *ARTICLE 19 Report*, Chapter 2 (London: ARTICLE 19, July 1997)
- Reporters without borders, *Caught between Old Habits and Democratic Strides: Romanian Press at a Crossroads* (Paris: RSF, April 2004)
- SAR, Raport de analiză și prognoză – România în 2004 (*Policy Warning and Forecast Report – Romania in 2004*) (Bucharest: Romanian Academic Society, 30 January 2004)
- SAR, *UNDP Project Early Warning System* (Bucharest: Romanian Academic Society, January 2003)
- Petković, Brankica (ed.), *Media Ownership and Its Impact on Media Independence and Pluralism* (Ljubljana: SEENPM and Peace Institute, 2004).
- SBS Broadcasting, *2002 Annual Report*, filed with the U.S. Securities and Exchange Commission (Washington: 15 May 2003)
- U.S. Department of State, *2003 Human Rights Report on Romania* (Washington: 25 February 2004)

CME, *Annual Report, 2005*, filed with the Securities and US Exchange Commission (Washington: 15 March 2005)

CME, *Quarterly report Q1 2004 for the period ended 31 March 2004*, filed with the Securities and Exchange Commission (Washington: 5 May 2004)

CME, *Annual report 2003*, filed with the Securities and Exchange Commission (Washington: 12 March 2004)

CME, *Quarterly Report Q2 for the period ended 30 June 2004*, filed with the Securities and Exchange Commission (Washington: August 2004)

#### *In French*

IMCA, "Paysage audiovisuel et politique publique dans le secteur audiovisuel – Roumanie", ("The broadcasting landscape and public policy in the broadcasting sector – Romania") (Brussels: International Media Consultants Associés, March 2004)

#### *In Romanian*

AMP-FreeEx Programme, *Libertatea Presei în România 2003, (Press Freedom in Romania in 2003)* (Bucharest: March 2004)

Institute for Marketing and Polls (IMAS), *Percepția publicului asupra campaniei electorale pentru alegerile locale, desfășurate la radio și televiziune, (Public perception of the electoral campaign for local elections on radio and television)* (Bucharest: IMAS, July 2004)

INSSE, *Recensământul populației și locuințelor, (Census of population and dwellings)* (Bucharest: National Institute for Statistics, 18-27 March 2002)

## ANNEX 4. EUMAP Questionnaire

The EUMAP questionnaire was conceived as a journalistic, not sociological, tool to obtain comments on the freedom of the media in Romania and potential improvements of the legal and business framework. Therefore, it was not used for any statistical purposes. It contained 15 questions. Six of them were questions allowing multiple answers. If none of them was in line with the respondent's opinion, they had the option to freely comment on the topic.

The EUMAP questionnaire was distributed to more than 50 media experts, representatives of the regulatory bodies, television journalists, editors and managers, representatives of the specialised media commission in Parliament, members of the public television board and managers or representatives of the private television stations, mainly national, but also a few local. The questions addressed mainly the pressures on the public and private media, the trends in the Romanian television market and the activity of the broadcasting regulator.



Television across Europe:  
regulation, policy and independence  
Serbia

## Table of Contents

1. Executive Summary .....	1320
2. Context .....	1323
2.1 Background .....	1324
2.2 Structure of the television sector .....	1327
2.3 Market shares of the main players .....	1331
3. General Broadcasting Regulation and Structures .....	1335
3.1 Regulatory authorities for the television sector .....	1335
3.1.1 The Republican Broadcasting Agency (RBA) – main responsibilities .....	1336
3.1.2 The RBA Council – appointments .....	1337
3.1.3 The first RBA Council .....	1340
3.2 Licensing .....	1343
3.3 Enforcement measures .....	1346
3.4 Broadcasting independence .....	1347
4. Regulation and Management of Public Service	
Broadcasting .....	1350
4.1 The public service broadcasting system .....	1351
4.2 Services .....	1354
4.3 Funding .....	1355
4.4 Governance structure .....	1357
4.5 Programme framework .....	1359
4.5.1 Programming .....	1359
4.5.2 Quotas .....	1361
4.6 Editorial standards .....	1362
5. Regulation and Management of Commercial	
Broadcasting .....	1362
5.1 The commercial broadcasting system .....	1363
5.2 Services .....	1366
5.3 Commercial television ownership and cross-ownership .....	1367

---

5.4 Funding .....	1369
5.5 Programme framework .....	1370
5.5.1 Programmes .....	1370
5.5.2 Quotas .....	1371
5.6 Editorial standards .....	1371
6. European Regulation .....	1372
7. The Impact of New Technologies and Services .....	1374
7.1 New media platforms .....	1374
8. Conclusions .....	1376
9. Recommendations .....	1378
9.1 Media policy .....	1378
9.2 The regulatory bodies (the RBA and the Telecommunications Agency) .....	1380
9.3 The public service broadcaster (RTS) .....	1380
9.4 Industrial relations and ethical issues .....	1380
Annex 1. List of legislation cited in the report .....	1382
Annex 2. Bibliography .....	1383

## Index of Tables

Table 1.	Technical coverage of the main television channels (spring 2005) .....	1330
Table 2.	Average daily television audience reach and audience share (population age 4+) – breakdown by type of station (2004) .....	1330
Table 3.	Average daily television audience share (population age 4+) – breakdown by channel (2005) .....	1332
Table 4.	Average daily radio audience (population age 4+) – breakdown by station (2004) .....	1334
Table 5.	Licences required for the different types of broadcasters .....	1346
Table 6.	RTS expenditure structure (2002) .....	1356
Table 7.	Programme output of RTS 1 and RTS 2 – breakdown by genre (January-March 2005) .....	1360
Table 8.	Programme ratings (29 November to 5 December 2004) .....	1361
Table 9.	Audience shares of the main television channels (2002–2005) .....	1366

## List of Abbreviations

DOS	Democratic Opposition of Serbia, <i>Demokratska Opozicija Srbije</i>
DSS	Democratic Party of Serbia, <i>Demokratska Stranka Srbije</i>
RBA	Broadcasting Agency of the Republic of Serbia, <i>Republička radiodifuzna agencija</i>
RTS	Radio-Television Serbia, <i>Radio-televizija Srbije</i>
SPS	Socialist Party of Serbia, <i>Socijalistička Partija Srbije</i>
SRS	Serbian Radical Party, <i>Srpska Radikalna Stranka</i>

*Note on Serbia and Montenegro*

The State Union of Serbia and Montenegro, established on 4 February 2003, is at this moment the last country to emerge from the violent dissolution of the former Yugoslavia in the 1990s. Its Constitutional Charter is still not fully implemented, because of differences between the Governments of the union members regarding the future of the State. The present Government of Montenegro has declared its determination to transform the Republic into an independent State, while the Serbian authorities would prefer to preserve the union. The initial arrangement foresees the possibility of a referendum on independence in each of the republics in 2006.

The State is a loose union whose top administrative body, the Council of Ministers, is in charge of only five areas – defence, human and minority rights, foreign policy, internal economic affairs and international economic relations. The federal ministries that were previously concerned with media issues have shrunk into only one office, the Information Directorate, which mostly deals with Government-media relations and has no policy-making capacity.

Since the late 1990s, when the major political rupture occurred between the two republics, their developments have followed separate routes. Media policy is exclusively in the competence of the republics. The media industries in the two republics differ in many respects. Divergent, occasionally even incompatible, conditions, institutions or policy in Serbia and Montenegro have resulted in separated and to a great extent different media systems.

## 1. EXECUTIVE SUMMARY

The present media landscape in Serbia is shaped by two major factors – a decade of devastation in the 1990s and slow and insufficient reforms after 2000.

The democratic transition in Serbia only started after the presidential elections of September 2000, in which the authoritarian ruler Slobodan Milošević was defeated. Initially, Milošević attempted to avoid accepting electoral defeat, but mass protests in Belgrade on 5 October 2000 brought about a change of power. Since then, media policy in Serbia has oscillated between two myths. The first Government, led by Prime Minister Zoran Đinđić (2001–2003), inspired many people to believe that Serbia would undergo a transition – including the transformation of the media sector – faster than any other country in the region. The second Government, established in early 2004, with Vojislav Koštunica at the helm, behaved as if transition had mostly been completed, often attempting to present the absence of media policy as a “free market approach”. In reality, though, Serbia lives with one of the most unsettled and unregulated media industries in Europe.

Commercial television and radio channels began to emerge in Serbia in the early 1990s, prior to the legalisation of the dual broadcasting system and the establishment of a coherent regulatory framework. Tenders for broadcast licences were called without proper public openings or transparent criteria. Licences were granted as political favours, or broadcasters simply operated with no licence at all. Until recently, even basic data on the media business were difficult to obtain.

It has been estimated that Serbia has, for some years, had up to 1,500 media outlets, of which the majority are broadcast media. In early July 2005, in addition to the State broadcaster, Radio-Television Serbia (RTS), there were 755 radio and television stations in Serbia – 543 radio stations, 73 television stations and 139 stations broadcasting radio and television programmes. However, such a high number reflects a regulatory chaos, rather than a prospering industry. Estimated at approximately €80 million, the advertising market lags far behind other countries in the region in relative terms, and is not strong enough to support such a large number of outlets. Due to legal deficiencies and political instability, foreign capital has not been ventured in significant figures into Serbia’s electronic media industry. Financial sources supporting the present excessive number of media are not transparent.

Television is the most important medium, in terms of both market and audience share. The leading commercial station, TV Pink, and the first channel (out of three) of the State broadcaster, RTS, compete for top audience ratings. Throughout 2005, they attracted similar average audiences – 22.5 per cent and 21.7 per cent, respectively – leaving far behind the two other commercial stations with national coverage, BK Telecom and TV B92. The six national channels have a combined daily audience of 70 per cent and attract most of the advertising income, while the local, regional and foreign channels share the remaining 30 per cent of the audience. The local media are

still mostly owned by the municipalities and other local authorities, but should be privatised by 31 December 2007. With press circulation remaining among the lowest in Europe – estimated at less than 100 copies sold per 1,000 inhabitants – television continues to be the most important medium in terms of social influence.

The Broadcasting Act, adopted in 2002, was the first in a package of media laws adopted since 2000. The act applies to broadcasting in general and, for the first time, regulates both public service and commercial media. Other relevant laws are the Public Information Law (2003), which has general provisions on media freedom and journalistic independence, and the Telecommunications Law (2003), which regulates the technical aspects of broadcasting. Also important is the recently adopted Law on Free Access to Information of Public Importance (2004), which could significantly strengthen the role of media, by helping citizens to exercise their “right to know”.

The Broadcasting Act introduced a new licensing system, defined general programme standards, regulated advertising and sponsorship issues, and introduced anti-concentration instruments. The new regulatory authority, the Broadcasting Agency of the Republic of Serbia (RBA), was entrusted with the majority of the envisioned tasks, and its establishment became a symbol of the transfer of power over broadcasting from political bodies to an independent regulator. It should have become a cornerstone of broadcasting reform in Serbia.

However, the appointment of the members of the RBA Council turned into the biggest media crisis since 2000. Due to Parliament’s violation of the electoral procedures in the case of two members, and the disputed appointment of one more member, two other members resigned immediately after their appointment, in June 2003. The Council was thereby left incomplete and, as Parliament never approved its Statute, it never functioned properly. In turn, this subsequently entirely blocked the implementation of the Broadcasting Act.

After the 2003 general elections, the new authorities amended the Broadcasting Act in 2004, in order to elect a new Council. The election of the new Council was finally completed in May 2005. Immediately upon its appointment, however, the Ministry of Culture and Media initiated further changes to the Broadcasting Act, thereby subjecting it to a second round of amendments even before it had been implemented. In August 2005, more than 20 months after the deadline for the reform of the state broadcaster, RTS, into a public service broadcaster had expired, Parliament passed amendments to the Broadcasting Act which again extended the deadline – until 30 March 2006. The amendments also include permission for RTS to start collecting licence fees – the mandatory licence fees will be paid together with the electricity bill, as of 1 October 2005 – before its transformation into a public service broadcaster. On

31 August 2005, the OSCE Mission to Serbia and Montenegro expressed its regret at Parliament's adoption of these amendments to the Broadcasting Act.<sup>1</sup>

The Broadcasting Act foresaw the transformation of RTS into a public service broadcaster by 30 January 2003 at the latest. However, as this proved impossible, RTS has been operating in a legal limbo since February 2003. It cannot be considered a public service institution, but is also no longer a State-owned and controlled broadcaster. It will remain impossible to proceed with the transformation without a fully effective and legally established broadcasting council – that is, the RBA Council – and properly appointed RTS management and governing bodies.

Commercial broadcasting is a recent, but prolific, industry in Serbia. For the past 15 years, new radio and television channels have boomed to the point of congesting the airwaves. This reflects the chaotic policy of the previous decade, when licences were granted arbitrarily and mainly for political purposes. Many media also just took advantage of the regulatory void to start operating without any licence. Beneath this chaotic surface, however, several dominant outlets firmly established themselves as market leaders. Advertising and ownership transparency issues are not fully regulated yet, while the anti-concentration measures recently introduced in media regulation are still not implemented.

In April 2005, Serbia and Montenegro received a positive report on their preparedness to start negotiating a Stabilisation and Association Agreement (SAA) with the European Union (EU). The report indicates that the country should take steps to promote the European audiovisual industry, encourage co-production in the fields of cinema and television, and gradually align its policies and legislation with those of the EU. This particularly applies to matters relating to cross-border broadcasting and the acquisition of intellectual property rights. According to the report, preparation for ratification of the Council of Europe's Convention on Transfrontier Television (ECTT) is already under way. However, the report also states that internal media legislation in Serbia remains problematic.

The outcome of the first wave of regulatory reform is far from satisfactory. The new normative framework is not consistent, the essential legal package has not been completed, there is no proactive media policy, and new institutions are not in place. Political control over broadcasting still exists, although no longer through direct programme interference, but mostly through indirect influences. The Government is reluctant to radically transform the media landscape by enforcing regulation and accountability, while the media empires that emerged during the authoritarian period are now securing their market positions.

---

<sup>1</sup> OSCE Mission to Serbia and Montenegro, press release of 31 August 2005, available at <http://www.osce.org/item/16128.html> (accessed 31 August 2005).



## 2. CONTEXT

The television landscape in Serbia has changed beyond all recognition over the past 15 years. However, unlike the situation in the other former socialist countries in Europe, 1989 was not the turning point in the process. The political disintegration of the former Yugoslav federation and the ensuing wars hampered democratic and media changes in Serbia. Democratic transition in Serbia started in autumn 2000, when presidential elections in September, followed by the change of power on 5 October, ended a decade of authoritarian and populist rule by the regime of Slobodan Milošević.

In early 2001, the Democratic Opposition of Serbia (DOS), a heterogeneous coalition of 18 parties, formed a Government promising a rapid transformation of the criminalised State, the ruined economy and devastated society. Besides all of this, Serbia had also suffered severe damage during the NATO bombardment in 1999. The new Government pledged to discontinue the policy of the previous regime. However, overcoming the recent past became as much of a challenge as setting up a new political and social agenda for the future. The arrest of Slobodan Milošević and his transfer to the International Criminal Tribunal in The Hague on 28 June 2001 symbolised this readiness. Yet it also provoked a dreadful reaction on the part of the alliance of criminals, paramilitaries and segments of the security forces against the changes. Their determination to prevent democratisation and to capture the State for their own, criminal, purposes culminated on 12 March 2003 with the assassination of Zoran Đinđić, the first democratically elected Prime Minister. This halted the initial reformist enthusiasm, and caused a major delay in democratic reforms.

The dissolution of the ruling coalition after the murder of the Prime Minister led to early elections in December 2003, followed by complicated coalition negotiations. A new Government, led by Prime Minister Vojislav Koštunica of the Democratic Party of Serbia (DSS), was formed in March 2004 by four parties, whose personnel were once either members of, or close to, the original DOS. It is a minority Government, surviving with the support of Milošević's Socialist Party of Serbia (SPS) and, whenever necessary, also the extreme right-wing Serbian Radical Party (SRS).

The new Government declared constitutional reform to be its major objective, but soon lost its fast pace of transition, consequently slowing down Serbia's reintegration into the international community. This was primarily because of the hesitant cooperation with the Hague Tribunal. Its critics say that, while the Government insists on "legalism", it actually thereby avoids distancing Serbia from its recent nationalistic past. Only in April 2005, after Koštunica's Government sent more than a dozen suspects to the Hague Tribunal, did the EU issue a positive Feasibility Study Report,

opening the way to negotiations on a Stabilisation and Association Agreement that could eventually lead to EU membership.<sup>2</sup>

## 2.1 Background

The present media landscape in Serbia is shaped by two major factors – a decade of devastation in the 1990s and slow and insufficient reforms after 2000.

The media constituted one of the pillars of Milošević's regime.<sup>3</sup> Although hundreds of new outlets appeared, the domination of State-controlled media in the public sphere was preserved. The majority of the largest, oldest and most prestigious media – led by the publishing house Politika, the State broadcaster, Radio Television Serbia (*Radio-televizija Srbije* – RTS), and the State news agency Tanjug – readily supported the regime, after the authorities crushed the initial resistance by some journalists in these organisations. Among the commercial media first granted broadcast licences were those that were either devoted only to entertainment, such as TV Pink, or were politically supportive of the regime, such as BK Telecom. However, despite many difficulties, new, independent media, devoted to professional and unbiased reporting, were also appearing. Politically supported by the emerging civil society and with some financial aid by Western donors, they slowly changed the media landscape in Serbia. It was only by the end of the decade, in 1998, when war with NATO was looming, that the regime resorted to a new repressive law, the Law on Public Information, to suppress, both politically and economically, alternative media voices.<sup>4</sup>

The legacy of misuse of the media and their devastation is still visible. The market leaders are either State-owned media that have traditionally served the powers that be, or new commercial channels that survived the authoritarian regime due to their lack of criticism. Neither of these outlets ever functioned under regular market conditions, and nor were they ever properly regulated. Therefore, the transformation of both State and commercial channels into broadcasters with public service obligations is a major normative, institutional and professional challenge.

<sup>2</sup> European Commission, *Serbia and Montenegro Stabilisation and Association Report 2004*, Commission staff working paper, COM(2004) 206 final, Brussels, available at [http://europa.eu.int/comm/external\\_relations/see/sap/rep3/cr\\_s-m.pdf](http://europa.eu.int/comm/external_relations/see/sap/rep3/cr_s-m.pdf) (accessed 4 August 2005).

<sup>3</sup> For a complex analysis of the role of media, along with other important institutions, during the 1990s, see: Nebojša Popov (ed.), *Serbia's Road to War*, CEU Press, Budapest, 1996. For an analysis of the media content of major State and independent media before 1998, see: Snježana Milivojević, and Jovanka Matic, *Ekranizacija izbora, (Televised Elections)*, Vreme knjige, Belgrade, 1993. For a detailed analysis of the role of individual media see, for example: Miodrag Marović, *Politika i Politika, (Politika and Politics)*, Helsinki Committee for Human Rights in Serbia, Belgrade, 2002. For a documented chronology of the misuse of licensing policy, see: Slobodan Djorić, *Bela knjiga o radiodifuziji 1990–2000, (White Book of Broadcasting 1990–2000)*, Spekter, Belgrade, 2002.

<sup>4</sup> Law on Public Information, *Official Gazette of the Republic of Serbia*, No. 36/98.

The first Government after 5 October 2000 reacted to urgent media problems without developing a coherent media policy. As a sign of goodwill, it immediately abolished the unpopular Ministry of Information and suspended the repressive Law on Public Information 1998. Within months, it announced that the fines that the independent media had paid during several months of the harsh sentencing policy under the Law on Public Information 1998 would be returned to them. Despite this, today many media still complain that they have never been properly compensated for the fines that they had to pay, and that this was only a symbolic gesture on the part of the Government.<sup>5</sup>

The expectations of the public were much higher, however. In the eyes of the public, RTS was perhaps the most visible symbol of the regime's propaganda. Mass protests against the station had taken place on several occasions between 1991 and 2000. Also, NATO warplanes bombarded it in April 1999, killing 16 of its staff. Both the general public and the media community expected a clear break with the past, including some form of justice against those who suppressed the media during those years and also those who commanded pro-regime media during their worst time. Yet the DOS Government avoided responding to this difficult task. Instead, its major media-related achievement during its three years in office was the adoption of three relevant laws: the Broadcasting Act (2002),<sup>6</sup> the Telecommunications Law (2003),<sup>7</sup> and the Public Information Law (2003).<sup>8</sup> However, as yet, none of these laws has been fully implemented.

The Broadcasting Act was adopted by the Serbian Parliament in July 2002.<sup>9</sup> It was amended two years later, in August 2004, and again in August 2005. From its initial stages, the draft was prepared by a working group of media, legal and NGO experts, with international expert assistance, and it was based on Council of Europe standards. The working group was formed on the initiative of media and NGO activists, who had been demanding regulatory changes long before 5 October 2000. Independent organisations and experts had on several previous occasions drafted various proposals, but the Government and Parliament had never adopted them.<sup>10</sup> This time, however,

<sup>5</sup> Comment from the OSI roundtable meeting, Belgrade, 9 May 2005 (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.*

<sup>6</sup> Broadcasting Act, *Official Gazette of the Republic of Serbia*, No. 42 /18 July 2002.

<sup>7</sup> Telecommunications Law, *Official Gazette of the Republic of Serbia*, No. 44/03, 24 April 2003.

<sup>8</sup> Public Information Law, *Official Gazette of the Republic of Serbia*, No. 43/03, 23 April 2003 (hereafter, Public Information Law 2003).

<sup>9</sup> Broadcasting Act, amendment of 24 August 2004, *Official Gazette of the Republic of Serbia*, No. 97/04, (hereafter, Broadcasting Act). Available in Serbian at [http://www.parlament.sr.gov.yu/content/cir/akta/akta\\_detalji.asp?Id=163&t=Z](http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=163&t=Z) (accessed 4 August 2005).

<sup>10</sup> These initiatives from civil society date back to the early 1990s. See: Prvoslav Plavšić, Mirosljub Radojković, Rade Veljanovski, *Toward Democratic Broadcasting*, Soros Yugoslavia Foundation, Belgrade, 1993.

they welcomed the introduction of the working group, although it mostly worked without the participation of State institutions. A long debate preceded the acceptance of the draft law, with its tenth version finally submitted to Parliament.<sup>11</sup> The final text is, in many respects, a compromise, reflecting the various influences along the way and neglecting some of the initial demands of civil society.

The Broadcasting Act established a new regulatory authority – the Broadcasting Agency of the Republic of Serbia (RBA). It introduced a new licensing system and defined general programme standards, including public service obligations. The act also prescribed basic anti-concentration instruments, and regulated advertising and sponsorship. Additionally, it foresaw the transformation of the State broadcaster, RTS, into two separate public service institutions (see section 4.1) and the privatisation of other State-owned outlets.

The new regulatory authority, the RBA, was entrusted with carrying out the majority of the envisioned tasks. Its establishment became a symbol of the transfer of power over broadcasting from political bodies to an independent regulator. The RBA should have become a cornerstone of the broadcasting reform in Serbia. In particular, it was expected to bring order to the illegal operation of hundreds of broadcasters who were jamming the airwaves. However, the attempt to establish an independent broadcasting regulator failed, due to Parliament's violation of the appointment procedures for the RBA Council. As a result, two out of the nine members resigned, and the RBA Council could never function properly (see section 3.1.2).

The incomplete RBA Council blocked implementation of the law, the transformation of the State broadcaster into a public service, the privatisation of local media and initiation of the new licensing procedures. Although the unresolved status of the broadcasting regulator immediately became a political problem, any attempt to find a solution was postponed until after the early elections, in December 2003. Yet, less than two weeks after taking up office in March 2004, the subsequent Government appointed a new Director General of State television, using its prerogatives under the Law on Public Enterprises.<sup>12</sup> The Government said that the intervention was justified because of popular dissatisfaction with RTS's coverage of the outbreak of ethnic violence against Serbs in Kosovo on 17 March 2004. The Government opted for personal, rather than structural, changes within State television, confirming right away its primary interest in programme content, rather than institutional transformation. In order to solve the crisis over the RBA Council, the Government proposed insignificant amendments to the Broadcasting Act, using these changes as a justification for appointing a new Council before the termination of the mandate of the inactive one. Although the Government argued that this procedure offered the only possible

---

<sup>11</sup> More details on the working group activity and the media transition process so far are available in Serbian at <http://www.mediacenter.org.yu/code/navigate.asp> (accessed 4 August 2005).

<sup>12</sup> Law on Public Enterprises and Related Areas of Public Interest, *Official Gazette of the Republic of Serbia*, No. 25/2000.

solution, critical observers believe that, through such manoeuvres, the Government again subordinated the Council to political interests.

The Public Information Law and the Telecommunications Law also took a long time to prepare. Both were adopted a year later than the Broadcasting Act, in April 2003 – during the state of emergency following the assassination of Prime Minister Đinđić.<sup>13</sup> During the parliamentary debate, the Law on Public information was modified by the insertion of nine new articles, which, among other things, permitted courts to ban the dissemination of information, if such information would result in “a serious, irremediable consequence that could not be prevented in another manner”.<sup>14</sup> As these were last-minute amendments, they were never publicly debated, and still draw much criticism from the media. Professional associations and human rights organisations have repeatedly asked for the revocation of these provisions, which reflected the restrictive climate of the moment. After several postponements – and on persistent pressure from the media, NGOs and international organisations – the Law on Free Access to Information of Public Importance was finally adopted in November 2004.

The introduction of European standards, through new media regulation, has a twofold meaning for Serbia. First, in constructing a normative framework for a transitional society. Second, in providing a new context for a country isolated from the international community for years, during the UN-led embargo of the 1990s (because of Belgrade’s role in the war in Bosnia and Hercegovina). However, the country had already enjoyed massive international assistance in the media domain even before Serbia and Montenegro became a member of the Council of Europe in April 2003. Since the early 1990s, international and western donors have supported independent outlets and strengthened media pluralism. After 2000, external support was extended to include assistance with the transformation of State television into a public service broadcaster, as well as expertise for revising normative and institutional structures. Prior to the country’s membership of the Council of Europe, its progress in the media domain had been regularly monitored.<sup>15</sup> However, after an initial few months of enthusiasm, its progress has usually been evaluated as slow and insufficient. In Serbia, the delay of media policy reforms appears to be a permanent condition rather than a temporary aberration.

## 2.2 Structure of the television sector

Broadcasting in Serbia was introduced in 1929, when Radio Beograd was established. This is also the date of foundation of the present public enterprise, Radio-Television Serbia (*Radio-televizija Srbije* – RTS). Regular television broadcasts went on air in

<sup>13</sup> The state of emergency introduced after the assassination of Prime Minister Zoran Đinđić lasted from 12 March to 22 April 2003.

<sup>14</sup> Public Information Law 2003, art. 17.

<sup>15</sup> See, for example, the following Council of Europe reports: SG-Inf(2004)14, SG-Inf(2003)28, SG-Inf(2003)38, SG-Inf(2004)8, available at <http://www.coe.int/sg> (accessed 4 August 2005).

1958, with the second television channel launched in 1972 and the third in 1989. Until the 1990s, Radio-Television Belgrade (*Radio-televizija Beograd* – RTB), renamed Radio Television Serbia (RTS) in 1992, was a State monopoly. It was a large State-owned company, financed by licence fees. It comprised three units, with RTV Novi Sad (in the autonomous province of Vojvodina) and RTV Priština (in the autonomous province of Kosovo-Metohija) as regional centres, in addition to the Belgrade headquarters. State television always maintained strong coverage of news and current affairs, but also had a high-quality production of drama, documentary, children’s and educational programmes.

Competition in the media industry was introduced as a result of a combination of arbitrary political decisions and some chaotic developments. Commercial stations began to emerge prior to the legalisation of the dual broadcasting system and before any coherent regulatory framework was in place. Several tenders for broadcast licences were called without proper public openings or transparent criteria for obtaining licences. Due to changes of remit between federal and republican ministries throughout the 1990s, some of the licences were issued on a temporary basis. However, there were also arbitrary decisions by the State broadcaster, RTS, to sign a series of business agreements with new commercial broadcasters that in fact permitted the use of RTS frequencies and transmitters. Two new major television stations, both friendly to the Milošević regime – TV Pink and BK Telecom – used this privilege to enlarge their service area after they started operating in 1994.

During the following years, hundreds of stations emerged, either with various temporary licences or without any licence at all. Immediately after Milošević’s regime was ousted in 2000, the Federal Ministry of Telecommunications called for a moratorium on granting new broadcasting permits. The moratorium was a temporary decision, intended to prevent new stations appearing and to halt any further deterioration in the utilisation of the airwaves, but did not have its intended effect. According to data released by the Broadcasting Agency in July 2005, 172 radio stations, 10 television stations and 39 radio and television stations started broadcasting *after* the suspension of the issue of new broadcast licences in July 2002.<sup>16</sup>

Due to the political heritage of the 1990s, the media in Serbia are often regarded as a source of political influence rather than an industry, and this is reflected in their high position on the political agenda. The commercial aspects of media operations are widely understood to be a private matter for their owners, rather than a public issue requiring adequate transparency. For many years, the total number of media outlets was unknown, with official statistics inaccurate and hopelessly belated. Only recently, the RBA disclosed that, besides RTS, there are 755 broadcasters in Serbia – 543 radio stations, 73 television

---

<sup>16</sup> “U Srbiji ima 755 emitera”, (“There are 755 broadcasters in Serbia”), in *Politika* (daily), Belgrade, 2 July 2005, p. A9, (hereafter, *Politika*, 755 broadcasters).

stations and 139 stations broadcasting both radio and television programmes.<sup>17</sup> At least 300 local media are still in various forms of State or municipal ownership.

Due to the arbitrariness of the licensing regime and the frequent changes of institutional remits, with many temporary arrangements, all electronic media operate without proper licences. There is no control of the technical aspects of their work, and the financial sources sustaining this medley are not publicly known. Because of legal deficiencies and the permanent political instability, foreign capital has not been attracted to the broadcasting sector.

Television is the most widespread medium, with 81.7 per cent of households owning a television set and 98 per cent of the population above the age of four watching television. The average viewing time is 3.5 hours per day. Radio is second in importance, with 87 per cent of the population regularly listening, primarily to music programmes (69 per cent). Press circulation is low – around 30 per cent of the population do not read daily newspapers at all, or read them only several times a month, an additional 40 per cent read newspapers from once to a few times per week, and fewer than 30 per cent read dailies.<sup>18</sup> The number of Internet users is growing fast. Since it was introduced in 1996, it has increased by an average rate of 15 per cent annually.<sup>19</sup> It reached approximately 840,000 users in 2004. Yet, at 11 per cent of the population, Internet usage is still quite low in comparison with other European countries.<sup>20</sup> Reliable cable and satellite data are not available, and there is no regulation for these two media platforms.

At present, six channels have national coverage – three RTS channels and three commercial stations (see Table 1).

---

<sup>17</sup> *Politika*, 755 broadcasters.

<sup>18</sup> Strategic Marketing and Media Research Institute, *What Does Serbia Read?*, survey on the print media market, November-December 2003, presentation obtainable through IREX.

<sup>19</sup> International Financial Corporation, *Investing in the Internet Sector and Development of IT Technologies in Serbia*, Public Report, Belgrade 2003, p. 23.

<sup>20</sup> CEPIT, *E-volucija*, No 8, 2005, available (in Serbian) at <http://www.bos.org.yu/cepit> (accessed 4 August 2005).

**Table 1. Technical coverage of the main television channels (spring 2005)**

Channel	TV households receiving the channel (per cent)
RTS 1	98.3
RTS 2	97.7
3K (RTS 3)	94.8
TV Pink	91.8
BK Telecom	88.6
TV B92	88.6

Source: AGB Nielsen Media Research<sup>21</sup>

The combined audience share of the national channels averaged 75 per cent during 2004. Local, regional and foreign media are watched by around one quarter of the audiences (see Table 3).

**Table 2. Average daily television audience reach and audience share (population age 4+) – breakdown by type of station (2004)**

Type of television station	Daily audience reach (per cent)	Daily audience share (per cent)
National	77.0	75.2
Local	43.8	10.2
Regional	32.0	6.8
Foreign	22.3	7.8
Total	–	100

Source: AGB Nielsen Media Research<sup>22</sup>

Many local media are still connected to municipalities or local authorities, as they were either founded by them or are funded by them, pending the forthcoming privatisation.<sup>23</sup> The Broadcasting Act set out a four-year period for the privatisation to be accomplished, with a deadline of summer 2006. However, the process is already

<sup>21</sup> AGB Nielsen Media Research, overview of the Serbian television scene January-July 2005, available in Serbian at <http://www.agbnielsen.co.yu/srpski/vesti/index.shtml#37> (accessed 4 August 2005), (hereafter, AGB Nielsen Media Research, *Overview: January-July 2005*).

<sup>22</sup> AGB Nielsen Media Research, *Overview: January-July 2005*.

<sup>23</sup> For more on the local media, see: Snjezana Milivojević, and Srećko Mihajlović, *Local Media and Local Community Development*, Belgrade, Friedrich Ebert Stf., 2004; also: IREX, “Media Privatization in Serbia”, roundtable debate, Belgrade, 2004; “Privatization of the Media in minority languages”, transcript, roundtable debate organised by IREX and the Novi Sad School of Journalism, in Novi Sad, 2 June 2004.



behind schedule new amendments to the Broadcasting Act, passed by Parliament in August 2005, extend the deadline for privatisation of local electronic media until 31 December 2007.<sup>24</sup> The privatisation of State-owned or publicly funded print media was given an even shorter deadline, to April 2005, according to the Public Information Law.<sup>25</sup> However, by the time that the Government had proposed its extension to summer 2006 and Parliament had voted on it, the deadline had already expired.<sup>26</sup> 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.

### 2.3 Market shares of the main players

The excessive number of media outlets in Serbia reflects a regulatory chaos rather than a prospering media market. At approximately €80 million per year, total advertising expenditure is smaller than that in other countries of the region, in relative terms. It is far from enough to support this number of electronic outlets. Advertising spending has increased by €15 million annually since 2002. Advertising is still not properly regulated, and the deficient taxation system does not provide for adequate insight into the money flow.<sup>27</sup>

Of the total annual advertising expenditure, 65 per cent goes to the television sector, 4 per cent to radio and 19 per cent to the print media. A major portion of the total revenue, around 40 per cent, goes to TV Pink.<sup>28</sup> All three channels of the State television broadcaster, RTS, together take half of this amount. Two other national commercial channels, BK Telecom (12-15 per cent) and TV B92 (6-7 per cent),

<sup>24</sup> Proposed changes to the Broadcasting Act, available in Serbian at [http://www.mediacentre.org.yu/media\\_on\\_media.htm](http://www.mediacentre.org.yu/media_on_media.htm) (accessed 4 August 2005).

<sup>25</sup> Law on Public Information 2003, art. 101.

<sup>26</sup> Public Information Law, amendment of 15 July 2005, *Official Gazette of the Republic of Serbia*, No. 61/05. Available in Serbian at [http://www.parlament.sr.gov.yu/content/cir/akta/akta\\_detalji.asp?Id=236&t=Z](http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=236&t=Z) (accessed 4 August 2005).

<sup>27</sup> Therefore, all estimations are based on monitoring advertising expenditures as part of advertisers' market research and are indirectly calculated by the price list of the media concerned. This has been regularly monitored only since 2001. For further information, compare the yearly overviews of the media scene in Serbia of AGB Nielsen Media Research available in Serbian at <http://www.agbnielsen.co.yu/srpski/vesti/index.shtml#37> (accessed 4 August 2005).

<sup>28</sup> According to its own calculation, TV Pink has exceeded this figure and attracts 45 per cent of total television advertising expenditure in the country. Pink International, *Company Information for the Year 2003*, (Company promotion publication in English), p. 9.

together take a similar share, while the rest remains for several hundred other television broadcasters.<sup>29</sup>

TV Pink and the first channel of the State broadcaster, RTS 1, had similar average audience shares throughout 2005, at 22.5 and 21.7 per cent, respectively (see Table 3). They were well ahead of the other two commercial channels with national coverage, BK Telecom and TV B92. All three channels of the State broadcaster, combined, averaged 31.8 per cent of the audience share, making RTS the network with the greatest audience.

**Table 3. Average daily television audience share (population age 4+) – breakdown by channel (2005)**

Channel	Audience share (per cent)
TV Pink	22.5
RTS 1	21.7
BK Telecom	11.4
TV B92	6.9
RTS 2	6.3
3K (RTS 3)	3.8
Other	27.4
Total	100

Source: AGB Nielsen Media Research<sup>30</sup>

From a population of close to 7.5 million in Serbia, about 5 million form the usual daily television audience.<sup>31</sup> For the majority of the population, television is also the major source of information. The evening RTS 1 news bulletin, *Dnevnik 2*, still attracts the largest audience and is the only daily news programme watched by more than 1 million viewers. For example, the *Dnevnik 2* broadcast was the seventh-rated

<sup>29</sup> AGB Nielsen Media Research, *Media scene in Serbia 2004*, presentation at the Media fair in Novi Sad, 3 March 2005, available in Serbian at <http://www.agbnielsen.co.yu/srpski/vesti/index.shtml#37> (accessed 4 August 2005), (hereafter, AGB Nielsen Media Research, *Media scene in Serbia 2004*).

<sup>30</sup> AGB Nielsen Media Research, *Overview: January-July 2005*.

<sup>31</sup> According to the 2002 census, the population of Serbia is 7,498,001, or 92.3 per cent of the population of the State Union of Serbia and Montenegro. These figures do not include Kosovo. More population data is available (in English) on the Serbian Government website at <http://www.srbija.sr.gov.yu> (accessed 4 August 2005).

programme in 2004, with 1,691,861 viewers, or 48.3 per cent of the total audience watching television that evening.<sup>32</sup>

The major portion of the television audience is divided between the State broadcaster and the largest commercial station, TV Pink. RTS is obviously competing for audiences, and is becoming more focused on its entertainment programmes, introducing more soap operas, reality and game shows. This competition is serving to blur the editorial differences between public and commercial channels. TV Pink – known since its establishment in 1994 for its light entertainment profile – has continued almost unchanged in terms of programme content, and the station even strengthened its position after 2000. The other commercial channel, BK Telecom, preserves a variety of programming, but is increasingly serving the political agenda of its owner, Bogoljub Karić (see section 3.4). TV B92 is still trying to introduce public service standards in commercial television – a project disliked both by RTS, uncomfortable with serious journalism competition from the commercial sector, and by commercial channels, unhappy to see goals other than profit maximisation in non-publicly funded media.

Radio audiences show different preferences. Liberalised much earlier than television, and with innovative programming coming from the tradition of city-based Studio B and the youth station B92, radio has built up strong audiences for alternative programmes, unlike the much more controlled television broadcasters. For the independent radio stations that started operating in the 1990s, their continued high ratings form one of the biggest accomplishments of media freedom struggles before 2000.

The celebrated radio station Radio B92 initiated ANEM, a network of independent electronic media in 1993, as an alternative to the dominance of RTS at the time. The association grew much stronger after the local elections in 1996, when many local governments were formed by the previously opposition parties. Municipal stations in these towns mostly joined ANEM, trying to increase their programme quality and especially news production. The exchange of high-quality radio programmes throughout the country was particularly important during the times when central authorities strictly controlled most local outlets. It was also a means by which B92 programmes could be rebroadcast, on the occasions when the station was forced to shut down its offices during the time of authoritarian rule. At present, the network comprises 16 television stations and 28 radio stations, and has over 70 affiliates. ANEM continues to exist as a programme-oriented business association, but still actively promotes issues related to media independence.<sup>33</sup>

---

<sup>32</sup> AGB Nielsen Media Research, *Media scene in Serbia 2004*.

<sup>33</sup> More information is available on the ANEM website at <http://www.anem.org.yu/eng/klanice/index.html> (accessed 4 August 2005).

**Table 4. Average daily radio audience (population age 4+)  
– breakdown by station (2004)**

Radio station	Audience share (per cent)
ANEM	8.6
Radio Beograd	6.1
Radio B92	4.0
Radio S	4.0
Radio Pink	2.3
Radio JAT	2.2
Beograd 202	1.9
Other (mostly local and regional stations)	70.9

Source: AGB Nielsen Media Research<sup>34</sup>

Press circulation is among the lowest in Europe, and total sales do not exceed 700,000 copies per day.<sup>35</sup> Even with the rapidly growing circulation of tabloids in Serbia over the recent years, this still leaves Serbia with fewer than 100 copies per 1,000 inhabitants. Exact data on circulation or any other aspects of the publishing industry is not available, as most companies regard such information as confidential. The press market is diversified and has a long tradition of specialisation in both content and variety. The oldest publishing house, Politika, alone has 30 different media outlets. Despite low circulation figures, there are 12 daily newspapers of different format and editorial orientation at present. Since 2000, this has been a particularly lively, but unstable, market. Of the several new papers that have emerged, some have a fast-growing readership, while some have already disappeared. All of the newly established dailies in the past five years have been tabloids. In spite of differences, they are all recognisable by openly advocating conservative, nationalist and populist attitudes. This significantly influences the overall media quality, as broadsheets and serious television channels feel under pressure to also adjust to tabloid standards. It also decisively shapes the public debate, by introducing tabloid issues and style into political life.<sup>36</sup>

<sup>34</sup> AGB Nielsen Media Research/ SMMRI, *Radio Audience Research in Serbia*, May 2004, presented at the Media Centar, Belgrade, 7 July 2004, obtainable through IREX.

<sup>35</sup> In the absence of official data, this calculation is based on information from the media themselves. It also roughly coincides with rating measurement data. See, for example: Strategic Marketing and Media Research Institute, *What Does Serbia Read?*, survey on the print media market, November-December 2003, presentation obtainable through IREX.

<sup>36</sup> On different aspects of the phenomenon see, for example: Snježna Milivojević, *Tabloidization of the Daily Press in Serbia*, 2004, research report obtainable from IREX, and Helsinki Committee for Human Rights in Serbia, *Mediji kao deo anti-evropskog fronta: Štampa, nepromenjena matrica, (Media as part of the anti-European front: The press, unchanged pattern)*, Belgrade, 2005, available at <http://www.helsinki.org.yu> (accessed 4 August 2005).

### 3. GENERAL BROADCASTING REGULATION AND STRUCTURES

The Broadcasting Act was adopted in July 2002, replacing the outdated Law on Radio and Television that had been in force since 1991. The act applies to broadcasting in general and established an independent regulatory authority, the Republican Broadcasting Agency (RBA), as a regulator with wide competencies covering several areas. The Broadcasting Council was elected one year after the law was adopted. However, because it was not constituted in accordance with the law, it was never able to exercise its responsibilities. Disputes over the Council blocked the implementation of the entire Broadcasting Act. A new Council was appointed in May 2005, following amendments to the Broadcasting Act in 2004, which terminated the mandate of the inoperative Council.

Due to frequent changes in the licensing policy and its arbitrary application, together with the overall disordered development of the broadcasting sector, all broadcasters are currently operating without licences. Broadcast licences and content requirements must be defined by the Broadcasting Council, which is still inoperative, while the allocation of frequencies should be enforced by the Telecommunications Agency, which was only established in May 2005, after a two-year delay.

The Ministry of Media and Culture is in charge of general media issues, whereas the technical aspects of broadcasting and telecommunications are within the remit of the newly established Ministry of Capital Investment (2003).

The Telecommunications Law regulates the technical aspects of broadcasting, including the allocation of frequencies. The law should be enforced by the Telecommunications Agency, which was established in May 2005.

#### 3.1 Regulatory authorities for the television sector

The Broadcasting Act established the Republican Broadcasting Agency (RBA) as the broadcasting regulator. The act applies to broadcasting in general and, for the first time, regulates both public service broadcasting and commercial media, replacing the outdated Law on Radio and Television, in force since 1991.<sup>37</sup> The Broadcasting Act defines the following principles as the basis for regulating the broadcasting sector:<sup>38</sup>

- affirmation of civil rights and freedoms, especially freedom of expression and diversity of opinion;
- prohibition of censorship or interference in the work of the broadcasters;

<sup>37</sup> The Law on Radio and Television, *Official Gazette of the Republic of Serbia*, No. 48/91, 49/91, 53/93, 55/93, 67/93, 48/94 and 11/2001.

<sup>38</sup> Broadcasting Act, art. 3.

- freedom, professionalism and independence in public service broadcasting;
- rational use of the radio frequency spectrum;
- impartiality and transparency of licensing;
- encouragement of the development of broadcasting;
- creativity and application of internationally recognised norms in the sector.

### 3.1.1 The Republican Broadcasting Agency (RBA) – main responsibilities

The Broadcasting Act established the Republican Broadcasting Agency (RBA) as an organisation independent of any State body, other organisation or individuals involved in broadcasting and related activities. It is a regulator with wide competencies covering several areas.<sup>39</sup>

The first concerns its policy capacity, such as defining broadcasting strategy and creating a development policy, which has traditionally been the responsibility of the Government and Parliament. The RBA must be consulted in any matter of media regulation or policy undertaken by Parliament, and should cooperate closely with State institutions in media-related issues.

The second area includes the tendering and issuing of broadcast licences (see section 3.2). The process is to be carried out in cooperation with the Telecommunications Agency and according to the Frequency Allocation Plan prepared by the Ministry of Telecommunications.

The third area includes the supervision of the work of broadcasters in Serbia and the consistent application of the Broadcasting Act, including compliance with programme standards and sanctioning inadequate media performance. In this respect, special attention is given to the Agency's obligations in protecting minors, monitoring hate speech and ensuring the provision of programmes for minorities.<sup>40</sup> The Agency has the mandate to oversee broadcasters' performance and their compliance with general programme standards and special requirements set in their broadcast licence contract. It can issue warnings and temporarily or permanently revoke a broadcaster's licence. It also regulates the programme content of the public service broadcaster and appoints its managing board, and has to approve the statutes of civil society media (i.e. not-for-profit radio stations). All Agency decisions are subject to administrative lawsuits.

However, due to the long and tortuous history of RBA Council's appointment, the Agency has not yet assumed all its responsibilities (see section 3.1.2).

---

<sup>39</sup> Broadcasting Act, art. 8.

<sup>40</sup> Broadcasting Act, art. 19, 21.

The Agency is funded from broadcast licence fees (see section 3.2). In case it falls short of its planned income, the missing funds are to be provided from the State budget. However, the Broadcasting Act clearly states that this shall in no way influence the independence and autonomy of the Agency.<sup>41</sup> Spending must adhere to a financial plan, which the RBA Council adopts on an annual basis, and before the end of the current year for the following one. The financial plan has to be published, and all revenue and expenditures are to be reviewed annually by an independent authorised auditor. Annual financial reports must also be published within three months of the end of the fiscal year.<sup>42</sup>

### 3.1.2 The RBA Council – appointments

The RBA Council is the principal decision-making body of the Broadcasting Agency. It is a small, expert-type body, consisting of nine members and composed according to a socially representative model, as a variety of institutions are entitled to nominate members. The emphasis on selecting experts as members of the Council brings it close to being a body consisting of professionals. Nevertheless, the diversity of nominators should provide it with a representative quality.

The Council members must be distinguished experts in the relevant fields – for example, media experts, advertising experts, lawyers, economists and telecommunications engineers. Political interference is made additionally difficult by excluding from membership politicians (members of parliaments and political parties, and State officials), and any individuals involved in broadcasting or related activities, including their spouses, parents, children or other relatives to the second degree of kinship.<sup>43</sup>

The Council is appointed by Parliament. Parliament can only select one out of two candidates submitted by each nominator. A candidate is selected if the majority in Parliament votes for her or him. However, once appointed, members are not representatives of the institutions that nominated them, and have to fulfil their duties independently, to the best of their knowledge and conscience, only in keeping with the law.

Authorised nominators of the candidates for membership of the Broadcasting Council are spread across various groups, but civil society representatives have objected that, in their opinion, State institutions are over-represented. This was not the case in earlier drafts of the Broadcasting Act, which foresaw a Council with 15 members. However, when the number of members was slashed to nine in the final version of the act as

---

<sup>41</sup> Broadcasting Act, art. 35.

<sup>42</sup> Broadcasting Act, art. 36.

<sup>43</sup> Broadcasting Act, art. 25.

adopted in 2002, while the number of State institutions that could nominate candidates for the Council stayed unchanged, a clear disparity emerged.<sup>44</sup>

When the Broadcasting Act was amended in August 2004, the composition of the Council was slightly modified, without changing the total number of members.<sup>45</sup> The right to nominate was given to the following:<sup>46</sup>

- the Parliamentary Committee on Culture and Information: six nominees – for three members;
- the rectors of the country's universities (through mutual agreement): two nominees – for one member;
- media and professional associations: two nominees – for one member;
- domestic NGOs focusing on the protection of the freedom of expression and/or the protection of the rights of national and ethnic minorities, and the protection of children's rights (through mutual agreement): two nominees – for one member;
- churches and religious communities: two nominees – for one member;
- the Parliament of the Autonomous Province of Vojvodina: two nominees – for one member.

The Council members propose the ninth member themselves. Apart from the criteria prescribed for other members, he or she must live and work in the territory of Kosovo (Serbia's southern province, under UN administration since 1999). The law does not require two nominees, but in this case only specifies that the candidate must obtain the votes of at least five Council members.<sup>47</sup>

The State is favoured over media or civil society institutions not only by the number of nominations, but also by its possible influence upon selecting members proposed by the churches and the ninth member, from Kosovo. As there is no rotation proposed for various religious communities, it is foreseeable that the representatives of the Serbian Orthodox Church, with much closer relations to the State than have the Catholic,

---

<sup>44</sup> This was one of the changes to the Broadcasting Act that the Government introduced at the last minute, modifying the original composition of the Council, and transforming the character of the regulator, without adjusting other aspects of the nomination procedure. More details and comments of international experts comments are available at [http://www.coe.int/t/e/human\\_rights/media/3\\_Assistance\\_Programmes](http://www.coe.int/t/e/human_rights/media/3_Assistance_Programmes) (accessed 4 August 2005).

<sup>45</sup> Broadcasting Act, amendment of 24 August 2004, *Official Gazette of the Republic of Serbia*, No. 97/04, (hereafter, Broadcasting Act), available in Serbian at [http://www.parlament.sr.gov.yu/content/cir/akta/akta\\_detalji.asp?Id=163&t=Z](http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=163&t=Z) (accessed 4 August 2005).

<sup>46</sup> Broadcasting Act, art. 23, 24.

<sup>47</sup> Broadcasting Act, art. 23.



Muslim or any other religious communities, would always be given an advantage. In the case of the member from Kosovo, political interference is even more possible, as the State has more resources to preserve its contacts with interested parties in Kosovo at present, and through its financial support could influence selection of a nominee even further.

Amendments to the Broadcasting Act, passed by Parliament in August 2005, introduced terms ranging from four to six years for Council members, depending on the body proposing them. Those members of the Council elected upon the proposal of the Parliamentary Committee for Culture and Information will serve a six-year term; those proposed by the Parliament of the autonomous province of Vojvodina,<sup>48</sup> the universities and the religious communities will serve a five-year term; while those proposed by NGOs and professional associations will serve a four-year term. The Independent Union of Journalists and some other organisations criticised this amendment as offering an unjustified privilege to the political parties in Parliament, and thus increasing their leverage on the Council. Previously, the length of each member's term was awarded by drawing lots (the terms were of different length to ensure that elections to the Council would in future be staggered). The Government argued that the nominees of the Parliamentary Committee for Culture and Information contribute more to the "public interest" than those of other authorised nominators. However, as the Committee's nominees are agreed on in advance between the political parties, and if they can serve for several consecutive terms, this amendment means that Parliament (and in effect, the political parties) can preserve a permanent influence on the composition of the regulatory authority.

Along with its representative composition, the Council's independence should be further protected by a transparent and demanding appointment procedure and, even more, by the restricted dismissal criteria for members. Their appointment may end only in the case of the following:<sup>49</sup>

- serious illness (causing them to be incapacitated to perform duties for a period exceeding six months);
- giving false personal data during the nomination, or violation of the conflict of interest clauses, even if occurring during the term in office;
- not fulfilling duties for at least three consecutive months, or a period of 12 months during which duties are not fulfilled for at least six months.

A dismissal has to be thoroughly argued, and requires a majority in Parliament.

---

<sup>48</sup> At the same time, the right of veto for the representative from Vojvodina on decisions pertaining to this province was abolished.

<sup>49</sup> Broadcasting Act, art. 28.

### 3.1.3 The first RBA Council

The first appointments to the Council were delayed for eight months, after which the process was unexpectedly rushed through, pending the country's admission to the Council of Europe in April 2003. Throughout all the elapsed time, Parliament and the Government had their publicly declared candidates, but different people were nominated at the session of the Parliamentary Committee on Culture and Information and subsequently appointed. This was a procedural violation, as the Broadcasting Act requires that candidates be presented to the public at the latest 30 days ahead of the vote in Parliament. This disregard of the law soon turned into a substantial problem, provoking serious public criticism of those two appointments and the resignation of the Council member who was nominated by professional associations immediately after her appointment, in June 2003.<sup>50</sup>

During its constitutive session in June 2003, the Council proposed for its ninth member a person whose personal biographical data was disputed, as he was not working and living in Kosovo as the law requires. Although this is one of the conditions for possible dismissal, the Council did not find it proper to even discuss the allegations. Therefore, another Council member, nominated by NGOs, also resigned. In turn, the incomplete Council selected the two disputed members as its Chair and Vice-Chair. Professional organisations and the general public saw this as a form of support for the disputed members and of further disrespect for the law. Because of the long-lasting political confrontations over procedural and personal issues, the Council's record of limited independence was irreparably damaged.<sup>51</sup>

Finally, the dispute provoked a reaction from those international organisations that had been supportive throughout the preparation of the Broadcasting Act. The European Agency for Reconstruction suspended its €300,000 aid allocated for the work of the Council in the first year. When, under public pressure, Parliament finally responded to the problem in August 2003, it confirmed its original vote on the members of the RBA Council, maintaining that the 30-day requirement was pointless after so much time had elapsed. The incomplete Council never recovered from this initial loss of credibility, although it continued to exist. It did not issue any legal documents, and nor could it have done so, as Parliament never approved the Council's statute.

The flawed appointment of the RBA Council members escalated into the most serious media crisis after 2000, which blocked the implementation of the Broadcasting Act and indefinitely postponed the much-expected first, and fair, licensing procedure. As the RBA Council is responsible for appointing the RTS Governing Board (see section 4.4), RTS was left without its governing bodies and so could not even start its transformation into a public service broadcaster. Private broadcasters continued to be

---

<sup>50</sup> The member who resigned is the reporter for this report.

<sup>51</sup> Extensive information about the dispute is available at <http://www.b92.net/specijal/rds/> (4 August 2005).

unmonitored, as there were no licensing requirements to which they could be held responsible, and the Council enjoyed no credibility to set requirements. Finally, the flawed appointment process discredited the new regulator, which otherwise could have settled the various lingering media conflicts that still burden Serbian society.

After the 2003 parliamentary elections, the new Government declared that finding a solution for the status of the RBA Council was one of its priorities. In August 2004, Parliament slightly amended the Broadcasting Act, by modifying the list of authorised nominators. This was used as a justification to elect a new Council. The major modification was made with respect to the three members nominated by the State – the right to nominate these members was centralised in the hands of the Parliamentary Committee on Culture and Information. As Parliament votes in accordance with the strength of the parties represented in it, this modification in fact restored the dominant political influence of political parties on the composition of the Council. The list of Parliament’s nominees clearly stated which party supported the respective nominations, and indicated that the parties had reached mutual agreement prior to presenting the list.

Parliament and the Government thereby avoided admitting responsibility for the violation of the law committed during the flawed nomination of the first Council after the adoption of the Broadcasting Act in 2002. Instead, they proposed amendments that reinstated the influence of political parties on the Council. It therefore became evident that the two-year regulatory vacuum was a consequence of the reluctance of the ruling political parties to accept an autonomous regulator.

Media and professional organisations active in media policy have proposed more ambitious amendments to the Broadcasting Act, including substantial changes to the list of organisations that can nominate members of the Council.<sup>52</sup> Instead of retaining the dominance of State institutions – which currently nominate four members and can easily influence the selection of, at least, the member from Kosovo – they proposed a more balanced composition, described as the “three times three” principle. Three members of the Council would be nominated by Parliament, on behalf of all nominating State institutions of Serbia and Vojvodina. Three members would be nominated by civil society, by relevant NGOs, religious communities and universities. The three other members would be nominated by various professional and media organisations. Presently, all of these professional organisations – which range from drama and film producers to associations of journalists, composers and broadcasters – have only one representative.

This proposal was not accepted, however. Parliament instead amended the Broadcasting Act, selected the new Council, and reappointed two out of three members whose flawed nomination had led to the crisis in the first place. Further complications arose because of the difficulty in the procedure required to determine

---

<sup>52</sup> This was a joint proposal by the Independent Association of Journalists, the Association of Independent Electronic Media and the Media Center, who were active throughout various phases of the Council appointment.

which among the wide range of eligible NGOs are relevant to be among those nominating members of the Council. Some of the most active and reputable members of the media and NGO community were dissatisfied with the choice and again boycotted the process.<sup>53</sup>

The election of the new Council was finally completed in May 2005. However, the second attempt to elect a first RBA Council prolonged the controversy over its political independence. Again, the appointment procedures were extended well beyond the legal deadline, indicating a continuing reluctance to empower the independent broadcasting regulator.<sup>54</sup> It took nine months to elect the Council, three years after the Broadcasting Act had been passed. Even with the appointment of the second Council, there were some procedural irregularities. Questions have been raised regarding the issue of how representative the present members of the Council are of society and the media community, particularly as no fewer than four Council members had all worked together in a small student radio station for a long period.<sup>55</sup>

In addition, this attempt by the Government and Parliament to deal with the problem of the Council's lack of credibility by amending the act offered a dangerous precedent for any future Government wishing to dismiss the Council. It introduced legal insecurity and undermined the regulator's authority, revealing the Government's ultimate power over the regulator.

A second set of amendments to the Broadcasting Act, proposed by the Government in summer 2005, would further modify the procedure for appointing members of the RBA Council. Under these amendments, it is proposed that the longest first-term mandates should be given to the nominees of the Parliamentary Committee for Culture and Information, whereas previously they had been awarded by drawing lots. The Government argued that the nominees of the Committee contribute more to the "public interest" than those of other authorised nominators. As the Committee's nominees are agreed on in advance between the political parties, and if they can serve for several consecutive terms, this amendment would mean that Parliament (and, in effect, the political parties) could preserve a permanent influence over the composition of the regulatory authority.<sup>56</sup> There were strong protests against this proposal by associations of media professionals and by some civil society organisations. However, it is expected that the amendments to the Broadcasting Act will be adopted by

---

<sup>53</sup> The Association of Independent Electronic Media (ANEM) and the Independent Association of Journalists (NUNS) decided to withdraw their nomination from the procedure, indicating their dissatisfaction with the way in which the procedure was being conducted. Their joint statement is accessible at <http://www.mediacenter.org.yu/code/navigate.asp> (accessed 4 August 2005).

<sup>54</sup> In accordance with Article 10 of the amended to the Broadcasting Act, the procedure has to be completed within four months. However, as noted above, this in fact took nine months, with the appointment of the ninth Council member at the parliamentary session of 23 May 2005.

<sup>55</sup> OSI roundtable comment.

<sup>56</sup> A critique of the proposed amendments to the Broadcasting Act is available at <http://www.nuns.org.yu/saopstenje> (accessed 4 August 2005).

Parliament without many changes, probably by autumn 2005, as the parties of the ruling coalition seem to have reached a consensus on this issue.

### 3.2 Licensing

According to the Broadcasting Act, licensing is to be jointly carried out by the RBA Council and the Telecommunications Agency. Once it is applied, the new licensing regime and licence fee payment system could bring order to the chaotic broadcasting scene in Serbia. However, before the first public tender can be prepared, in accordance with the Broadcasting Act and the Telecommunications Act, the allocation of frequencies and further technical aspects of broadcasting must be established by the Telecommunications Agency. In addition, the details of broadcast licence and content requirements must be defined by the newly formed RBA Council.

#### *Licences*

The permission to broadcast comprises two parts. The first is the broadcasting station licence – a technical document issued by the Telecommunications Agency. The Agency is foreseen as a regulator in the Telecommunications Act, but was only appointed three years after the adoption of the act, in May 2005. The Agency is to issue broadcasting station licences based on criteria established in the Frequency Allocation Plan, which is prepared by the Ministry of Capital Investment.

The second part is the broadcast licence, which is issued by the RBA Council. All broadcasters require a broadcast licence, with the exception of the public service broadcaster (presently the State broadcaster, RTS) and also local community stations, while they are completely owned by the State.<sup>57</sup> In cases of mixed ownership, or after privatisation, they will have to apply for a licence like any other commercial operator.

A licence is required for all broadcasting via terrestrial television or radio stations, cable distribution systems and satellite radio communication. It provides the holder with the right to “mount, use and maintain fixed and mobile broadcasting equipment”, in accordance with the provisions of the Telecommunications Law, technical standards stipulated by telecommunications regulations, and in keeping with the Radio Frequency Assignment Plan.<sup>58</sup>

Licences for terrestrial broadcasters are granted after a public tender. The tender is called according to the specifications of the Radio Frequency Assignment Plan for the service area in question. Licences are issued for a period of eight years, but exceptionally also for a shorter period upon the request of the applicant, for the coverage of a single event. Applicants for a tender must provide their technical, organisational and programming concept, as well as their financial documentation and a statement on whether they adhere

---

<sup>57</sup> Broadcasting Act, art. 44.

<sup>58</sup> Broadcasting Act, art. 39.

to the constraints against concentration of media ownership. The Agency issues a licence to cable or satellite broadcasters without calling a public tender and at their request, if they meet the conditions set out in the Telecommunications Law.

Broadcast licences can only be obtained by domestic broadcasters, registered and with their head office or residence in Serbia. A foreign owner may have a maximum 49 per cent share in the overall founding capital of the broadcast licence holder, unless international agreements ratified by Serbia and Montenegro stipulate differently.<sup>59</sup> Applicants from countries where it is impossible to determine the origin of the founding capital cannot participate in a public tender. Foreign ownership is not allowed for public service broadcasters. The law also excludes two types of domestic institutions from becoming broadcasters – enterprises or institutions established by the State (except the public service broadcaster) and political parties, organisations or coalitions, or any organisation founded by them.<sup>60</sup>

The licensing procedure must be non-discriminatory, meaning that anyone fulfilling the conditions prescribed by the Broadcasting Act, and regulations passed on the basis of the act, may be granted a licence to broadcast a radio or television programme under equal terms. It has to be transparent, which means that the legal procedure must be respected. Finally, the announcement, conditions and all records of issued licences must be publicly known.

Public service institutions have the right to broadcast directly on the basis of the act, but are required to obtain a broadcasting station licence. They also must ensure quality reception of the signal by at least 90 per cent of the population in their service area. Commercial broadcasters must provide quality reception of their signal to at least 60 per cent of the population in their service area.

Once awarded, the licence cannot be ceded, leased or in another manner transferred, even in the event of a broadcaster selling his or her equipment. In such cases, the new owners of the equipment may not start broadcasting prior to obtaining a new licence.

### *Licensing fees*

Broadcasters must pay a fee, which consists of two parts: the broadcast licence fee (for the right to broadcast), and the broadcasting station fee (for the use of a radio frequency). The fee for a broadcasting station licence must be approved by Parliament.

The amount of the broadcasting licence fee depends on the number of residents in the service areas, and on the programming concept – i.e. programme types and variety, and the proportion of self-produced programmes and programmes from independent producers or other domestic broadcasters.<sup>61</sup> The fee needs to be approved by the

---

<sup>59</sup> Broadcasting Act, art. 41.

<sup>60</sup> Broadcasting Act, art. 42.

<sup>61</sup> Broadcasting Act, art. 66.

Government, but the RBA should issue detailed guidelines for setting the amount. The broadcast licence fee for a radio station cannot exceed 20 per cent of the amount set for a television station.

Only commercial broadcasters pay the broadcast licence fee. Public service institutions, radio and television stations of local and regional communities (if State-owned) and civic sector radio and television stations must only pay the broadcasting station fee, and are exempted from the broadcast licence fee.

Media owned by churches and religious communities are exempt from paying “until the completion of the procedure for restitution of the property of those churches and religious communities that were deprived through nationalisation, confiscation, expropriation *et al.* after World War Two”.<sup>62</sup> This provision indicates that churches and religious communities can also own a radio or television, which in fact has happened with a local radio station, although the public competition has not been called yet. All earlier drafts of the Broadcasting Act had explicitly excluded this possibility. When the final version of the act entered Parliamentary procedure, the Ministry of Religious Communities demanded that this exclusion be omitted, claiming that churches, not being legal persons, are in any case ineligible to register as a radio or television station owner. However, as this exemption from the broadcast licence fee indicates, it is not certain that, when it comes to the public tender, the Ministry’s interpretation will be relevant.<sup>63</sup>

---

<sup>62</sup> Broadcasting Act, art. 67.

<sup>63</sup> Comment by a member of the working group that drafted the law. OSI roundtable comment.

**Table 5. Licences required for the different types of broadcasters**

Type of broadcaster	Licences		Fees	Quality of signal reception
	(1) Broadcasting station licence	(2) Broadcast licence		
Public service station	required	received directly, by law	broadcasting station fee only	at least 90 per cent of the population
Commercial station	required	must apply for a licence	broadcasting station fee and broadcast licence fee	at least 60 per cent of the population
Civil sector station	required	must apply for a licence	broadcasting station fee only	no requirements
Church or religious community	not specified	not specified	broadcasting station fee only	not specified
Local or regional community station	required	must apply for a licence	broadcasting station fee only while State-owned / when privatised, same as other commercial stations	no requirements

Source: Broadcasting Act

### 3.3 Enforcement measures

The RBA Council is obliged to monitor the compliance of broadcasters with their licences and the work of broadcasters in general. It is authorised to issue warnings to broadcasters and also to revoke the broadcast licence for up to 30 days, if a broadcaster, despite continued warnings, fails to remedy the identified violations. It can permanently revoke a licence if the broadcaster has previously been punished at least three times by a temporary licence revocation.<sup>64</sup>

In Serbia, the public had expected that the Council would start proper and fair licensing procedures soon after the adoption of the Broadcasting Act. Many opponents of the previous regime even perceived this as the Council's historic obligation. The beginning of the Council's work was expected to facilitate not only a rational and efficient use of the analogue spectrum, but also an evaluation of the past performance of existing broadcasters, especially those that were among the pillars of the previous regime. In fact, the Council's remit also implied the opening up of a debate over the

<sup>64</sup> Broadcasting Act, art. 63.



role of the media during Milošević's regime. There was a strong expectation among independent media and the general public that those media outlets that served or benefited from supporting the regime should face the consequences. This provision was included in the Broadcasting Act, as one of the Council's obligations was to "take into consideration the applicant's contribution, in the previous broadcasting period, to the implementation of principles regulating broadcasting as determined by this law".<sup>65</sup> With the postponement of the start of the new licensing principles, however, this provision is losing its original purpose and is less likely to be applied.

### 3.4 Broadcasting independence

All media laws adopted since 2000 include provisions protecting the independence of broadcasters. The Public Information Law states that nobody can, directly or indirectly, limit the freedom of public information, abuse State or private authority to do so, or exert any form of physical or other pressure on a media outlet or its staff, or any form of influence apt to hinder their work.<sup>66</sup> It further protects journalists by excluding negative consequences following their work, if the work fully respects the law, their professional code and editorial concept, and additionally protects their right to confidentiality of sources.<sup>67</sup> The Broadcasting Act lists media independence among its basic principles, and prohibits any censorship or influence on the work of public media outlets.<sup>68</sup> It specifically requires the public service broadcaster to ensure that its programmes, especially news and current affairs reporting, are protected from any influence by the authorities, political organisations or economic interests.<sup>69</sup>

Nevertheless, in March and April 2004, the Government of Serbia appointed a new Director General and afterwards a new Governing Board of RTS, citing as the source for its competence to do so the Law on Public Enterprises and Related Areas of Public Interest. Thus, the Government bypassed the Broadcasting Act and its provisions, apparently considering it inapplicable until the RBA Council became operational. The appointment followed a few hours after the outburst of ethnic violence against Serbs in Kosovo, on 17 March 2004. The Government expressed its dissatisfaction with the coverage of these events by RTS.<sup>70</sup> By using programme performance as the argument for intervention in a sensitive situation of massive ethnic violence, it confirmed that it would assume "national obligations" to take precedence over professional standards for RTS. The Governing Board of RTS resigned in protest against the Government's

---

<sup>65</sup> Broadcasting Act, art. 53.

<sup>66</sup> Public Information Law, art. 2.

<sup>67</sup> Public Information Law, art. 31, 32.

<sup>68</sup> Broadcasting Act, art.3.

<sup>69</sup> Broadcasting Act, art. 78.

<sup>70</sup> Statement of the Minister of Culture and Media, Dragan Kojadinović, quoted in the daily *Blic*, 20 March 2004.

appointment of the new Director General, and the cabinet appointed a new Board within a month.

In this episode, the Government took advantage of the legal vacuum in which RTS is still operating, and treated it as any other public company, ignoring the fact that, due to the particular role of broadcasting in society, it enjoys special legal protection. The decision was made in the form of a decree, thus failing to provide for any transparency in the appointing procedure. Contrary to its declared commitments to ensure the implementation of a legal framework for the public service broadcasting service, which clearly stipulates its editorial independence and institutional autonomy, the Serbian Government used the opportunity to directly appoint the management. Instead of a structural transformation, the Government opted for a change of personnel, and instead of refraining from political influence on the public service broadcaster, it returned RTS to the position of a State broadcaster. With the management appointed by the Government and funding coming from the State budget, RTS becomes both politically and financially dependent on the Government of the day.

In its first move in the media field, the Government – by failing to provide the functional, legal and institutional framework for the development of broadcasting according to established European standards – on this occasion committed an act of crude political interference in the management structures of what was supposed to become a public service broadcaster. It ignored the fact that public service organisations should contrast with their State-run counterparts in that they should accomplish their missions independently, without interference from the public authorities or any other external meddling.

Among the first decisions of the new Director General, Aleksandar Tijanić, was to return the third channel to the RTS structure, arguing that it was illegally being prepared to be cheaply sold off. However, even if this were the case, the Broadcasting Act specifically states that the public broadcaster operates two national channels, meaning that RTS is not expected to engage itself in finding a solution for the third channel.<sup>71</sup> The Director General's decision reveals a fundamental misunderstanding of the future position of the public service broadcaster, which has to be achieved through a legal transformation. Avoiding serious structural transformation, under its new Director General, RTS instead started to change by getting involved in celebrity-style transfers of media personnel from other television stations. The absence of institutional restructuring was obscured through an attempt to “buy” credibility from other broadcasters by acquiring their successful programmes or staff. When several journalists joined RTS, they had the approval of the owner of BK Telecom, Bogoljub Karić – a Serbian business oligarch who recently also turned politician – who claimed that ceding some of his best journalists would help to strengthen “national television”.

---

<sup>71</sup> “The Broadcasting Institution of Serbia shall broadcast its radio programme on three channels within the MF band and three channels within the VHF band, and its television programme on two channels within the VHF/UHF band.” Broadcasting Act, art. 84.

For its part, the Government supported RTS by extending budgetary subsidies to the amount of almost the entire spending on culture of the Ministry. This joint support indicates a political arrangement to support what public officials and others in Serbia often call “national television”. In official parlance, this label is substituted for public service broadcasting. It reveals a serious discomfort with the notion of the Government losing control over public service broadcasters. Besides a deep misunderstanding of the notion itself, it also shows a basic disrespect for the public role and responsibility of the media. This fascination with the 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.

Broadcasting independence in Serbia is often understood as a broadcaster’s choice, rather than a structural matter that should be provided and secured by external and internal instruments. This attitude reflects the long tradition of operating under irregular conditions. Most of the present media organisations emerged during the years of repression of press freedom (1990–2000), and such an environment is the only one with which they are familiar. Even among journalists, editorial independence is regarded as a normative concept rather than a routine professional approach. Independence is often understood more to pertain to individual courage and determination than to be a professional obligation. Also, independence is widely understood to consist of keeping a distance from the authorities. This approach often equates independence only with the simplified “right to criticise”. This has serious implications for the professional climate and media quality by minimising the importance of financial pressures upon media independence.

The media in Serbia survived a most difficult decade between 1990 and 2000, both politically and economically. The past five years, after the authoritarian rulers were ousted, were also not easy. What helped the media to carry on was underpaid labour, cheap products, disrespect for copyright, and similar problematic methods. In such circumstances, media independence was not protected or even stimulated. Especially in broadcasting, ensuring independence was often not distinguished from other business competencies of the owners. All major commercial channels credit their own news and current affairs coverage with being impartial and independent, but none of them has any documents protecting the internal freedoms of their journalists. The majority among the commercial channels do not even rely on their own news coverage, but carry extensively reports provided by news agencies. They do not even appear to be aware of this issue. Encouraging investigative journalism is also not a topic.

Nevertheless, several independent media that built their reputation in the 1990s still stage campaigns in defence of media freedom and independence, whenever necessary. Through their professional or business associations, they have developed internal professional guidelines, or ethical codes, in the absence of general standards acknowledged by the profession. Trade unions or professional associations have not yet established the practice of bargaining collective agreements with the media owners, and

so the relations between owners, editors and journalists, especially the mutual obligations, are not yet formalised.

The owners' agenda is obviously obligatory for programme makers. In two major cases since 2000, TV Pink staged a campaign against a Belgrade professor who had called for a public investigation into this organisation because of its ties to the previous authoritarian regime. TV Pink attacked the professional and personal reputation of the professor, openly abusing its news coverage for this purpose. The case is still in court.<sup>72</sup> BK Telecom, the second largest commercial channel, openly supported its owner's political campaign when Bogoljub Karić ran as a presidential candidate in June 2004. He came third. According to the results of monitoring conducted by distinguished professionals, Karić was obviously favoured throughout the BK television programmes and by the media believed to be close to the Karić family.<sup>73</sup> BK Telecom did not accept these allegations, but nevertheless the issue of the "berlusconisation" of the media in Serbia entered the public debate. The Broadcasting Act prohibits political parties from owning television stations, but there is still no authoritative interpretation as to what the legal consequences are when the same person owns both a political party and a television station.

In the absence of a properly functioning RBA Council, media performance is still not systematically monitored. If threats to media independence are publicly discussed, they are still understood to consist in most cases of political pressure. The real, more comprehensive picture, which would also include the relations between media owners and the staff of media organisations, is not yet on the agenda of the professional community and the public as a whole.

#### **4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING**

During the 1990s, the State broadcaster, Radio Television Serbia (RTS), was under the direct control of the regime and was its most important propaganda instrument. The Broadcasting Act (2002), adopted after the democratic changes in 2000, foresaw the transformation of RTS into two separate public service broadcasters – the Broadcasting Institution of Serbia and the Broadcasting Institution of Vojvodina. This transformation should have been completed by 30 January 2003, but this obligation was not fulfilled.

---

<sup>72</sup> The history of this case is available in Serbian at <http://www.b92.net/specijal/pink> (accessed 4 August 2005).

<sup>73</sup> The Media Center, an NGO that supports media development in Serbia, established a team of five distinguished professionals to monitor the election media coverage, and this is one of their findings. They issued seven reports from 24 April to June 14 2004, available in Serbian at <http://www.mediacenter.org.yu/code/navigate.asp> (accessed 4 August 2005).

RTS has preserved its position as audience leader, despite its lost credibility during the years of authoritarian rule in Serbia. The major competitor to its first channel, RTS 1, is the strongest commercial channel, TV Pink, but when all three RTS channels are taken together, then the State broadcaster is firmly in the leading position. Its total audience share in 2004 was 33.3 per cent for television and 12 per cent for radio.

#### 4.1 The public service broadcasting system

During the 1990s, RTS was under the direct control of the Milošević regime, which used it as its chief tool of political propaganda. More than 1,000 journalists and other staff were forced to leave RTS because the regime considered them politically unreliable. Many distinguished professionals among these later joined other media and continued to oppose repression. Subsequently, professional standards were degraded, as “patriotic journalism” became the norm at RTS.

With its exceptionally high ratings in the early 1990s, RTS was initially the major instrument for achieving national mobilisation and sustaining public support for the nationalist policy of the regime. However, the influence of RTS on the Serbian public soon started to deteriorate. As a promoter of militant policies, State television manipulated and discriminated, and relied on hate speech as a major form of political communication to such grotesque proportions that it destroyed its professional reputation and subsequently its credibility with the audience. Due to international sanctions against the then Federal Republic of Yugoslavia and isolation from international exchange, both RTS’s technical infrastructure and its programme content seriously lagged behind the standards of the time.

On several occasions during the 1990s, major civic protests against RTS were staged, sometimes resulting in clashes with the police. During the 1996–1997 demonstrations, lasting three months, against an attempt of the regime to fake the outcome of municipal elections in Serbia, the RTS building was one of the major destinations of dissatisfied citizens. Also, during the RTS prime-time news hour, throughout the major cities dissatisfied citizens – on streets, in front of their houses, on balconies – hit pans, rang bells and produced all kinds of other noises, as a form of protest against the regime propaganda on television.

During the attack on Serbia in the spring of 1999, on the night of 23 April, NATO bombed the RTS headquarters in Abardareva Street, in the heart of Belgrade, justifying this unprecedented decision by citing the role of State television as the regime mouthpiece. The bombs killed 16 RTS staff members who were on duty that night.

Leading international human rights and media organisations vehemently protested against the action, and condemned military attacks on media outlets.<sup>74</sup>

NATO also destroyed a series of other RTS editorial offices and technical installations, such as the building of TV Novi Sad, the Avala television tower, and sites in Zvečka, Jastrebac and Kopaonik. Altogether 84 locations suffered a complete destruction of studio equipment, aerial and transmission systems, and other technical assets. A rough estimate of the material losses was €350 million. In June 1999, when the Serbian police and army left Kosovo and NATO troops moved in, RTS abandoned its Priština studio along with the greater part of its property there.

The decade closed with the State broadcaster being attacked as one of the symbols of the regime that it had so diligently served. During the anti-Milošević demonstrations on 5 October 2000, protestors stormed the RTS headquarters and set it on fire. Broadcasting ceased for several hours and was restored under a new RTS symbol. The darkest hours of RTS were apparently over. Yet the genuine transformation of RTS is still a fundamental political issue in Serbia, involving a wholesale change of the broadcaster's mission in society.

However, apart from normative and organisational changes, successful transformation into a public service would require solving many other problems of RTS, including technological, financial and personnel problems. Many years of destruction, a run-down system of transmitters, old-fashioned production equipment and enormous debts, as well as complicated employment issues, all heavily burden the company. The station's negative reputation and the high level of general poverty in the country obviously hinder the reintroduction of the licence fee as a way to stabilise its financial resources.<sup>75</sup>

The Broadcasting Act (2002) introduced the concept of public service into the broadcasting sphere by assigning the republican and provincial broadcasting organisations the task of providing "public service broadcasting". The act also listed their special obligations in fulfilling the public interest in the sector. The act foresaw the transformation of the public company RTS from a State-owned and controlled entity into two separate public service broadcasters – the Broadcasting Institution of Serbia and the Broadcasting Institution of Vojvodina (Serbia's northern province). For the time being, however, RTS is organised as a public enterprise consisting of RTV Belgrade, RTV Novi Sad and RTV Toplica (a new centre replacing the abandoned RTV Priština), and the RTS Music Production Company (PGP).

<sup>74</sup> "IFJ Condemns NATO Bombing of Media: a Broken Promise that Threatens the Lives of All Journalists and Media Staff", press statement by the International Federation of Journalists, 23 April 1999; Amnesty International issued a statement expressing grave concern on 23 April 1999. See: Amnesty International, *'Collateral Damage' or Unlawful Killings? Violations of the Laws of War by NATO During Operation Allied Force*, 2000, pp. 47–48, available at [http://www.amnesty.org/ailib/intcam/kosovo/docs/nato\\_all.pdf](http://www.amnesty.org/ailib/intcam/kosovo/docs/nato_all.pdf) (accessed 2 May 2005).

<sup>75</sup> OSI roundtable comment.

The Broadcasting Act established special responsibilities for the public service broadcasters in terms of both structures and programme content. The public service broadcaster is obliged to cover 90 per cent of the republic's territory with a high-quality signal. RTS should operate three radio channels and two television channels. RTV Novi Sad operates two regional television channels. As for the management structure, the RTS Governing Board should be appointed by the RBA Council, while the board appoints the Director General after a public call for applications.<sup>76</sup> (See section 4.4.)

Besides general programme standards, the Broadcasting Act determines the obligations and remit of the public service broadcaster in terms of content. It indicates "specific obligations in achieving public interest", although this rather vague requirement leaves room for arbitrary interpretations.<sup>77</sup> Other similarly vague provisions throughout the law reflect a misunderstanding of the public service role by placing upon the broadcaster obligations, such as those to "respect the traditional spiritual, historical, cultural, humanitarian and educational importance and role of the churches and religious communities in society".<sup>78</sup>

The most important obligation of the public service broadcasters is to produce and broadcast programmes with informative, cultural, art, educational, religious, scientific, children's, entertainment, sports and other content, meeting the needs of all citizens. Programmes 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.<sup>79</sup>

Some areas of the public service broadcasters' conduct are more closely regulated. For example, in their news programmes, they are obliged to adhere to principles of impartiality and fairness, to uphold freedom of speech and pluralism of opinion, and to prevent any form of racial, religious, national, ethnic, gender-based or other intolerance or hatred.<sup>80</sup>

The public service broadcaster – as well as the local and regional media, if they are predominantly State-owned – are also obliged to provide programming for ethnic minorities. While 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".<sup>81</sup>

<sup>76</sup> Broadcasting Act, art. 87, 89.

<sup>77</sup> Karol Jakubowicz, a Council of Europe expert, addressed this issue in one of his final comments on the Draft Broadcasting Act, dated 15 April 2002. See: Council of Europe, Analysis and Comments in the Draft Serbian Broadcasting Law, CoE ATCM (2002), available at [http://www.osce.org/documents/mc/2004/02/2491\\_en.pdf](http://www.osce.org/documents/mc/2004/02/2491_en.pdf) (accessed 4 August 2005).

<sup>78</sup> Broadcasting Act, art. 78.

<sup>79</sup> Broadcasting Act, art. 77.

<sup>80</sup> Broadcasting Act, art. 77-79.

<sup>81</sup> Broadcasting Act, art. 78.

According to the Broadcasting Act, RTS was supposed to be transformed into a public service broadcaster by 30 January 2003 at the latest. However, this obligation was not fulfilled. In the absence of an active Broadcasting Council, a new governing structure of RTS was not appointed, the division of assets was not made, and other necessary decisions concerning transformation were not taken. Since February 2003, RTS has therefore been operating in a legal vacuum. It cannot be considered a public service broadcaster, but it is also no longer a State-owned and controlled broadcaster, since the Broadcasting Act replaced the Law on Radio and Television.

The Ministry of Culture and Media responded to this ambiguity in summer 2005, by proposing amendments to the Broadcasting Act, to extend the RTS transformation deadline, while granting it the right to start collecting the licence fee. At this time, the newly appointed RBA Council was also strongly supporting the immediate re-introduction of the licence fee, even though RTS has not yet been transformed into a public service broadcaster. In other words, RTS would start receiving licence fee money without having fulfilled the legal obligation to become a public service broadcaster. However, the RBA's legal remit is to enforce this transformation, the purpose of which is, primarily, to create an independent public service broadcaster in Serbia. So instead of executing what the law asks them to do - and also what has been one of the central issues of political transition in the country since the abolition of authoritarian rule - the RBA is instead helping to prolong the present situation, in which many critics see RTS as being, once again, a thinly-veiled mouthpiece of the Government. The present Director General is insisting on RTS having the role of "national television", which is not foreseen by law but is an ideological construction strongly resembling concepts of State television.

There has been strong opposition by associations of media professionals, civil society organisations and some political parties against the re-introduction of the licence fee before the transformation of RTS into a public service broadcaster is achieved. However, in August 2005, Parliament passed amendments to the Broadcasting Act which both introduce a mandatory licence fee, as of 1 October 2005, while extending the deadline for the transformation of RTS until 30 March 2006.

## 4.2 Services

RTS says that it covers 97 per cent of Serbia's territory with its signal, but that only 65 per cent receive a signal of the highest quality.

The activities of RTS include broadcasting television and radio programmes, producing radio and television programmes, producing music and also live outdoor and indoor broadcasts, and running music orchestras, as follows:

- national television channels: RTS 1, RTS 2, 3K (the third RTS channel), viewtext and RTS Satellite;
- regional television channels: Novi Sad 1 and Novi Sad 2;



- radio channels: Radio Beograd First Programme, Radio Beograd Second Programme, Radio Beograd Third Programme, Beograd 202, Radio Beograd Stereorama, Programme 101, Radio Novi Sad, Radio Niš (including Music Production);
- music orchestras: Symphony Orchestra, Jazz Orchestra, Grand National Orchestra, Small National Orchestra, Mixed Choir and Children's Choir;
- PGP (audio and video production and publishing);
- RTS websites.

The status of Radio Television Priština, as well as the future of 3K, remains unresolved. The former is pending the regulation of the political status of Kosovo, and the latter awaits the implementation of the Broadcasting Act.

In spite of competition from commercial stations, RTS is still the leading broadcaster in terms of audience share (see Table 2). Its only serious competitor is the strongest commercial channel, TV Pink, but combined, the three national RTS channels are firmly in the leading position. RTS's total audience share in 2004 was 33.3 per cent for television and 12 per cent for radio.

Oscillation between the channels is indicative of audience loyalties and their reaction to programme changes. Whereas the audience share of RTS 2 stayed almost unchanged from 2003 to 2004, that of RTS 1 increased. The audience share of RTS's third channel (3K) considerably decreased in the same period – this was mostly because the station stopped daily repeats of popular domestic serials in prime time.<sup>82</sup>

### 4.3 Funding

#### *Present funding*

The Law on the Budget of the Republic of Serbia for the Year 2004 envisaged CSD 3.2 billion (approximately €40 million<sup>83</sup>) for financing RTS.<sup>84</sup> In addition, RTS expected to receive a further €15 million in that year from commercial and other revenues. The number of RTS employees is decreasing, and in December 2004 stood at 6,113.<sup>85</sup>

<sup>82</sup> OSI roundtable comment.

<sup>83</sup> The exchange rate used in this calculation is €1=60 CSD, as it was at the time of the budget planning. The exchange rate in August 2005 was €1= 84 CSD.

<sup>84</sup> The Law on the Budget of the Republic of Serbia for the Year 2004, *Official Gazette of the Republic of Serbia*, No. 33/04. Available in Serbian at [http://www.parlament.sr.gov.yu/content/cir/akta/akta\\_detalji.asp?Id=127&t=Z](http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=127&t=Z) (accessed 4 August 2005).

<sup>85</sup> "U toku 'operacija' smanjenja broja zaposlenih u RTS-u", ("An operation to cut the number of employees at RTS has been launched"), in *Dnevnik*, Novi Sad, 4 July 2005, p. 6.

RTS expenditures for 2002 are as shown below, in Table 6. Although RTS is funded by taxpayers' money, its spending has seldom been a public issue, and no procedures exist for a public review of its expenditures. According to the Auditor's Report for the year 2003, its financial operations were not properly conducted, and therefore did not deserve a completely positive review.<sup>86</sup>

**Table 6. RTS expenditure structure (2002)**

Type of expense	Share of total budget (per cent)
Programme purchase and production expenses	12
Other expenses	28
Payroll	54
Tax and contributions	0
Depreciation	6

The proposed RTS budget for 2005 was 2.8 billion CSD (or approximately €33.5 million). However, during summer 2005 this was reduced by the Ministry of Finance to 2.3 billion (or approximately €27.5 million). This provoked strong reactions from RTS – with its Director General even predicting the bankruptcy of RTS if this decision were to be put into force – and, in reaction, an immediate proposal from the RBA Council to re-introduce the licence fee as of September 2005. This, in turn, led to a public debate about the right of RTS to start collecting a licence fee, before its transformation into a public service broadcaster. It also raised fears that this transformation, if not stopped, would definitely start off on the wrong footing.<sup>87</sup> The debate also revealed that the Ministry is prepared to write off the debts of RTS, to the tune of almost €30 million, and that RTS needs an initial assistance of €10 million for its transformation process. According to its Director General, RTS needs at least €60 million per year to function normally.<sup>88</sup>

Finally, in August 2005, Parliament re-introduced a mandatory licence fee that all viewers and listeners will have to pay, together with their electricity bill, starting from 1 October 2005. The fee was set at CSD 300 (€3.6).

<sup>86</sup> Auditor's Report, 30 June 2004, internal document.

<sup>87</sup> As of 15 July 2005, when the Minister of Finance announced budget cuts for RTS, and the RBA Council responded with proposals to introduce a licence fee as of September 2005, RTS's finances became widely debated and data about its financial condition was for the first time widely publicly known. Further information available at [http://www.mediacentre.org.yu/code/navigate.asp?Id=6&from\\_date=1/1/2000&to\\_date=8/22/200](http://www.mediacentre.org.yu/code/navigate.asp?Id=6&from_date=1/1/2000&to_date=8/22/200) (accessed 15 August 2005).

<sup>88</sup> "Tijanac: Mogu da posumnjam da neko zeli da budemo bedna mala TV", ("Tijanac: I suspect that some one wants us to be a small, poor TV"), in *Blic* (daily), 18 July 2005.

### *Planned reforms*

The financing of the future public service broadcasters is regulated by the Broadcasting Act, but its provisions have not yet been implemented.<sup>89</sup> The act stipulates that the primary source of income for the RTS is the licence fee. The legislature considered that this would be the most appropriate way to allow independent financing of the public services. The licence fee is universal, being paid by all households that own a radio or television receiver.

State television in Serbia was, since its establishment, funded by licence fee. However, in the early 1990s, as the number of subscribers paying the fee rapidly decreased due to the political and economic crises, this form of payment was abolished. Instead, funding for the State broadcaster came from a tax added to electricity bills.

From 2001, the Government decided to fund RTS provisionally from the State budget, until Parliament decides on a lasting solution. By adopting the Broadcasting Act in 2002, Parliament also determined the initial funding level for RTS.

Public service broadcasters were obliged to establish a register of subscribers by 1 December 2002, but they are not entitled to control the ownership of receivers in a manner that would jeopardise the citizens' constitutional rights.<sup>90</sup> The act determined that the collection of the licence fee should start from February 2003. However, as none of the other public service broadcasting transformation deadlines was met, and RTS had not changed its legal status by this date, the re-introduction of the licence fee system has been postponed indefinitely.

If and when the licence fee system starts to operate, the licence fee is to be harmonised with the retail price growth index in Serbia. It will be paid on a monthly basis, by the 15th day of the current month, for the preceding month. The licence fee is to be collected by a publicly owned company offering the most favourable conditions. According to the law, the RBA is in charge of supervising and ensuring the consistent application of the provisions of the Broadcasting Act, including the introduction of the subscription fee. Of the revenue collected from the subscription fee on the territory of the autonomous province of Vojvodina, 70 per cent will belong to the province's public service broadcaster. The Broadcasting Institution of Serbia must pay 1.5 per cent of its monthly income from the licence fee to a separate account of the Republic of Serbia, to support the domestic film industry.

#### **4.4 Governance structure**

RTS is governed by the Governing Board and the Director General, with the Programme Board as a consultative body.

---

<sup>89</sup> Broadcasting Act, art. 80-84.

<sup>90</sup> Broadcasting Act, art. 81.

Although the Broadcasting Act sets out in detail the appointments system for the RTS management bodies, as yet these have not been implemented, due to the delay in appointing the RBA Council (see section 3.1). In March-April 2004, the Government of Serbia bypassed the Broadcasting Act's provision and instead directly appointed a new Director General and Governing Board of RTS, citing as the source of its competence to do so the Law on Public Enterprises and Related Areas of Public Interest (see section 3.4). The new Broadcasting Council is expected to appoint the Governing Board, which would subsequently conduct a procedure to elect the new Director General and provide RTS with undisputed governing bodies.

According to the Law, the RTS Governing Board consists of nine members, appointed by the RBA Council from the ranks of journalists and experts in media, management, law and finance, as well as from among other public figures. The law excludes members of the Serbian and provincial parliaments and public authorities, or officials of political parties, as well as Broadcasting Agency members, from serving on the board. Members are appointed for five years, with a maximum of two consecutive terms.<sup>91</sup>

The Governing Board is autonomous in performing its duties, which, among others, include the following:<sup>92</sup>

- adopting the statute of the broadcaster (with the consent of the RBA Council), business plans and reports on activities, with the obligation to inform the public, the RBA and Parliament;
- appointing the Director General, after a public call for applications;
- approving bylaws prepared by the Governing Board;
- adopting investment plans;
- considering recommendations of the Programme Board;
- determining modes of registering and cancelling the registration of radio and television receivers.

The Director General executes the decisions of the Governing Board and is responsible for the business activities of the broadcaster, as well as being accountable for its programming concept. The Director General proposes to the Board the appointment of the Directors of Radio and Television and Editors-in-Chief. The appointment is for four years with a maximum of two consecutive terms.<sup>93</sup>

According to the Broadcasting Act, all accounts and financial statements of the public service broadcaster are subject to an annual audit by an independent authorised

---

<sup>91</sup> Broadcasting Act, art. 87.

<sup>92</sup> Broadcasting Act, art. 89.

<sup>93</sup> Broadcasting Act, art. 90.

auditor. The act does not state any accountability requirements for the Governing Board or the Director General.

## 4.5 Programme framework

### 4.5.1 Programming

RTS is the biggest producer of radio and television programmes in Serbia. According to in-house data from 2003, RTS transmitted 26,280 hours of programmes on its three terrestrial channels, and 24-hour satellite programming of 8,760 hours. In 2003, the ratio between domestic and foreign programmes increased in favour of domestic works, from 64 per cent in 2002 to 77 per cent in 2003, and RTS produced 9,399 hours of new television programmes. In 2004, RTS transmitted 96 hours of programming daily. According to internal data, the programmes were mainly from RTS's own production, ranging from 58 per cent on 3K to 95 per cent on RTS 1.<sup>94</sup>

News bulletins have traditionally attracted the widest audience to RTS 1, and they still top the list of its most watched programmes. Quite often, RTS news bulletins reach record ratings of the week, only followed by the soap operas and the music or the quiz shows of commercial channels. No other daily news programme has ever enjoyed such high ratings. However, it was also the RTS news production that always attracted special attention and criticism, as it has traditionally been biased in favour of the Government and the ruling party. After 2000, RTS achieved editorial autonomy and increased its efforts to respect the pluralism of opinions. Nevertheless, the proximity of the RTS editorial policy to the Government, which still exerts financial and political influence over RTS, is still a major source of concern on the part of the critical public.

---

<sup>94</sup> Information from the RTS website, at [http://www.rts.co.yu/rt\\_s\\_onama.asp](http://www.rts.co.yu/rt_s_onama.asp) (accessed 4 August 2005). RTS is the only broadcaster in Serbia with a website only in Serbian.

**Table 7. Programme output of RTS 1 and RTS 2  
– breakdown by genre (January-March 2005)**

	Share of total output (per cent)	
	RTS 1	RTS 2
Information	36.4	19.3
Documentaries	1.4	9.1
Culture and arts	2.6	4.6
Religion	0.7	0.7
Science	1.4	3.0
Education	0.9	5.5
Music	3.8	4.9
Children	0.2	6.6
Fiction	17.1	7.4
Film	14.0	8.9
Entertainment	12.5	1.8
Sports	1.0	14.9
Advertising	6.4	5.1
Other	1.6	8.3

As shown below in Table 8, of the 15 top-rated shows in December 2004, eight were RTS programmes. On 1 December 2004, the RTS main evening news bulletin (*Dnevnik2*) was ranked first (20.7 per cent), and the top ten included two RTS domestic reality shows (third and eighth position) and two serials (fifth and ninth position).

**Table 8. Programme ratings (29 November to 5 December 2004)**

Rank	Title	Date	Channel	Audience share (per cent)
1	<i>Dnevnik2</i>	01.12.2004	RTS 1	20.7
2	<i>Serija: Rubi</i>	02.12.2004	PINK	18.4
3	<i>Jednostavanzivot</i>	05.12.2004	RTS 1	17.7
4	<i>Izborza Miss World 2004</i>	04.12.2004	PINK	16.7
5	<i>Serija: Lift</i>	05.12.2004	RTS 1	15.6
6	<i>Grandshow</i>	03.12.2004	PINK	14.7
7	<i>Milioner</i>	29.11.2004	BK	14.2
8	<i>48 Satisvadba</i>	01.12.2004	RTS 1	13.9
9	<i>Serija: Porodicno Blago</i>	01.12.2004	RTS 1	13.8
10	<i>Serija: Skriv Enestra Sti</i>	02.12.2004	PINK	13.8
11	<i>Sre_Ni Telefoni</i>	04.12.2004	RTS 1	12.3
12	<i>Kviz: Slagalice</i>	30.11.2004	RTS 1	12.2
14	<i>Kviz: Sam Protiv Svih</i>	03.12.2004	RTS 1	11.9
14	<i>5 do 12</i>	01.12.2004	PINK	11.3
15	<i>Magazinin</i>	04.12.2004	PINK	11.2

Source: AGB Nielsen Media Research<sup>95</sup>

#### 4.5.2 Quotas

General programme quotas for all broadcasters are set by the Broadcasting Act. At least half of the total programming must be in the Serbian language, and not less than 50 per cent of it must be self-produced. Additionally RTS and the local and regional broadcasters, if they are predominantly State-owned, are obliged to include in their annual airtime at least 10 per cent of independent productions. Not more than 50 per cent of such programmes may be more than five years old.<sup>96</sup>

However, in the absence of programme monitoring, it is not known whether RTS respects the obligatory quotas stipulated in the Broadcasting Council. According to internal claims, the only quota not fulfilled is the new legal obligation to include 10 per cent of programmes from independent producers.<sup>97</sup>

<sup>95</sup> AGB Nielsen Media Research, *Overview: January-July 2005*.

<sup>96</sup> Broadcasting Act, art. 74.

<sup>97</sup> OSI roundtable comment.

#### 4.6 Editorial standards

The major RTS document defining editorial standards is the programme policy that has to be adopted by the Governing Board.<sup>98</sup> Other internal decisions or resolutions from the Governing Board's meetings, as well as recommendations and decisions of the Programme Board, are obligatory guidelines for the programme producers.

There are no permanent internal programme guidelines, but there are topical instructions regulating organisational, business, professional and other issues. According to the official RTS website, these are guidelines to programme producers, who are encouraged not to "create but to represent public opinion", although "as an influential instrument, RTS plays an enormous role in increasing the general educational level of the population and [...] a role in the preservation and development of society's cultural potential".<sup>99</sup>

### 5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING

Commercial broadcasting is a relatively recent but prolific industry in Serbia. Over the past 15 years, so many new radio and television stations have emerged that the spectrum has become congested. The two largest commercial broadcasters, TV Pink and BK Telecom, emerged almost simultaneously at the end of 1994. TV Pink is the most successful among the private broadcasters, in terms of both market and audience shares. TV B92 – the offshoot of Radio B92, which became Serbia's most famous independent radio station during the Milošević years – is a rare exception among private media, by virtue of placing the public interest ahead of commercial benefits.

General anti-monopoly regulation and foreign ownership restrictions are contained in the Public Information Law. The Broadcasting Act limits foreign media ownership by requiring that the broadcast licence holder be registered or have a residence in the country. Foreign ownership is limited to 49 per cent in the overall founding capital of a media company. So far, there has been no major foreign investment in the broadcasting sector. The only significant foreign ownership is a 48.06 per cent share in the B92 joint-stock company acquired by the Prague-based Media Development Loan Fund, an offshoot of the Soros Foundations Network, in November 2004.<sup>100</sup>

<sup>98</sup> Informacije o nama, (Information about us), information from the RTS website at <http://www.RTS.co.yu> (accessed 4 August 2005).

<sup>99</sup> These are listed as principal RTS programme guidelines. See: Informacije o nama Orijentacija!, (Information about us. Orientation!), information from the RTS website at <http://www.RTS.co.yu> (accessed 4 August 2005).

<sup>100</sup> More on the ownership and privatisation of TVB92 available at <http://www.b92.net/english/aboutus/ownershipstructure> (accessed 4 August 2005).



## 5.1 The commercial broadcasting system

Serbia's airwaves are jammed by a huge number of programmes from private broadcasters. This reflects the disordered licensing policy of the previous decade, when licences were granted arbitrarily, and mainly for political reasons. In addition, many outlets also took advantage of the regulatory void by operating without any licence.

Beneath this colourful surface, major media have established themselves firmly in the market. Three commercial channels have already reached national coverage, and a few more have attempted to become regional channels. The two largest channels, TV Pink and BK Telecom, emerged almost simultaneously at the end of 1994. Both companies have diversified business interests.

### *TV Pink*

TV Pink is the most successful commercial channel, in terms of both market and audience shares. Soon after its establishment, TV Pink became a market leader, only competing with RTS for audience shares, and attracting more than 40 per cent of advertising revenues at present. TV Pink grew out of a recording studio, initially as an all-entertainment radio station. The concept proved to be successful, and within a few months Radio Pink became the most popular radio station in Belgrade.<sup>101</sup>

When the company started a television channel in 1994, entertainment was its major focus. As it said in its internal document "the content of the programming – no news, no sports, just entertainment – resulted in rapid success." As this was a period of wars in the former Yugoslavia, with flourishing nationalism, international sanctions and economic destruction in Serbia, TV Pink's success in making huge profits from selling escapist entertainment made it one of the major beneficiaries and even cultural symbols of the regime. It was the only television company required to pay extra profits, a one-time tax which was introduced as a measure against companies suspected of profiteering during the war years.<sup>102</sup>

After 2000, TV Pink started to produce news programming and began to distance itself from so-called turbo-folk music, cheap entertainment and unlimited advertising. However, TV Pink still has a predominant entertainment profile. It also became the

<sup>101</sup> Pink International, *Company Information for the Year 2003*, (company promotional publication) p. 3.

<sup>102</sup> The Law on One-time Taxation on Extra-profits or Extra Property Acquired under Special Conditions, passed on 23 June 2001, was one of the much-debated and expected measures against those who made a fortune during the previous regime, but it never really fulfilled the high expectations surrounding it. On the first anniversary of its application, the then Minister of Finance announced that TV Pink was to be taxed 2.4 million CSD, while a BK company was expected to pay 75.9 million CSD. Further information on the law's application is available in Serbian at <http://www.mfin.sr.gov.yu/html/modules.php?op=modload&name=News&file=article&sid=126> (accessed 4 August 2005).

most successful commercial television operation in South-eastern Europe, after launching TV Pink BIH (Bosnia and Herzegovina) and TV Pink M (Montenegro) as independent members of Pink International. Pink International is the only television company in South-eastern Europe itself coming from the region with affiliated stations operating in more than one country in the region. They are members of the same media company, although each station operates as a “domestic” company and is licensed and regulated by the country concerned. Both in Bosnia and Herzegovina and Montenegro, TV Pink became one of the most popular channels very quickly. Its satellite and cable programmes are also widely watched from Slovenia to Bulgaria.

### *BK Telecom*

BK Telecom is the second largest commercial channel in terms of its audience share. It is owned by the Karić family, one of the country’s richest families, who made their fortune during the 1990s and who also were among the few to pay the tax on extra profits after 2000.

The BK group is the major shareholder of Mobtel, one of the two mobile telephone operators in Serbia, and also owner of EUnet, the largest Internet provider in the country, and publisher of several magazines and possibly newspapers (because the ownership of some tabloids is not transparent). The station proudly announces that it “began operating with the motto ‘Symbol of good television’, with the first show on air called *Little Serbian Reader*”.<sup>103</sup> It maintains an image of a traditional, religious, enterprise with deep family roots in Kosovo, where the Karić family comes from. Close connections between media and political power became a major public issue when the company’s leader, Bogoljub Karić, contested the 2004 presidential elections. According to many, much of his success – he attracted almost one fifth of the votes cast – was thanks to the propaganda support of his television station (see section 3.4). Support for his political activities followed on from the support that the channel has always provided for his corporate and family interests.

BK Telecom has also announced plans to expand in the region, by establishing a Balkan News Network. After its owner launched his political career and established a political party, concerns have been raised about the legality of his ownership, as the Broadcasting Act prohibits political parties from owning broadcasting stations.<sup>104</sup> Stories occasionally surface in the media about selling the channel to “a major foreign company”, but nothing has been confirmed as yet.

Thus, Serbia, which has the least regulated and most devastated media environment in South-eastern Europe, is becoming a centre of lively expansion of television businesses. It seems as if some new commercial, “non-ideological television”, as promoted by TV Pink, is expected to restore the cultural connections between the now independent States of the

<sup>103</sup> Information from the BK TV website, available at <http://www.bktv.com/index.php> (accessed 15 January 2005).

<sup>104</sup> Broadcasting Act, art. 42.

former Yugoslavia that the heavily ideological State broadcasters once helped to destroy. So far, no major international media company has been interested in this task. For the time being, TV Pink, the company that in many respects symbolised the cultural and media production of the authoritarian policies of the 1990s, is attempting this.

### *TV B92*

TV B92 is the most recent of the three commercial stations, but has the longest history in broadcasting. It is the offshoot of Radio B92, the most famous independent radio station during the years of Milošević's regime. It was also a source of powerful political and cultural alternatives during the 1990s. It survived many attempts to shut down its operation and diminish its influence, and is one of the rare exceptions as a medium that placed public interest ahead of commercial benefits.

TV B92 was launched on the eve of the autumn 2000 elections, with a strong sense of public responsibility and serious programming. However, it cannot escape the blunt dilemma of independence: how to satisfy market imperatives without sacrificing its high reputation. TV B92 is the only television station with a significant share of foreign ownership, although the purpose of this investment, coming from an international foundation specialised in assisting media independence and plurality, is evidently not commercial. The Prague-based Media Development Loan Fund, linked to the Open Society Institute, acquired its 48.06 per cent shares in the joint stock company to help consolidate B92.

### *Other players*

Several more channels have important technical potential, but their future in broadcasting is still not clear. Some grew out of large media outlets, such as TV Politika, and will have to redefine their status once cross-media ownership regulation has been enforced. Others existed only as loyal supporters of the previous regime. These include TV Košava, once owned by the daughter of Slobodan Milošević and subsequently sold to the newspaper *Blic*, which is owned by the Swiss company Ringier. There is also TV Palma, once a vocal promoter of nationalist policies and now trying to redefine its programme identity. Finally, there are hundreds of local broadcasters, owned or supported by the local municipalities, whose future depends on their ability to attract new owners and start as commercial broadcasters once the privatisation process has been completed.

Although there are many more regional and local channels, the dual system seems to bring out clear preferences on the part of audiences. Comparative data indicates that the major audience choices over the past few years have led to leading positions for TV Pink and RTS 1, together with the steady growth of other commercial channels, as compared to RTS 2 and 3K (the second and third channels of RTS). By the end of 2003, BK Telecom had a larger audience share than either of these two channels, as did TV B92 by the end of 2004 (see Table 9).

**Table 9. Audience shares of the main television channels (2002–2005)**

Ranked by 2005 audience share

Channel	Dec. 2002	Oct.-Nov. 2003	Nov.-Dec. 2004	Jan.-July. 2005
TV Pink	22.1	23.9	22.5	22.5
RTS 1	20.9	21.7	22.7	21.7
BK Telecom	8.3	10.4	13.2	11.4
TV B92	2.3	3.9	7.0	6.3
RTS 2	7.9	9.3	6.3	6.9
3K (RTS 3)	10.9	5.3	3.5	3.8
Other (mostly local and regional)	27.6	25.5	22.8	22.8
Total	100	100	100	100

Source: AGB Nielsen Media research<sup>105</sup>

## 5.2 Services

The Broadcasting Act introduces, for the first time, general programme standards that are obligatory for all broadcasters.<sup>106</sup> These include the production of quality programmes, in terms of both technology and content, according to international and national standards, and the obligation to produce free, comprehensive and timely information, to broadcast important urgent announcements regarding threats to human life, health, security or property, and to contribute to raising citizens' overall culture and awareness.

As for content, the act explicitly does not allow programmes during the daytime “that may impair the physical, mental or moral development of children and youth”. If broadcast, such programmes should be clearly marked and only aired between 24.00 and 06.00. The same applies to pornography or content that gives undue prominence to violence or is likely to incite violence, drug abuse or other forms of criminal behaviour. Broadcasters are also not allowed to abuse “the naiveté of the audience” and must “contribute to raising the overall culture and awareness of the citizens and keep their programme content in accordance with regulations on public information, i.e. in accordance with regulations on the protection of cultural heritage”.<sup>107</sup> These rather vague propositions are the only public service obligations of the commercial broadcasters.

<sup>105</sup> AGB Nielsen Media Research, *Overview: January-July 2005*.

<sup>106</sup> Broadcasting Act, art. 68.

<sup>107</sup> Broadcasting Act, art. 68.

### 5.3 Commercial television ownership and cross-ownership

As a rule, the commercially most successful broadcasters are connected to a variety of media-related businesses, controlling radio stations, magazines, Internet providers, mobile operators and music companies. Unofficially, some own shares in the print media, but reliable data about this is impossible to obtain.

Several large media operations still exist within major State media or publishing companies. The State broadcaster, RTS, is still a conglomerate of various media-related businesses. Even after the Broadcasting Act sized it down to two terrestrial networks, the third channel, 3K, was not allowed to become separate, but was organisationally returned under the RTS structure. Its future transformation, and the establishment of the separate public service institution in the province of Vojvodina, will affect both the public service side and the commercial side of the broadcasting environment.

Two major publishing companies, Politika and Borba, still dominate the print market. The largest publisher, Politika, underwent privatisation in the mid-1990s and now includes 30 outlets, a radio and television channel, printing facilities and a distribution network. Privatised as a single company, it now comprises three: Politika AD, Politika Newspapers & Magazines, as a joint venture (with half the shares owned by Westdeutsche Allgemeine Zeitung (WAZ) of Essen, Germany), and RTV Politika as the broadcasting company. RTV Politika was formed in 1990 and has its own transmitter network covering most of the country's territory.<sup>108</sup>

Borba is one of the huge State companies due to be privatised soon. It still includes newspapers, a publishing house and a distribution company. Its future privatisation is already fore-shadowed by different interests for *Večernje novosti*, the highest-selling daily newspaper, with complicated property rights.

Some of the newly emerging media outlets are also huge corporations. Pink International includes two radio stations, a magazine and a music company, TV Pink BIH, TV Pink Montenegro and Satellite Pink Plus. BK Telecom has strong ties with the telecommunications industry as a majority owner of the cell phone operator Mobtel, publishes several lifestyle magazines and owns a record company.<sup>109</sup> TV B92 is part of a company that has a radio station, a television channel, book publishing, a cultural centre and an Internet centre.<sup>110</sup>

<sup>108</sup> Basic Facts on Politika are available on the company website at <http://www.politika.co.yu> (accessed 4 August 2005).

<sup>109</sup> Ownership data is compiled from various sources, and only those outlets that the companies themselves acknowledge are included. BK has several times been rumoured to be seeking an interest in various newspapers, most recently the tabloid newspaper *Balkan* or the weekly news magazine *NIN*, but this has not been confirmed.

<sup>110</sup> The detailed company structure is available at <http://www.b92.net/companyprofile/index.php> (accessed 4 August 2005).

The new regulatory framework introduced some ownership restrictions. General anti-monopoly regulation and foreign ownership restrictions are contained in the Public Information Law. Every form of monopoly in the field of public information is prohibited: “No one may enjoy the monopoly to establish or distribute a media outlet.” The provision also extends to protection of internal pluralism, stating that “no one may enjoy the monopoly to publish ideas, information and opinions in a media outlet”. In addition, media outlets may not be founded, directly or indirectly, by the State, a territorial autonomy, or by an institution or company that is prevalently State-owned or funded from public revenues.<sup>111</sup>

The Broadcasting Act further limits foreign media ownership by requiring that the licence holder be registered or have a residence in the country. A foreign owner may have a share of a maximum 49 per cent in the overall founding capital of the medium, but may not possess shares in the public broadcasting service organisations.<sup>112</sup>

The act also regulates the concentration of media ownership in more detail. It declares concentration (i.e. prevalent influence on public opinion) prohibited in cases where a broadcaster with national coverage also does one of the following:

- has more than a five per cent share in the ownership of another broadcaster with the same type of licence;
- broadcasts more than one television and more than one radio programme in the same area;
- has more than a five per cent share in a company publishing a daily newspaper with a circulation of more than 30,000, and vice versa;
- has more than a five per cent share of a news agency, and vice versa;
- simultaneously publishes a daily newspaper with a circulation exceeding 30,000;

It also declares a concentration prohibited if a regional or local television station does one of the following:

- has a share exceeding 30 per cent in the founding capital of another local or regional broadcaster in the same area;
- is simultaneously publishing a local daily newspaper in the same or neighbouring area.<sup>113</sup>

The RBA cannot issue a licence if this would result in any of the prohibited forms of concentration. It is the applicant’s obligation to provide a statement that his or her licence would not violate these provisions, and it is the Agency’s duty to ask the

---

<sup>111</sup> Broadcasting Act, art. 7.

<sup>112</sup> Broadcasting Act, art. 41.

<sup>113</sup> Broadcasting Act, art. 99.

broadcaster to bring its status into accordance with the required provisions within six months, if it occurs. The broadcaster must therefore notify the Agency prior to any ownership changes, and the Agency can revoke the licence if the broadcaster does not abide by the requirements.

However, these ownership restrictions, anti-concentration measures and transparency measures, all proposed in the Broadcasting Act, are still not being enforced or systematically monitored.

#### 5.4 Funding

Advertising is the major source of income for the largest commercial broadcasters. The Broadcasting Act attempted to regulate the financial operations of commercial outlets. The act determines the maximum duration of advertisements, and provides restrictions on the content of television advertising. Advertising time is limited to 10 per cent of programming for public service, local and civic sector outlets, and cannot exceed six minutes per hour of programming. The limit for commercial broadcasters is 20 per cent of the daily broadcasts and 20 per cent per hour of broadcasting. All advertising has to be aired in blocks, separated by not less than 20 minutes, and placed in “natural breaks” during programmes.

The Broadcasting Act prohibits untrue, deceitful, covert or denigratory (offensive) advertisements and teleshopping, or those that could affect the sub-consciousness of viewers. News programmes, information, documentary and children’s programmes may not be interrupted by advertising if they are shorter than 30 minutes. Advertising is not allowed in religious programmes, and political organisations cannot advertise themselves outside election campaigns. Advertisements must always be clearly distinguishable and set apart from other programme products, while journalists, presenters and editors of news, documentary, cultural, educational and children’s programmes may not appear in them. As for content, the act completely forbids the advertising of tobacco, alcohol, and all forms of professional medical treatments, their results, health protection methods or medication.<sup>114</sup>

The Advertising Act is expected to provide full regulation of advertising. The draft, recently prepared for Parliament, is provoking debate that has exposed differences between the advertising industry and the professional media community. According to advertisers’ complaints, Serbia is preparing the toughest regulation in the field, especially of tobacco and alcohol. Their estimates are that many media will not be able to survive with such limited sources of income if advertising remains so heavily regulated.

No reliable figures about the media market are available. The financial operations of the major broadcasters are non-transparent and can only be estimated indirectly, using the quantity of advertising, their audience and market shares. The most dependable

---

<sup>114</sup> Broadcasting Act, art. 104.

calculations draw on the business strategies of international companies interested in the Serbian market. After these companies began to move into the region, from 2000, they wanted to reach the largest possible audiences. These could only be delivered by the all-entertainment channels that were thus able to benefit in terms of advertising revenue from the privileged positions that they had established in the 1990s.

The yearly income of the most successful television station, Pink International, increased slowly from 1997 to 2000, to approximately €4 million. Since 2000, the station's income has been expanding rapidly and, according to advertising market research, its estimated income in 2004 was in the range of €35.<sup>115</sup> The steep growth curve indicates that the real beneficiary of the democratic changes is the leading entertainment broadcaster, which established its leading position during, and thanks to, the old regime, but seems to have only really prospered after its demise.

Meanwhile, the smaller outlets, and those with a strong public service vocation, are unable to compete, and find it difficult to maintain the quality of their programming. As in the case of TV B92, they still rely to an extent on international donations to produce high-quality information, documentary and investigative programmes.

## 5.5 Programme framework

### 5.5.1 Programmes

The Broadcasting Act imposes basic programme standard requirements upon all broadcasters. However, commercial broadcasters are not required to fulfil any particular quotas or to structure their output accordingly. Their programme obligations should in future be specified by their licence contract. As all of them operate without proper licences, there are no standards to which they can be held responsible.

As of recently, even without any requirement to do so, some channels have slowly been adjusting their programme structures according to their desired identity, preferred audience profiles and future market position. Nevertheless, this new orientation is only a substitute for genuine standards that must be defined by law and contained in licence contracts.

Commercial broadcasters in Serbia presently offer differing programmes, with recognisable identities. At one end of the range is TV Pink, the broadcasts of which introduced news shows only after 2000, and which – with fewer than ten of them – is still dominated by light entertainment. Somewhere towards the middle is BK Telecom, which styles itself as a “family channel”. BK Telecom complements its strong emphasis on information and news production with conventional types of entertainment shows.

---

<sup>115</sup> AGB Nielsen Media Research, *Media scene in Serbia 2004*.



At the other end of the spectrum is TV B92, with its strong emphasis on information and investigative journalism, and much less orientation towards light entertainment. During the past five years, this was the only channel whose special investigative programmes, both radio and television, were the channel's trademark. It is also the only broadcaster that consistently keeps the debate over the recent past – the years of ethnic conflicts, wars and authoritarian rule – on the agenda. In this respect, TV B92 approximates being a public service, a role that Radio B92 played throughout the 1990s, when the State broadcaster mostly acted as a regime propaganda instrument.

### 5.5.2 Quotas

Except for the obligation to have more than 50 per cent of their programming in the Serbian language and more than half of it self-produced, the Broadcasting Act does not set any specific obligations on diversity of content.

The large commercial channels do not have any programmes in minority languages. They have only recently started producing drama, documentary and other less commercial genres. Minorities' media mostly exist in areas with ethnically mixed populations. Many of them grew out of local branches of the State broadcaster and are facing serious funding problems. With the recent legal changes, ethnic minority media are now associated with National Minority Councils, autonomous bodies representing the numerous ethnic minorities in Serbia. Founding rights, and the ownership titles following from them, for the local minority media have already been transferred to the National Councils, and the effects of this policy decision are yet to be seen.

International standards are mostly not observed in domestic media, and in the absence of an active broadcasting regulator they are not even acknowledged. TV Pink, for instance, used to emphasise the fact that,

80 per cent of all films and serials broadcast by the Pink network are produced by Twentieth-Century Fox, Warner Brothers, Paramount, Dream Works and Universal Studios. The remaining airtime is divided between local and Latin American soap operas. No European film or television serial is aired on the Pink network.<sup>116</sup>

## 5.6 Editorial standards

All commercial channels value highly their editorial independence, even if news and documentary production is only a minor part of their output. However, none has ever presented any editorial guidelines or has made any such documents publicly accessible.

---

<sup>116</sup> Pink International, Company Information for the year 2003, p. 11.

TV B92 is so far the only large private broadcaster that repeatedly connects its programming with editorial independence and professional quality.<sup>117</sup> Along with many joint initiatives to promote professionalism, it introduced its own Code of Conduct (*ANEM Codex*) and contributed to or initiated many political activities in defence of media freedom, demanding media regulation or protection for journalists.<sup>118</sup>

TV B92's emphasis on serious journalism and investigative reporting significantly differs from the quite often very modest ambition in this respect of the two other main commercial channels.

When BK Telecom credits itself as being an educational channel, which it understands to encompass,

[...] everything from our manner of verbal expression, the way in which we conduct interviews, how we visually tell the story, to the manner with which we conduct ourselves. On the territory of ex-Yugoslavia, BKTv is the first television company to introduce the idea of television that educates, thus raising standards in broadcasting.<sup>119</sup>

Similarly, TV Pink sees “editorial independence, accuracy and respect for privacy” as its distinguishing features, which in turn place its programmes at “the heart of the cultural, entertainment, social, intellectual and political life of the community”.<sup>120</sup>

## 6. EUROPEAN REGULATION

The State Union of Serbia and Montenegro is at the moment at the initial stage of the EU integration process. The country became a member of the Council of Europe in 2003, ending a long period of international isolation.

<sup>117</sup> Some of B92's major awards include the following: Peace Award from Danish peace movements, 1993; Peace Plume from Flemish peace organisations, 1993; Radio Station des Jahres, from Medienhilfe Internationale (Germany), 1996; Free Media Pioneer, from the International Press Institute and Freedom Forum, 1998; Solidarity Award from AMARC, the World Association of Local Community Broadcasters, 1998; Free Your Mind award from MTV Europe; Robert Schumann Medal by the Group of the European People's Party and European Democrats in the European Parliament.

<sup>118</sup> Information from the ANEM website, available at [http://www.anem.org.yu/kodeks/index\\_1.htm](http://www.anem.org.yu/kodeks/index_1.htm) (accessed 22 August 2005).

<sup>119</sup> Quoted from web site information available at: <http://www.bktv.com/index.php> (accessed 15 January 2005).

<sup>120</sup> Description quoted information on TV Pink's website, available at <http://www.rtvpink.com/pink/kompanija-index.php> (accessed 15 January 2005)

In April 2005, the country received a positive report on its readiness to start negotiating a Stabilisation and Association Agreement with the EU.<sup>121</sup> Negotiations are scheduled to start in autumn 2005. However, the report indicates, in the section on television, that the country should take steps to promote the European audiovisual industry, encourage co-production in the fields of cinema and television, and gradually align its policies and legislation with those of the EU. This particularly applies to matters relating to cross-border broadcasting and the acquisition of intellectual property rights for programmes and broadcasters by satellite or cable. The report notes that the ratification of the Council of Europe's Convention on Transfrontier Television (ECTT) is already under preparation in Belgrade.<sup>122</sup> However, it also states that internal media legislation in Serbia remains problematic.

It is clear in any international review of the situation in Serbia that there is still important regulatory work to be done, as well as structural changes to be made, in the media domain. In its most recent periodic report, the Council of Europe emphasised several problems relating to the media: the functioning and credibility of the RBA Council, the implementation of the Law on Free Access to Information of Public Importance, and the alarming number of lawsuits against journalists.<sup>123</sup>

The Council of Europe has assisted in many legal activities, such as advising on the drafting of media legislation in Serbia and helping to introduce European standards into recently adopted laws. However, even when this assistance significantly contributed to increasing the quality of legal texts, it was mostly civil society and media organisations that pressed for the acceptance and implementation of suggested amendments. Compared to other countries in the region, media improvement is slower, and reflects the lack of political consensus over media transformation. The major issue is still the implementation of laws, which means that even when adopted, new regulation is not always effective.

As a non-member of the European Union, Serbia still does not generally regard European practices as obligatory. It has therefore not yet ratified the ECTT. Indeed, there is little awareness about future obligations for the media that will be incurred when Serbia and Montenegro introduce the TWF Directive and other European media

<sup>121</sup> European Commission, *Report On the Preparedness of Serbia and Montenegro to Negotiate a Stabilisation and Association Agreement with the European Union*, Brussels, SEC (2005) 478 final, available at [http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005\\_0476en01.pdf](http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0476en01.pdf) (accessed 4 August 2005).

<sup>122</sup> 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).

<sup>123</sup> Council of Europe, Information Document, SC/Inf/ 233/2005.

and telecommunications regulation as part of the country's preparations for EU membership.<sup>124</sup>

## 7. THE IMPACT OF NEW TECHNOLOGIES AND SERVICES

The Internet is a rapidly growing industry. The number of users in Serbia has doubled since 2000, reaching 11 per cent of the population in 2004, but is still among the lowest in Europe. The number of cable and satellite users is estimated at 400,000. Compared to other technologies, only mobile telephone use has achieved significantly faster penetration, and by all standards is the most vital and best-developed sector of new technologies. There are three million mobile telephone users, which is over 50 per cent more than the terrestrial network users.

According to the law, the Telecommunications Agency should have assumed its regulatory duties as of 2003. However, as the Agency was not established until May 2005, the Ministry of Capital Investment performed most of these functions in the meantime. There is no strategy for digitalisation, and nor is there any date or policy for switchover, as the Strategy on Telecommunications Development is still not finalised.

### 7.1 New media platforms

Although provided for in the Telecommunications Law of 2003, the Telecommunications Agency was only established in May 2005, after a two-year delay. As yet, there is no strategy for digitalisation. No date has been set for the general switchover from analogue signal to digital. Without an active Telecommunications Authority, it is difficult to perceive how Serbia would liberalise the telecommunications market in an orderly manner.

Since 1996, when the Internet was introduced in Serbia, the number of users has grown by an average annual rate of 15 per cent. Around 5 per cent of the population were Internet users by the end of 2000. This number reached 640,000 (or around 7 per cent of the population) during 2002, and increased to 840,000 in 2004.<sup>125</sup> Investment in Internet technologies is still among the lowest in Europe. Although

<sup>124</sup> "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](http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf) (accessed 15 March 2005).

<sup>125</sup> Gallo EFC S.p.A., *Investing in the Internet Sector and IT Technologies in Serbia: Challenges and Possibilities*, Belgrade, 2004, p. 24.

investment per capita increased to almost €18 million in 2004, up from €12 million in the previous year, this is still more than ten times less than in Slovenia, and less than in any other former Yugoslavian republic.<sup>126</sup> There are around 40 Internet service providers in Serbia, indicating a turbulent growth even before the industry has been properly regulated. The most popular media website in Serbia is that of B92, with more than 500,000 hits every day according to data published on its website.<sup>127</sup> It is funded as a commercial operation. Other media outlets lag behind in utilising and developing their Internet services.

Compared to other technologies, only mobile telephone use has achieved significantly faster penetration, and by all standards is the most vital and best-developed sector of new technologies. There are three million mobile telephone users, or over 50 per cent more than there are terrestrial network users.<sup>128</sup> However, even this prosperous segment of the telecommunications sector is facing serious challenges. According to the legal deadline set by the Telecommunications Act, the mobile telephone industry had to be de-monopolised by June 2005 and both market and services liberalised, but this has not yet happened. The State company PTT enjoys a kind of monopoly, having shares in two providers – 80 per cent ownership in Telecom and 49 per cent in Mobtel – which means that it is basically competing with itself. The State claims a majority share in Mobtel, although the BK group, the private co-owner, continues to benefit from its alleged position of majority owner. As BK Telecom is part of the BK group, direct connections between their joint telecommunications and broadcasting interests are continuously the focus of public concern in Serbia.

Cable and satellite users are hard to estimate, as both activities grew prior to any regulation. The number of users is now estimated at 400,000. Due to the absence of regulation, providers operate without licences and with many differences in technical standards. However, due to the fast-growing number of users, operators expect future legalisation. Their combined level of investment to date is approximately €35 million, compared to €520 million in mobile telephone use.<sup>129</sup>

The Ministry of Capital Investment has prepared a proposal for a telecommunications development strategy, which has been debated since summer 2004. However, the Government's avoidance of electing the Telecommunications Agency caused a significant loss of time in formulating consistent policy and relevant public debate. Ownership issues in the telecommunications sector seem to prevent important

<sup>126</sup> *Magazine Mikro*, No. 733, 20 January 2005, p. 7.

<sup>127</sup> Information from the B92 website, available at [http://www.b92.net/o\\_nama/index.html](http://www.b92.net/o_nama/index.html) (accessed 22 August 2005).

<sup>128</sup> OSI roundtable debate, discussion about the Draft Strategy on Telecommunications Development. The draft Strategy is available in Serbian at <http://www.bos.org.yu/cepit/evolucija/html/8/strategija.htm> (accessed 4 August 2005), (hereafter, Draft Strategy on Telecommunications Development).

<sup>129</sup> Draft Strategy on Telecommunications Development.

development decisions. Although most licences and arrangements in this field still date back to the years of Milošević's regime, the present authorities still seem to be inclined to solve them through direct deals involving political criteria, rather than observing the public interest.

## 8. CONCLUSIONS

Since democracy was established in Serbia in 2000–2001, the progress of reform in broadcasting, media policy and regulation has been far from satisfactory. Reforms are slow and piecemeal, rather than conceptually worked out and coherent. The essential legal framework is still incomplete, laws that have been adopted are not being implemented, and new institutions have not been established. Some political figures who played a role at the time of the Milošević regime have again attained prominent positions. The fundamental transformation of the broadcasting sector cannot be enforced without the establishment of new independent regulators for broadcasting and telecommunications. Until this has been provided, there can be no vision for the future.

Two subsequent rounds of amendments to the Broadcasting Act – in 2004 and 2005, even before the act had been implemented – indicate political reluctance to set up independent regulatory structures. The public authorities have so far avoided even initiating a process of revision of the questionable and irregular licensing decisions by the Milošević regime. It has instead tried to preserve influence over the media by prolonging the dubious legal and market conditions that it inherited.

The Government also continues to block the transformation of major State-owned media. Rather than turning the State broadcaster, RTS, into a public service broadcaster, it envisages RTS as Serbia's "national television". In practice, this means State television by another name. This reveals a misunderstanding – if not a rejection – of the very idea of public service broadcasting. RTS preserved large audiences after 2000 and, unlike many public service broadcasters in other transition countries, competes closely with the leading commercial channel in terms of audience share. It also enjoys strong political support. Only when its budget funding started to decrease in 2005 did the public become aware of the amount of its expenditure, as there are no public instruments to ensure its financial accountability.

The financial consolidation of RTS is one of the major issues that cannot be postponed indefinitely. Although the Broadcasting Act required the re-introduction of the licence fee, two years after its adoption this has not yet happened. In summer 2005, the public vehemently protested when the Government obtained Parliament's approval to reintroduce the licence fee for the unreformed State broadcaster, RTS. At the same time, the Government was entitled to set up a special fund to finance the reform of RTS into a public service broadcaster. After years of not paying for television, and with the strong presence of commercial channels, the public is not likely to accept the

licence fee again without first seeing value for money, in the form of the establishment of a genuine public service broadcaster. The commercial stations are also lobbying against granting RTS the possibility of increasing its advertising revenues.

Another highly problematic issue is the delay in privatising the huge State-owned local and regional media sector. Many local and regional radio and television stations owned by municipalities are far from their expected transformation into commercial outlets, which should have been facilitated by the Ministry of Culture and Media and the Privatisation Agency. This delay is caused primarily by the Government's lack of interest in the process, and even its indifference to the future of the local media outlets. There is no coordination between the relevant ministries in charge of privatisation, finances and culture in this complicated process. The Ministry has only issued a decree that has been criticised for its unclear and insufficient content, and which is basically non-applicable. In response to public demands, it once again responded with a postponement, extending the deadline for another year for print media. However, amendments to the Broadcasting Act subsequently extended this deadline to the end of 2008 for broadcast media. Some critics consider that this postponement strategy is in fact a way of preserving State ownership over local media until the next round of local elections. There have been many indications in the past years that the local authorities still exert a strong influence upon the local media.

After initial insecurity following the 2000 change of power, the large private media companies that emerged during the 1990s are consolidating their political and market position. The sources of their huge wealth – which in turn generates influence – have never been disclosed. This also applies to media-related businesses, particularly mobile telephone use. The new democratic governments did not meet public expectations, and opted for political arrangements with the major media outlets, rather than investigating or opening up a public debate about their obscure past and usefulness to the Milošević regime. Even their obligations to pay taxes for the exceptional wealth accumulated during the years of authoritarian rule in Serbia, as envisaged by the law on extra-profits (The Law on One-time Taxation on Extra-profits or Extra Property Acquired under Special Conditions), no longer appears to be an issue for the authorities. The major media companies that emerged throughout the 1990s are now using their market privileges to establish firm holds for the future.

The independent media – which developed as part of a civil society struggling against authoritarian rule and depended to a great extent on international support to oppose repression – are adjusting to the new conditions with much difficulty.

Commercial television channels have not yet been licensed, and the first fair allocation of licences and frequency regulation is not yet under way. Electronic media in Serbia have not yet been exposed to international competition or application of European standards. Foreign investments have not yet entered the broadcasting sector.

Public policy towards Internet-based technologies and other new media platforms is completely lacking. Even the prospering telecommunications sector is being held back

by unresolved ownership issues. The State is involved in an international court case over ownership with a private company, BK. The Government has delayed the appointment of the Telecommunications Agency, which is essential for the implementation of Telecommunications Law (2003) and the licensing of broadcasters.

The Government has not yet publicly accepted responsibility for the absence of reforms and the flawed implementation of the laws. The habit of many public officials to repeat that “the laws are good but not implemented” does not strengthen the case for the rule of law, but rather weakens it, as officials seem to support the notion that law enforcement is a voluntary matter. Furthermore, by supporting dubious “quick fixes” to overcome legal lacunae, the authorities themselves become a major source of disrespect for the rule of law.

Paradoxically, the most visible media improvement so far is one made in terms of content quality. Public communication is slowly recovering from the years of hate speech and militant and aggressive media. In the print sector, the legacy of those years is still visible in the highly aggressive marketing and editorial strategies of newly emerging tabloids. The broadcast sector is normalising, and broadcasters are positioning themselves for the licensing process, which cannot be postponed forever. The 2003 election showed that broadcasters realise that their own commercial interest will be better served in the long run by favouring editorial neutrality over clear political bias. However, it also showed that without firm licensing requirements, they could always opt to serve the political agenda of their owners. Without a proper legal framework and new regulatory structures, the media can hardly be expected to transform themselves into socially responsible and commercially viable companies.

## 9. RECOMMENDATIONS

### 9.1 Media policy

#### *Legislation*

1. Parliament and the Government should undertake a review and reform of national media legislation to ensure its full compliance with the EU *Acquis communautaire*, in line with the preparation of Serbia and Montenegro to become EU member States. They should refrain from legal or policy changes that undermine the already achieved democratic gains in the sphere of public communication.
2. Parliament and the Government should, as a priority, amend the Law on Public Information, the new draft Criminal Code and other relevant legislation, to delete all provisions contravening EU legal standards, in particular those provisions retaining libel as a criminal offence.



3. Parliament and the Government should, without further delay, ensure the full implementation of existing media laws and the establishment of the institutions foreseen by these laws. New institutions – such as the Telecommunications Agency, the Broadcasting Agency and the Ombudsman for Public Information – should receive all necessary support from the public authorities to enable them to fulfil their duties.
4. The Ministry of Culture and Media, in cooperation with other relevant institutions, should provide clear bylaws for the forthcoming privatisation process of municipal media. An office should be established within the Privatisation Agency to assist municipal media to prepare for the privatisation. This office should also facilitate the privatisation of large media owned by the federal State, such as Borba.
5. The Ministry of Culture and Media should also investigate if, and, if so, what, anti-concentration measures are necessary to stimulate media pluralism and introduce necessary transparency measures into ownership regulation.

#### *Broadcasting policy*

6. The Council of the Broadcasting Agency of the Republic of Serbia (RBA) should organise public hearings about the future of broadcasting in Serbia. Particular attention should be devoted to formulating obligations for private broadcasters, who, until now, have never been required to act in a socially responsible manner. The main purpose of the hearings would be to establish common ground for a consensual national media policy.
7. The Government should, in order to foster the development of new media platforms in Serbia, establish an inter-ministerial working group, also involving non-governmental experts from academia, civil society and the media industry. An urgent task of this working group would be to formulate a plan for the digitalisation of broadcasting in the country.

#### *International support*

8. The Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe (CoE), the European Union (EU) and other international governmental and non-governmental institutions should continue monitoring and assisting media reforms in Serbia, particularly with respect to public service broadcasting. They should condition the further integration of Serbia into Euro-Atlantic structures with the speeding up of the media reform process.
9. International organisations supporting media development should continue financial, technical and professional support, including financial assistance to news media in Serbia. Support should be focused towards those media outlets that endorse social responsibility, for instance by resisting cultural and political

populism and offering high-quality programming, including investigative journalism and reporting on politically and socially contentious issues.

## 9.2 The regulatory bodies (the RBA and the Telecommunications Agency)

### *Cooperation*

10. The Council of the Broadcasting Agency of the Republic of Serbia (RBA) should promptly prepare a coherent strategy for the development of the broadcasting sector. This strategy should pay particular attention to the issue of the technological convergence of various media platforms, as well as the liberalisation of media industries.
11. The Council of the Broadcasting Agency of the Republic of Serbia (RBA) should initiate cooperation with the Telecommunications Agency without delay, and should immediately start preparing the first public contest for broadcast licences.

## 9.3 The public service broadcaster (RTS)

12. The Council of the Broadcasting Agency of the Republic of Serbia (RBA) should, as a priority, launch the transformation of Radio Television Serbia (RTS), by appointing Governing Boards of future public service broadcasters of Serbia and Vojvodina. One of the most important parts of this transformation should be establishing the autonomous public service broadcaster for Vojvodina, according to the law, and finding a solution for the future status of the third channel of RTS.

### *Funding*

13. Radio Television Serbia (RTS) should, as soon as it reintroduces a licence fee, simultaneously introduce measures to ensure financial and editorial independence of the future public service broadcaster in Serbia. The transitional fund, set up to help the RTS transformation to public service broadcasting, should be under transparent public control, and there should be regular public reporting of licence fee expenditures.

## 9.4 Industrial relations and ethical issues

### *Employees' rights*

14. Trade unions representing the interests of media professionals should formulate a platform for the protection of employees' rights in the media industry. Based on this document, trade unions should start collective

bargaining with media owners to ensure social standards and other employees' rights.

*Professional ethics*

15. Journalists' associations should cooperate with trade unions on the issue of employees' rights. At the same time, they should enter into negotiations with media owners about acknowledged standards of internal press freedom, obligatory codes of ethics, and other self-regulatory instruments to protect the editorial integrity of journalists.
16. Associations of media professionals, trade unions, civil society organisations, academia and all other interested parties should establish a "media commission" and entrust it with the task of providing a report to Parliament about the role of particular media outlets and journalists during the time of authoritarian rule and warmongering in Serbia in the 1990s. The findings of this report should include recommendations on how to prevent the recurrence of such degradation in the future.
17. Media organisations, trade unions and civil society organisations should insist that the public authorities investigate, and bring to justice the perpetrators of, all cases of violence against media professionals since the 1990s. In the first place, the murderers of two journalists – Slavko Ćuruvija (1999) and Milan Pantić (2002) – and those who ordered these killings, should be uncovered and punished.

## ANNEX 1. List of legislation cited in the report

### Main broadcasting laws

Broadcasting Act, *Official Gazette of the Republic of Serbia*, No. 42/02, 18 July 2002.

Available in Serbian at

[http://www.parlament.sr.gov.yu/content/cir/akta/akta\\_detalji.asp?Id=45&t=Z](http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=45&t=Z) (accessed 4 August 2005).

Broadcasting Act, amendment of 24 August 2004, *Official Gazette of the Republic of Serbia*, No. 97/04.

Available in Serbian at

[http://www.parlament.sr.gov.yu/content/cir/akta/akta\\_detalji.asp?Id=163&t=Z](http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=163&t=Z) (accessed 4 August 2005).

Telecommunications Law, *Official Gazette of the Republic of Serbia*, No. 44/03, 24 April 2003.

Available in Serbian at

[http://www.parlament.sr.gov.yu/content/cir/akta/akta\\_detalji.asp?Id=90&t=Z](http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=90&t=Z) (accessed 4 August 2005).

### Other laws

Law on Free Access to Information of Public Importance, *Official Gazette of the Republic of Serbia*, No. 120/04, 21 November 2004.

Available in Serbian at

[http://www.parlament.sr.gov.yu/content/cir/akta/akta\\_detalji.asp?Id=171&t=Z](http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=171&t=Z) (accessed 4 August 2005).

Public Information Law, *Official Gazette of the Republic of Serbia*, No. 43/03, 23 April 2003.

Available in Serbian at

[http://www.parlament.sr.gov.yu/content/cir/akta/akta\\_detalji.asp?Id=84&t=Z](http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=84&t=Z) (accessed 4 August 2005).

Public Information Law, amendment of 15 July 2005, *Official Gazette of the Republic of Serbia*, No. 61/05.

Available in Serbian at

[http://www.parlament.sr.gov.yu/content/cir/akta/akta\\_detalji.asp?Id=236&t=Z](http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=236&t=Z) (accessed 4 August 2005).

Law on Public Information, *Official Gazette of the Republic of Serbia*, No. 36/98.

Law on Public Enterprises and Related Areas of Public Interest, *Official Gazette of the Republic of Serbia*, No. 25/2000.

The Law on the Budget of the Republic of Serbia for the Year 2004, *Official Gazette of the Republic of Serbia*, No. 33/04.

Available in Serbian at

[http://www.parlament.sr.gov.yu/content/cir/akta/akta\\_detalji.asp?Id=127&t=Z](http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=127&t=Z) (accessed 4 August 2005).

## ANNEX 2. Bibliography

### *In English*

- AGB Nielsen Media Research, *Media scene in Serbia 2004*, presentation at the Media Fair in Novi Sad, 3 March 2005 (Belgrade: AGB Nielsen, 2005)
- International Financial Corporation, *Investing in the Internet Sector and Development of IT Technologies in Serbia*, Public Report (Belgrade: IFC, 2003)
- Pink International, *Company Information for the Year 2003*, (company promotional publication in English).
- Plavšić, Prvoslav, Miroljub Radojković and Rade Veljanovski, *Toward Democratic Broadcasting* (Belgrade: Soros Yugoslavia Foundation, 1993)
- Popov, Nebojša (ed.), *Serbia's Road to War* (Budapest: CEU Press, 1996)
- European Commission, *Serbia and Montenegro Stabilisation and Association Report 2004*, Commission staff working paper, COM(2004) 206 final (Brussels: EU, 2004).
- Milivojević, Snjezana and Srećko Mihajlović, *Local Media and Local Community Development* (Belgrade: Friedrich Ebert Stf., 2004)
- Media Privatization in Serbia*, roundtable debate (Belgrade: IREX, 2004)
- Snježna Milivojević, *Tabloidization of the Daily Press in Serbia* (Belgrade: IREX, 2004)

### *Other languages*

- Djorić, Slobodan, *Bela knjiga o radiodifuziji 1990–2000, (White Book of Broadcasting 1990–2000)* (Belgrade: Spektar, 2002)
- Helsinki Committee for Human Rights in Serbia, *Mediji kao deo anti-evropskog fronta: Stampa, nepromenjena matrica, (Media as part of the anti-European front: The press, unchanged pattern)* (Belgrade: Helsinki Committee for Human Rights in Serbia, 2005)
- Marović, Miodrag, *Politika i Politika, (Politika and Politics)*, (Belgrade: Helsinki Committee for Human Rights in Serbia, 2002)
- Milivojević, Snježana and Jovanka Matić, *Ekranizacija izbora, (Televised Elections)* (Belgrade: Vreme knjige, 1993)

Television across Europe:  
regulation, policy and independence  
Slovakia

## Table of Contents

1. Executive Summary .....	1389
2. Context .....	1390
2.1 Background .....	1390
2.2 Structure of the television sector .....	1396
2.3 Market shares of the main players .....	1398
3. General Broadcasting Regulation and Structures .....	1401
3.1 Regulatory authorities for the television sector .....	1401
3.1.1 The Council for Broadcasting and Retransmission .....	1402
3.2 Licensing .....	1407
3.3 Enforcement measures .....	1409
3.4 Broadcasting independence .....	1413
4. Regulation and Management of Public Service Broadcasting .....	1418
4.1 The public broadcasting system .....	1418
4.2 Funding .....	1421
4.2.1 The licence fee .....	1422
4.2.2 State subsidies .....	1423
4.2.3 Advertising .....	1425
4.3 Governance structure .....	1426
4.3.1 Composition .....	1426
4.3.2 Appointments .....	1428
4.3.3 Responsibilities .....	1429
4.4 Programme framework .....	1429
4.4.1 Output .....	1431
4.4.2 Programme guidelines .....	1432
4.4.3 Quotas .....	1433
4.5 Editorial standards .....	1435
5. Regulation and Management of Commercial Broadcasting .....	1437

5.1 The commercial broadcasting system .....	1437
5.2 Services .....	1437
5.3 Commercial television ownership and cross ownership .....	1438
5.4 Funding .....	1440
5.5 Programme framework .....	1443
5.5.1 Programme guidelines .....	1445
5.5.2 Quotas .....	1447
5.6 Editorial standards .....	1448
6. European Regulation .....	1451
7. The Impact of New Technologies and Services .....	1452
7.1 New media .....	1452
7.2 Market conditions .....	1454
7.3 Services .....	1457
7.4 Funding .....	1457
7.5 Digital television .....	1458
8. Conclusions .....	1460
9. Recommendations .....	1463
9.1 Policy .....	1463
9.2 Regulatory authorities .....	1463
9.3 Public service broadcasters (STV and SRO) .....	1463
9.4 Public and private broadcasters .....	1464
9.5 New media .....	1464
Annex 1. Legislation cited in the report .....	1466
Annex 2. Bibliography .....	1468



## Index of Tables

Table 1.	Market share of the main television channels (2003–2005) .....	1399
Table 2.	Market share of the main radio stations (2003–2005) .....	1400
Table 3.	Budget of the Council for Broadcasting and Retransmission approved by Parliament (2001–2004) .....	1405
Table 4.	Monitoring of the national and multi-regional television stations (2003 and 2004) .....	1410
Table 5.	Sanctions on broadcasters imposed by the Council for Broadcasting and Retransmission (2001–2004) .....	1412
Table 6.	Total expenditure and income of STV (1993–2001) .....	1421
Table 7.	STV income – breakdown by revenue source (2002–2005) .....	1424
Table 8.	STV total income and expenditure (2002–2005) .....	1424
Table 9.	STV programming – breakdown by genre (2002–2004) .....	1432
Table 10.	Programming for national minorities on STV (2004) .....	1434
Table 11.	European works in television broadcasts (2002–2004) .....	1452
Table 12.	Electronic equipment ownership (2001–2002) .....	1454
Table 13.	Internet penetration (1997–2003) .....	1456
Table 14.	Internet users (2001–2004) .....	1456

## List of Abbreviations

ANO	Alliance of a New Citizen, <i>Aliancia nového občana</i>
ANRTS	Association of the Independent Radio and Television Stations, <i>Asociácia nezávislých rozhlasových a televíznych staníc</i>
IVO	Institute for Public Affairs, <i>Inštitút pre verejné otázky</i>
KDH	Christian Democratic Movement, <i>Kresťansko-demokratické hnutie</i>
ES-HZDS	People's Party – Movement for a Democratic Slovakia, <i>Ľudová strana – Hnutie za demokratické Slovensko</i>
MDPT	Ministry of Traffic, Post Offices and Telecommunications, <i>Ministerstvo dopravy, pôšt a telekomunikácií</i>
SDKÚ	Slovak Democratic and Christian Union, <i>Slovenská demokratická a kresťanská únia</i>
SIS	Slovak Information Service, <i>Slovenská informačná služba</i>
SMK	Hungarian Coalition Party, <i>Strana maďarskej koalície</i>
SRO	Slovak Radio, <i>Slovenský rozhlas</i>
SSJ	Slovak Syndicate of Journalists
STV	Slovak Television, <i>Slovenská televízia</i>

## 1. Executive Summary

Since Slovakia achieved its independence in 1993, the media scene has continued to be strongly politicised, creating problems for the broadcasting sector that are only now beginning to be resolved. Political developments in the 1990s tied the media sector to the political class, while some key outlets were, and to a certain extent still are, directly or indirectly under the influence of politicians competing for power. Although the independence of the media has gradually become stronger, the vulnerability of the media becomes most apparent during election campaigning.

Politicians in Slovakia have been willing to tackle the problems affecting the media only when a solution was urgently needed. This is particularly the case for the public broadcasters, which lack a long-term systematic solution for their funding. Licence fees for public broadcasting are not yet based on widely used economic indicators, such as the inflation rate, and therefore any increase depends on Parliament's will. The private media also suffered from the politicians' approach to media policy in the past, when a flawed Law on Parliamentary Elections limited their participation in the campaigns prior to both the 1998 parliamentary and municipal elections. Nevertheless, over the past five years, a set of laws regulating the media environment in general was adopted. These are the Law on Broadcasting and Retransmission (2000), the Law on Slovak Public Television (2004), the Law on Slovak Public Radio (2003), the Law on Freedom of Information (2000) and the Law on Electronic Communications (2003).

Another characteristic of the Slovak media landscape was an insufficient public debate on the future of public service broadcasting, namely on its mission, quality, content, financing and relation to commercial broadcasting. Following managerial changes in 2003, the Slovak Public Television (STV) started to undergo substantial structural changes, primarily aimed at improving its financial situation and attracting audiences. However, over the past decade the station has been seriously marked by a series of political interventions, and weakened by its poor economic situation and by the indifference of the civil society. There is a prevailing public opinion that following the implementation of economic reforms after 2003, the economic situation of STV has been stabilised. However, there are fears that this has been achieved at the price of the commercialisation of Jednotka, the first of STV's two channels.

The national (i.e. nationwide) commercial broadcasters in Slovakia are well established and constitute a strong component of the broadcasting system. Competition among television channels has been mounting, thanks to improvements in the programming of TV Joj and the increase in the market share of STV's first channel, which reflects a number of changes in its programmes. However, commercial TV Markíza has maintained its dominant position in the media market. The introduction of a more accurate audience measurement system in 2004 helped the media market to become more transparent.

The situation of local media is more complicated, as these outlets often operate with economic support from the local authorities, which sometimes seriously hampers their independence.

Although the Slovak advertising market is relatively small compared to other European countries, it has the potential to grow. The problem with the development of the media market could be the fact that the bulk of advertising revenue is concentrated in the national media, based in the capital, Bratislava. The capital captures the media's attention as it offers important topics related to the country's "high politics" which are concentrated there. Conversely, the media pays less attention to social issues and problems of the regions. This "Bratislava-centrism" has undermined the professionalism of the media.<sup>1</sup>

The journalistic community is not very strong and it suffers, in part, from a lack of respected journalist personalities. It comprises a significant proportion of young journalists and lacks experienced middle-aged journalists. Another factor affecting the development of an upstanding journalistic community is the low quality of journalism education at schools and universities. The result is a lack of investigative journalism and solid reporting.

Except for mobile telephony and, gradually, also the Internet, the development of new technologies has been slow and it is not possible to expect broader penetration for some years to come. From a long-term perspective, to promote the information society in Slovakia, it is essential that the Slovak Government provide more support.

## 2. CONTEXT

For most of the 1990s, successive Governments treated the Slovak media harshly. During the populist-nationalist regime of the Prime Minister Vladimír Mečiar, between 1993 and 1998, intimidation of journalists and explicit manipulation of the electronic media, especially the public broadcasters, were commonplace. The situation has improved significantly since 1998. In 2003, the public television began a lengthy process of major restructuring aimed at eliminating the network's huge losses and improving its programming.

### 2.1 Background

Prior to the fall of the Czechoslovak communist regime in 1989, the Slovak media consisted of the State television, State radio and State press agency, all controlled by the Communist Party. The nationwide State television was the most influential outlet

---

<sup>1</sup> J. Jiráček and J. Potůček, *Position of the Slovak media and impact of the media legislation on the media during the pre-election campaign prior to the parliamentary elections in 2002*, MEMO 98, 2002.

in the country and the main propaganda tool in the hands of the ruling party. The first democratic administration started the process of transforming the State broadcasters into independent public service media. In 1991, Slovak Television, *Slovenská Televízia* (STV) and Slovak Radio, *Slovenský Rozhlas* (SRO) were formally transformed into public service broadcasters. In the same year, legislation was adopted permitting both public and private broadcasting to operate and a year later, an independent regulatory body emerged, authorised to grant licences. In the early 1990s it granted 12 radio and six television broadcast licences, thus giving an impulse to the rise of a dual system of broadcasting.<sup>2</sup>

In the early 1990s, society saw a growing struggle for political power and efforts of the emerging political subjects to impose their will on the public radio and television. The Council for Radio and Television Broadcasting was established in 1992 as the primary broadcasting regulatory body.<sup>3</sup> Following the split of Czechoslovakia on 1 January 1993, both Slovakia and the Czech Republic inherited the Czechoslovak media legislation. The first multi-regional private television station was VTV, which was launched in 1995. However, it was private TV Markíza which, from 1996, quickly attracted the largest viewership in the country, thanks to its exciting programming and aggressive marketing. In May 1996 – five months before the launch of TV Markíza – the (then) largest local television station, TV Naša, went on air.

### *Between 1993 and 1998*

Authoritarian governance and violation of human rights were general characteristics of the period between 1993 and 1998, when the Prime Minister Vladimír Mečiar's populist-nationalist Movement for a Democratic Slovakia (HZDS) governed the country. Mečiar was fully aware that one of the biggest threats to his power might come from the increasingly influential independent media outlets. The print media pulled no punches in depicting the Government's authoritarian and arrogant behaviour, including its hostile and confrontational attitude towards the media.

In response, the ruling coalition treated the independent and pro-opposition media harshly. Systematic harassment and intimidation of the media included physical and verbal attacks on journalists, telephone threats and editorial interference amounting to censorship. The situation of the media was also characterised by inadequate training and a lack of professionalism.

<sup>2</sup> Ministry of Culture, *Národná správa o kultúrnej politike, 4. verzia, 31. júl 2002, (National Report on Cultural Policy of the Slovak Republic, the 4th version, 31 July 2002)*, Bratislava, 2002, p. 215, available at <http://www.kulturnapolitika.sk> or <http://www.culture.gov.sk/main/file.php?id=504&file=file2627.html> (accessed 16 April 2005), (hereafter, Ministry of Culture, *National Report 2002*).

<sup>3</sup> Law No. 294/1992 on the Council of the Slovak Republic for Radio and Television Broadcasting, entered into force on 11 June 1992. Since 4 October 2000, replaced by Law No. 308/2000 on Broadcasting and Retransmission.

In 1996, the Government cancelled its regular briefings to the media, limiting public access to information on Government activities. Mečiar and some other members of the Government stopped the access of some outlets to official information. There were also attempts by the Government to eliminate some newspapers, by making their economic situation more difficult, or to hinder some private radio stations from broadcasting. In particular, Radio Twist had its frequency withdrawn, apparently as a result of its in-depth and independent news coverage. Instead of acting as a guarantor of the free press, the Government filed lawsuits against the media.<sup>4</sup> During this period, Freedom House classified Slovakia as a country with only a partly free media.<sup>5</sup>

### *The 1998 parliamentary elections*

In 1998, Mečiar's ruling coalition passed significant amendments to the Law on Parliamentary Elections of 1990 only four months before the polling day and without any attempt to find consensus among contesting political forces.<sup>6</sup> The amendments were designed to help the ruling coalition stay in power. They included restrictions on media access and coverage that were in contradiction with the Slovak Constitution, as well as international human rights laws to which Slovakia was legally bound as a member of the United Nations and the Council of Europe.<sup>7</sup> For example, an amendment forcing political parties to carry their electoral campaigning only on public radio and television made it difficult for private electronic outlets to provide comprehensive political information as they were not allowed to air political advertising or host political talk-shows. Due to their vagueness, the new legal obligations created an atmosphere of self-censorship among broadcasters.

In addition, media monitoring conducted during the elections by international and domestic observers revealed that Slovak Television was strongly biased in favour of the ruling coalition and against the opposition. Yet, in spite of the complaints from

---

<sup>4</sup> In 1996, the Government filed a lawsuit against *SME* daily newspaper, seeking SKK 9 million (approximately \$293,666 according to the exchange rate of 1996, or €226,757 according to the exchange rate used in this report) in damages for the paper's opinions expressed at the memorial service for Róbert Remiáš, a former Slovak Intelligence Service (*Slovenská Informačná Služba – SIS*) agent who died in a car bombing in April 1996.

<sup>5</sup> Freedom House, *Freedom of the Press: 2005*, Press Release, available at <http://www.freedomhouse.org/research/pressurvey.htm> (accessed 27 July 2005).

<sup>6</sup> Law No. 80/1990 on Parliamentary Elections, *Official Gazette* No. 18 of 16 March 1990 (entered into force 16 March 1990). Replaced by Law No. 187/1998 on Parliamentary Elections (entered into force 18 June 1998).

<sup>7</sup> Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 3 September 1953, Council of Europe, E.T.S. 005; Article 19 of the Universal Declaration of Human Rights, 10 December 1948, UN; Article 19 of the International Covenant on Civil and Political Rights (CCPR), 23 March 1976, 999 U.N.T.S. 171; and Paragraphs 7.7 and 7.8 of the Copenhagen Document: Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, available at [http://www.osce.org/documents/odihr/1990/06/13992\\_en.pdf](http://www.osce.org/documents/odihr/1990/06/13992_en.pdf) (accessed 27 July 2005).

independent observers, the Council for Radio and Television Broadcasting failed to regulate the broadcasting sector adequately. It was accused of not treating all the broadcasters equally, reflecting the fact that most of its members were nominated by the ruling political parties. Moreover, the Slovak Television Council, which governs the activities of STV, was indifferent to the obvious political manipulation of the network.

### *Between 1998 and 2002*

Nevertheless, Mečiar's party lost the 1998 elections. Shortly after taking office, the new ruling coalition virtually dissolved both the STV Council and the SRO Council (hereafter, the Radio Council) – by means of amendments to the Law on STV (1991) and the Law on SRO (1991)<sup>8</sup> – promising to adopt general legislation that would prevent any recurrence of the situation before the 1998 elections.

In 1999, the Constitutional Court found that five articles among the amendments to the Law on Parliamentary Elections introduced by the Mečiar Government in 1998 were in conflict with the Constitution. However, due to a lack of real effort and political bickering, Parliament failed to pass all the necessary amendments to the law before the 2002 parliamentary elections (see below).

Compared to the period prior to 1998, the situation of the media started gradually improving. However, the main conceptual changes were still lacking. The ruling coalition at the time failed to agree on a common approach on reforming the public media. Political parties preferred to keep Slovak Television financially and politically dependent because they could thus better control it. The Government had no media strategy until 2001, when the General Director of the Media and Audiovisual Section at the Ministry of Culture, Martin Šmatlák, drafted the document “Declaration of the Slovak Parliament on Protection and Ensuring of the Media Environment Development”,<sup>9</sup> which could be considered the first State concept on media policy. The Declaration has never been adopted, however. Parliament's vote against Šmatlák's Declaration in 2001 provided clear proof of how reluctant the local policy makers still were to reform the media environment.

The only changes in media legislation that occurred during the first Dzurinda Government (1998–2002) were those based on *ad hoc* political interests (such as the dissolution of the STV and SRO Councils), or as a result of the harmonisation of media legislation with EU norms – namely, the adoption of the Law on Broadcasting

<sup>8</sup> Law No. 255/1991 on Slovak Radio, *Official Gazette* No. 49 of 28 June 1991 (entered into force 1 July 1991); Law No. 254/1991 on Slovak Television, *Official Gazette* No. 49 of 28 June 1991 (entered into force 1 July 1991).

<sup>9</sup> Ministry of Culture, Information on the draft “Declaration of the Slovak Parliament on Protection and Ensuring of the Media Environment Development”, available at <http://www.culture.gov.sk/main/file.php3?id=502&file=file258.html>, (accessed 5 February 2005).

and Retransmission in 2000.<sup>10</sup> In 2000, Parliament also adopted the Law on Freedom of Information, which considerably improved the situation of the media.<sup>11</sup> The new law obliged the bodies in charge of handling public funding – including all governmental agencies and offices, Parliament and the municipalities – to provide citizens with information to the extent outlined in the law. However, implementation of this law was difficult, mostly due to a lack of knowledge of the law on behalf of both the general public and State officials.

### *Parliamentary elections 2002*

Generally speaking, media coverage of the 2002 parliamentary elections was better than that of the previous elections. However, the commercial stations were once again limited in their ability to carry electoral campaigning.

Shortly before the elections, private broadcasters again lobbied for a change in the Law on Parliamentary Elections 1998 to allow all television and radio stations to carry political advertising. The provision of the law that explicitly banned private broadcasters from airing campaign messages had been ruled unconstitutional in 1999. However, the law still contained a general ban on “political advertising” that was also in effect during election campaigns if not stipulated otherwise by election legislation.<sup>12</sup> As the Law on Parliamentary Elections had not been amended in this regard, the ban on political advertising clearly affected the commercial stations’ 2002 pre-election coverage. This change was eventually incorporated into a new Law on Parliamentary Elections, passed in May 2004.<sup>13</sup>

In the pre-election period, commercial stations were cautious of broadcasting some political programmes that could be considered as political advertising. As the law failed to provide a clear definition of political advertising, even political debates normally broadcast by all television stations could have been labelled as such. However, the broadcasting regulator announced that a less strict interpretation of the law would be applied than in the previous elections, allowing commercial broadcasters to broadcast political debates during the election campaign and thus enabling certain media outlets, such as TV Markíza, to offer voters wide-ranging information.

One of the major problems affecting media independence during the 2002 elections was the links between Pavol Rusko, the co-owner of TV Markíza, the most popular

---

<sup>10</sup> Law No. 308/2000 on Broadcasting and Retransmission, *Official Gazette* No. 128 of 4 October 2000 (entered into force 4 October 2000), last amended 23 June 2005 *Official Gazette* No. 124 of 30 June 2005 (entered into force 1 August 2005); See also: Ministry of Culture, *National Report 2002*, p. 209.

<sup>11</sup> Law No. 211/2000 on Freedom of Information, *Official Gazette* No. 92 of 13 July 2000 (entered into force 1 January 2001).

<sup>12</sup> Law on Broadcasting and Retransmission 2000, art. 31

<sup>13</sup> Law No. 333/2004 on Parliamentary Elections, *Official Gazette* No. 139 of 29 May 2004 (entered into the force 1 October 2004).

private television station, and the political party Alliance of a New Citizen (*Aliancia Nového Občana* – ANO). The emergence of Pavol Rusko, founder and chairman of ANO, as a political player was accompanied by unusually extensive broadcasting time in the main newscast allocated to his party on TV Markíza's prime time newscasts. These news items were positive or neutral and completely lacked the critical tone typical for TV Markíza's reporting on other political parties.

### *From 2002*

Following the 2002 elections, and based on the findings of the Constitutional Court, the re-elected coalition finally abolished some sections of the Criminal Code relating to defamation of State authorities.<sup>14</sup> Parliament also removed another provision related to the criticism of State authorities in 2003.<sup>15</sup> Finally, a new Penal Code, adopted by Parliament in May 2005 and to enter into force on 1 January 2006, dropped the old problematic provision concerning defamation of State officials.<sup>16</sup> While the new version of the Penal Code still retains a provision on general defamation, this has been reformulated, and the reference to mass media has been removed.

In November 2004 – in line with its initial *Government Programme Declaration*,<sup>17</sup> which sets all policy objectives – the new Government adopted a draft strategy on State cultural policy, together with an action plan for its implementation.<sup>18</sup> However, the media are mentioned only marginally in these documents, which constitute a follow-up to the voluminous 2002 *National Report of Cultural Policy in the Slovak Republic* that assessed cultural policies in the framework of the Council of Europe.<sup>19</sup> The Government assigned the Minister of Culture to submit, by the end of May 2005, a detailed “Plan of Cultural Policy Implementation”, in line with the action plan.

<sup>14</sup> The Coalition was mainly motivated by negative public reactions towards the lawsuit filed by President Schuster against journalist Aleš Krátky of *Nový Čas*, the most popular daily tabloid.

<sup>15</sup> In 2003, the former Director of the Slovak Intelligence Service, Ivan Lexa – who had been accused of several criminal offences – won (as an ordinary citizen) civil lawsuits against two newspapers that called him a “rascal” and “the most famous villain”.

<sup>16</sup> Law No. 300/2005 on the Penal Code, *Official Gazette* No. 129 of 2 July 2005 (to enter into force 1 January 2006), art. 373.

<sup>17</sup> Government of the Slovak Republic, *Government Programme Declaration 2002*, available at [http://www.vlada.gov.sk/linky\\_zoznam\\_dokumenty.php?id\\_stranky=15&id\\_typ=&id\\_akcie=&tart=50p](http://www.vlada.gov.sk/linky_zoznam_dokumenty.php?id_stranky=15&id_typ=&id_akcie=&tart=50p) (accessed 19 July 2005), (hereafter, *Government Programme Declaration 2002*).

<sup>18</sup> Ministry of Culture, *Uznesenie vlády SR č. 1067 k návrhu Stratégie štátnej kultúrnej politiky a Akčného plánu úvodnej fázy implementácie kultúrnej politiky*, (*Resolution of the Government of the Slovak Republic No. 1067 about the draft Strategy on State Cultural Policy and the Action Plan of the Initial Stage of its Implementation*), available at <http://www.culture.gov.sk/main/file.php?id=873&file=file3278.html> (accessed 6 November 2004).

<sup>19</sup> Ministry of Culture, *National Report 2002*.



## 2.2 Structure of the television sector

Television is the most important source of information for citizens of Slovakia. According to a joint survey conducted by the Slovak Academy of Sciences and SRO in January 2004, 77 per cent of respondents chose television as the main source of information in Slovakia.<sup>20</sup> By contrast, about half of the respondents chose radio (53.2 per cent) and the print media (41.7 per cent) as a primary source of information.

The television market works on a dual principle that public and private stations operate side-by-side. Despite the various turbulences which affected their operations for a long time, both public broadcasters, STV and SRO, have been ranked as the most trusted media in the country, based on regular surveys conducted by the SRO media research department.<sup>21</sup>

The media market is small compared to European standards. According to the 2001 population census, there are 1.824 million television households in the country, which represents almost 99 per cent of the population, and 1.832 million radio households (over 99 per cent).<sup>22</sup> As in other developed markets, television stations are the greatest recipients of advertising revenues. Conversely, the lowest share of advertising revenues goes to radio stations and outdoor advertising.

Slovak Television has two channels, Jednotka (formerly STV1) and Dvojka (formerly STV2), with studios in Bratislava, Banská Bystrica and Košice. Jednotka covers 97.3 per cent of Slovakia and 95.8 per cent of the population. Dvojka covers 89.4 per cent of the territory and 88.7 per cent of the population.<sup>23</sup>

Slovak Radio covers 94.9 per cent of populated territory and reaches 98.2 per cent of the population in this area.<sup>24</sup>

<sup>20</sup> M. Kollár, "Médiá", in M. Kollár and G. Mesežnikov (ed), *Slovensko 2004. Súhrnná správa o stave spoločnosti*, (Slovakia 2004. A Global Report on the State of Society), IVO, Bratislava, 2004, p. 724, (hereafter, Kollar 2004, *Media*).

<sup>21</sup> The findings of a survey conducted in May 2005 indicated that Slovak Public Radio (SRO) is trusted by 75.2 per cent of Slovaks while Slovak Public Television (STV) is trusted by 73.3 per cent of the viewers. Some 60.4 per cent of the respondents said that they trusted TV Markíza. Findings of the SRO survey are available at <http://www.slovakradio.sk/inetportal/index.php?page=showSprava&refPage=r-zine&id=21470&textToBold=prieskum&lang=1> (accessed 28 June 2005).

<sup>22</sup> Statistical Office, information from the Statistical Office website available at <http://www.statistics.sk> (accessed 15 December 2004).

<sup>23</sup> Broadcasting Council, *Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2004*, (Annual Report on the state of broadcasting and on the activities of the Council for Broadcasting and Retransmission for the year 2004), Bratislava, 2004, p. 108, available at <http://www.rada-rtv.sk> (accessed 10 July 2005), (hereafter, Broadcasting Council, *Annual Report 2004*).

<sup>24</sup> Broadcasting Council, *Annual Report 2004*, p. 103.

The two commercial full-format television stations with a national outreach are TV Markíza, which covers 86 per cent of the country<sup>25</sup> and is also available digitally via satellite, and TV Joj, which covers 80 per cent of the country.<sup>26</sup> TV Markíza started broadcasting in August 1996, and TV Joj in March 2002, as a successor to TV Global, which started broadcasting in March 2000 as a regional alternative to TV Markiza.

Other commercial stations with multi-regional coverage include the news channel TA3, the documentary channel Nautik TV, the music channel Music Box, the tele-shopping channel TVA, the thematic channel Moooby TV and UPC with a monothematic informational videotext. TA3 went on air in September 2001 with a format similar to CNN and BBC World, which is unique for such a small market. It reaches its viewers via satellite and cable. In December 2002, the music channel Music Box was launched. It can be received via cable and satellite, and also terrestrially in and around the town of Košice. TVA went on air in 2003. In March 2005, Nautik TV was launched, which broadcasts via satellite and cable. Also started in 2005, TV Moooby airs programmes about mobile communication and can be accessed via satellite and cable.

The first Slovak Internet television station, TVin, started its experimental webcasting in 2004. However, after a few months of broadcasting, in spring 2005 it temporarily had to stop, due to financial problems.

There are 74 regional and local television stations in the country.<sup>27</sup> Many of these have experienced economic hardship, but some have succeeded in achieving professional standards. Cities and villages very often provide local media outlets with subsidies to keep them running.

The radio market comprises 24 private stations.<sup>28</sup> Six of these have a multi-regional coverage of between 30 per cent and 80 per cent of the population. They include BBC World Service, Radio Okey, Radio Expres, Radio Twist, Fun Radio and Radio Lumen. The rest of the stations are regional radio stations covering less than 30 per cent of the population. In the radio market, the public broadcaster is represented by SRO, with seven channels including Radio Slovensko (with a special focus on news and current affairs programmes); Radio Regina (broadcasting regional information from three regional studios); Radio Devin; Radio FM (broadcasting programmes for youth and music shows); Radio Patria (broadcasting programmes for seven national minorities); Radio Slovakia International (international programming in five languages); and Radio Inet (Internet radio).

---

<sup>25</sup> Broadcasting Council, *Annual Report 2004*, p. 108.

<sup>26</sup> Broadcasting Council, *Annual Report 2004*, p. 27.

<sup>27</sup> Broadcasting Council, *Annual Report 2004*, p. 29.

<sup>28</sup> Broadcasting Council, *Annual Report 2004*, pp. 22–26.

### 2.3 Market shares of the main players

Slovak Television is the only broadcaster with national coverage (for both its channels). There are seven multi-regional commercial television stations. These are: the generalist stations TV Markíza and TV Joj; and the thematic stations TA3 (news), Music Box (music), TVA (advertising and tele-shopping), Nautik TV (documentary) and Mooby TV (mobile communication). The leading station is TV Markíza, which reaches an audience share of around 35 per cent. As yet, any attempts to break TV Markíza's leading position have failed, whether from the satellite station VTV, which went on air before TV Markíza, or the now defunct TV Luna. Presently, the only real commercial competitor for TV Markíza is TV Joj, which built its broadcasting on the infrastructure of TV Global, a former network of regional stations.

Since its establishment in 1996, TV Markíza has built a dominant position thanks to which the station gained an unusually large share of the advertising pie, amounting to 80 per cent of all television advertising spending. TV Markíza consolidated this strong position during Mečiar's last administration (1996–1998), when its success was fuelled mainly by STV's inability to compete with TV Markíza's programming and also thanks to more objective newscasts than those of the Slovak public television.

The effort by TV Joj, which employed the successful methods of its former Czech partner TV Nova, by offering an adequate alternative to TV Markíza has not yet fully materialised. Covering fewer households than TV Markíza, TV Joj started its operations by airing old shows from TV Nova's archives and sensationalist news. It therefore gained the reputation of being TV Nova's "rubbish bin" in Slovakia. However, the proportion of old programmes imported from Czech television stations has diminished, and by gaining new frequencies TV Joj's coverage expanded from 65 per cent of the country in 2002, to 80 per cent in 2005.

TA3 TV went on air in September 2001 and has been broadcasting via satellite and cable. However, the relatively high penetration of cable television, which reaches approximately 40 per cent of households in Slovakia, and the interest of cable companies in carrying TA3's signal, expanded the station's reception both in the big cities and in outlying regions.

Until recently, Slovakia had no unified system of measuring television viewership that guaranteed objective data. The television market used two competing diary surveys, one carried out by the Department of Media Research of STV, and the other commissioned by TV Markíza from the Visio research company. Both surveys played into the hands of their respective clients and they often differed widely. For example, the difference in data on viewership of the Ice Hockey World Championship final in 2002 won by the Slovak national team almost reached one million viewers.

In 2003, the main commercial channels and the public television agreed to introduce a new system of peplemeters. In 2004, STV, TV Markíza, TV Joj, TA3 and the Association of Media Agencies set up the company PMT, which chose the research

company Taylor Nelson Sofres SK (TNS SK) to measure television audiences. TNS SK has been using a panel of 800 households, with 25 per cent of them to be changed every year. Although it is the first country in Europe employing a GPRS (general packet radio service) based peoplemetering technology, Slovakia is among the last countries on the continent that introduced peoplemeter systems.<sup>29</sup>

The results of the peoplemeter research have been available as of 15 October 2004. As soon as they were released, some channels, particularly STV, immediately made changes in their programming and staff to improve their service to the viewers. The introduction of the television audience measurement system also prompted broadcasters to increase their advertising tariffs, as television became a more effective marketing tool.<sup>30</sup>

Nevertheless, introduction of peoplemeters did not bring any significant changes in the actual ranking of the television stations. Although the margins in terms of market share among television stations have decreased, TV Markíza retains the leading position.

**Table 1. Market share of the main television channels (2003–2005)**

	Market share (per cent)		
	2003	May 2004	April-June 2005
TV Markíza	45.9	41.9	33.2
Jednotka (STV 1)	15.7	17.5	18.5
TV JOJ	11.3	10.9	12.2
Dvojka (STV2)	4	3.1	7.4
TA3	1	1.8	1.4
Czech TV channels	–	7.9	11
Other TV channels	–	16.9	16.3

Source: SRO, Visio and PMT/TNS<sup>31</sup>

<sup>29</sup> J. Janček, “História merania sledovanosti na Slovensku”, (“History of measuring viewership in Slovakia”), available at <http://www.medialne.sk/clanok.php?clanok=149&cvrubrike=4> (accessed on 2 April 2005).

<sup>30</sup> “Peoplemetre zostrili boj a zvýšili ceny reklamy”, (Peoplemeters increased the competition and the prices for advertising). The source of the information ([www.mediaportal.sk](http://www.mediaportal.sk) – accessed 10 February 2005) has been closed in the meantime.

<sup>31</sup> SRO, “Markíza zostala lídrom na trhu”, (“Markíza remained leader of the market”), in *SME*, 16, December 2004, p. 4, available at <http://www.slovakradio.sk/radioinet/iservis/indexOmv.php?id=7#tab04> (accessed 17 May 2005); IP International Marketing Committee, *Television 2004. International Key Facts*, October 2004, p. 424; For May 2004: Information available at [www.slovakradio.sk/radioinet/iservis/indexOmv.php?id=7#tab04](http://www.slovakradio.sk/radioinet/iservis/indexOmv.php?id=7#tab04) (accessed 10 February 2005); For May-June 2005: Medialne.sk, “Sledovanos: Markíza s najväčším poklesom, stúpajú verejnoprávne kanály”, (“Viewership: Markíza with the biggest decrease, public channels are increasing”), available at <http://www.medialne.sk/print.php?clanok=527&cvrubrike=12> (accessed 18 July 2005).

Most of the commercial radio stations, especially the small regional ones, face serious financial problems. As opposed to the television market, there is no big player among the radio stations. The multi-regional radio stations employ a format based on a combination of music and information. In recent years, there have been numerous attempts to create a strong news radio station, with Twist, Okey and Expres being launched. In addition, in 2004, a strong company GES Holding owning a radio network in the Czech Republic gained a few frequencies in Slovakia. Smaller local stations, which usually play pop music have merged with stronger multi-regional stations due to financial strains.

No system for measuring the audience of radio stations is yet in place. As such, they must rely on the findings of diary listener surveys, according to which the strongest position in the market has for a long time been occupied by the first channel of Slovak Radio, Rádio Slovensko (31.1 per cent as of March 2005), followed by the commercial station Rádio Expres (17.3 per cent) and Slovak Radio's Rádio Regina (10.0 per cent).<sup>32</sup> (See Table 2.)

**Table 2. Market share of the main radio stations (2003 and 2005)**

	Market share (in per cent)	
	November 2003	March 2005
Rádio Slovensko (SRO 1)	41	31.1
Rádio Expres	20.5	17.3
Rádio Regina (SRO 4)	13.3	10.0
FUN Rádio	10.8	7.1
Rádio Okey	10.4	6.7
Rádio FM (SRO 3)	11.5	4.5
Rádio Twist	7.3	3.0

Source: SRO<sup>33</sup>

<sup>32</sup> SRO, information from the SRO website, available at <http://www.slovakradio.sk/inetportal/index.php?page=../omv/index&orefPage=noRightNav> (accessed 18 July 2005)

<sup>33</sup> For November 2003: Information from the SRO website, available at <http://www.slovakradio.sk/radioinet/iservis/indexOmv.php?id=7#tab04> (accessed 7 February 2005); For March 2005: Information from the SRO website, available at <http://www.slovakradio.sk/inetportal/index.php?page=../omv/index&orefPage=noRightNav> (accessed 18 July 2005).

### 3. GENERAL BROADCASTING REGULATION AND STRUCTURES

The main regulator of the broadcasting sector is the Council for Broadcasting and Retransmission, whose members are elected by Parliament at the proposal of Members of Parliament, professional institutions and various NGOs. In 2000, a new broadcasting law, the Law on Broadcasting and Retransmission, brought a major improvement in the appointment of members, by rotating a third of the members every two years. However, the Council is to a certain extent still subject to politicisation as candidates for the membership are often closely connected to the political parties.

#### 3.1 Regulatory authorities for the television sector

The bodies involved in regulating the broadcasting sector are the Ministry of Culture, the Council for Broadcasting and Retransmission, the Telecommunications Office, and the Antimonopoly Office.

Of these bodies, hierarchically, the Ministry of Culture holds the top position. It is the central body of the State administration, in charge of protecting monuments and cultural heritage, libraries, art, copyright and related legal issues, educational activities, enhancing the culture of national minorities and Slovaks living abroad, and media and audiovisual policies. The Ministry prepares the basic concept of State media policies and participates in the activities of the Council of Europe and other international organisations working in the media field, audiovisual and intellectual property.<sup>34</sup>

The Minister of Culture's Council for Mass Media, a media advisory body, consults the Minister on media issues.<sup>35</sup> Internally, the ministry's activities are handled by five main sections, including a Media and Audiovisual Section divided into three different bodies: the Audiovisual and Cinematography Department, the Mass-Media and Copyright Protection Department, and the Media Desk Office. The tasks of the Mass Media and Copyright Protection Department include:

- defining the main objectives of State policy in the sphere of mass-media and copyright protection;

<sup>34</sup> The Ministry of Culture is currently headed by František Tóth. Tóth replaced Rudolf Chmel, who resigned in May 2005 (both were nominees of the ANO party).

<sup>35</sup> The Minister of Culture's Council for Mass Media comprises 17 members. Members come from: the Ministry of Culture (two members), STV, SRO (two members), STV Council, Radio Council, TV Joj, TASR (State press agency), SSN (Syndicate of Slovak Journalists), ANRTS (Association of Independent Radio and Television Stations), AEN (Association of European Journalists), Petit Press publishing house, IFPI (International Federation of the Phonographic Industry), Unimedia media agency, Rádiokomunikácie company, and the Association of Cable Television Providers. Information from the Ministry of Culture website available (in Slovak) at <http://www.culture.gov.sk/main/index.php3?id=1002> (accessed 18 April 2005).

- drafting analyses of the situation of the media;
- preparing statistics and maintaining information databases of media outlets in Slovakia;
- drafting proposals for legislative initiatives within the Department's competence.

The Telecommunications Office manages the broadcasting frequency spectrum jointly with the Ministry of Traffic, Post Offices and Telecommunications.<sup>36</sup> In this regard the Telecommunications Office also cooperates with the Council for Broadcasting and Retransmission. A plan of usage of the broadcast frequency spectrum was produced for the first time in 1993. The Council for Broadcasting and Retransmission, together with the Telecommunication Office, initiated the plan in 1996. In accordance with the Law on Broadcasting and Retransmission, the plan must be updated every two years – the first update was in 2002, there was a partial update in 2003, and the next update is scheduled for 2005.<sup>37</sup>

Another body entitled by law to oversee various issues concerning the media is the Antimonopoly Office of the Slovak Republic.<sup>38</sup> As the State administration's office responsible for protecting and enhancing competition, the Antimonopoly Office looks into such issues as ownership concentration, abuse of dominant position in the market, and cartel agreements limiting free competition. The media owners are required by law to report basic ownership data if concentration occurs – namely, if the joint turnover of their media outlets reaches over €18.89 million (see section 5.3).

### 3.1.1 The Council for Broadcasting and Retransmission

The main regulator of the broadcasting sector is the Council for Broadcasting and Retransmission, *Rada pre vysielanie a retransmisiu*, (hereafter, Broadcasting Council). The Council was first established by law in 1992, under the name of the Council of the Slovak Republic for Radio and Television Broadcasting, as an independent body in charge of regulating the broadcasting activities in the country.<sup>39</sup> It was renamed as the Council for Broadcasting and Retransmission in 2000 under the Law on Broadcasting and Retransmission, which also sets its activities.

<sup>36</sup> The Telecommunications Office was founded by the Law on Electronic Communications 2003: Law No. 610/2003 on Electronic Communications, *Official Gazette* 249 of 31 December 2003 (entered into the force on 1 January 2004), last amended on 4 February 2005.

<sup>37</sup> Broadcasting Council, *Annual Report 2004*, p. 96.

<sup>38</sup> The Antimonopoly Office was established by the Law on the Protection of Economic Competition 2001: Law No. 136/2001 on the Protection of Economic Competition, *Official Gazette* No. 57 of 13 April 2001 (entered into force 1 May 2001), last amended 1 March 2005.

<sup>39</sup> Law on the Council of the Slovak Republic for Radio and Television Broadcasting 1992.

The Broadcasting Council's main task is to guarantee the public's right to information, freedom of speech, and access to culture and education. It must also enforce State regulations in the sphere of broadcasting, with a special focus on securing diversity in the broadcasters' news programming. The Council's main responsibilities include:<sup>40</sup>

- granting and withdrawing broadcast licences;
- granting new frequencies to the public service broadcaster;
- observing broadcasters' compliance with legal obligations;
- imposing sanctions on broadcasters;
- keeping records of licences and applications for licences;
- drafting plans, in cooperation with the telecommunications authorities of the State, for the use of the frequency spectrum;
- filing statistics on programmes broadcast, with a focus on European programmes;
- representing the Slovak Republic in the Standing Committee for Transfrontier Television of the Council of Europe;<sup>41</sup>
- participating in drafting legislation on broadcasting;
- submitting annual reports on the state of broadcasting and on its own activities to Parliament within 90 days of the end of the year.

The Council has nine members, who are elected, and can be removed, by Parliament.<sup>42</sup> There are a number of entities entitled to put forward their own nominations for members, to the Parliamentary Committee for Education, Science, Sport, Youth, Culture and Media. There is no limit on the number of members who can be proposed. The final vote is taken in a plenary session of Parliament. Those with a right to nominate members include: Members of Parliament, professional institutions such as universities and civil associations in the fields of audiovisual, mass media, culture, science, education, sports, churches and religious societies, or associations of people with disabilities. Members of the Council elect a Chair and Vice-chair from among themselves.

The vote on the Council's members exclusively by Parliament stirred controversy among broadcasters and media experts. Although nominations of candidates can be submitted to Parliament both by Members of Parliament and various associations, in reality members

---

<sup>40</sup> Law on Broadcasting and Retransmission, art. 5.

<sup>41</sup> The Slovak Broadcasting Council has been a member of the European Platform of Regulatory Administration (EPRA) since 1996.

<sup>42</sup> In its current composition, the Council consists of two journalists (including the Chair, Valéria Agócs), one lawyer, the Pro-Dean of the Law Faculty at the Bratislava-based Comenius University, the Director of Accounting and Auditing of the Slovak branch of Deloitte & Touche, a cameraman, a theatre academic and the previous Head of the Office of the Broadcasting Council.



of the Council have often been political nominees.<sup>43</sup> The negative effect of this procedure was demonstrated predominantly during the campaign prior to the 1998 parliamentary elections, by the Broadcasting Council's passive approach towards the one-sided and biased news broadcasting on STV. The new Law on Broadcasting and Retransmission of 2000 brought an important improvement. It introduced the system of rotating one third of the Broadcasting Council's members every two years. Although, by 17 February 2005, the terms of three members had expired, only two new members were elected by Parliament in February 2005, while the appointment of the last member was in July 2005 still pending. Notwithstanding the introduction of the staggered term, the composition of the regulator remains subject to political agreements since all members of the Broadcasting Council are elected by Parliament.

Any citizen residing in Slovakia, who is at least 25 years old and has a clean criminal record, can be nominated for a Council membership. However, membership is incompatible with the positions of President of the Slovak Republic, being a member of the Government or of Parliament, State Secretary or head of a ministerial office. Members are not allowed either to hold positions in another State administration body, work as a mayor, judge or prosecutor, or hold membership of the STV Council or the Radio Council. Nor may they be active in a political party or movement, or act in the name of, or to the benefit of, a political party. Members and their relatives cannot be publishers, broadcasters, or hold membership in a statutory or executive body of an institution. They and their relatives are forbidden from holding shares or voting rights in broadcasting companies.<sup>44</sup>

The newly adopted Law on Protection of the Public Interest during Public Officials' Service of 2004 (Law on Conflict of Interests) put in place even more strict conditions for membership than the original ones in the Law on Broadcasting and Retransmission, stipulating that members cannot have any private businesses or use their image or name in advertising.<sup>45</sup>

The tenure of a Broadcasting Council's membership is six years, renewable once. One third of its members are changed by rotation every two years. Parliament can remove a member for breaching the rules of compatibility, if they are sentenced for an intentional crime, if they do not carry out their duties over six consecutive months, or if they act in contradiction with the statute of the Broadcasting Council.

<sup>43</sup> In June 2005, the composition of the Broadcasting Council was as follows: Chairman V. Agócs was a nominee of the ruling SMK (Hungarian Coalition Party) party, J. Žitňanská was a nominee of another ruling party, SDKU (Slovak Democratic Christian Union) and M. Mistrík was a nominee of the opposition ĽS-HZDS (People's Party – Movement for Democratic Slovakia). In 1998, all four newly-elected members of the Council were nominated by political parties, as were four out of the members elected previously.

<sup>44</sup> Law on Broadcasting and Retransmission, art. 7.

<sup>45</sup> Law No. 357/2004 on Protection of the Public Interest during Public Officials' Service, *Official Gazette*, No. 151 of 16 June 2004 (entered into force 1 October 2004). The law is referred to as the "Law on Conflict of Interests".

The Broadcasting Council meets twice a month. In cases of emergency, at the request of at least four members, the Chair is obliged to convene an extra session. The sessions are not public, but the Broadcasting Council can decide in advance to invite people to their sessions or declare some sessions to be public. Conversely, the hearings of applicants for broadcast licences are always public. Decisions of the Broadcasting Council must be approved by at least five members with at least seven members present, including the Chair or Vice-chair. The voting is public, with the exception of the election of the Chair and Vice-chair.

The organisational, administrative, personnel and technical tasks are carried out by the Office of the Broadcasting Council. The Office is run by the Head of the Office who is appointed and can be removed by the Broadcasting Council. The Head of the Office reports to the Broadcasting Council on all the activities of the Office, including economic, legal, licensing, programming, technical and personnel-related issues. The Office has seven departments: Economic and Organisational, Licensing, Technical, Programming, Legal, International Relations and European Integration, and Documentary.

The Broadcasting Council is financed from the State budget and must be approved by Parliament every year.

**Table 3. Budget of the Council for Broadcasting and Retransmission approved by Parliament (2001–2004)**

Budget (€)	2001	2002	2003	2004
Ordinary expenditures	313,958	405,241	428,143	445,629
Capital expenditures	5,039	6,299	28,975	28,975
Total	318,997	411,540	457,118	474,603

Source: Broadcasting Council<sup>46</sup>

<sup>46</sup> Broadcasting Council, *Annual Report 2004*; Council for Broadcasting and Retransmission, *Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2003*, (*Annual Report on the state of broadcasting and on the activities of the Council for Broadcasting and Retransmission for the year 2003*), Bratislava, 2003, available at <http://www.rada-rtv.sk> (accessed 25 April 2005), (hereafter, Broadcasting Council, *Annual Report 2003*); Council for Broadcasting and Retransmission, *Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2002*, (*Annual Report on the state of broadcasting and on the activities of the Council for Broadcasting and Retransmission for the year 2002*), Bratislava, 2002, available at [www.rada-rtv.sk](http://www.rada-rtv.sk) (accessed 25 April 2005), (hereafter Broadcasting Council, *Annual Report 2002*); Council for Broadcasting and Retransmission, *Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2001*, (*Annual Report on the state of broadcasting and on the activities of the Council for Broadcasting and Retransmission for the year 2001*), Bratislava, 2001, available at [www.rada-rtv.sk](http://www.rada-rtv.sk) (accessed 25 April 2005), (hereafter, Broadcasting Council, *Annual Report 2001*); Council for Broadcasting and Retransmission, *Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2000*, (*Annual Report on the state of broadcasting and on the activities of the Council for Broadcasting and Retransmission for the year 2000*), Bratislava, 2000, available at <http://www.rada-rtv.sk> (accessed 18 July 2005), (hereafter, Broadcasting Council, *Annual Report 2000*).

Transparency of the Broadcasting Council's operations is guaranteed by the Law on Broadcasting and Retransmission and is also mentioned in the Broadcasting Council's Statute, which was approved by the Speaker of Parliament in 2001.

Transparency can be considered from several angles. In general, it is guaranteed by the Law on Freedom of Information 2000, which defines the subjects and bodies obliged to make public all the documents within their competence, including the Broadcasting Council. Documents such as the Broadcasting Council's decrees and other internal rules, minutes of sessions, reports on its other activities and on the state of broadcasting are regularly uploaded on its website. Other information relevant for the broadcasting market, including directives adopted by the Head of the Office, information on the Broadcasting Council's budget, licensing procedures, sanctions, outcomes of its monitoring, the use of the frequency spectrum, and broadcasting laws is also published on the website.

Another level of transparency is represented by the deliberations of the Broadcasting Council. In accordance with the Broadcasting Council Statute<sup>47</sup> all sessions are in general private, unless decided otherwise by the members. This decision shows the will of the legislative body to allow the Broadcasting Council to decide by itself which issues are a matter of public interest and can therefore be discussed publicly. Most often, the Broadcasting Council invites other people to some of its sessions. A positive aspect of its activity is that all licence tenders are public.

The third level of transparency is represented by the Broadcasting Council's accountability to Parliament. The Council is obliged to submit an annual report on the state of broadcasting and on its own activities to Parliament, within 90 days of the end of the year. It must also submit any information on the state of broadcasting or its own activities required by Parliament during the year. It is also required to submit to the Parliamentary Committee for Education, Science, Sport, Youth, Culture and Media draft proposals for its own status and session guidelines. The Broadcasting Council's draft budget and accounts have to be submitted to both Parliament and the Ministry of Finance.

By adequately enforcing media legislation, especially the Law on Broadcasting and Retransmission, and by ensuring a certain level of transparency in its rulings and activities, the Broadcasting Council's reputation has improved over recent years. Its name had been considerably damaged, especially during the campaign for the 1998 elections when the Broadcasting Council was accused of political bias in favour of the Mečiar-led Government. This bias was reflected above all in the Council's lenient assessment of numerous unbalanced political programmes broadcast by STV at the time.

---

<sup>47</sup> Decision No. 1115 on the Statute of the Council for Broadcasting and Retransmission of 4 May 2001 of the Speaker of Parliament, amended by Decision No. 625 of 3 March 2004.

### 3.2 Licensing

The process of issuing broadcast licences is under the full competence of the Broadcasting Council. The Law on Broadcasting and Retransmission defines the whole licensing process.<sup>48</sup> Public tenders for broadcast licences must be announced on the Council's website and in at least two national daily newspapers. The main conditions for awarding a licence are as follows:

- a broadcast licence can be awarded only to a single legal entity or person;
- a legal entity can be awarded a broadcast licence only if it is a company headquartered in Slovakia, or has a branch or a unit based in Slovakia and is registered in the country's commercial registry;
- an individual can be awarded a broadcast licence if he or she has a permanent or long-term residence in Slovakia. Once granted a broadcast licence, the individual must register with the commercial registry.

Licences for radio stations are issued for an eight-year term, while licences for television broadcasting are valid for 12 years. Applicants are required to include in their application such information as:

- data on all partners, shareholders and members of statutory or controlling bodies;
- data on the ownership and investments of the applicant's partners;
- data and documentation on the investment planned to finance the broadcasting operation;
- description of the technical equipment and organisational structure;
- the proposed programming schedule, specifying the type of programming planned to be broadcast;
- the share of broadcasting time reserved for programmes of public interest;
- the annual budget envisaged for producing programmes of public interest.

The applicant must attach documents proving the accuracy of the data provided in the licence application, such as extracts from the business registry, documents on technical equipment, a document confirming the availability of financial means, reports on audited accounting of the company, tax office certificates, and certificates from health and social insurance companies. At the same time, the applicant must state any ownership connections with broadcasters, publishers of periodicals, or owners of news agencies.

---

<sup>48</sup> Law on Broadcasting and Retransmission, art. 45-55.

As stipulated in the Law on Broadcasting and Retransmission, the Broadcasting Council is obliged to take into account:

- how the applicant will guarantee plurality of information and media content;
- transparency of ownership and of the proposed financing;
- the relevance of the proposed programming structure, in relation to the existing offer of programmes on the market;
- the applicant's pledge to produce programmes of public interest;
- the need to prevent any applicant from gaining a dominant position on the market.

The Broadcasting Council must also ensure that Slovak citizens are represented in the supervisory bodies of the company applying for the licence.

Licences are awarded based on an agreement between the Broadcasting Council and the Telecommunications Office, which is the State administrator of broadcasting frequencies. Prior to a tender, the Telecommunications Office issues a list of the frequencies allocated for each licence. The role of the Office is mainly technical, informing the Broadcasting Council of all changes in the list of frequencies which might result in a tender being held. The granting of licences for national broadcasting, covering the entire territory of the country – which at present applies only to the two channels of STV – must also be approved by Parliament.<sup>49</sup> However, Parliament's approval is mainly a formality and to date none of the Council's proposals have been refused.

The applicant who receives a broadcast licence must pay a one-off administrative fee, which can range between SKK 20,000 (€504)<sup>50</sup> and SKK 10 million (€251,953), depending on the power of the transmitters used for carrying the broadcasting signal.<sup>51</sup> Broadcasters do not pay annual fees for using the licence. In 2003, the adoption of a bill on electronic communications stirred a hot debate among broadcasters as it

---

<sup>49</sup> According to Article 3 of the Law on Broadcasting and Retransmission, there are four types of broadcasting from the outreach and coverage points of view. Besides national broadcasting, there is multiregional broadcasting (covering several regions and which can be received by over 30 per cent and less than 80 per cent of households), regional broadcasting (which can be received by less than 30 per cent of inhabitants) and local broadcasting (its coverage does not exceed a settlement and is not received by more than 100,000 inhabitants of the settlement or 200,000 inhabitants of a city).

<sup>50</sup> The exchange rate used throughout this report (€1 = SKK 39.69) is based on data of the National Bank of Slovakia for the average exchange rate for the period January 2004 – March 2005, available at <http://www.nbs.sk> (accessed 20 April 2005).

<sup>51</sup> Administrative fees for licences: for terrestrial broadcasting, between €504 and €251,963; for satellite television broadcasting (€25,195); for broadcasting through other telecommunications networks or facilities (approximately €12,598); change in the conditions of licence (between €126 and €1,260); and prolongation of the licence (the same fee as when being awarded the licence).

intended to introduce annual fees for the use of terrestrial frequencies, worth €4,535 for television and €2,268 for radio. The rationale for this move was that most of the Telecommunications Office's expenses were incurred by frequency administration. However, the provision on annual fees was not included in the final form of the Law on Electronic Communications adopted in 2003.<sup>52</sup>

The broadcast licence cannot be transferred to another legal entity or person. The broadcaster can apply to the Broadcasting Council to amend the licence contract during its term of validity or extend the validity of its licence. The licence can be extended only once, for 12 years for television stations and eight years for radio stations. When deciding on a licence extension, the Broadcasting Council considers the broadcaster's cultural contribution and the quality of its information to the public, the transparency of its ownership, the development of original programmes, its contribution to the development of the media market, and its compliance with legislation, meaning primarily the Law on Broadcasting and Retransmission. The broadcaster can appeal to the Supreme Court if the Council rejects its application for an extension.

The Broadcasting Council strictly follows legal requirements. However, its 1999 decision on changing the ownership of the private channel VTV was cancelled by the Supreme Court in 2000.<sup>53</sup> The Broadcasting Council had decided to auction the licence of financially-troubled VTV. The company SATEL MEDIA won the licence, but at the request of the General Attorney, the Supreme Court cancelled the Broadcasting Council's decision.

### 3.3 Enforcement measures

The Broadcasting Council is responsible for ensuring broadcasters comply with legislation stipulating the conditions of television and radio broadcasting – mainly the Law on Broadcasting and Retransmission and the election laws. The Programming Department in the Broadcasting Council's Office supervises broadcasters' compliance with the laws by monitoring the programming. Monitoring is carried out in the following basic forms: planned monitoring, continuous monitoring, follow-up monitoring of programmes on which sanctions have been imposed, and monitoring suggested by viewers, listeners, interest or civil groups, political parties and other subjects.

<sup>52</sup> M. Kollár, "Médiá", in M. Kollár and G. Mesežnikov (ed), *Slovensko 2003. Súhrnná správa o stave spoločnosti, (Slovakia 2003. A Global Report on the State of Society)*, IVO, Bratislava 2003, p. 668, (hereafter, Kollár, *Media*).

<sup>53</sup> M. Lauko "Prečo zanikla VTV – Vaša televízia?", ("Why has VTV – Your television – finished?"), available on <http://www.birdz.sk/print.php?clanok=49&rubrika=16> (accessed 20 July 2005).

**Table 4. Monitoring of the national and multi-regional television stations (2003 and 2004)**

Type of monitoring	Year	Hours of monitoring					
		STV	TV Markíza	TV Joj	TA3	Music Box	Total
Planned	2003	–	–	14	–	48	62
	2004	1,459	836	372	715	72	3,526
Continuous	2003	–	–	–	–	–	–
	2004	1,548	406	400	–	48	2,402
Based on a complaint	2003	25	35	554	2	–	616
	2004	103	25	43.5	3	–	174.5
Specific	2003	70	10.5	–	–	–	80.5
	2004	10	10.5	10.5	10	–	41
Referendum	2003	28	7	23	19	–	77
Election-related	2004	242	117	64	78	–	493
Total	2003	1,582	888.5	949	736	72	4,299.5
	2004	1,903	558.5	532	91	96	3,180

Source: Broadcasting Council<sup>54</sup>

The sanctions that the Broadcasting Council can impose are:

- notifying the broadcaster of the breach of law;
- asking the broadcaster to air an announcement about the breach of the law;
- asking the broadcaster to cancel part or an entire programme that breached the law;
- imposing a fine or deciding to withdraw the licence.

The Council can also impose a fine of up to €12,600 for radio broadcasters and €100,781 for television channels, in the case of a violation of the given licence.<sup>55</sup>

The Broadcasting Council may ask a broadcaster to air an announcement about breaking a law, if the broadcaster is found to have breached the principle of pluralism of information or if it did not secure objectivity and impartiality of the news and political programmes. The same sanction can apply if the broadcaster aired programmes harming human dignity or children. The sanction of postponing a

<sup>54</sup> “Specific monitoring” is monitoring focused on specific features in the sphere of broadcasting, such as newscasts, or compliance with the unified system of marking of television programmes. Broadcasting Council, *Annual Report 2004*, p. 58; Broadcasting Council, *Annual Report 2003*, p. 61.

<sup>55</sup> Law on Broadcasting and Retransmission, art. 68(7).

programme can be imposed if the broadcaster has repeatedly or seriously broken obligations resulting from a previous sanction. The Council can fine broadcasters who repeatedly violated obligations imposed on them by the regulatory body in relation to a previous breach of law. The level of fines ranges between €126 and €125,976. The highest fine can be imposed for broadcasting without a licence.

The Council can remove a broadcaster's licence if the broadcaster was found to have provided false data in the application; if a stake larger than 55 per cent in the ownership of the broadcaster or part of the broadcaster's voting rights have been transferred to another entity without the Council's prior consent; or if a broadcaster repeatedly and intentionally advocated war, violence, or racial hatred, despite prior sanctions imposed by the Council.<sup>56</sup> A broadcaster whose licence is withdrawn for these reasons has the right to apply for a new licence only one year after the Council's decision to remove the licence. Furthermore, the regulatory body can remove the licence if a broadcaster did not broadcast continually for 30 days, if the licence holder went bankrupt, or if it did not register in the commercial registry. Recently, there have been no controversial decisions by the Council.

---

<sup>56</sup> Law on Broadcasting and Retransmission, art. 54.



**Table 5. Sanctions on broadcasters imposed by the Council for Broadcasting and Retransmission (2001–2004)**

Type of sanction	Year	Public service broadcasters	Private broadcasters	Total
Warnings	2001	17	27	44
	2002	7	45	52
	2003	4	37	41
	2004	5	34	39
Obligation to broadcast announcement	2001	2	2	4
	2002	–	1	1
	2003	–	–	–
	2004	–	3	3
Fines	2001	7	3	10
	2002	16	9	25
	2003	14	15	29
	2004	13	16	29
Total	2001	26	32	58
	2002	23	55	78
	2003	18	52	70
	2004	18	53	71

Source: Broadcasting Council<sup>57</sup>

In 2004, the Broadcasting Council received 152 complaints related to broadcasting, which is a significant increase in comparison with the previous year (86 cases). However, this has had no apparent impact on the number of sanctions imposed by the Council, which remains almost unchanged – 71 in 2004 and 70 in 2003 (see Table 5). The largest number of complaints, almost half of the total number, were filed against STV (65), an enormous increase compared with 2003 (17).<sup>58</sup>

Proceedings against TV Markíza (37) mainly concerned violations of the principles of fairness and objectivity in its news programmes. Those against public STV concerned, first, non-usage of the unified system of marking television programmes currently in use and, second, exceeding the advertising limits imposed by the Law on Broadcasting and

<sup>57</sup> Broadcasting Council, *Annual Report 2004*, p. 60; Broadcasting Council, *Annual Report 2003*, p. 63; Broadcasting Council, *Annual Report 2002*; Broadcasting Council, *Annual Report 2001*.

<sup>58</sup> Broadcasting Council, *Annual Report 2004*, p. 109.

Retransmission.<sup>59</sup> A complaint against STV for interrupting its programmes with advertising was submitted to the Broadcasting Council by private broadcasters – among others, TV Markíza, TV Joj and TA3. The complaint referred mainly to the Slovak version of the “Pop Idol” programme (*Slovensko hľadá SuperStar*).<sup>60</sup> As a result, in February 2005 the Council imposed a fine of €12,598 on STV.<sup>61</sup>

### 3.4 Broadcasting independence

#### *Self-regulation*

In 1990, the Slovak Syndicate of Journalists (SSJ), one of the principal professional organisations in Slovakia, approved a Code of Journalistic Ethics.<sup>62</sup> However, in reality, the Code started to be implemented only in 2002, when the Syndicate completed a long-term plan for the establishment and functioning of a body responsible for overseeing compliance with the Code.

On 10 April 2002, the SSJ, along with the Association of Publishers of Periodical Press, established the Press Council, to monitor adherence to the Code and examine complaints against the media. In the opinion of some journalists, the existence of the Press Council should prevent lengthy lawsuits filed by people offended by newspaper articles. Although it has no legal powers to enforce its decisions, it was anticipated that in a short period of time it would wield moral authority, as its members are respected figures from various areas.<sup>63</sup> However, although the Press Council had received a total of 36 complaints up to the end of 2004, it has yet to make a strong impact on the ethical behaviour of Slovak journalists and the media. This is to some extent due to the character of the body, which – although it investigates all complaints and eventually issues recommendations – has no binding powers. Another reason is a shortage of real journalistic personalities in the media. Many experienced journalists do not even know that the Press Council and the Code exist. This situation confirms that many journalists have been indifferent to the role of such self-regulatory efforts.

<sup>59</sup> M. Sojková, “Státisícové pokuty pre televízie”, (“Hundreds of thousands in fees to TV stations”), in *Hospodárske noviny*, 7 December 2004, available on [http://hnonline.sk/3-22217655-St%E1tis%EDcov%E9+pokuty+pre+telev%EDzie-k00000\\_detail-c4](http://hnonline.sk/3-22217655-St%E1tis%EDcov%E9+pokuty+pre+telev%EDzie-k00000_detail-c4) (accessed 10 February 2005).

<sup>60</sup> SME, “Komerčné televízie sa spolu sťažujú na reklamu v STV”, (“Private TV stations are jointly complaining against advertising on STV”), 13 January 2005, p. 4.

<sup>61</sup> Medialne.sk, “Pol milióna pre STV za prerušenie SuperStar”, (“A half of million for STV for an interrupting of SuperStar”), available at <http://www.medialne.sk/archivbleskoviek.php?start=8> (accessed 19 April 2005).

<sup>62</sup> Slovak Syndicate of Journalists (SSJ), *Kódex novinárskej etiky*, (*Code of Journalistic Ethics*), available at <http://www.ssn.sk> (accessed 27 July 2005).

<sup>63</sup> The Council consists of two lawyers, a painter, a writer, a bishop and a historian.

### *Independence from the State*

Editorial independence is upheld by the Constitution, which bans censorship and guarantees freedom of speech.<sup>64</sup> Furthermore, the Law on Broadcasting and Retransmission states that, “a broadcaster broadcasts programmes freely and independently. There can be intervention into their content only on the basis of the law and its limits”.<sup>65</sup> In addition, the laws on STV and SRO seek to make the management and supervisory bodies of the two institutions more independent (see section 4.3)

The *Statute of Programme Workers*, developed according to a proposal of the Union of Slovak Television Producers, has been a part of STV’s internal rules since 1996 and is intended to guarantee the independence of the programme workers. Nonetheless, especially during the Mečiar administration, very few employees of STV dared to invoke the Statute in defending their rights, as they feared reprisals from the management, which was loyal to the political leadership. In 2004, the Statute was replaced by the *Statute of Programme Workers and Co-workers*,<sup>66</sup> which also introduced rules for the external contributors of STV. However, the introduced changes were not of a major character.

The former Slovak President, Rudolf Schuster, was known for his quick-tempered behaviour with the media during his mandate, between 1999 and 2004. He was quite critical of how journalists covered his activities, suggesting that the publicly funded media in particular should have paid much more attention to his work. The media published allegations that staff from the presidential office had called STV to “suggest” how the station should cover the President’s activities, and that, during the 2004 presidential elections, Schuster had been using the presidential office resources for his election campaign. However, the journalistic community was quite resistant to such pressure and did not hesitate to inform the public about these practices.

The State has no legal powers to interfere with the independence of public media news. One of the biggest achievements of the current STV management has been the improvement of STV’s economic situation, to the extent that it has ceased to be dependent on State subsidies (see section 4.3).<sup>67</sup> State aid was largely believed to be the main instrument of control over the network’s broadcasting content in the past.

<sup>64</sup> The Constitution of Slovak Republic *Official Gazette* No. 460/1992, 92 of 1 October 1992 (it came into the force on 1 October 1992), last amended on 14 May 2004, art. 26.

<sup>65</sup> Law on Broadcasting and Retransmission, art. 15.

<sup>66</sup> STV, *Štatút programových pracovníkov a spolupracovníkov STV, (Statute of Programme Workers and Co-workers)*, not publicly available.

<sup>67</sup> STV, *Výročná správa o činnosti Slovenskej televízie za rok 2004, (Annual Report on the activities of the Slovak Television for the year 2004)*, Bratislava, 2004, available at [http://www.stv.sk/category\\_files.php?id=36&open=9895](http://www.stv.sk/category_files.php?id=36&open=9895) (accessed 18 July 2005), (hereafter, STV, *Annual Report 2004*); STV, *Výročná správa za rok 2003, (Annual Report for the year 2003)*, Bratislava, 2003, available at [http://www.stv.sk/category\\_files.php?id=36&open=9839](http://www.stv.sk/category_files.php?id=36&open=9839) (accessed 18 July 2005), (hereafter, STV, *Annual Report 2003*).

However, some media analysts have criticised STV's news department, accusing it of being too cautious and lacking proactive and investigative energy when covering political issues. STV's news department has vehemently rejected such criticism.

According to a media survey conducted by the domestic agency Polis in September 2003, 33 per cent of respondents believed that *all* the Slovak media were under political pressure, whereas 51 per cent thought *some* media faced political pressure. Nevertheless conversely, 60 per cent of the population apparently believed that the media played an important role in influencing politics and the politicians. Almost half of the survey's respondents believed that political parties do not have equal access to the media.<sup>68</sup> Given the dominant position of TV Markíza and its close links with its former owner, now leader of the ANO party, it is not surprising that 45.9 per cent of the interviewees believed that ANO was the political party with the biggest coverage in the media.

### *Independence from political and economic interests*

Although there are no reports on State interference in the media, some observers and journalists interviewed for this report admitted that indirect forms of pressure on journalists still exist. In particular, they alleged that powerful political and economic circles are still, to a certain extent, able to influence the content of news programmes. Generally, the media are not afraid of reporting on rampant corruption in the Government, but sometimes close links and relations between certain politicians and journalists hinder the media from fulfilling their watchdog role (see also section 5.6).

There were no reports of direct pressure or editorial interference akin to censorship. However, in 2003, a scandal broke out when it was revealed that the Slovak Information Service (SIS) had illegally bugged the mainstream daily newspaper *SME*. The investigation revealed that the SIS illegal wiretaps also included politicians and entrepreneurs. Several international organisations, including the International Press Institute (IPI) and the International Federation of Journalists (IFJ), expressed serious concerns. Although a military prosecutor charged three SIS officers with abusing their powers, the prosecution eventually ended in June 2005 without anyone receiving a sentence.<sup>69</sup>

In another case, a journalist working for the commercial television station TA3, Braňo Dobšinský, accused his former employer of editorial interference prior to the 2004 presidential elections, shortly after his contract was terminated. This followed TA3's dissatisfaction with the professional level of an interview Dobšinský had conducted with one of the presidential candidates, Ľubo Roman, the ANO nominee. When asked

<sup>68</sup> Pravda.sk, "Médiá sú pod politickým tlakom, myslia si Slováci", ("As Slovaks think, the media are under political pressure"), available at [http://spravy.pravda.sk/sk\\_domace.asp?r=sk\\_domace&c=A030922\\_111727\\_sk\\_domace\\_p03](http://spravy.pravda.sk/sk_domace.asp?r=sk_domace&c=A030922_111727_sk_domace_p03) (accessed 15 July 2004).

<sup>69</sup> M. Žemlová, "Súd o odpočúvaní SME: Vinníka niet", ("The Court about SME bugging: no one is guilty"), in *SME*, available at <http://www.sme.sk/clanok.asp?cl=2267023> (accessed 30 June 2005).

to repeat the same interview once again, Dobšínský refused, accusing the management of sending the tape of the original interview to the candidate for approval. Dobšínský alleged that, after seeing the content, the candidate had recommended to the TA3 management that a new interview be conducted. While Dobšínský claimed that he was fired due to political pressures, the official explanation from TA3 was that the main reason for his layoff was his e-mail correspondence with another presidential candidate, Jozef Šesták, which according to the management, violated professional and ethical standards.<sup>70</sup>

Given its dominant position in the media market and its previous history of biased reporting in favour of certain political representatives, especially during the 1999 and 2002 elections, TV Markíza has been under close scrutiny by independent observers. Although the former co-owner of the television station, Pavol Rusko, sold his stake in the station to the entrepreneur František Vizváry right after the 2002 elections and resigned as a member of the Board of Owners of TV Markíza, he has maintained an unofficial relationship with the television station even after the ANO party became a member of the ruling coalition (ANO gained eight per cent of the votes in the 2002 elections). In its 2004 Country Reports on Human Rights and Practices, the US State Department stated that, “the ANO chairman and Minister of Economy, Pavol Rusko, continued to influence TV Markíza’s editorial policies despite having divested his ownership interest”.<sup>71</sup>

The Christian Democratic Movement (KDH) decided to boycott TV Markíza, claiming that its news and current affairs coverage failed to meet the basic ethical and political criteria of journalism.<sup>72</sup> Furthermore, KDH Interior Minister Vladimír Palko, during the live television show *Na telo* (“Skin close”) broadcast on TV Markíza, accused the stations’ reporters of “playing with the mafia” and said that TV Markíza was a “corrupt station and propaganda machine.”<sup>73</sup> Palko’s accusations followed negative news reporting of the police and Ministry of Interior activities. In response, TV Markíza’s management and reporters filed a lawsuit against Palko and the General Prosecutor’s office launched a criminal prosecution on suspicion of libel. There were several other cases where Rusko and TV Markíza appeared to be closely tied.<sup>74</sup> This tight relationship is demonstrated by the presence in the party’s leadership of a number

<sup>70</sup> Kollar 2004, *Media*, p. 739.

<sup>71</sup> US State Department, *2004 Country Reports on Human Rights and Practices*, available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41707.htm> (accessed 17 July 2005).

<sup>72</sup> In a series of reports published in 2002 and 2003, the monitoring of primetime newscasts on TV Markíza, carried out by the civic association MEMO’98, revealed that the station was biased in favour of ANO and Pavol Rusko, and selectively critical towards KDH. MEMO’98 monitoring reports, available at <http://www.memo98.sk> (accessed 27 July 2005).

<sup>73</sup> SITA news agency, 7 September and 10 September 2003.

<sup>74</sup> V. Zelmanová, “Citové väzby jedného ministra”, (“Sympathies of a minister”). The source of the information ([www.mediaportal.sk](http://www.mediaportal.sk) – accessed 11 October 2004) has been closed in the meantime.

of TV Markíza “faces” such as Lubomír Lintner, the station’s former news editor, Jozef Heriban, TV Markíza’s former PR manager, and Eva Černá, a former programme host.

### *Links between media and politicians*

Slovakia’s media legislation contains no provisions forbidding such links between politicians and the media. After the 2002 elections, ANO declared its intention to amend media legislation, stripping STV of advertising. This would have allowed TV Markíza to grab more advertising revenues. Rusko’s influence is not limited to TV Markíza, and there was a period in which there were indications that it had also been extended to the public broadcaster. On 2 June 2002, the two hosts of STV’s popular Sunday talk show *O päť minút dvanásť* (“Five minutes to twelve”), Beata Oravcová and Michal Dyttert, resigned after they were ordered by STV management to include Pavol Rusko in their programme. In their response, Dyttert and Oravcová stated that the “only criteria for inviting talk-show guests was the relevance of their contributions to the topic under discussion.”

Another incident that revealed the close links between politicians and journalists was the appointment of former journalist Peter Tóth as head of the SIS counter-intelligence unit. The Editor-in-Chief of *SME* newspaper, Martin M. Šimečka, did not exclude the possibility that Tóth was already with the SIS while working as a journalist. As a result of this case, in March 2004 Parliament adopted an amendment of the Law on Slovak Information Service, which prohibited the SIS cooperating with the journalists.<sup>75</sup>

Generally, given the lack of widely respected media personalities, the journalistic community *per se* is still relatively weak at resisting political pressure. Instead, it is divided into various groups surrounding different media outlets that are more or less antagonistic towards each other. There are indisputably several talented young journalists, but only a few middle-aged journalists who their younger colleagues could follow and learn from. The Slovak media environment is lacking in self-reflection and self-regulation, and the SSJ does not play a significant role. Nonetheless, there have been some interesting projects, such as Slovak Press Watch, lead by Gabriel Šipoš, who had gained the respect of media professionals for his ability to uncover certain practices and tendencies conducted by some journalists or media outlets. After the project questioned the reliability of some material published in dailies *Národná obroda* and *SME*, three journalists were forced to leave the two papers. However, despite the positive reactions to the project, Šipoš announced its end in December 2004.

In recent years, however, there have been a series of improvements boosting the independence of the media. For example, since 2004 the General Directors of STV and SRO are elected by the stations’ overseeing councils, while previously, they were elected by Parliament. Another improvement is the introduction of the rotation

<sup>75</sup> Law No. 46/1993 on the Slovak Information Service, as amended by Law No. 178/2004 of 17 March 2004.

principle in the councils overseeing the public broadcasters – every two years, one third of the members are replaced. (See section 4.4.)

## 4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING

Since the new management came to STV at the beginning of 2003, the station has finally undergone a major restructuring process, mainly organisational and economic. The main reason for this process was the collapsing situation of the public television broadcaster, which had been decimated and traumatised by recurrent political interference and weakened by the poor economic situation and the indifference of professional journalists. By the end of 2004, however, STV was employing less than half the staff it had in 2002, when Richard Rybníček was elected as the new General Director. STV's economic situation has also been more or less stabilised – apart from expenses in connection with lawsuits, STV now has a balanced budget. Nonetheless, there are well-founded anxieties that this was achieved at the price of weakening the public service role of STV. There have also been accusations that STV's Jednotka channel – which, following the programme division of the two channels, has been focusing mainly on the majority viewer – has been turned into a commercial television station.

### 4.1 The public broadcasting system

The main laws governing the public service broadcasters are the Law on Slovak Public Television 2004<sup>76</sup> (hereafter, Law on STV 2004) and the Law on Slovak Public Radio 2003<sup>77</sup> (hereafter, Law on SRO 2003).

The main obligation of STV is to provide public service in the sphere of television broadcasting.<sup>78</sup> STV programming should contribute to the development of a democratic society; 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; and support the development of artistic works, culture and education. Furthermore, public broadcasters are responsible for ensuring a heterogeneous selection of programmes, mostly for the public interest.

---

<sup>76</sup> Law No. 16/2004 on Slovak Public Television, *Zbierka zákonov* 7 of 15 January 2004 (entered into the force on 1 February 2004), (hereafter, Law on STV 2004).

<sup>77</sup> Law No. 619/2003 on Slovak Public Radio, *Zbierka zákonov* 252 of 31 December 2003 (entered into force 1 January 2004), (hereafter, Law on SRO 2003).

<sup>78</sup> Law on STV 2004, art. 3.

The Law on STV 2004 defines Slovak Television as a public service broadcaster: a national, independent, informative, cultural and educational institution that serves the public by producing and broadcasting programmes for a broad viewership, complying with the principles of editorial independence, produced by professionals who assume their responsibility to society. STV programmes must offer impartial, verified, unbiased, actual, understandable, balanced and plurally sourced information about what is going on in Slovakia and abroad, to allow viewers to form their views independently.

STV has been weakened by frequent changes of its senior management, reflecting the changes of political parties in government.<sup>79</sup> As such, STV has often acted as an obedient servant of the political factions in power. This trend intensified in 1996 when Igor Kubiš, a former news anchor, became the General Director of STV. Under his management, the public television was constantly used to attack the opponents of the then ruling coalition under Prime Minister Mečiar.

Contrary to its public mandate to provide balanced and objective coverage, STV, mainly during the 1998 parliamentary elections, clearly and openly supported the ruling coalition and became an unabashed mouthpiece of the Government. This imbalance was further aggravated by the fact that STV was the only televised news source covering the entire country.<sup>80</sup> In its news and current affairs programmes, STV openly favoured the ruling coalition parties, portraying them in an exclusively positive light. On the contrary, the opposition parties were offered significantly less airtime with an overwhelmingly negative slant. STV's primetime news bulletin was highly selective, with events being covered not for their news value but in order to portray a favoured party in a positive light or its opponents in a negative light.<sup>81</sup>

At the time, the supervisory body of STV, the STV Council, was composed of representatives of parliamentary political parties. Until 2004, STV's General Director was elected by Parliament, but is now selected by the STV Council. The result was that every parliamentary election brought a new television management. Another move that would have further undermined the independence of STV would have been the elimination of advertising from public television. There has been a debate on withdrawing advertising from STV, but it is clear that if such a move were to be implemented, STV would instantly go bankrupt or become a puppet in the politicians' hands (see section 4.2).

In the past, there were also intentions to privatise the STV2 channel (now Dvojka), which covers almost 90 per cent of the national territory. However, in 1996, the Law on STV 1991 was amended, to stipulate that the STV2 channel could not be

---

<sup>79</sup> STV has had 13 General Directors in the past 15 years.

<sup>80</sup> The news coverage by private media only partly offset this situation. Mečiar's HZDS party achieved its best election results in regions not covered by the private media, but only by STV.

<sup>81</sup> More detailed information is available on the MEMO 98 website ([www.memo98.sk](http://www.memo98.sk)).



privatised.<sup>82</sup> The amendment was proposed by a Member of Parliament of the then opposition Party of the Democratic Left (SDL), Milan Ftáčnik, and it was initiated by non-governmental media organisations. It was virtually the only legal initiative by the opposition that was voted on by Parliament during four years of the third Government of Vladimír Mečiar.

STV's current management assessed that the station's bloated staff was one of the main reasons behind its bad economic situation. Until 2003, the network employed around 2,000 people. Although STV is composed of two channels, and its role in fulfilling all the legal requirements placed on the public broadcasters is more demanding than for the commercial broadcasters, the efficiency of using such huge human resources has often been questionable. Outsourcing was seldom used by STV although commercial television stations, such as TV Markíza, outsourced a number of projects very efficiently. By 30 November 2004, STV management had made around 1,100 employees redundant.

Another significant problem of STV (and also SRO) that has not been solved is its financing. The level of funding from licence fees and revenue from commercial activities is still low compared to the real cost of running the public broadcasters (see section 4.2).

The history of SRO was not as turbulent as that of STV. When STV was acting as the mouthpiece of Mečiar's administration, SRO managed to remain more or less independent. Following the appointment of Jaroslav Rezník as SRO's General Director, the station increased its revenue from advertising and from its own activities, but to a large extent remained dependent on State subsidies. Between 1996 and 1998, the State financed up to 44 per cent of the radio's activities. Although SRO has suffered from severe financial problems, it managed to preserve its leading position on the radio market. It also benefits from the fact that a great number of households own medium-wave receivers and SRO is the only station broadcasting on this band. At the moment, however, broadcasting on this band is losing popularity and has been partly removed. Generally, it is middle-aged and senior citizens, especially those living in the rural areas and small towns, who mostly listen to SRO. The situation in large cities is different. For example, in Bratislava the most listened to radio station is the commercial news station Rádio Expres.

The public radio's first channel, Rádiožurnál, is a modern public news station. More questionable is the position of the SRO's FM channel (Rádio FM), which, although part of the public radio corporation, has commercial programming.

---

<sup>82</sup> Law No.321/1996 amending Law No. 254/1991 on Slovak Television.

## 4.2 Funding

In accordance with the recently adopted Law on STV 2004 and Law on SRO 2003, both broadcasters can be financed from various sources, including the State budget.<sup>83</sup> However, the most important sources of income for both public broadcasters is revenue from the licence fees paid by all owners of television and radio sets, and from advertising (see Table 7).

The under-financing of STV over a considerable time has had negative repercussions on the quality of its programmes. Comparing 1993 and 2001, for example, STV's expenditures increased by 53.6 per cent, while the index of consumer prices increased by 94.9 per cent (see Table 6). In addition, the amount of programmes broadcast on STV increased by 46.5 per cent over the same period. The increase of STV's expenditures since 1993, when it started to broadcast on two channels – meaning more broadcasting time and a larger amount of own programmes – was not seriously mulled over by the station's management.

The long-term financial stagnation of STV is even more noticeable if compared with Czech public television, Česká Televize, whose starting position before the split of Czechoslovakia in 1993 was comparable with that of STV, but which now reaches twice as many viewers as STV. While the income of Česká Televize increased by some €86 million between 1992 and 2001, STV saw a slender increase of only €15.4 million in the same period.<sup>84</sup>

**Table 6. Total expenditure and income of STV (1993–2001)**

	1993	1994	1995	1996	1997	1998	1999	2000	2001
Total expenditure (€ million)	31.82	33.16	34.78	41.88	42.25	46.11	47.11	49.27	48.90
Increase with respect to the previous year (per cent)	–	4.2	4.9	20.4	0.9	9.1	2.2	4.6	-0.8
Total income (€ million)	30.61	34.17	34.83	39.38	36.09	40.67	39.16	40.59	42.21
Increase, with respect to the previous year (per cent)	–	11.6	2.0	13.0	-8.4	12.7	-3.7	3.7	4.0
Annual rate of inflation (per cent)	23.1	13.4	9.9	5.8	6.1	6.7	10.6	12.0	7.3

Source: Ministry of Culture<sup>85</sup>

<sup>83</sup> Article 21 of the Law on STV 2004 and the Law on SRO 2003 enumerate the possible sources of funding for STV (10 possible sources) and SRO (12), respectively.

<sup>84</sup> Ministry of Culture, *Analyza súčasného stavu financovania Slovenskej televízie a Slovenského rozhlasu*, (*Analysis of the current stage of financing of Slovak Television and Slovenský Rozhlas*), available on the Ministry of Culture website at [http://www.culture.gov.sk/pk/SMA\\_19\\_02\\_03/analyza\\_fin\\_stv\\_sro.htm](http://www.culture.gov.sk/pk/SMA_19_02_03/analyza_fin_stv_sro.htm) (accessed 3 February 2005) (hereafter, Ministry of Culture, *Analysis of financing*).

<sup>85</sup> Ministry of Culture, *Analysis of financing*.

#### 4.2.1 The licence fee

Until 1997, STV was profitable thanks to its dominant position and national coverage. With the entrance on the market of TV Markíza in 1996, however, STV's income fell sharply, due to a loss of advertising revenues. Consequently, it became clear that STV did not have sufficient financial support from its principal source, revenue from licence fees.

Licence fees constitute the main and regular income of both institutions. The licence fee was introduced in 1969 and was mandatory for all households owning a television set. Since 1969, the licence fee was increased only twice, in 1985 and 1997, from the original 30 Czechoslovak crowns for television (€0.76), and ten crowns for radio (€0.25) per month.<sup>86</sup> Following the appointment of a new Government in 2002, the Ministry of Culture drafted a proposal to increase licence fees. The proposal put forward a number of variants, up to a maximum increase of 100 per cent.

Finally, the Law on Licence Fees was amended in April 2003, to include an increase of 33 per cent in the monthly licence fee for STV and SRO.<sup>87</sup> The increase of the licence fee was from €1.76 to €2.02 per month for STV, and from €0.76 to €1.01 for SRO. The management of SRO was not satisfied with the rise and demanded a second one, to €1.26 per month, but this was refused. However, the licence fee for STV was increased to €2.51. The amendment finally approved in April 2003 set the total licence fee at €3.52 and also included a new obligation for pensioners to pay half of the licence fee – they had previously been exempted.

The increase in the licence fee is important as both STV and SRO had previously depended on State subsidies to cover their huge debts.<sup>88</sup> In practical terms, it corresponds to an annual increase in STV's income of SKK 400 million (€10 million). Nonetheless, the current legislation on licence fees is still not satisfactory, as it lacks a provision on increasing the fee in line with the rate of inflation or on compensating staff dismissed by the station. According to the Ministry of Culture, STV would require approximately SKK 3 billion (or €75.59 million a year), in order to fulfil its role and to be able to further develop – equivalent to a monthly television licence fee of €3.53.<sup>89</sup> In addition, the insufficient enforcement of the licence fees has in recent years also contributed to the fragile financial situation of the public broadcasters. STV expects to make a loss of around €12,600 in 2005 (and SRO around €10,000) in comparison with their planned budgets.

In May 2005, Parliament rejected a proposal from of a group of Members of Parliament, calling for the introduction of a mandatory licence fee payment by all electricity

<sup>86</sup> Ministry of Culture, *Analysis of financing*.

<sup>87</sup> Law No. 212/1995 on Licence Fees, *Official Gazette* No. 73 of 14 October 1995, as last amended by Law No. 241/2003 of 19 June 2003

<sup>88</sup> The combined debt owed by both institutions (STV and SRO) to the State telecommunications company Slovak Telecom amounted to more than €5.82 million as of 30 September 2002.

<sup>89</sup> Ministry of Culture, *Analysis of financing*.

consumers. However, the newly-appointed Minister of Culture, František Tóth, as well as some other Members of Parliament, nonetheless see room for changes to the licence fee system before the next parliamentary elections, scheduled for autumn 2006.<sup>90</sup>

#### 4.2.2 State subsidies

After his appointment as General Director of STV in 2003, Richard Rybníček stated that one of his goals was for STV to avoid further losses and thus no longer to have to use State subsidies. Subsequently, in December 2003, the Government approved a State subsidy of SKK 400 million (€10.08 million) to cover STV debts.<sup>91</sup> Rybníček also received a special State loan of SKK 250 million (€6.3 million) destined only for programme production. Roughly half of this loan went as severance pay to dismissed employees.

The STV Council approved a budget for 2005 that does not envision any State subsidies (see Table 7). However, this does not take into consideration a potential loss of SKK 100 million (€2.52 million) due to possible losses in a lawsuit.<sup>92</sup>

<sup>90</sup> M. Sojková, “STV a SRO: Koncesionárske poplatky ostávajú v hre”, (“STV and SRO: The licensee fees remaining in a game”), in *Hospodárske noviny*, 19 July 2005, available at [http://www.hnonline.sk/2-22596605-k00000\\_detail-fa](http://www.hnonline.sk/2-22596605-k00000_detail-fa) (accessed 20 July 2005).

<sup>91</sup> “STV skončila tretí štvrt'rok zo stratou 50.9 milióna”, (“STV finished the third quarter with a 50.9 million deficit”), 23 November 2004, available at <http://www.sme.sk> (paid access to the article) (accessed 6 February 2005).

<sup>92</sup> According to the STV's *Annual Report 2004*, STV is a defendant in a number of lawsuits, which could lead to a potential debt of SKK 1.050 billion (€26.46 million). In 2004, STV faced three serious lawsuits, including a case with Štúdio BETA. This lawsuit resulted from the period of General Director Igor Kubiš (1996–1998), who had signed a contract obliging STV to produce a specific programme for a long period. The amount of the contract, which was eventually annulled by the following General Director, Milan Materák (1998–2002), is estimated to be up to SKK 790 million (€19.9 million).

**Table 7. STV income – breakdown by revenue source (2002–2005)**

Revenue source	Income					Share of total revenue for 2005 (per cent)
		2002	2003	2004	2005 (approved budget)	
Licence fees	SKK billion	1.031	1.179	1.430	1.400	62.6
	€ million	25.98	29.71	36.03	35.27	
Advertisements	SKK million	177	237	446	400	17.9
	€ million	4.46	5.97	11.24	10.08	
State subsidies	SKK million	218	368	400	0	0
	€ million	5.49	9.27	10.08	0	
Other	SKK million	141	256	95	435	19.5
	€ million	3.55	6.45	2.39	10.96	
Total	SKK billion	1.567	2.040	2.372	2.235	100
	€ million	39.48	51.40	59.76	56.31	

**Table 8. STV total income and expenditure (2002–2005)**

		2002	2003	2004	2005 (approved budget)
Total income	SKK billion	1.567	2.040	2.372	2.235
	€ million	39.48	51.40	59.76	56.31
Total expenditure	SKK billion	1.978	1.955	1.972	2.235
	€ million	49.84	49.26	49.69	56.31
Balance	SKK billion	-411	+84	+399	0
	€ million	-10.36	+2.12	+10.05	0

Source: STV<sup>93</sup> and *Hospodárske noviny*<sup>94</sup>

SRO was anticipated to have made a loss of SKK 150 million (€3.78 million) in 2004, due to insufficient revenues from the licence fees, a decline in advertising revenues, and an outstanding debt to Slovak Telecom. Furthermore, SRO had a debt of SKK 63 million (€1.59 million) from 2003. However, in 2004, the Minister of Finance, Ivan

<sup>93</sup> STV, *Annual Report 2004*; STV, *Annual Report 2003*.

<sup>94</sup> M. Sojková, "Aká bude Slovenská televízia? Verejný tlak sa stupňuje.", ("What will be the Slovak TV like? Public pressure has been increasing"), *Hospodárske noviny*, 24 January 2005, available at [http://hnonline.sk/3-22297935-Ak%E1+bude+Slovensk%E1+telev%EDzia+Verejn%FD+tlak+sa+stup%F2uje.-k00000\\_detail-ad](http://hnonline.sk/3-22297935-Ak%E1+bude+Slovensk%E1+telev%EDzia+Verejn%FD+tlak+sa+stup%F2uje.-k00000_detail-ad) (accessed 8 February 2005).

Mikloš, made a surprising decision to allocate an extra subsidy of SKK 183 million (€4.61 million) to SRO, which helped the station cover its debts for the years 2003 and 2004. At the same time, the subsidy allowed the station to keep its foreign broadcasting running on Radio Slovakia International, which did not receive any State subsidy in 2004 despite the fact that the Law on SRO 2003 stipulates an obligation to finance it from the State budget. Nevertheless, the Chairman of the Radio Council, Michal Dzurjanin, has stated that the subsidy was not a long-term solution to the station's financial problems.<sup>95</sup>

#### 4.2.3 Advertising

From 2002–2004, STV more than doubled its income from advertising. However, an analysis by the Ministry of Culture in 2003 on increasing advertising revenues by STV states that,

financing of the public broadcasting service cannot be dependent on income from the broadcasting of advertising, but should be based on a stable system of getting money from public sources. To focus on increasing the advertising revenues would *de facto* mean a change in the broadcasting content in favour of commercially attractive programmes that would then mean no reason for existence of television and radio service in public interest (PSB).<sup>96</sup>

In September 2003, Parliament passed an amendment to Law on STV of 1991, allowing Slovak Television to found commercial corporations or enter existing ones. The management of STV had lobbied for the amendment, as they wanted to buy into a company that would carry out peplemetering surveys and also to sell advertising through its own commercial vehicle. This provision was also incorporated into the new Law on STV 2004. Another important provision of the Law on STV 2004 and Law on SRO 2003, both of which entered into force in 2004, allows both public service broadcasters to become owners of property that before they could only administer. Furthermore, the new laws allow both public service broadcasters to seek commercial revenues, provided that this does not encroach on their public service broadcasting activities.

In recent years, there have been numerous calls, especially from commercial broadcasters, to forbid STV from receiving money from the State budget and from advertising. The Law on Broadcasting and Retransmission allows STV to sell advertising for three per cent of its broadcasting time. With tele-shopping, the ceiling on advertising on STV reaches ten per cent of its daily broadcasting time. In prime time, from 19.00 until 22.00, commercials should not exceed eight minutes per hour of broadcasting time. Commercial television stations can sell advertising up to 15 per

<sup>95</sup> “Mikloš odsúhlasil mimoriadnu dotáciu pre rozhlas 183 miliónov”, (“Mikloš approved special subsidy for Slovenský Rozhlas amounting to SKK 183 million”), in *SME*, 30 December 2004, p. 1.

<sup>96</sup> Ministry of Culture, *Analysis of financing*.

cent of their daily broadcasting time and up to 20 per cent with teleshopping included. Unlike licensed operators, STV is not allowed to interrupt programmes with advertisements.

In connection with this, several complaints have been filed with the Broadcasting Council against STV from the public and also from private businessmen. Two cases in point are the interruption of broadcasts from the 2004 Ice-Hockey Championship and of the show *Slovensko hľadá SuperStar*. Based on these complaints, the Broadcasting Council started sanctioning procedures against STV. The dissatisfaction of private television broadcasters with the current legal status, which allows STV to compete for advertising income, motivated TV Markíza to air in June 2005 a two hour discussion with various guests.<sup>97</sup> They looked at the general state of television in Slovakia, but focused in particular on STV.<sup>98</sup>

### 4.3 Governance structure

#### 4.3.1 Composition

The Law on STV 2004 envisions three governing bodies for the public television: the STV Council, the Supervisory Commission, and the General Director.

The STV Council is the primary controlling body that oversees the implementation of the Law on STV. It elects and dismisses the General Director. Before the adoption of the new Law on STV 2004, STV's General Director was elected by Parliament.

The Council's 15 members are elected and recalled by Parliament – prior to the enactment of the Law on STV 2004, the Council had nine members. The appointment process is identical to that of the Council for Broadcasting and Retransmission, with the following entities entitled to nominate an unlimited number of candidates: the Parliamentary Committee for Education, Science, Sport and Youth, Culture and Media, Members of Parliament, legal entities operating in the audiovisual sector, mass media, cultural, science organisations, education and healthcare institutions, organisations representing national minorities and ethnic groups, registered religions or religious societies. Members serve a six-year term, with one third of the members being renewed every two years. The first regular meeting of a new Council is convened by the Speaker of Parliament not later than 30 days after the

<sup>97</sup> The discussion included the following participants: representatives of the Ministry of Culture, the Broadcasting Council, the STV Council, TA3, General Directors of TV Markíza and TV Joj, MPs, former General Director of public Czech TV and civil society organisations. As declared by STV management, General Director Richard Rybníček declined to participate because “it was a form of inquisition, where they would even burn us at the end”.

<sup>98</sup> “Zápas o STV sa už vedie na Markíze”, (“A fight of STV is already battled on TV Markíza”), in *SME*, available at [http://www.sme.sk/clanok\\_tlac.asp?cl=2247448](http://www.sme.sk/clanok_tlac.asp?cl=2247448) (accessed 19 July 2005) (paid access after three months from the date of publication).

appointment of the Council members. At its first meeting, the Council elects its Chair and Vice-chair. The same rules apply for the Radio Council.

Both the Law on STV 2004 and the Law on SRO 2003 stipulate that members of both Councils must be elected within 60 days after the laws took effect. The new laws on STV and SRO became effective in February 2004 and January 2004, respectively. The repeated voting of the Radio Council members between February and April 2004, when Parliament failed to elect at once all members of the council (the last ones were elected on 29 April 2004), was, according to Bohumír Bobocký, a member of the STV Council, “the best illustration that in spite of nominations by civil society, political parties are not willing to lose their ability to interfere with the work of the public service broadcasters.”<sup>99</sup>

The STV Council approves the station’s Programme Code and Organisational Order, the Code of the Supervisory Commission, as well as the Statute of Programme Workers and Co-workers. The Council is entitled to debate the annual report on STV prepared by the General Director for the Council. It also discusses and approves the draft STV budget, the station’s accounts, and any proposals to use the reserve fund.

STV’s statutory body is the General Director, who manages its activities and represents the television in its external relations. The STV Council has the legal power to dismiss the General Director if he or she is sentenced for a criminal offence, or loses the competence to carry out legal actions, or holds a position or conducts activities in conflict with their position. The Council can also fire the General Director if they do not perform their duty for three consecutive months or if the Council decides twice within six consecutive months that STV has not fulfilled its legal tasks and responsibilities.

The Supervisory Commission has three members, one elected by Parliament, the second appointed by Government and the third by President, for a three-year term.

To improve transparency of STV’s economic performance, the new Law on STV 2004 specifies the creation of the Supervisory Commission responsible for ensuring that the network’s management is appropriately and efficiently managing STV.<sup>100</sup> The members of the Supervisory Commission are entitled to access the station’s entire accounting, economic, financial and legal documents connected with the management of STV resources.

The General Directors of STV and SRO were both strongly opposed to some provisions in the new laws. The SRO General Director, Jaroslav Rezník, disagreed with

<sup>99</sup> OSI Roundtable meeting, Bratislava, 8 December 2004, hereinafter “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.*

<sup>100</sup> Law on STV 2004, art. 15-16.



the creation of the Supervisory Commission, and with the provision saying that directors of public service broadcasters should be elected and dismissed by the stations' councils. The STV General Director, Richard Rybníček, also disagreed, saying that there is more room for corruption in the station's council than in Parliament. "This society is not morally prepared to have in councils [such as STV's] such important personalities, who would resist external pressures."<sup>101</sup> However, after a long and heated debate, and a series of proposals to change the law, both General Directors accepted the new legislation.

#### 4.3.2 Appointments

According to the Law on STV 2004, members of the STV Council should not hold any position within any political party or movement, and should not represent a political party or movement or act in their support.<sup>102</sup> They cannot be the President of the Republic, a member of Parliament or the Government, a Secretary of State, the head of a central body of public administration, the head of a ministerial department, a member of the Broadcasting Council, or a member of the management of SRO. They are also forbidden from having any legal or working relationship with STV. These restrictions apply also to their relatives. Furthermore, STV Council members must not be employed in the State administration at the central or lower levels, or as a mayor, prosecutor or judge. The STV Council members are entitled to a monthly salary set at twice the minimum wage.

With the adoption of the Law on Protection of the Public Interest during Public Officials' Service (known as the Law on Conflict of Interests) in May 2004, even strict rules were introduced concerning the conditions for membership of the STV Council (and the Radio Council). According to the law, members of the STV Council are prohibited from having private businesses or using their image and name in advertising.<sup>103</sup>

Members of the STV Council can be removed by Parliament if they do not perform their duty for three consecutive months, if they have been sentenced for a criminal offence, if they become legally incapable, or if they hold a position or conduct activities conflicting with their position in the STV Council. Parliament can dismiss all members of the STV Council only if it passes, twice in six consecutive months, a resolution stating that the STV Council does not fulfil its role stipulated by law. At least 30 Members of Parliament are needed to initiate a vote of no confidence in the STV Council.<sup>104</sup>

---

<sup>101</sup> Kollár, *Media*, p. 663.

<sup>102</sup> Law on STV 2004, art. 10.

<sup>103</sup> Law on Conflict of Interests, art. 4(f).

<sup>104</sup> Law on STV 2004, art. 16(6).

For the election and dismissal of the STV General Director, a two-thirds majority of all the STV Council members is needed. The General Director is appointed for a five-year mandate and one person can serve two consecutive mandates. The General Director is entitled to a monthly salary set at twice the salary of a Member of Parliament.

### 4.3.3 Responsibilities

The Broadcasting Council can warn the STV Council about infringements of its duties as a public service broadcaster. If the public service broadcaster breaches any of the obligations laid down in the Law on Broadcasting and Retransmission, the Broadcasting Council can impose sanctions on STV and SRO. These include asking the broadcaster to air an announcement about the infringement of the law, suspending all or part of a programme, or imposing fines between €252 and €125,976 on the television network and between €76 and €37,793 for the radio broadcaster, commensurate with the gravity of the breach (see section 3.3).

In 2004, the Broadcasting Council imposed 18 broadcasting-related sanctions on STV and none on SRO (the corresponding number in 2003 was 18 for STV and 2 for SRO). In the case of STV, most sanctions (15 cases) were fines, totalling SKK 1,400,000 (€35,273), which is almost the same as in the previous year (€35,021). In most cases, the fines were levied for problems with the common system of programme marking and with advertisements – more precisely with unlawful commercial breaks within certain programmes (see also section 4.2). The highest fine, SKK 300,000 (€7,559), was imposed on STV for not clear distinguishing advertisements from other programmes.<sup>105</sup>

## 4.4 Programme framework

When the new Law on STV was being passed in 2003, artists and cultural personalities warned that STV was being turned into an increasingly commercialised station that would mainly broadcast imported programmes, similar to the commercial television stations. Professional organisations such as the Union of Slovak Television Producers, the Union of Slovak Actors and the Civic Association “Public Matter” criticised the management of STV for diverting the station from its public service broadcasting ambit. They added that STV did not properly fulfil its tasks as stated by law, such as producing and broadcasting original productions, a certain number of documentaries and TV movies. They also pointed to the decline in production of programmes for children and teenagers, which were moved to the station’s second channel, and the decrease of programmes about religion and spiritual life in general.

The Broadcasting Council stated in its *Annual Report 2003* that STV had gone through a difficult period and saw changes in its structures and programming aimed at

<sup>105</sup> Broadcasting Council, *Annual Report 2004*; Broadcasting Council, *Annual Report 2003*.

the “stabilisation of STV to become fully capable, as of 2004, of fulfilling its role as a public service broadcaster.” The Broadcasting Council further stated,

The production of several programmes was terminated, broadcasting of others temporarily stopped. A high number of series and soap operas show the tendency of Jednotka to get closer to the character of programme service of a commercial broadcaster. In spite of a serious reduction in its own production, the public service character of broadcasting was preserved mainly thanks to using the STV archive.<sup>106</sup>

According to Rybníček’s concept of reform, STV’s first channel Jednotka “should be filled by a programme that is attractive for a majority viewer, which means that it will have not only a good viewership rating but it will also entertain people, with family oriented programmes”. Dvojka, the second channel, “will be a public service channel dedicated to a specific, more demanding viewer, where we will not look at the viewership rating, even though I would be happy having a 5-8 per cent rating”.<sup>107</sup> This initial intention of the STV management was reflected in an evaluation given by the Broadcasting Council in its *Annual Report 2004*, that “STV, after a ‘new beginning’ from 1 January 2004, chose a strategy of considerable broadcasting change, on both channels”. The report further assessed,

After the launch of the peplemetres [system], the Jednotka channel has predominantly begun to compete with commercial channels for viewer ratings, as a result of which programming has been shaped accordingly. The majority of public service programmes have moved to Dvojka channel, which is now directed towards more demanding viewers. The current affairs programmes, and mainly regional news having a high credibility, have been strengthened. Likewise, the broadcasting of a strengthened type of documentary has increased a viewer’s attraction to the Dvojka channel.<sup>108</sup>

Public reactions to these changes are polarised and, to a certain extent, mixed. On the one hand, 67 per cent of respondents in a survey conducted in June 2005<sup>109</sup> gave a positive assessment of STV’s broadcasting after the appointment of Richard Rybníček. However, the Broadcasting Council received a total of 65 complaints related to STV in 2004, which represented an enormous increase in comparison with 2003 (17 complaints). (See section 3.3.) The situation of STV was also discussed at a joint public discussion between Members of Parliament and the public, with around 200

<sup>106</sup> Broadcasting Council, *Annual Report 2003*, p. 20.

<sup>107</sup> Britské listy, “Rybníček: Splnil sa mi sen”, (“Rybníček: My dream come true”), available at <http://www.blisty.cz/2003/6/13/art14353.html> (accessed 22 July 2005).

<sup>108</sup> Broadcasting Council, *Annual Report 2003*, p. 20–21.

<sup>109</sup> “Diváci:STV sa lepší, ale je málo pôvodná”, (“STV is becoming better, but is a little national), in *SME*, available at <http://www.sme.sk/clanok.asp?cl=2256625> (accessed 27 July 2005).

participants,<sup>110</sup> which took place in May 2005, with mostly critical remarks directed towards STV broadcasting.<sup>111</sup>

Some Members of Parliament also participated in the debate on STV through their legal initiatives. In July 2004, they drafted a further amendment to the Law on STV 2004, which would have obliged STV to broadcast original production of at least ten per cent of total broadcasting. The STV management strongly criticised this draft amendment, arguing that STV could not fulfil such an obligation given the current economic situation of the station. In the end, the amendment was rejected by Parliament. In 2004, Members of Parliament proposed another amendment to the Law on STV 2004, which would allow the STV Council to regularly, or at least once a year, define “priorities of the public interest” in regard to STV programming. However, Rybníček stated that the amendment would not resolve the future of PSB, and he also considered the initiative to be “unsystematic”, as it only concerned STV and not SRO. Rybníček said that he did not see in this initiative “an effort to help, but more likely an effort to stop something”, and that is why he did not like it.<sup>112</sup> At the end of 2004, the STV Council approved the *STV Programme Strategy for the period 2005–2007* which, among other things, contains a commitment to increase the amount of original production.<sup>113</sup>

#### 4.4.1 Output

In 2004, STV broadcast a total of 15,361 hours of broadcasting. In 2003, it aired 10,372 hours, in 2002, 10,762 hours, and in 2001, 10,777 hours.

<sup>110</sup> The discussion included the following participants: various Members of Parliament, members of the STV Council, former STV employees, a number of actors, the former President of the Republic, Michal Kováč, and the spokesperson of the last President of the Republic, Ján Fule.

<sup>111</sup> “Na verejnej diskusii o kultúre bola terčom kritiky STV”, (“STV was a target of criticism on a public discussion about culture”), in *SME*, available at [http://www.sme.sk/clanok\\_tlac.asp?cl=2235353](http://www.sme.sk/clanok_tlac.asp?cl=2235353) (accessed 27 July 2005).

<sup>112</sup> *Mediaportal.sk*, “Rybníček: Novela zákona o STV je nesystémová”, (“Rybníček: The amendment of the law on STV is unsystematic”). The source of the information ([www.mediaportal.sk](http://www.mediaportal.sk)) has been closed in the meantime.

<sup>113</sup> Kollar, *Media*, p. 737.

**Table 9. STV programming – breakdown by genre (2002–2004)**

	Share of total programming (per cent)				
	2002		2003		2004
	Jednotka	Dvojka	Jednotka	Dvojka	STV Total
News	12.1	15.9	13.5	18.3	16.78
Political current affairs	12.7	18.4	12.8	20.5	14.31
Documentary	6.9	12.5	5.1	7.8	9.58
Religious	0.5	3.1	0.6	2.2	0.51
Drama	37.0	5.9	43.8	11.3	32.35
Entertainment	9.2	3.1	7.9	6.3	10.35
Sport	1.5	25.4	1.1	17.6	8.53
Education	3.3	1.1	1.4	0.9	3.27
Music	5.0	6.9	3.1	5.3	4.32
Other broadcasting	4.3	3.7	4.4	6.3	–
Commercial (including advertising)	7.5	4.0	6.3 (2.7)	3.5 (1.1)	–

Source: Broadcasting Council<sup>114</sup>

#### 4.4.2 Programme guidelines

In 2001, STV management, led by the General Director Milan Materák, approved the *Charter for News and Current Affairs Programmes*<sup>115</sup> (hereafter, STV Charter), a public statement pinning down the network's standards and principles for programme production, along with guidelines for implementation. In its first part, the STV Charter specifies the role of STV's news and current affairs programmes as to “serve the public” and states that programmes must be based on “principles of democracy, humanism, ethics, truthfulness, independence, impartiality and professionalism”. The STV news and current affairs programmes must provide timely and unbiased information and create room for debate, with the goal of helping viewers to formulate their own views. The news and current affairs programmes of STV must, according to the STV Charter, protect and enhance national identity and culture.

The STV Charter further defines the relationship between STV and official institutions such as Parliament and the Government, and also between STV and SRO, print and electronic media outlets, professional organisations and NGOs. The fourth chapter states that the network must present a plurality of views in its programming. It also sets

<sup>114</sup> Broadcasting Council, *Annual Report 2004; Annual Report 2003; and Annual Report 2002*.

<sup>115</sup> STV, *Charta spravodajstva a publicistiky, (Charter for News and Current Affairs Programmes)*, available at <http://www.stv.sk/files/FUSellXoQf.pdf> (accessed 12 April 2005).

guidelines for coverage of elections and of controversial and sensitive issues in society and establishes rules on how to use statistics and public opinion polls. The fifth chapter contains guidelines on coverage of the activities of the President, Parliament and the Government.

In covering the activities of political parties, until 1 March 2005 the Charter stated that the STV news department should allocate two-thirds of its newscasts' airtime to the governing coalition and one-third to the opposition parties. As far as the activity of non-parliamentary political parties is concerned, the STV Charter stated that STV should cover those parties that have gained the support of more than five per cent of the vote in three consecutive polls. These requirements concern STV news programmes outside the election period, whereas the rules on programming during elections are governed by the Law on Parliamentary Elections 2004.<sup>116</sup> As the Charter is an internal code, it poses some barriers to the independent coverage by journalists. However, it does not severely encroach upon their reporting. STV informs the station's Council on how it fulfils these criteria from a quantitative point of view (the amount of broadcasting dedicated to various parties), but it does not include in its reports to the Council qualitative assessments on issues such as the tone of various programmes.

The STV Charter also contains guidance on how to cover stories in the regions, court matters, national security issues, church and religion, culture, foreign affairs, national minorities and ethnic groups, people with disabilities, accidents and disasters, public unrest, crimes, assassinations, abductions, obscenity, suicides, healthcare, announcements for charity collections, sports and internal affairs of the television station. The sixth chapter outlines methods and means of STV production such as standards of editing, interviewing, making commentaries, and producing talk-shows. The Charter also covers legal aspects of broadcasting and describes issues such as protection of identity, unsubstantiated accusations, violation of privacy, national and racial hatred, spreading of alarming messages, copyright, and so forth.

#### 4.4.3 Quotas

STV also has the obligation to cater for the interests of the national minorities and ethnic groups living in Slovakia, by broadcasting programmes in their mother tongues. The Broadcasting Council is responsible for ensuring that the network complies with the special regulations on the use of the State language and the languages of national minorities. It is important to mention, however, that the Broadcasting Council is entitled to apply only a basic, preventive sanction (broadcasting of an announcement about violation of the law) for breaching these provision. The regulator cannot fine the station if it finds it in violation with the regulations on use of language.

The STV Charter outlines (in Chapter 5) the coverage of national and ethnic minorities. The Slovak Constitution also guarantees equal rights for the members of national and ethnic minorities as well as conditions for development of their own culture.

<sup>116</sup> Law on Parliamentary Elections 2004, art. 24.

**Table 10. Programming for national minorities on STV (2004)**

National minority	Share of programming (per cent)			
	2003		2004	
	Total broadcasting for national minorities (hours)	Share of total broadcasting for national minorities (per cent)	Total broadcasting for national minorities (hours)	Share of total broadcasting for national minorities (per cent)
Hungarian	35 h 24 min	50.0	89 h 30 min	70.4
Roma	18 h	25.5	Undefined <sup>117</sup>	Undefined <sup>118</sup>
Czech <sup>119</sup>	2 h 36 min	3.7	Undefined	Undefined
Ruthenian	1 h 18min	1.8	Undefined	Undefined
Ukrainian	3 h	4.2	Undefined	Undefined
Jewish	1 h 42 min	2.4	Undefined	Undefined
German	2 h 12 min	3.1	Undefined	Undefined
Polish	1 h 18 min	1.8	Undefined	Undefined
Bulgarian*	0	–	Undefined	Undefined
Moravian*	0	–	Undefined	Undefined
Russian*	0	–	Undefined	Undefined
Croatian*	0	–	Undefined	Undefined
Serbian*	0	–	Undefined	Undefined
More minorities (multi-minorities broadcasting)	0	–	Undefined	Undefined
Other ethnic groups	4 h 24 min	6.2	Undefined	Undefined
Total (annual)	70 h 48 min	100	127 h 20 min	100
Share of minorities in total STV broadcasting (per cent) <sup>120</sup>		0.7		0.84

\*Information on these minorities could also have appeared in multi-minorities programmes  
**Source:** STV and Statistical Office<sup>121</sup>

<sup>117</sup> According to data provided by STV and presented in the Broadcasting Council's *Annual Report 2004*, there is only available data on the aggregate broadcasting time for all other national minorities – 37 hours 42 min.

<sup>118</sup> According to data provided by STV and presented in the Broadcasting Council's *Annual Report 2004* there is only available data on the aggregate share for all the other national minorities – 29.6 per cent.

<sup>119</sup> Broadcasting of Czech TV news programmes, as well as films dubbed in Czech language, does not fall into the category of minority programme.

<sup>120</sup> Share of broadcasting for minorities on STV (per cent): in 2003 (100 per cent = 10.372 hours) and 2004 (100 per cent = 15.361 hours).

<sup>121</sup> Broadcasting Council, *Annual Report 2003*, p. 21; and Broadcasting Council, *Annual Report 2004*, p. 21.

Although the amount of broadcasting for national minorities decreased from 95 hours 36 min in 2002 to 70 hours 48 min in 2003, in 2004 it again increased to 127 hours 20 min. This increase was mainly the result of a significant increase in total STV broadcasting (about 5,000 hours), but there was also an increase in the minorities' share of broadcasting – 0.84 per cent of total STV broadcasting in 2004. Despite this, there is still a marked disproportion between the broadcasting time devoted to minorities – 0.84 per cent in 2004, 0.7 per cent of total airtime in 2003, and 0.9 per cent from 2002 – and the share of minorities in the total population – 13.2 per cent.<sup>122</sup>

The Law on Broadcasting and Retransmission states that a public service broadcaster is obliged to air at least 25 per cent of all broadcast programmes on each channel with closed or open captions within five years of the enactment of this law. Furthermore, public service television must ensure broadcasting for deaf people on at least one per cent of the output.

The Law on Broadcasting and Retransmission also stipulates the share of independent European production. Public service television must allocate at least 20 per cent of its broadcasting time to independent European production, which should consist of new works (i.e. works broadcast within five years of their production). This quota is also considered as fulfilled when a broadcaster spends 20 per cent of its budget on buying European works produced by independent producers. Although STV had problems fulfilling this provision for certain short periods of time, the Council eventually accepted the data provided by STV (see section 6).

#### 4.5 Editorial standards

The production of news and current affairs programmes by STV and SRO is regulated by internal rules – the STV Charter, for STV, and *Rules on News and Current Affairs Programmes*, for SRO.<sup>123</sup> Both are based on the British Broadcasting Corporation's (BBC) editorial guidelines, as the BBC is often perceived in Slovakia as a modern media outlet providing a public service. The SRO General Director, Jaroslav Rezník, admits that the station considers the BBC as a model, while the STV General Director, Richard Rybníček, has stated that from the viewpoint of political and social information and quality of newscast aired, he would like “to see STV having an influence equal to that of ZDF in Germany.”<sup>124</sup>

<sup>122</sup> Broadcasting Council, *Annual Report 2003*, p. 21.

<sup>123</sup> STV, *Pravidlá spravodajstva a publicisticky v Slovenskom rozhlase, (Rules on News and Current Affairs Programmes in Slovak Radio)*, not publicly available. The SRO rules are also not publicly available.

<sup>124</sup> T. Hujdič, “Devät' otázok, šestnásť odpovedí”, (“Nine questions, sixteen answers”), SRO, available on the SRO website at <http://www.slovakradio.sk/inetportal/index.php?page=showSprava&refPage=r-zine&id=16418&textToBold=Pravidl%E1+spravodajstva+a+publicistiky+Sro&lang=1> (accessed 15 April 2005).



The STV Charter requires all TV employees, including external contributors, to familiarise themselves with it and comply with it. The Charter is binding for all employees in the editorial departments. Any violation of its principles is regarded as a serious breach of work discipline and can be followed by sanctions, including termination of the employee's work contract.

With the change of management in 2003, STV's news programming underwent major reforms. It became built upon a more dynamic and streamlined visual format, which required investments in a virtual studio. Although the potential of this investment has not yet been fully utilised, the improvement of the visual aspect of newscasts is obvious. On the other hand, STV is confronted with differing opinions on the content of its news programmes, especially after the introduction of the peplemeter survey. The station has been criticised mainly for excessively pandering to viewer ratings. Renáta Goldírová, who worked until March 2005 as the STV correspondent in Brussels, said, "There has been a significant departure [in STV] from substantive topics, and conversely, pursuing the ambition to compete with commercial TV stations, there is a demand for marginal topics and curiosities."<sup>125</sup> This criticism is, to a certain extent, proven by the frequent rotation of the senior editor's post – since the peplemeters were launched, three people have held this position in the course of ten months.<sup>126</sup>

According to Ivan Janda, STV Senior News Editor, who quit for personal reasons in May 2005 but continued to produce a political talk-show on public television, the situation of STV's news programming has stabilised.<sup>127</sup> Janda was appointed as Editor of STV news on 1 January 2004, with the aim of preserving the attributes of public service, objectivity and balance in the station's newscasts, but "with a slightly friendlier face".<sup>128</sup> Indeed, STV has retained its position as the most trusted media as a result of good, balanced, professional news. Among current affairs programmes, the investigative programme *Reportéri* ("Reporters") has gained a solid reputation for the quality of its reporting.

In terms of the programme content of STV, there are major differences between its two channels. The programmes broadcast on Dvojka are often focused on small target groups and ratings are not the paramount goal. However, some programmes on Dvojka, which did very badly in terms of audience, have been scrapped in the past. Dvojka airs music and sports programmes, programmes for national minorities, religious programmes and

<sup>125</sup> M. Havran, "STV has deflected from its essence", in *Domino fórum*, n. 15, p. 13.

<sup>126</sup> Medialne.sk, "Vedením spravodajstva STV bude poverená Jana Pankovčinová", ("Jana Pankovčinová will be designed to head the News Department"), available at <http://www.medialne.sk/printf.php?flash=906> (accessed 20 July 2005).

<sup>127</sup> SME online, "Janda neopúšťa šéfredaktorský post so zlým pocitom", ("Janda is not leaving the Editor-in-chief's post with a bad feeling"), 12 April 2005, available at [www.sme.sk/clanok.asp?cl=2008147](http://www.sme.sk/clanok.asp?cl=2008147) (accessed 15 April 2005).

<sup>128</sup> SME online, "Šéfredaktorom spravodajstva STV bude od 1. mája Eduard Žitňanský" ("The Editor-in-chief from 1 May will be Eduard Žitňanský"), 12 April 2005, available at [www.sme.sk/clanok.asp?cl=2008083](http://www.sme.sk/clanok.asp?cl=2008083) (accessed 15 April 2005).

documentaries. On the contrary, the programming of Jednotka resembles that of commercial television stations. Jednotka broadcasts established formats of entertainment shows, sometimes repeated more than once – movie blockbusters, family shows (*Pošta pre Teba*), gossip magazines (*Extra*), and recently various reality shows. For example, STV pumped massive money into buying the licence for the successful “Pop Idol” programme (*Slovensko hľadá Superstar*), which provoked heated debate among experts on the STV mission as a public service broadcaster.

## 5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING

The television market works on a dual commercial-public television principle. The public service television broadcaster is funded from licence fees, advertising and State subsidies, while commercial television stations, which have limited technical coverage, are funded from advertising revenues. The media market is small and relatively weak, with print media suffering as most advertising budgets are spent on television. TV Markíza is the dominant station, and is expected to maintain its leading position in the coming years. However, given the sustained aggressive marketing by its competitor, TV Joj, and the ongoing reform of STV, the market shares of these three players are likely to become more proportionate.

### 5.1 The commercial broadcasting system

The Slovak national television scene is composed of seven commercial television stations, of which the three main ones are TV Markíza, TV Joj and TA3. TV Markíza and TV Joj are generalist stations, while the others are specialised stations. TV Markíza holds the strongest position. It has multi-regional coverage and has been broadcasting since 1996, now enjoying a large audience share. As yet, any attempts to compete with TV Markíza have failed. Presently, TV Markíza’s sole serious competition comes from TV Joj, which started broadcasting in March 2002. In late 2004, a new, Internet-transmitted channel, television Tvin, also entered the Slovak market.

### 5.2 Services

Under current legislation, commercial broadcasters do not have any specific requirements that could be characterised as public service obligations. However, they do have to comply with a number of common obligations for all broadcasters, predominantly relating to programming.

### 5.3 Commercial television ownership and cross ownership

The Slovak Antimonopoly Office regulates the ownership concentration and its impact on the market in the framework of the Law on Protection of Economic Competition,<sup>129</sup> but does not address diversity of information. In accordance with the Law on Broadcasting and Retransmission, the Broadcasting Council is responsible for regulating ownership concentration, cross ownership, and diversity in broadcasting. It looks into content issues and is in charge of licensing television and radio broadcasters. According to information provided by the Council there is *ad hoc* communication between both bodies, as required.

Based on the Law on Protection of Economic Competition, market dominance as such is not prohibited in Slovakia. However, the problem would arise (and the Antimonopoly Office would react) in a situation when a dominant company abuses its position by not taking an identical approach to various contractors.

More specific regulation dealing with ownership, cross ownership and media concentration was only implemented in 2000, in the Law on Broadcasting and Retransmission. When the Broadcasting Council considers applications for broadcast licences, it must take into consideration the impact on pluralism and diversity that the new station will play, meaning how the new player contributes to the diversity of programming and competition in the broadcasting sector as a whole. In addition, when considering the applicant's documents, the Council must also take into account the prevention of dominant position. The applicant must provide information on ownership structure, as well as the sources of financing and personal data on the owners, backed by a declaration on their own responsibility. In his report on media ownership and its impact on media independence and pluralism, Gabriel Šipoš wrote,

There has been little public pressure on publishers and broadcasters towards transparency and disclosure of conflicts of interest. The Slovak media continue to publish news about their owners, while disclosing little relevant information about their interests or ownership ties. In such an atmosphere, highly concentrated media ownership can have negative impact on the country's democracy as well as its economic development.<sup>130</sup>

The Law on Broadcasting and Retransmission includes several provisions on preventing concentration and on cross-ownership.<sup>131</sup> One entity is allowed to own only one national broadcaster. In addition, the publisher of a newspaper appearing at least five times a week and distributed across at least half the territory of Slovakia is forbidden from owning a licence for multi-regional or national broadcasting. An entity

<sup>129</sup> Law No. 136/2001 on Protection of Economic Competition, *Official Gazette*, No. 57 of 13 April 2001 (entered into force 1 May 2001), last amended 1 March 2005.

<sup>130</sup> G. Šipoš, Slovakia Chapter, in Brankica Petković (ed.), *Media Ownership and its Impact on Media Independence and Pluralism*, Peace Institute and SEENPM, Ljubljana, 2004, p. 448, (hereafter, Šipoš, *Media ownership*).

<sup>131</sup> Law on Broadcasting and Retransmission, art. 42-44.

can own several local or regional radio or television broadcasters only if their total reach does not exceed 50 per cent of the population. Cross-ownership between radio and television and print media is forbidden by law.

In spite of these narrow limitations on cross-ownership, the legal provisions can be ignored, especially by hiding ownership links within a bigger group of companies. For example, some time ago it was alleged that the local media mogul Ivan Kmotrík owned shares in two television stations, while owning at the same time the largest newspaper distribution network in the country, Mediaprint & Kapa Pressegrasso. The ownership links between these outlets are hard to reveal, however.

The Law on Broadcasting and Retransmission does not forbid foreign capital from entering the broadcasting sector in Slovakia. The rules on ownership apply to both foreign and Slovak companies.

Some concentration among larger print media outlets has been observed in the past several years. However, the ownership relations between major private media are often non-transparent.

Media ownership in Slovakia is practically in only a few pairs of hands. The dominant media group is that of Pavol Rusko, the former co-founder, co-owner and manager of TV Markíza. After he entered politics in 2002, Rusko sold his stake to a friend, František Vizváry, who has since become his advisor at the Ministry of Economy. Vizváry, two other Slovak businessmen, Ján Kováčik and Milan FiPo, and the US Central European Media Enterprises (CME) are the main shareholders of STS Slovakia, the company that runs TV Markíza. The company owning the station's broadcast licence, Markíza-Slovakia, is owned by private companies A.R.J. (50 per cent), Media Invest (16 per cent) and CME (34 per cent). The group of companies around TV Markíza, through indirect personal and capital ties, is cited to include TV Markíza, by far the most influential and powerful media outlet, the lifestyle weekly *Markíza* (the second best-selling weekly in the country), Rádio Okey (ranking fourth or fifth among the most listened to radio channels) and, according to some media experts, recently also *Národná obroda* newspaper (the fourth best-selling broadsheet daily).

The second largest media group is concentrated around the entrepreneur Ivan Kmotrík. His empire, Grafobal Group, currently owns 90 per cent of TV Joj (the third most popular television station in the country). In November 2004, Grafobal Group acquired 40 per cent stake from the Czech company Česká Produkční Invest, that retained the remaining 10 per cent). It also owns Mediaprint & Kapa Pressegrasso (the largest newspaper distributor and retailer), four big printing houses (Versus, Bratislavské Tlačiarne, Polygraf Print, Svornost'), the book publishing house SPN-Mladé Letá, and the largest Slovak advertising agency, EURO RSCG Artmedia.

In connection with the ownership structure of the Slovak private broadcasters, some developments that took place in December 2004 in TV Nova, the most popular television in the Czech Republic, had repercussions on the Slovak market as well. TV

Nova's former majority owner, the Czech financial group PPF (which owned a 50 per cent stake in TV Joj via Česká produkční invest) sold 85 per cent of the stock in TV Nova Holding, which included Česká Produkční Invest, to the American television investor CME, which owns television stations in Croatia, Romania, Slovenia, Ukraine and Slovakia. The deal makes room for cooperation between the two major players on the Central European television market, namely TV Markíza and TV Nova.<sup>132</sup>

The all-news television station TA3 is 95 per cent-owned by the J&T Finance Group. The newly-launched Nautik TV, which airs programmes mostly devoted to nautical issues, is entirely owned by Slovak investors.

The Petit Press holding has become another important media player thanks to investment by the German Verlagsgruppe Passau. Petit Press publishes the second largest daily *SME*, the daily *Új Szó* (in Hungarian, fifth ranking), the English-language weekly *The Slovak Spectator*, the *Rolnícke noviny* weekly, as well as 27 local dailies and weeklies around the country. Petit Press owns the only network of regional newspapers in Slovakia.

After it bought stakes in several publications from its partner Gruner+Jahr, the Swiss group Ringier is expected to become another strong player. It owns the top tabloid daily *Nový čas*, and several lifestyle periodicals, including the weekly *Život* and the monthly *Eva*.<sup>133</sup>

In 1997, the commercial broadcasters established their own lobbying group, the Association of the Independent Radio and Television Stations (ANRTS).<sup>134</sup> Radio Twist Director General Andrej Hryc chaired the association from March 2001 until December 2004, when he was replaced by Radio Expres Director General, Václav Mika. Local television stations formed two organisations of their own, which support their members in the production of programmes and professional training of their employees. In 1996, the Association of Local and Municipal Television Stations (Altev) was founded in the town of Košice, followed by the LOToS Association established in 1998 in the town of Martin.

## 5.4 Funding

The commercial stations are funded mostly by advertising revenues. Commercial television stations can sell advertisements on 15 per cent of their broadcasting time per day. With tele-shopping, this percentage can reach 20 per cent of daily broadcasting time. In prime time, commercial television stations must not air more than 12 minutes

<sup>132</sup> No by-line, "Nová NOVA slovenský trh neovplyvní" ("A new Nova will not influence the Slovak market"), *Pravda*, 16 December 2004, available at [www.pravda.sk](http://www.pravda.sk) (accessed 8 February 2005 – paid access to the article).

<sup>133</sup> Šipoš, *Media ownership*, pp. 453–455.

<sup>134</sup> See the association's website at [www.anrts.sk](http://www.anrts.sk) (accessed 4 April 2005).

of advertising per hour. Unlike STV, commercial television stations are allowed to interrupt programmes with commercials.

Some representatives of commercial stations say that this competition with public television, – which also receives money from licence fees and the State budget (see section 4.3) – is unfair and hinders the steady growth of the Slovak media market. Milan Kňážko, TV Joj’s Director General, was quoted as saying that, “it is absolutely immoral and wrong for the public television to be a parasite on advertising and depend on advertising partners to the degree that we have seen recently. The public pay their television fees also in order to be protected from advertising.”<sup>135</sup>

The question has also arisen of whether the Slovak advertising market is large enough to feed four television stations (or five, counting both channels of STV). Milan Kňážko has said that only the private players should have access to advertising. Vladimír Repčík, Director of TV Markíza, added that the total advertising budget is not enough even to support the private television stations. “The only problem here is how many of them [commercial television stations] can survive only through advertising revenues. I am sure TV Markíza can do it. But I would not be so confident about the other stations,” he said.<sup>136</sup> Even STV’s General Director, Richard Rybníček, believes there is not enough room in the market and that “four television stations are simply too many for Slovakia”.<sup>137</sup>

Commenting on the all-news station TA3, which enjoys an audience share of only one per cent, Rybníček said,

This kind of television will always be subsidised in a country like ours, so it must have an owner who has a passion to support it, but that is not business. I do believe it is only a question of time [until TA3 succumbs], for instance with the introduction of peplemeters, it will become evident that TA3 is a hopeless project in the Slovak market. Not in terms of the content, but in the light of economic viability.<sup>138</sup>

The entire advertising market (not only for television) is dominated by TV Markíza, which attracts as much as 52 per cent of the total advertising expenditures in the country, and some 80 per cent of television advertising, according to media surveys by MML-TGI, Median SK.

According to data compiled by TNS SR, based on the advertisers’ rate cards, the television advertising market was worth SKK 5.7 billion (€143.6 million) in 2003.

<sup>135</sup> M. Kňážko, “Nemusí byť dobré len to, čo sa páči mne”, (“What I like is not necessarily good”), in *GoldMan*, July – August 2004.

<sup>136</sup> V. Repčík, “Oberaný o pôžitok zábavného sledovania televízie”, (“Deprived of the pleasure of enjoyable television-watching”), in *GoldMan*, July – August 2004.

<sup>137</sup> R. Rybníček, “Musel som sa učiť od začiatku”, (“I have to learn from the very beginning”), in *GoldMan*, July – August 2004, (hereafter, Rybníček, *I have to learn*).

<sup>138</sup> Rybníček, *I have to learn*.

According to data coming from the television stations, the real invoiced television advertising revenues were only slightly above SKK 2 billion (€50.4 million).<sup>139</sup> The total real expenditure on advertising in the media (taking into consideration special discounts and barter) was SKK 7.72 billion (€194.5 million) in 2003, according to TNS. In comparison with 2002, this represents an increase by approximately SKK 800 million (€20.16 million).<sup>140</sup>

Local television stations are regarded as commercial as they operate on advertising revenues. In reality, their role is often much closer to that of STV. The programming on local television stations is “pure public service providing the audience with information that the national public television is not able and often not willing to broadcast.”<sup>141</sup> However, the poor economic situation in the regions has had a negative impact on the financial health of the local stations, which suffer from low, or almost no, advertising revenues. The municipalities own most of these television stations, which run on funding from the budget of the respective towns – although in some cases this raises concern about their independence. Generally, local television broadcasters are quite respected in their specific areas and serve as a good information source. Therefore, the question is “whether the local television stations, in the light of the character of their broadcasting, should not be entitled to at least a marginal part of the licence fees.”<sup>142</sup>

In late 2004, a new television station, TVin, cast on the Internet, launched trial broadcasts. It started regular broadcasting in February 2005, with the aim to operate purely on advertising revenues. It is owned by Braňo Král, a former TV Markíza anchor, who believed that advertisers would be interested “in presenting their products within certain webcasts, as Internet broadcasting is not regulated by the Law on Broadcasting and Retransmission”.<sup>143</sup> However, its broadcasting was temporarily stopped in spring 2005, due to low user interest. The station’s management have declared that the channel will try to redefine its policy and re-open with news-oriented programming.

---

<sup>139</sup> Kollár, *Media*, pp. 668–669.

<sup>140</sup> “Reklamný trh na Slovensku”, (“Advertising Market in Slovakia”), available at <http://www.spravy.markiza.sk> (accessed on 14 January 2005).

<sup>141</sup> OSI roundtable comment.

<sup>142</sup> OSI roundtable comment.

<sup>143</sup> I. Kahanec, “Exreportér Markízy rozbieha internetovú televíziu”, (“Ex-reporter of TV Markíza launches an Internet TV”), in *Trend*, 25 November 2004, available at [http://www.etrend.sk/generate\\_page.php?page\\_id=41497](http://www.etrend.sk/generate_page.php?page_id=41497) (accessed on 7 February 2005).

## 5.5 Programme framework

In 2003, TV Markíza aired 7,384 hours, TV Joj 8,736 hours, and TA3 5,980 hours.

Impartial and accurate information is guaranteed by the Law on Broadcasting and Retransmission, and has become a basic obligation for all broadcasters. However, the practical implementation of this legal provision in the political and news programmes often creates problems. There are several forms and means of identifying these problems and solving them. Thus, it is possible to differentiate between external and internal methods of achieving the broadcasting of impartial and accurate information.

As the main regulator of the broadcasting industry, the Broadcasting Council must observe if broadcasters air impartial and accurate information. The Programming Department of the Council's Office monitors commercial broadcasters. From 2002–2004, the number of sanctions imposed by the Broadcasting Council on commercial televisions for violation of the basic obligations stipulated by Article 16 of the Law on Broadcasting and Retransmission was very comparable (55, 52 and 53 cases, respectively). (See section 3.3).

Although in 2003 the Broadcasting Council imposed total fines on commercial broadcasters of SKK 1.65 million (€41,570), recent years have seen a tendency to decrease the fines imposed on broadcasters for breaking their basic legal and/or contractual obligations. This is in part due to the new strategy of regulation brought about by the Broadcasting Council's Chair, Valeria Agócs, who was appointed on 4 March 2003. She said at the time, "the Broadcasting Council has operated as a penal body for a long period of time. When [monitoring broadcasters'] compliance with the law, they always looked for breaches of law and ways of punishing those who broke it."<sup>144</sup> Her initial ambition was to turn the relationship between the Council and broadcasters into a partnership. This is perhaps reflected in the fact that, in 2004, the total fines imposed by the regulator fell to SKK 1.19 million (€29,982), a significantly lower sum than in 2003.

Besides the regulation by the Broadcasting Council, several other organisations (mostly NGOs) have played a role in monitoring the compliance by private broadcasters of the basic professional standards in their news programmes. These include MEMO'98 and the Slovak Press Watch – which, however, despite its apparent contribution to a healthy media sector stopped its activity at the end of 2004 (see section 3.4). In addition, useful media-related websites (such as Medialne.sk and Mediaportal.sk – temporarily inactivated), regularly inform about media news, including the Council's activity, and thus cultivate a media discourse.

Internal instruments employed by commercial broadcasters are the most important factor in securing the broadcasting of balanced, impartial and accurate information.

---

<sup>144</sup> R. Tapušíková, "Bola trestným oddielom...", ("It was a penal division ..."), cited in Kollár, *Media*, p. 681.



Although each broadcaster has its own independent and individual approach to airing balanced information, there are some common instruments employed by most of them. Some television outlets such as TV Markíza monitor their own programmes to check if they upheld the principle of impartiality. Such internal monitoring is carried out to prevent possible sanctions by the Broadcasting Council. When applied consistently, it can be a very efficient indicator of problems. However, for observing basic principles, no monitoring is completely satisfactory because it is carried out after the respective programmes have been broadcast. That is why some television and radio stations opt for traditional methods of identifying and removing shortcomings before the programmes are broadcast. These methods include daily meetings and sessions with the editors responsible for particular stories. The usual morning meetings brainstorm the main topic of the day and allocate tasks. More meetings are organised in the afternoons when there is more substance to discuss and make decisions. Thus, the materials produced during the day can be checked by editors and the head of the programme or the Editor-in-Chief. After broadcasting the programme, an evaluation meeting usually takes place in most stations.

However, it often happens that the final news item is produced in a rush, literally at the last moment. Avoiding professional errors is therefore impossible and the outlet can only rely on the professional competence of individual journalists. That is why the need for objective personalities and authoritative figures in journalism is even more pressing for a media outlet to be really credible. At the moment, there is a lack of such personalities. In practically all television stations, the journalists who are really professional and competent leave the newscast to become moderators of political debates and talk-shows.

In this respect, the Open Society Foundation – Bratislava (Slovakia), which has supported media independence for a long time, organised in 2004 for the first time the Journalist Prize competition. Nearly 500 entries competed in ten categories, with the mainstream media receiving at least an award. The project's long-term goal is to "create foundations for a forum of competition of journalist professionalism", said OSF Director, Alena Pániková.<sup>145</sup>

However, the Center for Independent Journalism, which, since 1993 has provided trainings, various studies and consultation programmes as well as free access to its library, was officially closed in March 2004 due to lack of funding.

---

<sup>145</sup> M. Hobláková and J. Sirotová, "Novinárska cena – podporujú hlavne nezávislosť", ("Journalist Prize – first of all they support independence"), in *SME*, 27 January 2005, p. 28.

### 5.5.1 Programme guidelines

Commercial broadcasters have the right to broadcast programmes freely and independently. Their content is subject to 15 basic obligations laid down in the Law on Broadcasting and Retransmission, including:<sup>146</sup>

- ensuring varied information and pluralism of views;
- broadcasting impartial and unbiased news and political programmes;
- ensuring that opinions and commentaries are separated from factual reporting;
- ensuring that programmes broadcast during election campaigns accord with the electoral laws;
- in the event of urgent public interest, allowing the State authorities to broadcast, free of charge and at their request, an important or urgent announcement, a declaration of the state of war or a declaration of war, or information on civil protection within the time which would eliminate the danger of delay to the minimum possible level;
- keeping complete recordings of programmes for 30 days after they are broadcast;
- signing contracts with copyright protection organisations;
- ensuring use of the official language and of the languages of national minorities in programmes;
- broadcasting announcements about their own breach of law and conditions of the licence, in the appropriate extent, form and at the time stipulated by the Broadcasting Council;
- starting broadcasting within 360 days of the decision to award the licence becoming valid;
- marking their programme with their logo permanently (except for commercials);
- broadcasting in accordance with their licence conditions.

Other important obligations on private broadcasters include the EU obligations incorporated in the Law on Broadcasting and Retransmission. These provisions are stipulated by the EU “Television without Frontiers” Directive (TWF Directive)<sup>147</sup> and

<sup>146</sup> Law on Broadcasting and Retransmission, art. 15.

<sup>147</sup> “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](http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf) (accessed 15 March 2005).

refer to the protection of human beings, the protection of children, the right of correction and the access of the public to important events. Programmes must not damage human dignity or infringe on people's basic rights and liberties. Programmes that could harm children must not be broadcast between 06.00 and 22.00. To better implement these norms, the Broadcasting Council employs a unified system of programme labelling, which provides information for parents and educators on the suitability of the programme for a certain age group. Broadcasters are obliged to observe this system both in their broadcasting and in the programme schedules printed in the press.

Broadcasters are not obliged to devote a fixed amount of their output to national interest-related issues or to programmes of regional or local interest. However, the Law on Broadcasting and Retransmission states that citizens have the right to be informed about events of major importance for the nation. This category of event was defined by law as a political, social, cultural or sporting event of general appeal or undeniable cultural value, or as an international event with the participation of State representatives. Although the list of important events should be compiled by the Broadcasting Council, in cooperation with the ministries of culture and education, it has not yet been drafted.

As for the principle of impartial and accurate information in political programmes, the Law on Broadcasting and Retransmission places four basic obligations upon all broadcasters. They must ensure:<sup>148</sup>

- varied information and pluralism of opinions;
- the objectivity and unbiased character of news and political programmes;
- that opinions and evaluative commentaries are separated from the news;
- that programmes broadcast during the election campaign are in accordance with the electoral laws (which define the regime of allocation of broadcasting time to political representatives during particular campaigns).

The law also touches on the broadcasters' possibility to air political advertising. It defines political advertising as a public announcement aimed at gaining support for a political subject or a candidate, or for an election or referendum campaign as such. Political advertising also includes broadcasting of political party logos or political slogans. The basic provision in this respect is the prohibition of broadcasting political advertising during periods other than election campaigns.<sup>149</sup>

As for the programme structure of the two full-format private stations, TV Markíza and TV Joj, they both try to win over viewers with more or less similar formats, with a special emphasis on well-trying foreign films, particularly Hollywood blockbusters, or South

---

<sup>148</sup> Law on Broadcasting and Retransmission, art. 16.

<sup>149</sup> Law on Broadcasting and Retransmission, art. 32(10).

American soap operas. Also very popular on commercial television stations are the game shows such as *Who wants to be a millionaire?* or *Zlaté vajce* (“Golden eggs”) on TV Markíza, and witty talk shows or candid camera programmes such as *Je to možné?* (“Is it possible?”) on TV Markíza. Commercial television broadcasters have been airing a number of lifestyle programmes and, since the launch of peplemetres in 2004, reality shows have, in particular, accounted for an unprecedented boom in Slovakia.

However, primetime news on TV Markíza continues to retain the highest ratings (although lower than before peplemeters), despite various attempts by STV and TV Joj to attract more viewers. Among the reasons for this are high professional quality, the dynamics of the programme, as well as a “proper proportion” of serious and tabloid items, in line with public expectations. After the introduction of peplemeters, commercial television stations started to be more proactive in planning their programming, making numerous changes to the programming and moderators.

### 5.5.2 Quotas

The law is not very specific on the use of language in broadcasting. The general requirement of using the official language, and the languages of national minorities in accordance with specific laws, is one of the basic obligations imposed on broadcasters.<sup>150</sup>

According to the Law on the Official Language,<sup>151</sup> radio and television broadcasting must be carried in Slovakia’s official language, Slovak. The only exception is for programmes in a foreign language (or foreign music programmes), where there is a legal requirement to use subtitles. Foreign programmes targeting children under age 12, however, must be dubbed into the official language. News anchors, presenters, moderators and editors must also use the official language. Regional and local broadcasting must also be carried out in Slovak. Other local or regional languages may only be used before and after broadcasting a programme in the official language. The Law on the Use of Languages of National Minorities 1999 stipulates in a very general way the right of minority members to use the language of their ethnicity.<sup>152</sup> However, it does not specify any obligations upon private broadcasters to use national minority languages.

The quotas for European television programmes are stipulated in Article 23 of the Law on Broadcasting and Retransmission, in accordance with the TWF Directive. All broadcasters, except for local ones, are obliged to allocate over 50 per cent of their broadcasting time to European programmes. The broadcasting time of news

<sup>150</sup> Such specific laws are Law No. 270/1995 on the Official Language and Law No. 184/1999 on the Languages of National Minorities.

<sup>151</sup> Law No. 270/1995 on the Official Language, *Zbierka zákonov* 89 of 9 December 1995 (entered into force 1 January 1996), last amended 1 September 1999.

<sup>152</sup> Law No. 184/1999 on the Use of Languages of National Minorities, *Zbierka zákonov* 81 of 24 July 1999 (entered into force 1 September 1999), art. 1.

programmes, sports events, quiz shows, teletext, advertising and tele-shopping is not included in this quota. In the licence, the Broadcasting Council has the right to grant broadcasters the right to air a smaller amount of European programmes. However, this provision is generally not used very often.

Broadcasters are obliged to provide the Broadcasting Council with data on their compliance with quotas of European programmes. The Council then works out the preliminary statistics, and evaluates the quotas once every three months. Apart from public STV, the basic obligation to provide such data applied in 2004 to two multiregional broadcasters (TV Markíza and TV Joj) and one local station (City TV Komárno). None of these broadcasters seriously breached the specific quota of European programmes in recent years. Only TV Markíza recorded a slight fall in the quota of European programming during summer 2003 and the first months of 2004. However, the Broadcasting Council accepted its justification and the broadcaster eventually complied with the provisions of the Law on Broadcasting and Retransmission.

In line with the TWF Directive there is also a quota for independent European production. The Law on Broadcasting and Retransmission obliges private broadcasters to allocate a minimum of ten per cent of their broadcasting time (and for public media, 20 per cent) to independent European production.<sup>153</sup> The ten per cent provision is also considered to be fulfilled if a broadcaster spends ten per cent of its programming budget on purchasing European works created by independent producers. STV had some problems with reaching this quota for the first half of 2004, which initiated a sanction procedure by the Broadcasting Council. However, after corrected statistics were provided by STV, the procedure was halted and no penalty was placed on the station.

## 5.6 Editorial standards

During the 1990s – a period of rebuilding democratic institutions, including the media, after the long totalitarian regime – the Mečiar Government's attitude towards the media was to consider them either loyal or hostile. Slovak media are still marked by this experience. Under Mečiar, media content was often manipulated by politicians or Government. Such practices were blatant at STV, which saw its public character degraded in the 1990s in favour of positive bias towards the regime. This behaviour was mentioned in the *Final Evaluation Report of the OSCE/ODIHR Election Observation Mission*<sup>154</sup> after the 1998 parliamentary elections, which mentioned the “major concern that Slovak TV failed to meet internationally acknowledged standards for public broadcasters.”

---

<sup>153</sup> The Law on Broadcasting and Retransmission, art. 25.

<sup>154</sup> OSCE, ODIHR, *Final Evaluation Report of the OSCE/ODIHR Election Observation Mission* available at [http://www.osce.org/documents/odihr/1998/10/1459\\_en.pdf](http://www.osce.org/documents/odihr/1998/10/1459_en.pdf) (accessed 27 July 2005).

Although there is a general consensus among the authorities and the public that media freedom and independence are necessary, the existing instruments for ensuring these values are not properly implemented. The problem does not lie in the formal definition of the media's role and responsibilities. The Constitution, for example, forbids censorship and guarantees freedom of speech. In 2002 and 2003, the legislature abolished two of the most controversial articles in the Penal Code, which had limited, and represented a potential threat to, journalists' work independently in relation to political class. The two articles banned defamation of the Republic and its representatives, and criticism of public officials. Although international media freedom organisations argue that Slovakia's Penal Code still has two problematic provisions (offence to a State body and its defamation), no journalist has recently been prosecuted on the basis of these provisions.<sup>155</sup>

The main problem for the Slovak media is that they have not been able to foster and benefit from high standards of journalism. One reason for this situation is the continuing series of setbacks in the media sector, such as the lack of a peoplemeter surveying system of television watching until 2004. The launch of commercial TV Markíza in the summer of 1996 represented a huge step forward and the beginning of a new era for the Slovak television market. On the other hand, from the point of view of editorial independence and valid professional standards, it started an era in which such values would be tested in new ways. In a period of obvious social dissatisfaction with the Government and its representatives, TV Markíza functioned to a certain extent as a counter-weight to the pro-Government STV. One of TV Markíza's undeniable merits has been that it introduced a new way of presenting social and political issues. However, its journalists started to form closer relationships with politicians. This began to become a norm for other media outlets as it proved an effective tactic for getting information from politicians. Although, examples of such practices are difficult to prove, among the consequences that deserve mention are a less critical approach towards politicians on the part of those journalists engaged in a closer relationship with politicians – for example, while interviewing, or in covering unpopular issues.

To avoid any possible engagement with particular political or business games, the media's next step towards independence must be to become aware of their role in society, and to base their relations with politicians on this awareness. Such a step, however, is possible only in a functioning media environment with high standards. This is not the case with the Slovak market, which is largely in the hands of one powerful player, TV Markíza. Due to lack of competition, TV Markíza can dictate the behaviour of advertising partners, and, in a way, the local standards of journalists. The declared political ambitions of the owner of TV Markíza, Pavol Rusko, who began by

<sup>155</sup> G. Šipoš, "Médiá" in E. Sičáková-Beblavá & D. Zemanovičová (ed.), *Korupcia a protikorupčná politika na Slovensku*, (*Corruption and anti-corruption policies in Slovakia*), Transparency International Slovakia, p. 194, available online at [http://www.transparency.sk/studie/040302\\_korup.pdf](http://www.transparency.sk/studie/040302_korup.pdf) (accessed 11 October 2004).

founding the Alliance of a New Citizen in 2001 and was appointed Minister of Economy in 2003, was another relevant example of the close cohabitation of journalists and politicians.

Moreover, although media professionalism is gradually improving, the ability of some journalists to resist pressures, including from politicians, has not improved since the last elections. This is most visible in the broadcasting of TV Markíza, still closely linked to its former owner. Even after Rusko's resignation from the post of the station's director, there has been biased news reporting in his favour. For example, the station's newscasts have been extensively covering Rusko's activities, or covering topics often related to the activities of the Ministry of Economy. Such behaviour is also a result of the fact that the media in Slovakia often follow the activities of the politicians and their political agenda, without making any effort to find new, original topics.

Another very important reason for the feeble condition of broadcasting independence is the low professional level and the youthfulness of journalists, which lowers their resistance to the pressures of different interest groups. On the contrary, one can see amongst journalists an effort to be directly involved in politics, instead of being objective and reporting on politics. Many young journalists have used their position in the media as a springboard to political posts or to positions as spokespersons in various State institutions and political parties. This might be the result of a lack of widely respected journalists with natural authority, who could serve as an example for the new generation. In Slovak society, there is sometimes a general misunderstanding of a journalist's role. Attention needs to be given to education and study programmes, which need to stress that the primary role a journalist should perform is as a medium for – rather than the centre of – a story.

Despite some shortcomings, private television stations definitely contribute to enriching the public discourse. Although private stations, except for TA3, are unambiguously focused on entertainment and life-style programmes, much of their output not only fulfils the basic function to provide information, but also educates their viewers. They have created several quality programmes, such as political debates like *SITO* on TV Markíza, *V politike* ("In politics") on TA3, analytical programmes such as *Téma dňa* ("The topic of the day") on TA3 or some investigative programmes such as *Palba* ("Fire") on TV Markíza or *Črepiny* ("Splinters") on TV Joj.

In general, it can be said that the market conditions of both electronic and print media are gradually being standardised, within a modern legal framework. As far as media content is concerned, however, clearer rules are still needed. In most of the commercial outlets, ethical codes are non-existent (or are not made public). The media also make no effort to defend their own interests and define clear editorial standards to ensure their independence.

## 6. EUROPEAN REGULATION

In September 2000, after a delay of almost a year, Parliament finally passed the Law on Broadcasting and Retransmission. The law was perceived very positively in the domestic media sphere, as a major improvement, and it also enabled Slovakia to close the Chapter on Cultural and Audiovisual Policy (Chapter 20) of the EU *Acquis communautaire*, for which it was a prerequisite.

The former Head of the Office of the Broadcasting Council, Jarmila Grujbárová, and also the lobbying group of the commercial broadcasters, ANRTS (the Association of the Independent Radio and Television Stations) both contributed significantly to preparing the final bill. In preparing the final version of the law, pressure from various lobby groups was successfully eliminated. For example, Pavol Rusko, co-owner of TV Markíza at the time, was in conflict with the position of ANRTS (of which he was Chairman at that time), attempting to dismiss the entire Broadcasting Council on the same day that the law came into force. As many as 180 amendments to the draft Law on Broadcasting and Retransmission were submitted, concerning 70 articles of the law.

By the end of 2002, the Slovak Republic had managed to successfully close its negotiations with the EU over full membership. In 2004, Slovakia's relations with the EU changed from being a candidate country to becoming a member.

The EU "Television without Frontiers" Directive (TWF Directive) has been incorporated into the relevant parts of the Law on Broadcasting and Retransmission (see sections 5.5.1 and 5.5.2). In passing the Law on Broadcasting and Retransmission, Slovakia completed the harmonisation of its media legislation with EU norms. The main idea behind harmonising the Slovak legislation with the TWF Directive was to adopt the philosophy of liberalisation of programme services, and guarantee conditions for EU productions.<sup>156</sup>

After the adoption of the Law on Broadcasting and Retransmission in 2000, the Broadcasting Council has assessed the level of legal harmonisation with the TWF Directive in its annual reports. Monitoring compliance with the European Convention on Transfrontier Television (ECTT) also falls within the competencies of the Broadcasting Council, which also represents Slovakia in the Standing Committee for Transfrontier Television of the Council of Europe.<sup>157</sup>

<sup>156</sup> Broadcasting Council, *Annual Report 2003*, pp. 125–126.

<sup>157</sup> 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, which entered into force on 1 March 2002, available at <http://conventions.coe.int/treaty/en/Treaties/Html/132.htm> (accessed 30 June 2005).



**Table 11. European works in television broadcasts (2002–2004)**

Station	Share of total broadcasting time (per cent)						Legal minimum	
	2002 (average)		2003 (average)		2004 (average)			
	Total	By independent European producers	Total	By independent European producers	Total	By independent European producers	Total	By independent European producers
STV	78.2	10.5	75.2	7.8	72.2	24.7	50	20
TV Markíza	56.2	30.8	51.3	30.8	58.0	32.8	50	10
TV Joj	55.8	13.73	57.05	20.9	60.4	23	50	10

Source: Broadcasting Council<sup>158</sup>

## 7. THE IMPACT OF NEW TECHNOLOGIES AND SERVICES

The Government that was formed after the 2002 elections pledged to implement a coherent policy for the introduction of new technologies, guided by the objective of bringing the information society fully into Slovakia. Besides supporting the development of broadband access and other new technologies by boosting competition, the authorities have helped establish a group of specialists working on the implementation of digital broadcasting in Slovakia, which should replace the existing analogue technology by 2015.

### 7.1 New media

The *Governmental Programme Declaration*<sup>159</sup> (2002) of the Government that took office in 2002 addressed the development of information technologies. In the Declaration, the Government expressed its awareness of the challenges of the information age, and accepted the obligation to support the broad introduction of information technologies and data structures, by offering institutional support on professional, administrative and legislation levels, with the aim of creating conditions for interconnecting the information systems of traffic, post and telecommunications with those in the EU. In particular, the Government stated that it wanted to enhance public access to information about the State administration via the Internet.

<sup>158</sup> Broadcasting Council, *Annual Report 2004*, p. 88; Broadcasting Council, *Annual Report 2003*, p. 92; *Annual Report 2002*.

<sup>159</sup> Government Programme Declaration 2002.

The Government also adopted the Law on Electronic Communications, incorporating the EU regulatory framework into domestic law, just before Slovakia's accession into the EU.

To support access to broadband electronic communication services, the Government wants to pay more attention to lowering the barriers to this access predominantly by supporting competition, effective use of the frequency spectrum and the extension of information technology to rural areas. The Government declares that close cooperation between the State and the private sector is important for developing IT services and establishing a modern communications infrastructure.

These preconditions were described in the *Strategy and Action Plan on the Informatisation of Society in the conditions of Slovakia*<sup>160</sup> (hereafter, Informatisation Strategy), which was prepared by a group of academic experts and specialists of the Ministry of Traffic, Post Offices and Telecommunications (MDPT). Passed in January 2004, the Strategy is a key document which aims to diminish the slow development of information technology in Slovakia, in comparison with other EU countries. The Action Plan defines particular steps, which should enhance citizens' information literacy.

To coordinate the implementation of the Strategy, the Government pledged to establish, within two years, an independent central body of the State administration responsible for addressing computer literacy in the general population. However, at the time of writing, the Government's approach towards real support of information technologies, though criticised, has not been marked by a significant change (see section 7.2). For example, there was an eight-month delay before the post of Plenipotentiary Representative for Informatisation was established (at the end of 2004), although this should have been a first step in the Strategy's implementation.<sup>161</sup>

With respect to other policy initiatives, the Government would also like to concentrate the competencies for regulating and coordinating electronic communication and the development of the information society within one regulatory authority, by merging the Telecommunications Office, the Broadcasting Council and the Post Office. The initial idea was that this new joint office would manage the frequencies and telecommunication technologies (at present administered by the Telecommunications Office); regulate broadcasting content (at present regulated by the Broadcasting Council); and regulate postal services (at present regulated by the Post Office). Finally, in May 2005, the Government decided to create a joint regulatory body under the MDPT, but without

<sup>160</sup> *Stratégia informatizácie spoločnosti v podmienkach SR a Akčný plán*, (*Strategy and Action Plan on the Informatisation of Society in the conditions of Slovakia*) available at <http://www.telecom.gov.sk/index/go.php?id=862> (accessed 18 July 2005).

<sup>161</sup> T. Bella and J. Andacký, "Internet, telekomunikácie a nové technológie", ("Internet, telecommunications and new technologies"), in M. Kollár and G. Mesežnikov (ed.), *Slovensko 2004. Súhrnná správa o stave spoločnosti*, (*Slovakia 2004. A Global Report on the State of Society*), IVO, Bratislava, 2004, p. 838, (hereafter, Bella and Andacký, *Internet, telecommunications*).

incorporating the Broadcasting Council. This new regulatory office should begin functioning in 2007, based on a new specific law to be prepared by MDPT.<sup>162</sup>

## 7.2 Market conditions

The social and political upheaval in the former Czechoslovakia in 1989 strongly affected the media environment as well. As new standards began to be applied after freedom of speech was protected by law and private ownership of media outlets was allowed, global trends began to prevail also in Slovakia. These included the growing number of satellite receivers and the arrival of cable television in the early 1990s, the expanding network of video rental outlets, the growing interest in CD and DVD usage, Internet expansion and the beginning of digitalisation.<sup>163</sup>

**Table 12. Electronic equipment ownership (2001–2002)**

	Share of household (per cent)		
	Slovakia		In 13 EU candidate countries
	2001	2002	2002
Colour TV set	93	93	88
VCR	52	55	36
PC / home computer	22	27	20
Mobile phone	46	62	50
HI-Fi equipment	43	45	36

Source: European Commission<sup>164</sup>

Under the Law on Telecommunications 2000 (replaced by the Law on Electronic Communications in 2003), complete liberalisation of the telecommunications market was possible from 1 January 2003. However, the high expectations that Slovakia would take a big step towards the information society during that year were not met, in the sense that the new technologies had no particular impact on the life of ordinary citizens. On the contrary, in 2003, Slovakia's progress towards the information society stalled.

<sup>162</sup> Živé.sk, available at <http://www.zive.sk/h/Spravy/AR.asp?ARI=113165> (accessed 16 July 2005).

<sup>163</sup> IVO, "Média", in F. Gál, G. Mesežnikov and M. Kollár, *Vizia vývoja Slovenskej republiky do roku 2020*, (*The development prognosis of Slovak republic until 2020*), IVO, Bratislava, 2002, p. 289, available online at [http://www.vlada.gov.sk/miklos/vizia\\_vyvoja\\_2020.html](http://www.vlada.gov.sk/miklos/vizia_vyvoja_2020.html) (accessed 11 October 2004), (hereafter IVO, *Media*).

<sup>164</sup> European Commission, *Candidate countries Eurobarometer 2001*, Brussels, March 2002 (data from October 2001); and European Commission, *Candidate countries Eurobarometer 2002*, Brussels, March 2003 (data from September and October 2002). Available on the European Commission website at [http://europa.eu.int/comm/public\\_opinion/cceb\\_en.htm](http://europa.eu.int/comm/public_opinion/cceb_en.htm) (accessed 17 May 2005).

According to the World Economy Forum, which annually evaluates the level of technological development worldwide, Slovakia came 48th in a report mapping the 2004–2005 period, eight places lower than in the previous year, and fifteen places lower than two years ago.<sup>165</sup> The 2003–2004 report stated that the development of information and communications technologies was hindered by very low activity of the Government. In evaluating the conditions of the development of information technologies, Slovakia came 37th in a worldwide ranking, in the same 2003–2004 World Economic Forum report. This indicates that the economic environment and technological infrastructure are both relatively well developed, but there is still a need to adapt and improve the legal and regulatory framework supporting the development of information technologies. In the index of “readiness for the use of new technologies” in the 2003–2004 report, Slovakia ranks 39<sup>th</sup>, despite a high level of education and popular enthusiasm for using new technologies.<sup>166</sup>

The new communication technologies can probably be expected to achieve a breakthrough in the coming years, mainly in the form of digital broadcasting and third-generation mobile telephony. By the end of 2002, mobile telephony had reached 60 per cent of the population and was, year-on-year, the fastest growing communication sector, according to the European Commission’s Eurobarometer data. On the other hand, the Internet is not penetrating at a similar pace. The main reason for the slow growth in Internet users was, until recently, the price of Internet connection. In 2001 and 2002, the price of access through a telephone line increased rapidly, contradicting EU recommendations, and developments across the EU.<sup>167</sup> Although connection prices did become cheaper in the course of 2004, a belief of high price rates remains one of the barriers to faster Internet accessibility for Slovak households.<sup>168</sup>

Over the past years, the Ministry of Economy has held a series of talks with the dominant Internet service provider, the State-owned Slovak Telecom, to make the so-called Internet family packages more affordable – SKK 400 (or €10) per month was mentioned as a reasonable price, which would be 40-50 per cent cheaper than today. The former Minister of Economy, Pavol Rusko, even mentioned the idea of subsidising access to the Internet for households from the national budget.<sup>169</sup>

<sup>165</sup> World Economy Forum, *Global Information Technology Report 2003–2004*, available at <http://www.weforum.org/gitr> (accessed 6 October 2004).

<sup>166</sup> Bella and Ďurkovič, *Internet, telecommunications*, p. 742.

<sup>167</sup> Bella and Ďurkovič, *Internet, telecommunications*, p. 742.

<sup>168</sup> Bella and Andacký, *Internet, telecommunications*, p. 823.

<sup>169</sup> No by-line, “Minister chce od ST lacný internet pre rodiny”, (“Minister wants from ST cheap Internet for families”), *SME online*, 5 February 2005, available at <http://www.sme.sk/clanok.asp?cl=1918870> (accessed 8 February 2005).

**Table 13. Internet penetration (1997–2003)**

According to surveys conducted by:	Share of population already using the Internet (per cent)						
	H1 1997	H1 1998	H1 1999	H2 2000	H2 2001	H2 2002	H2 2003
TNS	–	–	–	9	17	22	32
GfK	–	–	10	13	19	26	32
Focus	6	8	9	14	17	20	25

Source: T. Bella and M. Ďurkovič<sup>170</sup>**Table 14. Internet users (2001–2004)**

According to surveys conducted by:	Share of population using the Internet over the last month (per cent)			
	H1 2001	H1 2002	H2 2003	H1 2004
TNS	17.1	21.8	22.1	29.2
GfK	–	–	27.9	35.1
MVK	–	–	32.2	38.2

Source: T. Bella and J. Andacký<sup>171</sup>

The number of Slovaks owning a computer at home (40.8 per cent of the total population) or having home Internet access (15.5 per cent of all households) has increased only slightly since 2003. However, since 2003 a major change in the nature of the Internet use has occurred as the balance has shifted from search for information towards communication.<sup>172</sup> As for e-government, according to an analytical study by *The Economist* focused on Eastern Europe, Slovakia was the worst ranked among all EU countries.<sup>173</sup>

<sup>170</sup> Bella and Ďurkovič, *Internet, telecommunications*, p. 743.

<sup>171</sup> Bella and Andacký, *Internet, telecommunications*, p. 822.

<sup>172</sup> M. Benka, “Internetizácia domácností napreduje pomaly”, (“Internet in households is being increased slowly”), in *Trend*, 7 September 2004, available at <http://www.etrend.sk> (accessed 12 January 2005 – paid access).

<sup>173</sup> Bella and Andacký, *Internet, telecommunications*, p. 828.

### 7.3 Services

The role of the public service broadcasters in enhancing the new information and communications technologies has not been explicitly stated in the Law on Broadcasting and Retransmission and the Law on STV. However, the gradual digitalisation of television in Slovakia is proceeding, and STV has joined this process.

At the session of the STV Council on 4 May 2004, STV's General Director, Richard Rybníček, presented a *Strategy on the Management of STV* confirming his intention to lead STV to digitalisation. Rybníček's speech was part of a hearing in the competition for the position of STV's General Director. At the same time, Rybníček said that part of STV's budget would be earmarked to boost technological development.

In June 2004, STV Council passed a resolution asking the management of STV to submit a *Strategy on the Organisational, Economic, and Technological Development of STV by 2007*, by September 2004. However, this resolution was subsequently cancelled by the STV Council, in reaction to arguments from the STV General Director. Rybníček argued that because Parliament had been ensnarled during 2004 in discussing a multitude of legal proposals, on issues such as licence fees and STV programming and production, it was impossible to finalise such a strategy document.<sup>174</sup> Although the STV Council passed the same resolution again in March 2005, with a required submission in May, due to the double requests of the General Director, the deadline was postponed to August 2005.

### 7.4 Funding

Introducing new technologies is a costly process, amounting to approximately €12.5 million per year, according to the Government's latest estimates. This requires financial investment from all parties involved, both the State and businesses. The Government's strategy foresees the following broad pattern of multi-source financing:

- Funds from the State budget – for projects initiated by the Government and its organs.
- Funds from the MDPT budget – for projects that will be carried out by the Office of the Plenipotentiary Representative for Informatisation at the MDPT.
- Financial means provided by EU structural funds.
- Other sources of financing. In accordance with the recommendations of the e-Europe+ programme, it is possible to use some other sources of financing, such as the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD), and the World Bank.

<sup>174</sup> Report of the STV's management of 21 September 2004, available (in Slovak) at <http://www.stv.sk/article.php?id=6869> (accessed 4 April 2005), p. 2.

## 7.5 Digital television

All the issues related to the launch of digital terrestrial television and radio (DVB-T) were originally dealt with by the Permanent Group of Experts. In June 2001, the Government established an interdepartmental Working Group for Digital Broadcasting (SKDV).

In May 2000, the Government passed a Decision on the Telecommunications Policy of the Slovak Republic for the period 2000–2002. Based on its findings, the *Strategy and Technological Criteria for Introducing the Terrestrial Digital Television Broadcasting in the system DVB-T in Slovakia*, was released and approved in June 2001.<sup>175</sup> This document contains the basic characteristics of the digital terrestrial broadcasting system, reviews the state of its implementation, and forecasts its future in Europe and around the world. It also envisages particular steps for supporting the switch of terrestrial broadcasting in Slovakia from analogue to digital with the aim of launching digital broadcasting in 2004 (in parallel with analogue). The Government proposes that analogue switch-off should happen by 2015 at the latest.

The strategy of introducing terrestrial digital broadcasting was divided into several phases. The first step of experimental digital broadcasting was represented during the INTERMEDIA-broadcasting exhibition in October 1999, when a “package” of three television stations and several radio programmes covered Bratislava and its surroundings. The next phase will consist of pilot projects testing the technology, checking the measuring methods, workers’ training and advertising the new technology and services. The pilot projects were launched in autumn 2004 with four applicants interested. In summer 2004, Radiocommunications, a unit of the fixed-line dominant carrier Slovak Telecom, and three other applicants, namely Slovak Digital Group, the cable television operator SATRO and Telecom Corp participated in the tender for the experimental digital projects. Radiocommunications won the tender for Banská Bystrica-Zvolen region, while Telecom Corp. won the tender for Košice-Prešov region. The testing phase, including not only testing of the technology, but also evaluating the terrestrial coverage and signal in the towns of Banská Bystrica, Zvolen, Košice and Prešov, should last until 30 June 2006.<sup>176</sup> In May 2005, according to a Decision of the Telecommunication Office, Radiocommunications won a tender for Bratislava with the intention of launching a test broadcast later in 2005.

<sup>175</sup> *Stratégia a technické kritériá na zavedenie pozemského digitálneho TV vysielania v systéme DVB-T na Slovensku*, (*Strategy and Technological Criteria for Introducing the Terrestrial Digital Television Broadcasting in the system DVB-T in Slovakia*), available at <http://www.rada-rtv.sk/e19ef097-aa2b-45e8-a2d5-d4858f0dccbf/15.8.html> (accessed 20 July 2005).

<sup>176</sup> Mediaportal.sk, “Zavedenie DVB-T na Slovensku bude problematické”, (“Introduction of DVB-T in Slovakia will be problematic”), “DVB-T na Slovensku začína” (DVB-T begins in Slovakia). The source of the information (www.mediaportal.sk – last accessed 2 November 2004) has been closed in the meantime (hereafter, *Introduction of DVB-T*).

The next phase in the process should be the launching of regular digital broadcasting in 2006 and the gradual switch from analogue to digital broadcasting, which will operate in parallel in areas with high population until 2015 when analogue broadcasting is scheduled to be scrapped. However, as Milan Mizera of the Frequency Spectrum Management Department at the Telecommunication Office says, the introduction of DVB-T in Slovakia faces challenges related to the country's geographical position as it requires coordination of all frequencies with its neighbouring countries. Another hurdle for the successful launch of the DVB-T is likely to be the modest purchasing power of the Slovak population as the digital signal can only be received with an additional set-top box or a new TV set.<sup>177</sup> While in the Czech Republic one can already easily buy this equipment,<sup>178</sup> Slovakia can probably only expect wider dissemination in the upcoming years, when the price falls to around €150-300.

The strategic document on the kick-off of digitalisation recommended establishing six digital multiplexes. One or two multiplexes should transmit unscrambled television signals.

The Working Group for Digital Broadcasting consists of representatives of 16 institutions and bodies including ministries, research institutes, universities and industry. Especially in its incipient phase, SKDV activities were hampered by the lack of funding and the relative indifference of the Ministry of Finance, which did not nominate its representative to the working group. The situation improved in 2003 as the Broadcasting Council budget was increased to cover the activities of the group of experts.

For the introduction of digital broadcasting, the Law on Broadcasting and Retransmission will have to be amended because, for example, the broadcasting market will have a new link in the transmission chain, namely the operators of digital multiplexes. The law must also state the conditions under which broadcasters should co-operate within one multiplex. The Ministry of Culture has not yet prepared a proposal for law to regulate digital broadcasting, but it is expected to do so during 2005.

No noticeable discussion on the expectations and readiness for the digitalisation of broadcasting has been going on in Slovakia. Although some segments of the population, predominantly the younger generation, are very willing to accept new communications technologies, it remains unclear what new possibilities the new technologies will bring. The essential question is whether or not the new technology will mean only technically better reception of the same content.

Apart from the Broadcasting Council and SKDV, which are directly involved in the debate on digital broadcasting, some potential players in the digital field began to be

---

<sup>177</sup> *Introduction of DVB-T.*

<sup>178</sup> Marketing & Media, available at [http://mam.ihned.cz/1-10001760-16336530-100000\\_d-6e](http://mam.ihned.cz/1-10001760-16336530-100000_d-6e) (accessed 18 July 2005).



more active recently, namely businesses trying to secure control over the pilot projects for digital broadcasting.

Moreover, the Working Group for Digital Broadcasting is not only in charge of preparing the conditions for digital broadcasting. It also develops promotional and information activities targeting the public. It organised a series of seminars in 2003 to explain the new technology. They included a seminar on “Methods of Scrambling Image and Sound” organised by the SKDV and the Faculty of Electro-technology and Information Technologies of the Slovak Technical University (STU). In June 2004, the Slovak Association for Cable Broadcasting and the Slovak Audiovisual Company (SKDV) held an international conference on “Perspectives of Digital Broadcasting in Slovakia after the Integration in the EU”. Besides seminars, the SKDV informed both the specialised and the lay public about the new technologies through articles published in various periodicals (such as *Trend*, *Tempo*, *Telecommunications*) and by delivering lectures to students in the towns of Banská Bystrica and Bratislava.

## 8. CONCLUSIONS

Pursuing the aims set out in the 2002 *Governmental Programme Declaration*, the cabinet’s official policy plan, the Government has gradually adopted new legislation in several sectors, including the media, which have led to standardisation in the industry. Since 2003, this process has achieved a fair momentum. In 2003 and 2004, new laws redefining the statute of both the public media networks, STV and SRO, were adopted. Although these were the result of a process that was more protracted than necessary, and at some points even went against the opinions of the two institutions’ management, in their final version the laws met with relatively broad acceptance and approval. A word of public approval has finally also come from the General Directors of both public broadcasters. In reality, the Law on STV and the Law on SRO supplemented the existing Law on Broadcasting and Retransmission, which became effective in autumn 2000, and regulates all private electronic media.

Apart from the legal changes that have helped the situation of STV, the key factor enabling reform of the public service broadcaster has been the new management, installed in early 2003. After winning broad support in Parliament, as well as from the general public, STV’s General Director Richard Rybníček launched an unprecedented overhaul of the station’s entire structure. In 2004, the new management implemented a completely new regime of organisation, management and programming. The reform included a series of cost-cutting measures. STV has renegotiated some parts of its collective agreement with the trade unions and slashed the station’s staff by 1,015 employees (out of 2,000) in May 2004. Already in 2003, STV reduced its production by as much as 40 per cent and discontinued all its loss-incurring activities. The result was that, by August 2003, STV went into the black for the first time in many years.

Opinions on the STV reforms have been mixed. They have been highly praised for bringing financial and organisational health to STV, putting an end to the long-term losses of the 1990s. However, there is also growing fear that STV is turning into just another commercial television network, more interested in high ratings than in anything else.

TV Markíza has been extremely influential since its launch in 1996. The station acquired its dominance in a context where there was no competition from other commercial television stations and STV, due to the high degree of politicisation of its leadership, was losing credibility. By dwarfing the television market and entering other media, TV Markíza became one of the forces shaping the market. In such an environment, other commercial television stations, such as VTV and TV Luna, could not survive and had to cease broadcasting. Even the financial stability of the current commercial competitors, TV Joj and TA3, has to a certain extent been in doubt.

Therefore, a very significant event for the broadcasting market was represented by the introduction of peplemeters, which brings a number of incontestable advantages to the industry. First, it shows the real position on the market of respective broadcasters, and second, it provides advertisers with accurate information on the stations' viewership and a much more detailed portrayal of their watching habits. Above all, the system is expected to help stations with their programming and scheduling.

The interaction between politicians and journalists, although decreasing, is still evident in a number of media outlets. Some journalists seem to have come to believe that their mission lies in active cooperation with politicians and, in fact, in participating in political life.

In the course of the 1990s, Slovak media had a major impact on the development of society. As for the television stations, the years of Mečiar's rule (1994 to 1998) were marked by political interference with STV's programming, while the years between 1997 and 2002 saw some commercial stations, mainly TV Markíza, involved in boosting several politicians. At the same time, it is characteristic for the Slovak media, even those outlets with links to politicians, to declare their determination to remain impartial, non-partisan and neutral.

In their efforts to make political, mostly negative, news and other topics more attractive to viewers, the media has trivialised their content. Although this phenomenon, known as tabloidisation of the media, is far more evident in the print sector, the television news is often highly tabloidised, especially on TV Joj. The coverage of political issues by electronic media is rather perfunctory. There is a general lack of enterprising investigative journalism. Instead of investigating the causes and roots of a problem, journalists prefer to hunt for scandals. In this respect, a certain deficit can be noticed in the approach of the public STV whose mission should be to promote the values offsetting the tendency towards tabloidisation.

One of the major merits of the adoption of the Law on Broadcasting and Retransmission in 2000 was that it brought full harmonisation with the *Acquis communautaire* and, thus, Slovakia's full recognition of the obligations imposed by EU legislation on the media and audiovisual sectors. Another major step was the adoption of relatively progressive laws governing the public broadcasters and of a new Law on Copyright that acknowledges all international agreements and treaties that bind Slovakia in the field of intellectual property rights.

Slovakia's accession to the EU in 2004 is expected to bring growing pressure to ensure media independence and compliance with the EU standards. More intensive assistance from media professionals and specialists from other EU countries could help raise the level of journalists' professionalism and the quality of media content.

Although Slovakia has made progress in enabling citizens' access to information, there is still a need to improve the conduct of the media and the quality of the information they provide. A first important step would be a change in the attitude of the political elites, which should respect the independence of the media, thereby putting an end to the public belief that the media are close to politicians.

There is also still a need to ensure transparency of the media and prevent concentration of ownership by adopting an amendment to the Law on Broadcasting and Retransmission, to strictly prevent media moguls from governing more media outlets through related companies.

Improving the quality of media discourse, now often characterised by an overwhelming tabloid slant, ultimately depends on the journalists. Apart from changing the system of educating journalists, it is equally important to create a suitable environment for their professional development and ensure their adequate remuneration. Such an environment could be both an independent and free public television as well as a financially stable private media.<sup>179</sup>

The television sector has undergone complex development since the early 1990s. The media experienced difficult times following the post-1989 reforms. As with STV, this turbulent period lasted until recently. The youngest generation of journalists is not immune, or fully prepared, to resist commercial or political pressures. Despite the existence for a long time of the Code of Journalist Ethics, approved in 1990 by the Slovak Syndicate of Journalists, journalists are insufficiently familiar with it because the Code is not regarded as having much authority. However, in spite of these threats to media credibility and independence, and a damaging shortage of media personalities, the situation of television has been gradually improving, with a number of programmes – predominantly current affairs programmes, such as *SITO* and *Na Telo* on TV Markíza, and *V Politike* on TA3 – achieving a high level of professional quality.

---

<sup>179</sup> IVO, *Media*, p. 297.

## 9. RECOMMENDATIONS

### 9.1 Policy

1. The Ministry of Culture should, based on wider public discussion, draft and submit to the Government for adoption a new national media policy that will define fundamental guidelines for the media, including the role of the public service broadcasters.

### 9.2 Regulatory authorities

#### *Transparency and media diversity*

2. The Council for Broadcasting and Retransmission should be granted a larger jurisdiction, to enable it to ensure transparency in the broadcasting market and prevent concentration of ownership.
3. Parliament should amend the Law on Broadcasting and Retransmission to sharpen Articles 42-44, in order to prevent unlawful bypassing of the law.
4. The Council for Broadcasting and Retransmission should utilise its competence and publish the names of all licence stakeholders, together with their shares.
5. Parliament should amend the Law on Broadcasting and Retransmission to require applicants for broadcast licences to adopt their own binding ethical code as part of the application procedure for broadcast licences.
6. Parliament should amend the Law on Broadcasting and Retransmission to enable the Council for Broadcasting and Retransmission to remove a licence when a broadcaster, despite imposed sanctions, continues to repeatedly violate the law.

### 9.3 Public service broadcasters (STV and SRO)

#### *Independence and professionalisation*

7. Parliament should amend the Law on Slovak Public Television (STV) and the Law on Slovak Public Radio (SRO), to introduce a new system of appointing the members of the Slovak Public Television (STV) Council and the Slovak Public Radio (SRO) Council that would minimise political influence on the public service broadcasters. Under these amendments, a certain number of members of both councils should be appointed from civil society and professional organisations' nominees.
8. Parliament should amend the Law on Slovak Public Television (STV) and the Law on Slovak Public Radio (SRO), to introduce media expertise and

experience as a new criterion for the appointment of the members of the STV Council and the Radio Council.

#### *Public service mission*

9. The public service broadcasters (STV and SRO) should be ensured sufficient funding to fulfil their public service mission. To achieve this, Parliament should amend the Law on Licence Fees to change the procedure for establishing the level of licence fees, such that increases in the level of the licence fee are in future made directly proportional to the rate of inflation. Consideration should also be given to more effective enforcement measures as regards the collection of licence fees.
10. Civil society should continue to organise regular debates on how the public broadcaster fulfils its mission, inviting all political parties, representatives of regulators, Parliament, other relevant institutions to participate.

### **9.4 Public and private broadcasters**

#### *Training*

11. Professional organisations such as the Slovak Syndicate of Journalists, and both public and private broadcasters, should encourage the training of their journalists and put in place a system to motivate and reward journalists open to training.
12. Broadcasters should support educational and cultural policy in broadcasting, by producing own programmes and formats, and by cooperating with independent producers.

#### *Local broadcasters*

13. The Government should initiate legislation to allow public financial aid to be given to local broadcasters that pursue public service values in their broadcasting. Such funding could represent a portion of the licence fee or of local taxes.

### **9.5 New media**

14. The Government should encourage and support the penetration of new information and communication technologies, such as the Internet and digital broadcasting, by subsidising part of the process. The Government should also motivate businesses to invest in these technologies.
15. The Government should finance programmes promoting new technologies to the public, predominantly to less developed regions and social groups, in order to help them understand and use the opportunities offered by these

technologies. The Government should improve its support to the e-government policy by supporting online services for citizens as well as for business enterprises.

16. The Government should, in its capacity as a controlling shareholder, ask the dominant fixed-line operator, Slovak Telecom, to support the expansion of Internet access in the country by significantly decreasing the price of the service.

## ANNEX 1. Legislation cited in the report

The Official Gazette of the Slovak Republic is *Zbierka zákonov* (*Sbírka zákonů* prior to 1993)

### Constitution

The Constitution of Slovak Republic *Official Gazette* No. 460/1992, 92 of 1 October 1992 (it came into the force on 1 October 1992), last amended on 14 May 2004.

### Main broadcasting laws

Law No. 16/2004 on Slovak Television, *Official Gazette* 7 of 15 January 2004.

Law No. 619/2003 on Slovak Radio, *Official Gazette* 252 of 31 December 2003 (entered into force 1 January 2004)

Law No. 610/2003 on Electronic Communications, *Official Gazette* 249 of 31 December 2003 (entered into the force on 1 January 2004), last amended on 4 February 2005.

Law No. 308/2000 on Broadcasting and Retransmission, *Official Gazette* 128 of 4 October 2000 (entered into force 4 October 2000), last amended 23 June 2005.

Law No. 195/2000 on Telecommunications, *Official Gazette* 84 of 27 June 2000 (entered into force 1 July 2000), replaced by the Law No. 610/2003 on Electronic Communications.

Law No. 294/1992 on the Council of the Slovak Republic for Radio and Television Broadcasting, *Official Gazette* No. 61 of 11 June 1992 (entered into force 11 June 1992), replaced by the Law No. 308/2000 on Broadcasting and Retransmission.

Law No. 468/1991 on Providing Radio and Television Broadcasting, *Official Gazette* 91 of 22 November 1991 (entered into force 22 November 1991), replaced by the Law No. 308/2000 on Broadcasting and Retransmission.

Law No. 255/1991 on Slovak Radio, *Official Gazette* 49 of 28 June 1991 (entered into force 1 July 1991), replaced by Law No. 619/2003 on Slovak Radio.

Law No. 254/1991 on Slovak Television, *Official Gazette* 49 of 28 June 1991 (entered into force 1 July 1991), replaced by Law No. 16/2004 on Slovak Television.

### Other laws

Law No. 300/2005 on the Penal Code, *Official Gazette* 129 of 2 July 2005 (to enter into force 1 January 2006)

Law No. 740/2004 on the State Budget for the year 2005, *Official Gazette* 301 of 29 December 2004 (entered into force 1 January 2005)

- Law No. 357/2004 on Protection of the Public Interest during Public Officials' Service, *Official Gazette* 151 of 16 June 2004 (entered into force 1 October 2004)
- Law No. 176/2004 on Disposing of Property of the Public Service Institutions, *Official Gazette* 83 of 7 April 2004 (entered into force 1 May 2004)
- Law No. 333/2004 on Parliamentary Elections, *Official Gazette* 139 of 29 May 2004 (entered into the force 1 October 2004)
- Law No. 618/2003 on Copyright, *Official Gazette* 252 of 31 December 2003 (entered into force 1 January 2004)
- Law No. 598/2003 on the State Budget for the year 2004, *Official Gazette* 244 of 31 December 2003 (entered into force 1 January 2004)
- Law No. 331/2003 on Elections to the European Parliament, *Official Gazette* 148 of 5 August 2003 (entered into force 5 August 2003), last amended 14 May 2004)
- Law No. 136/2001 on Protection of Economic Competition, *Official Gazette* 57 of 13 April 2001 (entered into force 1 May 2001), last amended 3 February 2005.
- Law No. 575/2001 on Organisation of Government activities and of State bodies, *Official Gazette* 225 of 29 December 2001 (entered into force 1 January 2002), last amended 21 March 2005.
- Law No. 147/2001 on Advertising, *Official Gazette* 62 of 27 April 2001, (entered into force 1 May 2001), last amended 18 December 2001.
- Law No. 211/2000 on Freedom of Information, *Official Gazette* 92 of 13 July 2000 (entered into force 1 January 2001)
- Law No. 184/1999 on the Use of Languages of National Minorities, *Official Gazette* 81 of 24 July 1999 (entered into force 1 September 1999)
- Law No. 46/1999 on Manner of Holding Elections of the President, *Official Gazette* 20 of 19 March 1999 (entered into force 19 March 1999), last amended 5 November 2003.
- Law No. 350/1996 on Parliamentary Working Procedures, *Official Gazette* 122 of 7 December 1996 (entered into force 1 January 1997), last amended 27 May 2004.
- Law No. 270/1995 on the Official Language, *Official Gazette* 89 of 9 December 1995 (entered into force 1 January 1996), last amended 10 July 1999.
- Law No. 212/1995 on Licence Fees, *Official Gazette* 73 of 14 October 1995 (entered into force 1 November 1995), last amended 19 June 2003.
- Law No. 145/1995 on Administration Fees, *Official Gazette* 49 of 17 July 1995 (entered into force 1 August 1995), last amended 9 February 2005.
- Law No. 46/1993 on the Slovak Information Service, *Official Gazette* 11 of 15 February 1993 (entered into force 15 February 1993), last amended 17 March 2004.
- Law No. 372/1990 on Misdemeanours, *Official Gazette* 61 of 6 September 1990 (entered into force 1 October 1990), last amended 26 October 2004.



- Law No. 80/1990 on Parliamentary Elections, *Official Gazette* 18 of 16 March 1990 (entered into force 16 March 1990), replaced by Law No. 333/2004 on Parliamentary Elections.
- Law No. 81/1966 on the Press and Mass media, *Official Gazette* 36 of 8 November 1966 (entered into force 1 January 1967), last amended 7 November 2003.
- Law No. 40/1964 on the Civil Code, *Official Gazette* 19 of 5 March 1964 (entered into force 1 April 1964), last amended 26 October 2004.
- Law No. 140/1961 on the Penal Code, *Official Gazette* 65 of 8 December 1961 (entered into force 1 January 1962), replaced by Law No. 300/2005 on the Penal Code.

## ANNEX 2. Bibliography

### *In English*

- Brankica Petković (ed.), *Media Ownership and its Impact on Media Independence and Pluralism*, (Ljubljana: Peace Institute and SEENPM, 2004)
- IP International Marketing Committee, *Television 2004. International Key Facts* (London: October 2004)
- European Commission, *Candidate countries Eurobarometer 2001* (Brussels, European Commission, March 2002)
- European Commission, *Candidate countries Eurobarometer 2002* (Brussels, European Commission, March 2003)
- Králik, I., *Slovak Television 1990–2000* (Bratislava: Media Institute, 2001)
- Mistriková, Z., *Media diversity and pluralism in the Slovak Republic* (Bratislava:2004)
- World Economy Forum, *Global Information Technology Report 2003–2004*, (New York, Oxford: Oxford University Press, 2004)

### *In Slovak*

- Bútorá, M.(ed.), *Slovensko 1996. Súhrnná správa o stave spoločnosti a trendoch na rok 1997 (Slovakia 1996. A Global Report on the State of Society and the Trends for 1997)* (Bratislava: IVO, 1997)
- Bútorá, M. & M. Ivantyšin (ed.), *Slovensko 1997. Súhrnná správa o stave spoločnosti a trendoch na rok 1998, (Slovakia 1997. A Global Report on the State of Society and the Trends for 1998)* (Bratislava: IVO, 1998)
- Bútorá, M. & M. Ivantyšin (ed.), *Slovensko 1998–1999. Súhrnná správa o stave spoločnosti, (Slovakia 1998–1999. A Global Report on the State of Society)* (Bratislava: IVO, 1999)
- Council for Broadcasting and Retransmission, *Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2000, (Annual Report on the*

- state of broadcasting and on the activities of the Council for Broadcasting and Retransmission for the year 2000*) (Bratislava: Council for Broadcasting and Retransmission, 2000)
- Council for Broadcasting and Retransmission, *Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2001, (Annual Report on the state of broadcasting and on the activities of the Council for Broadcasting and Retransmission for the year 2001)* (Bratislava: Council for Broadcasting and Retransmission, 2001)
- Council for Broadcasting and Retransmission, *Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2002, (Annual Report on the state of broadcasting and on the activities of the Council for Broadcasting and Retransmission for the year 2002)* (Bratislava: Council for Broadcasting and Retransmission, 2002)
- Council for Broadcasting and Retransmission, *Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2003, (Annual Report on the state of broadcasting and on the activities of the Council for Broadcasting and Retransmission for the year 2003)* (Bratislava: Council for Broadcasting and Retransmission, 2003)
- Council for Broadcasting and Retransmission, *Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2004, (Annual Report on the state of broadcasting and on the activities of the Council for Broadcasting and Retransmission for the year 2004)* (Bratislava: Council for Broadcasting and Retransmission, 2004)
- Gál, F., G. Mesežnikov and M. Kollár, *Vizia vývoja Slovenskej republiky do roku 2020 (The development prognosis of Slovak republic until 2020)* (Bratislava: IVO, 2002)
- Jiráček, J. and B. Köpplová, *Média a spoločnosť – Stručný úvod do studia médií a mediální komunikace* (Prague: Portál, 2003)
- Kollár, M. & G. Mesežnikov (ed.), *Slovensko 2000. Súhrnná správa o stave spoločnosti, (Slovakia 2000. A Global Report on the State of Society)* (Bratislava: IVO, 2000)
- Kollár, M. and G. Mesežnikov (ed.), *Slovensko 2001. Súhrnná správa o stave spoločnosti, (Slovakia 2001. A Global Report on the State of Society)* (Bratislava: IVO, 2001)
- Kollár, M. & G. Mesežnikov (ed.), *Slovensko 2002. Súhrnná správa o stave spoločnosti II, (Slovakia 2002. A Global Report on the State of Society, volume II.)* (Bratislava: IVO, 2002)
- Kollár, M. & G. Mesežnikov (ed.), *Slovensko 2003. Súhrnná správa o stave spoločnosti (Slovakia 2003. A Global Report on the State of Society)* (Bratislava: IVO, 2003)
- Kollár, M. and G. Mesežnikov (ed.), *Slovensko 2004. Súhrnná správa o stave spoločnosti (Slovakia 2004. A Global Report on the State of Society)* (Bratislava: IVO, 2004)
- Kunczik, M., *Základy masové komunikace* (Prague: Karolinum, 1995)
- Media Institute, *Názory na verejnoprávnu televíziu na Slovensku (Opinions on the Public Television in Slovakia)* (Bratislava: Media Institute, 2000)
- Ministry of Culture, *Národná správa o kultúrnej politike, 4. verzia, 31. júl 2002, (National report on culture policy of the Slovak republic, the 4th version, 31 July 2002)* (Bratislava: Ministry of Culture, 2002)

- Mistríková, Z. a kol., *Vývoj súkromného rozhlasového a televízneho vysielania na Slovensku (1990–1999)*, (*Development of the private radio and television broadcasting in Slovakia (1990–1999)*), (Bratislava: Association of Independent Radio and Television Stations in Slovakia (ANRTS), 2000)
- Musil, J., *Elektronická médiá v informačnej spoločnosti*, (*Electronic media in an information society*) (Prague: Votobia, 2003)
- Sičáková-Beblavá, E. and D. Zemanovičová (ed.), *Korupcia a protikorupčná politika na Slovensku*, (*Corruption and anticorruption policy in Slovakia*) (Bratislava: Transparency International Slovakia, 2003)
- STV, *Charta spravodajstva a publicistiky Slovenskej televízie*, (*Charter of the News and Current Affairs Programmes of the Slovak Television*) (Bratislava: STV, 2001)

Television across Europe:  
regulation, policy and independence  
Slovenia

## Table of Contents

1. Executive Summary .....	1475
2. Context .....	1477
2.1 Background .....	1477
2.2 Structure of the broadcasting sector .....	1478
2.3 The main players and their market shares .....	1480
3. General Broadcasting Regulation and Structures .....	1481
3.1 Regulatory authorities for the television sector .....	1481
3.1.1 The Agency for Post and Electronic Communication .....	1481
3.1.2 The Broadcasting Council .....	1483
3.1.3 The Ministry of Culture .....	1485
3.2 Licensing .....	1486
3.3 Enforcement measures .....	1489
3.4 Broadcasting independence .....	1490
4. Regulation and Management of Public Service Broadcasting .....	1493
4.1 The public broadcasting system .....	1494
4.2 Services .....	1494
4.3 Funding .....	1495
4.4 Governance structure .....	1497
4.4.1 Council of RTV Slovenia .....	1497
4.4.2 Supervisory Board .....	1499
4.5 Programme framework .....	1500
4.5.1 Output .....	1500
4.5.2 Programme guidelines .....	1501
4.5.3 Quotas .....	1502
4.6 Editorial standards .....	1504
4.7 The future of public service broadcasting in Slovenia .....	1506
5. Regulation and Management of Commercial Broadcasting .....	1512

5.1	The commercial television system .....	1512
5.2	Services .....	1515
5.3	Commercial television ownership and cross ownership .....	1516
5.3.1	Ownership .....	1516
5.3.2	Cross-media ownership .....	1518
5.4	Funding .....	1520
5.5	Programme framework .....	1521
5.5.1	Instruments to ensure accurate and impartial information .....	1521
5.5.2	Programme guidelines .....	1523
5.5.3	Quotas .....	1524
5.6	Editorial standards .....	1524
6.	European Regulation .....	1525
7.	The Impact of the New Technologies and Services .....	1526
7.1	New platforms .....	1527
7.2	Current market conditions .....	1527
7.3	Services .....	1527
7.4	Funding .....	1528
7.5	Digital television .....	1528
8.	Conclusions .....	1529
9.	Recommendations .....	1531
9.1	Policy .....	1531
9.2	Regulatory authorities .....	1532
9.3	Public and private broadcasters .....	1533
9.4	The public service broadcaster (RTV Slovenia) .....	1533
9.5	Private broadcasters .....	1535
	Annex 1. Legislation cited in the report .....	1536
	Annex 2. Bibliography .....	1537

## Index of Tables

Table 1. Television overview (2003) .....	1478
Table 2. National television channels .....	1479
Table 3. Audience shares of the main television channels – for the population aged over 4 years old (2004) .....	1480
Table 4. RTV Slovenia regional channels .....	1495
Table 5. RTV Slovenia revenue and expenditure structure (2003) .....	1495
Table 6. Programme output of TV Slovenia – breakdown by genre (2003)	1500
Table 7. The structure of TV Slovenia’s broadcasts (2003) .....	1502
Table 8. Italian-language programming on TV Koper Capodistria – breakdown by genre (2002) .....	1503
Table 9. Gross advertising revenue of the main television channels (2003) .	1515
Table 10. National daily newspapers .....	1519
Table 11. Estimated net advertising expenditure for the television sector (1996–2003) .....	1520
Table 12. Net media expenditure – breakdown by sector (2004) .....	1521
Table 13. Revenues of Pro Plus (the owner of Pop TV and Kanal A television channels) (2001–2003) .....	1521

## List of Abbreviations

APEK	Agency for Post and Electronic Communication, <i>Agencija za pošto in elektronske komunikacije</i>
SNS	Slovenian National Party, <i>Slovenska nacionalna stranka</i>
SRDF	Broadcasting Council of the Republic of Slovenia, <i>Svet za radiodifuzijo Republike Slovenije</i>
ZLSD	United List of Social Democrats, <i>Združena lista socialnih demokratov</i> (in 2005 renamed as: Social Democrats, <i>Socialni demokrati – SD</i> )

## 1. EXECUTIVE SUMMARY

Public opinion polls usually show a high level of public trust and satisfaction with the television sector in Slovenia. In spite of many shortcomings, it can be said that television in Slovenia often fulfils the role generally ascribed to it as one of the elements of a democratic system.

In Slovenia, the broadcasting sector – and the television industry in particular – is saturated, with a vast number of outlets competing for limited advertising revenue. The public service broadcaster, RTV Slovenia, comprises Television Slovenia (hereafter, TV Slovenia) and Radio Slovenia. The Slovenian television market consists of TV Slovenia, with four channels – Slovenia 1 (SLO1), Slovenia 2 (SLO2), Television Koper/Capodistria and Television Maribor (Tele M) – and 35 commercial terrestrial television channels, operated by 31 stations. Five channels can be viewed by more than 75 per cent of the population: SLO1 and SLO2, Pop TV, Kanal A and Prva TV.

With SLO1 and SLO2, TV Slovenia is the largest television station and most important in terms of diversity and quantity of its production. In 2004, it had an audience share of 37.6 per cent. Two television channels and teletext services, as well as four radio channels, of RTV Slovenia are also available via satellite. The public service broadcaster is expanding its online service to include real time transmission of radio and television programmes and a range of additional services.

The first commercial channel, Kanal A, was licensed in 1990 and started to broadcast in 1991. Most commercial broadcasting is non-political, relying on soap operas and films, with little news and current affairs reporting. The main exception remains Pop TV, the most successful private channel, which broadcasts daily one-hour evening news, weekly current affairs magazines and talk shows. Initially, Pop TV's news programme had a number of characteristics of tabloid reporting, which, in turn, prompted TV Slovenia to also adopt a more commercial approach in its news reporting, and also in other programmes. More recently, however, both sides have abandoned some of their most blatant commercial attitudes. They attract an audience of similar size, with Pop TV reaching younger viewers. Pop TV's website is also very popular, with regular updates and video.

Commercial television aspired to achieve instant success, measured in rising profits, which has led to a reduction of choice. Entertainment programmes include few in-house or independent productions, but a lot of low-quality imports. Infotainment plays an important role. Little attention is devoted to domestic creativity and more demanding content, such as educational, documentary, arts, religious and similar programmes. While no academic studies of editorial independence in commercial broadcasting are available, there are no solid grounds for arguing that the commercial broadcasters are overtly biased or connected to certain political parties or the Government.



Commercial television broadcasting is regulated by the Mass Media Act, adopted in 2001, and pursuant to the Law on Electronic Communication, adopted in 2004. The Mass Media Act abolished the former restriction on ownership to 33 per cent for any person, including foreigners, and assigned the task of restricting ownership concentration to the State. Public broadcasting is regulated by the Law on RTV Slovenia.

The main broadcasting regulatory bodies are the Ministry of Culture – including the Media Inspector, and the Ministry's special Directorate for Media (established in autumn 2004); the Agency for Post and Electronic Communication (APEK); and the Broadcasting Council (SRDF). The Agency's most important tasks are ensuring the implementation of the Law on Electronic Communication and monitoring the compliance of radio and television stations with the restrictions on their programming defined in the Mass Media Act. It issues broadcast licences on the basis of a binding instruction of the Broadcasting Council, which is an independent body that, among other things, supervises the adherence of broadcasters to the obligations contained in their licences. The Ministry of Culture supervises the implementation of the Mass Media Act, with the ministry's Media Inspector investigating breaches of the act on its own initiative or following complaints from the public.

RTV Slovenia is governed by its Council, while its financial operations are controlled by a Supervisory Board. The Law on RTV Slovenia obliges the public broadcaster to be independent and autonomous, to respect human integrity and dignity in its programmes, to observe the principle of impartiality, and to ensure the truthfulness of information and the pluralism of opinions and religious beliefs. It also obliges the public broadcaster to provide radio and television programmes for the Italian and Hungarian minorities in Slovenia.

There are frequent debates about the impartiality of the public service broadcaster. Most of the accusations of biased reporting come from political parties and politicians, usually from the right-wing parties that were in opposition during the last ten years. These parties also argue that most of the other media in Slovenia, particularly in the print sector, are biased in favour of liberal and left wing parties. Various media analysis projects have, however, found no such overt bias in broadcasting.

Political pressure on media in Slovenia is not felt as directly as it used to be before the end of socialism in 1990 and the achievement of independence in 1991. Nevertheless, political parties and the Government still try to influence the management, editors and journalists of the public service broadcaster in several ways. Parliament plays an important role in appointing key personnel, such as the Director General, and in the financial affairs of the public service broadcaster. Some claim that political influence can also be felt in the Council of RTV Slovenia – for example, through the membership of former party officials and through the Government's influence on funding, especially the licence fee.

The future of public service television is not clear. A new Law on RTV Slovenia has recently been adopted by Parliament. However, it has been vetoed by the National Council and its final shape and content are still open questions. The draft law proposes important changes regarding management, supervisory and other bodies, and the appointment of editors, but it also increases the role of the Government and Parliament in the appointment of key personnel and with respect to oversight of the public service broadcaster. This threatens to diminish the independence and credibility of RTV Slovenia as the largest and most important broadcaster in the country.

## 2. CONTEXT

Approximately 98 per cent of Slovenian households have one or more television sets; there are 650,000 television households in Slovenia. On average, 11 per cent of the population (or 221,500 people) watched television every day in 2004. Each viewer watched television for an average of 249 minutes per day.<sup>1</sup> There are currently 877 media outlets registered in the country. At 56 per cent of the households, cable penetration is similar to other countries in Central and Eastern Europe. (See Table 1 below.)

When television was launched almost five decades ago in socialist Slovenia, it was nevertheless funded through advertising as well as licence fees. State television programming combined highbrow and popular contents, including a significant share of programmes imported from Western Europe and the USA (films, drama series, light entertainment shows and documentaries).<sup>2</sup> Italian and Austrian television channels were also watched, especially in the western and northern parts of Slovenia. Therefore, the change of political and economic system with the fall of socialism at the end of 1980s did not entail such a profound change as in countries that were part of Warsaw Pact in Central and Eastern Europe.

### 2.1 Background

Radio Ljubljana, the forerunner of Radio Slovenia, went on air as early as 28 October 1928. Radio and Television Slovenia (hereafter, RTV Slovenia) started to broadcast in 1957 under the name of RTV Ljubljana, as part of the wider Yugoslav broadcasting system. On 14 February 1957, test television transmission began and the first test colour television broadcast was made in 1966. Videotext transmission commenced in

---

<sup>1</sup> Media Services AGB, *Research on 2004*, Ljubljana, 2005 (hereafter, Media Services AGB, *Research on 2004*).

<sup>2</sup> Television series included prime time successes such as *Dynasty*, *Miami Vice*, *The Thorn Birds*, and *Shogun*.

1984, and 1986 is regarded as the year when digitalisation started. RTV Ljubljana was renamed RTV Slovenia in 1991.

In 1990, the first private television channel, Kanal A, received a broadcast licence. In 1995, two more commercial channels, Pop TV and TV3, started to broadcast. In 1997, there was a first test Digital Audio Broadcasting (DAB) transmission. The digitalisation of radio (DALET) started in 1998 and the gradual digitalisation of television began the following year. The second satellite station, in Domžale, was completed in 2000.

**Table 1. Television overview (2003)**

Total number of households	672,520	
Total number of TV Households (TVHH)	650,000	
Total number of TV Households (per cent)	98	
Number of channels received by 75 per cent of the population	5	
TV equipment (per cent of TVHH)	Colour TV	98.5
	Multiset (homes with more than one TV set)	37.1
	VCR	54.2
	DVD	32.2
	Teletext	72.0
	Remote control	96.0
Cable/ satellite connection (per cent of TVHH)	Cable connected	55.9
	Satellite private dish/DTH	9.2
	Satellite collective dish/SMATV	0.5
	Only terrestrial	35.0

Source: Media Services AGB, RTV SLO, IP/RTL Group<sup>3</sup>

## 2.2 Structure of the broadcasting sector

In 2004, Slovenia, with a population of 1.96 million, had a per capita GDP of €16,112 112 (“the richest ex-communist state”, according to the *Financial Times*<sup>4</sup>) and a GDP growth rate of 4.3 per cent.<sup>5</sup> According to estimates, the net turnover of the television advertising market was €40-50 million in 2003.<sup>6</sup>

The public broadcaster, RTV Slovenia, includes Television Slovenia, *Televizija Slovenija*, (hereafter, TV Slovenia) and Radio Slovenia, *Radio Slovenija*. There are four public service television channels: SLO1 and SLO2 are national channels, and

<sup>3</sup> IP International Marketing Committee, *Television 2004, International Key Facts*, October 2004.

<sup>4</sup> “Special Report on EU Enlargement”, in *Financial Times*, 27 April 2004.

<sup>5</sup> “Slovenska gospodarska slika”, (“Slovenian Economic Picture”), in *Finance*, 11 May 2005. Sources: Statistical Office of the Republic of Slovenia.

<sup>6</sup> *Marketing Magazine*, February 2004, p. 23.

Television Koper/Capodistria and Television Maribor (Tele M) are regional channels. There are 35 commercial television channels, owned by 31 television stations.<sup>7</sup>

Five terrestrial television channels (all broadcasting in Slovene) can be viewed by more than 75 per cent of the population: SLO1, SLO2, Pop TV, Kanal A and Prva TV (see Table 2 below). Other television channels cover local and regional areas. Twenty channels are transmitted only through cable systems. A number of specialised channels also broadcast, such as Čarli (popular music) and Petelin (folk music). Foreign channels are available through cable and satellite; some, such as National Geographic, Discovery, Hallmark and HBO, broadcast their programmes with Slovenian subtitles, as local affiliates of the transnational channels.

**Table 2. National television channels**

Channel		Launch	Diffusion	Technical penetration (per cent)	Output (hours/week)	Programming	Revenue source
Public	SLO 1	1958	T, C, S	97.0	168	Generalist	L-F/ Adv.
	SLO 2	1972	T, C	95.0	129	Sports, Series, Documentaries	L-F/ Adv.
Private	Pop TV	1995	T, C	80.0	134	Series, Movies, News	Adv.
	Kanal A	1991	T, C	80.0	112	Series, Movies	Adv.
	TV 3	1995	T, C	75.0	128	Series, Documentaries	Adv.

**Abbreviations:** Adv. = Advertising, L-F = Licence fee and other State supports, C = Cable, S = Satellite, T = Terrestrial, Tech. pen. = Technical penetration.

**Source:** Broadcasting Council<sup>8</sup>

The public service broadcaster, Radio Slovenia, has eight channels. These are: Radio Slovenia 1, 2 and 3, Radio Koper, Radio Maribor, Radio Capodistria (for the Italian-speaking minority), Pomursko-Hungarian Radio (for the Hungarian-speaking minority) and Radio Slovenia International.<sup>9</sup> There are some 73 other radio channels

<sup>7</sup> The Agency for Post and Electronic Communication (APEK), *Annual Report on 2004*. RTV Slovenia, *Annual Report 2003*, published in English and Slovene language, Ljubljana, 2004, (hereafter, RTV Slovenia, *Annual Report 2003*).

<sup>8</sup> Broadcasting Council, *Radijski in TV programi v Sloveniji, (Radio and TV Programmes in Slovenia)*, SRDF, Ljubljana, 2001, published in Slovene and English, (hereafter, Broadcasting Council, *Radio and TV Programmes*).

<sup>9</sup> According to the 2002 census, the total population is 1,987,971. Ethnic Italians were 0.11 per cent and ethnic Hungarians were 0.32 per cent of the population. (Ethnic Slovenes were 83.06 per cent). Information from the website of the Statistical Office, available at [http://www.stat.si/popis2002/en/rezultati\\_slovenija\\_prebivalstvo\\_dz.htm](http://www.stat.si/popis2002/en/rezultati_slovenija_prebivalstvo_dz.htm) (accessed 22 June 2005), (hereafter, 2001 census data).

in private ownership. Only three radio channels cover the entire country with their signal: Radio Slovenia 1, 2 and 3.

### 2.3 The main players and their market shares

The market was dominated by SLO1, the first channel of the public broadcaster, until the second half of the 1990s, when Pop TV often overtook it. SLO1 is a generalist channel, mainly dedicated to news, current affairs, children's programmes, prime-time entertainment, and films. The second channel of TV Slovenia, SLO2, provides complementary programming. SLO2 is event-oriented, broadcasting mostly sports, documentaries, and arts. SLO1 reaches virtually all of Slovenia's television households, while SLO2 reaches 97 per cent of these households. According to Peoplemeters<sup>10</sup> research conducted by AGB Media Services, a private market company, in 2004 SLO1 and SLO2 were ranked second and third in the market, respectively (see Table 3 below).

The Pop TV network is the leading national commercial television broadcaster. In 2004, Pop TV led the market with an all-day audience share of 27.1 per cent. The fourth-ranking channel in 2004 was Kanal A, owned by the same company as Pop TV (Pro Plus), which reached 81 per cent of the population. Its national all-day audience share was 8.1 per cent, rising to 11 per cent in prime time. Prva TV (called TV3 until November 2004) had an audience share of 1.7 per cent. Other channels have significantly lower ratings and shares, often below 1 per cent. Neighbouring Croatia's public service channels, HRT 1 and HRT 2, have the highest ratings among foreign broadcasts, and HRT 1 is sometimes even the third most watched channel in Slovenia.

**Table 3. Audience shares of the main television channels  
– for the population aged over 4 years old (2004)**

Channel	Audience share (national, all-day) (per cent)
Pop TV	27.1
SLO 1	26.1
SLO 2	10.2
Kanal A	8.1
TV 3	1.7
Other domestic	1.3
Foreign	25.5

Source: Media Services AGB<sup>11</sup>

<sup>10</sup> During 1999 and 2000, devices for measuring audience viewing patterns, called "Peoplemeters", were placed in 450 television homes. They are the primary source for obtaining information about audience shares.

<sup>11</sup> Media Services AGB, *Research on 2004*.

### 3. GENERAL BROADCASTING REGULATION AND STRUCTURES

Until recently, there was limited policy on how broadcast licences and frequencies should be granted. This was improved with the Mass Media Act of 2001<sup>12</sup> and with more precise regulatory procedures.<sup>13</sup> The Mass Media Act regulates all media, with a second chapter dedicated specifically to broadcasting, including the public broadcasting system – which is more precisely regulated by the Law on RTV Slovenia.<sup>14</sup>

The main broadcasting regulatory bodies are the Ministry of Culture (including the Ministry's Media Inspector); the Agency for Post and Electronic Communication (APEK); and the Broadcasting Council (SRDF). The Ministry of Culture supervises the implementation of the Mass Media Act 2001 and prepares laws regulating public service broadcasting and commercial media, including all broadcasters. The Media Inspector deals with breaches of the Mass Media Act on his own initiative or following complaints from the public. In accordance with the Mass Media Act, in order to retain its broadcast licence a broadcaster must provide the APEK with an annual report that indicates whether the programming obligations were maintained. This report must list the share of broadcasts, according to the different types of programme content; the share of advertising in broadcasts; the anticipated amount of in-house production; and the share of European works.

#### 3.1 Regulatory authorities for the television sector

##### 3.1.1 The Agency for Post and Electronic Communication

The Agency for Post and Electronic Communication (*Agencija za pošto in elektronske komunikacije* – APEK) is an independent body that was established in July 2001 under the Law on Telecommunications 2001.<sup>15</sup> The APEK was initially established as the Office for Telecommunications and Broadcasting, but in June 2002 its name was changed to the Agency for Telecommunications, Broadcasting and the General Post Office. It gained its present name in 2004, when the Law on Telecommunications was replaced by the Law on Electronic Communication 2004.<sup>16</sup>

<sup>12</sup> Mass Media Act, *Official Gazette* no. 35/2001. The *Uradni list Republike Slovenije* is the Official Gazette of Slovenia.

<sup>13</sup> Procedure on programmes of special significance, *Official Gazette* no. 85/2002; Procedure on content of request and content of decision on broadcasting frequency), *Official Gazette* no. 60/01.

<sup>14</sup> The Law on RTV Slovenia was first adopted in 1994: Law on RTV Slovenia, *Official Gazette* 8 April 1994 (hereafter, Law on RTV Slovenia 1994). The law was subsequently amended a number of times: Law on RTV Slovenia, *Official Gazette* no. 18/1994, 29/1994, 73/1994, 88/1999, 90/1999, 102/1999, 113/2000, 35/2001, 79/2001, (hereafter, Law on RTV Slovenia 2001).

<sup>15</sup> Law on Telecommunications, *Official Gazette* no. 30/2001.

<sup>16</sup> Law on Electronic Communication, *Official Gazette* no. 80/2004.

The APEK is led by a Director who is appointed on the basis of public advertisement by the Government, which can also dismiss him or her. The tenure lasts five years. The APEK Director cannot be a member of APEK's Supervising Board and is not allowed to own shares in organisations that are supervised by the APEK. By law, the APEK's activity must be independent from, and impartial towards, the companies or institutions that provide electronic and communication services. The organisational structure and economic operations of the APEK are defined by its Statute<sup>17</sup>, which must be ratified by the Government. Broadcasting is regulated by two APEK departments: the Broadcasting Department and the Department for Programme Controlling.

The APEK's most important task is the supervision of the implementation of the Law on Electronic Communication 2004 and the Mass Media Act. In accordance with these laws, its main responsibilities regarding broadcasting are as follows:

- supervising the implementation of programming obligations and restrictions, as well as ownership restrictions, for television and radio;
- issuing written warnings to broadcasters in the event of irregularities and determining the deadline to correct them (usually within one month but no longer than six months);
- issuing broadcast licences on the basis of a binding instruction by the SRDF; and
- providing technical, expert, financial and administrative support to the SRDF.<sup>18</sup>

The APEK's wider goals are:

- to foster cultural, linguistic and media pluralism;
- to foster competition in the media, information and communication market; and
- to support the interests of the citizens of the European Union (however, this task is not clearly defined).

The APEK's work is supervised by the Government, which must approve its annual financial and activity plan, as well as its annual report. Since the Government also appoints and dismisses the APEK Director, the role and influence of politics and the Government over this formally independent body is very important.

---

<sup>17</sup> Statute of the Agency for Telecommunications, Broadcasting and General Post Office, *Official Gazette* no. 77/2002.

<sup>18</sup> In accordance with Article 103 of the Mass Media Act.

### 3.1.2 The Broadcasting Council

The Broadcasting Council (*Svet za radiodifuzijo Republike Slovenije* – SRDF) was established in 1994, after the adoption of Mass Media Law.<sup>19</sup> It started working in 1995, but its annual reports were not discussed in Parliament until the adoption of the Mass Media Act in 2001, which replaced the Mass Media Law and under which a new Broadcasting Council was appointed in 2001.

The Broadcasting Council is an independent body which has the following responsibilities:<sup>20</sup>

- instructing the APEK to supervise the implementation of broadcasters' programming obligations;<sup>21</sup>
- deciding on the enactment, transference and retraction of broadcast licences and instructing the APEK to issue broadcast licences;
- deciding on granting or retracting the status of local, regional, or student television or radio channels;
- providing a preliminary opinion to the Ministry of Culture on granting or retracting the status of non-profit television or radio channels and channels of special importance;
- providing a preliminary opinion to the APEK on decisions regarding the prevention of ownership concentration;
- evaluating the state of the television and radio markets in an annual report to Parliament;
- suggesting to the Ministry of Culture how to implement criteria on local and regional content, in-house production and conditions to acquire the status of a broadcaster of special significance; and
- proposing a development strategy for television and radio to the Ministry of Culture.

The Broadcasting Council consists of seven members, appointed by Parliament for a tenure of five years. The President of the Council is elected by the SRDF members

---

<sup>19</sup> Mass Media Law, *Official Gazette* no. 18/1994, 8 April 1994.

<sup>20</sup> Mass Media Act, art. 100.

<sup>21</sup> The APEK supports the Broadcasting Council in this respect, by carrying out monitoring for which the Council lacks technical and other resources. The Broadcasting Council provides the APEK with initiatives for conducting an expert supervision of the implementation of programming requirements and restrictions specified in the Act.



from their own ranks. In accordance with the Mass Media Act, candidates for membership are nominated by:<sup>22</sup>

- the University of Slovenia (experts on law, telecommunications and information);
- the Chamber of Culture (an expert on audiovisual culture);
- the Chamber of Commerce (an economics expert); and
- the Slovene Journalist Association (an expert on journalism and communication studies)

Irrespective of these provisions, the National Assembly may also choose from among candidates who submit their own candidacy, provided that these are experts in the above-mentioned areas.<sup>23</sup>

Members, including the President, can be re-elected only once. The following may not be members of the Broadcasting Council:<sup>24</sup>

- officials, parliamentary deputies and other persons employed at State bodies;
- members of the leadership of political parties;
- persons employed at a radio or television station or at an advertising organisation;
- persons who, as external contractors, have concluded contractual relations with a radio or television station or an advertising organisation; and
- persons who hold more than one per cent of the capital or management or voting rights within the assets of a radio or television station or an advertising organisation

For most of the 1990s, there was a lack of political will to ensure better regulation of, and transparency in, the broadcasting sector. The Mass Media Law of 1994 requested that “the Council prepare for Parliament an annual report or assessment of the situation in the area of broadcasting and proposals for improving the situation”.<sup>25</sup> However, between 1995 and 2001 none of the Broadcasting Council’s annual reports were discussed or reviewed by Parliament. The situation has improved with the Mass Media Act and the new Broadcasting Council, established in 2001. Nonetheless, the Council’s annual report for 2003 was only discussed in spring 2005, due to the passivity of Parliament. Later, the report for 2004 was also discussed. Two years ago,

---

<sup>22</sup> Mass Media Act, art. 100.

<sup>23</sup> Mass Media Act, art. 100(3).

<sup>24</sup> Mass Media Act, art. 101.

<sup>25</sup> Mass Media Act, art. 58.

when it adopted the Broadcasting Council's report, the Parliament also adopted a list of open questions related to media policy in the broadcasting sector. These questions still await answers from the Ministry of Culture.

### 3.1.3 The Ministry of Culture

The Ministry of Culture prepares laws regulating public service broadcasting and commercial media, including all broadcasters, and supervises the implementation of the Mass Media Act. In autumn 2004, a special Directorate for Media was established within the Ministry.

Based within the Ministry of Culture, the Media Inspector deals with breaches of the Mass Media Act on his own initiative or after complaints from the public. A complaint cannot be anonymous. In 2004, the Inspector dealt with 116 cases, of which 72 were complaints from the public and 46 were the result of the Inspector's own initiative. The majority of the complaints (58 cases) concerned the obligation to register media ownership (see section 3.2). This was followed by complaints about the transparency of media data (19 cases) and the protection of the Slovene language (11 cases).<sup>26</sup> However, the best-known case was from February 2003 about the issue of whether local cable operators could broadcast erotic/pornographic films after midnight. The Inspector's decision to forbid such content caused a public controversy and outcry, as there is no definition of pornography in Slovenian law. The ruling party even initiated a special procedure in the Parliament after the decision of the Media Inspector, which resulted, in June 2003, in the authentic interpretation of Article 84(1.3) of the Mass Media Act. Also, following these developments, and in line with the provisions in Article 84, an agreement was signed in July 2003 between the Broadcasting Council and broadcasters, on the voluntary designation of programming with erotic and violent scenes unsuitable for children and minors.

There is only one Media Inspector for 877 media outlets, with very little administrative support. The Inspector has managed up to now to resolve most of the complaints from the public, possibly because they are relatively few in number. The responsibilities of the Inspector are defined in the Mass Media Act. According to the Mass Media Act, the Inspector has no mandate for any monitoring, as his mandate is only for administrative proceedings in supervising the implementation of the act. He can propose to the Broadcasting Council to request the APEK to monitor certain programmes or channels, but he himself has no mandate or competency to conduct monitoring.

---

<sup>26</sup> Data submitted by the Media Inspector, written correspondence, 22 March 2005.

### 3.2 Licensing

The APEK is the public authority entitled to grant broadcasting frequencies, after the Broadcasting Council has issued a preliminary judgement on a request. Broadcasters who apply for a frequency have to be registered with a court and to provide the Ministry of Culture with information about themselves and the programmes they intend to broadcast. Once this information has been supplied, the Ministry enters the broadcaster into the Media Register.

The Media Register is a database of all the media outlets in Slovenia, including print.<sup>27</sup> The main data that media companies should provide to the Ministry includes the area of coverage, frequency and sources of revenue. Publishers of daily or weekly general and news-oriented newspapers, and operators of a radio or television channel should also provide a list of all the companies or individuals owning or controlling more than five per cent of the broadcaster's proprietary shares or voting rights (see section 5.3.1). The Media Register, and the names of the frequency and licence holders, is open to the public and is also available on the website of the Ministry of Culture ([www.kultura.gov.si](http://www.kultura.gov.si)). In practice, however, a revision of the Media Register is necessary, as – in contravention of the Mass Media Act – the information it contains is mostly out of date and there is very little data on ownership. In addition, data on media ownership differs in comparison with the information, including precise data on ownership, contained in the judicial register, where all companies in Slovenia must be registered.

#### *Licensing procedures*

The Ministry of Culture provides the Broadcasting Council with a preliminary opinion<sup>28</sup> on whether a certain terrestrial station should be awarded the status of a regional, local or non-profit radio or television channel. When the Council reaches a decision on the status of a broadcaster, in the case of a regional or local channel, it issues a written order about issuing a licence, which must be passed to the APEK, which must then issue the licence. The Ministry of Culture issues the decision on the status of a non-profit radio or television channel, after receiving a preliminary opinion from the Broadcasting Council.<sup>29</sup> The decision on the status of a student radio or television channel is issued by the APEK.<sup>30</sup>

The Broadcasting Council can abolish the awarded status of a regional or local radio or television channel with a written order, if the operator fails to fulfil its programming obligations.

---

<sup>27</sup> As defined in Articles 12-16 of the Mass Media Act.

<sup>28</sup> In accordance with section 3 of the Mass Media Act.

<sup>29</sup> Mass Media Act, article 81.

<sup>30</sup> Mass Media Act, article 80.

In accordance with the Law on Electronic Communication 2004, radio and television broadcasters pay an annual fee for the use of broadcasting frequencies.<sup>31</sup> The fee is set by the Government, and varies according to the area covered by the television or radio channel. The fee goes to finance the APEK and the Broadcasting Council.

Since 1990, more than 20 television stations and almost 100 radio stations have received licences and frequencies, together with more than 20 stations that broadcast only through cable.

Cable and satellite broadcasters are regulated by a separate, special procedure.<sup>32</sup> Commercial and public broadcasters complain that cable operators routinely ignore copyright and licensing conditions by redistributing channels which do not have broadcasting rights for Slovenian territory – such as the Croatian channels, HRT1 and HRT2 – and thereby undermining the appeal of both public and commercial channels. Pop TV succeeded in blocking the distribution of channel of the Croatian public television channel HRT2 during the World Cup football finals in 2002, as Pop TV had exclusive rights for these programmes for Slovenia. However, although the cable operators agreed to block these specific programmes, afterwards they resumed the distribution of the Croatian channels.

Such a huge number of electronic media outlets exist in a country with only two million viewers and listeners. There were also few differences in the programme content that was broadcast by all these stations. The result of that process is that although Slovenia has a relatively large number of broadcast media, it does not necessarily have a corresponding amount of quality domestic production or diverse programming. Documentaries, and arts and education programmes are almost completely absent from commercial programmes. Most domestic programming is cheap in-house production, such as talk shows, television interviews, roundtables, and music videos. There are also plenty of “infomercials” and – although the Mass Media Act prohibits it – covert advertising, with paid-for interviews, promotions and presentations of different new products or companies.<sup>33</sup> There are interviews with representatives of travel agencies, shopping malls, pharmaceutical and other companies, who present their new offerings and catalogues. The studio background is usually full of company logos, product placements and similar promotions.

The majority of radio and television stations depend on advertising revenues. Data on the advertising market over the last few years indicates that a recession is ongoing, with advertising expenditure falling by up to 15 per cent in 2003. Consequently, there was less money for programme production. Given that domestic production costs are high, especially for news and current affairs reporting, the Broadcasting Council states that

---

<sup>31</sup> Law on Electronic Communication 2004.

<sup>32</sup> Procedure on licences for radio and television broadcasting, when the function is not connected with the use of frequencies, *Official Gazette* 10 March 2003.

<sup>33</sup> Mass Media Act, art. 47.

the consequences of this situation will be an increased commercialisation of programme content and more cross-ownership.<sup>34</sup>

In its report for 2001–2002, the Broadcasting Council stated that, due to the absence of a national strategy for the development of radio and television, in the past there was no policy on granting frequencies.<sup>35</sup> (This observation remains valid, given that in 2005 there is still no specific strategy for broadcasting.) The Council called for a development strategy for radio and television channels to be drafted, to clarify how many channels are actually needed in Slovenia to satisfy the needs of the public for information, education and culture, given that the available television and radio frequencies were almost exhausted.<sup>36</sup> The Council's report assumed that in two or three years it would be practically impossible to find new frequencies for television analogue broadcasting, a prediction that subsequently proved to be accurate. To resolve this situation, the Council proposed that Slovenia should turn to digital technology. A document is now in preparation on the switchover to digital broadcasting, and the basis for a strategy is contained in the Broadcasting Council's report for 2004.

### *Television and radio channels of special importance*

The 2001–2002 report of the Broadcasting Council also expressed concern at the length of the procedure required to establish the status of a channel of "special importance". Three authorities lead the procedure: the Ministry of Culture, the Broadcasting Council and the APEK. Prior to the Mass Media Act, ten television stations had the status of "local non-profit channels". Subsequently, their status was changed into one of the following:<sup>37</sup>

- "Local television and radio channels of special importance": these must cover 10 per cent of the population of Slovenia and broadcast at least 30 per cent of local in-house content production daily. Five television channels have this status.
- "Regional television and radio channels of special importance": these must cover between 10 and 50 per cent of the population of Slovenia and broadcast at least 30 per cent of regional in-house content production daily. Three television channels have this status.
- "Non-profit television and radio channels": these must broadcast at least 30 per cent of in-house production (news and current affairs, arts, educational, cultural and entertaining content) daily. No television stations currently have this status.

<sup>34</sup> Broadcasting Council, *Letno poročilo 2001/2002, (Annual Report 2001/2002)*, Ljubljana, 2002, (hereafter, Broadcasting Council, *Annual Report 2001/2002*).

<sup>35</sup> Broadcasting Council, *Annual Report 2001/2002*.

<sup>36</sup> Broadcasting Council, *Annual Report 2001/2002*.

<sup>37</sup> Mass Media Act, section 3.

In the Mass Media Act and in its implementation, student television or radio stations are also ranked among “television and radio stations of special importance”. The criteria for student stations are that their “programming is created and disseminated by students and is primarily aimed at a student audience” and their “surplus of revenues over expenditure is used only for executing the activities for which it was founded”.<sup>38</sup>

Channels (local, regional or student) defined as having special importance for their communities must provide local and regional content (news, current affairs and culture) or content dedicated to students. For this, in accordance with the Mass Media Act, they receive, *inter alia*: preferential treatment when applying for broadcasting frequencies; lower prices for copyright; and free distribution by cable operators, where possible.<sup>39</sup> They can also receive funds from the State budget, particularly the Ministry of Culture, for specific projects, such as arts, news, documentaries and so forth.<sup>40</sup>

All five channels of TV Slovenia also have the status of channels of special importance. Ten applications for such status from local and regional commercial channels were sent to the Agency in 2002, but to date only seven applications have been approved. These are: RTS from Maribor, TV Primorka from Nova Gorica, Kanal 10 from Murska Sobota, GTV from Kranj, ATV Signal from Litija, Vaš Kanal from Novo Mesto, and VTV from Velenje. These are local or regional television channels from different parts of Slovenia, which provide news, current affairs, arts and education programmes.

### 3.3 Enforcement measures

The Ministry for Culture and its Media Inspector monitor broadcasters’ compliance with the conditions of their broadcast licence. The Broadcasting Council can also propose to the APEK to monitor a certain station.

Monitoring of television channels and their programmes is performed by the APEK in accordance with a bi-annual plan, submitted to the Broadcasting Council. However, in 2003 and 2004, the APEK only monitored television channels that “cover a major part of Slovenia.”<sup>41</sup> This included three channels of RTV Slovenia and three commercial channels, Pop TV, Kanal A and Prva TV, but meant that none of the other television channels (32 commercial and one public) were monitored in 2003 and 2004. Although lack of personnel and technical capabilities may explain this lack of monitoring and regulatory control, the fact that only 6 television channels out of 39 were monitored in the last two years leaves plenty of opportunity for possible breaches of regulation.

<sup>38</sup> Mass Media Act, art. 80.

<sup>39</sup> Mass Media Act, art. 82(4), 104(4) and 112(2).

<sup>40</sup> Mass Media Act, art. 82(1).

<sup>41</sup> APEK, *Annual Report for 2004*, p. 40.

If the Media Inspector or the APEK finds that a broadcaster's compliance with the conditions of the broadcast licence or the Mass Media Act is lacking, they have the following powers:<sup>42</sup>

- to issue a warning or a financial penalty;
- to prohibit advertising to be published in that outlet for three months; or
- to issue a temporary or permanent withdrawal of the licence.

Penalties and sanctions applicable to all broadcasters, including RTV Slovenia, are defined in the Mass Media Act.<sup>43</sup> Financial penalties range from SIT 90,000 (€400) to SIT 2.5 million (€10,500), according to the type of violation.<sup>44</sup> For instance, the fine for covert advertising is SIT 2.5 million (€10,500), while that for offending human dignity, broadcasting pornography and violent scenes at times of the day when such content is not allowed, and for all types of discrimination, is SIT 2 million (€8,000).

To date, however, no fines have yet been imposed. In 2003 and 2004 (total for both years), the APEK found 12 breaches of the Mass Media Act following its monitoring of the 6 channels listed above. In each case it issued a warning. The breaches mainly concerned restrictions on advertising.<sup>45</sup> In 2004, of the 116 cases initiated by the Media Inspector from all the media outlets, including press, radio and television, 81 cases were dropped as no breach of law was found or the irregularities had ceased. The Media Inspector issued 25 warnings, and two decisions to prohibit broadcasting or printing.<sup>46</sup>

### 3.4 Broadcasting independence

RTV Ljubljana, which became RTV Slovenia in 1991, started to transform itself into a public service broadcaster immediately after the first multiparty elections in 1990. RTV Slovenia's Council was designed to represent the different segments of Slovenian society. The political parties were awarded only minor direct influence – only 5 out of 25 members of the Council are appointed by political parties in Parliament, proportionally to the election results.

However, although direct political pressure is no longer felt, the Government and the political parties still try to influence, and even exert pressure on, the management, editors and journalists of RTV Slovenia. Political influence can still be felt in the Council of RTV Slovenia. Although no party official can be nominated as a member of

---

<sup>42</sup> Mass Media Act, ch. 5.

<sup>43</sup> Fines range from those imposed on an author or legal person to those imposed on the responsible person at a media company. Mass Media Act, chapter 5 (Penalty provisions).

<sup>44</sup> Mass Media Act, ch. 5.

<sup>45</sup> As defined in Article 93 of the Mass Media Act.

<sup>46</sup> Data provided by Media Inspector, written correspondence, 22 March 2005.

the Council, this restriction does not apply to former party officials. This explains why Janez Kocijančič – President from 1993 to 1997 of the successor of the Communist Party, the United List of Social Democrats (*Združena lista socialnih demokratov* – ZLSD) – was able to become a member of the Council, as the representative of sports organisations. (Kocijančič is the chairman of the Slovenian Olympic Committee.) Later, he also became the chairman of the Council of RTV Slovenia, a position that he still holds at this time of writing. This has provoked plenty of protests from his political opponents, mostly right-wing parties. However, Kocijančič's position does not violate the Law on RTV Slovenia or the Statute of RTV Slovenia<sup>47</sup> since he is no longer a party leader or official. The situation is similar to that of other members of the Council or former members of the Council, such as the late Rudi Šeligo (a former Minister of Culture) and France Arhar (a former presidential candidate). However, neither Šeligo nor Arhar has been a party leader or official.

Political influence can also be exerted in other ways. In particular, the Government still plays an important role in financing public service broadcasting, also when it comes to finding solutions to relieve it of its debts.

Tanja Starič, the Editor-in-chief of news and education programmes at RTV Slovenia for the last few years, says that, while direct political pressures on journalistic work are rare, indirect forms of pressure persist,

A specific Slovenian problem is that journalists who cover internal politics are connected with politicians in one way or another. This is why politicians try to influence news coverage by direct contacts with journalists, for example by telephone calls, giving out true or false information about their political opponents, or friendly persuasion. If this does not work, they fall back on more direct means of pressure. In the last instance, they resort to telephone calls to the editors, to the programme management of RTV Slovenia or the Director General, who actually has no competence over programme content.<sup>48</sup>

Starič was particularly concerned about pressure from advertisers and economic interests in general. She mentioned many cases when companies tried to gain the support of journalists by means that are prohibited by the RTV's code of ethics,<sup>49</sup> such as paid journeys abroad, or receipt of some services or gifts. There are also examples when journalists experienced anonymous, direct or physical threats, because they revealed corruption, especially during the privatisation of former State companies. Starič states that, "cases of such pressure are rare, but journalists are aware of them, especially after the attack on Miro Petek [an investigative journalist of daily *Večer*,

<sup>47</sup> Statute of RTV Slovenia, *Official Gazette* no. 66/1995, 17 November 1995.

<sup>48</sup> Interview with the Tanja Starič, Editor-in-Chief of news and education programmes at TV Slovenia, Ljubljana, 6 July 2004.

<sup>49</sup> RTV Slovenia, *Poklicna merila in načela novinarske etike v programih RTV Slovenija – Professional Standards and Ethical Principles of Journalism in the Programmes of RTV Slovenia*, Ljubljana, May 2000 (hereafter, RTV Slovenia, *Professional Standards*).



badly beaten in 2002], and this awareness influences their work.” However, according to Starič, there is also a danger of political interference, especially in the nomination and selection of editors and programme directors,

The belief that politics define all segments of social life is also a form of indirect pressure on journalism. The same goes for the belief that without political support candidates running for the leading positions at RTV Slovenia cannot be successful.

Commercial broadcasting is not under direct political influence and is not overtly politically biased. Nonetheless, there have been a number of controversial cases. For example, before the March 2003 referendum on Slovenia joining NATO, a number of local and regional commercial channels broadcast paid-for programmes on NATO, which had been subsidised by the Government and the Ministry of European Affairs, without their being “clearly visually and aurally separated from other programming”, as stipulated in the Mass Media Act.<sup>50</sup>

Similarly, RTV Slovenia signed a contract with the Ministry of Defence to produce a programme on defence issues and the Slovenian army. The programme was to be paid for, and edited by, the Ministry of Defence. However, the programme was later cancelled, after the Council of RTV Slovenia cancelled the contract.<sup>51</sup>

From January 2005, Prva TV, the third most watched commercial channel, started with a five-minute programme, broadcast at 20.00 every day during the week (except the weekend), where the President of the Slovenian National Party (*Slovenska nacionalna stranka* – SNS), who is also a Member of Parliament, comments on political and social topics. No other political party, politician or other person has been granted such space on this channel, and this provoked protests by the public and other political parties about biased and politically charged editorial decisions and content.<sup>52</sup>

There have been no main scandals or issues regarding news reporting on Pop TV, either regarding any political bias or with respect to the station’s commercial approach, which included the introduction of more “tabloid” techniques, with a higher number of human-interest stories, crime, scandals and similar characteristics of tabloid media.

---

<sup>50</sup> Mass Media Act, art. 93(1).

<sup>51</sup> M. Milosavljevič, “Kapitulacija TV Slovenija”, (“The Capitulation of RTV Slovenia”), in *Delo*, 22 March 2003, p. 7, Ljubljana.

<sup>52</sup> M. Milosavljevič, “Zmago Jelinčič Plemeniti – Novinar”, (“Zmago Jelinčič Plemetini – The Journalist”), in *Medijska preža* magazine, no. 22, May 2005, p. 12.

#### 4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING

The activity of RTV Slovenia is defined in the Law on RTV Slovenia, which was first passed in 1994 and subsequently amended in 1999 and 2001. The draft of a completely new Law on RTV Slovenia (hereafter, draft Law on RTV 2005) was presented on 1 April 2005<sup>53</sup> and passed by the National Assembly (lower chamber of Parliament) on 22 June 2005, but it was then vetoed by the National Council. While its final form remains to be seen, it will very likely introduce important changes. More detailed functioning of RTV Slovenia is defined in its Statute.<sup>54</sup>

The Law on RTV Slovenia obliges RTV Slovenia to be independent and autonomous, 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.<sup>55</sup> It also obliges RTV Slovenia to broadcast radio and television programmes for the Italian and Hungarian minorities in Slovenia. RTV Slovenia must also ensure almost universal access to its channels, as 90 per cent of the population – and 90 per cent of the areas where members of the Italian and Hungarian minorities live – must be able to receive its signals.<sup>56</sup>

In 2003, the total revenue of RTV Slovenia was SIT 26,034 million (or approximately €111.15 million),<sup>57</sup> while its total expenditure was SIT 28,654 million (€119.39 million). Some 600,000 individuals pay the licence fee, which is the most important funding source for RTV Slovenia. In 2003, the public broadcaster's total marketing revenue (advertising and other commercial activities) was SIT 3,925 million (€13.7 million), a 7.2 per cent decrease with respect to 2002. TV Slovenia attracted the lion's share (71 per cent) of the total advertising income of RTV Slovenia in 2003.<sup>58</sup>

RTV Slovenia is governed by the Council of RTV Slovenia, which consists of 25 members, of whom 17 are appointed by various institutions of civil society and academia, three by the staff of RTV Slovenia, and five by Parliament. The Council appoints the Director-General, who has to be confirmed by Parliament. It also appoints the programme directors of Radio and Television on the basis of a public

<sup>53</sup> The draft Law on RTV 2005 is available (in Slovenian) at <http://www.kultura.gov.si/legislations.cp2?&uid=18532> (accessed 10 July 2005), (hereafter, draft Law on RTV Slovenia).

<sup>54</sup> The Statute was adopted on the basis of Law on RTV Slovenia by the Council of RTV Slovenia, with the consensus of Parliament. Statute of RTV Slovenia, *Official Gazette* no. 66/1995, 17 November 1995.

<sup>55</sup> Law on RTV Slovenia 2001, art. 4.

<sup>56</sup> Law on RTV Slovenia 2001, art. 5.

<sup>57</sup> The exchange rate used throughout this report is €1 = SIT 239 (Slovenian Tolars).

<sup>58</sup> RTV Slovenia, *Annual Report 2003*, published in English and Slovene language, Ljubljana, 2004, (hereafter, RTV Slovenia, *Annual Report 2003*), p. 63.

announcement, upon a proposal following the recommendations of the Director-General. Editors-in-chief are appointed on the basis of a public announcement upon a proposal following the recommendations of the programme director of radio or television.

#### 4.1 The public broadcasting system

TV Slovenia remains the largest and most important television station. It produces the largest quantity of domestic production, and the most diverse production, including news, current affairs, arts, religious programmes, documentaries and other content.

In 2004, TV Slovenia's four channels had a 37.6 share of all television viewers between 07.00 and 24.00.<sup>59</sup> After new commercial channels started to broadcast in the mid-1990s, to big success, TV Slovenia started to lose viewers and to adopt more commercial approaches and contents, causing critical responses from both commercial broadcasters and public. However, since 2000, its ratings have been improving every year.

Although RTV Slovenia's annual report for 2004 had not, at the time of writing, yet been published, data provided by RTV Slovenia shows that it had 2,150 employees at the end of 2004. The number of part-time employees and contributors has decreased by 250 since 2003. According to management plans, RTV Slovenia will have to reduce the number of its employees and regular contributors by a further 600 by 2008. However, far from shedding staff, RTV Slovenia employed 64 new staff during 2004.<sup>60</sup>

#### 4.2 Services

RTV Slovenia broadcasts two national television channels, one regional channel, Television Maribor (Tele M) and one channel for the Italian-speaking minority in Slovenia (TV Koper Capodistria). The public service broadcaster also produces television programmes for Slovene national minorities in neighbouring countries, television programmes for foreign audiences, and television programmes in the regional centres in Maribor and Koper/Capodistria. There is satellite broadcasting for external audiences.

On its regional channel, TV Koper Capodistria, TV Slovenia does not broadcast in languages other than Slovenian and Italian. However, TV Slovenia also produces programmes in Hungarian for the Hungarian-speaking minority in Slovenia at its regional centre in Lendava (these programmes are broadcast on channels SLO 1 and Tele M), as well as in German and in English for foreign audiences (with Slovenian subtitles when broadcast in Slovenia).

<sup>59</sup> Media Services AGB, *Research on 2004*.

<sup>60</sup> Working material for the Annual Report of RTV Slovenia for 2004 received directly from RTV Slovenia for this report; and S. Banjanac-Lubej, "Izgube so katastrofalne", ("Losses are disastrous"), in *Zurnal* weekly, 27 May 2005.

**Table 4. RTV Slovenia regional channels**

Channel	Launch	Diffusion	Technical Penetration	Language	hours/week	Programming	Revenue source
TV Koper Capodistria	1971	T, C	40	Italian Slovenian	85	Generalist	L-F / Adv.
Tele M	2002	T, C	20	Slovenian	75	Generalist	L-F / Adv.

**Abbreviations:** L-F licence fee; Adv. Advertising, T terrestrial, C cable  
**Source:** Broadcasting Council<sup>61</sup>

### 4.3 Funding

In 2003, revenue from licence fees accounted for the 72.8 per cent of RTV Slovenia's income of SIT 26,034 million (or €111.15 million). (See Table 5 below.) Other income came mainly from advertising, in-house music and audiovisual production, public concerts, book publishing and sponsorship. A further SIT 300 million (€1.25 million) was received from the State budget, in the form of State subsidies for special projects, mainly for programming for the two national minorities.

**Table 5. RTV Slovenia revenue and expenditure structure (2003)**

		Share of total (per cent)
Source of revenue	Licence fee	72.8
	Advertising	16.5
	Other commercial income	9.5
	Co-production	1.2
Type of expenditure	Labour costs	41.3
	Material costs	34.7
	Financial costs	13.0
	Amortisation	9.9
	Extraordinary costs	2.0

**Source:** RTV Slovenia<sup>62</sup>

All owners of radio or television receivers must pay a licence fee. The fee is paid by more than 600,000 individuals (as of 31 December 2003). Since August 2004, the licence fee has stood at SIT 2,637 (€11) monthly. RTV Slovenia identifies potential payers from lists of domestic electricity consumers. To be exempted from the fee, it is

<sup>61</sup> Broadcasting Council, *Radio and TV Programmes*, p. 22.

<sup>62</sup> RTV Slovenia, *Annual Report 2003*, p. 65.

necessary to sign a legally binding declaration that there is no radio or television set in the household. False declarations may be prosecuted.

The Law on RTV Slovenia 1994 established that the overall amount of advertising and other commercial presentations in the programmes of RTV Slovenia must not exceed 15 per cent of daily broadcasting time, and must not exceed 12 minutes of any 60 minutes of programming.<sup>63</sup> The Mass Media Act imposed restrictions on advertising for all media, and additionally limited advertising in prime time (between 18.00 and 23.00 hours) to nine minutes per hour and prohibited teleshopping during this time. For radio and television channels of “special importance”, including RTV Slovenia (see section 3.2) restrictions on advertising, with respect to frequency, content and sponsorship, are set out in Article 94 of the Mass Media Act, while Article 98 restricts the amount of advertising.

In accordance with the Law on RTV Slovenia, funding from the State budget for special projects may only be used for:

- production, broadcasting and transmission of domestic programmes by the public service broadcaster;
- production of programmes for Slovene minorities in neighbouring countries and for Slovenian emigrants;
- production of programmes designed for foreign audiences;
- construction, maintenance and operation of the transmission network; and
- important cultural, educational and scientific projects.

During the 1990s, RTV Slovenia incurred escalating losses which have not yet been recovered, although its financial performance is improving. Together with accumulated interest, by 2003 the total amount owed amounted to SIT 5,204 million (or approximately €21.68 million). There was also a decline in advertising revenue; in 2003, advertising revenue was 18.8 per cent smaller than planned.

According to the management,<sup>64</sup> one of the reasons for RTV Slovenia’s losses in previous years was the Government’s repeated refusal to take the unpopular (and possibly inflationary) step of increasing the licence fee. However, revenue from the licence fee did increase following amendments to the Law on RTV Slovenia in 1999 which obliged all households connected to the public electric power grid (unless those exempted) to pay the licence fee.<sup>65</sup>

Aleks Štakul, the current General Director of the RTV Slovenia, has sought an annual increase of the licence fee corresponding to the overall rate of inflation. He has also

---

<sup>63</sup> Law on RTV Slovenia 1994, art. 10.

<sup>64</sup> Interview with Aleks Štakul, 9 July 2004.

<sup>65</sup> Law on RTV Slovenia 1999.

proposed that an independent supervisory committee, rather than the Government, should be in charge of determining the licence fee. Štakul also requested in 2004 additional State funds for “special tasks and programmes of public service broadcasting, minority programmes, technological updating and necessary digitalisation of archives, transmitting network and multimedia services.”<sup>66</sup> However, by June 2005, there had been little response to these proposals.

In the beginning of 1998, Pop TV began to promote the idea of prohibiting advertising on public service broadcasting so that commercial stations would have the advertising market to themselves.<sup>67</sup> However, as the number of homes with televisions in Slovenia is relatively small – 600,000 compared to more than three million in Austria or 3.8 million in the Czech Republic – it seems unrealistic to expect that public service broadcasting could finance itself only from licence fees.

Moreover, in the past, non-commercial local, regional and student radio and television stations succeeded in securing a part of the licence fee that was established exclusively for public service radio and television. Under the Mass Media Act, three per cent of the revenue from the licence fee should be distributed to non-commercial radio and television stations. RTV Slovenia filed a complaint, which the Supreme Court endorsed, ruling in 2003 that RTV Slovenia should be the only organisation to receive money from the licence fee. Nonetheless, the court ruled that revenue collected prior to this judgement must be paid to all radio and television stations of special importance (see section 3.2), and not just the public service broadcasters.<sup>68</sup> Approximately SIT 770 million SIT (€32 million) would therefore be split among these stations, for arts, education and other non-commercial programmes. RTV Slovenia opposes this decision and has not paid this money.

#### 4.4 Governance structure

The draft Law on RTV Slovenia 2005 includes major changes, including a new body – the Programming Council – that will replace the existing Council of RTV Slovenia.

##### 4.4.1 Council of RTV Slovenia

At the time of writing (early June 2005), RTV Slovenia is governed by the Council of RTV Slovenia, which consists of 25 members. Various institutions of civil society and academia appoint 17 members, three are appointed by the staff of RTV Slovenia, and five are appointed by Parliament.

<sup>66</sup> Interview with Aleks Štakul, 9 July 2004.

<sup>67</sup> Marko Milosavljevič, “Daj slab nasvet”, (“Give bad advice”), in *Delo*, 14 March 1998, p. 25.

<sup>68</sup> See section 5.2.

The choice of the five Council members who are appointed by Parliament reflects the division of power among the parties in Parliament. Parliament cannot appoint members of the House or State officials to the Council. The Italian and the Hungarian national communities each appoint one member through their minority organisations. In addition, the following organisations each appoint one member of the Council:

- the University of Ljubljana and the University of Maribor;
- the Academy of Arts and Sciences;
- the Association of Film Producers;
- the Association of Musicians and the Association of Composers;
- the Association of Writers and the Association of Theatre Artists;
- the Association of Cultural Organisations;
- the Federation of Journalists;
- the Council of the Organisation of the Disabled Persons;
- the National Olympic Committee;
- the Association of Employers;
- the Cooperative Union and Farmers' Association;
- the Coordination Committee of Organisations and Parties of the Retired People;
- trade unions;
- the Youth Council and the Union of Youth Supporters; and
- religious communities in Slovenia.

Members of Parliament, public officials and party leaders, as well as staff of RTV Slovenia (including former staff employed less than three years ago) cannot be elected to the Council as representatives of civil society. Directors and other executive staff of RTV Slovenia who are appointed by the Council are also excluded.

The mandate of Council members is four years and may be renewed. Council members can be dismissed by the organisations that selected them, but as yet no member has yet been dismissed. The criteria and procedures for dismissal should be defined in the statutes of these organisations, but are often not clearly defined or missing altogether. The Council of RTV Slovenia has the following responsibilities:<sup>69</sup>

---

<sup>69</sup> Law on RTV Slovenia 2001, art. 18.

- adopting the Statutes of the Council;
- appointing and dismissing the Director General, the Directors of Radio and Television Programmes, the Director of the Transmitters and Communications Unit, the Directors of the National Minority Programmes and the Editors-in-chief;
- proposing the amount of the licence fee (for approval by the Government);
- adopting the financial plan and the final financial report; and
- defining programme standards and the programme framework

The decision about the licence fee must be approved by the Government, while the election of the Director General, as well as the adoption of Statutes, must be approved by Parliament.

The Council of RTV Slovenia appoints the Director General on the basis of a public announcement, but the appointment must be confirmed by Parliament. The Council also elects the Directors of Radio and Television Programmes, after a public announcement and following the recommendations of the Director General. The Editors-in-chief of the different sections, and the Head of the Transmitters and Communications Unit, are appointed on the basis of a public announcement following the recommendations of the Programme Director in charge. The Directors of the National Minority Programmes are appointed on the basis of a public announcement following the recommendations of the Director General and the National Minority Council. All tenures last four years. The Council decides by a majority vote.

#### 4.4.2 Supervisory Board

A seven-member Supervisory Board oversees the financial operations of RTV Slovenia. Parliament appoints and dismisses five members of this Board, with the remaining two elected by RTV Slovenia's own staff. They are all appointed for a mandate of four years.

The main tasks of the Supervisory Board are the supervision of the business operations of RTV Slovenia, are to review the financial plan, and to supervise the account statements, final balance and books, and the legal conformity of operations. In the Board's annual report for 2003, Chairman, Nikola Damjanić highlighted the necessity of realistic and harmonised planning, given that RTV Slovenia's revenues have decreased and its labour costs have increased.<sup>70</sup>

---

<sup>70</sup> RTV Slovenia, *Annual Report 2003*, p.13.



## 4.5 Programme framework

### 4.5.1 Output

The RTV Slovenia report for 2003 states that 748 full-time TV Slovenia employees, together with 384 regular contributors and part-time workers, produced a total of 14,310 hours of programming for SLO 1 and SLO 2. This comprised 13,091 hours of programmes and 1,219 hours of commercials, television sales and trailers (see Table 6 below). This total was 646 hours less than in 2002, but still 1,318 hours more than in 2001.

**Table 6. Programme output of TV Slovenia – breakdown by genre (2003)**

Genre	Annual output (hours)	Share of total annual output (per cent)
News and current affairs programmes	2,637	18
Documentaries	1,417	10
Sport	1,493	10
Feature films	1,403	10
Music	1,375	10
Series	1,053	7
Children and youth programmes	810	6
Advertising and teleshopping	865	6
Entertainment	875	6
Newscasts	1,068	8
Trailers	354	3
Education	348	2
Other programmes	350	2
Television drama	262	2
Total	14,310	100

Source: RTV Slovenia<sup>71</sup>

For decades, SLO1 and SLO2 broadcast a mixture of highbrow and popular contents, including an important share of programmes from Western Europe and the USA. Since the start of commercial broadcasting, public service television stations opted for an increase of popular formats. New game shows, including licensed programmes such as *The Weakest Link*, European soap operas and similar light entertainment were introduced. This has been reflected in increases both in the quantity of advertisements and in overall advertising revenue.

<sup>71</sup> RTV Slovenia, *Annual Report 2003*, p. 27.

Nonetheless, what mainly differentiates the public service broadcaster from commercial stations, is that it is the only television station that provides the whole spectrum of programmes, including arts, documentaries, religious programmes, news, current affairs, education, children and youth programmes. Unlike the commercial stations, it emphasises quality and European production. This orientation includes the financing (in part) of new Slovenian films and series. The transmission of quality European works and independent productions has also increased.

TV Slovenia has lost a number of sports broadcasting rights to commercial competitors, including the Wimbledon tennis tournament, the World Cup football finals in Japan and South Korea, and some Formula 1 car racing. However, it still provides the biggest share of sports programmes among all Slovenian television stations, including the most popular ones, such as skiing, international football and basketball, whose events regularly achieve the highest ratings. For the next World Football Cup, TV Slovenia decided to buy the rights jointly with the commercial channel, Pop TV, and its parent company, Pro Plus.

#### 4.5.2 Programme guidelines

Impartiality in all programmes is the primary value demanded by the Law on RTV Slovenia.<sup>72</sup> According to this law, reporting must be emotionally neutral, balanced, ethical and impartial. Employees of RTV Slovenia must avoid any suspicion of partiality. The producers of television programmes must not suppress or neglect important pieces of information, which are not in accordance with their personal belief.

The Law on RTV Slovenia also obliges journalists to provide an equal and balanced presentation of a wide range of different opinions about a particular issue. Journalists must also enable representatives of all involved parties to express their point of view. This applies to all types of programmes produced by the station.

Nonetheless, certain topics that TV Slovenia's editors considered important for the country because of Government policy, but that were controversial or potentially problematic, were handled with excessive care. For example, prior to Slovenia's decision to join NATO, opponents of NATO were often left out of the debate, probably due to self-censorship by journalists and editors (see section 3.4).

---

<sup>72</sup> Law on RTV Slovenia 2001, art. 4.

### 4.5.3 Quotas

The EU “Television without Frontiers” Directive (hereafter, TWF Directive)<sup>73</sup> is, to a certain extent, mirrored in Article 92 of the Mass Media Act 2001, which lists the following requirements for RTV Slovenia:

- European audiovisual production must account for the majority of airtime of annual public service broadcasting.
- Both public service television stations, SLO1 and SLO2, have to reserve at least 25 per cent of their annual airtime for programmes produced in Slovenia.
- The public service broadcasters must reserve 10 per cent of their schedule for programmes by independent producers.

**Table 7. The structure of TV Slovenia’s broadcasts (2003)**

		Hours aired	Share of total (per cent)
<b>Total</b> (excluding advertising, television sales and trailers)		13,091	100
<b>Type of production</b>	In-house and commissioned production – first run	3,434	26
	Other production – first run	2,954	23
	Repeats	6,703	51
<b>Source of works</b>	Original Slovenian works	7,478	57
	US works	1,543	12
	European works	3,188	24
	Other	882	7

Source: RTV Slovenia<sup>74</sup>

According to its annual reports over recent years, RTV Slovenia did fulfil these requirements for Slovenian and other European works. However, its fulfilment of the requirement regarding independent production is not so clear, as independent production is not well developed in Slovenia, especially in terms of the quantity of production (see section 6).

<sup>73</sup> 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](http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf) (accessed 15 March 2005).

<sup>74</sup> RTV Slovenia, *Annual Report 2003*, p. 27.

With its minority-language output, RTV Slovenia is obliged to reach 90 per cent of the areas where members of the Italian and Hungarian minorities live. There is, however, no quota for this output. Under the RTV Slovenia's code of ethics, *Professional Standards Professional Standards and Ethical Principles of Journalism in the Programmes of RTV Slovenia*,<sup>75</sup> it must also pay attention to other ethnic and religious minorities in Slovenia, and to Slovenian emigrants.

In 2003, Television Studio Lendava, the Hungarian-language television studio of RTV Slovenia, produced as many as 192 programmes, with a special emphasis on the Hungarian-speaking minority in Slovenia. These were mostly 30-minute reviews of current affairs, focusing on the bilingual area of Prekmurje. In September 2004, a new RTV studio was opened in Lendava.

**Table 8. Italian-language programming on TV Koper Capodistria – breakdown by genre (2002)**

	Share of total hours (per cent)
Sport	21.6
Television drama	19.0
Current affairs	19.0
Arts programme	18.0
News	13.0
Music	5.0
Children's programme	4.0
Religious programme	0.2
Entertainment programme	0.2
Total	100

Source: RTV Slovenia<sup>76</sup>

Nonetheless, there is discontent with the national minority programming both among the producers and in civil society. Producers have called for additional State funding and civil society organisations for more minority programming. Aleks Štakul, General Director of RTV Slovenia, has demanded that the Government provide additional, targeted funding, to cover 50 per cent of the total costs of producing such programmes.<sup>77</sup>

<sup>75</sup> RTV Slovenia, *Professional Standards*, p. 61.

<sup>76</sup> RTV Slovenia, *Annual Report 2002*, Ljubljana, 2003, p. 23. (No information for this programme is available in the *RTV Annual Report 2003*.)

<sup>77</sup> Interview with Aleks Štakul, General Director, RTV Slovenia, Ljubljana, 9 July 2004.

RTV Slovenia is also obliged to produce news and information for the international public in English, German and Italian. Such broadcasts are part of the programme of radio stations and they include, for example, regular information on traffic and weather in the summer during the tourist season. Radio Slovenia International broadcasts in English and German. No such news is available on TV Slovenia.

There are no special quotas for languages or minority group representation. This is particularly problematic for the Roma minority, which is almost absent from RTV Slovenia radio and television programmes.<sup>78</sup>

There are no specific quotas for culture, sports or other programme strands.

#### 4.6 Editorial standards

In addition to the Law on RTV Slovenia, the Statutes of RTV Slovenia, and the Mass Media Act, RTV Slovenia journalists must also respect the *Code of Practice for Slovenian Journalists*<sup>79</sup>(2002) and the RTV Slovenia's code of ethics (2000).<sup>80</sup>

At the moment, the Council of RTV Slovenia acts as a sort of ombudsman, discussing complaints regarding biased or unprofessional reporting or programmes. However, to date no such case brought before the Council has resulted in penalties or sanctions. RTV Slovenia's code of ethics foresaw the appointment of an ombudsman to monitor and safeguard adherence to professional standards and ethical principles. The current management of RTV Slovenia also stated that an ombudsman was needed in their response to the draft Law on RTV Slovenia 2005 (see section 4.7). However, the draft law makes no mention of an ombudsman or of any other mechanism for monitoring quality and adherence to professional standards and ethical principles. There are also currently no independent and effective mechanisms to improve public accountability regarding programmes and their contents.

The draft Law on RTV Slovenia 2005 provides the new Programming Council with a mandate to deal with complaints from viewers and listeners, and instruct the Director General on how to introduce changes. At the same time, however, the draft law does not foresee a complaints mechanism or any other mechanism for audience feedback, nor does it provide for any direct accountability to the public, other than through an annual report drawn up by the Supervisory Board. The Peace Institute, an NGO,

<sup>78</sup> In the 2002 census, the Roma minority numbered 3,246 persons, or 0.17 per cent of the population of Slovenia. 2002 census data.

<sup>79</sup> Association of Slovene Journalists, *Društvo novinarjev Slovenije, (Code of Practice for Slovenian Journalists)*, Ljubljana, 2002.

<sup>80</sup> RTV Slovenia, *Professional Standards*.

suggested an alternative mechanism,<sup>81</sup> proposing that the Programming Council establish a committee for complaints and proposals from viewers and listeners – established within the editorial offices of RTV Slovenia and reporting to the Programming Council – which would watch over complaint procedures and decide on the most complicated cases. However, all amendments to the draft law proposed by the Peace Institute were refused.

The original version of RTV's code of ethics (adopted in 2000) actually forbade the expression of opinion by journalists in any form, and comments are still rare today. Nonetheless, Tanja Starič, the Editor-in-chief of news and education programmes at TV Slovenia in recent years, warns of several possible traps,

Our code of ethics [*Professional Standards and Ethical Principles of Journalism in the Programmes of RTV Slovenia*], which has a fundamental significance for public service broadcasting, obliges journalists to report impartially and in a balanced manner, and also to separate journalistic reports and analyses from commentaries. But at the same time, articles in the Code of Practice [*Code of Practice for Slovenian Journalists*] can represent an obstacle for expressing journalistic opinions and viewpoints. For example, if a journalist is merely quoting opinions of the parties involved, then truth and facts can become blurred. This kind of “mathematical” division of opinions without an active journalistic attitude can represent an alibi for journalistic self-censorship or laziness over revealing facts and circumstances.<sup>82</sup>

Two types of sanction can be used against journalists for not upholding professional standards. Journalists can be summoned to the Journalistic Court of Honour, an internal committee which discusses particular cases and issues public warnings. If, as sometimes happens, the Court rules that a journalist has acted unethically, the judgement should be published in the same outlet where the unethical act took place. However, since this is a self-regulatory system adopted by journalists and not accepted by all publishers, it is not binding. Some media do not publish the decisions of the Court of Honour or at least not those related to themselves. The Mass Media Act also regulates the rights of reply and of correction, which are very detailed and can result in a civil court order to a publisher to publish a reply or correction. Another way to address violations of professional standards is to file a civil court case and demand financial compensation.

No journalist of RTV Slovenia has ever been fired for professional misconduct. There were certain civil court cases involving private persons, claiming defamation, but there have been no recent civil court case involving politicians or other public figures.

---

<sup>81</sup> Peace Institute, *Predlogi za spremembe in dopolnitve Predloga zakona o RTV Slovenija, (Suggestions for amendments and corrections of Draft Law on RTV Slovenija)*, available at [http://www.mirovni-institut.si/slo\\_html/novosti/Predlog%20amandmajev%20ZRTVS.doc](http://www.mirovni-institut.si/slo_html/novosti/Predlog%20amandmajev%20ZRTVS.doc) (accessed 16 July 2005).

<sup>82</sup> Interview with Tanja Starič, 6 July 2004.

The impartiality of the public service broadcaster is frequently debated. Most of the accusations of biased reporting come from political parties and politicians – in the last ten years, most often from the right-wing parties who were in opposition. It remains to be seen what will be made of the media coverage of the right-wing Government, elected in October 2004.

#### 4.7 The future of public service broadcasting in Slovenia

A number of questions have been raised in recent years regarding the future of public service broadcasting in Slovenia, particularly its financing and management, and its political independence from the State and pressures from commercial competition.

Interviewed for this report, General Director Štakul argued for specific changes in the management system: “Presently, there is no efficient and transparent management in RTV Slovenia. For instance, the General Director is not able to choose the most important managers. The system does not provide quick and efficient decision-making and does not ensure common strategic goals.”<sup>83</sup> Štakul was critical of the fact that journalists and other employees of RTV Slovenia are categorised as public servants when it comes to negotiating their wages and working conditions. By making it possible to invoke other laws that restrict the work and actions, as well as the expression of opinions, of public servants, this categorisation offers more scope for restricting journalists’ activities, including their journalistic work, thus threatening journalistic independence. Indeed the law is unclear with respect to with whom journalists should negotiate their salaries. As a result, when RTV Slovenia journalists went on strike out of solidarity with their colleagues at private media (who, in October 2004, were on strike for better conditions and wages), the Council of RTV Slovenia had to give its authorisation for them to negotiate with the General Director.

Marjan Jurenc, chief executive officer of Pro Plus (the owner of commercial networks Pop TV and Kanal A) has called for a public debate to establish what public service broadcasting should be in Slovenia.<sup>84</sup> However, a number of roundtables organised on this topic, mostly by NGOs, met with little or no response from the Government, the regulatory bodies or the Ministry of Culture.

In May 2004, RTV Slovenia presented the document *Strategy for RTV Slovenia 2004–2010* to the Government and Parliament, and later also an Annex to this Strategy.<sup>85</sup> The Strategy proposed several methods to ensure stable financing for public service broadcasting, together with cost-cutting measures:

<sup>83</sup> Interview with Aleks Štakul, 9 July 2004.

<sup>84</sup> Interview with Marjan Jurenc, chief executive officer, Pro Plus, Ljubljana, 13 July 2004. (Pro Plus is the owner of the commercial television networks Pop television and Kanal A).

<sup>85</sup> RTV Slovenia, *Dopolnitve dolgoročne strategije razvoja RTV Slovenija 2004–2010*, (Annex to the long-term development strategy of RTV Slovenia 2004–2010), Ljubljana, 2004.

- It should be stated clearly in law that the public service broadcaster is the exclusive beneficiary of licence fee revenue.
- The Government should not be free to decide at its own discretion about increasing the licence fee, which should rise in accordance with the annual rate of inflation.
- Additional State funds should be granted to the public service broadcaster to meet its obligations in the production of minority programmes.
- State funding should also be available for strategically important and costly investment tasks, such as the transition from analogue to digital broadcasting, the digitalisation of radio and television archives, the modernisation of the central photo-film laboratory and the development of the Multimedia Centre (see section 7.4).
- RTV Slovenia should develop multimedia services such as the transmission of radio and television programmes on the Internet and include content such as videotext, subtitles for the deaf and access to programme archives.

The Strategy also foresaw a review of the size and composition of the present Council of RTV Slovenia. The purpose would be to find ways to prevent Council members from acting on behalf of particular interests, rather than promoting the public interest.<sup>86</sup>

The Strategy also suggested examining whether to transform the public service broadcaster into a company with limited responsibilities, owned by the State. This would enable RTV Slovenia to carry out its public service obligations while, at the same time, allowing it to invest together with private companies.

According to data published in the Strategy, production costs for minority programmes in 2004 reached nearly SIT 2.4 billion (or approximately €10 million).<sup>87</sup> However, only SIT 205 million (€0.85 million), or 8.7 per cent of the costs, were covered from State funds. The Strategy proposes that the Government should cover half of the expenses for minority programmes. It should recommend that it should be examined whether Television Koper/Capodistria – whose main duty is to provide programming for the Italian-speaking minority in Slovenia and the Slovenian-speaking minority in Italy – should continue to produce generalist programming, not only programming aimed at minorities.

However, few of these sensible suggestions were included in the draft Law on RTV Slovenia 2005 presented to the Parliament by the Ministry of Culture on 1 April 2005.

<sup>86</sup> In 2001, the Council had adopted a rule that defined conflicts of interest and prohibited members from involvement in other business relationships with RTV Slovenia.

<sup>87</sup> From this amount, almost SIT 1.9 billion (€7.92 million) was used for Italian-language minority programmes and SIT 450 million (€1.87 million) for Hungarian-language minority programmes.



The draft was prepared in secrecy, without consulting academic experts or journalists' associations, and was supposed to be fast-tracked through Parliament.

The draft law introduces massive changes in the organisational and editorial structure of RTV Slovenia. According to the Explanatory Memorandum of the draft law, the main motive behind the proposed changes to the organisational structure is the acute politicisation of the existing Council of RTV Slovenia. The Memorandum declares:

For quite some time now, the status of public service television in Slovenia has not been fully comparable to the status of public service broadcasters (PSB) in other EU member states. Particularly problematic has been the area of RTV Slovenia's management. The currently valid law on RTV Slovenia was written in 1994 in special circumstances, that is to say, at the time when the new director began his four-year term. The 1994 law introduced a two-level decision process, taking away all the powers of the Director General with regard to programming, and transferring these to the directors of individual radio and television programs. This arrangement deviates from those practised by other European countries with PSBs, and indeed, already during the few years following its introduction, it proved to have expressly negative implications, since RTV entered a management crisis and incurred a loss amounting to several billion *tolars*.

A special problem is presented by the composition of RTV Slovenia bodies, the method of electing their members and the powers they have. For example, in the current system, the RTV Slovenia Council is a body that in effect incorporates all management and all crucial staff-related functions as well as some supervisory functions, although practice has shown that this body frequently failed to address certain vital aspects of the problems pestering this public institution. In addition, practice has proved that one body cannot possibly be expected to find appropriate solutions for the entire range of issues that need to be addressed. In the present scheme, the Supervisory Board is no more than a paper tiger that can only issue warnings, but cannot adopt rules since it does not have appropriate powers. The result of this arrangement is poor performance of various bodies.<sup>88</sup>

The decisions of the Council of RTV Slovenia are, according to the authors of the draft (who at this time of writing remain unidentified), often perceived as "political" and there is criticism of the fact that a former president of a political party – although not named explicitly, the reference is clearly to Janez Kocijančič – was repeatedly elected onto the Council and even chosen as its chairperson. The Memorandum claims that "Slovenia is the only EU country (and judging by the available data, the only world country as well) with the former leader of a (previously totalitarian) political party as a head of the council of its national radio and television broadcaster."<sup>89</sup>

<sup>88</sup> Ministry of Culture, *Ocena stanja in razlogi za sprejem zakona, (Explanatory Memorandum to the draft Law on RTV Slovenia)*, (draft), published on 1 April 2005, (hereafter, Ministry of Culture, *Explanatory Memorandum*).

<sup>89</sup> Ministry of Culture, *Explanatory Memorandum*.

The draft law proposes the abolishment of the public broadcaster's 21-member Council, and its Supervisory Board:

The current method of shaping the RTV Council, which, according to the authors of the proposal, was supposed to enable the domination of civil society within the Council, actually established a corporate transmission of pre-democratic political representation while excluding a great part of civil society. Of several thousand civil society institutions, only around twenty are given the opportunity to nominate their representatives to the RTV Council, which is an evidently controversial rule.<sup>90</sup>

The draft law envisages the creation of new 29-member Programming Council that would take decisions about content, and a new Supervisory Board that would be authorised to take organisational and financial decisions. The new Programming Council would consist of 29 members:<sup>91</sup>

- 16 civil society representatives appointed by Parliament;
- five persons representing the main political parties, also appointed by Parliament;
- three persons elected from RTV Slovenia staff;
- two representatives of religious communities, appointed by the President;
- one person appointed by the Slovenian Academy of Arts and Sciences; and
- one person appointed by each of the Italian and Hungarian national communities.

The Parliamentary Committee for Appointments would collect proposals for the 16 civil society representatives, which Parliament would then confirm. However there is very little detail on the procedure whereby civil society is supposed to nominate members; until now, representatives from civil society on the Council were chosen without any involvement by Parliament. In addition, the Government would have greater influence over the new Programming Council than under the current system, as 21 of the Council's members would be approved by Parliament.

The draft law also establishes a new Supervisory Board that would have responsibilities in the areas of management and business operations. The Supervisory Board would consist of 11 members:

- five appointed by Parliament, representing the five main political parties;
- four appointed by the Government; and
- two elected by RTV Slovenia employees.

<sup>90</sup> Ministry of Culture, *Explanatory Memorandum*.

<sup>91</sup> Draft Law on RTV Slovenia, art. 17.

The Government would therefore also have a majority on the new Supervisory Board, with nine of the 11 members named by Parliament or by the cabinet.

Under the draft law, the Supervisory Board of RTV Slovenia would have the following responsibilities:<sup>92</sup>

- adopt the Statute of RTV Slovenia on the basis of prior consent by the Programming Council of RTV Slovenia;
- adopt the financial plan and the annual report of RTV Slovenia and decide about the use of any surplus income;
- determine the price of services that are not part of the public service; determine the way in which television sets and radios are registered and registration temporarily or permanently cancelled;
- determine in detail the payment method for having a radio or television set, as well as the criteria for writing off, partly writing off or postponing payment and paying in instalments in line with this act;
- supervise the operations of RTV Slovenia;
- supervise the keeping of the books, the legality of business operations, and checking periodic statements of accounts;
- have a right to examine all documentation, including that which relates to the functioning of transmitters and connections;
- adopt its rules of procedure and organise its work and appoint its committees in accordance with the rules of procedure;
- decide on other issues determined by the law and the Statute.

The General Director, who is currently selected by Council and appointed by Parliament, would stay in place, but future General Directors would be appointed solely by the Programming Council, on the basis of a public call for applications, with no involvement of the Parliament.<sup>93</sup> The General Director's authority would be much increased. At present, the General Director ensures that the public broadcaster's finances are sound, but has no influence on editorial content. Under the draft law, the position would combine managerial and programming responsibilities. The specialised managers currently responsible for radio and television programming would be replaced with positions dealing mostly with organisational and staffing issues. Serving for four years, the General Director would appoint a Director of Radio and a Director of Television (also serving for four years) to run RTV Slovenia's radio and television channels, respectively. The Editors-in-chief would also be appointed by the General

---

<sup>92</sup> Draft Law on RTV Slovenia, art. 25(1).

<sup>93</sup> Draft Law on RTV Slovenia, art. 21.

Director, on the proposal of the Directors of Radio or Television, and would serve four-year terms. In the case that the General Director proposes to appoint an Editor-in-chief who does not enjoy the support of RTV Slovenia's employees, he or she could refer the matter to the Programming Council for a decision. The General Director would also appoint other senior management positions.

Under the new system, the State would have control over almost all managerial bodies at RTV Slovenia. It would have a majority in the Programming Council and the Supervisory Board. It would also indirectly have control over the General Director, who would be appointed by the Programming Council and would have broad responsibilities.

The draft law also foresees a new television channel, run by TV Slovenia but not named yet, to broadcast all sessions of Parliament, as well as sessions of parliamentary committees. When there is no session, this channel would broadcast home-shopping advertisements.

The draft law has provoked many reactions. It has been criticised by, among others, the President of the Republic of Slovenia, the Slovenian Association of Journalists, the Union of Journalists at RTV Slovenia, the Department of Communication Studies and Journalism at the University of Ljubljana, the Peace Institute and the Slovenian Association of Writers. It was also criticised abroad by, among others, Karol Jakubowicz, chairman of the Steering Committee on the Media and New Communications Services of the Council of Europe, representatives of the European Broadcasting Union, Aidan White, General Secretary of the International Federation of Journalists, and the UK NGO, Article 19.<sup>94</sup> Objections voiced by the NGO Article 19 to the draft law included the following:

- The majority of members of both the proposed new bodies are appointed by a political body and there is no requirement that members should sit in their individual capacities.
- There is very little detail on the procedure whereby civil society is supposed to nominate members.
- There is no statement requiring that members of the Supervisory Board should not receive instructions from anyone in regard to their function, or that members must serve the public interest rather than the benefit of any third party or themselves.
- Members of neither of the supervisory bodies are protected against early dismissal or external attempts to interfere with their independence.<sup>95</sup>

<sup>94</sup> Karol Jakubowicz, "Katastrofa", ("Disaster"), in *Delo*, 11 June 2005, Ljubljana, p. 11; Article 19, *Note on the Draft Act on Radio Television Slovenia*, London, May 2005.

<sup>95</sup> Article 19, *Note on the Draft Act on Radio Television Slovenia*, London, May 2005, pp. 2–6.

Almost none of these criticisms or warnings have been accepted. Representatives of the Ministry of Culture and the Government have claimed that international experts and organisations were either misled or were not qualified or expert enough to comment on Slovenia and RTV Slovenia.<sup>96</sup> Domestic experts in media and broadcasting were labelled “so-called experts”, while remarks by the Legal Office of the Parliament, which also expressed warnings, were labelled as politically-motivated and “un-expert”.<sup>97</sup>

## 5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING

From 1994 to 2001 the Mass Media Law regulated commercial broadcasting. During this period, broadcast licences and frequencies for commercial broadcasters were awarded free of charge by the Office for Telecommunications.<sup>98</sup> Control over commercial outlets was virtually non-existent in the 1990s, and there were almost no penalties for any breach of the Mass Media Law. The only punishment that the Office could propose to the Ministry of Culture was the withdrawal of an outlet’s broadcast licence. The effectiveness of the Office was doubtful for the most part of the 1990s. It never withdrew any broadcast licence, in spite of clear violations of the media law by some stations and its control of the broadcasters remained mostly on paper. This situation changed with the Mass Media Act 2001, but nevertheless the law is still quite frequently broken.

### 5.1 The commercial television system

The broadcasting system changed with the fall of socialism in 1990. In November 1990, Slovenia’s first private television station, Kanal A, received a licence for terrestrial broadcasting. Many other private stations received broadcast licences soon thereafter, but their signals were limited to a relatively small area. Most private broadcasters started with limited financial resources and usually showed US soaps and films, and some cheap local production, such as studio debates and interviews.

Kanal A, majority-owned by the businessman Vladimir Polič, earned about \$1.4 million (or approximately €1.15 million) in 1995. It ended the year 1995 with losses of

<sup>96</sup> Gorazd Utenkar, “Vlada predlaga podržavljanje RTVS”, (“The Government proposes the State takeover of RTVS”), in *Delo*, 15 April 2005, p. 2; Milan Slana, “Le kozmetični popravki predloga”, (“Only the cosmetical corrections of the draft”), in *Dnevnik*, 15 April 2005, p. 3; Peter Kolšek, “Interview with Vasko Simoniti, Minister of Culture”, in *Delo*, 27 May 2005, p. 4.

<sup>97</sup> Jože Poglajen, “Igra z umazanimi kartami”, (“The game with dirty cards”), in *Delo*, 21 May 2005, p. 5.

<sup>98</sup> The Office for Telecommunications was later renamed as the Agency for Post and Electronic Communication (APEK) – see section 3.1.

\$2.4 million (€2 million). Public service television remained dominant. This situation changed in December 1995, when a new private television was launched. Pop TV was backed by Central European Media Enterprises (CME), a US firm registered in Bermuda that has invested in a number of Central and Eastern European countries.<sup>99</sup>

No national television frequency was granted to a commercial bidder. To reach the widest possible audience, CME joined with two local television stations, MMTV and Tele 59, and established a production company called *Produkcija Plus Ltd.* (Pro Plus) to make Pop TV's programmes. CME invested some \$16 million (€13.3 million), and together with local partners established Pro Plus. It owned 78 per cent of Pro Plus and also invested some \$20 million (€15 million) in programming, through loans to Pro Plus.<sup>100</sup> Pro Plus also sells advertising for MMTV and Tele 59, as well as for additional affiliates in the Pop TV network of local stations. Through this network, Pop TV reaches 1.7 million viewers, or approximately 87 per cent of the population of Slovenia.

Pop TV was first registered as a trademark, not as a broadcaster. It acquired frequencies from local stations in which it became a part owner. It owned 10 per cent of the capital, but had the right to 33 per cent share of the profits in two of these stations.

Most of Pop TV's initial programming consisted of US films and series. Pro Plus had secured exclusive rights in Slovenia for a number of US and Western European programmes and films produced by studios such as Warner Bros., Twentieth Century Fox and Paramount. Pro Plus also reached agreements with CNN, Reuters and APTN to rebroadcast their news reports and film footage.

The Scandinavian Broadcasting System (SBS), a US company in spite of its name, bought a 33 per cent share of Kanal A in 1997.<sup>101</sup> It soon raised its market share to 10 per cent, with a similar share in national television advertising market. Pro Plus, on the other hand, began to broadcast a second channel, entitled *Gajba Television* (Box Television) in October 1997.

In April 1999, SBS announced that it would take over CME. However, in the end nothing happened except for an exchange of ownership over their Slovenian and Hungarian stations. SBS sold its Kanal A to CME, while CME sold its Hungarian television station to SBS. On 11 October 2000, CME acquired control over Kanal A, the second-placed commercial television broadcaster in Slovenia. CME paid \$12.5

<sup>99</sup> For more on Central European Media Enterprises (CME) see: Sandra B. Hrvatin and Marko Milosavljevič, *Media Policy in Slovenia in the 1990's*, Peace Institute, Ljubljana, 2001; Also: Sandra B. Hrvatin and Lenart J. Kučič, *Report on Slovenia*, in Brankica Petković (ed.), *Media Ownership and its Impact on Media Independence and Pluralism*, SEENPM and Peace Institute, Ljubljana, 2004, available at [http://www.mirovni-institut.si/media\\_ownership/pdf/slovenia.pdf](http://www.mirovni-institut.si/media_ownership/pdf/slovenia.pdf) (accessed 22 June 2005).

<sup>100</sup> Marko Milosavljevič, "Od kod ta ljubezen do tujcev?", ("Where does this love for foreigners come from?"), in *Delo*, 10 April 1999, Ljubljana, p. 22.

<sup>101</sup> Marko Milosavljevič, "Od golobov do televizije", ("From pigeons to television"), in *Delo*, 16 August 1997, Ljubljana, p. 40.

million plus the value of the net current assets and net programming assets for 90 per cent of Kanal A. Consequently, Pro Plus ceased to produce programming under the name of Gajba Television and frequencies previously used for Gajba Television were taken over by Kanal A. From January 2001, Pro Plus has entered into an agreement with Kanal A, under which Pro Plus provides all programming to Kanal A and sells its advertising. All broadcast licences held by Pop TV and Kanal A have been extended to August 2012.<sup>102</sup>

In 1995, the Catholic Church decided to establish a television station, called TV3. Its previous ventures into the media had been quite successful. Both its print outlets (particularly the weekly *Družina*) and its radio station Radio Ognjišče, remain popular and commercially successful. Radio Ognjišče, the Dioceses of Maribor and Koper, Mohorjeva družba (a publisher of predominantly religious titles), and the Economic Forum of Christian Democrats put up starting capital of DEM 5 million (€2.4 million). In 1996 they were joined by Mladinska knjiga, another book publisher.<sup>103</sup>

TV3 began to broadcast on Christmas Eve 1995, and initially most of its output consisted of religious content. It never achieved a significant rating or advertising share. By the end of the 1990s, it had an audience share of only 1.2 per cent. After years of solid financial losses and failing to achieve any clear political, cultural or religious influence, 75 per cent of TV3 was sold to a Croatian entrepreneur, Ivan Čaleta, who at that time also owned Nova TV in Croatia and OBN in Bosnia and Herzegovina. By 2003, TV3 had an audience share of 1.7 per cent.

In 2004, Ivan Čaleta, sold his Croatian channel, Nova TV, to CME. Former Programme Editor-in-chief of Pop TV and Kanal A, Branko Čakarmiš, was appointed Programme Editor-in-chief at Nova TV. One of his first decisions was to adapt Pop TV's show "Our Little Clinic" for the Croatian market, with different actors and in the Croatian language. On 1 November 2004, Čaleta renamed TV3 as Prva TV (First Television). The change of name reflected the intention to broadcast more attractive films and shows, including Slovenian works.

<sup>102</sup> All data is from: CME, *Annual Report 2003*, March 2004, available at <http://www.sec.gov/edgar/data/925645/000101540204000664> (accessed 7 July 2005) (hereafter, CME, *Annual Report 2003*).

<sup>103</sup> Marko Milosavljevič, "Novi slovenski mediji v devetdesetih. 2", ("New Slovenian media in 1990's, part 2"), in *Delo*, 11 May 1996, p. 36.

**Table 9. Gross advertising revenue of the main television channels (2003)**

Channel	Share of total advertising revenue (per cent)
Pop TV	57.6
Kanal A	18.4
SLO 1	13.0
TV 3	9.1
SLO 2	1.9
Total	100

Source: Mediana IRM104

Apart from Pop TV, Kanal A and (to a lesser extent) Prva TV, the other commercial stations are relatively unimportant in terms of influence and advertising revenue. Altogether, they had an audience share of 1.3 per cent in 2003 (adults over 15 years old).<sup>105</sup> They mostly produce cheap in-house programmes, talk shows and music shows.

The majority of smaller media owners, particularly in the radio sector, are businesses with ownership shares held by family members, relatives or common law partners. Due to lack of legal definitions in Slovenia, under the Mass Media Law 1994, a married couple, parents or children were not considered “associated”. This changed with the Mass Media Act. However, one of the fundamental deficiencies with regard to media in Slovenia today remains the lack of transparency, particularly regarding ownership. Most of the smaller television stations are owned by local entrepreneurs, their family members and/or their partners, and not by foreign or domestic media companies or corporations, involved in another business. Although these stations have limited financial resources and produce programming that is often not very attractive, they do nonetheless report on local and regional events and provide discussions on local and regional topics and problems. While they often also broadcast interviews with local, regional or national politicians, their political influence is limited by their low ratings and income.

## 5.2 Services

Commercial broadcasters have almost no public service obligations. They do not have to broadcast news, current affairs, education programme, documentaries, or religious programmes. Not being obliged by law to broadcast programmes for minorities in their

<sup>104</sup> Mediana IRM, *Research on annual gross advertising revenue*, Ljubljana, 2004. There is no official data on net advertising revenue, or on the whole Slovenian advertising market.

<sup>105</sup> Media Services AGB, *Research on 2004*.



own languages, or to provide any airtime for other social groups, they do not broadcast such content.

The Mass Media Act does stipulates that 20 per cent of a commercial station's daily broadcast time must be produced in-house or on behalf of the broadcaster.<sup>106</sup> Own works of at least 60 minutes' duration must be shown between 18.00 and 22.00. Two per cent of the station's annual broadcast time must consist of films of Slovenian origin or other Slovenian works dealing with literature, science and art.

Erotic programmes may only be shown between 00.00 and 05.00. This includes those shown by cable operators, unless they are coded.

### 5.3 Commercial television ownership and cross ownership

#### 5.3.1 Ownership

Potential investors have to receive permission from the Ministry of Culture if they intend to acquire 20 per cent or more of the proprietary shares or the voting rights in newspaper, television or radio companies. The Mass Media Act foresees that the Ministry must consult the Agency for Post and Electronic Communication (APEK) before ruling on such requests.

The Ministry is legally obliged to refuse approval if this would enable an investor to obtain a monopoly over advertising revenues. Under the Mass Media Act, a monopoly means gaining control over more than 30 per cent of radio or television advertising time, or gaining frequencies that exceed 40 per cent of all of the nationally available frequencies.<sup>107</sup> As a monopoly is defined in terms of advertising time, rather than revenue, and by all of the nationally available frequencies, rather than viewer share or coverage, this means that no television station or channel holds a monopoly.

The main controversy arises from the fact that the law leaves the decision on who may or may not become a proprietor freely in the hands of the Government, as it is the Ministry of Culture that decides whether an operator has obtained a monopoly. In addition, the question of how this monopoly is measured has is not clearly answered. A new agreement on the methodology for defining a monopoly has been reached between the Ministry, the APEK and the Broadcasting Council, following initial discussions in 2004. The success and effectiveness of this methodology remains to be seen, however.

The lack of transparency with respect to the ownership of electronic media was a hotly debated issue when the main commercial television stations emerged in the mid-1990s. There was little information about their owners, especially for the foreign-owned channels, such as Pop TV, Gajba Television and Kanal A. However, in the USA,

---

<sup>106</sup> Mass Media Act, art. 85.

<sup>107</sup> Mass Media Act, art. 58.

accurate and up-to-date data on ownership must be reported to the Securities and Exchange Commission, which means that US investors had to include data on their investments in Slovenia. Thus, a lot of data on television stations broadcasting in Slovenia was almost immediately available in the USA.

For years, the ownership of media outlets was not transparent, since many people were willing to sell their names to the real owners for small amounts of money, enabling the true owners to remain concealed from the public eye. Nevertheless, the Mass Media Act provides for some market transparency.<sup>108</sup> By the end of February every year, broadcasters must publish their basic ownership data in the Official Gazette of the Republic of Slovenia. For every owner in possession of more than 5 per cent of the broadcaster's proprietary shares or voting rights, they must disclose the name and surname of the individual, or the name and location of the company. The names of the managers must also be disclosed.

The Mass Media Act does not, however, require precise information about ownership shares. Hence, it can remain unclear whether a shareholder possesses 5, 15 or 50 per cent more than the legal minimum of 5 per cent of the proprietary shares or the voting rights. Representatives of the Ministry of Culture say that it depends on the good will of the owners to come forward and admit their ownership share, given that the Act does not demand the disclosure of exact figures. Those who are more cunning or have better lawyers simply report that they own "more than 5 per cent".<sup>109</sup>

The Ministry of Culture enters this ownership data into the Media Register, which is publicly accessible. However, this contains limited and mostly out-dated ownership information (see section 3.2).

Following the Ministry of Culture's approval for Pro Plus to own more than 20 per cent of two broadcasters, CME has restructured its Slovenian operations. Since 30 January 2003, Pro Plus has owned 100 per cent of Pop TV and Kanal A. The US company CME owns 96.85 per cent of the voting and profits interests in Pro Plus with corresponding economic and voting rights. Prior to 30 January 2003, CME had 78 per cent of the voting interests in Pro Plus and an effective share of profits of 85.5 per cent<sup>110</sup>. Thus the three largest Slovenian commercial television stations are controlled and almost completely owned by foreign investors, while the majority of smaller media owners – even more in the radio sector – are mostly businesses with ownership shares held by family members, relatives or common law partners.

<sup>108</sup> Mass Media Act, art. 12 and 64.

<sup>109</sup> Petra Zemljič, interview with Sašo Gazdič, representative of the Ministry of Culture, "Dosje mediji in kapital", ("Dossier: the media and the money"), in *Večer*, 20 March 2004.

<sup>110</sup> All data is from: CME, *Annual Report 2003*.

### 5.3.2 Cross-media ownership

In accordance with the Mass Media Act, owners can be involved in either radio or television broadcasting, and not in both.<sup>111</sup> The owner of a radio or television channel can control up to 20 per cent of the shares or voting rights at a daily newspaper and *vice versa*.<sup>112</sup> There are no limits regarding cross-media ownership of magazines and radio or television channels. Advertising agencies cannot own or control more than 20 per cent of the shares or voting rights at radio or television channel. Telecommunications companies cannot own a radio or television channel.

There are seven daily newspapers in Slovenia. As shown below in Table 10, the dailies with the highest circulation are the broadsheet *Delo* and the tabloid *Slovenske novice*, both owned by the holding company Delo d.d.. They share a number of special interest supplements (*Ona, Polet, Delo & Dom, Vikend*), while on Sunday they publish *Nedelo* (average circulation 70,000 copies).<sup>113</sup> Together, these two newspapers control some 60 per cent of the daily newspaper market. Two other quality dailies are both regional, each controlling about 22 per cent of the market: in the capital Ljubljana there is *Dnevnik*, which also publishes the popular weekly tabloid *Nedeljski dnevnik* (average circulation 250,000); and *Večer* in the north-eastern town of Maribor.

With the exception of *Slovenske novice*, all these newspapers existed in socialist Slovenia. After the year 2000, they were first joined by two new dailies, both specialised: the sports bi-daily newspaper *Ekipa* became a daily, while the business daily *Finance* was launched in February 2001 with a print-run of around 5,000. On 1 October 2004, the regional newspaper *Primorske novice* was re-launched as a daily newspaper. It used to be a successful regional newspaper with a readership of more than 100,000, however no new data have been published since its re-launch. The print-run of all daily newspapers in Slovenia together is about 400,000 copies.

There were no foreign investors in the newspaper market until 2000, when the Swedish corporation Bonnier AG and its partner Dagens Industri invested approximately €3 million in relaunching the newspaper *Finance*, published by *Gospodarski vestnik*. In the same year, the Austrian company Leykam became one of the main owners with more than 27 per cent of the Maribor newspaper *Večer*, while Styria Verlag, also from Austria, bought more than 25 per cent of the Ljubljana daily *Dnevnik*. Some other foreign companies are present in the magazine market (for example, Burda of Germany and Styria of Austria), however print media and radio still remain predominantly in the hands of Slovenian companies, unlike commercial television where the three largest television stations are owned and controlled by foreigners.

---

<sup>111</sup> Mass Media Act, art. 59.

<sup>112</sup> Mass Media Act, art. 56.

<sup>113</sup> The format of *Nedelo* was changed from broadsheet to tabloid in May 2002.

**Table 10. National daily newspapers**

	Target Group	Average sold circulation (fourth quarter of 2004)	Readership (first half of 2005)	Ownership/ Publishing House
<i>Slovenske novice</i>	general public	88,322	425,000	Delo d.d.
<i>Delo</i>	general public	76,574	228,000	Delo d.d.
<i>Večer</i>	general public	50,363	188,000	ČZP Večer d.d.
<i>Dnevnik</i>	general public	46,406	187,000	Dnevnik d.d.
<i>Ekipa</i>	sport	NA	44,000	Salomon 2000
<i>Finance</i>	business	8,078	50,000	Časnik Finance d.o.o.
<i>Primorske novice</i>	regional	NA	79,000	Primorske novice d.d.

Source: NRB<sup>114</sup> and SOZ<sup>115</sup>

Some of the daily newspapers are inter-connected: *Dnevnik* is a co-owner of *Primorske novice* and *Večer*. Some are connected with magazine publishers: *Gospodarski vestnik* owns 48 per cent of *Finance* and also publishes a number of financial magazines. Some are connected with press distribution companies (*Dnevnik* is connected with the main press distributor Delo Prodaja), while others are owned by a company that also has interests in broadcasting (*Ekipa* is owned by Salomon 2000, that is connected with a number of commercial radio stations).

There is, however, no cross-ownership among print media, press distribution or radio, and television stations. Pro Plus, owner of Pop TV and Kanal A, was the only television company involved in other media. It produced radio news in a format called "24 ur – novice". This was transmitted on a number of commercial radio stations across Slovenia until December 2003, when Pro Plus ceased radio production. However, Pro Plus signalled an interest in forming their own radio station or network. Marjan Jurenc, chief executive officer of Pro Plus, declared: "It would be expedient to keep the restrictions on vertical ownership of television and print media, but to drop the restrictions on vertical ownership of radio".<sup>116</sup> However, the request by Pro Plus for permission to launch a radio channel called Radio 24 Ur (24 Hours) was rejected in June 2004 on the ground that it had not been correctly presented.

<sup>114</sup> Nacionalna raziskava branosti (NRB), *National research of readership*, data for the first half of 2005, available at <http://www.nrb.info/podatki/index.html> (accessed on 10 July 2005).

<sup>115</sup> Information from the Slovene Advertising Chamber (Slovenska oglaševalska zbornica), available (in Slovene) at [http://www.soz.si/projekti-soz/rpn\\_revidiranje\\_prodanih\\_naklad](http://www.soz.si/projekti-soz/rpn_revidiranje_prodanih_naklad) (accessed on 10 July 2005).

<sup>116</sup> Interview with Marjan Jurenc, 13 July 2004.

## 5.4 Funding

The commercial television stations derive their revenue from the sale of advertising time. No single advertiser dominates the market; the largest are mostly multinational companies.<sup>117</sup>

Commercial television stations compete for advertising revenue with foreign stations – particularly Croatian, Italian, German and Austrian broadcasters. Marjan Jurenc of Pro Plus has objected to what he sees as the unequal market position of Slovenian channels compared to the foreign channels available to the Slovenian audience – for example, external broadcasters may run advertising for tobacco and alcoholic beverages, which is prohibited in Slovenia. “The result is that we produce less quality programming that could be made from this kind of advertising money. A typical example is the lack of advertising from breweries during sports coverage”.<sup>118</sup>

The net worth of the total advertising market in Slovenia grew by 11.6 per cent between 1996 and 2003;<sup>119</sup> it was estimated at 34,334 billion SIT (or approximately €143 million) in 2003. As shown below in Table 12, the television sector had a 35 per cent market share in 2004.

**Table 11. Estimated net advertising expenditure for the television sector (1996–2003)**

	Advertising expenditure (€ million)
1996	27.7
1997	31.0
1998	40.0
1999	38.8
2000	37.2
2001	35.6–43.5
2002	35.6–43.5
2003	40.0–47,5

Source: Mediana IRM<sup>120</sup>

<sup>117</sup> Between January and August 2004, the ten largest advertisers were: P&G, Reckitt Benkiser, Pejo Trading, Mobitel, Beiersdorf, Henkel Slovenija, L’Oreal Slovenija, Simobil, Unilever and Wrigley. *Marketing Magazin*, Ljubljana, June 2004, p. 19.

<sup>118</sup> Interview with Marjan Jurenc, 13 July 2004.

<sup>119</sup> *Marketing Magazin*, Ljubljana, January 2005, p. 16

<sup>120</sup> Mediana IRM research, cited in: *Marketing Magazin*, Ljubljana, February 2005.

**Table 12. Net media expenditure  
– breakdown by sector (2004)**

	Market share (per cent)
Television	35
Daily press	30
Magazines	15
Outdoor	11
Radio	8
Cinema	1

Source: *Marketing Magazin*, January 2005

**Table 13. Revenues of Pro Plus (the owner of Pop TV and Kanal A television channels) (2001–2003)**

	2001	2002	2003
Net Revenue (€ million)	22.5	26.8	29.4
EBITDA <sup>121</sup> (€ million)	6.6	8.7	10.4
EBITDA Margin (per cent)	29.0	33.0	35.0
Broadcast Cash Flow (€ million)	6.2	9.4	10.3

Source: CME<sup>122</sup>

The net revenue of Pro Plus in local currency decreased by six per cent in 2003 as compared to 2002, when the 2002 soccer World Cup generated additional revenues. Without the effect of the World Cup, Pro Plus's underlying local currency net revenues would have shown only a small increase.<sup>123</sup>

The revenues of other smaller commercial broadcasters are insignificant in terms of the national advertising market, as they have limited reach and low ratings.

## 5.5 Programme framework

### 5.5.1 Instruments to ensure accurate and impartial information

The law does not define impartiality obligations for commercial broadcasters. However, it is defined in the *Code of Practice for Slovenian Journalists*, and also various

<sup>121</sup> EBITDA: earnings before interest, taxes, depreciation, and amortisation.

<sup>122</sup> CME, *Annual Report for 2003*, p. 43.

<sup>123</sup> CME, *Annual Report for 2003*, p. 55.

documents of the Council of Europe, international journalists' associations and other international and NGOs.

Interviewed for this report, Tomaž Perovič, Director of News and Current Affairs at Pop TV and Kanal A, stated that their guideline is the *Code of Practice for Slovenian Journalists* (2003). He stressed that Pop TV has reached “a strong consensus that big audiences come with continuous broadcasting of verified information”. Perovič added that the owner of Pro Plus established working conditions that “ensure objective reporting by a large number of journalists, access to modern technologies and a production environment that makes constant verification of information possible”. Perovič declared that “the rules are clear and simple, you have to check the information before broadcasting and give fair treatment and equal time to all parties involved in the issue.”<sup>124</sup> Perovič went on to say that Pop TV and Kanal A had complete editorial independence from their owners, with independence is assured in two ways,

Firstly, internal organisational structures ensure editorial independence. The position of the chief editor is clearly defined in relation to other heads of divisions, which means that there is no hierarchy among them. Also, the general manager does not interfere with daily decision-making. Secondly, the structure of ownership itself makes political and economic pressures impossible.<sup>125</sup>

After an initial search for public reaction and the right measure of aggressiveness, proportion between domestic and foreign news, and proportion between politics, economy, social issues and entertainment, Pop TV established its daily evening news programme, *24 Ur* (“24 Hours”) as the main competitor to the evening news bulletin on SLO1, *TV Dnevnik* (“TV Journal”). At first, they were both broadcast from 19.30 to 20.00, but they then switched to 19.15 to 20.00, before expanding the programme to one hour, broadcast from 19.00 to 20.00. They both achieve similar ratings, with *24 Ur* often getting more viewers among young people. The programme – together with the weekly magazine *Preverjeno* (“Checked”), and especially the talk show *Trenja* (“Friction”) – is influential and often sets the political and social agenda. The news programme on Pop TV contains more human-interest stories and “infotainment”, but also regularly covers foreign affairs, economic, social, health, education and other issues, as well as human rights and corruption.

Although news reporting on Pop TV is generally considered to be politically unbiased and not under the direct influence of owners or advertisers, pundits and civil society organisations have criticised their coverage of minority and other human rights issues. Brankica Petković of the Peace Institute, an NGO in Ljubljana, observed that in talk shows on commercial television, “the most extreme political guests are present, guests that contribute to higher ratings, but don’t contribute to constructive discussion on the

<sup>124</sup> Interview with Tomaž Perovič, the Director of the News and Current Affairs Programmes at Pop TV television and Kanal A at the time when interviewed for this report, Ljubljana, 7 July 2004.

<sup>125</sup> Interview with Tomaž Perovič, 7 July 2004.

situation and the rights of threatened individuals and groups". She added: "These confrontations are more present on commercial channels, where gladiator-like verbal duels regarding human rights are held between extreme politicians with representatives of most vulnerable groups. Not just this, but there is even tele-voting going on regarding human rights."<sup>126</sup> This approach has also provoked critical reactions from pundits and other media, especially the press, such as the dailies *Dnevnik* and *Delo* and the weekly *Mladina*.

### 5.5.2 Programme guidelines

The emergence of new commercial television stations did not lead automatically to more plural and diversified content. Commercial television channels still rely on a narrow range of programmes. There is almost no educational, arts, children's or documentary programming on the commercial channels, as well as very little news and current affairs (with the major exception of Pop TV). Most daytime programmes (before 18.00 hours) on Pop TV, Kanal A and Prva TV consist of new episodes and repeats of Latin American and US soap operas. Pop TV's strategy is to appeal to a mass audience through programming that includes serials, movies, news, variety shows and features. This station broadcasts 18 hours daily, of which approximately 25 per cent (including repeats) is locally produced, including news and game shows.

Kanal A broadcasts for 16 hours daily. In previous years, this included locally produced copies of international formats such as *Blind Date*, the *Newlywed* game show and music shows. However, when Pro Plus took over Kanal A, all in-house production was discontinued. All available methods to reduce costs were employed: most of the employees were laid off, films and serials already seen on Pop TV years ago were rebroadcast, while more successful shows (such as "Oprah") were transferred from Kanal A to Pop TV. Similar cost-saving tactics were used at Pop TV, with nearly all of in-house entertainment programmes stopped (with the exception of the licensed game-show *Who Wants To Be A Millionaire*) and the share of new movies radically reduced. A new focus on serials was evident, and most of the US series with higher ratings (*E.R.*, *Sex In The City*, *Friends*) reappeared.

Pop TV news and current affairs programmes remain popular. They include a daily one-hour news programme *24 ur* ("24 hours"), and shows *Preverjeno!* ("Confirmed!") and *Trenja* ("Friction"). Meanwhile, Kanal A network's official strategy is to complement that of Pop TV with a mixture of locally produced programmes such as Extra Magazine, the daily infotainment magazine E+, Popstars, and foreign programmes including films and series.

The content of the third commercial channel, TV3 (renamed Prva TV in November 2004) initially consisted for the most part of religious programmes, such as "From the

<sup>126</sup> Interview with Brankica Petkovic, Head of the Media Policy Centre, Peace Institute, Ljubljana, 10 November 2004.



Life of the Church”, “Religion and Time”, and “Transmitted from the Vatican”. On and off, TV3 tried to introduce news reporting, but without success. However, before the parliamentary elections in Slovenia in autumn 2000, they launched regular daily one-hour debates with representatives of different political parties. These debates and interviews were among their most important and influential broadcasts at that time. Nevertheless, it took the station several years to get rid of its image as a right-wing Catholic Church television station. The change of image had been achieved through reducing political content and expanding entertainment programmes, mostly music shows that regularly feature Slovenian folk music. Since the station was sold to the Croatian entrepreneur Ivan Čaleta, who owned Nova TV in Croatia and OBN in Bosnia and Herzegovina, the number of film premieres has increased, but in-house production has been cut. Its main domestic show in 2004 was a version of *Pop Idol*.

### 5.5.3 Quotas

Commercial broadcasters are not obliged by law to broadcast programmes for minorities in their language, and they do not broadcast such content. Only RTV Slovenia is obliged to do this (see section 4.5.3). Commercial broadcasters also do not have to provide any time to other social groups.

The Mass Media Act only stipulates that 20 per cent of the commercial stations’ daily broadcast time must be produced in-house or on the behalf of the broadcaster. Own works of at least 60 minutes’ duration altogether must be shown between 18.00 and 22.00 hours each night. Two per cent of the station’s annual broadcast time must consist of films of Slovenian origin or other works from the field of literature, science and art. However, since there is little of monitoring of commercial channels, it is not always clear whether all commercial channels fulfil this quota (see also section 6).

The EU TWF Directive, which is mirrored in Mass Media Act, also obliges Slovenian commercial broadcasters to fulfil quotas on European production and European independent production (see section 6).

## 5.6 Editorial standards

News editors, journalists and correspondents working in private television must avoid bias when reporting news. This obligation flows from the general provisions that apply to all media outlets in the Mass Media act 2001 and from the *Code of Practice of the Slovenian Journalists Association* (2002). There are, however, no specific legal obligations upon commercial television programmes. This is evident also in their coverage of elections. There are precise instructions and demands in the Law on RTV Slovenia as to how the public broadcaster should cover the candidates and political parties (such as equal time, time for political parties that are not in Parliament.) However, commercial television stations have no such obligations and therefore usually

show discussions and panel discussions involving just a few of the most popular candidates or parties.

There are no studies available of editorial independence in commercial broadcasting. There were discussions of their news values, especially tabloid approach and emphasis on crime, human-interest stories and celebrities. There were also discussions on the effects of their programming, such as the introduction and popularity of telenovelas from Latin America, which were never before shown in Slovenia and became extremely popular. However there has been little debate on whether they are biased or connected to certain political parties or the Government.

Very few journalists have permanent contracts at commercial television stations. Most of them work part-time, without social security and other advantages of permanent employment or contracts. This threatens not just their financial security, but also journalistic independence, as they are much more vulnerable to demands by, and pressure and threats from, owners, advertisers and politicians

## 6. EUROPEAN REGULATION

The EU TWF Directive is to a certain extent mirrored in Article 92 of the Mass Media Act 2001 (see section 4.5.3). The act also stipulates (in Articles 89 and 90) that by 2003:

- the amount of European independent audiovisual production on commercial channels must reach at least 10 per cent of the annual airtime.
- The majority of all commercial television airtime must be works of European origin (this includes also Slovenian works).
- 10 per cent of the commercial stations' annual airtime must be independent productions, out of which at least 50 per cent must have been produced in the last five years. If a broadcaster is still not fulfilling these standards, it must increase the percentage of European works each year until the quota is reached.

RTV Slovenia does fulfil these quotas (see also section 4.5.3). However, because of lack of monitoring, it is not absolutely clear whether all commercial channels fulfil these quotas. Most commercial channels achieve the European quotas by airing a large quantity of Slovenian production, which is mostly cheap production. This includes countless talk shows, music shows and similar cheap formats. The only exceptions are private radio and television stations which have the status of "channels of special significance" (see section 3.2). The prescribed quotas of local and European programmes present a problem for Slovenian broadcasters, as the economy of scale is cheaper than the production of local content, which is under the constraints of both language and market size. This influences the quality of their programme and production. Especially problematic is domestic production, particularly Slovenian audio-visual works. The Ministry of Culture financed 17 television projects in 2003, of

which 14 were from independent producers, two were from RTV Slovenia and one from a local television station. Their funding totalled SIT 55 million (or approximately €230,000).<sup>127</sup>

While other programme quotas are defined on an annual basis, the domestic Slovenian quota is defined on a per-day basis. The Mass Media Act stipulates that 20 per cent of commercial stations' daily broadcast time must be produced in-house or on the behalf of the broadcaster. Marjan Jurenc of Pro Plus observes that,

Slovenia is a small country. Our in-house production is expensive; even if we were producing for ten million viewers, the costs would stay the same. Therefore, it would be much easier if programme quotas were defined on a per-year and not per-day basis, as viewing figures fall in the summer. It is a pity that money and programmes are not used more efficiently.<sup>128</sup>

## 7. THE IMPACT OF THE NEW TECHNOLOGIES AND SERVICES

Slovenia's telecommunication market ranks among medium-sized European markets with an annual turnover of SIT 139.1 billion (or €579 million). This represents 2.6 per cent of the national GDP. In May 2004, Slovenia had more than 230,000 cable television subscribers.<sup>129</sup> Approximately 24,000 subscribers also used this platform for access to the Internet. A recent study for the Government's Office for Macro-economic Analysis and Development concluded that Slovenia has achieved solid results in building an information society and is well positioned for the future. Accelerating its development would need an integrated and co-ordinated strategy encompassing all partners such as the business community, the research and education sphere, public administration and civil society.<sup>130</sup>

Until the new Government took office in December 2004, Slovenia had a Ministry for Information Society. The new Government decided that this Ministry was no longer needed, as most of its tasks had been achieved, and that this Ministry could function in future as a division of the Ministry of Economic Affairs.

---

<sup>127</sup> Ministry of Culture, *Poročilo Ministrstva za kulturo Republike Slovenije za leto 2003 (Annual report of Ministry of Culture 2003)*, Ljubljana 2004, p. 240.

<sup>128</sup> Interview with Marjan Jurenc, 13 July 2004.

<sup>129</sup> Slovene Agency for Telecommunications, Radio Diffusion and the G. P. O., *Letno poročilo 2003, (Annual Report for 2003)*, Ljubljana, 2004. (Source: data provided by the Association of Slovenian Cable Operators).

<sup>130</sup> Kmet Stare and Bučar Zupanič, *Slovenia – On The Way To The Information Society*, Office for Macro-economic Analysis and Development, Ljubljana, June 2004.

## 7.1 New platforms

In 2003, 118 telecommunication enterprises were registered in Slovenia, with State-owned Siol and its parent company Telekom being the market leader, followed by Telemach (also a cable company). The report of the Research Institute of Slovenia (RIS) on *The Use of Internet* showed that the share of households with internet access reached 45 per cent in December 2003, which was close to the EU average.<sup>131</sup> The most common access to the Internet in 2003 was through analogue telephone connections (60 per cent), followed by cable distribution (16 per cent) and ISDN telephone access and ADSL telephone access (both 8 per cent). Mobile telephone access to the Internet grew fast in 2003, although it amounted to only 2 per cent.

## 7.2 Current market conditions

The fixed public telephone network is completely digitalised. According to the RIS report, there were 41.8 cable subscribers per 100 residents and 96 cable subscribers per 100 households in 2003. RIS established that in 2003 there were 80.000 new Internet users compared with the previous year. According to this research, Internet users account for 43 per cent (713,000 people) among the population aged 15 years and above. The report also perceived a substantial digital divide reflecting the level of education, income and regions.

## 7.3 Services

Two television and four radio channels of RTV Slovenia are also available via satellite (Hotbird 3). The public service broadcaster is expanding its online offer to include real time transmission of radio and television programmes and a range of additional services. RTV Slovenia short news is available through mobile phones with WAP technology. The two largest mobile phone operators Mobitel and Si.Mobil offer this service on their platforms, entitled Planet and Vodafone live, respectively. The website [rtvslo.si](http://rtvslo.si) features content from both Radio and TV Slovenia. Its recent domestic production, including news, is available online in video and audio.

Pop TV is also present on the Internet, while its locally produced content (as well as that of Kanal A) such as news and current affairs is, since May 2004, also transmitted on satellite (Hellas – Sat 2) through a deal with Slovenian cable television channel, TV Pika, that in 2003 also became available through satellite. Pop TV's website ([24ur.com](http://24ur.com)) features regular updates and video. In January 2005 it received Izidor, the newly established Slovenian award for web sites for the best Internet presentation of news and current affairs.

<sup>131</sup> Research Institute of Slovenia (Raziskovalni inštitut Slovenije – RIS), *Uporaba interneta v gospodinjstvih v letu 2003, (Report on The Use of Internet in Households for the year 2003)*, RIS, Ljubljana, 2004.

## 7.4 Funding

The Multimedia Centre is an important part of RTV Slovenia, producing videotext, Internet, video streams for mobile phones, and internet games, produced in connection with nine other members of the European Broadcasting Union (EBU). Multimedia activities are an important part of the *Strategy for RTV Slovenia 2004–2010* (see section 4.7). However, very little is said about technological development in the draft new Law on RTV Slovenia 2005.

Online advertising is not developed in Slovenia. Pop TV's 24ur.com is one of the websites that attracts most visitors, but even so, it incurs losses. Pro Plus is reluctant to invest more in their online activities, as the income from online is not sufficient and there are no signs of growth.<sup>132</sup>

## 7.5 Digital television

According to the proposed *Strategy on RTV Slovenia 2004–2010* (May 2004), RTV Slovenia should provide additional specialised digital television and radio channels of informative, parliamentary, educational, sports and archival character, and also trans-border television for minority programmes using satellite broadcasting. One of the most important tasks of public service broadcasting, according to the Strategy, will be archive digitalisation. At this time, RTV Slovenia is obliged to archive in-house radio and television production, but would prefer that the State would take over the part of the burden for the archive. The public service broadcaster should also find a proper way to enable the public to access the archive. This kind of approach could eventually ensure additional income.

However, there are few plans for switching from analogue to digital signal and almost no public debate on the digitalisation of broadcasting. The digitalisation of radio (DALET) started in 1998, and the gradual digitalisation of television began in 1999, however there are no digital platforms available in Slovenia and there are no plans for such platforms in near future. Digitalisation is mostly present as digitalisation of transmissions by the public broadcaster and other changes in production, while there are few digital television sets or digital decoders in use. RTV Slovenia warns that the State has not formed any decision regarding digitalisation of transmitters and has not become involved enough in the processes of European Union. The Agency for Post and Electronic Communication (APEK) states in its *Plan of work and financial plan for 2005*, that it has commenced activities that were agreed in the first part of the regional agreement in Geneva 2004 (GE04), as part of the preparation of a new international

---

<sup>132</sup> Interview with Marjan Jurenc, 13 July 2004.

treaty that, according to APEK, should be prepared in 2006 and should regulate the switch from analogue to digital technology, according to treaty CH97.<sup>133</sup>

## 8. CONCLUSIONS

In Slovenia, the broadcasting sector is saturated, with a vast number of electronic media outlets competing for a limited amount of advertising revenue. Probably there are too many television and radio stations for such a small country, resulting in small advertising revenues for most of them. This situation causes both a lowering of the programme quality and frequent breaches of the Mass Media Act, particularly when it comes to covert advertising.

At the same time, the transparency of the media market is inadequate. Most problematic is the opaque ownership situation of many outlets and the non-transparent structure of the advertising market. This is the main reason why there is no official data on the advertising revenue of Slovenian media. Foreign investments started in the mid-1990s with investors coming from outside the EU. The three largest commercial Slovenian television stations are all foreign-owned. CME and SBS are US-controlled, and the third most important player, Ivan Čaleta, is Croatian. These stations have an important influence, both in terms of their share in the advertising market and, through their popular news and current affairs programmes, in terms of setting the political agenda. However, the situation is quite different with the print media: most of the foreign investments took place only recently, and most of the foreign investors come from the EU, from Austria, Sweden and Germany. Foreigners do not play a dominant role in the print media.

RTV Slovenia increased its income significantly since the revenue from the licence fee rose, following amendments to the Law on RTV Slovenia in 1999, which obliged all households connected to the public electric power grid to pay the licence fee (unless they are exempted). Its ratings have risen steadily since 1999, and RTV Slovenia has succeeded in improving its image, which was often damaged in the 1990s by scandals over the financing of certain shows and over contracts.

There was often not clear division of competence and assignments of the Council of RTV Slovenia and the Supervisory Board. It was also often not clear which documents and data should be available to Supervisory Board and members of Supervisory Board have in the past complained about lack of relevant data or difficulties with access to certain documents. It is essential to re-examine the competence and the assignments of the Council of RTV Slovenia, especially in relation to the Supervisory Board. The Council should deal primarily with issues regarding the development strategy of the

<sup>133</sup> APEK, *Annual Report for 2004*, p. 39; APEK, *Plan dela in finančni načrt za leto 2005*, (*Plan of work and financial plan for 2005*), accepted by the Government on 10 March 2005, p. 12.

public broadcaster, and less with particular financial questions, as this is the task of the Supervisory Board. The task of the Council is, in relation to business operations, merely to adopt the financial plan and the final financial report. However, it seems that it is often spending too much time on these discussions and too little on defining programme standards and the programme framework.

The relationships of the management to programme directors and individual editors need to be clarified. Some believe that the programme directors and editors need to be directly subordinated to the management, rather than being ostensibly on an equal footing with it, if greater efficiency is to be achieved. However the question remains whether such direct subordination would really be more effective and whether it would not bring even more political control over the public broadcaster, since the General Director is named by Parliament, meaning in reality the political parties.

Slovenian television stations, both public and commercial, will have a problem to adhere to the obligations determined in the EU TWF Directive. Already there is a problem meeting Slovenian quotas, especially when it comes to domestic audiovisual works, which is in relatively short supply. Slovenia is a small country and the Slovenian language is little used outside the country's borders, meaning that there can be few benefits from economy of scale. Slovenian production is much more expensive than programmes bought from the USA, Latin America or the rest of the EU. To adhere to EU quotas, most television stations rely on cheap formats, such as talk shows, studio interviews, and music videos.

There seems to be an over-supply of commercial broadcasting in Slovenia. This has led to domestic production of low quality and plenty of licensed formats, particularly game-show formats. Limited advertising revenues make broadcasters more vulnerable and open to pressure from advertisers and politicians, who want favourable coverage in exchange for State subsidies, tax cuts and other possible benefits.

On the other hand, the influence of commercial broadcasters is clearly felt and much has changed at RTV Slovenia since commercial channels, particularly Pop TV, started to broadcast in 1990s. Unlike many other previous State television channels in former Yugoslavia, RTV Slovenia managed to avoid direct influence and control by politicians and, especially, by the Government. Unlike some other former State television channels in former communist countries, such as the Czech Republic, RTV Slovenia also managed to keep relatively high ratings and to hold its own against commercial broadcasters.

The influence of commercial broadcasters is most clearly seen in the news reporting, with more human-interest content and a tabloid approach, and programmes such as telenovelas from Latin America and soap operas. However, both public television channels and commercial channels, such as Pop TV, offer plenty of information and news reporting. They also investigative reporting, exposing numerous cases of corruption in State and private companies and institutions. They are frequently the first to discover such cases, and police and prosecutors often start their investigations

only after the media, including television channels, report about them. Therefore, the main television stations often function as a watchdog, even though they are at the same time clearly connected with sources of power. Although many of them broadcast very narrow, mostly commercial programming, public-opinion polls usually show a high level of public trust from, and satisfaction with, the television sector overall. In spite of the shortcomings mentioned above, it can be said that the performance of the television sector is usually adequate to the role generally ascribed to it as one of the pillars of democracy.

The new Law on RTV Slovenia, which was adopted by the National Assembly (the lower chamber of the Parliament) in June 2005, but then vetoed by National Council, presents even more problems and questions regarding independence of journalists and editors. Under the new system set out in this draft law, the ruling political parties, which form the Government and represent the majority in Parliament, would have control over almost all managerial bodies at RTV Slovenia, and also over the appointment of all key editors. Parties forming the Government would have a majority in the newly created Programming Council – which would replace the existing Council of RTV Slovenia – and in the Supervisory Board. They would also have control over the Director General, who would in future be appointed by the Programming Council. The Director General would also have broader responsibilities than at present: he or she would lead the programme work, appoint and manage the directors of radio and television, as well as Editors-in-chief of programmes and all other senior management. This threatens to diminish the independence of RTV Slovenia and could endanger its credibility, level of trust and respect in public.

## 9. RECOMMENDATIONS

### 9.1 Policy

#### *Diversity*

1. The Government should take steps to guarantee the pluralism and diversity of the television sector. In particular, it should ensure – through amendments to general and specific laws, such as the Law on RTV Slovenia and the Mass Media Act – that political pressures on the regulatory authorities and on the broadcasters are avoided.

#### *Consultation and cooperation*

2. The Government should ensure coherent media policy, by improving cooperation between the various Government agencies that deal with the media.



3. The Government and Parliament should consult civil society organisations, media professionals and other actors in the media field, when developing media policy and legislation.

#### *Research*

4. The Government should ensure the increased involvement of independent specialists in the competent ministries and other public authorities for scientific research for media policy.

## **9.2 Regulatory authorities**

5. Parliament and the Government should establish a clear-cut division of powers between the various media regulatory authorities over clearly defined areas, such as control over ownership, programme quotas, advertising and broadcast licensing procedures.

#### *Independence and professionalisation*

6. Parliament and the Government should take steps to ensure the transparent selection of key personnel at the regulatory authorities, on the basis of professional credentials and not political preferences. They should also ensure that such personnel are not involved in any conflicts of interest and that there are clear rules over their appointment and removal. Parliament and the Government should also ensure that the personnel are selected by a two-thirds majority in Parliament, and with less than one third of the personnel nominated by the Government.
7. The Agency for Post and Electronic Communication (APEK), the Broadcasting Council, the Ministry of Culture and the Media Inspector at the Ministry of Culture, should establish better control over the compliance of television stations with the Mass Media Act, particularly over programming quotas and the elimination of covert advertising. To achieve this, the Government should provide them with better material and personnel conditions for their work.
8. The Broadcasting Council and the Ministry of Culture should ensure media outlets' compliance with legal requirements for transparency of ownership and audience figures. To ensure this, they should have wider powers, as provided for by the Mass Media Act.

### 9.3 Public and private broadcasters

#### *Transparency*

9. The Parliament and Government should improve the framework for media regulation by amending the Mass Media Act, to ensure increased transparency of political and economic interests influencing broadcasting. In particular, the transparency of media ownership should be ensured.

#### *Diversity*

10. The Government should provide funds for domestic television production that meets certain criteria of quality and diversity. These criteria should be set by group of experts and practitioners, with the aim of promoting diversity of media content. These funds should be available to both public and private media. The broadcasters should develop programming and employment policies which take into account cultural diversity of the society in Slovenia and contribute to the integration of minorities and to social cohesion.

#### *Third Sector*

11. The Parliament should introduce further policy mechanisms by regulators to further develop and improve the functioning of radio and television stations with the status of “special importance for the Republic of Slovenia”. These mechanisms should encourage the development of the so-called third sector and non-profit production of quality and diverse programming targeting local and minority audiences.

### 9.4 The public service broadcaster (RTV Slovenia)

#### *Transparency*

12. The Government should ensure that the Law on RTV Slovenia guarantees the transparent selection of key personnel at RTV Slovenia, based on professional credentials and not political preferences.
13. The Government should ensure that the Law on RTV Slovenia provides the conditions for transparent decision-making, regulation and management processes.
14. RTV Slovenia should take steps to increase transparency on how it is fulfilling its remit, including by:
  - Facilitating and encouraging public presentations and discussions on its annual reports, programme results, financial results, employment policy and social responsibility.
  - publishing relevant documents on the website of RTV Slovenia.

*Professionalisation*

15. The broadcasting companies should ensure conditions for professional work of journalists and editors, including training programmes, internal code of practice, regular contracts with staff members, respect for collective agreements, and internal complaint mechanisms including ombudsman where it is possible.

*Independence*

16. The Government should ensure that the Law on RTV Slovenia provides the conditions for political independence of management, editors and journalists. The Government should ensure the independence of RTV Slovenia through depoliticisation of key bodies and personnel, by giving more power to employees, journalists in particular, civil society and by accepting key decisions regarding RTV Slovenia by two thirds majority in Parliament.
17. The broadcasters should establish mechanisms to provide editorial independence, including clear separation of editorial and commercial content.

*Public accountability*

18. RTV Slovenia should establish a complaints mechanism by for members of the public to complain about RTV Slovenia broadcasts.

*The Council of RTV Slovenia*

19. The Parliament should ensure that The Council of RTV Slovenia represents the diversity of Slovenian society. To ensure this:
  - The Council should be comprised of representatives of different parts of society, civil society groups, associations, Universities, and other relevant groups. The representatives of these groups should form the majority of Council of RTV Slovenia and should be named by their groups.
  - Before the list of the groups that would be represented in the Council of RTV Slovenia is formed, there should be a public debate, giving time and space for different opinions.
  - Once the representatives of the society/the public are appointed, they should act in the interest of the public/society as a whole and not following particular interest of their groups, political or economic interests. They should act in favour of independence, quality and stability of the public service broadcasting.

*Minority representation*

20. The Government should propose, and the Parliament should introduce, regulation on RTV Slovenia to provide regular forms of access to

programming and employment for wide range of minorities in Slovenia. Beside the Italian and Hungarian national minorities, which already have their own programmes, this should also include the Roma, Albanians, Bosnians, Croats, Macedonians, Montenegrins, Serbs, Germans and other ethnic communities which traditionally, or in significant number, live in Slovenia.

21. RTV Slovenia should provide regular courses for minority representatives in its training centre, to increase their capacities for collaboration and employment at RTV Slovenia.

## 9.5 Private broadcasters

### *Monopoly*

22. The Government should ensure that the broadcasting monopoly is more clearly defined in law, including parameters for decisions upon its applicability in given circumstances.

### *Ownership*

23. Parliament should adopt legislation to prevent excessive cross-ownership and other forms of monopolisation, ensuring that precise and correct data on ownership of media and connections between different persons and companies is clearly established, monitored, regulated and sanctioned by regulatory bodies.

## ANNEX 1. Legislation cited in the report

The *Uradni list Republike Slovenije* is the Official Gazette of Slovenia.

### Laws

Mass Media Law, *Official Gazette* no. 18/1994. (*Mass Media Law 1994*). (Replaced by the Mass Media Act)

Mass Media Act, *Official Gazette*, 11 May 2001. (*Mass Media Act 2001*).

Law on Telecommunications, *Official Gazette* no. 30/2001. (*Law on Telecommunications 2001*). (Replaced by the Law on Electronic Communication)

Law on Electronic Communication, *Official Gazette* no. 43/2004, 26 April 2004. (*Law on Electronic Communication 2004*)

Law on RTV Slovenia, *Official Gazette*, 8 April 1994. (*Law on RTV Slovenia 1994*)

Law on changes and additions to law on RTV Slovenia *Official Gazette*, 29 October 1999. (*Law on RTV Slovenia 1999*)

Law on changes and additions to law on RTV Slovenia, *Official Gazette*, 10 October 2001 (*Law on RTV Slovenia 2001*)

Draft Law on changes and additions to law on RTV Slovenia, prepared by the Ministry of Culture. (*draft Law on RTV Slovenia 2005*).

### Regulations

Procedure on programmes of special significance, *Official Gazette* no. 85/2002.

Procedure on content of request and content of decision on broadcasting frequency, *Official Gazette* no. 60/2001.

Procedure on licences for radio and television broadcasting, when the function is not connected with the use of frequencies, *Official Gazette*, 10 March 2003.

Statute of RTV Slovenia, *Official Gazette* no. 66/1995.

Statute of the Agency for Telecommunications, Broadcasting and General Post Office, *Official Gazette* no. 77/2002.

## ANNEX 2. Bibliography

### *In English*

- Agency for Post and Electronic Communication (APEK), *Annual Report on 2004* (Ljubljana: APEK, 2005)
- Article 19, *Note on the Draft Act on Radio Television Slovenia* (London: Article 19, May 2005)
- Broadcasting Council, *Radio and TV Programmes in Slovenia* (SRDF: Ljubljana, 2001)
- Central European Media, *Annual Report 2003* (CME: March 2004)
- Hrvatín, S. B., and L. J. Kučič, "Report on Slovenia", in Brankica Petković (ed.), *Media Ownership and its Impact on Media Independence and Pluralism* (Ljubljana: SEENPM and Peace Institute, 2004)
- Hrvatín, S. B. and M. Milosavljevič, *Media Policy in Slovenia in the 1990's* (Ljubljana: Peace Institute, 2001)
- Stare, Kmet and Bučar Zupanič, *Slovenia – On The Way To The Information Society*, Office for Macro-economic Analysis and Development (Ljubljana: June 2004)
- Mediana IRM, *Research on annual gross advertising revenue* (Ljubljana: 2004)
- Media Services AGB, *Research on 2004* (Ljubljana: 2005)

### *In Slovenian*

- Agency for Telecommunications, Radio Diffusion and the G. P. O., *Letno poročilo 2003, (Annual Report for 2003)* (Ljubljana: 2004)
- Association of Slovene Journalists, *Društvo novinarjev Slovenije (Code of Practice for Slovenian Journalists)* (Ljubljana: 2002)
- Broadcasting Council, *Letno poročilo 2001/2002, (Annual Report 2001/2002)* (Ljubljana: SRDF, 2002)
- Broadcasting Council, *Radijski in TV programi v Sloveniji (Radio and TV Programmes in Slovenia)*, (Ljubljana: SRDF, 2001)
- Ministry of Culture, *Poročilo Ministrstva za kulturo Republike Slovenije za leto 2003 (Annual report of Ministry of Culture 2003)* (Ljubljana: Ministry of Culture, 2004)
- Nacionalna raziskava branosti (NRB), *National research of readership, Data for 3<sup>rd</sup> quarter of 2004*, (Ljubljana: NRB, 2004)
- Research Institute of Slovenia (Raziskovalni inštitut Slovenije), *Uporaba interneta v gospodinjstvih v letu 2003, (Report on The Use of Internet in Households for the year 2003)* (Ljubljana: RIS, 2004)
- RTV Slovenia, *Poklicna merila in načela novinarske etike v programih RTV Slovenija, (Professional Standards and Ethical Principles of Journalism in the Programmes of RTV Slovenia)* (Ljubljana: RTV Slovenia, May 2000)

RTV Slovenia, *Annual Report 2003* (Ljubljana: RTV Slovenia, 2004)

RTV Slovenia, *Dopolnitve dolgoročne strategije razvoja RTV Slovenija 2004–2010 (Annex to the long-term development strategy of RTV Slovenia 2004–2010)* (Ljubljana: RTV Slovenia, 2004)

RTV Slovenia, *Delovno gradivo za letno poročilo za leto 2004 (Working material for the Annual Report of RTV Slovenia for 2004)* (Ljubljana: RTV Slovenia, 2005)

Television across Europe:  
regulation, policy and independence  
Turkey



## Table of Contents

1. Executive Summary .....	1543
2. Context .....	1544
2.1 Background .....	1544
2.2 Structure of the television sector .....	1547
2.3 Market shares of the main players .....	1548
3. General Broadcasting Regulation and Structures .....	1549
3.1 Regulatory authorities for the television sector .....	1549
3.1.1 The Radio and Television Supreme Council (RTÜK) .....	1550
3.1.2 The Telecommunications Authority (TK) .	1554
3.1.3 The Communications High Council (HYK) .....	1555
3.2 Licensing .....	1555
3.3 Enforcement measures .....	1558
4. Regulation and Management of Public Service Broadcasting .....	1561
4.1 The public broadcasting system .....	1561
4.2 Services .....	1562
4.3 Funding .....	1563
4.4 Governance structure .....	1565
4.4.1 Composition .....	1565
4.4.2 Appointments .....	1565
4.4.3 Responsibilities .....	1567
4.5 Programme framework .....	1568
4.5.1 Output .....	1568
4.5.2 Programme guidelines .....	1569
4.5.3 Quotas .....	1571
4.6 Editorial standards .....	1571
5. Regulation and Management of Commercial Broadcasting .....	1571
5.1 The commercial broadcasting system .....	1571

5.2 Services .....	1572
5.3 Commercial television ownership and cross-ownership .....	1573
5.3.1 Ownership .....	1573
5.3.2 Cross-media ownership .....	1577
5.4 Funding .....	1581
5.5 Programme Framework .....	1584
5.5.1 Instruments .....	1584
5.5.2 Programme guidelines .....	1584
5.5.3 Quotas .....	1586
5.6 Editorial standards .....	1587
6. European Regulation .....	1587
7. The Impact of New Technologies and Services .....	1590
7.1 New media .....	1590
7.2 Market conditions .....	1591
7.3 Services .....	1593
7.4 Funding .....	1593
7.5 Digital television .....	1593
8. Conclusions .....	1594
9. Recommendations .....	1595
9.1 Media policy .....	1595
9.2 Regulatory authorities .....	1596
9.3 Public and commercial broadcasters .....	1596
9.4 Public broadcasters (TRT) .....	1596
9.5 Commercial broadcasters .....	1597
Annex 1. Legislation cited in the report .....	1598
Annex 2. Bibliography .....	1599

## Index of Tables

Table 1.	Market shares of the main media groups (2004) .....	1548
Table 2.	Audience shares of main channels (2002–2003) .....	1549
Table 3.	Broadcast licence fees .....	1556
Table 4.	Sanctions by the RTÜK .....	1560
Table 5.	Net income of TRT – breakdown by revenue source (1998–2003) .....	1563
Table 6.	TRT expenses – breakdown by type of expenditure (2000–2003) .....	1564
Table 7.	Planned annual television output of TRT – breakdown by genre (2005) .....	1569
Table 8.	Planned annual television output of TRT – breakdown by source (2005) .....	1569
Table 9.	Major cross-media groups .....	1578
Table 10.	Smaller cross-media groups .....	1579
Table 11.	Newspaper market shares (2004) .....	1580
Table 12.	Magazine market shares (2004) .....	1580
Table 13.	Advertising share of the major cross-media groups (2004) .....	1581
Table 14.	Total net advertising expenditure (1995–2004) .....	1582
Table 15.	Advertising market – breakdown by segment (2001–2004) .....	1582
Table 16.	Television market shares (2004) .....	1583

## List of Abbreviations

BDDK	Banking Regulation and Supervision Agency, <i>Bankacılık Denetleme ve Düzenleme Kurulu</i>
MGK	National Security Council, <i>Milli Güvenlik Kurulu</i>
RTÜK	Radio and Television Supreme Council, <i>Radyo Televizyon Üst Kurulu</i>
TBMM	Turkish Grand National Assembly, <i>Türkiye Büyük Millet Meclisi</i>
TK	Telecommunications Authority, <i>Telekomünikasyon Kurumu</i>
TMSF	Saving Deposit Insurance Fund, <i>Tasarruf Mevduatı Sigorta Fonu</i>
TRT	Turkish Radio and Television Corporation, <i>Türkiye Radyo ve Televizyon Kurumu</i>
TT	Turkish Telecom, <i>Türk Telekom</i>
YDK	Prime Ministerial High Auditing Board, <i>Başbakanlık Yüksek Denetleme Kurulu</i>

## 1. EXECUTIVE SUMMARY

In early 1990, the first privately owned television station started broadcasting to Turkey via satellite from the Federal Republic of Germany. This signalled the beginning of a new era for Turkish broadcasting, as, one by one, a whole host of new private radio and television channels originating from Europe followed suit.

Private entrepreneurs started investing in the electronic media sector, and began turning into media conglomerates. In the absence of a regulation on commercial broadcasting *per se*, the growth of the broadcasting market expanded out of control. In the first couple of years, no concrete step was taken to prepare a new law to regulate commercial broadcasting. The number of commercial television stations reached 100, and that of radio stations reached 500, all operating without any licences. The vicious competition in the Turkish broadcasting sector created a new buzzword – ratings. All parties in the media sector devoted their full attention to this word, which had hardly existed in Turkey before 1990. In the midst of the ratings war, the media paid little attention to ethics and quality.

On 13 April 1994, the long-awaited Law on the Establishment and Broadcasts of Radio and Television came into effect. The law established the Radio and Television Supreme Council (RTÜK), comprising nine members appointed by Parliament, as the regulator for commercial broadcasters. The RTÜK was made responsible for distributing frequencies and awarding licences to broadcasters, and also for monitoring the broadcasters' compliance with the law. However, it soon became evident that the enactment of the law did not solve as many problems as had been expected. The RTÜK was ineffective in facilitating the healthy growth of the industry. Currently, all terrestrial radio and television broadcasting is still carried out without any licences.

Turkey today has 14 national, 13 regional and 203 local television channels, and 33 national, 89 regional and 873 local radio stations. In addition, the public broadcaster, the Turkish Radio and Television Corporation (TRT), has four national, one regional and two international television channels. The vast majority of private television channels are considered as generalist in terms of their output. Eight cross-media groups dominate Turkey's media scene. Of these, the "big four" – Doğan, Merkez, Çukurova and Star – control approximately 80 per cent of the market, with Doğan and Merkez the two strongest players. The number of players now sharing the already small advertising expenditure has driven more outlets into dependency on non-media revenue sources. This increases the challenges to media independence.

The country's sole public broadcaster, TRT, has not been able to perform its public service role fully, as it has not been independent from the Government, either in financial or in editorial terms. In the period after its broadcasting monopoly was terminated, TRT underwent many losses. The first blow was to its budget – TRT's advertising revenue fell dramatically, by almost 50 per cent, making the public broadcaster more reliant on State funding. The second blow came on the personnel

side, with most of TRT's experienced technical and creative personnel being offered better positions, with more attractive salaries, by the private rivals. Nonetheless, overstaffing remains a major problem for TRT.

In terms of broadcasting policy, as in other fields, the demands of the European Union (EU) and the expectations of Turkey as a candidate country have been the driving force behind significant initiatives in recent years. EU requirements on freedom of expression and minority rights have been the main policy imperatives in the media field.

There is significant popular demand for new technologies and services, as observed in the mobile telephone market, where there is a penetration of 40 per cent, with around 30 million users. Booming demand is not, however, matched on the policy side. The development and penetration of new media services are instead based on *ad hoc* decisions and market forces.

Television in Turkey has become an industry over the past decade, although the broadcasting market is not yet big enough to sustain the number of players.

## 2. CONTEXT

After the *de facto* break-up of the public broadcasting monopoly, the Turkish airwaves were occupied by private radio and television channels. In the absence of regulation, commercial broadcasters have come to dominate the media scene. With over 14 million television-owning households, the broadcasting market is one of the biggest in Europe. Although there are many players, four major media groups dominate the market.

### 2.1 Background

For more than two decades, television in Turkey was synonymous with the Turkish Radio and Television Corporation (*Türkiye Radyo ve Televizyon Kurumu* – TRT), which was founded in 1964. The Constitution awarded the sole broadcast licence to TRT, and this monopoly lasted until 1990, although the Constitution was not amended to reflect this until 1993.

First radio and then television were considered very important for the State in Turkey, due both to the regime's fear of potential opposition influence over the media and to its wish to control what is being aired. It has always been believed that the electronic media bear an important responsibility in maintaining political stability and national unity. Therefore, it was strongly assumed that allowing alternative voices to be heard in the broadcasting system would pose a threat to the State.

Moreover, all social and political agents have considered television to be the most effective medium for political communication. Political parties have always sought

access to television in order to reach their constituencies. Hence, the history of broadcasting in Turkey is full of political and power struggles among the main political agents, with TRT caught in the middle.

In early 1990, the first privately owned television station started broadcasting to Turkey via satellite from the Federal Republic of Germany. This signalled the beginning of a new era for Turkish broadcasting, as one by one a whole host of new, private radio and television channels beaming from Germany, France and the United Kingdom followed suit. The mushrooming of private channels not only changed the broadcasting scene in Turkey but also radically altered the media system.

Following this lead by some non-media entrepreneurs, newspaper owners started investing in electronic media and began turning into media conglomerates, changing the nature of the business. This reached the point where almost all the major dailies owned one or more radio and/or television station. The family-run press ownership structure began to disappear, as new economic imperatives and business models were introduced. For these conglomerates, broadcasting boosted their newspaper businesses and, more importantly, was a means of wielding political and economic muscle. This had a great impact on the relationship between media owners and the State. In the absence of legal provisions regulating media concentration, the growth of the broadcasting market expanded out of control.

Since the majority of Turkish viewers were initially unable to receive satellite broadcasts, the mayors of several cities started retransmitting the satellite channels terrestrially. Millions of viewers were suddenly presented with the opportunity of watching these new, private channels along with TRT. The private stations operating abroad considered this development to be a green light for them to establish their own terrestrial transmitters in the country. They started using the available electromagnetic spectrum irregularly, without licences. Even the transmitters were imported illegally. As an outcome of the unregulated usage of the already limited frequency capacity, viewers were introduced to a brand new concept, "frequency pollution". This pollution escalated in such a short time that many viewers almost wished for the days when there was only one channel to watch. There was no longer any guarantee that they could watch any broadcast with the same quality of picture and sound as they had received even the evening before.

In the first couple of years, no concrete step was taken to prepare a new law to regulate broadcasting. Governments did not mind this situation – while TRT was, in a sense, the official mouthpiece, the private television companies were also endeavouring to maintain good relations with them. The commercial broadcasters feared that any new legislation might do them more harm than good. Furthermore, the private television companies wanted the incongruous situation to continue for as long as possible, since

they were not paying any fees for the frequencies that they occupied.<sup>1</sup> As a result, new legal arrangements developed at a snail's pace.

The most important single obstacle for the privately owned television companies to become legal was Article 133 of the Constitution, which granted TRT a monopoly in broadcasting. Despite the unanimity of all parties in Parliament that the Constitution should be amended, any attempt was halted by disagreement over the provisions of the amendment.

Finally, on 8 August 1993, Parliament amended the Constitution, lifting the State monopoly on radio and television broadcasting.<sup>2</sup> However, there was still neither a law to regulate the emergent private radio and television stations, nor a regulatory body to assign frequencies and award licences. Private channels were using powerful transmitters, causing interference with adjacent frequencies and, hence, jamming other stations.

As soon as Parliament had amended the Constitution, debate commenced on a new broadcasting law. However, it was impossible for the Government to achieve the required majority in Parliament. In fact, there was little that the Government could do but legalise the new broadcasters. On 13 April 1994, the long-awaited Law on the Establishment and Broadcasts of Radio and Television<sup>3</sup> came into effect. The law established the Radio and Television Supreme Council (RTÜK) as the regulator for commercial broadcasters.

Under the Broadcasting Law, the RTÜK was given the duties of allocating frequencies, awarding broadcast licences and issuing broadcasting standards. The new authority was endowed with a wide range of sanctions, varying from mere warnings to the revocation of the station's broadcast licence. However, it soon became evident that the enactment of the law did not solve as many problems as had been hoped. The RTÜK could not function effectively as a regulatory body to facilitate the healthy growth of the industry. This was due to several reasons, ranging from the composition of the RTÜK, and the lack of interest from the broadcasters, to foot-dragging by governments in backing the regulator's initiatives to solve the already complicated issues. Currently, all terrestrial radio and television broadcasts are carried out without any licences.

---

<sup>1</sup> Despite this consensus among the main agents in the broadcasting system, there were some attempts to shut down the radio and television stations, on the grounds that they were causing frequency interference with vital air traffic, naval, coast guard and police communications. The Government ordered provincial authorities to confiscate all equipment and transmitters if the stations did not cease broadcasting. The ban led to public uproar. Private stations appealed to listeners not to lose their freedom of communication. In protest, listeners tied black ribbons to their car aerials, rallied in front of the stations and petitioned the Government. Finally, the ban was removed.

<sup>2</sup> Constitution of the Republic of Turkey, as amended by Law No. 3913, *Official Gazette* No. 21633, 10 August 1993, (hereafter, the Constitution).

<sup>3</sup> Law No. 3984, the Law on the Establishment and Broadcasts of Radio and Television, *Official Gazette* No. 21911, 20 April 1994, (hereafter, Broadcasting Law).

## 2.2 Structure of the television sector

In Turkey, television signals reach a very large proportion of the country. Due to its public service obligations, TRT has the highest reach – more than 90 per cent of both the population and the territory. The private national broadcasters are obliged to reach at least 70 per cent of Turkey's territory.

About 25 terrestrial television channels are available in most cities. According to the RTÜK, there are 14 national, 13 regional and 203 local television stations, and 33 national, 89 regional and 873 local radio stations.<sup>4</sup> In addition, TRT has four national, one regional and two international television channels. It also operates four national and nine regional radio channels. All national television channels are also on cable and satellite. There are also a number of channels available exclusively to the cable and satellite audiences.

The number of colour television sets has increased over the last ten years. In 2002, Turkey had 14.5 million households, of which 98 per cent had at least one television set.<sup>5</sup> Cable television is available in 20 cities, with a capacity of 45 to 60 television channels and 100 radio channels.<sup>6</sup> Although the infrastructure exceeds 2.5 million households, the number of cable television subscribers was just over one million by the end of 2003. This relatively low figure reflects the poor marketing of services and consumer reluctance to subscribe to cable.

In the digital satellite market, Digiturk is currently the only digital bouquet operator, with over 850,000 subscribers. Satellite viewing and cable subscription are low, since all major channels on cable or satellite are also available terrestrially.

The media are located and concentrated in İstanbul and Ankara. İstanbul is home to several dailies, 29 national and local television channels and 128 radio channels.

The vast majority of private television channels are considered as generalist in terms of programme output. The mainstream commercial broadcasters lean towards the most popular genres, such as entertainment, news and sports, especially football. At the beginning of the private television era, the channels preferred to serve up a bland diet of old American movies and repeats of popular imported soap operas and serials. Their

<sup>4</sup> RTÜK, *Lisans Başvurusunda Bulunan Radyo ve Televizyon Kuruluşları*, (*Radio and television enterprises that have applied for a licence*), available on the RTÜK website at <http://www.rtuk.org.tr/yyaykur.htm> (accessed 17 August 2004).

<sup>5</sup> IMCA, *Turquie: Paysage audiovisuel et politiques publiques des pays candidats dans le secteur audiovisuel*, (*Turkey: the broadcasting landscape and public policy on broadcasting in candidate countries*), IMCA (for the European Commission), DG EAC Étude DG EAC/59 /02 2005, March 2004, p. 11, available at [http://europa.eu.int/comm/avpolicy/stat/2002/5886\\_imca/59-02-turkey-fr.pdf](http://europa.eu.int/comm/avpolicy/stat/2002/5886_imca/59-02-turkey-fr.pdf) (accessed 10 July 2005).

<sup>6</sup> Cable television providers offer 45 television channels in nine cities and 60 channels in 11 cities. See <http://www.turksat.com.tr/ktv.htm>.



round-the-clock schedule included cheap adventure/romance serials and game shows. In recent years, there has been a rise in the number of thematic channels. There are several music, documentary, sports and entertainment channels. News television has also become a leading choice for entrepreneurs. Following the launch of the country's first news channel, NTV, Time Warner (USA) entered a joint venture with the Doğan Media Group to establish a news channel called CNN-Türk in 1998. Currently there are five 24-hour news channels and a financial news channel.

### 2.3 Market shares of the main players

The media scene is dominated by four big media groups – Doğan, Merkez, Çukurova and Star – which control approximately 80 per cent of the market, with Doğan and Merkez the two strongest players.

**Table 1. Market shares of the main media groups (2004)**

Media Group	Audience share of their television channels (per cent)	Newspaper circulation share (per cent)	Magazine circulation share (per cent)	Share of the total advertising market (per cent)
Doğan	17	39	38	38
Merkez	13	22	20	17
Çukurova	18	9	3	13
Star	9	2	N/A	6
İhlas	8	4	N/A	3
Others (including TRT)	35	24	39	23
Total	100	100	100	100

Source: Doğan<sup>7</sup>

Advertising revenues are not distributed evenly in the sector, as 75 per cent of television advertising expenditure is taken by the “big four” channels: ATV (Merkez), Kanal D (Doğan), Show TV (Çukurova) and Star TV (Star). The rest of the television sector, including TRT, has to survive on the remaining 25 per cent. There is an abundance of financially insecure local stations.

After losing its monopoly, TRT's market share in terms of advertising revenue and audience figures fell dramatically, to the extent that it was no longer considered a main player. Although the public broadcaster has been regaining viewers in recent years, the audience share figures are dominated by the leading four commercial broadcasters.

<sup>7</sup> Doğan, *Investor Presentation May 2005*, Doğan Yayın Holding, 2005.

**Table 2. Audience shares of main channels (2002–2003)**

Channel	Audience share (per cent)	
	2002	2003
Kanal D	14.5	15.0
Show	13.5	14.4
ATV	15.2	13.6
TGRT	7.2	8.1
TRT 1	7.5	7.0
Star	12.0	5.1
Kanal 7	5.1	5.1
Flash	2.0	3.1
TRT 2	1.2	1.8
Others	21.8	26.8

Source: AGB Anadolu<sup>8</sup>

### 3. GENERAL BROADCASTING REGULATION AND STRUCTURES

The broadcasting sector in Turkey is regulated by the Radio and Television Supreme Council (RTÜK), a body established by the Broadcasting Law. The RTÜK faced the challenge of managing an already established sector. One of the most troubled aspects of regulating the broadcasting scene in Turkey has turned out to be the frequency allocations. The composition of the RTÜK Board has been criticised as being too political, and its sanctioning powers are considered to be too harsh.

#### 3.1 Regulatory authorities for the television sector

The RTÜK is the regulator for broadcasting in Turkey. Its biggest challenge has been to overcome a conundrum over frequency allocations. As this matter has not come to a conclusion over the years, an amendment to the Broadcasting Law in 2002 got two other bodies involved in the process: the Telecommunications Authority (TK) and the

<sup>8</sup> AGB Anadolu, IP International Marketing Committee, Television 2004. International Key Facts, October 2004, p. 445. For 2003: data does not include the months of April, May and June. In these months, data for “other channels” were not reported; for Star: the figures do not represent the actual performance of Star. Star quit the panel/audience measurement in April 2003 and joined again only in March 2004. The actual performance of Star for the target group (individuals age 5+) was as follows: January 2003: 13 per cent; February 2003: 14 per cent; and March 2003: 12.8 per cent.

Communications High Council (HYK), a council made up of top Government officials. In practice, however, this has only made things even more complicated, as the task of regulating the frequencies now has a three-step structure. The amendment of the Broadcasting Law, the changing attitudes of different governments towards the regulator, and the loss of will-power for a frequency auction, on the part of both the broadcasting sector and the regulator, have left broadcasting regulation in the country seriously impaired.

This deadlock over the analogue spectrum is a sign of things to come, when the digital switchover of television broadcasts gets under way and previously unavailable new media services emerge as a result of converging technologies. Thus, a revision of the regulatory framework should be a consideration not only for broadcasting, but for the whole of the communications sector, in order to anticipate the overlapping of media, telecommunications, services and products. However, this is currently not an item on the agenda of any of the agents in these sectors in Turkey.

### 3.1.1 The Radio and Television Supreme Council (RTÜK)

During the first years following the introduction of private broadcasting, policy-makers were incapable of grasping the real challenges of altering the media system. In the face of mushrooming private channels, policy-making in the field of media regulation was driven by the urgent goal of controlling the private broadcasters rather than by a strategic concern to guide the development of the sector.

Following the 1993 constitutional amendment ending the State monopoly on broadcasting, the Broadcasting Law, regulating both private and public broadcasting, came into effect in April 1994. The law established a new regulatory authority, the Radio and Television Supreme Council (*Radio Televizyon Üst Kurulu* – RTÜK) to distribute frequencies and award licences to all broadcasters and also to monitor the broadcasters' compliance with the law.<sup>9</sup> The public broadcaster, TRT, remains outside the RTÜK's authority, as it is subject to a separate law, the Radio and Television Law of Turkey (hereafter, Radio and Television Law).<sup>10</sup> However, the RTÜK is nonetheless responsible for nominating candidates to the Council of Ministers for the TRT General Directorate and the Executive Board (see section 4.4.2).

<sup>9</sup> For a detailed analysis of the RTÜK's establishment and activities, see: D.B. Kejanhoğlu *et al.*, "Yayınçılıkta Düzenleyici Kurullar ve RTÜK", ("Broadcasting Regulators and the RTÜK"), in Beybin Kejanhoğlu, Sevilay Çelenk, Gülseren Adaklı (eds.), *Medya Politikalar, (Media Policies)*, İmge, Ankara, 2001.

<sup>10</sup> Law No. 2954, The Radio and Television Law of Turkey, (hereafter, Radio and Television Law), *Official Gazette* No. 18221, 14 November 1983.

### *Structure and composition*

The political independence and composition of the RTÜK Board has been a subject of contention and debate over recent years.

As defined in the Broadcasting Law, the RTÜK Board consists of nine members, all appointed by Parliament – five members nominated by the party (or parties) in government and four by the opposition in Parliament. The candidates were required to have experience in the fields of “press, broadcasting, information and communications technologies, culture, religion, education and law”.<sup>11</sup> Members of the RTÜK Board cannot be dismissed. This arrangement was, in fact, a compromise between the political parties. While the new law was being drafted, it was almost impossible to reach a consensus on the main parameters of the representational aspects of the regulatory body. The need to bargain and compromise between conflicting interests overrode all other concerns.

Prior to the amendment of the Broadcasting Law in 2002, one of the central debates was over reforming the composition of the RTÜK Board. The initial amendment of the Broadcasting Law, passed by Parliament in 2001, did not change the number of RTÜK members, but the Board’s composition was altered to include members nominated by the Higher Education Council, journalists’ associations and the National Security Council,<sup>12</sup> as well as by Parliament. As amended, five members of the RTÜK Board would be appointed by Parliament and the remaining four members by the Council of Ministers, as follows:

- five members appointed by Parliament, nominated by the political parties;
- two members appointed by the Council of Ministers, from among four nominees of the Higher Education Council – academics in electrical or electronic engineering, communication, culture/arts and print/audiovisual media fields,
- one member appointed by the Council of Ministers, selected from two candidates nominated by the two largest associations of journalists and the Press Council;
- one member appointed by the Council of Ministers, selected from two candidates nominated by the National Security Council, from among civil servants.

However, in 2001 President Necdet Sezer vetoed the amendment and returned it to Parliament.<sup>13</sup> One of his main concerns was the appointment of the majority of RTÜK

---

<sup>11</sup> Broadcasting Law, art. 6.

<sup>12</sup> The National Security Council (*Milli Güvenlik Kurulu* – MGK) is composed of the Prime Minister, the Chief of the General Staff, the Ministers of National Defence, Internal Affairs, and Foreign Affairs, and the commanders of the branches of the armed forces and the gendarmerie. The MGK decides on national security and defence policy issues.

<sup>13</sup> Official Communication of the President to the Turkish Grand National Assembly, 18 June 2001.

members by Parliament. According to President Sezer, far from solving the problem of politicisation, the amendment in fact exacerbated it. He also argued that the prerequisite of experience in fields such as “press, broadcasting, information and communications technologies, culture, religion, education and law”, in Article 6 of the original version of the law, should be a necessary qualification for appointment and should be kept unchanged.

Nonetheless, in May 2002 Parliament adopted the law once more, without any changes.<sup>14</sup> Since the Constitution does not allow the President to veto a law a second time, President Sezer responded by bringing the law before the Constitutional Court, as his final legal opportunity to intervene. In the meantime, the amended Article 6 did not enter into force. In September 2004, the Court finally issued its decision, annulling two articles of the law, including the one on the composition of the RTÜK, and gave Parliament six months to propose new legislation.<sup>15</sup> This six-month period will commence once the Constitutional Court releases its reasoned decision. Usually, this takes several years. Thus, the existing RTÜK Board, which was appointed prior to the amendment, has remained in place, even though the terms of some members are already over.

Frustrated by their inability to appoint a new RTÜK Board, Parliament did not wait for the reasoned decision and amended the Constitution on 27 May 2005, and established the appointment of RTÜK members by Parliament as a constitutional matter. As expected, President Sezer vetoed this amendment immediately, but on 21 July 2005 Parliament adopted the amendment once more without any changes.<sup>16</sup>

Secure on the constitutional side, and thus preventing any possible veto by the President or an annulment by the Constitutional Court, on 24 July 2005 Parliament amended Article 6 of the Broadcasting Law.<sup>17</sup> As amended, Article 6 is a return to the original law of 1994. In accordance with the new law, Parliament convened on 13 July 2005 and appointed nine new members to the RTÜK Board. These were selected from 12 nominees proposed by the Government and six by the opposition parties.<sup>18</sup> After much legal wrangling, the legal deadlock over the appointment of RTÜK members therefore seems to have come to an end.

<sup>14</sup> Law on the Establishment and Broadcasts of Radio and Television, as amended by Law No. 4756 of 15 May 2002, *Official Gazette* No. 24761, 21 May 2002.

<sup>15</sup> Constitutional Court Decree No. 2004/9, 21 September 2004, *Official Gazette* No. 25593, 24 September 2004.

<sup>16</sup> Law No. 5370, Law Amending an Article of the Constitution of the Republic of Turkey, *Official Gazette* No. 25854, 23 July 2005.

<sup>17</sup> Law No. 5373, Law Amending the Law on the Establishment and Broadcasts of Radio and Television, *Official Gazette* No. 25866, 5 July 2005.

<sup>18</sup> “Yeni RTÜK Üyeleri Belli Oldu”, (“New RTÜK members appointed”), in *Hürriyet*, 13 July 2005, available at <http://www.hurriyetim.com.tr/haber/0,,sid-1@w-2@tarikh-2005-07-13-m@nvid-603806,00.asp> (accessed 13 July 2005).

### *Responsibilities*

In the current regulatory framework, the main functions and powers of the RTÜK are as follows:<sup>19</sup>

- allocating frequencies;
- awarding broadcasting permits and licences to national, regional and local radio and television stations and channels;
- specifying the prerequisites and standards to be fulfilled by private and public radio and television enterprises to be licensed;
- formulating rules to be applied to encrypted broadcasts and to cable operators;
- verifying the compliance of broadcasts with the provisions of the law and with international treaties to which Turkey is a party;
- deciding on appropriate sanctions in cases of violation of the Broadcasting Law;
- ensuring that satellite broadcasts are in accord with national and international rules and standards.

However, as the RTÜK could not act on the frequency allocations and licences (see section 3.2), its core activity in practice became the monitoring of the content of television and radio broadcasts to verify their compliance with the broadcasting standards as stated in the law.

### *Funding*

The Broadcasting Law lists the sources of income for the RTÜK as follows:<sup>20</sup>

- annual fees collected from commercial radio and television channels;
- a five per cent share of the annual advertising incomes of private radio and television channels;
- allocations from the budget of the Turkish Grand National Assembly (*Türkiye Büyük Millet Meclisi* – TBMM);
- fines collected from commercial radio and television channels.

In practice, though, the only source of income is the five per cent cut from the advertising revenues of the channels. As none of the broadcasting channels is licensed, the RTÜK cannot collect any annual fees from the broadcasters. The fines collected by the RTÜK are transferred to the Ministry of Finance. The RTÜK has not requested any allocation from the TBMM's budget, as the five per cent cut from the advertising revenues is considered sufficient.

---

<sup>19</sup> Broadcasting Law, art. 8.

<sup>20</sup> Broadcasting Law, art. 12.

### 3.1.2 The Telecommunications Authority (TK)

The liberalisation of the information and communications markets, particularly of Turkish Telecom (*Türk Telekom* – TT), had become the subject of a heated debate by the beginning of 2000. The Telecommunications Authority (*Telekomünikasyon Kurumu* – TK) was established in 2000<sup>21</sup> as an independent authority responsible for regulating and supervising the telecommunications sector. The main motive behind its establishment was to form an independent regulatory body that would facilitate and monitor the competence of the players during the liberalisation and privatisation of the telecommunications sector.

With the amendment of the Broadcasting Law in 2002, the task of frequency planning for radio and television was transferred from the RTÜK to the TK. This development gave the impression that the information and communications markets would no longer be regarded separately and that convergence would become a focus of debate in Turkey. In practice, however, despite the technological convergence in communications, the regulation remains split. Currently, besides issuing telecommunications licences, the TK is responsible for regulating the electromagnetic spectrum, while the RTÜK retains the authority to award broadcast licences. The frequency plan produced by the TK must be approved by the Communications High Council (see 3.1.3).

The decision-making body of the TK is the five-member Telecommunications Board, which is chaired by the TK's President. Members are appointed by the Council of Ministers for a five-year term as the following:<sup>22</sup>

- the president of the TK – appointed *ex officio*;
- one member representing wireless services and one member representing telecommunications services – appointed from among two candidates for each position nominated by the Ministry of Transport;
- one member representing the telecommunications sector – appointed from candidates nominated by operators and equipment suppliers that have a market share over ten per cent;
- one member representing consumers' interests – appointed from among two candidates nominated by the Ministry of Industry and the Turkish Association of Chambers of Commerce.

---

<sup>21</sup> Law No. 4502, Law Amending Certain Articles of the Telegram and Telephone Law, Law on Organisation and Responsibilities of the Ministry of Transport and Wireless Law, Law on Savings and Aid Fund of the Posts Telegraphs and Telephone Administration and Organisational Charts, attached to the Decree with the Force of Law on the General Cadres and Procedures, *Official Gazette* No. 23948, 29 January 2000, (hereafter, Law No. 4502).

<sup>22</sup> Law No. 4502, art. 17.

### 3.1.3 The Communications High Council (HYK)

The Communications High Council (*Haberleşme Yüksek Kurulu* – HYK) was established in 1983 as a body of approval for communications policies. The HYK is a board consisting of the Minister of Internal Affairs, the Minister of Transport, the Under-Secretary of the National Intelligence Organisation and the Head of Electronic Communications of the General Staff, meeting under the presidency of the Prime Minister (or a State Minister authorised by the Prime Minister).

The HYK may approve the radio and television frequency plan as it is presented by the TK, or demand alterations. The Council also decides when, and how many, frequencies may be auctioned. The HYK then orders the RTÜK to proceed with the tender process. On paper, HYK also has the role of supervising the relations between the TK, RTÜK, TRT and TT. In practice, however, this does not amount to anything practical, as the HYK is not an organisation, but only a board, and is only supposed to convene twice a year.

## 3.2 Licensing

All radio and television broadcasters must obtain a broadcast licence and a broadcasting permit. However, due to the frequency allocation deadlock (see below) currently, all terrestrial radio and television broadcasts are carried out without any licence or official allocation of frequencies.

Satellite and cable channels also have to obtain a broadcast licence and a broadcasting permit from the RTÜK. Since non-terrestrial transmissions do not require any frequency allocation, all satellite and cable channels have received licences. Digital platform operators must, in addition, obtain an operating licence from the TK. If the same channel is to be available on both or all of these transmission platforms (i.e. terrestrial, cable and/or satellite), it must be licensed separately for each of them.

Those channels that have filed an application with the RTÜK for a terrestrial broadcast licence, were automatically allowed to make terrestrial broadcasts and are considered as the applicants of a future auction of broadcast licences. The application for a licence must provide a long list of documents, in addition to an advance payment of a fee for the licence, which the channel may or may not acquire, if and when the licences are auctioned. Applicants for national terrestrial television licences must currently pay the RTÜK over TRY<sup>23</sup> 570,000 (or approximately €346,047).<sup>24</sup> The fees for the other types of licence are as shown below in Table 3.

<sup>23</sup> TRY is the international acronym for New Turkish Lira, which was introduced in 2005 as the official currency replacing Turkish Lira (TRL). TRY 1 = TRL 1,000,000. On 1 January 2006, the acronym TRY will be replaced back by TRL.

<sup>24</sup> This and all figures hereafter in Euros are rounded conversions from local currency with the conversion rate of the relevant year.



**Table 3. Broadcast licence fees**

	Type of licence	Fee (TRY)	Fee (€)
Terrestrial television	National terrestrial television licence	570,000	346,047
	Regional terrestrial television licence	78,500	47,657
	Local terrestrial television licence	1,140	692
Terrestrial radio	National terrestrial radio licence	34,250	20,793
	Regional terrestrial radio licence	5,000	3,035
	Local terrestrial radio licence	114	69
Cable television	Cable television non-local licence	143,000	86,815
	Cable television local licence	28,600	17,363
Satellite	Satellite package operator licence	172,000	104,421
	Satellite television licence	143,000	86,815
	Satellite radio licence	28,600	17,363

Source: RTÜK<sup>25</sup>

The Broadcasting Law states that all broadcast licences are to be awarded for a maximum of five years. The law only allows “corporations established for the purpose of radio and television broadcasting, communication, education, culture and art in accordance with the provisions of the Turkish Trade Law” to hold a licence. The law also rules out those who cannot apply for a licence,

Political parties, associations, labour and employer unions, professional associations, co-operatives, foundations, local governments and companies established or partly owned by local governments, commercial companies, unions, and organisations and enterprises dealing with investment, import, export, marketing and financial affairs shall not be granted a radio and television broadcasting permit; these enterprises cannot be the partner of enterprises that have been granted a radio and television broadcasting permit.<sup>26</sup>

<sup>25</sup> Several directives issued by the RTÜK on Channel or Frequency Allocations and Broadcasting Permits.

<sup>26</sup> Broadcasting Law 2005, art. 29. The rationale behind this provision was to impede political parties, associations and unions from taking advantage of the new broadcasting opportunities, at a time when TRT’s monopoly was breaking up. In a sense, it was supposed to protect diversity, as political parties and unions were especially liable to use their media assets as a tool for political propaganda. For example, during the 1991 elections, the Social Democratic People’s Party (SHP), an opposition party, launched its own television channel, Mega10. Paradoxically, however, the provision dealt a blow to diversity, as the non-commercial, small, time-sharing and “public access”-style broadcasters were also excluded from the system. On the other hand, as it turned out, any political party could have its supporters establish a corporation, not linked to the party, and launch a television channel to promote the party line.

The Broadcasting Law does, however, permit the General Directorate of Meteorology and the General Directorate of Security to maintain their own radio broadcasts as a public service.<sup>27</sup> Also, universities are granted the right to establish local radio and television stations on a time-share basis.

### *The frequency allocation deadlock*

It was the RTÜK's initial responsibility to prepare a frequency plan and allocate frequencies accordingly. The law required that one quarter of the total channels should be allotted to TRT, while, of the remaining channels, half should be allocated on a full-time basis and the other half on a time-share basis.

In 1994, the RTÜK commissioned Bilkent University, Ankara, to prepare a comprehensive frequency plan, which was completed in July 1995,<sup>28</sup> and invited all existing private radio and television stations to apply for broadcast licences. The applicants then started a long wait for the RTÜK to invite them to bid for frequencies. Operators were anxious that some of them would be put out of business, fearing that the frequency spectrum could not accommodate all of them.

Although the RTÜK was supposed to complete the allocations within its first four months, the tender process for frequencies and licences only finally got under way in 1997. The RTÜK's original plan was to start with the bidders for local and regional broadcasters, and to award the licences for national channels later. However, the MGK intervened in the process and advised the RTÜK to cancel the auctions. The MGK's main concern was that the licences would be awarded to conservative religious circles, which would pose a threat to the secular State.

The MGK then recommended that the RTÜK require the owners and senior managers of the bidding channels to obtain a national security clearance document. Once the bidders had obtained these documents, the RTÜK announced a new auction for national terrestrial channels in April 2001. This time the auction was halted for a different reason. Several broadcasters took the issue to court at the Council of State,<sup>29</sup> claiming that the auction was in breach of the freedom of communication, as only those broadcasters who had filed their application for a broadcast licence before 1995 were allowed to bid. The Council found in favour of the plaintiff and halted the tender process.<sup>30</sup> Consequently, broadcasters – local, regional and national – have continued to use terrestrial frequencies on a *de facto* basis.

To end the deadlock, the Government decided to change its media and communications policies. Although the frequency planning was completed by the

<sup>27</sup> Broadcasting Law, art. 24.

<sup>28</sup> Bilkent University, *Türkiye Frekans Planı, (Frequency Plan of Turkey)*, RTÜK, Ankara, 1995.

<sup>29</sup> The Council of State is the high administrative and appeals court.

<sup>30</sup> Council of State, Decision No. 1240, 3 April 2001.

RTÜK, the TK was assigned to review the plan, and if necessary revise it, and then send it to the HYK for approval. The RTÜK would then auction the frequencies.

Although the TK duly completed its work on the frequency plan, the frequencies have not yet been allocated, due to a stand-off between the two regulatory bodies. The RTÜK argues that it cannot announce the bids for licences, because the TK's frequency plan does not specify the number of channels that should be allocated to national, to regional and to local radio and television stations, respectively. For its part, the TK claims that the RTÜK is asking it to exceed its administrative capacities.

In 2002, the two regulators asked the HYK to arbitrate. The HYK was supposed to determine to what extent, and according to which schedule, frequencies should be auctioned. The RTÜK would then announce the tender process within this framework. After a two-year wait, however, following its meetings in December 2004 and March 2005 the HYK announced its decision to abandon any procedures for analogue frequency allocations and instead to move ahead with the digital switchover.<sup>31</sup>

Given the increasing number of players and the complexity of the media ownership structures, it is clear that these regulatory authorities cannot formulate strategic policies to end this deadlock, which has been very damaging for the broadcasting industry. Moreover, the Government has not pushed for a conclusion, because it wants to avoid clashing with powerful media conglomerates.

The national security clearance document is a matter of concern to broadcasters. They complain that the requirement for this document goes against the Constitution and contrasts starkly with the process of harmonisation with EU policy and legislation. The requirement also renders any public offering of a broadcasting company impossible, as each and every shareholder, board member and editor-in-chief must be issued this document.<sup>32</sup> To obtain the document, they had to fill out the National Security Investigation form and apply to the office of the Prime Minister. As its name suggests, this is not a transparent process.

### 3.3 Enforcement measures

In order to ensure that commercial broadcasters comply with the provisions of the broadcasting standards, the RTÜK has established a monitoring department that watches and tapes all the national channels (both radio and television) 24 hours a day,

<sup>31</sup> "Türkiye tamamen sayısal yayıncılığa geçiyor", ("Turkey will completely switch to digital broadcasting"), in *Hürriyet*, 30 March 2005, available at <http://www.hurriyetim.com.tr/haber/0,,sid-1@w-2@nvid-556464,00.asp> (accessed 30 March 2005).

<sup>32</sup> Comment from OSI Roundtable, İstanbul, December 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.*

365 days a year. Besides the reports from the monitoring department, the RTÜK also considers complaints from the public and discusses each case in order to rule on whether it really violates the regulation. In the case of a violation, the RTÜK issues a warning to the broadcaster.

Any violation of the rules of the Broadcasting Law can result in a range of sanctions, which have always been criticised as very strict and anti-democratic. The lightest of these sanctions is a mere warning. If the station continues to disregard the RTÜK's decisions, tougher sanctions follow, ranging from suspension to revoking a station's licence.

Prior to 2002, in the case of a violation the RTÜK would suspend the channel's broadcasts altogether. Suspended television channels would display the text of the RTÜK's decision for the period of suspension (which could range from a single day to months) on a blank screen. For radio, the penalty was silence for the suspension period.

When the Broadcasting Law was amended in May 2002 (see section 3.2), an amendment of Article 33 of the law brought some changes to the sanctions, in line with broadcasters' demands. Instead of suspending the broadcast altogether, in the case of violation, the programme now gets a suspension. The channel must broadcast an educational programme (usually a documentary) supplied by the RTÜK in place of the suspended programme. As amended, Article 33 of the Broadcasting Law states the following,

The Supreme Council shall issue warnings to those private radio and television enterprises which fail to fulfil their obligations, violate the conditions of the broadcasting permit, or transmit programmes that violate the broadcasting rules and other standards stipulated in this Law, or shall require them to apologise clearly during the same broadcasting spot. In the case of non-compliance with this request or repetition of the violation, the transmission of the programme that contains the violation shall be suspended between one and twelve times. Within this time period, the producer of the programme and its presenter, if there is any, shall not produce any other programme under any other names. Instead of the suspended programmes, programmes on education, culture, traffic, women's and children's rights, the physical and moral development of adolescents, the fight against drugs and harmful habits, good use of the Turkish language, and environmental protection shall be broadcast during the same broadcasting slot without any advertisements. [...] In the case of the repetition of the violation, administrative fines are imposed. [...] In the case of a second repetition during a one-year period beginning from the first violation date, the administrative fines shall be increased by 50 per cent. In the event of a third repetition of the violation during a one-year period beginning from the first violation date, the broadcasting permit may be suspended up to the period of one year in accordance with the gravity of the violation.

As shown below in Table 4, the figures from 1996 to 2005 show that the RTÜK has used its punitive powers extensively.

**Table 4. Sanctions by the RTÜK**

	Warnings	Channel Suspensions	Programme Suspensions <sup>33</sup>
1996	113	35	–
1997	107	58	–
1998	168	133	–
1999	302	235	–
2000	99	171	–
2001	111	148	–
2002	118	126	–
2003	173	35	1
2004	785	46	73
2005 <sup>34</sup>	975	47	94

Source: RTÜK<sup>35</sup>

All RTÜK decisions are declared as press releases and are publicly available via the regulator's website. The RTÜK sanctioned the channels for the violation of broadcasting standards defined in the Broadcasting Law. However, some standards are ambiguous and subjective in their definition, such as "broadcasts shall not violate the national and moral values of the community and Turkish family structure" and "broadcasts shall not violate the existence and independence of the Turkish Republic, the territorial and national integrity of the State, and the reforms and principles of Atatürk". Broadcasters have complained that the RTÜK had interpreted these definitions subjectively and used its corrective and punitive powers harshly.

Sezgin Tanrıkulu, the Chair of the Bar of Diyarbakır, argues that the RTÜK has adjudicatory powers, which means that the RTÜK's judgements are put into effect even while they are being appealed. He points out that, despite improvements to laws on freedom of expression, the RTÜK still considers some material as separatist propaganda and suspends channels on those grounds.<sup>36</sup> Although a broadcaster may take such a decision to court, unless the court suspends the RTÜK's decision, the channel remains suspended until the court decides. The case of Açık Radyo is an example in point. This local radio station in İstanbul took one RTÜK suspension to court, and the lawsuit has continued for the past four years, although the station had to comply with the suspension order way back in 2002.<sup>37</sup>

<sup>33</sup> The suspension of programmes as a sanction was introduced from 2003.

<sup>34</sup> Until the end of May 2005.

<sup>35</sup> Figures obtained from the *RTÜK's Monitoring and Evaluation Department*.

<sup>36</sup> OSI roundtable comment.

<sup>37</sup> Açık Radyo, "Açık Radyo Yeniden Açılıyor", ("Açık Radyo Reopens"), 28 January 2002, available at [http://www.aciksite.com.tr/default.aspx?\\_mv=a&aid=714](http://www.aciksite.com.tr/default.aspx?_mv=a&aid=714) (accessed 10 November 2004).

## 4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING

TRT operates several radio and television channels. As the public broadcaster, it is financed by both advertising income and public funds. However, since the early 1990s, the competition from commercial broadcasters has diminished TRT's advertising revenues. TRT has been struggling to regain its audience and its income.

### 4.1 The public broadcasting system

The history of broadcasting in Turkey dates back to the first radio broadcasts in 1927. These broadcasts were carried out by a private company, Turkish Wireless Inc., which had close ties to the Government. In 1937, the Government decided that all radio broadcasts should be in the hands of the State. Radio remained under State control until the establishment of the Turkish Radio and Television Corporation (*Türkiye Radyo ve Televizyon Kurumu* – TRT) in 1964. The Corporation was made responsible for providing a national broadcasting service on a monopoly basis.

The establishment of TRT coincided with an increasing demand for democratisation at all levels of society following the first *coup d'état*, in 1960. In reaction to the ousted Government's anti-democratic and partisan usage of radio, the autonomy of the new broadcasting system was stated in the new Constitution and in the law establishing TRT.<sup>38</sup> However, as one of the amendments to the Constitution following the second *coup d'état* in 1971, TRT's autonomous status was lifted. Its status was redefined in 1972 – ironically as an impartial public corporation. The third and last *coup d'état*, in 1980, resulted in a new Constitution and then a new law to regulate broadcasting, the Radio and Television Law (1983). This new law reaffirmed TRT's mandate and retained its monopoly.

In the 1993 constitutional amendment, TRT's autonomy, 21 years after its revocation, was once again stated in Article 133 of the Constitution. The same article also states TRT's obligation to provide impartial broadcasting.

TRT is responsible for the whole broadcasting process, from the planning and making of radio and television programmes through to transmission over the air, over its network of transmitters. Article 9 of the Radio and Television Law lays down TRT's powers and responsibilities. The duties outlined in this article illustrate what is understood of public broadcasting in Turkey – TRT is seen as a tool for maintaining the unitary nation state and Atatürk's nationalism. In its domestic broadcasts TRT is required to help to do the following:

---

<sup>38</sup> Law No. 359, Turkish Radio and Television Corporation Law, *Official Gazette* No. 11596, 2 January 1964.

- to establish the principles and reforms of Atatürk and the realisation of the national goals of the Turkish Republic, which would bring it to contemporary civilisation;
- to protect and reinforce the existence and independence of the State, the indivisible integrity of the nation and public, and public well-being, with the perception of national unity and justice, and the qualities of a democratic, secular and social State, which respects human rights and is based on Atatürk nationalism;
- 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.

In its overseas broadcasts, TRT is expected to promote the State in every respect and to foster and maintain the relations and bonds of Turkish citizens living abroad.

Following the introduction of private broadcasting in 1990, TRT had to face market competition with an organisational structure where even the word “competition” had never figured previously.

TRT found it increasingly difficult to finance its activities, as it lost its advertising revenue to the private broadcasters, and the station started to undergo financial losses.

While TRT’s revenues were declining steadily, the huge burden on its organisational budget increased year by year. The competition also triggered vast numbers of resignations, with experienced personnel fleeing from TRT to commercial broadcasters. These losses had a great impact on the quality and variety of TRT’s productions. The decreasing interest among viewers and the decline in revenues led to a wave of criticism.

## 4.2 Services

TRT has four national channels: TRT 1 (general), TRT 2 (news, arts and culture), TRT 3 (sports) and TRT 4 (open education). TRT also has a regional television channel, TRT-GAP, for the south-eastern region of Turkey. The public broadcaster also has two international outputs, TRT-INT for the Turkish population living in Europe, and TRT-TURK beamed to the Caucasus and Central Asia.

TRT also operates four national radio channels: Radio 1 (general), Radio 2 (TRT FM) (Turkish classical music, Turkish pop music and Turkish folk music), Radio 3 (jazz, classical and easy listening music) and TRT 4 (education and Turkish music). In addition, there are nine regional radio stations and the international radio service, Voice of Turkey.

With its network of radio and television transmitters, TRT reaches over 90 per cent of Turkey's population.<sup>39</sup>

### 4.3 Funding

TRT's main sources of income are revenue obtained from a tax levied on all electricity bills, allocations from the general budget, advertising revenue, and income from the sales tax collected from television and radio receivers. TRT's funding is regulated by the Law on the Revenues of the Turkish Radio and Television Corporation,<sup>40</sup> and the amounts of public funding are set by the Council of Ministers.

Competition in the broadcasting market hit TRT's advertising revenues badly. The share of advertising in its total revenue dropped from 57 per cent in 1990 to just two per cent in 1997. The public broadcaster has since sought ways to attract more advertising, but the bulk of TRT's revenue now accrues from revenue from electricity bills and the sales tax, rather than advertising. After adding TRT 1 and TRT 2 to the electronic audience measurement system – a prerequisite for competition in the broadcast market, which TRT resisted for a long time – and boosting the channels' ratings with more competitive content from 1998, its advertising income has risen steadily, except for 2001 (see Table 5).

**Table 5. Net income of TRT – breakdown by revenue source (1998–2003)**

Source of revenue	Share of total revenues (per cent)			
	2000	2001	2002	2003
Tax on electricity bills	45.5	52.6	62.5	53.7
Sales tax	13.6	5.2	5.4	14
Advertising	6.3	4.9	8.9	10.4
Other (mainly allocation from the State budget)	34.6	37.3	23.2	21.8
Total net income (€ thousand)	378,809	311,688	317,050	254,685

Source: TRT<sup>41</sup>

The public broadcaster has usually been profitable, but in 2003 it encountered net losses of €13 million. This was largely due to personnel and programme expenses,

<sup>39</sup> With the exception of Radio 4, which has a 21.5 per cent reach. Proceedings of TRT meeting on 22 January 2004 in the Turkish Grand National Assembly Commission on State Economic Enterprises, p. 6.

<sup>40</sup> Law No. 3093, Law on the Revenues of the Turkish Radio and Television Corporation, *Official Gazette* No. 18606, 15 December 1984.

<sup>41</sup> TRT, *2003 Faaliyet Raporu (2003 Annual Report)*, Ankara, 2004, p. 673.



which doubled between 2001 and 2003 in the midst of the general economic crisis and rising inflation (see Table 6). TRT's revenue also dropped significantly in 2003.

**Table 6. TRT expenses – breakdown by type of expenditure (2000–2003)**

Type of expense	Share of total expenses (per cent)			
	2000	2001	2002	2003
Personnel	47.1	39.4	37.3	44.1
Programming	24.6	29.6	45.4	41.6
Running Costs	22.6	22.7	5.6	5.9
Other	5.6	8.3	11.6	8.4
Total expenses (€ thousand)	251,817	223,673	253,632	267,725

Source: TRT<sup>42</sup>

In 2003, TRT's workforce cost the Corporation over €117 million out of its net income of €254 million – of this, advertising revenues brought in €26.6 million, while revenue from electricity bills amounted to €136 million.<sup>43</sup>

In 2004, TRT declared a total income of €230 million and total expenses of €268.5 million, meaning an anticipated financial deficit of almost €39 million. In 2004, TRT's personnel costs reached €134 million.

As TRT has become an increasing burden on the State budget, the Government recently decreased the share of revenue that it receives from electricity bills, from 3.5 to 2.0 per cent. However, in the face of pressure from TRT, in January 2005 the Government compensated for these cuts by increasing the share of the sales tax collected from television and radio receivers, from 10 to 16 per cent. However, this move is far from covering TRT's losses.<sup>44</sup>

TRT's Director General, Şenol Demiröz, expects that personnel costs will amount to 60 per cent of the Corporation's budget in 2005. If this happens, he claims that the revenue share received from electricity bills will not even cover the personnel costs.<sup>45</sup>

Staff recruitment has been a contentious issue throughout the history of TRT. Working for TRT has always meant security, a good salary and highly satisfactory retirement benefits. As a result of various demands and pressures, thousands of people

<sup>42</sup> TRT, *2003 Annual Report*, p. 674.

<sup>43</sup> TRT, *2003 Faaliyet Raporu, (2003 Annual Report)*, Ankara, 2004, p. 673, (hereafter, TRT, *2003 Annual Report*).

<sup>44</sup> Figures compiled from various newspaper reports on the briefing by TRT to the Turkish Grand National Assembly Commission on State Economic Enterprises, 30 March 2005.

<sup>45</sup> OSI roundtable comment.

were recruited by TRT with no expertise in broadcasting, but with fortunate connections. This led to overmanning and underqualified personnel. According to Director General Demiröz, the total number of TRT personnel exceeds 8,000, of whom 2,000 are technical personnel responsible for running and maintaining the transmission facilities. The majority of the rest are administrative staff. Director General Demiröz claims that the Corporation could be run with only 1,500 people, excluding the transmission personnel.

Programme production and acquisition spending is TRT's second biggest expenditure. In 2004, TRT spent almost €6.5 million on foreign programme acquisitions.

TRT's expenses and governance are audited both by a Parliamentary Commission and the Prime Ministerial High Auditing Board (*Başbakanlık Yüksek Denetleme Kurulu – YDK*), which prepares interim and annual reports on the Corporation. Director General Demiröz has complained about the auditing procedures, calling them politically motivated.<sup>46</sup>

## 4.4 Governance structure

### 4.4.1 Composition

TRT is governed by the Radio and Television Law, which defines its objectives, powers and obligations. The governance structure of TRT consists of three main bodies: the Executive Board, the General Directorate and the Coordination Board.

### 4.4.2 Appointments

#### *Director General*

The Director General is selected from three candidates nominated by the RTÜK and is appointed for a four-year term by the Council of Ministers. However, the President must approve the appointment.<sup>47</sup> The Director General can be dismissed by the Council of Ministers upon proposal from the RTÜK. The Radio and Television Law states the circumstances under which the Director General can be dismissed,

When it becomes necessary by reason of national security or public order considerations, in a breach of impartiality, in the case of committing a very serious duty offence or in the event of loss of civil servant qualifications.<sup>48</sup>

---

<sup>46</sup> OSI roundtable comment.

<sup>47</sup> The President has indefinite veto power. The appointment of the current Director General, Şenol Demiröz, took nine months, as President Sezer vetoed the appointment three times on various grounds.

<sup>48</sup> Radio and Television Law, art. 13.

So far, in the history of TRT, no Director General has ever been dismissed, as these conditions are too severe to impeach anyone with.

### *Executive Board*

The highest decision-making authority rests with the Executive Board. The Board comprises the Director General – who heads the Board – and six members who are appointed by the Council of Ministers, selected from 12 candidates nominated by the RTÜK. The candidates must be qualified in one of the following areas: electronics, mass communication, law, management or economics, social sciences, or arts and culture. The members of the Executive Board are appointed for a four-year term and they can be re-elected. Their appointment cannot be terminated.

TRT's powers and obligations are vested in the Executive Board. The Board's main duty is to determine overall broadcasting policy. It approves principles and objectives concerning programming, technical, administrative, and financial and personnel matters. It is also responsible for adjudicating the Corporation's budget, balance sheet and staff, subject to the High Auditing Board and the Parliamentary Commission.

### *Coordination Board*

The Coordination Board consists of the Director General, the Assistant Director Generals, the Chief Legal Advisor, the General Secretary, the Head of the Personnel Department and the Head of the Education Department. The Coordination Board's main duty is, as its name suggests, accomplishing collaboration among various units of the Corporation. The Board prepares annual draft budgets and annual draft broadcasting plans.

The Corporation has been criticised for not being independent, flexible and accountable. The present Director General, Şenol Demiröz, agrees with these criticisms.<sup>49</sup>

### *Management reforms*

After facing strong competition from private rivals, TRT's administration decided to undertake a process of restructuring. In 1998, TRT commissioned McKinsey & Company, a consultancy, to develop a new organisational structure to make TRT more competitive with the commercial channels, while maintaining its public service aim. McKinsey's initial report assessed TRT's existing structure as being unmanageably huge in terms of activities and personnel, financially weak in comparison to similar broadcasters, unsatisfactory in its programming diversity and appeal, beset by serious structural problems in carrying out its basic functions, due to its overly bureaucratic management, and lacking in adequate cost and performance analysis mechanisms.<sup>50</sup>

<sup>49</sup> OSI roundtable comment.

<sup>50</sup> McKinsey & Company, *Başarılı Bir Gelecek İçin Değişim Programı Tasarısı, (A Proposal for a Transformation Programme for a Successful Future)*, Ankara, 1998.

The McKinsey report recommended that TRT make the following changes:

- adopt a corporate management style that could develop strategies and policies, and achieve a manageable structure by downsizing its personnel and abolishing regional branches;
- transform all its units (including production resources, production and transmission facilities) into internal commercial arms, except the management of broadcast channels;
- redefine its channels;
- adopt cost analysis and train the staff to implement the structural changes;
- adopt the internal market model to increase productivity and efficiency;
- gradually reconfigure its technological infrastructure and prepare for switchover from an analogue to a digital signal.

However, since the regulatory framework and the established practices within the Corporation hindered TRT from implementing any real change, the restructuring largely failed.

Director General Demiroz questions the Corporation's autonomy by arguing that TRT is dependent on State funding and personnel appointment procedures. He also emphasises the point that production staff are not represented in the governance structure. According to the Director General, TRT's vertical hierarchical structure is an obstacle to flexible management, with one out of every eight TRT personnel some sort of a bureaucratic chief. In the governance structure, TRT channels are linked to the related departments (for example, the Radio Department and the Television Department). In other words, the department heads are responsible for the management of channels. Director General Demiroz argues that to improve TRT's management, the Radio and Television Law must be amended so that the channels can be run separately.<sup>51</sup>

#### 4.4.3 Responsibilities

There are no sanctions that can be invoked against TRT. The Radio and Television Law states that in the case of offences committed in TRT's broadcasts, the persons who are responsible for controlling and directing such programme are personally liable.<sup>52</sup>

The Radio and Television Law gives the Government the right to prohibit TRT from broadcasting any news item or programme on the grounds of national security. In practice, however, the Government has never used this power, due to the fact that, in

---

<sup>51</sup> OSI roundtable comment.

<sup>52</sup> Radio and Television Law, art. 28.

line with this law, the TRT administration has always acted according to the State's policies on national security issues.

#### **4.5 Programme framework**

Since 1972, TRT has planned its programming policy annually. Every year a *General Broadcasting Plan* is prepared in order to guide the Corporation's budget, investment plans and production procedures (for example, proposal, production, control and broadcast). This detailed plan includes issues and themes to be covered in the programmes. Annual goals and guidelines are also stated in the plan.

While it enjoyed a monopoly, TRT was fairly indifferent to its audience. Although it defined itself as a public service broadcaster, its programming was State-centric and paternalistic. Lack of autonomy and a strict hierarchical structure limited the quality, creativity and innovation of TRT broadcasts. However, the audience never challenged TRT's output, and watchdog organisations or media NGOs were non-existent.

Some characteristics that emerged in TRT's programming – such as its editorial standpoint in the news, its approach to popular culture, particularly music, and its advertising quotas/rules – have determined its identity as a public broadcaster over the years.

##### **4.5.1 Output**

Most of TRT's output consists of in-house productions. The remainder includes both commissioned/outsourced programmes and foreign imports. As for the in-house productions, in the first half of 2004, TRT's programme producers submitted 445 programme proposals to the department heads, of which 257 were accepted. In the same period, TRT commissioned 12 prime-time drama series from independent production companies.

**Table 7. Planned annual television output of TRT – breakdown by genre (2005)**

	Share of total output (per cent)						
	TRT 1	TRT 2	TRT 3	TRT 4	TRT-GAP	TRT-INT	TRT-TURK
Education	12	4	–	46.4	33	11	12
Culture	9.5	28	–	1	23	17	10
Drama	46.5	25	–	–	19	28	36
Music	3	15	–	51.6	12	8	8
Entertainment	4	–	–	–	–	7	7
News	11	21.5	–	–	7	18	15
Parliamentary Sessions	–	–	33.5	–	–	–	–
Sports	4	2	65.5	–	1	3	2
Advertisements	5	0.5	–	–	–	1	–
Other	5	4	1	1	5	7	10
Total	100	100	100	100	100	100	100

Source: TRT<sup>53</sup>**Table 8. Planned annual television output of TRT – breakdown by source (2005)**

Source	Share of total output (per cent)						
	TRT 1	TRT 2	TRT 3	TRT 4	TRT-GAP	TRT-INT	TRT-TURK
Local Production	68.5	91	74	100	96.5	98	90
Foreign Acquisitions	31.5	9	26	–	3.5	2	10
Total	100	100	100	100	100	100	100

Source: TRT<sup>54</sup>

#### 4.5.2 Programme guidelines

The Radio and Television Law states the following main principles of broadcasting:<sup>55</sup>

<sup>53</sup> TRT, *2005 Genel Yayın Planı, (2005 General Broadcasting Plan)*, Ankara, 2004, p. 127, (hereafter, TRT, *2005 General Broadcasting Plan*).

<sup>54</sup> TRT, *2005 General Broadcasting Plan*, p. 136.

<sup>55</sup> Radio and Television Law, art. 5.

- to be bound by the context and spirit of the Constitution; to safeguard the indivisible integrity of the State with its territory and nation, national sovereignty, the Republic, public order, general security and public interest;
- to establish the principles and reforms of Atatürk and the realisation of the national goals of the Turkish Republic, which would bring it to contemporary civilisation;
- to safeguard the national security policy and the national and economic interests of the State;
- to have no place for the propaganda of regimes and ideologies that aim at ruling the state by an individual or a group, or establishing a hegemony of one social class over other classes, or destroying the State or State authority, or creating discrimination on the basis of language, race, religion or sect, or establishing a State regime based on such concepts and ideas in any way;
- to observe the prerequisites of national and moral values and national traditions;
- to comply with the basic ideas, objectives and principles of Turkish national education;
- to use easily understandable, correct and clear Turkish;
- not to include matters that may be harmful to the physical and psychological health of the public;
- not to make any broadcast that shall aim at inspiring or suggesting negative feelings such as pessimism, despair, confusion, dismay or hostility;
- to respect individuals' privacy, honour and dignity, and to adhere to the concept of honesty;
- to adhere to the principles of impartiality, fairness and quickness, as well as contemporary techniques and methods of journalism, in gathering, selecting and broadcasting news;
- to differentiate between news and commentaries, and to reveal the sources of commentaries;
- to make sufficient broadcasts in order that public opinion may be formed soundly and freely on issues that might be of interest to the public;
- to avoid making one-sided, biased broadcasts, and to avoid becoming a tool serving the interests of a political party, a group, an interest group, a belief or an idea.

TRT has a pre-broadcast programme control mechanism. All programmes must be checked by the Broadcast Control Board before they go on air. The controls are based on the main programming principles. In 2003, the Board reviewed 11,229 television

programmes, 13,055 radio programmes, 7,412 advertisements, 4,319 song lyrics and 349 educational programmes.

#### 4.5.3 Quotas

There are no special quotas for language or minority group representation.

#### 4.6 Editorial standards

The main principles also apply to TRT's news and information programmes. They are considered as basic guidelines for the provision of impartial and accurate information and news. However, what TRT understands by impartiality and accuracy is problematic and contradictory. The codes of practice outlined in these guidelines depict TRT as a public broadcaster, which should not take an editorial position. However, conversely, it requires the programme makers covering social issues in their programmes not only to debate the issues, but also to propose solutions. Therefore, what TRT understands by factual programming turns out to be a studio production, in which a presenter discusses the issues with experts.

TRT has always been criticised for reflecting the official views of either the State or the Government. For years, TRT's news bulletins faithfully reflected the priorities of the State and were reluctant to debate any controversial issues on the public agenda. TRT news staff are considered as public employees, and therefore they are strictly expected to follow TRT's main principles of broadcasting. There have been cases of displacements of journalists, news and current affairs programme producers and editors for political reasons.

## 5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING

The commercial broadcasting scene in Turkey is overcrowded, and there are many more channels than the relatively small advertising expenditure can sustain. Four major cross-media groups with widely ranging interests dominate the market. The strict legal provisions on ownership have proved to be inefficient. The interplay of politics, the economy and the media have led to the use of broadcasting as political or economic muscle.

### 5.1 The commercial broadcasting system

Turkey's airwaves are crammed with radio and television channels. In addition to TRT, 14 national commercial broadcasters supply 24-hour programming. When the 13 regional and 203 local television stations and almost a thousand national and local



radio stations are added, there is a surfeit of broadcast media. On top of this, cable and satellite audiences provide access to even more Turkish channels.

The absence of licensing (see section 3.2) causes technical problems. In Ankara, the capital city, for example, more than 20 channels are available via terrestrial reception. This creates significant interference problems, which are burdensome in an overly competitive market.

The commercial broadcasters are regulated by the RTÜK, which is seen as a bureaucratic prohibiter in the eyes of the business-minded television executives. The RTÜK has recently tried to be much more business-friendly, but it too sees itself primarily as the custodian of the law instead of a regulator that can guide the market towards a better broadcasting environment, and encourage innovation and pluralism in broadcasting.

The lack of policy means changing and balancing the rules of the game according to the needs of the business and public feedback. This, in turn, results in frequent crises between the industry and the regulators, and abrupt changes in the rules.

The division of advertising expenditure among an excessive number of players has had an impact on the independence of broadcasters by increasing their reliance on non-media revenue sources. The leading broadcasters in Turkey are usually cross-media groups, which are part of conglomerates with a range of non-media interests.

As more than 200 local television channels try to survive – most of the time without a fraction of the resources of national channels – broadcasters from İstanbul dominate the scene all over the country.

On the other hand, due to several economic downturns that the country has suffered, commercial broadcasting operates very efficiently in terms of content production. Most programming involves out-sourced productions or acquisitions. This has created a significant independent production sector, which provides most programming on commercial channels.

## 5.2 Services

In Turkey, the public service aspect of broadcasting is largely understood as improving the education and culture of the people through television programmes. Thus, in terms of public service obligations for commercial broadcasters, the law states that radio and television enterprises, except for the narrowcast channels, are obliged to broadcast certain amounts of education, culture, Turkish folk and Turkish classical music programmes. The share of such programming is determined by the Directive of 17 April 2003, which stipulates that at least 15 per cent of the weekly schedule should be

dedicated to this content.<sup>56</sup> Education, culture and Turkish music (both classical and folk) get a five per cent slice each.

Broadcasters must also air public advertisements on road safety, the hazards of smoking, preventing forest fires, and so forth, to comply with provisions in several laws on non-media issues.

Nuri Çolakoğlu, the Chair of the Association of Broadcasters, complains that the obligations originating from different laws – for example, on educational and cultural programming and public advertisements – amount to five hours and 46 minutes of airtime daily for each non-thematic channel.<sup>57</sup> Although these provisions are respected, the programmes are usually exactly as long as the directive and laws stipulate, and are broadcast in “dead hours” or “graveyard slots”: that is, in the afternoon, late after midnight, or very early in the morning.

### 5.3 Commercial television ownership and cross-ownership

#### 5.3.1 Ownership

##### *Ownership restrictions in the Broadcasting Law*

The Broadcasting Law was a heavy-handed reaction to the previous unregulated period. Contrary to the Western European experience, when TRT’s broadcasting monopoly was breaking up in the early 1990s, the focus of public concern with respect to the ownership of the new private broadcasters was not concentration, but rather the abuse of media power.

General scepticism towards the media owners led to the imposition of a 20 per cent ceiling on all aspects of ownership in the Broadcasting Law. No shareholder was to own more than 20 per cent of a broadcasting enterprise. If the shareholder held shares in more than one enterprise, the total shares in all enterprises could not exceed 20 per cent. Newspaper owners also could not own more than 20 per cent of a broadcaster. The ceiling of foreign ownership in a broadcasting enterprise was likewise 20 per cent. On top of the 20 per cent threshold, shareholders’ next of kin were forbidden to own any shares in the same enterprise. Foreign investors were only allowed to invest in one broadcasting enterprise. Finally, any one with more than 10 per cent of the shares in a broadcasting enterprise was barred from Government tenders or businesses.<sup>58</sup>

The main objective of the Broadcasting Law with respect to the regulation of media ownership was to prevent media outlets from serving their owners’ interests. Yet precisely

<sup>56</sup> Article 29 of Directive on the Principles and Rules of Radio and Television Broadcasts, *Official Gazette* No. 25082, 17 April 2003.

<sup>57</sup> OSI roundtable comment.

<sup>58</sup> Broadcasting Law 1994, art. 29.

this problem was observed throughout the 1990s. In practice, it turned out that the law actually encouraged a veiled structure that was wide open to abuse (see below).

An amendment of the Broadcasting Law in May 2002 changed the approach to ownership restrictions.<sup>59</sup> Instead of targeting the abuse of ownership power, the amendment was intended to avoid concentration. This might seem a retreat from the issue of abuse, especially considering that the amendment was the result of lobbying by the major media groups to eliminate obstacles in bidding for privatisation tenders. However, it sets out a more realistic control factor, which might in future bring the practices of veiled ownership structure and dependency on Government contacts to an end. Abuse of ownership is still considered a violation of broadcasting standards under the amended Broadcasting Law.<sup>60</sup>

As amended, the Broadcasting Law (Article 29) sets no limits on ownership. Instead, it employs an annual average audience “ratio” threshold (hereafter, audience threshold). (The term “ratio” here is rather problematic, as the law does not provide a definition, whereas audience measurements are usually based on “share” or “rating”.) The amendment set the audience threshold at 20 per cent, which is currently far above what any channel can achieve. If a radio or television channel exceeds this threshold, the RTÜK requests the majority share owner – whether an individual or a group – to reduce its share of ownership to below 50 per cent, by a public offering or other kind of sale. If the audience threshold has been exceeded due to the ownership of shares in more than one radio and television channel, again, an appropriate number of shares, sufficient to reduce the total ownership share to below 50 per cent, needs to be sold. In the case of a breach, the RTÜK can revoke the broadcaster’s licence. The amendment also states that foreign capital cannot exceed 25 per cent of the paid-in share capital of a private radio and television channel.

However, the two crucial sub-paragraphs of Article 29 setting the audience threshold rules were suspended by the Constitutional Court in June 2002 and then annulled in September 2004. (See Section 3.1.1.)<sup>61</sup>

If and when the provisions on the audience threshold finally enter into force, questions will remain on how to implement them in practice. As previously mentioned, the first snag is the lack of definition of the term “ratio”. A bigger question is how the RTÜK will measure the audience threshold. Currently, AGB-Anadolu, a subsidiary of AGB International, commissioned by the Turkish Audience Research Board (TİAK), an industry group of broadcasters, advertisers and advertisement agencies, handles audience measurements in Turkey. It uses 1,951 people-meters and has invested

---

<sup>59</sup> Law on the Establishment and Broadcasts of Radio and Television, as amended by Law No. 4756 of 15 May 2002. See section 3.1.1 for further details on this amendment.

<sup>60</sup> Broadcasting Law, art. 4.

<sup>61</sup> Constitutional Court Decree No. 2004/9, 21 September 2004, *Official Gazette* No. 25593, 24 September 2004.

significantly in the system, although it only measures the national television channels that have subscribed to the AGB-Anadolu system. It is unclear whether the RTÜK will use the TIAK's figures, or will establish its own audience measurement arm and spend public money on setting up a wider-reaching system for both television and radio.

### *Ownership regulation in practice*

Despite the ownership restrictions stipulated in the Broadcasting Law, in practice, things hardly went the way that the law intended. All the major broadcasters were part of a media group, and some had several television and radio channels. Although, on paper, the ownership structure of the broadcasters conformed with the law, everyone knew that almost every channel had one absolute boss – Kanal D belonged to Aydın Doğan, Cem Uzan had Star TV, and so forth. In the ownership form submitted to the RTÜK, the list of shareholders could contain the names of a driver or doorman, or a company lawyer. Corporate structures were made confusingly complicated in order to distance broadcasting interests from newspaper interests, although all were (literally) under one roof.

This dual pattern of ownership, one real and the other on paper, was a result of an unrealistic law, which itself was the outcome of a law-making process that lacked a policy, just as it lacked accurate information about ownership and revenues. Hence, the law encouraged the very tendencies that it set out to prevent.

Concern about the abuse of media power turned out to be amply justified. Often and repeatedly, private broadcasters took an editorial line that favoured their owners' interests. The news bulletins were used to defend owners or to stand by or against the Government, depending on the owner's interests. If the owner of the channel wanted to win a privatisation tender, pro-Government discourse would flood the news and current affairs programmes, while investigative news teams would unearth material against their rivals.

In the 1990s, the owners of the media groups made acquisitions during the privatisations of the energy and banking sector. Despite the provision in the Broadcasting Law (Article 29), barring those with more than ten per cent of the shares in a broadcasting enterprise from taking part in Government tenders, owners of all major media groups bid in the tenders, as the Government turned a blind eye. In fact, except for a few of the largest conglomerates, *all* those who could bid had media interests, as this was a necessity of the times for entrepreneurs who wanted a "slice of the pie" in the privatisations and other tenders.

However, the privatisations did not provide the only opportunity for the owners to abuse their media power. When Cem Uzan, owner of the Star media group, went into politics, his broadcasting and publishing interests went with him. He ran for Parliament with his Genç Parti (Young Party) in the 2002 elections, winning 7.25 per cent of the popular vote. Although this was below the national threshold of ten per cent for entering Parliament, the Genç Parti became the most vocal opposition party.

His Star TV and *Star* newspaper, as well as several cable and satellite channels and radio stations, were heavily used for party propaganda and to criticise the Government. Even the lucrative commercial breaks during the UEFA Champions League broadcasts, to which Star TV held the rights, were used solely for the Genç Parti's political broadcasts. The RTÜK, acting in accordance with the Broadcasting Law, warned Uzan's television and radio stations several times and then suspended their broadcasts for various periods. However, Star and its sister broadcasters ignored the warning and persisted with Uzan's propaganda once they were back on air, insisting that they were impartial and gave fair coverage to all parties.

Things got worse in July 2003, when the Banking Regulation and Supervision Agency (*Bankacılık Denetleme ve Düzenleme Kurulu* – BDDK) revoked the banking licence of Uzan's İmar Bank (İmar Bankası), and transferred the bank's management to the Saving Deposit Insurance Fund (*Tasarruf Mevduatı Sigorta Fonu* – TMSF), a Government institution responsible for restructuring and managing ailing or bankrupt banks. In February 2004, after it emerged that the bank was being used as a cash-cow for sister companies thirsty for money, all the Uzan group investments, including the media interests, were transferred to the Fund. However, during the process, the Uzan media outlets fiercely defended their boss and protested against the Government. A number of staff members began a hunger strike live on television, updates about the strike were broadcast daily, and the newscasts were filled with Uzan's speeches at party meetings and items criticising the Government, as well as the BDDK and TMSF officials. The hunger strike and the Uzan party line were dropped once the takeover was complete. The Star media group continues broadcasting and publishing, under the control of the TMSF, awaiting sale to a new owner.

The banking connection is not unique to the Star media group. All the major media groups had their sister banks. In Turkey's cash-strapped, high-inflation economy, media owners vied for low-rate credits, which the State-owned banks supply to favoured clients, meaning those with the right links to the Government. Normally the bank would ask for guarantees to justify the credit. A media owner, on the other hand, could ask for favours in return for good publicity for the Government. Even better, owning a bank could provide almost unlimited cash flow in the laxly regulated banking days of the 1990s. Again, good relations with the Government would ease things greatly if one wanted to buy one of those smaller state banks about to be privatised.

The triangle of finance, politics and the media, hardly exclusive to the 1990s, constituted the nursery, alas a corrupting one, for the emerging Turkish private broadcasters. In the absence of a media policy, the interplay of these three factors determined how the sector would structure itself and operate.

It seems, however, that reforms of the banking sector and the economic recovery will make it difficult to sustain this triangle. The banking sector is now heavily regulated, and the remaining few media groups with banking interests would not dare make use of these banks. Also, the sector is much more business-minded today, and the days when broadcasters spent incredible amounts of money on acquiring talent and rights

are gone. According to Nuri Çolakoğlu, the Chair of the Association of Broadcasters, apart from the major national channels, which have the ability to spend \$50 million on programming, broadcasters now have to live within their income.<sup>62</sup>

### 5.3.2 Cross-media ownership

Currently cross-media ownership issue is addressed in the amended Article 29 of the Broadcasting Law, which sets no constraints on the number and variety of media holdings, but limits the market domination to 20 per cent for each market (i.e. radio or television). As detailed above, the RTÜK oversees the ownership issues, and may require the cross-media group to sell some of its assets or shares, and as a final resort may revoke a broadcaster's licence. However, both the legal situation – i.e. the provisions suspended by the Constitutional Court – and the fact that none of the current broadcasters is licensed leave the RTÜK without any means to be active regarding ownership issues.

Turkey's media scene is dominated by eight cross-media groups, four major and four smaller. Except for Kanal 7, all the main commercial channels are part of a cross-media group: Doğan's Kanal D, Merkez's ATV, Çukurova's Show TV, TMSF-owned Star, İhlas's TGRT, and Samanyolu's STV. (See Tables 9 and 10.)

The crisis in the banking sector has drastically altered the structure of the media industry in recent years, as all the media groups were part of larger groups with banking interests as well. Some investors already owned banks and then went into the media, while others were in the media and acquired banks due to the nature of doing business in Turkey.

Currently, Uzan's Star Group and the Aksoy Group have been completely taken over by the TMSF. Also, the Merkez Group – which was formerly the Medi Group, owned by the Bilgin family, and has now been taken over by businessman Turgay Ciner through a licensing deal – is in effect leased from the TMSF in return for the debts incurred by Bilgin's troubled bank Etibank, which was taken over by the TMSF on charges of bad governance. The TMSF has also taken over one of Çukurova's banks, Pamukbank; the group's other bank, Yapı Kredi, was saved at the last minute. So Çukurova also owes money to the TMSF and reached a settlement with the Fund on a 15-year plan. The İhlas Group also lost its banking and finance arm and had troubles with the TMSF. Doğan seems to be the only major media group not entangled with the TMSF, although it also had banking interests. Recently, in April 2005, the group's bank, Dışbank, was acquired by Fortis, an international banking group.

Hence, the TMSF is now one of the major factors in the Turkish media. The banks were taken over by the TMSF on charges of bad governance or corruption. These charges usually involved bad loans to the group companies, including their media

---

<sup>62</sup> OSI roundtable comment.

interests. It is obvious that Turkey's major media lost their lifeline after the interventions of the BDDK and the TMSF and the banking sector reforms, as advertising expenditure does not in itself suffice to sustain the multitude of media outlets in the country.

**Table 9. Major cross-media groups**

	Doğan	Merkez	Çukurova	Star (TMSF)
National terrestrial television <sup>63</sup>	Kanal D, CNN-Türk <sup>64</sup>	ATV	Show TV	Star, Kral <sup>65</sup>
Cable/Satellite <sup>66</sup>	Dream, FunTV, Galaxy	Kanal1	SkyTurk, DigiTurk digital package <sup>67</sup>	Joy, Nev TV
Radio <sup>68</sup>	Hür FM, Radyo CNN-Türk, Radyo D	Radio City	Alem FM	Metro FM, Süper FM, Kral FM
Newspaper	Hürriyet, Milliyet, Posta, Radikal, Referans, Turkish Daily News	Sabah, Yeni Asır, Takvim, Pasfotomaç, Cumhuriyet (Partial)	Akşam, Güneş, Tercüman	Star
Publishing	Online publishing, magazine publishing, book publishing, print distribution, music publishing, music and books retail, printing	Online publishing, magazine publishing, book publishing, print distribution, printing	Online publishing, magazine publishing, book publishing, printing	Music publishing, printing
Other media	Production, DHA News Agency, media marketing	Production, Merkez News Agency, media marketing	Eksen facility provider, media marketing	Production, Ulusal Medya News Agency, media marketing
ICT	ISP, telecoms, cable operator		GSM operator Turkcell, telecoms, ISP, cable operator	GSM operator Telsim, telecoms, cable operator
Non-media	Banking and finance, energy, automotive, health, trade, manufacturing	Energy, construction, hospitality	Banking and finance, insurance, trade, automotive, steel, manufacturing, hospitality, maritime and air freight	Banking and finance, trade, energy, sports, construction, manufacturing

<sup>63</sup> All national terrestrial channels are also available on cable and satellite.

<sup>64</sup> CNN-Turk is a news channel available nationwide. CNN-Turk is a joint venture with Time Warner, USA.

<sup>65</sup> Star's Kral is a terrestrial music channel available nationwide.

<sup>66</sup> All national cable channels are available on satellite as well.

<sup>67</sup> Digiturk is 66 per cent owned by Fintur, the Netherlands. Fintur, on the other hand, is 58.55 per cent owned by TeliaSonera and 41.45 per cent owned by Turkcell, another Çukurova company. However, TeliaSonera owns 37.09 per cent of Turkcell itself.

<sup>68</sup> Local radio assets of the groups are not listed.

**Table 10. Smaller cross-media groups**

	İhlas	Doğuş	Samanyolu	Aksoy (TMSF)
National Terrestrial television <sup>69</sup>	TGRT	NTV <sup>70</sup>	STV	Cine5, <sup>71</sup> Fantasy <sup>72</sup>
Cable/Satellite <sup>73</sup>	TGRT Haber	CNBC-e, <sup>74</sup> Discovery Ch. Turkey, NBATV		Maxi, Supersport Gala, Viva
Radio <sup>75</sup>	TGRT FM	NTV Radyo	Burç FM	Show Radyo, Radyo5 Radyo Viva
Newspaper	Türkiye Gazetesi		Zaman	
Publishing	Magazine publishing, online publishing printing	Magazine publishing, ntvmsnbc.com <sup>76</sup>	Online publishing	Magazine publishing
Other media	İHA News Agency		Cihan News Agency	
ICT	ISP, telecoms			ISP, cable operator
Non-media	Retail, food, trade, schools, health, construction, energy	Banking and finance, insurance, automotive, retail, food, hospitality, energy		Finance

These groups also dominate the newspaper market, as all the major dailies are published by cross-media groups. The market structure imposes vertical and horizontal integration in the media, not leaving much space to the independents. All major groups have their own printing facilities. Print distribution is dominated by Doğan's Yay-Sat and Merkez's MDP, with 60 per cent and 40 per cent of the market respectively. As a result, most of the time independent newspapers must make use of the major groups' printing and/or distribution resources.

<sup>69</sup> All national terrestrial channels are available on cable and satellite as well.

<sup>70</sup> Doğuş's NTV is a terrestrial news channel available nationwide.

<sup>71</sup> Cine5 is a subscription-based, encrypted, terrestrial channel.

<sup>72</sup> Fantasy is a subscription-based, encrypted, terrestrial channel.

<sup>73</sup> All national cable channels are also available on satellite.

<sup>74</sup> CNBC-e is a joint venture between Doğuş Group and CNBC.

<sup>75</sup> Local radio assets of the groups are not listed.

<sup>76</sup> Ntvmsnbc.com is a joint venture between NTV and MSNBC.



**Table 11. Newspaper market shares (2004)**

Media Group	Share of total circulation (per cent)	Share of advertising expenditure (per cent)
Doğan	39	62
Merkez	22	21
Çukurova	9	5
Uzan/TMSF	2	1
İhlas	4	2
Others	24	9

Source: Doğan<sup>77</sup>

In addition, cross-media groups enjoy the benefits of having their own television and radio channels, which help to promote sister newspapers by offering extra discounts off the rate-card or sometimes even for free. Moreover, such groups have another advantage, in the form of package deals, which let advertisers buy much more advertising space in several outlets for the same money; the independents or smaller groups cannot offer this. As a result, as shown in Table 11 above, the Doğan and Merkez groups, publishing a variety of print titles targeting different markets, sell more than half of the 4.5 million newspapers sold daily in Turkey and take 80 per cent of the newspaper advertising expenditure. As shown below in Table 11, Doğan and Merkez also dominate the €39 million magazine publishing sector, with a combined market share of almost 60 per cent.

**Table 12. Magazine market shares (2004)**

Media Group	Share of total sales (per cent)	Share of advertising expenditure (per cent)
Doğan	38	44
Merkez	20	16
Çukurova	3	3
Doğuş	3	9
Others	36	28

Source: Doğan<sup>78</sup>

<sup>77</sup> Doğan Yayın Holding, *Investor Presentation May 2005*, 2005.

<sup>78</sup> Doğan Yayın Holding, *Investor Presentation May 2005*, 2005.

Although all cross-media groups have radio assets, radio broadcasting is a somewhat more open market. The main players include many independent radio stations, such as Power FM, Capital Radio, Best FM and Radyo Klas. This is due to the relatively low start-up and running costs of radio. Local radio stations are also very popular.

Overall, of the €931 million total advertising expenditure in 2004, Doğan seems to grab the largest share, with nearly 40 per cent (see Table 12).

**Table 13. Advertising share of the major cross-media groups (2004)**

Media Group	Share of advertising expenditure (per cent)
Doğan	38
Merkez	17
Çukurova	13
Uzan	6
Others	26

Source: Doğan<sup>79</sup>

#### 5.4 Funding

Commercial broadcasters are dependent on advertising income, which is very sensitive to economic and political developments. Advertising spending shrank by half during the most recent economic crisis, although economic recovery and political stability since then have brought an upturn. However, the relatively crowded media scene makes it very difficult for most companies to get a big enough slice of the pie to sustain their businesses. Also, the major groups can benefit from the economies of scale (and/or scope) to soak up the gains from any boom in the market.

<sup>79</sup> Doğan Yayın Holding, *Investor Presentation May 2005*, 2005.

**Table 14. Total net advertising expenditure (1995–2004)**

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Net advertising spending (\$ millions)	620	730	835	896	870	1,120	550	732	910	1,165
GDP growth (per cent)	7.2	7	7.5	3.1	-4.7	7.2	-8.5	7.8	5	5
Advertising growth (per cent)	48	18	14	7	-3	29	-51	33	24	28

Source: Advertising Association <sup>80</sup>

Over the years, television has increased its share of the market and now captures half of all advertising expenditure (see Table 13). The economic crisis forced broadcasters to slash their rates from 2001 on, only for them to recover in 2004. Consequently, although there are legal limits on the period and amount of commercials, television stations are now swamped with them. Although the Broadcasting Law (Article 21) only permits eight-minute breaks between programmes, and five-minute breaks within programmes every 20 minutes, it became a common practice to air 50 to 65 minutes of commercials during a 50-minute popular drama. Viewers complained that most channels showed the programmes between commercials, rather than the other way round. When the RTÜK invited the broadcasters to behave themselves, they initially obeyed, but soon began airing additional advertisements before and after the advertising break, thus extending the allowed slot. The RTÜK has warned the channels that it is investigating and will take action.<sup>81</sup>

**Table 15. Advertising market – breakdown by segment (2001–2004)**

	Share of total advertising market (per cent)			
	2001	2002	2003	2004
Television	42	48	50	51
Newspaper	38	35	35	36
Outdoor	8	7	5	4
Radio	5	5	5	3
Magazine	5	4	4	4
Internet	1	1	1	1
Cinema	1	1	1	1

Source: Doğan <sup>82</sup>

<sup>80</sup> Advertising Association, data compiled from figures, 2004, available at <http://www.rd.org.tr> (accessed 17 June 2005).

<sup>81</sup> RTÜK, Press Release, 17 June 2005, available (in Turkish) at <http://www.rtuk.org.tr/bas2005.htm> (accessed 17 June 2005).

<sup>82</sup> Doğan Yayın Holding, *Investor Presentation May 2005*, 2005

Nonetheless, broadcasters are anxious about costs, as it gets harder to increase audiences and ratings. Many programme formats, including the local versions of successful US or European quiz shows, sitcoms and reality dramas, are already out of fashion, as the channels saturated the market with too many of them. The number of competing channels creates a problem here as well; when a station has a hit with a new show, its rivals swiftly undermine the demand for it by imitating the innovation.

This also undermines diversity in programming. Struggling in the depressed advertising market, television executives seek to guarantee the success of their programming by copying their rivals' tried and tested formulas. The schedules of Show TV, ATV, Kanal D, Star and, to a degree, even TRT 1 are filled with very similar shows, with similar content. This makes things much worse for the smaller television stations with low advertising income. As a result, there is very little room for diversity and creative programming, as all the channels hold on to what is known to work on screen.

**Table 16. Television market shares (2004)**

Media Group	Television audience share (per cent)	Share of advertising spend (per cent)
Doğan	17	28
Merkez	13	18
Çukurova	18	22
Uzan	9	9
İhlas	8	4
Others	35	19

Source: Doğan<sup>83</sup>

In the broadcasting market, Doğan, Merkez, Çukurova and Star have almost 60 per cent of the television audience. However, as shown in Table 16, they receive around 75 per cent of television advertising expenditure, which totalled €477 million in 2004. The 15 per cent discrepancy is a result both of better deals offered by these broadcasters – for example, packages including the showing of advertisements on more than one channel, or a combination of print and television advertising space sales – and the fact that they can ask for higher rates for their advertising slots, especially in prime time.

Another outcome of this harsh competition for advertising income is the fact that the channels turn to sponsorship and product placement. Even the commercial break signs

<sup>83</sup> Doğan Yayın Holding, *Investor Presentation May 2005*, 2005

are now sponsored, and the news bulletins have product placements, clearly violating the law. The RTÜK has warned several channels on several occasions.<sup>84</sup>

## 5.5 Programme Framework

### 5.5.1 Instruments

Besides the reports from the RTÜK's own monitoring department, the regulator also considers complaints from the public and discusses each case, before ruling on whether it really violates the regulation.

In cases of violation, the RTÜK issues a warning to the broadcaster. If the violation continues, the RTÜK may order the broadcaster to suspend the programme in question (see section 3.3). Instead of the suspended programme, the broadcaster has to air one of the documentaries supplied by the RTÜK. (The documentary as penalty is one of the oddities of Turkish broadcasting regulation.) All the channels have received numerous warnings. In the past, some channels and radio stations were suspended for months. The RTÜK still issues dozens of warnings and penalties monthly, but now it only suspends the programme in violation. However, the number of warnings and suspensions shows no sign of decreasing – indicating that “regulation by penalty” has not resolved the problems. When the RTÜK warns or sanctions channels, they discover another loophole or way around the problem for them. This is very well exemplified in the case of sponsored commercial break signs, of which there is no mention in the Broadcasting Law or in directives issued by the RTÜK, as no one had ever thought of it before.

### 5.5.2 Programme guidelines

There are no programme obligations placed on the commercial broadcasters apart from the stipulation of a weekly 15 per cent quota of educational and cultural programming, which does not do much for diversity. Instead, the commercial interests of the channels create diversity to a significant degree. Most popular dramas reflect regional cultures, entertainment shows are crowded with an incredibly wide range of local music, and political talk shows often have higher ratings than many sitcoms. It can be argued that market forces have worked better in forcing broadcasters to observe cultural diversity than any regulation would.

On the other hand, the television schedules are crowded with local productions. When the commercial channels first started, broadcasters seemed bent on buying as many US and Latin American imports as possible. However, within a few years, imports such as *ER* or *The X Files* were unable to compete with local productions. Nowadays, apart

---

<sup>84</sup> RTÜK, various press releases, available at <http://www.rtuk.org.tr/bas2005.htm> (accessed on various dates).

from the narrowcast channels, foreign programming is extremely rare on Turkish television.

Commercial broadcasters must provide impartial and accurate news and information as envisaged in Article 4 of the Broadcasting Law, which sets the broadcasting standards:<sup>85</sup>

- Radio, television and data broadcasts shall be conducted within a spirit of public service, in compliance with the supremacy of the law, the general principles of the Constitution, fundamental rights and freedom, national security and general moral values. The broadcasts shall be in Turkish. However, broadcasts in other languages may also be broadcast for the purpose of teaching foreign languages, in programmes that may make a contribution to the formation of universal culture and scientific works, or transmitting music or news in those languages.
- Broadcasting should not be exercised in a manner that serves the unfair interests of broadcasting enterprises, shareholders and their relatives.
- Broadcasts should not, in any manner, humiliate or insult people for their language, race, colour, sex, political opinion, philosophical belief, religion or sect, or any such considerations.
- Broadcasts should not offend the personality of individuals beyond the limits of criticism, and should respect the right of reply and rectification; the news, the investigation of the accuracy of which is possible within the framework of the code of conduct of the media, should not be broadcast without proper investigation or without being sure of their truthfulness; the given information, provided that it be kept confidential, should not be broadcast unless there is a serious necessity for public interest.
- Broadcasts should not serve an unfair aim and interest and should not lead to unfair competition; broadcasts qualified as proclamation and advertising should be announced clearly without leading to any suspicion; a product promotion created by one agency with its own efforts should not be broadcast by another agency as if it belongs to itself; it is particularly important that sources of the news that are provided by agencies or another media source should be indicated.
- Broadcasts should not present or declare anyone as guilty unless there is a court decision; any programme item that leads people to commit a crime or raises the feeling of fear should not be broadcast.
- Broadcasters should respect the principles of impartiality, conformity and reliability in news programmes; broadcasts should not prevent free formation of

---

<sup>85</sup> Article 4 (Broadcasting Standards) of the Broadcasting Law, as amended by Law No. 4771. Law on the Establishment and Broadcasts of Radio and Television, as last amended by Law No. 4771 of 3 August 2002, *Official Gazette* No. 24841, 9 August 2002.

opinions; the secrecy of the source of information should be preserved unless there is an intention of misleading the public.

- Those advertisements that are deceptive or misleading, or that would lead to unfair competition, should not be broadcast.
- The equality of opportunity should be established among the political parties and democratic groups; the broadcasts should not be biased or partial; the broadcasts should not violate the principles on the election bans that are determined at election times.

A directive issued by the RTÜK on 17 April 2003,<sup>86</sup> which sets very detailed guidelines for broadcasters, added two more provisions besides others: news and commentary should be distinguishable, and any reconstruction of events should be labelled as such. These additions, and actually some of the provisions in the law itself, seem to have been made in reaction to past experiences of abuse of media power, misinformation and unethical broadcasting.

In practice, these guidelines are frequently violated. Broadcasters have a tendency to air problematic material, as it is more than often sensational, which means higher audience ratings. However, broadcasters complain that the RTÜK may consider any content to be violating the rules, as it is very hard to define if an item is partial or inaccurate. The RTÜK's judgements are too "narrow-minded" or "bureaucratic", and are in contradiction of the mentality of commercial television. Also, the wide-ranging and detailed provisions make it difficult for both the RTÜK and the broadcasters to observe the guidelines. The Directive includes restrictive provisions on issues that were amended in other laws or addressed in the Constitution during the recent legislative reforms.

Most violations arise from the established practices originating in the press and carried over into the broadcast news. When it had a monopoly, TRT was never able to create a respected tradition of news-making under Government pressure. That said, commercial broadcasters have significantly transformed the television news, both in form and content, in many instances contributing to the progress of democracy in the country and exposing several corruption cases.

### 5.5.3 Quotas

There are no special quotas for languages or minority groups, although broadcasting in regional languages is encouraged nowadays (see section 6). There are also no quotas for European or independent productions. Turkish television channels have a very high ratio of national programming, as mentioned above, most of it in the form of independent productions.

---

<sup>86</sup> Directive on the Principles and Rules of Radio and Television Broadcasts, *Official Gazette* No. 25082, 17 April 2003.

## 5.6 Editorial standards

Apart from the provisions in the Broadcasting Law and in directives issued by the RTÜK, broadcasters do not have separate editorial standards, such as in-house guidelines. There is no mechanism to ensure the editorial independence of commercial broadcasters. This makes them vulnerable to internal and external pressures.

The Turkish Journalists' Union (*Türkiye Gazeteciler Sendikası* – TGS), accused media owners of not ensuring free and secure working conditions for the journalists.<sup>87</sup> TGS claimed that the unilaterally prepared and imposed contracts by “big media groups” carried some provisions contrary to the Press Labour Law that would be used to dismiss journalists easily.

The troubles of the banking sector and their repercussions on the media confirm that editorial independence has no guarantees. All broadcasters have from time to time turned out to be their masters' voice, more or less subtly promoting the owners' interests. On several occasions, the conflict between the major groups over their non-media interests has also turned into a war of words on screen.

On the other hand, while the sector has become more business-minded in recent years, competition for viewers has forced the “tabloidisation” of news, even for the major commercial broadcasters. Political events, which have always been the lead item in news bulletins, now take second place behind the “soft news” stories.

## 6. EUROPEAN REGULATION

In terms of broadcasting policy, as in other fields, the demands of the European Union (EU) and expectations of Turkey as a candidate country have been the driving force behind significant initiatives in recent years. EU requirements on freedom of expression and minority rights have been main policy imperatives in the field of the media.

After a long run, Parliament amended 27 articles of the Constitution to make it harmonise with EU legislation. This move also meant strengthening the civic elements of the Constitution. Significant improvements have occurred in the freedom of thought and expression. In Turkey's recent history, many writers and journalists have ended up in prison because of what they have written.

One of the most controversial issues between Turkey and the EU was minority language broadcasting. The policy process on the regulation of broadcasts in different languages demonstrates the interplay between various cultural and political dynamics

<sup>87</sup> The Journalists' Union of Turkey (TGS), *Call to media owners to be sincere when using the expressions “press freedom” and “editorial independence*, available at <http://www.ifj.org/docs/Turkey03062004.doc> (accessed 10 July 2005).



in Turkey. When the debate on amending the Broadcasting Law began at the end of 2001, one of the central questions was the possibility of allowing broadcasting in ethnic languages and dialects. Although the first amendment passed in 2002<sup>88</sup> had no provision on this issue, increasing pressure from the EU led to the insertion of a new paragraph in the second amendment of the law in August 2002,<sup>89</sup> which legalised broadcasts in languages other than Turkish,

There may be broadcasts in the different languages and dialects used traditionally by Turkish citizens in their daily lives. Such broadcasts shall not contradict the fundamental principles of the Turkish Republic enshrined in the Constitution and the indivisible integrity of the state with its territory and nation. The principles and procedures for these broadcasts and the supervision of these broadcasts shall be determined through a regulation to be issued by the Supreme Board.<sup>90</sup>

However, the realisation of the broadcasts took a very long time, since the legislative framework for implementation could not be easily formulated. TRT and RTÜK officials, as well as representatives of the Foreign Ministry and National Security Council, had several meetings on the issue.

A major discussion concerned the question of who would carry out these broadcasts – TRT or the commercial broadcasters. As the public service broadcaster, TRT was the natural choice. Although the amendment allowed the commercial national broadcasters to broadcast in minority languages, they were not interested in doing so, mainly as it is not commercially interesting. TRT was also not keen on the task, and dragged its feet. The deadlock was ended at the beginning of 2004, when the RTÜK issued a Directive<sup>91</sup> detailing the implementation of minority language broadcasts and assigning the job to TRT, which began the broadcasts in June 2004.

The directive set strict time limits for broadcasts in other languages – four hours per week on television, not exceeding 45 minutes per day, and five hours per week on radio, not exceeding 60 minutes per day. TRT currently broadcasts in Bosnian, Arabic, Circassian and the Kurdish dialects of Kirmançi and Zaza. These broadcasts consist of news headlines, documentaries, music and sports programmes.

Local and regional broadcasting in minority languages will be possible once an audience profile by the RTÜK is completed. Previous restrictions imposed on broadcasters, including the requirement to respect the principle of “the indivisible unity of the State”, remain unchanged.

---

<sup>88</sup> Law No. 4756.

<sup>89</sup> Law on the Establishment and Broadcasts of Radio and Television, as last amended by Law No. 4771 of 3 August 2002.

<sup>90</sup> Broadcasting Law, art. 4.

<sup>91</sup> Directive on Radio and Television Broadcasts to be Made in Different Languages and Dialects Traditionally Used by Turkish Citizens in their Daily Lives, *Official Gazette* No. 25357, 25 January 2004.

In its *2004 Regular Report on Turkey's Progress towards Accession*, the European Commission notes that some local private television and radio broadcasters have applied to the RTÜK to broadcast in Kurdish. The report states that,

although the broadcasters have not yet been granted permission it has been reported that these applications will be assessed favourably. None of the national private television channels are reported to have applied to RTÜK for broadcasting in languages other than Turkish.<sup>92</sup>

The Commission's report also points out the heavy penalties imposed by the RTÜK,

As regards the Broadcasting Law (RTÜK Law), this is still frequently invoked by the RTÜK in order to impose heavy penalties, including fines and the suspension or cancellation of the broadcasting licence. For example, in March 2004 the RTÜK ordered the closure for 30 days of ART TV, a local television channel broadcasting from Diyarbakır, on the grounds that it had violated "the principle of the indivisible unity of the state" when, in August 2003, it broadcast two Kurdish love songs. If this broadcaster is closed for a second time, its licence will be revoked. On a separate occasion, the Government successfully challenged the RTÜK's decision to impose sanctions on a private radio station which had broadcast a song in Kurdish. A further liberalisation of the legislation and a clearer alignment of the RTÜK's policy with the spirit of the reform process would obviate the need for Government intervention in such cases.<sup>93</sup>

In its overall assessment, the report states that minority language broadcasting is a "step towards the basic principles enshrined in the *Acquis*".<sup>94</sup> However, the Commission's report concluded that Turkey's alignment with the *Acquis communautaire* in the field of broadcasting is limited, and that "substantial efforts are still required to bring Turkish legislation and implementation into line with the *acquis*",

Turkey's level of alignment with the *acquis* in this chapter remains limited to some provisions concerning advertising. The Law on the Establishment of Radio and Television Enterprises and their Broadcast still poses major problems in terms of definitions, jurisdiction, freedom of reception, discrimination on the grounds of nationality, major events, promotion of European and independent works, advertising and tele-shopping, protection of minors, and restrictions on the share of foreign capital in radio and television enterprises.

Despite broadcasting legislation which 10 years ago abandoned the State television monopoly and created a strong regulatory body (RTÜK), there is still no stable, transparent and effective regulatory framework in Turkey:

---

<sup>92</sup> European Commission, *2004 Regular Report on Turkey's Progress towards Accession*, SEC (2004) 1201, Brussels, 6 October 2004, available at [http://europa.eu.int/comm/enlargement/report\\_2004/pdf/rr\\_tr\\_2004\\_en.pdf](http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_tr_2004_en.pdf) (accessed 5 May 2005), p. 39, (hereafter, European Commission, *Regular Report 2004*).

<sup>93</sup> European Commission, *Regular Report 2004*, p. 40.

<sup>94</sup> European Commission, *Regular Report 2004*, p. 129.

radio and television stations pre-existed the regulatory framework and the regulatory authority has not yet been in a position to re-allocate frequencies and review the existing temporary licences. The RTÜK also has strong sanctioning powers but they seem rather ineffective, even in the limited field of content regulation where they are used. The independence of the Regulatory body should be strengthened.<sup>95</sup>

## 7. THE IMPACT OF NEW TECHNOLOGIES AND SERVICES

Liberalisation of the telecommunications sector is likely to increase the availability of media services based on new technology – cable television, digital satellite packages and the Internet, especially broadband connectivity. It is planned that the switchover of terrestrial television to digital should begin in 2006 and be completed in 2014.

### 7.1 New media

There is significant popular demand in Turkey for new technologies and services, as observed in the mobile telephone market, where there is a penetration of 40 per cent, with around 30 million users. This level of demand is not, however, matched by any such dynamism on the policy side. The development and penetration of new media services are instead based on *ad hoc* decisions and market forces. The absence of common policy on new media technologies is partly due to the fragmented structure of communications regulation. Broadcasting is regulated by the Radio and Television Supreme Council (RTÜK), while the Telecommunications Authority (TK) manages the telecommunications sector (see section 3.1). New media, by converging broadcasting and telecommunications, are in some aspects covered by both regulators, while other aspects are left untouched by regulation. Currently, the RTÜK is more interested in the content side of the services, whereas the TK sees itself as a regulator of the infrastructure. This dual structure may create regulatory dilemmas when the technologies of convergence, such as broadband television and digital television, are at stake.

Telecommunications policy clearly favours liberalisation of the market. The monopoly of the incumbent telecom operator, Turkish Telecom (TT), has been ended, and several companies have been awarded licences for long-distance telephone services. Other types of service licences will follow. However, TT retains the infrastructure of which its new competitors want to make use, and there is a debate on the pricing of TT's services to the competition.

Liberalisation, especially unbundling access to the local loop, will transform the new media by increasing the quality and availability of services over the cable and broadband networks.

---

<sup>95</sup> European Commission, *Regular Report 2004*, p. 130.

The Internet is a key focus for the TK, TT and the Government. Ambitious e-government projects are being undertaken, and primary schools all over the country are getting broadband connections. However, the percentage of Internet users is still in single figures. This is largely due to the low penetration of computers in homes. A majority of computer homes still use the dial-up connection, as the availability of DSL or other broadband connections is limited. Liberalisation enables commercial operators to provide broadband services, but they still have to make use of TT infrastructure for the “last mile” (i.e. the connection from the exchange to the user’s computer). Nonetheless, the number of players in the market and the demand for broadband connections promise significant growth in Internet access if TT and the private operators can reach a solution on pricing and the use of infrastructure.

## 7.2 Market conditions

Cable infrastructure and services are currently offered by TT, the incumbent public operator. TT offers 45 to 60 channels of television, voice-over-IP and broadband Internet access services over the cable network, which is available in 20 cities. Out of the 14.5 million households in Turkey, one million have cable access and more than 2.5 million homes are on streets or in districts covered by cable.<sup>96</sup> Ironically, this figure is slightly above the target that TT has set for 1991. The low penetration of cable can be attributed to TT’s poor marketing and shoddy treatment of customers.

TT has contracted the cable-laying and subscription sales part of the business to several private companies in different regions. This was expected to help the marketing of cable services, but overall did not create the expected boost. A major problem in the development of cable is the fact that all the major channels on cable are readily available on terrestrial. Cable television adds a few international channels (CNN, BBC World, BBC Prime, MTV, RTL and TV5) and some cable-only channels, which are usually considered less than enticing.

In the late 1990s, the marketing of cable had the advantage of broadband Internet access through cable modems, but this also stalled, as customers were deterred by the relatively high price of subscribing for even a 64 Kb connection, and by the variable quality of service. The introduction of DSL connections over existing telephone lines in 2004 has removed this advantage from cable completely.

TT transformed the cable infrastructure, and since 2002 it has been ready to switch its television service to digital, which may create an added value to the marketing of cable, offering at least 90 channels and interactive services. However, due to TT’s inability to sign in the content providers, the service is still analogue.

<sup>96</sup> “Kablolu TV’de 1 milyon abone var”, (“Cable TV has 1 million subscribers”), in *Hürriyet*, 31 October 2004, available at <http://www.hurriyetim.com.tr/haber/0,,sid-4@nvid-489049,00.asp> (accessed 31 October 2004).

In the satellite market, Çukurova's Digiturk, currently the only digital operator, is well established, as the two other competitors, Star's Star Digital and Aksoy's Cine+, have shut down their operations. Digiturk has over 850,000 subscribers, who benefit from nearly a hundred television channels and interactive services.<sup>97</sup>

Digiturk was initially a joint venture of Çukurova and Doğan. Doğan, which later pulled out of the deal, is currently investing in the digital satellite market again. It is marketing FreeTV, a standard digital satellite receiver with an embedded decoder that can be used to watch the free-to-air satellite channels. The plans were to win the television rights to the Turkish Super League (i.e. the premier football league) and build a subscription service around it. This would be a blow to Digiturk. However, Digiturk won the rights to the league once more for another four years. Aksoy's Cine5, which is an analogue pay-tv, got its foothold in the market in the 1990s through live football games. When it lost those rights to the games later on, it went into an unrecoverable downturn.

Eurasiasat, a joint venture of TT and Alcatel Space of France, operates the Turksat 2A satellite, which carries all the national and regional television and radio channels. The European beam of the satellite provides radio and television channels from Turkey to four million Turkish citizens living abroad.

As for Internet access, the numbers vary from one source to the next. Compiling data from various sources, Internetworldstats.com reports six million Internet users in Turkey as of March 2005, which corresponds to a 8.2 per cent penetration.<sup>98</sup> The Internet market is certainly recovering from the adverse effects of the latest economic crisis. The global boom in the online industry prior to 2000 led many investors in Turkey to spend in the sector. The global decline of the industry and Turkey's economic crisis left many casualties. Most of the Internet service providers (ISPs) quit the business, leaving a few connection providers in the consumer and corporate markets. Çukurova's Superonline, TT's TT.net and Doğan's E-kolay are strong players in the consumer market. TT's DSL service, which provides broadband connections to homes and businesses, aimed to have one and a half million subscribers by the end of 2005.<sup>99</sup> TT is also to open the DSL infrastructure to the new private telecom operators, as the liberalisation of the telecommunications sector moves forward.

<sup>97</sup> Digiturk, *Digiturk Hakkında (About Digiturk)*, available at [http://www.digiturk.gen.tr/default.php?sid=p\\_digiturkinfo.php&cstil=1](http://www.digiturk.gen.tr/default.php?sid=p_digiturkinfo.php&cstil=1) (accessed 10 July 2005).

<sup>98</sup> Internet World Stats, March 2005, available at <http://www.internetworldstats.com/middle.htm#tr> (accessed 10 July 2005).

<sup>99</sup> "Türk Telekom'dan 1.1 milyar YTL'lik yatırım", ("1.1 billion TRY investment from Turkish Telecom"), in *Sabah*, 27 April 2005, <http://www.sabah.com.tr/2005/04/27/eko105.html> (accessed 27 April 2005).

### 7.3 Services

TRT is currently testing both DVB and DAB terrestrial in Ankara. The broadcast is a digital multiplex of TRT's five television channels and radio stations. As there are no terrestrial digital receivers available in the market yet, this is to remain as a test. TRT's digital output is also available in the Digiturk package.

All national and regional broadcasters have their websites. A few offer separate dedicated news sites, such as Ntvmsnbc.com and Haber7.com. Some broadcasters run portals, such as Showtvnet.net, with a wide range of content. As many of the major broadcasters are part of a cross-media group, several broadcasters have sister companies in the Internet and telecommunications sectors.

### 7.4 Funding

All the services offered on new media platforms are funded commercially. Although cable television is a loss maker, TT is commercially successful and subsidises its investment in cable. Eurasiasat is a wholly commercial operation, and its revenue comes from selling satellite transponders. Digiturk is funded through both subscriptions and advertisements. Internet service providers sell subscriptions to corporate and home users, whereas the websites usually depend on advertisements for revenue.

### 7.5 Digital television

In late 2002, the RTÜK prepared an action plan and a road map for the switchover from analogue to digital in terrestrial broadcasting, and presented it to the Communications High Council (HYK). The plan foresaw a simulcast period, leading to the switching off of all analogue signals by 2018. Recently, the HYK has convened and announced its decision that the switchover should begin in 2006 and be completed in 2014. The HYK has also decided to ditch any attempts at auctioning broadcast licences for the analogue spectrum (see section 3.2).<sup>100</sup>

Preparation for the switchover must deal with many issues, including significant problems arising from the mess in the spectrum caused by the analogue broadcasters. In major cities there is currently no space in the frequency spectrum to launch digital broadcasts. This might mean leaving the analogue broadcasters as they are, then cancelling out some of the analogue broadcasters and using the opening in the spectrum to launch digital multiplexes. This would mean an incremental deployment of digital transmissions: as more households get digital receivers, more broadcasters will shift to the digital multiplexes.

<sup>100</sup> NTVMSNBC, *Televizyonda dijital devri başlıyor, (Digital era begins in television)*, 30 March 2005, <http://www.ntvmsnbc.com/news/316341.asp> (accessed 30 March 2005).

The RTÜK plan also proposed the formation of a forum to decide on additional standards and technical specifications. The forum will include the participation of broadcasters, electronics manufacturers and regulators.

The broadcasting industry wants the switchover to happen, as it would mean major cost-cutting in transmission operations, bring a solution to the interference problems of analogue broadcasting, and create room for many more channels and value-added services.

## 8. CONCLUSIONS

Television in Turkey has become an industry over the past decade, although the market is too small to sustain the current number of players. Some major players, such as Kanal D, ATV and Show TV, have emerged alongside TRT. These stations have the ability to cope with the volatility of the advertising market through their cross-media assets and subsidies from their non-media parent companies. These main channels keep the television sector rolling, despite the many recent troubles afflicting the Turkish economy.

The stability of the market depends on the growth of television advertising expenditure. Even the main players have a difficult time making ends meet, let alone the smaller players, especially the local broadcasters. This fact presents one of the main concerns for Turkish broadcasting. The independence of the media is a remote ideal, as all broadcasters need a constant cash flow and thus have to operate under a cross-media group or be supported through non-media revenues. The sheer quantity of players in the market makes things even worse. The absence of frequency allocations and licensing also presents a major uncertainty for the sector.

Oddly, a consolidation of the market by some of the main players would work for the independence of the broadcasters both from the conglomerates and the State. Some of the main players are currently owned by the Government – through the Saving Deposit Insurance Fund (TMSF) – while others are open to pressure because of the holding group's debts to the Government. It is a very difficult market for new entrants unless they are supported by financial or political affiliations. Foreign investment in the market might increase, however, now that Turkey has got a firm date from the EU for accession talks.

On the other hand, some of the broadcasters and the independent production houses have very good resources and technical facilities. The television schedules are full of local productions. The audience's demand for local content provides a basis for growth. Independent production has developed to supply programming to both the public broadcaster and the commercial channels. New media technology (i.e. satellite and terrestrial digital television) will help the development of the sector, as it demands more of narrowcast channels, in terms of content creation.

The broadcasters' financial vulnerability has resulted in a demand-driven sector. This is a fact of commercial television everywhere, but in Turkey it makes creative programming or highbrow productions a challenge that many broadcasters avoid. Diversity is neglected by both the broadcasters and the RTÜK. The public broadcaster also has a long way to go in terms of representing diversity, instead of locating itself as the mouthpiece of the State (not necessarily the Government). The commercial broadcasters provide more diversity at times, as they are more relaxed about taking up issues, even taboo ones. TRT, on the other hand, has to stick closely to the official position of the Turkish Republic. Also, the broadcasting standards laid down in the law themselves make diversity difficult.

The demand-driven nature of the sector poses another problem. The broadcasters define the demand solely based on AGB's audience measurements. The perception of the audience as numbers creates a gap between the audience and the broadcasters, both commercial and public.

The RTÜK considers its regulatory position as more of an administration of broadcasters instead of policy-making to encourage the sector's healthy growth. The distribution of regulation between the RTÜK and the TK poses another problem, as new media technologies increase their presence, whereas the regulatory framework was drawn up only for analogue terrestrial transmission. A new communications law and a single regulator would benefit both the telecommunications and broadcasting sectors, as the two businesses increasingly converge.

## 9. RECOMMENDATIONS

### 9.1 Media policy

#### *Minority broadcasting*

1. The Government and the Radio and Television Supreme Council (RTÜK), which together currently form the policy community on minority broadcasting, should also include commercial broadcasters, in order to address the current unrealistic solution to the minority broadcasting issue.

#### *Digitalisation*

2. Public and industry agents should establish a "Digital forum" to facilitate the transition to terrestrial digital and to decide on the technical standards. The forum would also promote the development of broadband media.

#### *Cable television*

3. The Government should liberalise the cable television market to create competition in the market. The transition of the cable services to digital transmission should be completed before losing out altogether to satellite



digital television. Competing providers and transition to digital would achieve growth in the subscriber base and improve services.

## 9.2 Regulatory authorities

### *Reform of the regulatory system*

4. The media sector, the regulators and the Government should commence a debate on the need for a single regulatory framework, with one regulatory authority for the whole of the communications sector, in order to determine whether this would make it easier to cope with the convergence of the telecommunications, IT and media sectors.

### *Communications High Council (HYK)*

5. The Government should more clearly define the tasks of the Communications High Council (HYK), either in the Broadcasting Law or by a directive, as the HYK presently has to approve major policy actions.

### *Radio and Television Supreme Council (RTÜK)*

6. The RTÜK should meet with the broadcasters more often to discuss issues. It should also do better and more to inform the public on issues.

## 9.3 Public and commercial broadcasters

### *Viewer representation*

7. The RTÜK and the broadcasters, including the Turkish Radio and Television Corporation (TRT), should take steps to encourage viewers – who are not represented at all in the regulation or policy circles – to organise to voice their concerns and interests. The present gap between the audience and the broadcasters should be bridged by transparency and accountability on the broadcasters' side.

## 9.4 Public broadcasters (TRT)

### *Public service role*

8. The Turkish Radio and Television Corporation (TRT) should take steps to redefine its public service in the commercial broadcasting era. This should include the initiation of a forum with the participation of relevant agents to this end.

### *Independence*

9. The Government should reinstate TRT's autonomy, to ensure independence from the Government in financial, administrative and editorial matters.

*Accountability*

10. TRT should be accountable to the people, and should do more to inform the public on its operations.

**9.5 Commercial broadcasters***Professional ethics*

11. The commercial broadcasters should fill in the vacuum, which they themselves have created, concerning ethical practices, by agreeing on at least some basic concepts of programming guidelines.

*Diversity and transparency*

12. The Radio and Television Supreme Council RTÜK should take initiatives to have the issues of diversity and transparency placed in the broadcasting legislation.
13. The Government and the RTÜK should, in the digital broadcasting era, consider the consolidation of the commercial broadcasting market to be a policy issue rather than a matter of the market. The RTÜK should take the initiative in the policy-making process on this issue.

*Self-regulation*

14. The Government and the RTÜK should take initiatives to form a sound and realistic self-regulatory system for commercial broadcasters, in order to develop and safeguard the independence of broadcasters. The regulatory framework should include the self-regulation of commercial broadcasters.

## ANNEX 1. Legislation cited in the report

### Constitution

Constitution of the Republic of Turkey, as amended by Law No. 3913, *Official Gazette* No. 21633, 10 August 1993.

Law No. 5370, Law Amending an Article of the Constitution of the Republic of Turkey, *Official Gazette* No. 25854, 23 July 2005.

### Broadcasting Law

Law No. 3984, Law on the Establishment and Broadcasts of Radio and Television, *Official Gazette* No. 21911, 20 April 1994.

Law No. 4756, Law on the Amendment to the Law on the Establishment and Broadcasts of Radio and Television, *Official Gazette* No. 24761, 21 May 2002.

Law No. 4771, Law on the Amendment to the Law on the Establishment and Broadcasts of Radio and Television, *Official Gazette* No. 24841, 9 August 2002.

Law No. 5373, Law on the Amendment to the Law on the Establishment and Broadcasts of Radio and Television, *Official Gazette* No. 25866, 5 July 2005.

### Other laws

Law No. 4502, Law Amending Certain Articles of the Telegram and Telephone Law, Law on the Organisation and Responsibilities of the Ministry of Transport and Wireless, Law on Savings and Aid Fund of the Posts Telegraphs and Telephone Administration and Organisational Charts attached to the Decree with the Force of Law on the General Cadres and Procedures, *Official Gazette* No. 23948, 29 January 2000.

Law No. 3093, Law on the Revenues of the Turkish Radio and Television Corporation, *Official Gazette* No. 18606, 15 December 1984.

Law No. 2954, The Radio and Television Law of Turkey, *Official Gazette* No. 18221, 14 November 1983.

Law No. 359, Turkish Radio and Television Corporation Law, *Official Gazette* No. 11596, 2 January 1964.

### Directives issued by the RTÜK

Directive on the Principles and Rules of Radio and Television Broadcasts, *Official Gazette* No. 25082, 17 April 2003.

Directive on Radio and Television Broadcasts to be Made in Different Languages and Dialects Traditionally Used by Turkish Citizens in their Daily Lives, *Official Gazette* No. 25357, 25 January 2004.

## ANNEX 2. Bibliography

### *In English*

European Commission, *2004 Regular Report on Turkey's Progress towards Accession*, SEC (2004) 1201 (Brussels: European Commission, 6 October 2004)

### *In Turkish*

Bilkent University, *Türkiye Frekans Planı (Frequency Plan of Turkey)* (Ankara: RTÜK, 1995)

Kejanlıođlu, D.B. *et al.*, "Yayınclıkta Düzenleyici Kurullar ve RTÜK" ("Regulatory Authorities in Broadcasting and the RTÜK"), in Beybin Kejanlıođlu, Sevilay Çelenk, Gülsereñ Adaklı (eds.), *Medya Politikaları (Media Policies)* (Ankara: İmge, 2001)

TRT, *2003 Faaliyet Raporu (2003 Annual Report)* (Ankara: TRT, 2004)

TRT, *2005 Genel Yayın Planı (2005 General Broadcasting Plan)* (Ankara: TRT, 2004)

Television across Europe:  
regulation, policy and independence  
United Kingdom

## Table of Contents

1. Executive Summary .....	1605
2. Context .....	1606
2.1 Background .....	1607
2.2 Structure of the television sector .....	1608
2.3 Market shares of the main players .....	1608
3. General Broadcasting Regulation and Structures .....	1611
3.1 Ofcom .....	1611
3.1.1 The Ofcom Board – composition and structure .....	1611
3.1.2 Other Ofcom boards .....	1612
3.1.3 Ofcom’s remit .....	1613
3.2 Licensing .....	1614
3.3 Enforcement measures .....	1616
3.4 Broadcasting independence .....	1616
4. Regulation and Management of Public Service Broadcasting .....	1618
4.1 The public broadcasting system .....	1618
4.2 Services .....	1618
4.3 Funding of the BBC .....	1619
4.3.1 BBC commercial revenues .....	1620
4.3.2 Auditing BBC revenues .....	1623
4.4 BBC governance structure .....	1623
4.4.1 The Board of Governors .....	1623
4.4.2 Composition .....	1623
4.4.3 Appointments .....	1623
4.4.4 Responsibilities .....	1624
4.5 BBC programme framework .....	1625
4.6 BBC editorial standards .....	1628
4.6.1 The Hutton Report .....	1629

5. Regulation and Management of Commercial Broadcasting .....	1631
5.1 Public service obligations for commercial broadcasters .....	1631
5.1.1 Channel 3 .....	1631
5.1.2 Channel Five .....	1632
5.1.3 Channel 4 .....	1632
5.2 Commercial television ownership and cross ownership .....	1633
5.2.1 Ownership of the main players .....	1636
5.2.2 Cross-media ownership .....	1638
5.3 Funding .....	1638
5.4 Programme framework .....	1640
6. Regulation of Programme Production .....	1641
7. European Regulation .....	1645
8. The Impact of New Technologies and Services .....	1646
8.1 Digital television .....	1647
8.2 Internet .....	1650
9. Conclusions .....	1652
10. Recommendations .....	1658
10.1 Media policy .....	1658
10.2 Regulatory authorities .....	1658
10.3 New media platforms .....	1659
Annex 1. Legislation cited in the report .....	1660
Annex 2. Bibliography .....	1661

## Index of Tables

Table 1.	Audience share – breakdown by channel (1981–2004) .....	1609
Table 2.	Legal status of the terrestrial broadcasters .....	1609
Table 3.	Listener share of the major radio groups (2003) .....	1610
Table 4.	Ofcom’s regulatory tiers .....	1614
Table 5.	Additional sources of revenues collected by the BBC .....	1621
Table 6.	Division of responsibilities of the BBC .....	1624
Table 7(a)	BBC Network output – breakdown by genre (2003/2004) (Part 1) .....	1627
Table 7(b)	BBC Network output – breakdown by genre (2003/2004) (Part 2) .....	1627
Table 8.	Channel 4 output (2003/2004) .....	1633
Table 9.	Revenue breakdown for the UK television sector (2003) .....	1639
Table 10.	Net advertising revenues – breakdown by channel (2002 and 2003) .....	1639
Table 11.	Annual production quotas for terrestrial broadcasters .....	1642
Table 12.	Annual production quotas for BBC digital channels .....	1644
Table 13.	Listed events .....	1646
Table 14.	Digital television penetration (third quarter 2004) .....	1648
Table 15.	BBC television services (year-end 2003) .....	1649
Table 16.	BBC main UK-based websites .....	1650
Chart 1.	Ownership structure of the ITV network (2004) .....	1637

## List of Abbreviations

BBC	British Broadcasting Corporation
BSC	Broadcasting Standards Commission
DCMS	Department for Culture, Media and Sport
DTT	digital terrestrial television
EEA	European Economic Area
IBA	Independent Broadcasting Authority
ITC	Independent Television Commission
NAO	National Audit Office
Ofcom	UK Office for Communications
PACT	Producers alliance for cinema and television



## 1. EXECUTIVE SUMMARY

Television broadcasting in the United Kingdom (UK) has been indelibly shaped by the principle of public service broadcasting. With the exception of satellite and cable television channels, all terrestrial broadcasters in the UK have public service obligations: this is the uniqueness of the British model of broadcasting, which has historically provided a stable and innovative television environment, with quality, universality and diversity enjoying prominence in public policy debate. The concept of public service in television has been supported by a political consensus on the positive contribution of television to society.

The British television industry is one of the largest and most dynamic in Europe and the UK is a leader in the rollout of digital television services. Digitalisation, however, is not an end in itself and there are some important trends in media policy that are fundamentally changing the television sector. Since the 1990s, there has been a progressive move away from a highly regulated commercial sector towards an increasingly competitive market as successive governments have sought to adjust the dynamics of the television sector to meet the perceived changes brought about by the growing penetration of multichannel services and the liberalisation of international markets.

Television regulation in the UK is conditioned by an increasingly complex range of issues which include shifting public policy objectives. The Government introduced a radical set of reforms in the Communications Act 2003, which seeks to liberalise while holding on to the public service principles that have been fundamental in shaping the television industry. The repercussions of such a liberalising instrument in the television industry are yet to be seen. However, it looks likely that the trends over the past decade will continue: competition between the main television broadcasters will increase while the public service remit of the commercial broadcasters are further relaxed. In sum, the UK appears to be aligning its system towards the continental model of television regulation by putting in place a dual system, characterised by a clear distinction between commercial and public broadcasters.

The electronic media in the UK enjoy a great deal of independence from the Government, but independence comes with responsibility and accountability. The main free-to-air broadcasters all have obligations and guidelines to ensure that they retain standards and remain impartial and objective. The BBC is also accountable to the public through Parliament, and annually submits its accounts and an assessment of its performance to parliamentary scrutiny. Although the Board of Governors and the BBC are independent from the State, they are accountable.

The Communications Act 2003 also abolished the separate regulatory authorities for radio, television and telecommunications, replacing the sector-specific regulators with a converged regulator, the UK Office for Communications (Ofcom). The new regulator

has responsibility for the whole of the communications industries in the UK. It legally substituted the previous regulators at the end of 2003.

The spread of multichannel television has transformed the television sector. However, although the terrestrial broadcasters' market shares have reduced overall, they retain a significant share of the market and remain central to the television landscape. The main public broadcaster, the BBC, retains a strong position, as does the commercially funded public broadcaster, Channel 4. The BBC has successfully expanded into a range of new media activities and enjoys strong public support.

There is a currently a wide-ranging debate about the future of the broadcasting industry and especially the role of the BBC in the run up to the renewal of its Charter in 2006. This debate, and the liberalising nature of the Communications Act 2003, suggest that the television sector will become increasingly competitive over the next few years. This may well be at the expense of its unique model, whereby the terrestrial broadcasters as a whole are responsible, and legally required, to provide a television service that not only entertains, but also educates and informs the public across a wide range of subject areas with quality programming.

## 2. CONTEXT

The television sector in the UK is one of the largest in Europe and has enjoyed long periods of stability, with a detailed regulatory framework to ensure that public policy objectives have been achieved. Television remains the central medium that the public use to receive their news, information and entertainment. A recent survey reveals that 71 per cent of viewers use television as their main source of entertainment, 55 per cent as their main source of news and 58 per cent responded that television was their main source of information on history and science.<sup>1</sup> Generally, the stability of the UK polity and a consensus on the positive (and potentially negative) role undertaken by television in society, coupled with the key principle that broadcasting should be independent of the State, has meant that television has enjoyed a privileged position in British policy making.

There are 25,176,000 television households in the UK. According to the National Statistics Office, as of 2002 over a third of homes had a DVD player and 54 per cent of households a personal computer (PC), making the UK one of the leading countries in terms of home entertainment and PC penetration, though somewhat behind countries in Scandinavia.<sup>2</sup>

---

<sup>1</sup> Ofcom, *Ofcom Review of Public Service Television Broadcasting*, Ofcom, London, April 2004, available at [http://www.ofcom.org.uk/tv/psb\\_review/reports/112799/psbr\\_pdf.pdf](http://www.ofcom.org.uk/tv/psb_review/reports/112799/psbr_pdf.pdf) (accessed 15 August 2005), (hereafter, Ofcom, *Ofcom Review 2004*).

<sup>2</sup> National Statistics Office, *Living in Britain: the General Household Survey 2002*, London, 2004.

## 2.1 Background

Over the past 15 years the television sector has changed dramatically. The growth of multichannel television households and the increasingly competitive environment of the sector overall have acted to partly reshape the industry.

Until 1982 there were only three channels supplied by two broadcasters in the UK, the BBC and the companies that comprised the ITV network.<sup>3</sup> Both of these broadcasters had public service obligations placed on them and this continues today, albeit in a diluted form for the ITV companies as their public service obligations have been gradually reduced.

In 1982 a fourth channel was introduced. Channel 4 was established as a non-profit public corporation with a unique remit to innovate and cater to the programme areas and groups that were neglected by the established broadcasters. It was also unique in that it was funded from commercial revenues, as a non-profit organisation – it was not until the 1990 Broadcasting Act that it began to sell its own advertising spots.<sup>4</sup> Unlike the other broadcasters it was established on a publisher/broadcaster model; its original programming was to be commissioned from the independent production sector.

There is also a Welsh-language television service provided in Wales. SC4 consists of a window within the Channel 4 schedule that broadcasts 36 hours of Welsh-language programming per week, mostly in peak time with Channel 4 programming rescheduled around these programmes. Channel Five was the fifth and final terrestrial channel to be introduced under this kind of regime and it has developed an important niche in the market since its introduction in 1997.

The first major reform affecting the terrestrial broadcasters was brought about by the Broadcasting Act of 1990. This legislation changed the way that licences for the ITV franchises were allocated (an auction plus quality threshold was introduced) and also established a 25 per cent independent production quota for all UK terrestrial broadcasters. The act represented a turning point in the television industry: competition in broadcasting increased significantly, along with shifting public policy objectives that attempt to account for the changing nature of the sector. In 2003 a major overhaul of the regulatory structures of television was completed with the coming into force of the Communications Act 2003, which established the new regulatory body, Ofcom.<sup>5</sup>

---

<sup>3</sup> Since the 1990 Broadcasting Act, the ITV network companies have been referred to in relevant legislation as Channel 3.

<sup>4</sup> Broadcasting Act 1990 (c.42), Her Majesty's Stationery Office (HMSO), London, 1990, available at [http://www.opsi.gov.uk/acts/acts1990/Ukpga\\_19900042\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900042_en_1.htm) (accessed 15 August 2005).

<sup>5</sup> Communications Act 2003 (2003 Chapter 21), Her Majesty's Stationery Office (HMSO), London, 2003, available at <http://www.opsi.gov.uk/acts/acts2003/20030021.htm> (accessed 15 August 2005).

## 2.2 Structure of the television sector

Until the 1990s the British television system was a model of the steady evolution of public service principles, originally set down in the BBC's Royal Charter and then extended into the realms of ITV, Channel 4 and Channel Five as these channels were introduced. In this respect the system was, and still is, unique: as new broadcasters were issued with licences, each was allocated either a specific public service remit or some degree of public service obligation, regardless of how it was funded. Today the sector remains characterised by a strong publicly funded broadcaster, a group of commercial terrestrial broadcasters with public service obligations, and a public company that is funded through advertising.

There has also been very strong growth in the past decade of multichannel television services, mainly through the services of BskyB. A large number of households also subscribe to digital television services. The development of digital terrestrial television since the introduction of Freeview (see section 8) has also shown strong growth as an alternative to satellite television.

The radio sector has also witnessed similar trends. Growing competition and liberalisation have increased the number of radio stations over the past decade. At the same time, the BBC's radio services enjoy a strong market share and although the BBC's stations have undergone restructuring over the past decade they remain very successful. The commercial radio sector has also burgeoned, and seven major groups provide regional and national radio services.

## 2.3 Market shares of the main players

The contemporary television sector is characterised by the growth of multichannel television and a declining audience share for the ITV network companies and the general entertainment channel of the BBC, BBC1. Since 1981, as Table 1 illustrates, there has been a steady decline in the audience share of the two largest broadcasters and a notable increase in the "others" category, which are mainly satellite and digital terrestrial television services.

**Table 1. Audience share – breakdown by channel (1981–2004)**

Channel	Audience share (per cent)						
	1981	1986	1991	1996	2001	2003	2004
BBC1	39	37	34	33.5	26.9	25.6	24.7
BBC2	12	11	10	11.5	11.1	10.9	10.0
ITV	49	44	42	35.1	26.7	23.7	22.8
Channel 4	–	8	10	10.7	10	9.7	9.7
Channel Five	–	–	–	–	5	6.3	6.6
Others	–	–	4	9.2	20.3	23.6	26.2

Source: BARB<sup>6</sup>

Although this decline is inevitable, as viewers gain access to a greater number of channels, it is important to put the changes into context. The free-to-air generalist channels remain central to the television environment – the five channels combined are watched by nearly 74 per cent of the audience. Audience behaviour in multichannel television homes shows a decline in the viewing time of the main channels, but even there an impressive 57 per cent of viewing time is spent watching the free-to-air channels, and 85 per cent of these viewers still watch some programming on one of the main channels daily.

Competition among broadcasters has grown over the past decade, as has the number of niche channels, and what was once a highly consensual system developing out of the BBC/ITV duopoly has become far more competitive overall. With two public corporations (BBC and Channel 4) and two main private operators (the ITV network companies and Channel Five), the television sector has achieved a balance between public and private, although there is competition for revenues between Channel 4 and the private companies. The legal status and main funding sources of the channels is as follows:

**Table 2. Legal status of the terrestrial broadcasters**

Broadcaster	Status	Primary funding
BBC	Public Corporation	Licence fee
ITV	Commercial	Advertising
Channel 4	Public Corporation	Advertising
Channel Five	Commercial	Advertising

<sup>6</sup> Information from the BARB (British Broadcasters' Audience Research Board Ltd.) website, available at <http://www.barb.co.uk> (accessed 24 August 2005).

The radio sector is highly competitive and, as a result of its regional structure, horizontal expansion and integration have caused a number of leading groups to consolidate in order to control a significant position. It is structured regionally and there are only three commercial UK national analogue radio stations: Talk Radio, Virgin Radio and Classic FM. The BBC enjoys an extremely strong position; it operates five national licences and 43 regional stations, and enjoys 53 per cent of listener share.

The listener share of the commercial radio market is carved up between seven groups, which together enjoy 86 per cent of the audience share for commercial radio (see Table 3). Of these groups GWR and Capital are the most prominent. Capital focuses on the regional centres such as Birmingham and Manchester, whilst GWR holds a national licence and a range of regional stations. These seven groups also collectively enjoy 99 per cent of all commercial revenues, with the largest two groups, Capital and GWR, accounting for 47 per cent.

**Table 3. Listener share of the major radio groups (2003)**

Radio group	Listener share (per cent)
BBC	53.0
GWR	12.0
Capital	7.4
EMAP	5.9
Chrysalis	5.1
SRH	3.4
Wireless	3.2
Virgin	1.7
Other commercial	6.2
Other	2.0
Total	99.9

Source: Radio Advertising Bureau 2004 and Rajar data

### 3. GENERAL BROADCASTING REGULATION AND STRUCTURES

The regulatory structures for radio and television in the UK have recently undergone a radical overhaul with the introduction of Ofcom. The changes in the structure of the regulators, however, have not meant that the culture of television regulation has changed in terms of the relationship between Government and the regulators; the “arm’s length” approach that is fundamental to the UK system has been retained.<sup>7</sup> Ofcom is accountable to Parliament, but its activities are independent of the State. The BBC is regulated by a Board of Governors who are responsible for ensuring that the BBC fulfils its public service obligations. The Board is also independent from the State; although the BBC is accountable to both the Government and Parliament, these institutions cannot overturn the Board’s decisions.

#### 3.1 Ofcom

The new communications regulator, Ofcom, started operating at the end of 2003 when it replaced all of the regulatory authorities responsible for broadcasting and telecommunications. As far as radio and television are concerned, this means that the regulators formerly responsible for commercial television – the Independent Television Commission (ITC), the Broadcasting Standards Commission (BSC) and the Radio Authority – have merged into one organisation that is responsible for all the communications industries in the UK including radio spectrum and telecommunications.

Ofcom also has a limited role in the regulation of the BBC under the new system based on tiers. Ofcom inherited this system, with the coming into force of the Communications Act 2003, from the BSC (responsible for ensuring broadcasters complied with taste and decency standards) and the Office of Fair Trading (responsible for assessing the BBC’s compliance with the independent production quota). Like its predecessors, Ofcom operates at arm’s length from the Government of the day and is independent of the State. Ofcom is, however, accountable to Parliament through parliamentary committees.

##### 3.1.1 The Ofcom Board – composition and structure

In order to fulfil the tasks that Ofcom has been established to undertake, a complex structure has been built around a board, which resembles that of a commercial company. The Ofcom Board comprises two executive members, the Chief Executive of Ofcom, and six non-executive members, including a Chairman. The non-executive

<sup>7</sup> “Arm’s length” is the term commonly used to characterise the proper co-operative and respectful relationship between government, industry and the regulators, with particular emphasis on the independence of regulators from political and commercial interests.

members must make up the majority. The Chairman and the non-executive members are appointed by ministers under the so-called “Nolan principles” 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.<sup>8</sup> 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.

The Secretary of State for Culture, Media and Sport and the Secretary of State for Trade and Industry appoint the Chairman of the Ofcom Board for a period of five years. Ministers also appoint other non-executive members to the Board with the Chairman having an input to the appointments. The Chief Executive Officer is appointed by the Board to run Ofcom and sit on the Board.

### 3.1.2 Other Ofcom boards

Ofcom also has a number of other boards, whose work feeds into the main Board. The two most significant of these independent boards are the Content Board and the Consumer Panel, but there is also an Advisory Committee on Older and Disabled People and separate Advisory Committees for the Nations, whose members are appointed by the main Ofcom Board after the posts are publicly advertised. There are also plans for a Regulatory Assessment Committee.

#### *Content Board*

The Content Board is established as a sub-committee that is responsible for content issues in the radio and television sectors. Composed of 11 non-executives and two executives, it acts in an advisory capacity to the main Board and is independent of Ofcom. The Ofcom Board appoints all members of the Content Board, with four members appointed from the regions. The Deputy Chairman of the Ofcom Board chairs it. It is charged with understanding and furthering the interests of the public in the areas covered by the regulatory tiers (described in Table 4 below). It has a responsibility to make recommendations and give advice to the main Ofcom Board and provide an annual report covering its activities.

#### *Consumer Panel*

The Consumer Panel also operates independently of Ofcom and its remit complements the Content Board, in that it is responsible for “understanding consumer issues and concerns related to the communications sector”, which excludes content issues that are covered by the Content Board. These issues cover a range of interests including rural

---

<sup>8</sup> 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](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](http://www.public-standards.gov.uk/about_us/seven_principles.htm) (both accessed 24 August 2005).



communities, people with disabilities and disadvantaged groups. There are 11 members of the Panel, who are appointed by Ofcom. The Panel has a Chairman and Vice-Chairman and has an independent secretariat. The panel is constituted from a diverse range of members representing both the regions of the UK and a variety of communities covering the interest groups listed above. The Panel's primary role is to advise Ofcom on consumer issues.

#### *Advisory Committees for the Nations*

There are also Regional Advisory Committees representing Scotland, Wales, Northern Ireland and the regions of England. The committees are composed of a range of members (11 in England, eight in Scotland, nine in Wales) and they have an advisory role to the Ofcom Board as well as the Consumer Panel and the Content Board. Ofcom appoints the members.

### 3.1.3 Ofcom's remit

Ofcom has a broad remit covering the whole of the communications industries, from spectrum management to media ownership, and content matters in the sectors that it is charged with regulating. The Communications Act 2003 sets out Ofcom's "principal duty" to "further the interests of citizens in relation to communications matters" and "further the interests of consumers in relevant markets, where appropriate by promoting competition".<sup>9</sup> In accordance with the provisions of the act, Ofcom should ensure that its main regulatory duties are based on the principles of accountability, transparency and proportionality in its application of regulatory instruments.

Ofcom's wide-ranging powers include nearly all aspects of television regulation, including content and quotas established under the terms of the contracts that the broadcasters have under their public service remits and European regulation. It is also responsible for promoting competition, encouraging investment in UK television, protecting minors, promoting media literacy, and ensuring a healthy public service broadcasting system.

Cable and satellite regulation is characterised by a "light touch" approach.<sup>10</sup> Satellite and cable operators – this includes operators who serve the UK public, and satellite operators based in the UK and transmitting to third countries outside the EU – do not have any positive regulatory requirements, but are still regulated on taste and impartiality grounds. The ITC/Ofcom has issued around 600 licences to commercial broadcasters and many of these target overseas audiences.

<sup>9</sup> Communications Act 2003, section 3(1).

<sup>10</sup> The concept of "light touch" regulation was developed in the build up to the Broadcasting Act 1990, in order to characterise the shifting role of the regulator that was marked by the replacement of the Independent Broadcasting Authority (IBA) with the Independent Television Commission (ITC). The concept refers to a loosening of detailed regulatory requirements to allow the industry greater flexibility.

Its regulatory principles are founded on a tiered system that is based on degrees of public regulation, co-regulation and self-regulation (see Table 4). Tiers 1 and 2 apply to all broadcasters including the BBC, while tier 3 is a system of co-regulation for the commercially funded terrestrial broadcasters.

**Table 4. Ofcom's regulatory tiers**

Tiers	Regulatory areas
1	These requirements apply to all broadcasters in the UK and relate to programming and advertising standards and impartiality. This tier deals with programme complaints from viewers and listeners and taste and decency issues.
2	Relates to quantitative obligations including production quotas, regional, original production quotas, and 25 per cent of original programming from independent producers, News and Current Affairs and educational programming.
3	Is built on a system of self-regulation and includes issues ranging from the fulfilment of programme promises made by broadcasters annually and certain obligations to produce an annual report.

Source: Communications Act 2003, Ofcom information.

The Communications Act 2003 provides a general definition of public service broadcasting (covering all generalist terrestrial channels),<sup>11</sup> and in light of this definition requires Ofcom to conduct a review every five years to assess whether public service broadcasters in the UK, taken as a whole, provide:

- a wide range of programming for viewers covering the interests and needs of different communities;
- a balanced and impartial programme service;
- high general standards and quality programming.

The requirement to provide a public service is applied differently to each broadcaster; there are degrees of public service obligations, with the BBC having the most responsibility as the main public broadcaster, followed by Channel 4. ITV and Channel Five have fewer obligations, covering regional productions and minimum programme requirements that include current affairs and news.

### 3.2 Licensing

Ofcom issues licences for all frequencies to commercial broadcasters. After the changes brought about by the Broadcasting Act 1990, the licences for the ITV franchises were issued on the basis of a sealed cash bid plus an assessment of the quality of the services

<sup>11</sup> Communications Act 2003, section 264.

proposed by the competing operators. The licences run on three different timescales, with the current licences in force until 2008 and 2011. Ofcom is reviewing the system to simplify it, especially in light of the merger in February 2004 between Carlton and Granada, which left the new company, ITV plc, controlling the majority of franchises (see below). Both the BBC and Channel 4 receive frequencies at no cost in return for their public service obligations.

As part of its wide review of the industry, Ofcom has undertaken a review of spectrum usage. This includes an assessment of the financial terms agreed with the commercial broadcasters and of the licence fees they pay for access to the spectrum. ITV currently pays approximately €300 million annually for its licence and it argues that its public service broadcasting commitments cost another €375 million on top of this amount.<sup>12</sup> It is widely expected that spectrum charges will be reduced to take account of the growth of multichannel television and ITV's loss of income over the past decade, as viewers turn to digital television services. One estimate by business analysts suggests that the reduction might be as much as 40 per cent.<sup>13</sup>

Channel Five currently pays a considerably lower fee of €36.6 million per year, as was agreed when its original licence was issued in October 1995 by competitive tender. This licence is valid for a period of ten years from the date when the service commenced broadcasting, in 1997. There are no levies on cable or satellite operators.

Ofcom also licenses satellite operators and all bodies that provide a satellite service, whether transmitted from the UK for national reception or transmitted from outside the UK, but managed editorially from the UK. This includes services that are uplinked from the UK but intended for audiences abroad, if the said service is receivable in the UK. Certain entities are disqualified from operating a satellite service, including local authorities, political bodies, advertising agencies and religious bodies.

At the start of 2004 Ofcom introduced spectrum trading for a limited amount of frequencies under a system of co-regulation. As a result, companies will be allowed to trade spectrum, but will be required to refer the transaction to Ofcom for agreement. The system has not been extended to television, though this is envisaged at some future point in time. During the first phase trading will be limited to public mobile operators, private business radio and fixed wireless access.<sup>14</sup>

---

<sup>12</sup> All exchange rates were calculated as of May 2004 (approximately €1 = £0.67).

<sup>13</sup> D. O'Connell, "Regulators may cut ITV's licence fees by 40%", in *The Times*, 27 June 2004. <http://business.timesonline.co.uk/article/0,,9071-1161094,00.html> (accessed 15 August 2005).

<sup>14</sup> Ofcom, *Trading Guidance Notes: A Practical Guide to Spectrum Trading*, Doc No. OfW224, Ofcom, London, 2004, available at <http://www.ofcom.org.uk/radiocomms/ifi/trading/tradingguide/tradingguidancenotes.pdf> (accessed 15 August 2005).

### 3.3 Enforcement measures

Although the third tier is in essence self-regulatory, Ofcom may invoke its co-regulatory powers if a broadcaster is adjudged to have failed to fulfil or contribute to its public service remit, and there are no economic or market conditions to explain the failure. In such a case, Ofcom reserves the right to draw up and implement a detailed set of rules and standards. In the event that Ofcom introduces rules and standards at a later date, these can also be revoked at its discretion.

Ofcom may also impose penalties on broadcasters that fail to comply with the requirements of their obligations. In the case of the BBC, Ofcom may impose a maximum fine of €372,334. A range of options is available to Ofcom if the terrestrial commercial companies fail to comply with their remits and obligations. It can fine the licensee a sum of up to five per cent of the qualifying revenue of its last accounting period. In an extreme case, Ofcom is able to revoke the licence of the offending broadcaster and fine the operator a sum of up to €744,668.

### 3.4 Broadcasting independence

Unlike its European neighbours the UK does not have a written constitution. Whereas in republican constitutions, such as that of France, the rights to the independence of the media are set out clearly, in the UK a less formalised system has developed. Britain has ratified both the European Convention on Human Rights<sup>15</sup> (ECHR), whose Article 10 protects freedom of expression, and the International Covenant on Civil and Political Rights<sup>16</sup> (CCPR), whose Article 19 protects freedom of expression in terms very similar to those of Article 10 of the Convention. Although Britain ratified the Convention in 1951, it was only in 1998, with the introduction of the Human Rights Act 1998,<sup>17</sup> that the provisions of the Convention were fully set out in British Law.<sup>18</sup> In terms of freedom of speech, the full provisions of Article 10 of the Convention set out the right to freedom of speech in the UK.

<sup>15</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, 3 September 1953, E.T.S. 005.

<sup>16</sup> International Covenant on Civil and Political Rights (CCPR), 23 March 1976, 999 U.N.T.S. 171.

<sup>17</sup> Human Rights Act 1998 (c. 42), Her Majesty's Stationery Office (HMSO), London, 2002, available at <http://www.opsi.gov.uk/acts/acts1998/19980042.htm> (accessed 15 August 2005).

<sup>18</sup> Although the European Court of Human Rights had already affirmed the provisions of Article 10 and its application to British-based media. See: E. Pertzidou and D. Ward, "Libertad de expresion y libertad de medios: es la concentración de prensa compatible con la Convención Europea sobre los Derechos Humanos? Estudio en la prensa alemana y britanica", ("Freedom of expression and media freedom: is the concentration of the press compatible with the European Convention on Human Rights"), in *Libro Blanco de la prensa diaria: estudios sobre los medios de prensa escrita desde las ópticas empresariales, tecnológicas, legales, ticas y de contenidos*, (The *Libro Blanco* daily: studies on the tools of the written media, from the economic, technological, legal, ethical and content perspectives.), AEDE Press, Madrid, 2002. pp. 375–392.

The absence of a constitution has not meant that freedom of speech and the freedom of the media from the State have not been important factors in British political history. At first glance, the UK system looks as if the State is highly involved in the media – and this is true in terms of regulation, the election of regulatory boards, accountability and the overall public policy that shapes the media. However, the main principle underpinning the relationship between State and broadcast media is one of “arm’s length”. While Government and Parliament have a central role in developing public policy objectives and ensuring that they are met and that public institutions are accountable for their activities, they have no role in the management or editorial affairs of broadcasters.

Independence for broadcasters is very much part of the political culture of the UK, rather than being set out in a legal instrument that protects the broadcasters from interference by the State. Although the State retains the right to censor broadcasters when national security is threatened, this has seldom occurred. Only six times in the history of broadcasting has the Government used its legal right to attempt to introduce censorship measures.

The most recent occasion was in 1988 when Douglas Hurd, the Home Secretary, invoked executive powers under the Broadcasting Act 1981 section 29(3) and the BBC’s Licence and Agreement clause 13(4) (under the present agreement it is clauses 8(1) and 8(2)). The power under the licence allows the Secretary of State to compel the BBC to broadcast or refrain from broadcasting material. Previously this power had been used twice in 1927, twice in 1955, and once in 1964. The first two prohibitions barred the BBC from stating its own opinion as an organisation and avoiding controversy (the first of these still stands to this day), the second occasion in 1955 dealt with party political broadcasts and an upcoming debate in Parliament (both withdrawn), and the 1964 intervention banned broadcasters from using subliminal techniques.

In 1988, as part of its fight against militant Irish republicans, the Government introduced what became known as the “Broadcasting Ban”. It was very wide in scope and sought to banish not only members of armed groups such as the IRA from the airwaves, but also those associated with them, including the representatives and supporters of legal political parties. The clumsy wording of the order allowed broadcasters to sidestep the ban by dubbing over the voices of such people – a reflection on the resistance that greets any Government pressure to censor broadcasting. The ban ended in January 1994, and in September of that year the IRA agreed a ceasefire with the British Government.

There is an all-party consensus on the need for all broadcasters and regulators to be independent of political parties and State organisations. In this respect, UK broadcasters operate in a sphere whereby the programme guidelines ensure objectivity and independent journalism, that guarantees broadcasters are editorially independent from external forces and the State alike. Independence is therefore a key concept underpinning the system. The fact that only six times in the history of broadcasting has the State

attempted to invoke the powers granted to it in the Royal Charter and Agreement to impose prohibitive measures on broadcasters is testimony that the system works.

## 4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING

### 4.1 The public broadcasting system

The legal status of the BBC is established by a Royal Charter, granted by the Queen on the advice of the Government and renewable every ten years.<sup>19</sup> Each renewal is accompanied by an Agreement between the Government and the BBC. Together, the Charter and Agreement set out the BBC's structure, activities and obligations as a public service broadcaster, recognising its editorial independence and requiring it to produce and transmit a range of quality programmes that seek to inform, educate and entertain.

The BBC is the main public service broadcaster in the UK and the only broadcaster that receives public revenues. However, the UK system of public service broadcasting is unique in that it includes all the terrestrial free-to-air broadcasters, which have public service obligations as part of their contracts.

### 4.2 Services

The Royal Charter for the BBC states that the Governors should set and monitor a set of "clear objectives and promises for the Corporation's services, programmes and other activities and monitor how far the Corporation has attained such objectives and met its pledges to its audiences".<sup>20</sup> In terms of the services that the BBC should provide, the Charter states that the objectives of the Corporation are,

To provide, as public services, sound and television broadcasting services (whether by analogue or digital means) and to provide sound and television programmes of information, education and entertainment for general reception in Our United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man and the territorial waters thereof, and on board ships and aircraft (such services being hereinafter referred to as "the Home Services") and for reception elsewhere within the Commonwealth and in other countries and places overseas (such services being hereinafter referred

---

<sup>19</sup> Department of National Heritage, *Copy of Royal Charter for the Continuance of the British Broadcasting Corporation*, Her Majesty's Stationery Office (HMSO), London, 1996, available at <http://www.bbc.co.uk/info/policies/charter/pdf/charter.pdf> (accessed 15 August 2005), (hereafter, BBC Charter).

<sup>20</sup> BBC Charter, section 7(1)(a).

to as “the World Service”) the Home Services and the World Service together being hereinafter referred to as “the Public Services”.<sup>21</sup>

The Charter’s rather abstract definition of public service in broadcasting – essentially to entertain, inform and educate – has been both an advantage and a drawback for the BBC. It has provided the Corporation with a wide-ranging remit for its activities, enabling it to adjust over time to cultural, industrial and technological changes with a great deal of success. On the other hand, in recent years it has opened the BBC up to criticism that its remit is too flexible and, as a result, the philosophical principles around which the Corporation has evolved, under the direction of the Board of Governors, remains too loose.<sup>22</sup>

### 4.3 Funding of the BBC

The BBC is funded through a licence fee, which is supplemented with a marginal amount of income from commercial sources. The licence fee ensures a consistent level of funding, necessary for the BBC to provide a wide range of programming and services. In 2002/2003 the total revenues from the licence fee enjoyed by the BBC were €3,959 million, and this sum was complemented with €252.74 million from commercial and other sources of revenue. The BBC’s total revenues make it the sixth largest media enterprise in Europe according to company turnover, and the second largest public broadcaster after ARD in Germany.<sup>23</sup>

The Government sets the level of the licence fee. The current fee for a colour television household is €180.21, as of April 2004, a fee of a little under €16.40 per month in line with the current Agreement with the BBC. The level of the licence fee is linked to the Retail Price Index<sup>24</sup> (RPI) – according to the agreement between the Government and the BBC, it is set at 1.5 per cent above the rate of inflation as measured by the RPI. Under the current Agreement, the BBC has also been obliged to undertake cost savings and develop additional revenues throughout the present funding agreement (January 2000 to July 2006) of €1.64 billion. There are concessions to the full rate of the licence fee of 50 per cent for blind people, and the 75 and above age group are granted a waiver. In 2003, the BBC received €543.61 million from the Department for Work and Pensions (DWP) to cover the costs of these groups of viewers.

<sup>21</sup> BBC Charter, section 3(a).

<sup>22</sup> ITV, “Memorandum submitted by ITV”, *Select Committee on Culture, Media and Sport Written Evidence*, Her Majesty’s Stationery Office (HMSO), London, 2004, available at <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmcomeds/598/598we03.htm> (accessed 15 August 2005).

<sup>23</sup> D. Ward, *Media Concentration and Ownership in Ten European Countries: A Mapping Study*, Commissariaat voor de Media, Hilversum, Netherlands, CvdM, 2004, (hereafter, Ward, *Media Concentration and Ownership*).

<sup>24</sup> The Retail Price Index is the method used by the Government to measure inflation and is based on a system that monitors fluctuation of high street prices of a range of products.

In the recent Charter renewal debate and at the launch of the BBC's contribution to the review, the new Chairman of the Board of Governors, Michael Grade, has suggested that the independence of the licence fee should be guaranteed by removing the assessment of the level of the fee to an independent body. The inspiration behind this idea, he said, was the success of the Bank of England's Monetary Committee in setting the interest rates independently of the Government. Seeing the setting of the level of the licence fee as the final challenge in achieving a completely independent BBC, Grade argued that, "depoliticising the licence fee settlements could be the final underpinning of the BBC's independence."<sup>25</sup> Whether this will be seriously considered is questionable and Grade well may have raised the issue as a strategic move to ensure that the BBC's contribution to the Charter renewal debate covers a wider set of issues rather than its own internal accountability structures. If it were to be accepted, however, it would be a major innovation.

#### 4.3.1 BBC commercial revenues

The BBC also receives revenues from commercial activities that feed into the core activities of the Corporation (the range of these activities is summarised below). These revenues have been growing in recent years and although they remain a small percentage of the BBC's overall revenues, they represent an important source of complementary finance.

Since 1923, the BBC has operated a small range of commercial services, such as publishing the *Radio Times* listings magazine. However, the renewal of its Charter in 1996 reflected a changing approach to the BBC by the Government (which at that time was a Conservative one led by Prime Minister John Major), and a desire to supplement the licence fee with commercial activities, rather than simply fund the BBC by raising the licence fee. The Davies Committee report into *The Future Funding of the BBC* supported this move in 1999 under the "New Labour" Government of Prime Minister Tony Blair. Although the report favoured a rise in the licence fee to support digital services, it recommended that the BBC's primary funding for extra services should be generated from a combination of cost-savings and increased commercial revenues. It argued that,

The BBC should seek to accelerate the growth of its commercial services, which need not conflict with its role as a public service broadcaster, provided that new measures are introduced to ensure that the fair trading commitment is enforced strictly and with full transparency.<sup>26</sup>

<sup>25</sup> Michael Grade, cited in: M. Wells, "Free TV from politics", in *The Guardian*, London, 30 June 2004, available at <http://media.guardian.co.uk/site/story/0,14173,1250203,00.html> (accessed 4 August 2005).

<sup>26</sup> Department for Culture, Media and Sport (DCMS), *The Future Funding of the BBC. Report of the Independent Review Panel* ("Davies Report"), DCMS, London, 1999, p. 6.



The BBC has established a commercial arm operated by two subsidiaries, BBC Worldwide Ltd. and BBC Resources Ltd. These subsidiaries have separate Boards and provide separate accounts and annual reports. The commercial services include a number of thematic channels: the global news channel BBC World, BBC Prime (entertainment) and BBC America (drama, news and entertainment). In addition to these channels, the BBC, in cooperation with Flextech, has established four primary channels (which are on the second tier subscriber category). These channels include UK Gold (comedy), UK Horizons (documentary), UK Style (cooking and gardening reruns) and UK Play. The BBC has a 50 per cent stake in these channels. The commercial arm includes distribution, as well as magazine and technology companies that all operate as subsidiaries. Today the BBC derives commercial revenues from the channels, the rental of studios, as well as the sale of programmes. It is the largest exporter of television programmes in Europe.

**Table 5. Additional sources of revenues collected by the BBC**

Source	Amount (€ million)
BBC commercial businesses	218.69
Open University	0.15
Others	33.62
Total	252.46

Source: DCMS

However, commercial activities must meet certain criteria and essentially meet with, and be supportive of, the BBC's activities as a public service broadcaster. In order to comply with the European Union's Transparency Directive and national competition policy rules, the BBC is obliged to maintain separate and transparent accounting systems for its public and commercial activities, to ensure that it does not distort competition by using the licence fee to cross-subsidise its commercial services.<sup>27</sup> The BBC has developed a set of guidelines for its commercial activities to ensure that they comply with competition law requirements. The Executive Board of the BBC also reports four times a year to the BBC's Fair Trading Compliance Committee, which in turn reports to the Board of Governors and reviews and monitors the compliance of the BBC with its commitment to fair trading and transparency. A list of complaints about fair competition received by the BBC is also made available to the public.

These mechanisms have not deflected criticism of the BBC's commercial growth, especially from commercial operators who have focused on both its new digital channels and commercial services. This has been directed both at the European level,

<sup>27</sup> European Commission, Directive 80/723/EEC on the Transparency of Financial Relations between Member States and Public Undertakings ("Transparency Directive"), COM (80)723 final, Brussels, 1980.

with complaints lodged to the European Commission's Competition Directorate against the unfair use of State aid and, more vociferously, at the national level. The cases adjudged by the European Commission concerned the BBC's digital channels and News 24; the Commission rejected the claims by BSkyB that these distorted competition beyond the services of general economic interest qualification (and therefore acceptable use of State aid).

The BBC's commercial activities must be within certain standards set out in its guidelines on fair trading. Commercial activities are therefore governed by three main principles:

- the activity must reflect the same values and editorial quality as those of the public activities;
- there should be transparency in all commercial activities and these activities should be at arm's length from the public activities and fairly priced;
- the commercial activities should not present a risk to the licence fee revenues collected by the BBC.

The BBC's Fair Trading Commitment was independently reviewed in 2001 on behalf of the Department for Culture, Media and Sport (DCMS). The report concluded that the commitments were satisfactory to ensure that the BBC's commercial activities did not lead to unfair competitive practices.

The Fair Trading Commitment and the Guidelines are appropriate to ensure that the BBC does not distort competition in commercial markets. I am aware that this conclusion will disappoint some interested third parties, who have serious concerns about various aspects of the BBC's commercial behaviour. However, for the purpose of this review, the relevant question must be whether any conduct complained about was anti-competitive and yet of a kind condoned, or at least prohibited, by the BBC's Fair Trading Commitment or the Guidelines. If this were to be the case, it would be appropriate to question these instruments. My view is that they do adequately address the fair trading issues that are relevant to the BBC.<sup>28</sup>

However, the report was limited to a review of the guidelines. It did not investigate the actual practices of the BBC, and therefore no assessment was made of whether the BBC's system of transparency and separation is adequate. In this respect the BBC is still frequently criticised by commercial broadcasters, and the report has done little to silence the critics who argue that the BBC's commercial services distort the market and are unnecessary as the private sector already provide these services.

---

<sup>28</sup> R. Whish, *Review of the BBC's Fair Trading Commitment and Commercial Policy Guidelines. Independent Review on behalf of the Department for Culture, Media and Sport*, DCMS, London, 2001, p. 5, available at <http://www.culture.gov.uk> (accessed 15 August 2005).

### 4.3.2 Auditing BBC revenues

Despite common perceptions to the contrary, the BBC is rigorously and independently audited each year to assess its spending activities. Prior to the Communications Act 2003, the parliamentary watchdog, the National Audit Office (NAO), was responsible for assessing a limited number of BBC activities, including the collection of the licence fee and the spending of the BBC World Service. The BBC was exempted from being fully audited by the NAO on grounds that this would potentially threaten its independence. However, the role of the NAO has been extended under the Communications Act 2003 and now includes an assessment of all the BBC's activities.

## 4.4 BBC governance structure

Despite the overhaul of broadcasting regulation and the creation of Ofcom, the BBC has, at this time of writing, retained its traditional self-regulatory structure. A Board of Governors is charged with ensuring that the BBC maintains, in its radio and television activities, a set of practices in compliance with the Royal Charter and Agreement.

### 4.4.1 The Board of Governors

The Board of Governors has a dual role as both strategic directors of the BBC as well as its regulator. This is a sometimes contradictory role, frequently criticised by those who see the Board as too close to BBC management to regulate the activities of the Corporation independently.

### 4.4.2 Composition

The Board consists of 12 governors, including a Chairman, Vice Chairman and three governors for Wales, Scotland and Northern Ireland, who are responsible for ensuring that the public interest, in terms of programming, services and activities is served. The regional governors also chair the National Broadcasting Councils in their respective regions, with each council consisting of between eight and 12 governors. These councils are supplemented with ten regional councils representing areas in England.

### 4.4.3 Appointments

The appointments to the Board are made by the Secretary of State for Culture, Media and Sport and are directed by the Chairman of the Board. The appointment of the Chairman follows the Nolan principles and includes an independent assessor to ensure compliance. For the most recent appointment – to replace the Chairman who resigned following the Hutton Inquiry (see below) – a scrutiny panel was established consisting of Privy Councillors from the main political parties, who have no influence on the

appointment itself but sit on the panel to ensure that the selection process remains fair and transparent.<sup>29</sup>

#### 4.4.4 Responsibilities

Under the Royal Charter, the Board of Governors approves the objectives and commitments of the Corporation, and monitors them and ensures that they are achieved. In this respect it both acts as strategic director in granting approval of the management board’s strategies and budgets, and assesses the BBC’s performance against its programming promises and commitments. The Board of Governors is theoretically independent from the general management of the BBC and is responsible for selecting a Director General who heads managerial affairs. This appointment is not subject to Government approval.

**Table 6. Division of responsibilities of the BBC**

Executive Committee	Board of Governors
Responsible for management	Guaranteeing the public interest
Proposing key objectives	Setting key objectives
Developing strategy and policy in light of the set objectives	Approving strategy and policy
Operating all services within the strategic and policy framework	Monitoring performance and compliance, and reporting on both in the Annual Report
	Ensuring public accountability
	Appointing the Director General and, with him or her, other Executive Committee members, and determining their remuneration

Source: BBC<sup>30</sup>

The Board of Governors reviews the performance of the BBC annually against the previous year’s set objectives. Subsequently, the annual report is presented to Parliament for Members to scrutinise before the Chairman of the Board of Governors formally presents it and receives questions and comments on it. The annual report is also reviewed by the Culture, Media and Sport Select Committee in the House of Commons, whose members can question relevant Governors, the Director General and senior executives of the BBC. The Governors’ judgements on the BBC’s performance cannot, however, be overruled by any of these actors.

<sup>29</sup> “Her Majesty’s Most Honourable Privy Council” is a largely ceremonial body of personal advisers to the Queen, as the head of State of the UK.

<sup>30</sup> BBC, *BBC Governance in the Ofcom Age*, BBC, London, 2002.

There is also an Executive Committee, which consists of the Director General and ten other members, who hold a variety of internal responsibilities in respect of the general running of the BBC, and are responsible for the management of the Corporation.

#### 4.5 BBC programme framework

At the start of every financial year the BBC Governors set out the Corporation's objectives for the coming year together with programme commitments. Each year sees a different set of objectives; in the past, these have included providing high quality programmes or content, upholding the BBC's editorial values and offering a distinctive mix of programming or content (2000 objectives); and extending the range of quality programmes, especially culture and arts, engaging younger audiences, and minority groups, to providing better value for money (2003/2004 objectives). The framework that the BBC has developed to assess its own performance, and therefore its compliance with the Charter, encompasses both qualitative and quantitative measures. These measures cover a number of what the BBC calls Key Performance Indicators that are employed to aid the assessment and evaluation of the BBC's overall performance. They include:<sup>31</sup>

- breaking new ground in format, subject matter and talent;
- leading viewers and listeners from accessible to more challenging programming;
- reports on individual services by independent Advice Panels;
- views at public meetings;
- a range of genres in peak time and across the day;
- a range of communities, regions and nations served and reflected in programming and content;
- the provision of genres or programme formats which the commercial sector ignores or marginalizes.

These general tools employed to monitor the BBC's performance as a whole include a set of wider measures that the BBC utilises to ensure that its service meets the needs and interests of the British audience. This includes public consultation to inform the BBC of the audience's priorities and needs, as well as to help it judge the degree to which it is fulfilling its public service mission in general.

---

<sup>31</sup> Simon Milner, Secretary to the BBC, 2000, cited in: E. Machet, E. Pertzididou and D. Ward, *A Comparative Analysis of Television Programming Regulation in Seven European Countries: A Benchmark Study*. Hilversum, Netherlands, NOS, 2002.

In its contribution to the current Charter renewal debate,<sup>32</sup> the BBC has proposed to strengthen these instruments and increase the effectiveness of the assessment tools employed in its annual review, ultimately making itself more publicly accountable. To this end it has highlighted a number of key components in its methodological toolkit. The main principles underpinning the system are “reach, quality, impact and value for money”. These will be combined under the banner of what the BBC calls “public value” to provide a system of assessment which would allow the BBC to account fully for its performance and, crucially, for its relationship with the public.

- *Reach* refers to the range of people watching BBC programmes in terms of the variety of different interest groups and members of the public catered for in its programming.
- *Quality* is the range and distinctiveness of high quality programming.
- *Impact* refers to wider indicators of programming value to society, including the use of BBC programmes in schools and the awards collected by individual programmes.
- *Value for money* is understood to denote how the audience perceives the BBC’s spending and investment of the licence fee and commercial revenues.

Thresholds are not set for the percentage of genres to be broadcast on the BBC’s television services; the management board is responsible for ensuring that the schedule contains a mixed range of programmes. However, the Board of Governors must agree to accept the detailed budget submitted by the management, which includes a detailed account of revenues allocated to specific genres.

---

<sup>32</sup> BBC, *Building public value: Renewing the BBC for a digital world*, BBC, London, 2004, available at [http://www.bbc.co.uk/thefuture/text/bbc\\_bpv\\_complete.html](http://www.bbc.co.uk/thefuture/text/bbc_bpv_complete.html) (accessed 15 August 2005), (hereafter, BBC, *Building public value*).

**Table 7(a) BBC Network output – breakdown by genre (2003/2004) (Part 1)**

Genre	Output line			
	On all platforms		On digital platforms only	
	BBC1	BBC2	BBC3/BBC Choice	BBC4
Factual and learning	1,686	1,293	876	774
Education for children	–	664	–	–
News and weather	2,571	516	369	126
Current affairs	134	311	109	163
Entertainment	650	872	1,155	107
Sport	496	863	64	–
Children's	777	1,261	–	–
Drama	923	328	239	167
Music and arts	66	289	168	1,213
Film	911	818	172	254
Religion	87	37	13	30
Open University	–	455	–	5
BBC Learning Zone	–	577	–	–
Continuity	253	292	116	71
Total network	8,554	8,576	3,282	2,910

Source: BBC<sup>33</sup>**Table 7(b) BBC Network output – breakdown by genre (2003/2004) (Part 2)**

Genre	Output (hours) – on digital platforms only			
	The CBBC Channel	CBeebies	BBC News 24	BBC Parliament
Education for children	637	182	–	–
News and weather	–	–	8,711	8,290
Children's	3,423	4,043	–	–
Continuity	294	492	73	14
Total network	4,354	4,717	8,784	8,304

Source: BBC<sup>34</sup>

<sup>33</sup> BBC, *Annual Report 2003–2004*, p. 140, available at [http://www.bbcgovernors.co.uk/annreport/broad\\_facts\\_figures.pdf](http://www.bbcgovernors.co.uk/annreport/broad_facts_figures.pdf) (accessed 24 August 2005), (hereafter, BBC, *Annual Report 2003–2004*).

<sup>34</sup> BBC, *Annual report 2003–2004*, p. 140.

#### 4.6 BBC editorial standards

The BBC has an extensive set of programme guidelines that apply to radio, television and online services. All activities must adhere to a set of principles governed by impartiality, accuracy, fairness and accurate and fair representation of all social groups and individuals. These principles should underpin all programme-making at the BBC, including both public and commercial services. Any programmes that might be perceived to stray outside the above principles, or approach a subject of controversy should be referred to the Controller of Editorial Policy and other senior management members, for an assessment of their compliance. There are also special subject areas where a mandatory referral process is employed, including areas covering national security, gaining information through surreptitious recording and interviews with serious criminal elements.

“Due impartiality” is a key concept for the BBC’s editorial policy. It underpins a programming culture that is governed by accuracy, fairness and a respect for the truth. Due impartiality does not have to be restricted to one programme and can be extended throughout a series of programmes that look at a specific issue. However, all individual programmes that are not part of a series of programmes dealing with a specific issue should retain due impartiality. The notion of impartiality employed in UK broadcasting is therefore not some kind of straightjacket that restricts journalists in their investigations, but more a question of balance and disinterest.

Where personal views are represented in programmes, producers are also responsible for ensuring that these are signalled and that accuracy is respected. It is not permitted for BBC staff or journalists to represent their personal views on matters related to news programmes or public policy related programmes dealing with controversial subject areas.

Accuracy is also a central plank in the BBC’s editorial policy. The programme guidelines set down a rigorous checking process that recommends that producers should show reluctance to rely on single sources and notes are recorded of significant interviews. If a complaint about a programme is made, the BBC should issue a correction if the subsequent investigation into the relevant programme concludes that the programme failed to provide fair and balanced treatment of a subject or if it was inaccurate.

Individuals contributing to a programme should also be treated fairly by BBC staff. Their role in the programme should be explained to them, as should the subject of the programme and the range and nature of opinions it contains. In this way, contributors will clearly understand the nature of the programme that they are participating in.

The BBC guidelines also cover issues such as taste and decency. As stated in the BBC’s Royal Charter and Agreement, the Corporation should not broadcast programmes that “include anything which offends against good taste and decency or is likely to



encourage or incite to crime or lead to disorder, or be offensive to public feeling”.<sup>35</sup> To this end the BBC (like the other free-to-air UK broadcasters) uses a watershed policy, whereby programming before 9 p.m. should be suitable for all audiences including minors. Producers should also guarantee that when material is potentially offensive to a large part of the audience, then signposting and warnings should accompany the programme. The BBC should also ensure that all social and community groups are portrayed fairly and strive to achieve full coverage of all social groups. These standards are applicable to the BBC’s Internet services as well.

On rare occasions, as in any other system with such a large output, the BBC makes mistakes and these standards are not met. In such cases, the viewers and listeners have the right to request Ofcom to investigate the relevant material and the BBC itself has a department for processing viewer’s complaints about programming. Ofcom in turn has the power to assess the material in question. If it finds a breach of the taste and decency, impartiality or fairness requirements that apply to all UK broadcasters, Ofcom can request measures to be taken to redress the situation, such as an on-screen airing of its judgement and a formal apology by the broadcaster. The BBC has recently committed itself to improving its response to viewer complaints and it has promised to review the current process in consideration of improving the system.

#### 4.6.1 The Hutton Report

In 2003, the BBC and the Government entered a protracted and bitter dispute over the former’s reports that the latter had allegedly “sexed up” a dossier intended to bolster the case for a controversial war against Iraq.<sup>36</sup> A report by a BBC journalist on the flagship *Today* Radio 4 news programme referred to an unnamed “senior official” as the source for claiming that Government Ministers had been involved in instructing the intelligence services to colour the report and had knowingly exaggerated the threat presented by Iraqi weapons of mass destruction. This allegation, if proved true, would have seriously undermined the whole Cabinet.

The source was revealed as Dr David Kelly, a senior adviser on chemical weapons to the Ministry of Defence. When Dr Kelly subsequently took his own life, the Prime Minister ordered a public inquiry into the circumstances of his death. Chaired by Lord Hutton, the inquiry concluded in January 2004 that the BBC had breached its own reporting standards. The Hutton Report drew criticism from some quarters for absolving the Government of any responsibility in the affair. On publication of the report, the Chairman of the BBC’s Board of Governors resigned, followed shortly

<sup>35</sup> BBC, *Producer’s Guidelines: The BBC’s Values and Standards*, BBC, London, not dated.

<sup>36</sup> Lord Hutton, *Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly C.M.G.*, Her Majesty’s Stationery Office (HMSO), London, 2004, available at <http://www.the-hutton-inquiry.org.uk/content/report> (accessed 15 August 2005).

afterwards by the Director General, who was later to claim that the Board of Governors forced him to resign.

The BBC's major mistake in the whole affair was not so much the misreporting of events, serious as this was, but the way that management responded to criticism from the Government. The Board of Governors almost immediately expressed support for management against the Government without having first investigated the details and circumstances of the controversial broadcast. In doing so they demonstrated loyalty to the Corporation in defending it against an irate Government, but at the same time demonstrated the tension between their dual role as both strategic directors and regulators of the BBC. It is likely that the current review of the Royal Charter will look at ways of reforming the Board, as its dual role has been criticised for a number of years. In this respect, the Hutton inquiry merely highlighted the problems inherent in the Board having two functions that at times are bound to come into conflict – though this seems to have rarely occurred historically. The last time a Director General was dismissed by the Board of Governors was in 1987, when the criticism of them was the opposite, namely that the governors were afraid of, or worse, were creatures of, the Government.

After an internal investigation into the whole affair, the BBC has suggested tightening up some of the journalistic processes and clarifying the staff's awareness and understanding of the producer guidelines. These measures were published as a report in June 2004, which recognised the inadequacy of the BBC's procedures and the lack of compliance with programme guidelines on the part of the journalist who filed the report, Andrew Gilligan.<sup>37</sup> Essentially, the report reaffirms the basic principles of impartiality, independence and accountability that govern the Corporation and recommends a tightening of the standards concerned with note-taking, reliance on sources, external publications by BBC staff and fairness. The central recommendation is that training provisions for BBC journalists should be developed to guarantee that the producer guidelines are fully adhered to. (The BBC subsequently began a process to increase its own training capacity). The report also suggests a greater degree of legal consultation in programming matters to ensure legal compliance in its coverage of controversial issues.

As of July 2005, the BBC introduced new guidelines for its editorial staff, incorporating changes to the way it operates, following criticism about its journalism in the run-up to the war in Iraq. Among the changes is an explicit commitment, that "accuracy is more important than speed" and to constantly review any decision to use secret recordings in undercover investigations.<sup>38</sup>

---

<sup>37</sup> BBC, *The BBC's Journalism After Hutton. The Report of the Neil Review Team*, BBC, London, 2004, available at [http://www.bbc.co.uk/info/policies\\_](http://www.bbc.co.uk/info/policies_) (accessed 25 June 2004).

<sup>38</sup> BBC, *Editorial policy meeting, 23 June 2005*, available at <http://bbc.co.uk/guidelines/editorialguidelines/assets/meetings/June2005Minutes.doc> (accessed 13 August 2005).

The ultimate consequences of the episode for BBC journalism, if any, are not as yet possible to assess. It is, however, unlikely that the Government would seriously wish to revisit the whole affair during the Charter renewal debate. Any new restrictions on journalism are likely to be self-regulatory, rather than resulting from external pressure.

## **5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING**

Since the Broadcasting Act 1990, the commercial broadcasters have enjoyed an increasingly liberal regulatory regime. Nevertheless, they retain their public service obligations and they are accountable to Ofcom, which, under the terms of the Communications Act 2003, is responsible for assessing whether commercial broadcasters meet their contractual obligations. Ofcom is also responsible, together with the Office of Fair Trading, for assessing mergers and acquisitions in the television sector under the new framework.

### **5.1 Public service obligations for commercial broadcasters**

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 and have been once again been reformulated in the Communications Act 2003, which states that the public service remit for Channel 3 and Channel 4 is “the provision of a range of high quality programming”.<sup>39</sup>

#### **5.1.1 Channel 3**

A basic television service characterised by a mix of different programmes is required as a contractual condition for the Channel 3 licensees, which ensures that they provide a minimum range of programmes. These thresholds are supplemented with indicative targets for a wider range of programme genres. Taken as a whole, these form a comprehensive framework for establishing ITV’s public service obligations, as well as monitoring compliance with the set thresholds.

---

<sup>39</sup> Communications Act 2003, section 265(2) and (3).

### 5.1.2 Channel Five

Channel Five's programme obligations are similar in certain respects to Channel 3. Its contract stipulates that the broadcaster must provide a television service that is characterised by a diversity of programmes. Under its legal requirements, Channel Five is obliged to provide a minimum of programmes in four areas: news, current affairs, religious programmes, and programming for children. However, as in the case of ITV, the ITC/Ofcom has traditionally set indicative targets in other programme genres as well.

### 5.1.3 Channel 4

Channel 4's remit is unique; it was established in 1982 to provide for segments of the audience whose tastes and needs were not catered for in the services provided by the other UK broadcasters. Under the Communications Act 2003, Channel 4 is required to provide,

[...] high quality and diverse programming which, in particular:

1. (a) demonstrates innovation, experiment and creativity in the form and content of programmes;
- (b) appeals to the tastes and interests of a culturally diverse society;
- (c) makes a significant contribution to meeting the need for the licensed public service channels to include programmes of an educational nature and other programmes of educative value; and
- (d) exhibits a distinctive character.<sup>40</sup>

The channel has in past years reformed its multicultural programming strategies in order to cater for a wider audience. This has meant that it has moved away from providing niche programmes for minority groups, towards a more generalist approach that seeks to represent groups in society within more mainstream programming.

It also has additional requirements to provide schools programmes and minimum thresholds for certain kinds of programmes. In 2003/2004 these were a minimum of seven hours of education, four hours of news, four hours of current affairs, three hours of multicultural and one hour of religious programming per week, as well as 330 hours per year of schools programming.

---

<sup>40</sup> Communications Act 2003, section 265(3).

**Table 8. Channel 4 output (2003/2004)**

Programme strand	Hours	Costs (€ millions)
Entertainment	1,791	161
Drama	929	121.5
Education	1,426	110.8
Sport	1,041	60.5
Films	1,061	28.9
Other factual	530	43.6
News	346	33.5
Documentaries	295	26.2
Current affairs	225	18.9
Quiz and game shows	448	16.2
Arts and music	247	13.9
Multicultural	191	12.0
Children	175	5.0
Religion	55	5.2
Other	–	13.3
Total	8,760	6,834

Source: Chanel 4<sup>41</sup>

### *Channel 4 structure*

Channel 4 also has a Board to oversee its public and commercial activities. The Board has overall responsibility for ensuring that Channel 4 complies with its statutory duties, as set out in the Communications Act 2003 and in accordance with its licence agreement with Ofcom. It is comprised of between 13 and 15 non-executive and executive members – there are presently five executive members and eight non-executive members. Although Channel 4 is primarily regulated by Ofcom, it is also obliged to deliver a copy of its annual report to the Secretary of State for Culture, Media and Sport and the two chambers in the Houses of Parliament. Ofcom is responsible for overseeing the appointment of the Chairman of the Board, which is formally approved by the Secretary of State for Media, Culture and Sport.

## **5.2 Commercial television ownership and cross ownership**

The framework for the regulation of media ownership and market concentration consists of a number of rules that have recently undergone reform to reflect a greater

<sup>41</sup> Channel 4 Television, *Report and Financial Statements 2003*, London, 2004, p. 39.

degree of liberalisation in ownership rules, to encourage competitiveness whilst theoretically protecting media pluralism. At the same time, what has been termed a “public interest test”, which has already been employed in the press and radio sectors in merger and acquisition decisions, has been extended to television and woven into the fabric of the overall regulatory framework at the instigation of the House of Lords, during the passage of the Communications Act 2003.<sup>42</sup>

As a result, prospective mergers or acquisitions between media companies with any features that might be against the public interest, in any of the media sectors covered by the act, together with the newspaper sector, must be reviewed by a combination of Ofcom and the Office of Fair Trading. Their opinions will be delivered to the Secretary of State, who in turn can refer any qualifying case to the Competition Commission. These reforms have been incorporated into the Enterprise Act 2002, which deals with newspaper mergers and acquisitions above a certain threshold.<sup>43</sup> On the whole, the Communications Act 2003 repeals some of the provisions regulating media ownership and replaces them with a more liberalised, case-by-case procedure.

Since the introduction of the Broadcasting Act 1996, the system for evaluating and monitoring media ownership and pluralism has consisted of an audience share framework rather than outlet share limits.<sup>44</sup> The main changes to legislation on television ownership brought about by the Communications Act 2003, concern the withdrawal of previous restrictions and limitations. These include the removal of the upper limit of 15 per cent audience share that one company could control, introduced in the Broadcasting Act 1996. The rule preventing the joint ownership of the two ITV London franchises has also been removed, as has the rule preventing ownership of both an ITV company and Channel Five. The most controversial part of the act was the removal of the restriction on non-EEA ownership of UK terrestrial television companies.<sup>45</sup> This rule was widely perceived primarily as an instrument to prevent major take-overs in the UK by large US media companies, such as Rupert Murdoch’s News Corporation, which is the largest shareholder of BskyB, the dominant satellite television company in the UK. However, any attempt by a non-EEA based company to acquire a UK terrestrial broadcaster will have to undergo a public interest test.

---

<sup>42</sup> Department for Culture, Media and Sport (DCMS) and the Department of Trade and Industry (DTI), *The New Newspaper Regime*, Her Majesty’s Stationery Office (HMSO), London, 2003; DTI, *Intervention on Media Mergers: Draft Guidance. Consultation Document*, Her Majesty’s Stationery Office (HMSO), London, 2003; DCMS, *Consultation on Media Ownership Rules*, Her Majesty’s Stationery Office (HMSO), London, 2002.

<sup>43</sup> Enterprise Act 2002 (c. 40), Her Majesty’s Stationery Office (HMSO), London, 2002, available at <http://www.opsi.gov.uk/acts/acts2002/20020040.htm> (accessed 15 August 2005).

<sup>44</sup> Broadcasting Act 1996 (c. 55), Her Majesty’s Stationery Office (HMSO), London, 1996, available at <http://www.opsi.gov.uk/acts/acts1996/1996055.htm> (accessed 15 August 2005).

<sup>45</sup> The European Economic Area (EEA) comprising the EU member States plus Iceland, Liechtenstein and Norway.

Some remaining restrictions on owning an ITV company are concerned with cross ownership and relate to disqualifications of companies that own newspapers. These restrictions exclude:<sup>46</sup>

- an entity with a national newspaper with a national market share of 20 per cent or above;
- an entity with national newspapers with a combined national market share of 20 per cent or above;
- an entity with a local newspaper that has a local market share of 20 per cent or more in the coverage area of the service.

Some of the restrictions previously placed on the ownership of Channel Five were lifted by the Communications Act 2003. There are no set restrictions on newspapers or other broadcasters owning Channel Five. However, any such move will have to undergo a review as to its impact on the services provided by the broadcaster and investment in regional and UK programming under the public interest test that would be applied by the relevant bodies. The public interest test will also cover any proposed merger or acquisition including cross-media ownership of Channel Five, any changes in the ownership of the ITV network and foreign (non-EEA) ownership of terrestrial television channels.

The public interest test is a significant device for protecting pluralism in the UK media industries. While many ceilings and fixed limits have been removed by the Communications Act 2003, it remains to be seen how this test will be employed and what kind of precedents will be set for the individual media sectors, as well as the sector overall in terms of pluralism and diversity. The public interest test can be employed where the transaction level is below €100 million and one of the parties has a 25 per cent or above market share in the relevant broadcasting or newspaper sector, or for cross-media purposes. When one of these criteria is triggered, the Secretary of State can intervene where it is believed that a public interest consideration is relevant. On this basis, where a media merger or acquisition case arises, the factors set out below will be central in determining whether a case is blocked or cleared, though the Secretary of State must make a decision that a case is a special interest case before this process is initiated. As it relates to broadcasting and cross-media mergers or acquisitions, the criteria for rejecting or clearing a merger or acquisition are as follows:

- whether there is overall a sufficient plurality of persons with control of media outlets;
- whether a wide range of quality television and radio service is available for the end consumer;

---

<sup>46</sup> Communications Act 2003, Schedule 14, Part 1, section 350 (1) and (2).

- whether the owners have a commitment to fulfilling the objectives set out in Section 319 of the act (standards).

A whole range of considerations will be addressed in any assessment based on these criteria, including the number of outlets and the audience share of the actors involved in the merger or acquisition, the availability of a wide range of quality programmes, and the owners' strategic planning policy for programming. Furthermore, the standards set out in Section 319 of the Communications Act 2003 relate to a raft of obligations, ranging from advertising standards to the protection of minors.

### 5.2.1 Ownership of the main players

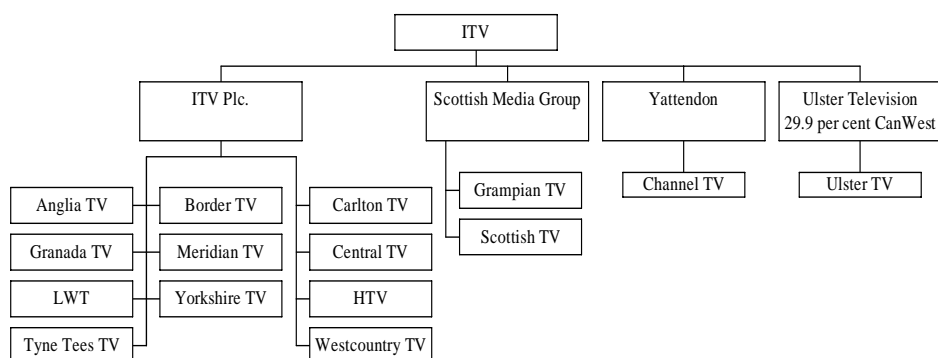
The UK has one of the most plural television sectors in Western Europe.<sup>47</sup> This situation was guaranteed by the ownership rules that were removed in the Communications Act 2003. The new policy framework is liberalising in this respect, and there appears to be a political consensus that UK television companies should be allowed to grow in order to take better advantage of the international television market place.

The main commercial network, ITV, has a regional structure consisting of 15 broadcasters combining to form the ITV national network plus GMTV, which is a window channel for breakfast television. ITV was originally designed to have a regional ownership structure with limits set restricting the number of regional franchises each member of the network could control. In reality, changes in legislation and relaxation of ownership rules mean that this structure has been eroded by the growth of Carlton and Granada as they expanded and acquired the other network companies. The February 2004 merger between the two groups' ITV assets completed this process; at the beginning of 2004, one company controlled the majority of the network, as the 15 per cent audience share ceiling that has traditionally restricted expansion in the sector was removed to allow companies to expand.

---

<sup>47</sup> Ward, *Media Concentration and Ownership*.



**Chart 1. Ownership structure of the ITV network (2004)**

Source: David Ward (2004)

The merger resulted in the majority of ITV regional franchises, and all the larger ones, being owned by one company, which retains a regional remit for programming and production while it benefits from economies of scale in programming, advertising sales and administration. The new group enjoys a combined market share, based on the current combined audience share, of 19.6 per cent.

Both the BBC and Channel 4 are publicly owned. The final terrestrial free-to-air broadcaster is Channel Five, of which a majority share of 66.6 per cent was acquired by the RTL Group from Pearson in 2000. The remaining shareholding is owned by United Business Media. The channel has successfully carved out a market niche; RTL highlighted Channel Five as one of its stable of channels that outperformed other channels in the RTL Group.

Since 1992, the cable industry in the UK has undergone significant consolidation as the regional licences that were owned by 29 companies have increasingly become dominated by two companies: NTL and Telewest. Even in the short period between 1997 and year-end 2003, the 13 companies that controlled 155 regional licences have decreased to two major players and a few minor operators in the Isle of Man, the North West of England and South Western Scotland. Telewest also acquired a content arm when it merged with Flextech in 2000 and inherited 11 channels that were established as a joint venture between Flextech and the BBC under the brand UKTV (see above). Its 2003 annual report records a decline in its cable television subscribers of 47,973 to 1,293,811, of which 66 per cent are digital households. The other main cable operator, NTL, holds 102 franchises and claims some 1,294,000 subscribers to its television services. The company's cable assets were extended considerably when it purchased the UK cable networks of Cable & Wireless Communications (owned by Cable & Wireless Plc.) in 2000, a bid that was partly financed by France Telecom.

These companies have both experienced significant financial losses in their UK cable operations due to a combination of strong competition from satellite in the content market, the strong position of BT in the telephony market, and a general decrease in confidence in the delivery sector. There has been speculation that they may merge at some point in the future.

US media mogul Rupert Murdoch owns News Corporation, which is the largest shareholder of BSkyB. It effectively controls the company's activities, and its satellite activities have no competitors. Given the high advance investment costs necessary to establish a viable competitor in the area and the considerable market power of BSkyB, any real competition in the satellite market is highly unlikely. In this sense BSkyB has a monopoly in the satellite industry, and its highly successful business model has fundamentally transformed the UK television market over the past decade. Three of BSkyB's channels are broadcast free-to-air on the Freeview digital terrestrial television platform, and on its digital satellite platform it offers over 200 television-based channels and 67 radio stations to UK subscribers.

### 5.2.2 Cross-media ownership

The restrictions on cross-media ownership have limited companies' expansion across media sectors. Granada plc has quite typical structures of horizontal and diagonal integration both within specific media and across different media. Such structures are common in the UK as companies attempt to create greater economies of scale and scope. Due to the nature of the media rules that have traditionally restricted cross-ownership between certain sectors, there has been a natural tendency to expand within the regulatory framework. This has led to a high degree of integration between the newspaper and radio sectors, terrestrial television and radio assets through the Granada Group, and satellite television and newspapers and publishing interests through News Corporation's interests in national titles and BSkyB. The changes introduced in the Communications Act 2003 support new constellations of ownership patterns with a greater degree of liberalisation of cross-media ownership rules to encourage companies to expand their interests across media sectors.

## 5.3 Funding

The breakdown of revenues that the television industry enjoys has undergone changes in the past decade, largely due to the development of subscription as a major part of the overall finance of the sector. Traditionally, funds from the licence fee and advertising have provided the public and commercially funded broadcasters with the majority of their revenues. Although this has not changed in respect of the terrestrial television services supplied by these broadcasters, overall there is a significant growth in revenues derived from subscription and pay per view for satellite and cable.

**Table 9. Revenue breakdown for the UK television sector (2003)**

Revenue source	Revenue (€ million)	Share of total revenue (per cent)
Advertising	4,725	33.0
Subscription	4,813	33.6
BBC licence fee	3,357	23.4
Other	1,430	10
Total	14,325	100

Source: Ofcom<sup>48</sup>

Subscription became the single greatest source of revenue in the television industry in 2003, for the first time overtaking advertising revenues by a small amount, marking an important landmark for the sector. The traditional advertising market is still dominated by the ITV network companies. Despite its decline in audience share, ITV remains the most popular commercially funded channel in the UK and it also retains the majority share of advertising revenues.

**Table 10. Net advertising revenues – breakdown by channel (2002 and 2003)**

Channel	Net advertising revenue (€ million)	Market share (per cent)	
	2002	2002	2003
ITV	2,452	54.9	51.9
Channel 4	884	19.8	19.3
Channel Five	314	7.0	7.7
Cable, satellite and other	816	18.3	21.1
Total	4,466	100	100

Source: ITC 2003 and Ofcom<sup>49</sup>

Channel 4 has also established a commercial arm, 4 Ventures. The subsidiary is divided into four main activities: 4 Channels, which operates a range of basic tier and premium subscription channels including entertainment and film, 4 Rights that exploits programme rights and sales, 4 Learning that is responsible for supplying schools programming, and 4 Services that includes Internet and interactive businesses. Unlike

<sup>48</sup> Ofcom, *The Communications Market 2004*, Ofcom, London, 2004, available at <http://www.ofcom.org.uk/research/cml/> (accessed 24 August 2005), (hereafter, Ofcom, *The Communications Market 2004*).

<sup>49</sup> Ofcom, *The Communications Market 2004*.

with the BBC channels, there has been little or no criticism of Channel 4 developing these services.

#### 5.4 Programme framework

A system of programme promises was introduced in 2001 by the Independent Television Commission (ITC) and then incorporated into the Communications Act 2003. All broadcasters are required to submit to Ofcom their individual aims and objectives for the forthcoming year, in terms of their programme obligations. Ofcom publishes the broadcasters' commitments, which are used to assess their performance at year-end. The commercial terrestrial broadcasters are required to provide annual statements of programme policy, setting out proposals for achieving their respective public service remits.<sup>50</sup> The broadcasters are obliged to conduct their own assessments of their activities in the first instance. Operators must consult with Ofcom before any significant alterations are made to the statement<sup>51</sup> and Ofcom has the power to direct revisions to the programme policy as it sees fit.

All commercial cable, satellite and terrestrial broadcasters are contractually bound by the ITC/Ofcom's code of practice covering issues such as impartiality, coverage of elections and taste and decency, based on principles similar to the BBC producer guidelines. In terms of fairness, however, the ITC/Ofcom rules refer directly to the European Convention on Human Rights (ECHR), concerning the right to privacy and freedom of expression.<sup>52</sup> The commercial broadcasters are not restricted in any way as to subject matter, but they are obliged by the ITC/Ofcom guidelines to abide by the principles of truth and fairness.

The broadcasters are also required, pursuant to the requirements set down in the Broadcasting Act 1990, to preserve due impartiality in all matters relating to news, political or industrial controversy, and public policy. In this respect it is incumbent on ITC/Ofcom to ensure "that due impartiality is preserved on the part of the person providing the service as respects matters of political or industrial controversy or relating to current public policy."<sup>53</sup>

As with the BBC, due impartiality is employed by the ITC/Ofcom in a manner that allows broadcasters room for investigation; they are not constrained by a mathematical notion of balance. The broadcasters should approach and represent subjects in an even-handed manner with different viewpoints. Opinion should also be separated from fact. The opinions of broadcasters are not allowed to be expressed in any programming covering the stated areas above and where there is a series of programmes covering a

---

<sup>50</sup> Communications Act 2003, Section 266.

<sup>51</sup> Communications Act 2003, Section 267.

<sup>52</sup> ECHR, art. 8 and 10.

<sup>53</sup> The Broadcasting Act 1990, cited in: ITC, *The ITC Programme Guide*, London, 2002, p. 23.

particular issue; broadcasters are allowed to provide balance across a series (rather than in each individual programme). It is not sufficient, however, to argue that other channels may provide an alternative viewpoint: each broadcaster is responsible for maintaining due impartiality within its programming.

In addition to the measures above, the policy of the 9 p.m. watershed is equally applicable to all the terrestrial broadcasters; only encrypted channels with PIN systems that restrict access to services are exempt. The broadcasters should also show respect for the rights of individuals and no programme must incite racial hatred. Where appropriate, indeed, broadcasters should ensure fair representation of all groups in society regardless of their race or religion.

The above requirements have all been incorporated into the Communications Act 2003.<sup>54</sup> In July 2004, Ofcom launched a review of the programme codes<sup>55</sup> of the legacy regulators, including the ITC's guidelines, that will eventually result in a new set of programme guidelines that will replace all the existing ones.<sup>56</sup> There is a shift in terminology used in the consultation document by the regulator from "taste and decency" to "harm and offence". This indicates a move towards a more flexible framework for the watershed system employed by broadcasters. At the same time, rules for the protection of minors will be clearly defined by Ofcom, reflecting public concern about the effects of media content on children. It is unlikely, however, that many of the central principles and regulations such as due impartiality will be changed, as these are set out clearly in the Act and reflect fully the ITC's code. More flexibility may be granted to the commercial broadcasters in the new guidelines, but they will still have to comply with the principle of due impartiality.

## 6. REGULATION OF PROGRAMME PRODUCTION

The regulation of programme production for UK broadcasters is centred on two areas: investment both in original national and independent production, and compliance with the requirement in the Television without Frontiers Directive to transmit a majority of European works. Ofcom also has the power to see to it that the "regulatory regime" requires broadcasters to produce and distribute an "appropriate proportion" of original programming, to ensure each channel's output remains of a high quality.

<sup>54</sup> Communications Act 2003, Section 320.

<sup>55</sup> Ofcom, *Consultation on the proposed Ofcom broadcasting code*, Ofcom, London, 2004, available at [http://www.ofcom.org.uk/consultations/current/broadcasting\\_code/bcast\\_code1.pdf?a=87101](http://www.ofcom.org.uk/consultations/current/broadcasting_code/bcast_code1.pdf?a=87101) (accessed 14 July 2004).

<sup>56</sup> These include the BSC Code on Fairness and Privacy, BSC Code on Standards, ITC Programme Code, ITC Code of Programme Sponsorship, RA News and Current Affairs Code and Programme Code, and the sponsorship rules contained in the RA Advertising and Sponsorship Code.

Ofcom has the power to impose a more detailed framework at its discretion, in consultation with the relevant broadcasters under a co-regulatory framework.

**Table 11. Annual production quotas for terrestrial broadcasters**

	Production quotas (per cent)				
	BBC1	BBC2	Channel 3	Channel 4	Channel Five
Independent production (share of hours)	25		25	25	25
Total original (share of hours)	70	70	65	60	51
Original in peak time (share of hours)	90	80	85	70	42
Regional production (share of hours)	25		33	30	10
Regional production (share of expenditure)	30		40	30	10
European production (share of hours)	50	50	50	50	50
European independent production (share of hours)	10	10	10	10	10

Source: Ofcom<sup>57</sup>

The free-to-air terrestrial broadcasters are all obliged to commission a minimum of 25 per cent of original qualifying programming, as determined by the Secretary of State, from the independent production sector. Qualifying programmes include all programming except acquired programmes, repeats, news, programmes provided by, or on behalf of, the Open University or Open College, and broadcasts on behalf of political parties.<sup>58</sup> Independent production companies are the largest supplier of programming to Channel 4, which was established as a publisher/broadcaster that commissions programmes rather than producing them itself.

As is the case for the other commercial broadcasters in the UK, SC4 is obliged to make annual programme promises. These are currently to produce at least 30 minutes of news programming in peak hours during weekdays, 15-minute bulletins at weekends, at least one hour of factual programming per week during peak time, and a minimum of 100 hours of drama and 110 hours of children's programming annually.

<sup>57</sup> Ofcom, *Ofcom Review 2004*, Figure 1.

<sup>58</sup> The Broadcasting (Independent Productions) Order 1991, Statutory Instrument 1991, No. 1408, Her Majesty's Stationery Office (HMSO), London, 1991. Amended 2003 as Statutory Instrument 2003 No. 1672.

The ITC/Ofcom's Invitation to Apply for regional Channel 3 (ITV) licences states that the Central Scotland and North of Scotland licensees must broadcast at least one hour a week on average, of programmes in the Gaelic language, funded by themselves. They must, in addition, broadcast programmes in the Gaelic language on a regular basis up to 200 hours a year, funded by the CCG (Gaelic Broadcasting Committee). It is a licence condition that Grampian TV airs 53 minutes a week, of Gaelic programmes funded by themselves, plus an additional 30 minutes a week which may be supplied by Scottish Television. Scottish Television is required to transmit 30 minutes a week of Gaelic programmes, plus an additional 30 minutes a week, which may be supplied by Grampian TV.

As part of their regulatory obligations, the ITV companies also have to produce and distribute regional programming. A suitable amount of airtime with an adequate range of high quality regional programming, some in peak time slots should be included in the schedule. For Channel 4, Ofcom should ensure that a suitable percentage of programming is commissioned from outside the M25 area.<sup>59</sup> In an attempt to decrease the dominance of London as the centre for the television industry, Ofcom is reviewing the level of the quotas and it is likely that the percentage of commissions required from the regions, i.e. outside London, will be increased.

The BBC has been criticised in the past for not meeting the independent production quota. In the latest report by the Office of Fair Trading, although the BBC met the requirements to commission a broad range of programming, it failed to meet the 25 per cent threshold for the third consecutive year in 2002/2003.<sup>60</sup> In 2003/2004, however, it fulfilled the quota and Ofcom reported that the BBC commissioned 28.8 per cent of qualifying programmes from independent producers and more than 2,300 hours of programming, 47 per cent of which was entertainment. In this period, the BBC commissioned programmes from 175 independent production companies spending €459 million. This represented some 2,300 hours of programming for the year.

The failure of the BBC to meet the 25 per cent requirement, according to the independent producers, stems from the sheer size of the BBC's own production resources and pressures to keep production in-house. There is, to some extent, a conflict of interest between the BBC farming out programme production to independents at the expense of using its own resources and it has been fairly aggressive in its relationship with the sector and therefore somewhat of a reluctant partner. One of the reasons that the BBC did not meet the previous year's quota was that the pan-European independent production company Endemol, which produces some of the most popular programming in the UK, lost its status as an independent producer when it was acquired by Telefonica that holds considerable television assets in Spain. Ofcom has now reinstated Endemol's independent status after an appeal by the company.

---

<sup>59</sup> The M25 is the orbital motorway circling the London area.

<sup>60</sup> Office of Fair Trading, *Independent Productions Transmitted by the BBC. Tenth Report*, London, 2003.

In order to improve its relationship with the independent production sector the BBC have created a new post within the organisation directly concerned with commissioning programmes from the independent sector. In 2004 the BBC also agreed a new set of terms of trade for the commissioning of programmes with PACT (Producers alliance for cinema and television), the independent producer trade association that aim to strengthen the relationship between the BBC and independent producers.<sup>61</sup>

Prior to the Communications Act 2003 there were no sanctions that could penalise the BBC for its failure to meet the quota. However, the new measures in the act have changed this situation and today a series of fines could be administered if the BBC fails to meet the 25 per cent threshold for commissions (see section 3.3). Alternatively, the BBC could be made to carry the shortfall over into the following year by Ofcom.

The BBC’s digital channels also have quotas that it is obliged to meet under the terms of its agreement with the Secretary of State to operate these channels.

**Table 12. Annual production quotas for BBC digital channels**

	Annual production quotas (per cent)					
	BBC3	BBC4	CBeebies	CBBC	News 24	Parliament
Total original (share of hours)	80	around 70	around 80	70	90	90
Original in peak time (share of hours)	70	50	–	–	–	–
European (share of hours)	90	around 70	around 90	around 75	–	–
Independent (share of hours)	25 (across all channels)					
Regional production (share of hours)	25 (across all channels)					
Regional production (share of expenditure)	30 (across all channels)					

Source: Ofcom<sup>62</sup>

<sup>61</sup> BBC Press Release, “Ofcom confirms BBC independent production quota 2004”, 11 August 2004, available at [http://www.bbc.co.uk/pressoffice/pressreleases/stories/2004/08\\_august/11/quota.shtml](http://www.bbc.co.uk/pressoffice/pressreleases/stories/2004/08_august/11/quota.shtml) (accessed 14 August 2005).

<sup>62</sup> Ofcom, *Ofcom Review 2004*, Figure 2.



## 7. EUROPEAN REGULATION

The rules and regulations laid down in the EU “Television without Frontiers” (TWF) Directive are incorporated into UK broadcasting law.<sup>63</sup> The UK has actually benefited from the free movement principle in the Directive, as it has acted as a base for numerous satellite operators who broadcast across Europe. The 25 per cent independent programme quota imposed by the Broadcasting Act 1990 surpasses the 10 per cent independent quota provision of the Directive. According to the European Commission’s report on compliance with the European works quota, the main UK broadcasters exceed the quota by a healthy margin.<sup>64</sup>

Although cable and satellite broadcasters have no national positive regulatory requirements placed on them, the Directive is applicable to all broadcasters in the UK except for those channels distributed from the UK to third countries that are not received in any of the Member States. This means that the European programme quotas are placed on all broadcasters. However, Article 4 of the Directive stipulates that the production quotas should be imposed “where practicable”. In this respect, there has so far been a lack of enforcement of the quota provision as Member States have applied the caveat broadly and cable and satellite channels have little regulatory incentives (either positive or negative) in meeting the requirements of Article 4 of the Directive.

The UK is one of a handful of member States that has introduced an *events of national importance* list, a requirement laid down in the Directive. The list guarantees the rights to these events for broadcasters with a minimum of 95 per cent coverage of the UK (these are the so called Category A channels: BBC1, BBC2, ITV, Channel 4).<sup>65</sup> The A list requires protection of live coverage of the listed events, while the B list allows Category B channels (which do not meet the coverage threshold above) access to the

<sup>63</sup> “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](http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf) (accessed 15 March 2005).

<sup>64</sup> European Commission, Sixth Communication from the Commission to the Council and the European Parliament on the application of Articles 4 and 5 of Directive 89/552/EEC “Television without Frontiers”, as amended by Directive 97/36/EC, for the period 2001–2002, Brussels, 28 July 2004, COM(2004) 524 final, available at [http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2004/com2004\\_0524en01.pdf](http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2004/com2004_0524en01.pdf) (accessed 24 August 2005).

<sup>65</sup> Channel Five only has about 80 per cent national coverage and therefore fails to cross the coverage threshold.

rights of the listed event on condition that the Category A channels have delayed coverage rights, allowing them to broadcast the events at a later time.<sup>66</sup>

**Table 13. Listed events**

A list	B list
The Olympic Games	Cricket Test Matches played in England
The FIFA World Cup Finals Tournament	Non-Finals play in the Wimbledon Tournament
The European Football Championship Finals Tournament	All Other Matches in the Rugby World Cup Finals Tournament
The Football Association (FA) Cup Final	Six Nations Rugby Tournament Matches Involving Home Countries
The Scottish FA Cup Final (in Scotland)	The Commonwealth Games
The Grand National horse race	The World Athletics Championship
The Derby horse race	The Cricket World Cup – the Final, Semi-finals and Matches Involving Home Nations' Teams
The Wimbledon Tennis Finals	The Ryder Cup
The Rugby League Challenge Cup Final	The Open Golf Championship
The Rugby World Cup Final	

Source: DCMS<sup>67</sup>

## 8. THE IMPACT OF NEW TECHNOLOGIES AND SERVICES

The diffusion of new technology is a key Government objective and the rollout of digital television and Internet services are seen as crucial policy areas. The BBC, following the historical precedents set by its expansion from radio to black and white television, then to colour television, has established a strong position on both digital platforms and on the Internet. The remaining terrestrial broadcasters have also developed new services, though these are dwarfed by the BBC's expansion. Whether or not the Government's ambition to switch off the analogue airwaves by 2010 will be achieved will depend on consumer behaviour and on the industry overcoming some of the technical problems with coverage.

<sup>66</sup> DCMS Broadcasting Policy Division, *Coverage of Sports on Television*, DCMS, DCMS leaflet, revised March 2005, available at <http://www.culture.gov.uk/NR/rdonlyres/E4039BD6-FF27-49F2-9ECF-907518C4BDDF/0/SportLeafletrevmarch05.pdf> (accessed 24 August 2005).

<sup>67</sup> DCMS, *Coverage of Sports on Television*, Appendix A.

## 8.1 Digital television

In 1998, the UK saw the first and by far the most ambitious attempt of any government in Europe to introduce digital television services and switchover from analogue to digital signals, thereby creating greater efficiency in the use of spectrum. In 1999, the Government set the objective for the time framework for analogue switch off between 2006–2010. This was based on the projected criteria that 95 per cent of UK households would have access to digital equipment to receive the services, and that all the main public service channels that are available through analogue television would be available in digital form.

At the third quarter of 2004, over 13 million households had access to multichannel television, according to Ofcom. The number of households that subscribed to cable, satellite or digital terrestrial television (DTT) was estimated to be in the region of 55.9 per cent.<sup>68</sup> Satellite has traditionally dominated multichannel television services in the UK, both in terms of subscribers and revenue share. However, the growth of Freeview has created a viable competitor to BSkyB in terms of penetration. At the same time, BSkyB's significant market position and its access to key programme rights such as Premiership football and movies leaves it in a powerful position in the market that is largely unchallenged. In October 2003 BSkyB announced that it had seven million subscribers to its services, and its "churn rate" has decreased at 9.6 per cent to below 10 per cent.<sup>69</sup>

Overall, subscribers for these services are increasing, though in a report on the development of digital television in the UK Ofcom recently concluded that it has reservations as to whether 95 per cent of households will have access to digital platforms by 2010. It estimates a maximum of 78 per cent based on current trends in the market. The major obstacles Ofcom notes are, on one hand, technological and relate to the fact that the power of the existing signals restricts the amount of households using traditional aerials that will have access to DTT until this is increased at switchover. On the other hand, there is evidence of a lack of development in the pay TV market, which under current conditions Ofcom predicts will reach no more than 50 per cent of households. It does, however, suggest that these can be overcome with a clear plan of action and switchover date. Access to DTT services is currently limited by the technical restriction of DTT to 73 per cent of the country, of cable services to 51 per cent of households, and satellite television to 97 per cent of the population.<sup>70</sup>

<sup>68</sup> Ofcom, *Driving Digital Switchover: A Report for the Secretary of State for Culture, Media and Sport*, Ofcom, London, 2004, (hereafter, Ofcom, *Driving Digital Switchover*).

<sup>69</sup> The "churn rate" is the number of subscribers who discontinue their use of a service (during a given period) divided by the average number of total subscribers.

<sup>70</sup> Ofcom, *Driving Digital Switchover*.

**Table 14. Digital television penetration (third quarter 2004)**

	Platform	
Number of households	Digital cable	2,502,451
	Digital Satellite (Sky)	7,085,000
	Total digital pay TV households	9,598,981
	Free-to-view DTT (Freeview)	5,016,200
	Free-to-view digital satellite	345,000
	Total Free-to-view receivers	5,361,200
	Total Free-to-view households	4,259,920
	Total UK digital households	13,858,901
	Analogue cable	860,193
	Total UK pay TV households	10,459,174
Share of households (per cent)	Digital penetration	55.9
	Multi-channel penetration	59.4

Source: Ofcom<sup>71</sup>

With the closure of ITV Digital in April 2002 due to bankruptcy, the licence for DTT was re-issued to Freeview, a consortium of the BBC, Crown Castle and BSkyB. Freeview provides a range of channels based on a free-to-air model with some additional opportunities for consumers to subscribe to premium channels such as film and sports channels. The BBC has become central to the development of digital terrestrial television in the UK, with the launch of Freeview. Over the past years the BBC has introduced a number of new digital channels (with the permission of the Secretary of State for Culture, Media and Sport) including an up-market cultural channel, BBC4, Youth (BBC3), Children's (CBeebies and CBBC), Parliamentary (BBC Parliament) and News channel (BBC News 24).

<sup>71</sup> Ofcom, *Digital Television Update*, Ofcom, London, 2004, available at [http://www.ofcom.org.uk/research/industry\\_market\\_research/m\\_i\\_index/dtvu/dtu\\_2004\\_q3/dtu\\_2004\\_q3.pdf](http://www.ofcom.org.uk/research/industry_market_research/m_i_index/dtvu/dtu_2004_q3/dtu_2004_q3.pdf) (accessed 12 January 2005).

**Table 15. BBC television services (year-end 2003)**

Channel	Content	Audience share (per cent)	Expenditure (€ million)
BBC1	Popular generalist	25.5	1,279.19
BBC2	Highbrow and culture	10.8	547.18
BBC3	Youth	0.7	112.44
BBC4	Highbrow and culture	0.2	61.36
CBeebies	Children's (under 6)	1.3	59.42
CBBC	Children's (6-12)	0.3	
BBC News 24	News	0.5	35.45
BBC Parliament	Parliamentary coverage	NA	4.02

Source: DCMS

These channels are all categorised as *auxiliary services* to the main channels provided by the BBC. The BBC's plans to establish digital channels must satisfy the Secretary of State for Media, Culture and Sport that:

- they are sufficiently different from existing services provided by commercial broadcasters;
- they enhance the public services already provided by the BBC;
- the channel will be universally available "within a reasonable period of time".

Internal approval by the Board of Governors must also be confirmed. In this respect, the BBC must submit a detailed plan and case for the distinctiveness of the proposed channels, scope and coverage of the channels, before they are given the consent of the Secretary of State. New public services are also subject to independent review approximately two to three years after they are launched.

A former editor of the *Financial Times*, Richard Lambert, undertook the review of BBC News 24. Although the report pointed to serious flaws in the original plans for the channel, Lambert judged that radical changes introduced by the BBC had succeeded in improving the channel significantly, and concluded that the channel performed "satisfactorily in all areas, and better than that in some areas [...] [and] is highly regarded by a range of senior opinion formers."<sup>72</sup> He also concluded, however, that the BBC could do better in its international coverage, depth in news stories, and in bringing a wider range of issues to the screens than its main commercial competitor, Sky News.

<sup>72</sup> DCMS, *Independent Review of BBC News 24*, DCMS. London, 2002, p. 9.

## 8.2 Internet

The main UK broadcasters have approached the Internet in markedly different ways. Channel 4 has invested in new services and has developed interactivity and a wide range of online services and has used the Internet to complement popular programming such as *Big Brother*. The ITV network companies and Channel Five have invested less in the medium and have remained cautious in their expenditure on Internet sites, whose content mainly relates to entertainment and the main television schedules.

None of these broadcasters approaches the scale of investment in resources that the BBC has devoted to its Internet services. The BBC perceives itself to be a leading broadcaster in the development of new technologies and its Internet sites are widely regarded as being some of the best available for news and information. BBC Online's website is amongst the ten most visited websites in the UK and, according to KPMG, has a reach of 40.5 per cent of the population.<sup>73</sup> It also sees its expansion into the Internet as a natural extension of its programming, mirroring its expansion from radio to television in the 1940s.

The BBC established a small range of Internet services in the mid-1990s to support key programming. In 1997, the Secretary of State for Culture, Media and Sport approved an expansion programme based on a two-stage growth plan. In 1998, after a full review of BBC services, approval was granted for Phase Two, with the BBC setting out its public service objectives for online services. BBC Online now provides a wide range of interactive services on the Internet, television and mobile telephony. Its Internet activities focus upon providing content, searching facilities and chat rooms. Content is the core activity and consists of a number of main categories set out in the table below.

**Table 16. BBC main UK-based websites**

BBC Online main websites	
News	History
Sport	Learning
World Service	Music
Health	Science and Nature
Entertainment	Society and Culture
Business and Money	Children's

Source: BBC Online (2004)

<sup>73</sup> KPMG LLP, *Market Impact Assessment of BBC's Online Service*, KPMG, London, 2003, available at [http://www.bbc.co.uk/info/policies/pdf/kpmg\\_exec\\_sum.pdf](http://www.bbc.co.uk/info/policies/pdf/kpmg_exec_sum.pdf) (accessed 14 August 2005).

Each of these main sites leads to a myriad of different web pages covering a range of areas and there are also regional sites covering local issues and news and sport throughout the UK.

The BBC's online services are divided into three different sections:

- the UK services are funded from the licence fee and run as public services catering to the needs of the British public;
- the BBC World Service is funded by a grant from the Government;
- Beeb.com is a commercial service aimed at international audiences, produced by the commercial arm of the BBC, BBC Worldwide, and including bbcworld.com, bbcprime.com and bbcamerica.com.

The Internet sites funded from the licence fee are not allowed to carry advertising. The sites that do carry advertising are part of the BBC's commercial services and are largely targeted at audiences outside the UK. There are limits on the placing of advertisements; for example, they cannot be placed on the BBC's commercial news and current affairs pages designed for a UK audience. Likewise the BBC does not accept advertising from political, religious and governmental organisations. Although the growth of BBC online activities is impressive in terms of the number of websites, it is important to keep this in the context of the BBC's overall activities. Approximately three per cent of the licence fee is spent on the BBC's online services, demonstrating the continued dominance of traditional activities in radio and television.<sup>74</sup>

July 2004 saw the publication of the second of the independent reviews of the BBC's new services, commissioned by the DCMS, with a remit to assess whether BBC Online's activities were meeting their terms of approval.<sup>75</sup> The report broadly recognised the value of the BBC's online services, citing audience research that suggested users found the service of high value. The report was critical of a minority of the online services and questioned whether sites containing content such as game sites and listing magazines should be operated by the BBC as a public service broadcaster, as they were not "sufficiently distinctive enough [*sic*] from [the] commercial alternative or adequately associated with public service purposes". However, the review concluded that the original remit, though broadly stated and interpreted, "has been largely fulfilled. The present BBC Online site is impressive in terms of its breadth, depth and capabilities. I found clear evidence of innovation and creativity".<sup>76</sup>

<sup>74</sup> DCMS, *Report of the Independent Review of BBC Online. Commissioned by the Secretary of State for Media, Culture and Sport*, DCMS, London, May 2004, available at [http://www.culture.gov.uk/global/publications/archive\\_2004/BBC\\_Online\\_Review.htm](http://www.culture.gov.uk/global/publications/archive_2004/BBC_Online_Review.htm) (accessed 14 August 2005), (hereafter, DCMS, *Report of the Independent Review of BBC Online*).

<sup>75</sup> DCMS, *Report of the Independent Review of BBC Online*.

<sup>76</sup> DCMS, *Report of the Independent Review of BBC Online*, pp. 9–11.

The main recommendations of the report sought to ensure that the BBC remained within its traditional content boundaries. To this end it suggested clipping the Corporation's wings, so that its services fully reflected its public service remit (though this would be a very minor practical constraint). On the other hand, the report raised more fundamental issues about the accountability and assessment of the services, as well as about increasing access to independent producers.

Broadly, however, the report proposes leaving BBC Online intact. Although the areas highlighted for criticism will need to be addressed by the Board of Governors and management, they do not represent fundamental changes in its online activities. Some services are expected to be closed or re-evaluated in terms of the *public value* test that will apply to radio, television and Internet services equally, but these will represent a small number of services. Additionally a market impact test was recommended, though this would be an extremely difficult undertaking, given the shape and rapidly developing nature of the Internet.

In an immediate response to the report, the BBC announced the closure of five websites (representing one to two per cent of traffic on BBC Online, according to the BBC) and to undertake a review of all of BBC Online's activities. In many respects such a review fits in with the overall internal review process that will be strengthened in the "public value" initiative (see above). It also promised to look into opening up the production side to independent producers.

## 9. CONCLUSIONS

A survey conducted as part of Ofcom's review of public service television, and published in April 2004, indicated continued popular support for public service broadcasting.<sup>77</sup> It also showed that the public believes the generalist free-to-air channels should provide a range of programming governed by social values, quality, range and balance and diversity, and strongly supports programmes such as news and children's strands. Furthermore, when asked whether it was important for these broadcasters to provide popular American programming, a low of 27 per cent was recorded, suggesting a strong public preference for domestic British productions. The survey results also indicated that certain kinds of programme strands such as news and drama are seen to be of high value and great social importance.

The liberalising trend in the regulation of UK television is unlikely to be reversed in the coming years. Indeed, judging by the recent conclusions of Ofcom's review, further radical changes may well be introduced in the future to the detriment of the quality and range of public service television. The challenge facing British television is therefore to ensure that socially important genres of programming are not further

---

<sup>77</sup> Ofcom, *Ofcom Review 2004*.



marginalized in the schedules. Ofcom's conclusion to its 2004 review is to suggest that the broadcasters with public service obligations only partly fulfil the requirements in the Communications Act, hence: "The pressures of competition and of changing viewer behaviour are leading some of the more challenging or minority genres to be pushed outside of peak-time viewing; and overall, to ratings-driven schedules with less originality and innovation than audiences wish to see".<sup>78</sup> The review states that the BBC should reaffirm its position as the standard setter for delivering the highest quality public service broadcasting. However, at the same time it recommends a reduction of the public service obligations on the ITV network and Channel Five – a somewhat peculiar conclusion given that a relaxation of public service obligations is likely to draw these broadcasters away from public service principles rather than strengthen them and thereby increase competition.

This conclusion reflects the contradiction that runs through the remit of Ofcom: on one hand, it takes a pro-competition approach to the television industry, while on the other, it is supposed to maintain the quality of public service television. Such multiple and arguably conflicting goals are inevitable, given that Ofcom has merged the regulatory functions of the legacy regulators with their very different remits and regulatory cultures. Coupled to this, the objective of promoting competition while protecting the interests of citizens and consumers has been a focus of debate for the past decade. Although it is perhaps premature to assess Ofcom's position on this balance, it has stated that it does not see these premises at odds with one another – an indicator of its pro-market orientation and its sense of its role as a light touch regulator.

It seems likely that the public service obligations, which have traditionally been placed on commercial terrestrial broadcasters by the state will be traded off for improved economic and financial performance by these companies. In this case, the ITV network and Channel Five would increasingly pursue commercial strategies to maximise ratings without any positive content regulations except for national, independent and regional quotas. This would inevitably put more pressure on the remaining public broadcasters, especially Channel 4 as its revenues are derived from advertising. In the worst case, the BBC and Channel 4 (and SC4) would be left as the only public service broadcasters.

There is also a debate about the feasibility of introducing contestable funding, a system that was first discussed in the 1980s by the Peacock Committee.<sup>79</sup> This system would be based on a centralised body (a form of an "arts council of the airwaves") distributing public funding to programme makers and broadcasters whose programme proposals qualified for funding due to their public service nature. In its most radical form this would involve dismantling the BBC and replacing it with an arts council of the

---

<sup>78</sup> Ofcom, *Ofcom Review 2004*.

<sup>79</sup> Report of the Committee on Financing the BBC, Cmnd. 9824, Her Majesty's Stationery Office (HMSO), July 1986.

airwaves.<sup>80</sup> In its weaker version, mooted by Ofcom, it would involve providing a subsidy to the commercial broadcasters for producing programming that is defined as public services – something that was previously written into their licences.

The radical option will probably not be considered as a serious alternative by the Government in the current Charter renewal debate, and is highly unlikely to become a serious alternative to the current arrangement in the foreseeable future. The weaker option, however, might gain force in the run up to Charter renewal, though it is unlikely that the revenues will be “top sliced” from the Corporation’s existing revenue streams.

Part two of Ofcom’s review of public service television in the UK that complements the initial review suggests that a fund should be established to enable broadcasters to apply for funding from such a centralised body to produce what are perceived to be public service programmes on new media platforms such as the Internet. This recommendation marks a break with the past as public service principles have almost seamlessly developed institutionally across platforms and the separation of new media, and a specific fund for broadcasters to access revenues to develop public services on these platforms represents a shift in the concept.

UK television is witnessing a period of intense debate in the run up to the BBC’s Charter renewal in 2006. The outcome of this debate will determine the structures and quality of television, for the near future at least. The BBC retains a strong and central position in the sector and remains the most popular broadcaster; it provides a range of new services on the digital terrestrial television platform and the Internet; and it is still widely supported by the general public. Contrary to popular belief it is also heavily regulated, especially in terms of the separation of public and commercial services, and is accountable to Parliament annually. Its new services across platforms have also been, or are shortly to be, independently reviewed and assessed at the request of the DCMS.

The BBC has come under fire mainly from commercial operators or television executives that have an interest in criticising the Corporation. Yet the alternatives to the BBC model put forward by these critics, sometimes with eloquence, have been ill thought out and lack a basis in the reality of television production and the need to retain large vertically integrated operators that can not only provide a public service, but do so efficiently.

Another idea, that was also raised in Ofcom’s public service broadcasting review and would in many ways complement the contestable funding model, is to raise the independent production quota threshold to 50 per cent. This would inevitably reduce the in-house production capacity of the main television companies. Thus the policy debate is about introducing mechanisms that would reduce the efficiency and strength

---

<sup>80</sup> David Elstein et al, *Beyond The Charter: The BBC after 2006*, Broadcasting Policy Group, London, February 2004, available at [http://www.pact.co.uk/uploads/file\\_bank/1269.pdf](http://www.pact.co.uk/uploads/file_bank/1269.pdf) (accessed 14 August 2005).

of UK broadcasters, while at the same time there is a political desire to increase the size of UK television companies and relax ownership restrictions to enable companies to enjoy larger economies of scale and become more competitive in the global marketplace. This contradiction has not yet been satisfactorily aired.

It looks likely, however, that the increase in competition that has been evident over the past decade will further increase as the growth of multichannel television households continues to act as a powerful argument for the reform of the present system. The tension in the UK television system between consumer choice and citizenship rights has always promoted the latter, though not always in a democratic manner. Current trends suggest that the consumer choice arguments will become increasingly central to the television sector, due to a combination of three factors: a strong commercial television lobby group, a government policy of liberalisation, and a regulator that perceives multichannel television to be an all-purpose remedy against detailed State intervention.

This having been said, public service broadcasting and free-to-air generalist television will continue to dominate the television sector for the foreseeable future at least. It is likely that the BBC Charter renewal process will look to reform some of the regulatory instruments, such as the ten-year Royal Charter and the role of the Board of Governors as both strategic directors and regulators. There is certainly a need to ensure that the Board of Governors has independence from the BBC in order for it to regulate the Corporation in an adequate manner, and this may be undertaken in a number of different ways. A separate and independent Board with greater independent resources could be a solution to any accusations that the Board suffers from “regulatory capture”. Alternatively, an external independent regulator that assesses the BBC’s performance might provide a mechanism to ensure that regulation is fully independent from management.

In its submission to the Charter renewal debate, the BBC has responded to its critics and has laid out a plan of action for greater independence of the Board in its regulatory capacity.<sup>81</sup> If the Government and Parliament do not conclude from the Charter renewal debate that the regulatory functions of the Board should be transferred to an independent body, the BBC will certainly undertake to achieve greater independence and scrutiny from the Board internally. In many respects, the BBC’s response to the Charter debate suggests retaining the current structure of self-regulation, while committing itself to a greater degree of public accountability through its “public value” initiative, attempting to prevent closer regulation by the authorities by improving its links directly to the public as the primary source of accountability. By communicating its objectives and performance to the public more clearly, the BBC is also responding to criticisms of the latest review of its online services as well as wider criticism from the commercial broadcasters.

---

<sup>81</sup> BBC, *Building public value*.

Supported by the Government, the BBC has also expanded successfully into new media and both digital television and the Internet. No other European broadcaster can boast the range and depth of the BBC's online activities or range of niche channels. Furthermore, despite continued reservations from parts of industry that the BBC should be allowed to expand into new platforms, there now appears to be far more acceptance of the fact that the BBC, as a public service broadcaster, should have a legitimate claim to expand from radio and television into new areas of content provision. There will be limits to this expansion, and these should be more clearly articulated in the Charter renewal debate.

Unless there is a seismic shift in Government policy during the next year or two, the BBC can expect to retain the licence fee and some form of Board of Governors. The current UK television sector and public will therefore continue to benefit from a unique institution that not only entertains, but also informs and educates. Channel 4's position in the UK television sector would be weakened if the public service obligations on Channel Five and ITV are relaxed as it competes for advertising revenues with these two broadcasters, though it will retain its uniqueness in the television landscape.

The increasing concentration of ownership in the media sector generally is also a long-term concern. The liberalisation of the ownership rules by the Communications Act 2003 created the possibility that a US company may own either Channel Five or ITV; if this happens, it will further change the nature of the sector and the constellations of ownership. Such a move would have to undergo a public interest test; even if it was sanctioned by the authorities, the ITC/Ofcom guidelines would require the operator to meet certain standards and quality that would cover due impartiality, taste and decency and regional programming.

The BBC is essentially in good shape in the run up to the Charter renewal in 2006. Many of the ideas touted as alternatives to the status quo are in retreat. In a recent speech, Michael Grade's predecessor as Chairman of the BBC, Gavyn Davies, cited internal BBC research that suggested 75 per cent of the British public believed that the licence fee represented value for money, with 33 per cent of the sample saying they would pay double the present sum for the BBC's services.<sup>82</sup>

Moreover, Lord Burns, the Government's independent advisor on Charter renewal, has stated that from evidence drawn from the consultation process the public has demonstrated strong support for the BBC. In evidence to the Culture Media and Sport Select Committee, Burns suggested, "The evidence we have received from our consultative process and our research still points to the fact that a lot of people like the

---

<sup>82</sup> Gavyn Davies cited in: M. Brown, "What price the BBC?", in *The Guardian*, 28 June 2004, available at <http://media.guardian.co.uk/mediaguardian/story/0,7558,1248596,00.html> (accessed 11 July 2004), (hereafter, Brown, *What price the BBC?*).

BBC, and quite a lot like it a lot. They are not turning away from an important institution”.<sup>83</sup>

The new Director General of the BBC has also indicated that there will be changes at the BBC and has stated that he expects “the BBC to change more over the next two to three years than over the past 80 years”.<sup>84</sup> Given the changes in the past decade this might be overstating the case, but change is certainly a central force in UK broadcasting and sizeable cuts in staffing levels are currently being undertaken in an effort to demonstrate value for money and efficiency. In June 2005, ahead of charter renewal in 2006, the BBC announced that it would spend €90 million on a restructuring that would include cutting 3,780 jobs and lead to annual savings of €125 million until 2008.<sup>85</sup> Previously, thousands of BBC journalists and technicians had threatened a 48-hour strike because of plans to axe so many jobs. The key challenge is to ensure that broadcasting retains its important role in British society and serves its democracy. This will mean maintaining many features of the past in order to guarantee that television’s positive contribution continues to be enjoyed by the British public.

Perhaps the biggest threat to UK television and its core role for the principle of public service broadcasting is not the oft cited developments in technology and audience fragmentation, but the continued Government support for the liberalisation of the sector and the subsequent reduction of a full commitment to ensuring that the institutions that have been shaped by these principles retain their remits and direction. While it is too early to assess Ofcom’s performance, the citizen/consumer terminology it employs 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 clearly relegates the normative notion of citizenship and promotes the consumer.

---

<sup>83</sup> Lord Burns cited in Brown, *What price the BBC?*

<sup>84</sup> BBC 2 “Newsnight”, 29 June 2004.

<sup>85</sup> BBC, “At-a-glance: BBC job cuts”, available at [http://news.bbc.co.uk/1/hi/entertainment/tv\\_and\\_radio/4369221.stm](http://news.bbc.co.uk/1/hi/entertainment/tv_and_radio/4369221.stm) (accessed 24 August 2005).

## 10. RECOMMENDATIONS

### 10.1 Media policy

#### *Media pluralism*

1. Parliament and the Government should ensure that in the new regulatory framework media pluralism is rigorously protected. As this is an issue concerning the whole of society, the discussion about the new regulatory framework should be as transparent and encompassing as possible, also involving professional, consumer, civil society and other organisations.

#### *Public service broadcasting*

2. Parliament and the Government should continue to support public service broadcasting. The status and public funding of the BBC should be proportional and adequate to enable the BBC to fulfil its public service remit across platforms.

### 10.2 Regulatory authorities

#### *Media plurality*

3. Ofcom should rigorously protect media pluralism in the new regulatory framework. It should ensure that the television market remains plural and open to new competitors. It should develop a transparent framework to ensure that the public interest test maintains acceptable standards of pluralism in the television sector.

#### *The BBC*

4. Parliament and Government should ensure that adequate regulatory structures are put in place to ensure a clear separation between the management and the Board of Governors of the BBC. The strategic and regulatory functions of the Board should also be assessed as to the effectiveness of such an arrangement.

#### *Public service broadcasting*

5. The BBC should resist pressures of competition and prevent some of the more challenging or minority genres from being pushed outside of peak-time viewing. It should not succumb to ratings-driven schedules with less originality and innovation than audiences wish to see.

#### *Commercial broadcasters*

6. Ofcom should ensure that where a greater degree of self-regulation is introduced for the commercial broadcasters, co-regulatory measures are in place to guarantee that these broadcasters continue to contribute to the quality

and diversity of television services. Public service obligations, which have traditionally been placed on commercial terrestrial broadcasters by the State, should be maintained.

### **10.3 New media platforms**

#### *Digital television*

7. The Government should continue to support the UK public service broadcasters to ensure that they have a central place in the digital television landscape and on the Internet. Digital rollout should enhance the quality of television in the UK and not threaten the quality and diversity of television.

## ANNEX 1. Legislation cited in the report

### Media legislation

Broadcasting Act 1990 (c.42), Her Majesty's Stationery Office (HMSO), London, 1990, available at [http://www.opsi.gov.uk/acts/acts1990/Ukpga\\_19900042\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900042_en_1.htm) (accessed 15 August 2005).

Broadcasting Act 1996 (c. 55), Her Majesty's Stationery Office (HMSO), London, 1996, available at <http://www.opsi.gov.uk/acts/acts1996/1996055.htm> (accessed 15 August 2005).

Communications Act 2003 (2003 Chapter 21), Her Majesty's Stationery Office (HMSO), London, 2003, available at <http://www.opsi.gov.uk/acts/acts2003/20030021.htm> (accessed 15 August 2005).

The Broadcasting (Independent Productions) Order 1991, Statutory Instrument 1991 No. 1408, Her Majesty's Stationery Office (HMSO), London, 1991. Amended 2003 as Statutory Instrument 2003 No. 1672

### Other acts

Enterprise Act 2002 (c. 40), Her Majesty's Stationery Office (HMSO), London, 2002, available at <http://www.opsi.gov.uk/acts/acts2002/20020040.htm> (accessed 15 August 2005).

Human Rights Act 1998 (c. 42), Her Majesty's Stationery Office (HMSO), London, 2002, available at <http://www.opsi.gov.uk/acts/acts1998/19980042.htm> (accessed 15 August 2005).



## ANNEX 2. Bibliography

### *In English*

- BBC, *BBC Governance in the Ofcom Age* (London, BBC, 2002)
- BBC, *Building public value: Renewing the BBC for a digital world* (London: BBC, 2004)
- BBC, *Producer's Guidelines: The BBC's Values and Standards* (London: BBC, n.d)
- BBC, *The BBC's Journalism After Hutton. The Report of the Neil Review Team* (London: BBC, 2004)
- Channel 4 Television, *Report and Financial Statements 2003* (London: Channel 4 Television, 2004)
- Department for Culture, Media and Sport (DCMS), *Consultation on Media Ownership Rules* (London: HMSO, 2002)
- Department for Culture, Media and Sport (DCMS), *Coverage of Sport on Television, a DCMS Leaflet* (London: DCMS, 2005)
- Department for Culture, Media and Sport (DCMS), *Independent Review of BBC News 24* (London: DCMS, 2002)
- Department for Culture, Media and Sport (DCMS), *Report of the Independent Review of BBC Online. Commissioned by the Secretary of State for Media, Culture and Sport* (London: DCMS, May 2004)
- Department for Culture, Media and Sport (DCMS), *The Future Funding of the BBC. Report of the Independent Review Panel ("Davies Report")* (London: DCMS, 1999)
- Department for Culture, Media and Sport (DCMS) and the Department of Trade and Industry (DTI), *The New Newspaper Regime* (London: HMSO, 2003)
- Department of National Heritage, *Copy of Royal Charter for the Continuance of the British Broadcasting Corporation* (London: HMSO, 1996)
- DTI, *Intervention on Media Mergers: Draft Guidance. Consultation Document* (London: HMSO, 2003).
- Elstein, David, et al, *Beyond The Charter: The BBC after 2006* (London: Broadcasting Policy Group, February 2004).
- Hutton, Lord, *Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly C.M.G.* (London: HMSO, 2004)
- ITC, *The ITC Programme Guide* (London: ITC, 2002)
- Machet, E., E. Pertzididou and D. Ward, *A Comparative Analysis of Television Programming Regulation in Seven European Countries: A Benchmark Study* (Hilversum, Netherlands: NOS, 2002)
- National Statistics Office, *Living in Britain: the General Household Survey 2002*, (London: NSO, 2004)

- Ofcom, *Digital Television Update* (London: Ofcom, 2004)
- Ofcom, *Driving Digital Switchover: A Report for the Secretary of State for Culture, Media and Sport* (London: Ofcom, 2004)
- Ofcom, *Ofcom Review of Public Service Television Broadcasting* (London: Ofcom, April 2004)
- Ofcom, *The Communications Market 2004* (London: Ofcom, 2004)
- Ofcom, *Trading Guidance Notes: A Practical Guide to Spectrum Trading*, Doc No. OfW224 (London: Ofcom, 2004)
- Office of Fair Trading, *Independent Productions Transmitted by the BBC. Tenth Report* (London: 2003)
- Ward, D., *Media Concentration and Ownership in Ten European Countries: A Mapping Study*, Commissariaat voor de Media (Hilversum, Netherlands: CvdM, 2004)
- Whish, R., *Review of the BBC's Fair Trading Commitment and Commercial Policy Guidelines. Independent Review on behalf of the Department for Culture, Media and Sport* (London: DCMS, 2001)

### *In Spanish*

- Pertzinidou, E. and D. Ward, "Libertad de expresion y libertad de medios: es la concentración de prensa compatible con la Convención Europea sobre los Derechos Humanos? Estudio en la prensa alemana y britanica", ("Freedom of expression and media freedom: is the concentration of the press compatible with the European Convention on Human Rights"), in *Libro Blanco de la prensa diaria: estudios sobre los medios de prensa escrita desde las ópticas empresariales, tecnológicas, legales, éticas y de contenidos*, (The *Libro Blanco* daily: studies on the tools of the written media, from the economic, technological, legal, ethical and content perspectives.) (Madrid: AEDE Press, 2002)