

MONITORING REPORT

TELEVISION ACROSS EUROPE

MORE CHANNELS, LESS INDEPENDENCE

OVERVIEW

COUNTRY REPORTS:

ALBANIA

BULGARIA

CZECH REPUBLIC

ITALY

LITHUANIA

POLAND

REPUBLIC OF MACEDONIA

ROMANIA

SLOVAKIA

Follow-up Reports 2008

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Media Program

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Preface

In 2005, the Open Society Institute (OSI) published *Television across Europe: regulation, policy and independence*, a monitoring survey of broadcasting in 20 countries. This major project was inspired by the observation that television – a basic component and gauge of democracy – was undergoing rapid change throughout Europe. The reports covered the eight central and eastern European countries that joined the EU in May 2004 (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia); Bulgaria and Romania, which joined 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, the Republic of Macedonia, and Serbia). The final reports included significant contributions received through comments and critique during the monitoring process.

Widely acclaimed as unique in its range and rigour, the *Television across Europe* survey found that television stood on the brink of immense change – nowhere more than in the new democracies of central and eastern Europe. However much they may have wanted to ignore it, traditional broadcasters as well as governments in those countries were on the cusp of the ‘digital revolution’.

Since 2005, the pace of change in television has reached breakneck speed, affecting the patterns and models of production, transmission, consumption, marketing, financing and ownership. In order to take the measure of these changes, OSI has revisited nine of the countries that were included in the 2005 monitoring, where broadcasting has undergone significant change in the intervening three years: Albania, Bulgaria, the Czech Republic, Italy, Lithuania, the Republic of Macedonia, Poland, Romania and Slovakia.

TV across Europe 2008: more channels, less independence maps the main changes in broadcasting legislation, policy and markets over the past three years, and assesses the progress – or lack of – that these countries have made in improving the independence and pluralism of their broadcasting. As with the 2005 reports, these surveys are addressed to policy makers, civil society activists and academics alike, as a contribution to bringing about change. The nine country reports were drafted by local experts with the support of partner NGOs. All country reports are based on the same methodology, thus allowing for a comparative analysis. The Overview chapter points out common trends and offers recommendations for reform. The Open Society Institute and the Open Society Foundation assume final responsibility for their content. All reports are available in both English and translation at www.mediapolicy.org.

*

The **EU Monitoring and Advocacy Program (EUMAP)** of the Open Society Institute (OSI) 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 broadcasting 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 Muslims in EU Cities; publication is expected in 2009.

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. More information on EUMAP is available at www.eumap.org.

The **Media Program** of the Open Society Foundation (OSF) 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. It promotes changes in media policy that ensure pluralism in media ownership and diversity of opinion in the media. The Program works globally, primarily in countries undergoing a process of democratisation and building functioning media markets. More information on the Media Program is available at www.osf-london.org/media.html.

Foreword

What name can we call the odd and strangely threatening moment we are now in? Leaving aside the current financial turmoil: this report demonstrates that something new, yet disconcertingly familiar, was already remaking the ‘new’ Europe. Moreover, this engine has been moving fast in the wrong direction: if things were bad three years ago – when the original Television Across Europe reports were published – they are definitely worse now.

When the Cold War ended, democracy was supposed to bloom, with a movement towards independent thought and better government spreading through political systems. The chemistry of decency was to go about altering political parties, these would improve public services, and the economies becoming rule-governed would grow in everyone’s interests. And all of this would be tested and made better by the power of scrutiny that a free media bring to political situations. But it has not happened. A new political malaise with no precise name – nationalism, nepotism, corruption, clientelism are all part of it – stalks the post-post Cold War. One key symptom is the re-politicisation of broadcasting (and no doubt everything else). It is not an ideologically coherent movement, for it is about resource capture by elites of different stripes. Let us call it the era of kleptocracy.

This forensic and chilling report should be on the desk of every politician and international agency with any concern about our collective European futures, because it shows how political control of the crudest and most vulgar kind has re-possessed television from the Urals to Umbria. Freedom of thought, impartiality of information, wise exploration of the public condition (whether discussed in news, comedy, soap operas or relevant drama), the notion of broadcasting as informing citizens: this has retreated, not advanced, in most of these countries.

The study is also a vindication of the cool, analytical effects of empirical research in the right hands. The methodology means that it is genuinely comparable across countries; we really can assess Albanian television, regulators, laws and programme makers and audiences against those of Bulgaria. It is elegantly written and clear, and this alone makes it a remarkable document. But, frankly, the story is more or less the same. Politicians capture regulators, broadcasting is commercialised and bastardised, news is puppetry, drama has all but disappeared.

Does it matter? Indeed does television matter any more? Don’t young people do other things, isn’t the internet replacing it, can’t people get information from elsewhere? Yet as the researchers comment, ‘reports of the death of television are greatly exaggerated’ – it remains the most important window on the world for most people. Of course the new technologies present all broadcasters with immense and intriguing problems: ones that political chains and commercial exploitation leave most of these ailing beasts badly positioned to deal with. Populations still depend on broadcasting for their knowledge and entertainment; they are, however using it differently. Nor has the ‘need’ for the engagement that broadcasting can foster (as well as the enjoyment and knowledge)

disappeared because of the opportunities of the new technology. Indeed, while search engines and the internet make information available, they do not find it or assess it.

The report identifies the global trends driving the present condition: audiences fragment, ownership consolidates and technology converges. Who then represents the public interest or the need for citizens to be informed? Not the weak regulators, certainly not the owners (well, not these owners), and barely the broadcasters.

It is an aggressive process, not a passive one. 'Professionals are being replaced by loyal mediocrities', comments the Polish report; managements change in tune to political power, and the cultural capacity of the Polish film industry, for example, is pushed to the very margins of programming. In Albania, 'Information is neither impartial nor fair. There is almost no media outlet without vested economic or political interests'. In Italy, with Berlusconi back in power, a dark farce plays itself out.

Yet the point about this excellent report is precisely that it lets light flood into the condition of broadcasting. You can trust what it shows and you can understand what it tells us. Reliable knowledge about advertising revenue, the political manoeuvres, the attempts by some broadcasters to serve their publics better, the impact of the European Union trying to wrest propriety back into some systems, the failure of regulators in itself helps move the situation from dire to remediable. Political will and action depend on knowledge, and this report provides a gold standard of intelligent information.

Nor should fatalism cloud political will. Indeed, not all is gloom. The report shows a marked improvement in the independence of broadcasting in the Czech Republic, and that overall, everywhere, there has been an increase in choice – although what people have to choose between is not tremendous. The report shows, rather, a familiar and worrying loss of local information, locally produced and locally intelligent.

The report also shows that the European Commission can be an effective operator, and we need to build on this. All too often the media have been seen as 'optional' expendable extras in difficult political processes (when in reality they are the antiseptic that keeps all other systems cleaner). Thus the Commission has notably failed to keep the new states to their compacts for the media that they made as a condition of entry to the EU. The highest standards in this field are pretty dispiriting but a great deal better than what we now have. There is still time for the EU to learn that on the next round, Croatia, the Republic of Macedonia and other candidates must be held more rigorously to account for the media.

My own sense of the shape of the problem is that (like all of the aid and political support agenda), we have to learn where we are starting from. Encomiums of multi-ethnic multicultural idealism do not work. In Northern Ireland, just as the troubles blew really hot in 1984, an intelligent, sensitive and shrewd Controller of the BBC wrote that 'we always strive to report from the middle ground, we always strive to report moderation. But no one here lives in the middle ground, it is a fantasy.' The role of reporting is to report; these societies have to see where they actually are.

Secondly, much ‘media training’ has not worked as it should. There is no doubt of the need for training, and the weakness of professional standards runs like a thread through the whole report; but it needs to be re-considered. As, for example, Britain rightly carries out so much of this training, believing that we have (as we do) a set of values and institutions that work, this is something that we can really help to get working better. It is *local* realities that are disappearing again: lost in the bland excesses of reality television formats; lost in the sickly sweet programmes that distract; lost in the news that never investigates and never takes a stand; lost in routine political control by self-interested cliques.

Thirdly, mobile telephones, informal networks, blogging, new platforms, on which the issues that have direct impact on peoples lives, health, education, work, families, the environment, corruption large and small, can be aired, may have a huge potential role (just as has been seen in Africa). Fourthly, the problem is that in some places (following the Russian model) the population simply does not care: after decades of turmoil it ‘trusts’ or wants to ‘trust’ its governments. Fifthly, we need to sit down and think through how public intelligence and public agendas (which are, after all, what the media influence) can be identified and nourished. Moreover, some resources (like the BBC) are world resources and we need to find a world constituency to support them.

Which is why this research is so important: for evidence and reason permit thought and action. Things can be done, policies can be effective. People should take note of this report, for its findings show something threatening and often ignored: broadcasting and the media – like the canary in the mine – are an early warning system of foulness in the air.

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Television across Europe:
more channels, less independence

Overview

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List of Abbreviations

AMP	Media Monitoring Agency, <i>Agenția de Monitorizare a Presei</i> (Romania)
BNT	Bulgarian National Television, <i>Българска национална телевизия</i> (Bulgaria)
CEM	Council for Electronic Media, <i>Съвет за електронни медии</i> (Bulgaria)
CME	Central European Media Enterprises (U.S. broadcast company operating in Central and Eastern Europe)
CNA	National Audiovisual Council, <i>Consiliul Național al Audiovizualului</i> (Romania)
ČT	Czech TV, <i>Česká televize</i>
EBU	European Broadcasting Union (Geneva)
KKRT	National Council of Radio Television, <i>Keshilli Kombetar i Radios dhe Televizionit</i> (Albania)
KRRiT	National Broadcasting Council, <i>Krajowa Rada Radiofonii i Telewizji</i> (Poland)
LRTK	Lithuanian Radio and Television Commission, <i>Lietuvos radijo ir televizijos komisija</i>
LRTT	Council of Lithuanian Radio and Television, <i>Lietuvos radijo ir televizijos taryba</i>
MRT	Macedonian Radio and Television, <i>Makedonska radio-televizija</i>
MTG	Modern Times Group (Swedish media holding operating also in the Baltic countries and Central and Eastern Europe)
MTV	Macedonian Television, <i>Makedonska televizija</i>
PNL	National Liberal Party, <i>Partidul Național Liberal</i> (Romania)
PSD	Social Democrat Party, <i>Partidul Social Democrat</i> (Romania)
RAI	Italian Radio-Television, <i>Radiotelevisione Italiana</i>
RRTV	Council for Radio and Television Broadcasting, <i>Rada pro rozhlasové a televizní vysílání</i> (Czech Republic)
RTSH	Radio-Television of Albania, <i>Radio Televizioni Shqiptar</i>
SMER-SD	SMER-Social Democracy, <i>Smer-Sociálna demokracia</i> (Slovakia)
SRTV	Romanian Television Company, <i>Societatea Română de Televiziune</i>
STV	Slovak Television, <i>Slovenská televízia</i>
TVSH	Albanian Television, <i>Televizioni Shqiptar</i>
TVP	Polish Television, <i>Telewizja Polska</i>
TVR	Romanian Television, <i>Televiziunea Română</i>
WAZ	<i>Westdeutsche Allgemeine Zeitung</i> (Headquartered in Essen, WAZ operates print media outlets in countries in Central and Eastern Europe)

1. SUMMARY AND CONCLUSIONS

1.1 Context

Reports of the death of television are greatly exaggerated. Despite all the prophecies that were written around the millennium, claiming that the internet and other new media platforms would kill it off, TV has kept its leading position in terms of media consumption. The map of the largest broadcasters in Europe has not changed dramatically since 2005. Public service broadcasters continued to account for the largest part of the broadcasting budget. (Except in Poland, where commercial station TVN pushed Polsat TV out of the top three channels, the three most popular stations remained unchanged in our sample of countries.)

Nevertheless, change is sweeping through television, and its future has never been so hard to predict. Surveys in several of the countries in our sample have found that traditional ways of watching television have seen a steep decline, especially among younger viewers, aged 16 to 25. The largest channels in each country have seen their ratings fall. Public service television, in particular, saw a decline in ratings – in most countries, a substantial decline. Although it increased its aggregate revenue across Europe, over the past three years, the public broadcasting sector has seen a drop of more than 4 percentage points in its total market share, while the commercial sector (both radio and TV financed by advertising) has grown modestly.

As they attempt to keep pace with their publics' changing preferences, traditional broadcasters in Central and Eastern Europe, as well as those in Western Europe, are offering video content via the internet to keep up with the trend. Meanwhile their output is made available by the “aggregators”, which stream channels and programmes from multiple sources all over the world, over the internet.

New technologies are also transforming broadcast journalism. Start-up costs for electronic media are lower than ever, because distribution of television content via the internet or mobile telephone needs no traditional infrastructure. However, amid all this fluidity, business models that can sustain electronic media – and allow them to grow, while preserving professional standards – are elusive. The dispersal of advertising revenue hits production budgets at the very time that new platforms are opening up, demanding new content.

The barriers between ‘professional’ and ‘amateur’ journalism are becoming more porous than they have been since the rise of the modern media industry a century ago. This process is signalled by the jargon associated with networked media: user-generated content, citizen journalism, blogging, blogosphere, podcasting, and so forth. These developments bear rich potential for civil society; for example, online community-driven news and discussion forums can enhance communication among citizens over real social issues.

On the other hand, while internet search engines and other news-aggregators increase the availability of news and information, they contribute nothing in terms of reportage or editorial assessment. More information does not necessarily make people better informed. Some observers fear that the internet encourages distracted and superficial habits of news-consumption, based on browsing, soundbites and sensation; if these fears are valid, we may be growing less able to absorb the more demanding (and expensive) genres of journalism – the same genres which broadcasters are anyway less inclined to provide, for economic reasons.

Amid these fluctuations, several key patterns can be identified. The trend in audiovisual consumption is fragmentation – as more and more people gain access to more and more ways to consume audiovisual products. The key trend in ownership is consolidation – reducing the number of suppliers of media content. The key trend in technology is convergence – telecommunications, cable, satellite, mobile operators and traditional broadcasting are merging, with consequences for traditional media structures. Audiences *fragment*, owners *consolidate*, and technology (including programming) *converges*: the new ‘political economy’ of Europe’s audiovisual industry is the product of these dynamic processes.

The key trend in broadcast licensing is *relaxation*. With governments keen to exploit the digitised spectrum, the licensing process in many countries is being converted into a mere registration procedure, similar to satellite or cable operations. The main trends in digital licensing are the same across Europe:

- simplified procedure
- shifts in licensing power
- protection of analogue broadcasters
- privileges for public service broadcasters

Among broadcast regulators, the trend is one of *contraction*. In general, national media regulation is in retreat as the media market expands and becomes more international. This trend will create a vacuum that cannot be filled by the European Union’s transnational regulatory measures. With the arrival of digitisation and technical convergence, many of the content regulators find themselves overwhelmed. The days of “traditional command-and-control regulation”, as it has been called, appear to be numbered.¹ “Light touch” regulation appears to be the way ahead, combining research functions and responsiveness to public feedback with extensive self-regulation by the

¹ See Chris Marsden, Jonathan Cave, Eddy Nason, Andy Parkinson, Colin Blackman, Jason Rutter, *Assessing Indirect Impacts of the EC Proposals for Video Regulation. Executive Summary for Technical Report TR-414-Ofcom*. Prepared for Ofcom, 31st August 2006. Available at <http://www.ofcom.org.uk/research/tv/reports/videoregulation/vidregexec.pdf> (accessed on 13 October 2008).

industry. However, if it is really to serve the public interest, this kind of regulation will be hard to achieve.

Among public service broadcasters (PSBs), the key trends are *over-extension*, *under-funding* and *self-doubt*. In an era dominated by deregulation and the mantra of “consumer choice”, public service broadcasting is often presented as unfashionable; its critics argue that it is unsustainable. The traditional mission of PSBs to inform, educate and entertain the citizens who fund them, directly through the licence fee and in most cases also indirectly through advertising, has come under ferocious pressure just when technology has created the opportunity to reach more citizens, in more ways, than ever before.

In order to fulfil their legal remit, PSBs need to be present – and amply productive – on different platforms. Yet their right to do this is constantly challenged by their commercial rivals, while their resources to do this are restricted by a squeeze on both their main sources of funding. Some media pundits argue that digitisation will make the collectively-financed public service model obsolete, for two reasons. Firstly, it will be (politically) impossible to justify the licence fee – a universal taxation on TV receivers, which is still the principal funding source for PSBs – when audiences access audiovisual productions on other platforms. Secondly, the fragmentation of audiences leads to the decline of mass-oriented advertising. (This decline is already impacting on public service as well as commercial broadcasters.)

The trend in advertising is towards redistribution, as budgets are reallocated from traditional media to the internet. Television has not yet seen large losses among the countries in our sample, where television’s share of the total advertising spend saw sharp falls only in Romania and Poland: down since 2003 by 26 and 8 percentage points, respectively. Yet this pattern will not hold; the online segment will probably overtake the traditional television market within a few years. By 2012, according to one estimate, online will take the largest share of the advertising spend, followed by traditional TV, and the press and radio in third place. While European traditional channels are expected to grow up to 2 per cent a year, digital channels are forecast to see advertising growth rates of 20 per cent a year. This explains why media companies are moving their content online, trying to forestall the exodus of advertisers to powerful newcomers such as Google.

1.2 Assessing this sample of countries

Our monitoring of the nine countries covered by this report confirms that the trends, summarised above, extend right across the continent of Europe. However, these trends have specific features in the transitional states of Central and Eastern Europe. In some cases, these features are the result of backwardness. In others, they may be prophetic of developments in Western Europe as well.

One of these features is inertia. In the longer term, governments cannot reject the trends described in this Summary. In the short term, however, meaning the lifespan of any government, it is still possible to postpone the encounter with these trends. Consider, for example, the performance of the regulators in our sample countries. The failure to rise to their various challenges is due partly to institutional torpor, and partly – it is safe to infer – to their political masters’ preference for regulatory passivity. Likewise, progress to digital switchover has been obstructed by ignorance of the issues, persistent reluctance on the part of powerful broadcasters, and political bickering over how to divvy up the new digital market. More than anything, it is the EU’s deadline for analogue switch-off that has convinced these countries to accelerate the process.

Another feature revealed by this monitoring is a worrying determination on the part of political elites to reaffirm their influence over broadcasting. Many of the regulators are still subject to blatant political interference. There are clear signs that the inclusion of civil society representatives – introduced over the past 10 to 15 years – has not had much impact on regulators’ partisan behaviour. Political elites have proven quite capable of manipulating these representatives.

The fact remains, however, that regulatory control over audiovisual content is eroding, and this erosion will accelerate when digitisation allows the number of channels to multiply out of sight. This prospect may help to explain why the political elites in Eastern and Central Europe still as a rule refuse to let the PSBs become editorially or financially independent.

In the early 2000s, when their countries had recently joined the Council of Europe and in many cases were pursuing accession to the European Union, these elites showed signs of willingness to refrain from influencing the PSBs so overtly. Today, by contrast, they openly strive to restore tight control, usually by appointing loyal people to the governing bodies. In our sample, the re-politicisation of public service media is clearest in Poland, Romania and Slovakia, though it is evident too in Lithuania and elsewhere.

Concentration of ownership has continued apace in the past three years, with the main private broadcasters managing to preserve their grip on their national markets. Digitisation, which will open the door to an influx of new channels, may disturb this pattern. So far, however, the existing broadcasters have managed by and large to keep out fresh competitors through sustained lobbying and additional investment. Given the dearth of available analogue licences, broadcasters tend to diversify in as many media subsectors as possible, or to build up a presence in local broadcasting. Lack of transparency around ownership and funding continue to injure the development of broadcasting as well as the democratic role of media. In Albania and the Republic of Macedonia, the least developed markets of our sample, a combination of non-transparent ownership and a dearth of accurate audience and advertising spending data in continue to scare off foreign investors.

The proliferation of content has increased the public’s freedom of choice. This is a real achievement, given that most viewers in many Central and Eastern European states still

have access only to three to five TV channels – much lower than the European average. On the other hand, it is questionable whether this new media environment offers better quality or more diversity. Sensationalism and tabloid fare often dominate the TV news agenda. Programmes with a clear public service character are relegated to unattractive time-slots. Investigative reporting and serious talk shows are marginalised or cut. Reality shows continue to inundate the screens, mostly on commercial stations.

Local and regional broadcasting are foundering in most of the countries included in this study. Financed most often by municipalities, these broadcasters are in cahoots with local government. Where it is available at all, programming for social or ethnic minorities continues to be provided almost exclusively by public service broadcasters.

The commercialisation of programming is not only due to the economic pressures mentioned above, which squeeze the production budgets of all public service broadcasters and most commercial broadcasters. As well as this, there are political pressures on editorial independence in almost all these countries, where broadcast media continue to be subject to heavy pressures from political and business interests.

Editorial independence, in both public and private media, has continued to deteriorate in most countries covered by this report. Pressures on public service broadcasters in particular have intensified, with predictable consequences for the quality of their output. The exception is the Czech Republic, where the public service broadcaster has succeeded in raising the quality of its output. Interestingly, this is the only country that has embraced a pure licence fee-based PSB funding model; for Czech TV will drop advertising completely after digital switchover.

1.3 Looking ahead

Even though licence fees have risen in our sample of countries, these increases cannot secure adequate funding for the PSBs. Our monitoring suggests that the licence fee mechanism will not survive far into the future unless it is radically rethought. Ownership of a TV or radio set will soon cease to be viable as a basis for compulsory payment. Almost certainly, the fee will only be able to be preserved by expanding the basis for liability to ownership of all types of devices that receive public service content, or by replacing it with a compulsory “broadcasting tax” on all households (exempting only those with no means of receiving the content). However, nobody yet knows if these models would be durable in the longer term. In this respect, the crisis of public service broadcast funding in almost all countries of Central and Eastern Europe may be prophetic for Western Europe. Countries without a long tradition of the licence fee – and of respect for it – face a lack of stable funding for PSB, due to large-scale evasion. The quest for more viable models of independent public funding has barely begun.

The case for public service broadcasting used to rest on the fact of spectrum-scarcity, as well as on arguments about pluralism, democracy, universal access to high-quality content, social cohesion and inclusion, and the preservation of national cultural

traditions. The end of spectrum-scarcity means that these arguments need urgently to be re-examined and tested in today's changing world. The fact that these arguments are still woefully undeveloped in Central and Eastern Europe gives those governments and commercial broadcasters a free hand to set the terms of policy debate on the audiovisual sector.

As the diversification of platforms encourages the further relaxation of regulatory models, the maintenance of quality standards in audiovisual content regulation should become a rallying cry for media professionals, activists and civil society groups that are committed to media pluralism, quality, and the so-called European social model.

2. THE BROADCASTING ENVIRONMENT

2.1 Television audiences

TV has managed to defend its leading position in terms of media consumption. However, national TV networks started in the early 2000s to experience an economic downturn, while niche players, such as thematic channels, pay-TV or teleshopping channels, enjoyed economic growth, albeit from a much smaller base.² The internet and the new technologies are exerting increasing influence on the media environment. Surveys in several of these countries have found that traditional TV-watching has seen a steep decline, especially among younger viewers between 16 and 25 years of age. In the UK, this segment of the audience watches on average one hour less than the average viewer. In particular, they are abandoning public service TV. In 2001, 74 per cent of their total viewing time was devoted to watching public TV. Five years later, only 58 per cent of this time was spent on public TV. Instead, the internet plays the major role in their viewing lives. More than 70 per cent of young British internet users frequent social networking sites and 37 per cent have contributed to a blog, compared with 14 per cent of all viewers.³

TV broadcasters in Central and Eastern Europe, as well as those in Western Europe, are offering video content via the internet to keep up with the trend. Another category of new-wave broadcasters are the aggregators which stream channels and programmes from multiple sources all over the world. Analysts predict that video content over the internet will see an upsurge as it can deliver a message or brand to viewers more effectively than traditional means, due to its flexibility and interactivity. "But it does

² "Overview", in Open Society Institute, *Television across Europe: Regulation, Policy and Independence*, Budapest, 2005 (hereafter OSI/Overview).

³ Data from Ofcom cited in European Audiovisual Observatory, *Trends in European Television 2006*, Volume 2, Strasbourg, 2006, p. 140.

require some expertise to get going, and this is creating a new market for internet TV platform providers to set up and manage such channels.”⁴

New technologies have also transformed journalism and the manner in which people consume media today. Some of the new trends in recent years include the following.

- The emergence of *citizen journalism*: the public is increasingly involved in providing reports about local and even international news. This development has brought its own set of privacy concerns. It has also blurred the line between straight news reporting and advocacy, and – in the eyes of some – has encouraged a cult of amateurism, downgrading the professional crafts of writing and editing.⁵
- *Blogging* as news media: besides personal and social issues, blogs started to focus more on news. But, whereas information provided in some countries by established institutions, such as public service broadcasters, comes with a certain guarantee of reliability, blogs carry no such weight.
- *Technological and ownership convergence*: telecommunications, cable, satellite, mobile operators and traditional broadcasting are merging, with consequences for traditional media structures. The business models employed by traditional media have changed, with cuts on spending for foreign reporting and other forms of expensive coverage due to the availability of such information on the internet.⁶ As advertisers diversify their spending, spreading their budgets to other forms of marketing and new media, and as owners demand quick, high returns on their investments, economic pressures on media businesses have increased in ways that often affect the quality of journalism.

This has all led to the fragmentation of audiences, a trend which has accelerated over the past three years. However, TV consumption remains high. Yet some broadcasters are jumping on new platforms in an effort to survive in the digital environment that is already being shaped. In some countries, broadcasters defend their positions in the analogue environment by keeping new players out of the market for as long as possible. Therefore, their dominance of nationwide audiences is still high.

⁴ Philip Hunter, “Internet TV: the European Scene” in *IPTV News*, January–February 2008, pp. 36–37.

⁵ See, for example, Andrew Keen’s considerations on “attention-economy” media in his profile of Arianna Huffington, *Prospect*, August 2008 (available at http://www.prospect-magazine.co.uk/article_details.php?id=10312, accessed 8 August 2008).

⁶ Shanthi Kalathil, “Scaling a Changing Curve: Traditional Media Development and the New Media (A Report to the Center for International Media Assistance)”, 3 March 2008, p. 11. Available at http://www.ned.org/cima/CIMA-New_Media-Report.pdf (accessed 29 May 2008). See also an important new study by a British journalist, Nick Davies, *Flat Earth News* (London: Chatto & Windus, 2008).

The sample of countries covered by this report shows disparate trends in viewing time, with countries like the Czech Republic, Lithuania and Slovakia seeing drops in TV viewing time. Others have enjoyed stable viewing time or slight increases. In general, the downturn in TV viewing time among the general public is still insignificant. Between 2003 and 2006, this time went down by only three minutes a day (*see table 1*). The largest increase in TV viewing time (15 minutes) was recorded in the Republic of Macedonia, and the largest drop (37 minutes a day) was seen in Slovakia.

Table 1. Individual TV viewing time in 2003–2006.
Ranked by viewing time (2006)

Country	Average viewing time for adults Monday–Sunday (minutes per day)			
	2003	2004	2005	2006
Republic of Macedonia	259	266	260	274
Poland	250	251	255	254
Italy	245	250	249	249
Romania	235	228	242	242
Czech Republic	214	214	216	206
Lithuania	210	218	206	200
Slovakia	235	213	208	198
Bulgaria	185	188	188	187 ⁷
Average (eight countries)	229	228	228	226

Sources: OSI research; IP International Marketing Committee, *Television 2007. International Key Facts*, October 2007 (hereafter *Television 2007*)

Although the concentration of nationwide audiences has remained high, the largest channels in each country have seen their ratings decline (*see table 2*). In most of these countries, the largest three channels lost a combined audience equivalent to 4 or 5 percentage points. The biggest loss was recorded in Romania where the combined audience of the first channel of the public service broadcaster and the commercial stations Pro TV and Antena 1 plummeted by more than 10 percentage points. Much of this loss was incurred by the public service station, which lost over 10 percentage points in its nationwide audience during three years. Except in Poland, where commercial station TVN pushed Polsat TV out of the top three channels, the three most popular stations remained unchanged.

⁷ Data based on target group: individuals 4+.

Table 2. Concentration of national audiences in 2003 and 2006.
Ranked by aggregate audience share (2006)

Country	Top 3 channels in terms of audience share		Aggregate audience share of top 3 channels (per cent)	
	2003	2006	2003	2006
Czech Republic	TV Nova, ČT 1, Prima TV	The same	86.1	83.5
Bulgaria	bTV, Kanal 1, Nova TV	The same	84.2	79.2
Slovakia	Markíza TV, STV 1, TV Joj	The same	72.9	67.7
Lithuania	LNK, TV 3, LRT	The same	63.4	61.9
Poland	TVP 1, TVP 2, Polsat	TVP 1, TVN, TVP 2	62.6	61.7
Republic of Macedonia	A1 TV, MTV 1, Sitel	The same	60.0	45.6
Italy	RAI 1, Canale 5, RAI 2	The same	59.4	56.2
Romania	TVR 1, Pro TV, Antena 1	The same	57.5	46.8
Albania	NA	NA	NA	NA

Source: OSI research

If the mainstream TV channels have seen their ratings seep away, it is the public service broadcasters in particular that have lost substantial shares of viewers (*see table 3*). With the exception of Slovakia where STV increased its audience in 2006 compared with three years before (mainly due to reforms under new management from 2003), all other public service channels lost viewers.

First, there is a group of countries that has seen a moderate downturn, including the Czech Republic and Italy, where public service TV lost only a small amount of viewers. But in the other countries, public service TV saw a steady decline in viewers by nearly 10 percentage points each. In Lithuania, private TV continues to occupy the first two positions in the market. In Poland, Bulgaria and the Republic of Macedonia, public service TV lost its leading position to private competitors.

**Table 3. Evolution of the audience share
(two leading channels in 2003) in 2003 and 2006**

Country	Channel	Audience share (adults) (per cent)		Type of station
		2003	2006	
Albania	NA	NA	NA	NA
Bulgaria	BTV	37.9	37.5	Private
	Kanal 1	33.2	19.8 ⁸	Public
Czech Republic	TV Nova	43.4	41.8	Private
	ČT 1	22.1	21.4	Public
Italy	RAI 1	24.2	23.8	Public
	Canale 5	23.2	21.2	Private
Lithuania	LNK	27.0	23.1	Private
	TV 3	23.9	23.3	Private
Republic of Macedonia	A1	28.9	23.6	Private
	MTV 1	16.9	9.6 ⁹	Public
Poland	TVP 1	22.6	24.1	Public
	TVP 2	21.2	17.0 ¹⁰	Public
Romania	TVR 1	28.4	17.1	Public
	Pro TV	15.6	16.0	Private
Slovakia	TV Markíza	45.9	33.4	Private
	STV 1	15.7	18.5	Public

Sources: OSI research; *Television 2007*

While in 2003 terrestrial broadcasting was still dominant in many countries, recent years have seen an increase in the penetration mostly of cable, with satellite enjoying only modest growth in the countries covered by this report. With the exception of Poland, where cable coverage went down and the percentage of terrestrial-only households increased, all these countries saw a fall in terrestrial coverage (*see table 4*). The largest drop was seen in Romania, where cable has increased its viewers year on year. However, overall, cable has seen a decrease by 0.3 per cent across Europe. Cable

⁸ The public service broadcaster BNT lost significant audience numbers in the past three years, and the second position on the market to private TV Nova.

⁹ The first channel of MTV lost its healthy audience and second place in the market to the private Sitel TV, with an average audience share of 12.4 per cent in 2006.

¹⁰ The second channel of public service TVP lost its second place in the market to the fast-growing private channel, TVN.

penetration on average stays stable in both Western and Eastern Europe at 30 per cent. In contrast, satellite has seen growth at the European level, increasing from 18.5 per cent in 2005 to 21.9 per cent a year later. Some Eastern European countries such as Hungary contributed much to this. While in Western European countries (such as Belgium, the Netherlands, Germany or Luxembourg) most viewers have access to over 30 channels, in many Central and Eastern European states, only between three and five channels are available to the majority of the population. Some experts forecast that analogue-only terrestrial as the most important TV platform in countries such as the Czech Republic is living its last days. The general trend is a combination of viewing via satellite, cable or DTT.¹¹

Table 4. Cable and satellite penetration in 2003 and 2006

Country	Penetration (percentage of households)					
	Cable		Satellite		Only terrestrial (analogue)	
	2003	2006	2003	2006	2003	2006
Albania	NA	NA	NA	NA	NA	NA
Bulgaria	52.1	61.3	9.8	9.2	36.5	29.5
Czech Republic	19.3	17.7	8.9	12.0	71.8	66.3
Italy	0.3	0.6 ¹²	17.0	22.3 ¹³	NA	NA
Lithuania	38.3	42.6	NA	NA	61.7	57.4
Macedonia	16.0	52.1 ¹⁴	23.1	8.0 ¹⁵	70.0 ¹⁶	39.5
Poland	44.0	35.3	16.9	19.2	40.8	48.2
Romania	58.0	76.6 ¹⁷	3.8	3.7	42.0	18.5
Slovakia	39.2	40.7	25.2	13.0	51.7	44.9

Source: OSI research; *Television 2007*

The expansion of TV distribution platforms contributes to the fragmentation of TV consumption. Video-on-Demand services have seen an upsurge over recent years. Most

¹¹ Thomas Kirsch, “Multi-channel Homes – Cable and Satellite TV”, in IP International Marketing Committee, *Television 2007. International Key Facts*, October 2007. pp. 14–15.

¹² Data for 2005.

¹³ *Ibid.*

¹⁴ Percentage of population.

¹⁵ Only private dish.

¹⁶ Estimate by the Broadcasting Council in Skopje.

¹⁷ Within functioning and used TV sets.

VoD services are based on the internet. However, the services that necessitate a TV set (such as IPTV, cable, satellite and digital terrestrial TV) are expanding in parallel mainly because they are easier to use for most people. It is simpler to access and consume VoD on TV than on the internet. VoD saw significant growth in 2006 and 2007. In early 2007, there were 142 VoD paying services in 24 European countries. By the end of 2007, this number had almost doubled, to 258.¹⁸

In the mid-term, with the spread of convergent equipment such as set-top boxes, internet content will become more easily accessible on a TV set. Broadband penetration plays a central role in the roll-out of these new services. Western European countries are technically better prepared than Central and Eastern European countries, except for Slovenia (*see table 5*).

Table 5. PC and broadband penetration (end 2006) (as percentage).¹⁹
Ranked by the highest broadband penetration level

Country	Broadband penetration	PC penetration
Netherlands	82.2	85.5
Malta	79.5	NA
Iceland	75.0	89.0
Denmark	56.7	87.4
UK	44.3	71.0
Slovenia	44.0	63.0
France	39.9	50.7
Germany	29.8	70.6
Romania	28.6	30.0
Italy	28.2	55.7
Czech Republic	10.0	41.0
Republic of Macedonia	10.0	39.8
Lithuania	9.0	36.0
Poland	6.9	40.1
Slovakia	6.8	48.0
Bulgaria	5.0	13.0
Turkey	3.0	20.0
Albania	NA	4.8

Source: OSI research

¹⁸ European Audiovisual Observatory, *Video on Demand in Europe*, Strasbourg, May 2007; European Audiovisual Observatory, *Video on Demand in Europe. Second Survey of VoD Services as of January 2008*, Strasbourg, April 2008.

¹⁹ Besides the countries covered by our report, we selected a number of other countries for comparison. The figures are percentages of total households.

Mobile TV is another new development. Mobile network operators have been testing ways to deliver video content to mobile phone users in Europe. The main reasons behind the deployment of mobile TV (DVB-H) were the attempts of mobile operators to diversify and bring added-value services in an audiovisual market that is increasingly competitive.

Mobile TV has grown slowly so far in Europe mainly because of the small spectrum in large markets such as the UK, lack of consensus on business models and legal uncertainty in countries such as Spain. The most advanced European DVB-H market is Italy, where the platform was fully launched in 2006 and achieved some 800,000 subscribers by 2007. Other countries that have launched DVB-H are Finland, the UK and Germany. This is expected to be the year of mobile TV in Europe, with major markets such as Austria, Switzerland, the Netherlands and France slated to launch DVB-H.

The DVB-H market is expected to take off when certain key conditions have been met. These include:

- making available a broad offer of content that mobile companies can buy and air;
- coverage of most of the population;
- affordable prices of equipment and content.

These conditions are expected to be met by 2015.²⁰

Currently, over 70 per cent of Europeans have a mobile phone. Some mobile phone operators, such as Orange, foresee a 30 per cent growth of the mobile TV market over the next three years. Orange's mobile TV customers increasingly use the service, their continuous use jumping from an average of 17 minutes to 81 minutes per day in 2007.²¹

2.2 Television business

There have been no major changes in the structure of TV markets. In all but one of the countries covered, TV is present in more than 90 per cent of all the households. The only exception continues to be Albania where less than 70 per cent of households own a TV set (*see table 6*). However, all data for Albania should be treated with caution as the country still lacks reliable, systematic research into broadcasting.

²⁰ Alexander Shulzycki, Senior Media Analyst, EBU, "Analysis: Mobile Growth. Mass Market for Mobile Broadcast TV in Europe Still Unclear", in *DVB-Scene*, n. 25, March 2008, p. 13.

²¹ "Commission to Guide National Regulators on Mobile TV", *EurActiv*, 20 May 2008, available online at <http://www.euractiv.com/en/infosociety/commission-guide-national-regulators-mobile-tv/article-172476> (accessed 26 June 2008).

Table 6. TV overview in 2006.
Ranked by population

Country	Population (thousands)	Households (thousands)	TV households (TVHH) (with at least 1 TV set)	
			Total (thousands)	Share of all households (per cent)
Italy	56,726	22,876	22,646	98.9
Poland	38,157	14,011	13,381	96.6
Romania	21,584	7,320	6,887	91.2
Czech Republic	10,281	3,828	3,699	96.6
Bulgaria	7,700	2,710	2,607	96.2
Slovakia	5,389	1,900	1,612	98.0
Lithuania	3,385	1,357	1,336	98.4
Albania	3,144	726	500	68.8 ²²
Republic of Macedonia	2,039	507	473	93.1

Sources: OSI research; *Television 2007*

The original 2005 report highlighted the first downturn in the European broadcasting market; in 2002, after continuous growth for many years, European broadcasting saw a drop in the total net revenues amounting to 1.3 per cent.²³ However, it is now clear that the 2002 downturn was part of a global economic trend showing lower levels of advertising spend. Since 2003, the market has recovered. It grew by 7.1 per cent in 2005 over the previous year, according to a survey by the European Audiovisual Observatory (*see table 7*).

Public service broadcasters continued to account for the largest part of the broadcasting budget, followed by the commercial sector. However, over the past three years, although it increased its revenues, the public broadcasting sector has seen a drop of more than 4 percentage points in its total market share, while the commercial sector (both radio and TV financed by advertising) has grown modestly. All the other sectors, with the exception of pay-TV companies, have upped their market share over the period.

²² Estimates.

²³ OSI/Overview, p. 42.

Table 7. The EU broadcast market – breakdown by type of broadcaster in 2003–2005

	Total net revenues (€ million)			Change in net revenues 2005/2004	Share of total revenues (2005)
	2003	2004	2005	(per cent)	(per cent)
Total	71,933	77,311	82,823	7.1	100
Public broadcasters (radio and TV)	29,102	30,472	31,324	1.9	37.8
Commercial broadcasters (radio)	5,315	5,426	6,170	13.7	7.4
Commercial broadcasters (TV)	18,273	19,422	21,042	8.3	25.4
Home-shopping stations	1,898	2,205	2,516	14.1	3.0
Pay-TV companies	3,405	3,302	3,448	4.4	4.1
TV packagers	9,831	11,925	13,184	10.6	15.9
Thematic channels	4,109	4,559	5,139	12.7	6.4

Source: European Audiovisual Observatory²⁴

The map of the largest broadcasters in Europe has not changed dramatically (*see table 8*). The only change in the top 10 European TV companies was the entry of the Italian satellite operator Sky Italia, another venture of the US-based media tycoon Rupert Murdoch, which has enjoyed hefty year-on-year growth in the past three years, amounting to almost 19 per cent in 2006, while all the other top broadcast companies have seen growth rates of up to 8 per cent. With the exception of the German ZDF, the revenues of all the top broadcasters increased in 2006 over the previous year. Public service broadcasting was less represented in 2006 than three years before. The British, Italian, German and French public service broadcasters continued to figure in this list. But with the entrance of Sky Italia, French public service channel France 3 lost its place in the list.

²⁴ European Audiovisual Observatory, *Yearbook 2007. Trends in European Television*, Strasbourg, 2007, pp. 10–11 (hereafter Observatory, *Yearbook 2007*).

Table 8. Top 10 European TV companies in 2006.

Ranked by unconsolidated operating revenues

Rank	Company	Country	Main activities	Type	Unconsolidated operating revenues (€ million)
1	British Sky Broadcasting	UK	TV	Private	5,569.7
2	BBC Home Service	UK	TV+radio	Public	4,810.4
3	RAI	Italy	TV+radio	Public	2,933.5
4	RTI	Italy	TV	Private	2,341.9
5	Sky Italia	Italy	TV	Private	2,234.5
6	ZDF	Germany	TV	Public	1,965.6
7	TF1	France	TV	Private	1,798.0
8	France 2	France	TV	Public	1,751.2
9	RTL Television	Germany	TV	Private	1,705.9
10	Canal Plus	France	TV	Private	1,651.0

Source: European Audiovisual Observatory²⁵

3. BROADCASTING REGULATION

3.1 Regulatory authorities and framework

The original report on *Television across Europe* observed that most governments were showing, at least ostensibly, the willingness to loosen their grip on broadcasting regulators. In some cases, they had adopted legislation that provided a viable degree of independence for these regulators. However, improved legislation did not necessarily change the actual situation on the ground. The report criticised political circles for interfering in the work of the regulators and the aggressive lobbying by commercial interests. Regulators were often hampered by lack of legal authority and capacity. The report concluded that while in some Western European countries regulatory authorities had gained greater independence, in many transition countries the implementation of legislation ensuring the regulators' independence was flawed.

As broadcasting changes, patterns of regulation are changing too. With the arrival of digitisation and technical convergence, many of the content regulators find themselves overwhelmed. In institutional terms and also in terms of their remit, they overlap increasingly with the technical regulators; at the same time, some of them show an

²⁵ Observatory, *Yearbook 2007*, p. 22.

inclination to relegate part of their competencies to the market. In the Czech Republic, for example, with the number of frequencies skyrocketing, governments are preparing to turn the licensing process into a mere registration procedure similar to satellite or cable operations. Basically, any applicant capable of proving its financial viability would automatically get a broadcast licence. As the diversification of platforms encourages the further relaxation of regulatory models, the maintenance of key standards in audiovisual content regulation is likely to become a rallying cry not only for media activists but for civil-society groups that are committed to the so-called European social model.²⁶

Regulatory changes may be triggered by technology (the end of spectrum scarcity), but they are made by governments as a matter of policy. As the opportunities for audiovisual delivery proliferate, new regulatory frameworks are emerging. In general, national media regulation is retreating as the media market becomes more international. This trend prompts organisations such as the European Broadcasting Union (EBU) to believe that national regulation will become less meaningful.²⁷ There is no possibility that European-level transnational regulation will fill the vacuum. Indeed, the European Commission has been seen, at decisive moments, as more responsive to the interests of commercial media than to those of public service broadcasters, basically supporting a neo-liberal approach that may not bode well for the future of public service broadcasting (PSB).²⁸

In this fast-changing broadcast world, regulators in the countries covered by this report have failed so far to be more proactive and rise to the challenges, both because of their own inertia and because their political masters prefer them to be passive. Instead, despite some breezes of reform, politicisation of these bodies has escalated. Broadcast regulators were brought back under the tight reins of the political establishments, which have resumed the habit of promoting their allies and cronies.

The Bulgarian Council for Electronic Media (CEM, *Съвет за електронни медии*) has come under sharp criticism for politicisation and lack of media expertise. None of the CEM's current members has adequate education or experience in licensing, technology or intellectual property. Only one of the five members of the Polish National Broadcasting Council (KRRiT, *Krajowa Rada Radiofonii i Telewizji*) appointed in January 2006 fulfilled the professional criteria required by law. The other members

²⁶ The European social model is “a vision of society that combines sustainable economic growth with ever-improving living and working conditions. This implies full employment, good quality jobs, equal opportunities, social protection for all, social inclusion, and involving citizens in the decisions that affect them.” This definition is offered by the European Trade Union Confederation (ETUC). Available at <http://www.etuc.org/a/111> (accessed September 2008).

²⁷ Digital Strategy Group of the European Broadcasting Union, *Media with a Purpose. Public Service Broadcasting in the Digital Era*, November 2002.

²⁸ *Ibid.*

included close allies of politicians and the present Government. As in Romania, in January 2007, the KRRiT traded the appointment of two members of the Supervisory Board at public service TV for the directorship of the National Bank.

In Albania, the broadcast regulator (KKRT, National Council of Radio Television, *Keshilli Kombetar i Radios dhe Televizionit*) has recruited more staff and restructured its departments in order to improve its monitoring work. In other respects, it has continued to be a theatre of political infighting. In February 2006, the Government proposed to slash the KKRT membership from seven to five members, and allow more involvement of civil society in the appointment process. These changes were enshrined in law in May 2006. Although Parliament still appointed the members, broadcasters' associations, print media associations, universities and lawyers were allowed to nominate members to the body. The new law was much praised. In the end, however, the involvement of civil society groups – commendable in principle – was marred, as it has been elsewhere, by politicisation. The ruling parties struck a deal with the opposition parties to restore the KKRT's membership to seven, simply in order to give the opposition the right to appoint two members.

Similar trade-offs are common in Romanian broadcast regulation, where the CNA (National Audiovisual Council, *Consiliul Național al Audiovizualului*) is still subject to blatant political interference. When the leadership of the regulator and public service TV both fell vacant, politicians shared out the appointments. The CNA presidency went to the writer Răsvan Popescu, the preferred candidate of the governing National Liberal Party (PNL, *Partidul Național Liberal*), while the public broadcaster was given to Alexandru Sassu, the executive secretary of the opposition Social Democrat Party (PSD, *Partidul Social Democrat*). In 2006, when the mandates of six of the CNA's 11 members expired, Parliament postponed the appointment of five members under pressure from a group of politicians who wanted to change the appointment procedures to ensure pure political representation in the CNA. In the end, Parliament rejected the new procedures.

Politicisation has become so commonplace in the Czech Republic that it is taken for granted. Therefore, the Czech Council for Radio and Television Broadcasting (RRTV, *Rada pro rozhlasové a televizní vysílání*) has lately been criticised more for lack of professionalism than for its politicisation. Critics say that its members do not have sufficient knowledge of broadcasting and do not fulfil their duties in the required manner. Politicians reply that it was not realistic to introduce legal criteria of professionalism for the RRTV members, simply because there was no political will, which is – of course – a circular argument.

Civil society inclusion is a positive development, with the potential to loosen the political grip on regulators. But there are increasing signs that the civil society element is not having the expected impact. In Lithuania, where civil society is directly involved in the appointment of the regulators, the legitimacy of the non-governmental organisations (NGOs) which delegate representatives to the Lithuanian Radio and Television Commission (LRTK, *Lietuvos radijo ir televizijos komisija*) has been seriously

questioned. For example, the representativeness of the Congregation of Bishops, the only religious organisation that sends representatives to the LRTK, was queried. One reason why the civil society component in the regulatory bodies has failed to play its expected part is that the mechanism of delegation by civil society organisations does not often meet the need for professional expertise and commitment to the autonomy of the regulator.

The most radical changes in broadcast regulation have occurred in the Republic of Macedonia. A new Broadcasting Act (2005) increased the powers of the Broadcasting Council (*Совет за радиодуџузија*), especially over granting and revoking broadcast licences, implementing legislation, and adopting strategies and policies. Parliament can no longer dismiss Council members except at the request of a majority of the members. A hazardous development that could have meant a step back for regulatory independence was the Government's plan to merge the Broadcasting Council and the technical regulator, a move that some feared was premature and politically motivated, intended to regain political control over regulation. Under pressure from domestic media organisations and foreign critics, the Government dropped the plan.

3.2 Digital licensing

Broadcast licensing has also seen changes, with digitisation becoming central to the process. Slow in adopting legislation and policy, most of the young democracies in Central and Eastern Europe embarked on digital transition at the last minute. The European Commission proposed 2012 as the deadline for member States to phase out traditional analogue terrestrial broadcasting.²⁹ After that date, analogue signals will no longer be protected.

Digitisation has been obstructed by a mixture of confusion, ignorance about the issues, persistent reluctance on the part of the large broadcasting players and political bickering over how to divide up the new digital market. More than anything, the EU deadline for analogue switch-off prompted these countries to accelerate the process. In this context, it is likely that the big players will secure their place in the digital landscape and block newcomers from the market as long as possible.

The digital transition has split the eight Eastern and Central European countries covered by this report into two groups:

- the progressives – the Czech Republic, Poland, Slovakia and Lithuania;
- the latecomers – Romania, Bulgaria, the Republic of Macedonia and Albania.

²⁹ European Commission, "Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Accelerating the Transition from Analogue to Digital Broadcasting" (from digital "switchover" to analogue "switch-off"), COM(2003) 541 final, 17 September 2004.

The first group has adopted legislation and policy for digitisation and set a timeframe for the transition, which includes licensing digital stations. However, legal wrangling has held up the process.

In the Czech Republic, it took almost five years to adopt legislation for digital broadcasting. Moreover, it took more than two years to license the first digital channels, due to political pressure and commercial lobbying. Eventually, the RRTV awarded the first six digital licences in April 2006. The entire process was then blocked by TV Nova and Prima TV, the most powerful commercial broadcasters, which appealed the regulator's decision in court, where it was declared null and void. The six winners eventually received licences as a result of new legislation, but the court's decision had blocked the digital start-up for almost two years. This delay was orchestrated by its only beneficiaries: the commercial stations that wanted to prolong their domination of the advertising market.

In a similar move, the largest Slovak commercial broadcasters, TV Markíza and TV Joj, managed to postpone the launch of digitisation and thus to keep competitors out of the market. The only commercial digital multiplex is to be launched by 2011. In March 2007, the Government revised the timetable for digitisation in Poland. It decided that there would be six multiplexes. All three digital platforms (Cyfrowy Polsat, CYFRA+ and N) started to broadcast digital programmes.

Those countries that lag behind have yet to adopt a timeframe and licensing criteria for digitisation. In Bulgaria, licensing was frozen for four years due to the lack of adequate legislation and policy. When it resumed in 2006, the process was a failure. The CEM launched a licensing tender without taking account of the challenges posed by digitisation. While other European countries were preparing for analogue switch-off, Bulgaria was busy awarding even more analogue licences. Moreover, there were tensions and clashes with the technical regulator, which refused to provide information on available frequencies. In July 2007, the CEM decided to postpone any licensing tender until a national strategy for digitisation had been adopted.

Romania is still at zero in digitisation. Here, too, political infighting has wrecked the project. Politicians clashed over a new broadcasting law, which was meant to lay down the conditions for digital broadcasting. At issue were the provisions regarding appointments to the regulatory body. Civil society groups were sharply critical of draft provisions that would allow politicians to tighten their grip on the regulator. In the end, the Senate scrapped the entire bill, nullifying all the efforts to launch the digital transfer.

Albania is a unique example of digital broadcasting without licensing. Although the KKRT has not yet granted digital licences, it has defined the licensing criteria for network operators. The DigitAlb platform defied the regulator and other TV stations by launching in July 2004. Within two years, DigitAlb gained 120,000 subscribers across the country.

In the Republic of Macedonia, despite the lack of a legal framework and policy criteria, the Government wanted to announce a tender for digital multiplexes in February 2008. The tender was postponed, and the change of government following the early elections in June delayed it again until the autumn. The technical regulator is working to establish criteria for the tender, but civil society organisations argue that such an important process should be preceded by a broad debate with all interested parties on the regulatory model that would best fit the digital environment.

Summarising, the main trends in digital licensing in the nine countries covered by this report are as follows.

A simplified licensing procedure

In some countries, the licensing of digital channels is coming to resemble the authorisation process of cable and satellite TV channels. The tender mechanism is likely to be scrapped. In the Czech Republic, the RRTV has been stripped almost entirely of its decision-making power in licensing digital channels. The licensing tender will be replaced by a short application procedure. The RRTV must interview the applicant and can reject the application only in very few cases. In total, the Czech market is to have seven nationwide digital multiplexes able to host 70 channels. A similar relaxed licensing regime was introduced by the 2005 Broadcasting Act in Poland. Whether this development marks a general trend is an important question that events will soon answer.

Shifts in licensing power

Traditionally, the content regulator had the most important say in deciding what stations will go on air while the technical regulator merely issued the licensees with an authorisation to use a given frequency. With digitisation, technical regulators are gaining a more important role. In January 2008, the Polish Government announced that the entire broadcast licensing process would be transferred from the KRRiT to the technical regulator in 2008. In Slovakia, regulation was divided between the telecom regulator, which will be tasked to issue authorisations for multiplex operators, and the Broadcasting Council, which will grant licences for content providers.

Protection of analogue broadcasters

In all the countries surveyed, analogue broadcasters are defended by the law. In Albania, if a digital operator plans to build a network using a frequency that is occupied by an analogue operator, then the KKRT has to grant a different frequency to the analogue operator and cover any expenses incurred by the transfer. In the Czech Republic, incumbent broadcasters lobbied aggressively until they received digital licences automatically, through legislation.

Privileged public service

In all these countries, the public service broadcaster has a privileged position in the digital market, automatically receiving slots in one of the multiplexes, or even having an entire multiplex reserved for its use. This privilege is often linked with a requirement for the public service broadcaster to play a leading part in the switch-over. However, experience shows that the switch-over requires the active participation and involvement of the entire industry. In the Czech Republic, for example, Czech TV (ČT, *Česká televize*) pioneered experimental digital broadcasting, but it was able to build on an initiative by Prima TV in the late 1990s.

4. PUBLIC SERVICE BROADCASTING

4.1 Governance structures

Over the past three years, with the advent of digitisation and new technologies, PSB has come under increasingly critical scrutiny. The development of satellite distribution coupled with the emergence of internet distribution of content accelerated the globalisation of the media market.³⁰ The proliferation of content together with the weakening grip of content regulation meant that the public gained more freedom of choice, being no longer obliged to watch state-authorised channels and programmes; on the other hand, it is questionable whether this new media environment offered better quality or more diversity as programmes and formats became international commodities, traded by commercial companies, and PSB budgets were stretched by funding shortfalls and the need to invest in new technology.

These two conflicting perspectives are at the core of the debate on the role of public service broadcasting [...]. To the extent that public service is seen as a corrective for market failure, how should this role be defined and the remit drafted for PSM [public service media] in its operating territory? Are parliaments and governments compensating for their diminishing, direct influence over the media markets by enforcing tighter control over “their own” broadcasters, the public service bodies? Can (some of) the weakened governmental control be replaced by international regulation?³¹

The original OSI report stated that “in transition countries, public service TV was still associated by the general public with State TV, due to the long history of communist State monopoly on TV, and because of the numerous disclosures of State interference

³⁰ Christian S. Nissen, “Public Service Media in the Information Society”, Report prepared for the Council of Europe’s Group of Specialists on Public Service Broadcasting in the Information Society (MC-S-PSB); Media Division, Directorate General of Human Rights, Council of Europe, February 2006.

³¹ *Ibid.*

in the public broadcasters' activities and programmes". The report criticised governments that were reluctant to let the nominal public service broadcaster achieve autonomy.

With regulatory control over audiovisual content rapidly eroding, and the number of channels about to multiply out of sight, the political elites in many of the new democracies are determined to keep control of PSB. In the early 2000s, when their countries had recently joined the Council of Europe and in many cases were pursuing accession to the European Union, these elites showed signs of willingness to refrain from influencing these media. Today, by contrast, they openly strive to restore and maintain tight control, usually by appointing loyal people to the governing bodies.

Among our sample of countries, this pattern of the re-politicisation of public service media is clearest in Poland, Romania and Slovakia, though it is evident elsewhere. The only exceptions are the Czech Republic, which has seen progress, and Italy, where the degree of politicisation has hardly fluctuated despite changes of government. The Polish TVP (Polish Television, *Telewizja Polska*), which has been a cockpit of political infighting for a decade, is passing through major changes this year. The members of TVP's Supervisory Board continue to be drawn from party ranks and lack professional expertise. They have included the owner of a local hippodrome, a close associate of the mayor of Warsaw, a retired lawyer and a purveyor of herbal remedies to the former Prime Minister's mother.

The board of the Romanian SRTV (Romanian Television Company, *Societatea Română de Televiziune*) continues to be selected on the same old mechanism that keeps the institution in political harness. When Alexandru Sassu of the Social Democrat Party was appointed as Director-General in 2007, he became the first politician since the end of communism to head the public broadcaster. His appointment followed efforts by some MPs in 2006 to reform SRTV and remove it from political control. A bill they pushed through the Chamber of Deputies in 2006 was shelved indefinitely by the Senate, burying all attempts at reform.

In Italy, the prospects of reform improved with the end of Silvio Berlusconi's third term as Prime Minister in 2006. Already the owner of 90 per cent of Italian private broadcasting, Berlusconi was in a position as premier to influence the public service broadcaster, Italian Radio-Television (RAI, *Radiotelevisione Italiana*), as well. He also blocked attempts to pass strict conflict-of-interest provisions in law that would prevent him or anyone else from gaining such a stranglehold over Italian TV. During his third premiership, RAI's reputation had continued to slide. The appointment of its Board of Directors in 2005 followed the usual political logic, with the usual result that strategic decisions reflected political affiliation.

After the 2006 elections, the new minister of communications, Paolo Gentiloni, prepared a bill to reform RAI. As submitted to the Senate in May 2007, this bill was meant to guarantee RAI's independence from political and economic interests, including provisions to ensure the transparency of appointments, candidates'

experience and parliamentary hearings of the candidates. But Parliament's reaction was lukewarm; Italian deputies have, it emerged, grown accustomed to see their control over RAI as a natural prerogative. Berlusconi's return to power in May 2008 appears to have taken positive reform back off the agenda.

In the Czech Republic, politicians argue that the ČT Council should be nominated and controlled by the parties in Parliament. Slovakia was much praised for the reforms carried out by Richard Rybníček after his appointment as Director-General of STV (Slovak Television, *Slovenská televízia*) in 2003. Rybníček halved the station's staff and slashed costs, bringing STV into the black by 2005. He also improved its ratings. Since he stepped down in 2006, however, STV's reputation has been badly tarnished by its overt political subservience. After the 2006 elections, the governing coalition interfered grossly in both the appointment of the STV Director-General and the appointment of its governing structures. The 13th director since 1989 was appointed in 2006, but he only lasted a year. The nadir (so far) was reached in April 2008 with the appointment of Štefan Nižňanský, a news anchor from Czechoslovak TV in communist times, as the new director. Nižňanský is known for the support he receives from the ruling SMER-SD (SMER-Social Democracy, *Smer-Sociálna demokracia*).

Similar conflicts have taken place in Lithuania over the appointment by Parliament of members of the LRTT (Council of Lithuanian Radio and Television, *Lietuvos radijo ir televizijos taryba*). Members of Parliament are much more concerned to make sure that their candidates get on to the Council than to identify duly qualified professionals.

Reform was also attempted in Albania where, after intense debate, the ruling coalition managed in 2006 to reduce the Steering Board of RTSH (Radio-Television of Albania, *Radio Televizioni Shqiptar*) from 15 to 7 members and to allow universities, professional organisations and civil society groups to propose candidates. Although this move was meant to depoliticise the RTSH governing structures, the opposition and some observers argued that the civil society representatives were really a "Trojan horse" for different political parties. As with the Albanian regulator, the coalition then increased the Steering Council membership to 11, to give opposition parties four seats.

4.2 Funding

Some media pundits argue that digitisation will make the collectively financed public service model obsolete.³² With audiences fragmenting across a growing number of transmission platforms, the traditional model of mass-oriented advertising is in decline. This trend is already affecting public service as well as commercial broadcasters, as

³² The transition from the "flow use" of a broadcast signal (which, due to its "zero marginal cost", permits collective funding) to an increasingly individual use, encourages a subscription or "pay per view" model. (See Christian S. Nissen, "Public Service Media in the Information Society", *op. cit.*)

advertising accounts for roughly 40 per cent of the funding of PSB in most European countries.

At the same time, and for the same reason, the principal funding source for public service broadcasters – the licence fee – will not survive for long unless it is radically rethought. Ownership of a TV set will soon cease to be viable as a basis for compulsory payment. Almost certainly, the fee will only be able to be preserved by expanding the basis for liability to ownership of all types of devices that receive public service content, or by replacing it with a compulsory broadcasting tax on all households. However, nobody yet knows if these models would be durable in the longer term. In this respect, the crisis of PSB funding in almost all countries of Central and Eastern Europe may be prophetic for Western Europe. Countries without a long tradition of the licence fee face a lack of stable funding for PSB, due to large-scale evasion of the licence fee.

Public service broadcasters in the new democracies have continued to grapple with dire financial crises stemming mainly from low rates of licence-fee collection. In Romania, where the public service broadcaster largely depends on the licence fee, the fee has hardly increased since 2003. Low payment rates also undermine the financial health of the station. Some 40 per cent of households are exempt from paying the fee, in many cases as a result of claiming (implausibly) that they do not possess a radio or TV set.

In Albania, fewer than 9,000 households are estimated to pay the fee in a country of some 500,000 households. As in several other countries, the licence fee is collected along with a utility bill. These piggy-back arrangements were intended to spare the public service broadcaster from having to spend almost as much on collecting the fee as it would gain in revenue. (In Albania, the cost of separately collecting the €4 licence fee would probably exceed the revenue gained.) It was also intended to make evasion more difficult. In practice, these arrangements have often proved difficult to implement. Citizens have sometimes expressed anger at high utility bills by boycotting the licence-fee segment; not surprisingly, the utilities themselves have objected to a burdensome commitment. In some countries, this arrangement has been challenged as unconstitutional. For these reasons, doubling up the licence fee with utility bills is very unlikely to represent a durable solution. The search continues for independent public funding, on a scale sufficient to let the broadcasters fulfil their public service remits.

In Slovakia, a new system of collecting the licence fee was introduced on 1 April 2008, obliging all households connected to the electricity grid to pay. The change is expected to collect the fee from one-third of the households that have so far avoided paying the fee. In 2005, Bulgaria tried to establish a new model of financing the public service broadcaster, by setting up a Radio and Television Fund, drawn from a range of sources including the licence fee and broadcast licences. The fund is not yet operational, however, and there is little hope that it will start working soon.

The most serious financial crisis was experienced by Macedonian Radio and Television (MRT, *Makedonska radio-televizija*), which is funded by the licence fee, advertising, sponsorship, donations, sales of programme and services, and the State budget. The

main source of financing should be the licence fee, which is calculated as 2.5 per cent of the average net salary in the country over the past four months. The collection rate, which was 60–70 per cent, slumped in 2006 to only 6 per cent amid confusion created by changing the mode of collection. This took MRT to the brink of collapse. The Government saved the station by injecting State cash into the station. The payment rate slid further in 2007 to a mere 0.5 per cent of households. MRT’s own managers have colluded in the crisis by not trying very hard; for they find it more convenient to receive money directly from the State coffers. This disastrous situation is perpetuated by politicians who want to maintain MRT’s financial dependence on the Government.

Licence fees have increased steadily over the past three years (*see table 9*). The steepest increase was in the Czech Republic, where the fee rose by more than 60 per cent between 2003 and 2006. The lowest growth was recorded in Romania where over the three years ending in 2006 the fee increased by a less than €1.

Table 9. TV licence fee cost per year in 2003 and 2006

Country	Licence fee (€ per year)	
	2003	2006
Italy	99.60	104.0
Republic of Macedonia	57.33	64.26
Poland	NA	48.73
Czech Republic	27.77	43.66
Slovakia	29.15	34.85
Romania	12.78	13.62
Albania	NA	4.1
Bulgaria	None	None
Lithuania	None	None

Source: OSI research

An increasing number of voices are calling for the elimination of the licence fee. In Slovakia, despite efforts to improve licence-fee collection, the system has come under hostile scrutiny. A well-known economist launched a campaign in January 2008, called “Stop the licence fee”, demanding a referendum to settle the matter. The campaigners said that public service media could be adequately funded through contributions from commercial TV stations, the State budget or commercial income such as advertising, sponsorship or subscriptions.

In Poland, where evasion is widespread,³³ there are serious plans to scrap the licence fee by the end of this year. The Government proposed in an April 2008 bill to exempt retired people and to abolish the fee completely later in 2008. Many respected intellectuals oppose this move, but surveys indicate that most viewers do not want to pay the fee and would prefer the State to finance TVP directly.

Attempts to introduce the licence fee in Lithuania have failed. In December 2005, Parliament rejected a proposal to this effect, opting instead to keep financing the public service broadcaster through a combination of advertising and State subsidy.

The only country that has embraced a pure licence fee-based model is the Czech Republic, where ČT will drop advertising completely when digitisation has been fully introduced. Interestingly, the Czech Republic is also the only country in this sample where the public service broadcaster has succeeded in raising the quality of its output in recent years.

Table 10. Funding of public service broadcasters

Country	Name	Share of total budget (per cent)				Annual budget (€ million per year)
		Licence fee	State budget	Commercial income (advertising and sponsorship)	Other	
Albania	RTSH	NA	NA	65.0		NA
Bulgaria	BNT	0	100	0	0	31.0 (2007)
Czech Republic	ČT	69.0	0	14.0	17.0	243.7 (2007)
Italy	RAI	51.7	0	39.3	9.0	2,878.4 (2006)
Lithuania	LRT	0	62.9	37.1	0	19.4 (2006)
Poland	TVP	24.6	0	60.3	15.1	610.0 (2007)
Republic of Macedonia	MRT	16.5	0	57.3	26.2	NA
Romania	TVR	60.0	23.0	15.0	NA	142.4 (2006)
Slovakia	STV	45.7	3.0	16.3	3.8	68.9 (2007)

Source: OSI research

³³ From some 12.8 million TV households in Poland, over 4.6 million households did not pay the licence fee in 2006, causing TVP estimated losses of €32.5 million a year.

5. COMMERCIAL BROADCASTING

5.1 Ownership

Concentration of ownership has continued apace in the past three years, with the main private broadcasters managing to preserve their grip on their national markets. Digitisation, which will open the door to an influx of new channels, may disturb this pattern. So far, however, the existing broadcasters have managed by and large to keep out fresh competitors through sustained lobbying and additional investment. Without too many analogue licences up for grabs at the moment, broadcasters tend to diversify in as many media subsectors as possible, or build up a presence in local broadcasting.

In Bulgaria, where applicable law on ownership gives no protection to media pluralism, the Balkan News Corporation, which runs nationwide bTV, took over Radio Company CJ, which operates the local radio stations NJoy, Classic FM Radio and Jazz FM. TV2, a new station with almost nationwide coverage, announced that it would start operations, completely ignoring the licensing process. The station is allegedly owned by an advertising mogul, Krassimir Gergov.

In Lithuania, the operators of the three largest commercial TV stations – MG Baltic, Modern Times Group (MTG) and the Achema Group – have invested in a myriad of media outlets, including internet portals, publishing houses, radio stations, daily newspapers, printing houses and advertising agencies.

In Poland, where there are no restrictions on cross-ownership, media groups are freely consolidating. The Agora Group owns the leading daily, *Gazeta Wyborcza*, and 29 local radio stations in nine cities. The German Bauer Publishing Group, owner of over 30 glossy magazines in Poland, bought RMF FM, a private radio station with the largest audience in the country.

Romanian broadcasting remains in the hands of a few powerful media groups, with ramifications in numerous other sectors and businesses and with close connections to the political elite. In 2007, five enterprises controlled 72 per cent of the entire broadcast market: Central European Media Enterprises (CME),³⁴ the Voiculescu family, a businessman, Sorin Ovidiu Vântu, public service SRTV and SBS Broadcasting. CME's Romanian partner Adrian Sârbu and the companies linked with CME's local vehicle, Media Pro, are active in publishing, printing, cinema, entertainment and radio. One of the new entrants on the Romanian market was the Turkish Dogan, which started Kanal D in a joint venture with the Swiss group Ringier, publisher in Romania of several large dailies, an economic weekly and several women's, youth and TV-schedule magazines.

³⁴ CME was founded by a former US ambassador, Ronald S. Lauder, in the mid-1990s. It runs TV stations and other media outlets in six Central and Eastern European countries.

In September 2005, the Modern Times Group (MTG) from Sweden bought 50 per cent of GES Media Holding, the owner of Prima TV in the Czech Republic. The largest publisher in the Czech Republic, the German-owned Mafra, bought the music station Óčko in 2005. Its rival, Ringier, also announced an interest in entering the TV business in the Czech Republic. In Slovakia, one pole of power in the broadcasting market, the leading commercial station TV Markíza, owned by CME, lost its outright dominance. But the media group concentrated on a businessman, Ivan Kmotrik, continues to be an important player; as well as the all-news TV station TA3; it operates publishing and printing houses, advertising agencies, and the largest newspaper distributor and retailer in the country.

With the advent of digitisation in the Czech Republic, new major players are expected to emerge. One of these is very likely to be J&T Media Enterprises, part of the J&T Finance Group, which bought TV Joj station in Slovakia. J&T also obtained a digital licence for an all-news station in the Czech Republic.

In July 2008, the German media holding Westdeutsche Allgemeine Zeitung (WAZ) of Essen announced that it had invested in the Albanian TV station Vizion+ in Tirana. Refusing to disclose the financial details of the deal, WAZ stated that it would consider further investments in Albania. WAZ is a dominant player in the print media sectors in a number of countries in Central and Eastern Europe.

5.2 The marketplace

The media markets have already seen shifts in the classic model of advertising, which is changing according to the trends prompted by the new technologies and platforms. Some advertising spending is already migrating from traditional media in general, and TV in particular, to new media.³⁵ Global internet advertising revenues in 2007 are estimated to have reached \$21.1 billion, which would represent a 25 per cent increase over 2006.³⁶ Between 2008 and 2012, advertising revenues are expected to grow annually by only 3.6 per cent in Europe and 3.7 per cent in the US. Most of this growth is likely to be triggered by online advertising, which is expected to increase by an average 17 per cent worldwide every year until 2012. By 2012, it is estimated that advertising will be a three-tier market with online taking the largest income, followed by TV, with traditional media bringing up the rear. While European traditional channels are expected to grow up to 2 per cent a year, digital channels are forecast to see advertising growth rates of 20 per cent a year. Rather than increasing their budgets,

³⁵ Digital Strategy Group of the European Broadcasting Union, *Media with a Purpose*, *op. cit.*

³⁶ “Internet Advertising Revenues Again Reach New Highs, Estimated to Pass \$21 Billion in 2007 and Hit Nearly \$6 Billion in Q4 2007”, a study commissioned by the Interactive Advertising Bureau (IAB) to the consultancy PricewaterhouseCoopers (PwC) (25 February 2008). Founded in 1996, IAB represents over 375 companies specialising in the sale of online advertising. IAB members are responsible for selling over 86 per cent of online advertising in the US.

advertisers are expected to keep redistributing their spending. This will hit print media, radio and cinema advertising.³⁷

With the partial exception of Italy, the countries covered by this research are well behind the pace of these global trends. Advertisers are indeed moving part of their spending from traditional media to the internet. However, TV has not seen yet large losses (*see table 11*). Reasons could be the fact that unlike in Western Europe, broadcasters in the young and less competitive Eastern European markets managed to maintain their dominant positions and because new platforms are expanding much more slowly. The only countries where TV's share of the total advertising spend fell sharply were Romania and Poland: down since 2003 by 26 and 8 percentage points, respectively. Radio and print media especially have seen a downturn in advertising income. The biggest slump that the radio sector experienced was in Italy; the biggest loss in the print media sector was in Slovakia.

The internet, meanwhile, has averaged 30 per cent growth annually. Although it started from a much smaller base, the internet is swallowing larger shares of advertising, a trend that looks very likely to continue. Various forecasts show that internet advertising is expected to take up to 20 per cent of the total spend in Europe; one estimate predicts growth from €7.5 billion in 2006 to €16 billion in 2012. This will be driven, among other things, by the increase in access to high-speed internet access from 47 million to over 83 million individuals over the same period.³⁸ Online advertising spending in Europe reached €11 billion in 2007, a growth of 40 per cent over the previous year.³⁹ According to one of the principal sources of data on advertising, the internet is expected to pull in more money than radio in 2008 and to overtake magazines in 2010. Central and Eastern European countries will, on this prediction, drive European growth by achieving increases in advertising revenue of over 15 per cent, more than three times the rate forecast for Western Europe.⁴⁰

³⁷ Press release, "TV Advertising Faces Hard Times in 2008 and 2009. Two Tough Years Ahead but Outlook Improving to 2012 – Especially Online", *Screen Digest*, London, 3 March 2008.

³⁸ Forrester, "European Online Display Advertising Spend Will Double By 2012. The Market Will Build To €5.6 Billion In Five Years", Press release (3 August 2007).

³⁹ Source: PwC.

⁴⁰ "Carat Forecasts 6.0% Global Advertising Spend Growth for 2008 and 4.9% for 2009", Press release (17 March 2008), available online (in English) at <http://www.aegisplc.com/ags/media/groupreleases/grouprel2008/2008-03-17/> (accessed 25 June 2008).

Table 11. Share of media expenditures in 2003–2006 (as percentage)⁴¹

Country	Medium	2003	2004	2005	2006
Bulgaria	TV	70.0	68.1	67.9	70.8
	Print media	22.6	25.2	21.7	19.2
	Radio	7.2	6.4	4.7	4.6
	Internet	0.2	0.3	0.7	1.3
	Other	NA	NA	5.0	4.2
	Total advertising spending	193	210	251	320
Czech Republic ⁴²	TV	47.9	48.6	48.4	46.6
	Print media	35.6	35.0	34.4	34.7
	Radio	6.9	6.9	7.1	7.5
	Internet	1.4	1.8	2.3	3.0
	Other	8.1	7.6	7.7	8.2
	Total advertising spending	1,034	1,213	1,434	1,680
Italy	TV	35.7	39.2	35.8	34.6
	Print media	50.6	54.7	57.3	52.7
	Radio	9.7	3.1	2.8	2.9
	Internet	NA	NA	NA	5.8
	Other	4.1	4.3	4.0	4.0
	Total advertising spending	25,624	25,426	29,876	30,952
Lithuania	TV	72.3	69.4	72.4	72.9
	Print media	22.1	14.1	20.7	20.7
	Radio	2.4	2.3	2.2	1.8
	Internet	NA	0.6	0.9	1.3
	Other	3.2	3.6	3.7	3.4
	Total advertising spending	231	252	310	360
Republic of Macedonia	TV	75.8	77.7	77.2	79.8
	Print media	13.0	10.9	9.1	7.8
	Radio	4.5	4.6	4.7	4.7
	Internet	NA	NA	1.0	NA
	Other	6.8	6.9	8.0	7.7
	Total advertising spending	44	66	95	151

⁴¹ In countries where the figures for the internet are not known, they are usually included in the “Other” category, along with cinema and outdoor advertising. (The figures are in percentages, in gross figures, unless stated otherwise.) Total advertising expenditures are expressed throughout the table in million €, gross figures.

⁴² Net figures.

Poland	TV	58.3	54.6	49.1	50.7
	Print media	27.7	30.4	34.0	31.6
	Radio	8.1	8.6	9.5	9.5
	Internet	NA	NA	NA	NA
	Other	5.9	6.4	7.5	8.2
	Total advertising spending	2,410	3,086	3,376	4,031
Romania ⁴³	TV	86.3	87.0	60.6	60.4
	Print media	11.5	10.9	25.6	23.4
	Radio	2.0	2.1	5.5	7.4
	Internet	0.1	NA	0.6	1.4
	Other	NA	NA	7.7	7.4
	Total advertising spending	1,294	2,079	2,881	3,567 ⁴⁴
Slovakia	TV	70.1	74.9	76.4	78.5
	Print media	19.4	16.0	14.6	13.1
	Radio	7.2	6.3	5.9	5.2
	Internet	NA	NA	NA	NA
	Other	3.3	2.7	3.1	3.3
	Total advertising spending	411	614	777	1,019

Source: *Television 2007*

Although TV advertising in this sample of countries continues to be highly concentrated, the largest players are slowly losing revenue. Private TV stations still take the lion's share of the spend. In Poland, the only country where the public service broadcaster increased its advertising income in 2003, the private station TVN became the market leader, with some 27 per cent of the TV advertising market. The largest drops in the revenues of the main players were recorded in Slovakia and the Czech Republic, where their dominance had been extremely marked in the past. Only in the Republic of Macedonia has the biggest channel, A1 TV, seen a surge in its revenue. (However, data on the Macedonian market should be treated with caution.)

Still worrying is the extraordinary concentration of Italian TV advertising, with Berlusconi's Mediaset and the public service channels of RAI commanding a combined share of over 80 per cent of the TV advertising spend in 2006.

⁴³ The figures for 2005–2006 are in net values.

⁴⁴ Romania remains one of the countries where the difference between the gross and net figures for advertising spending is substantial. The gross figure does not include the extremely widespread discounts, barter deals or commissions offered or charged by advertising agencies and media-buying companies. The gross figure is ten-fold higher than the net figure.

Table 12. Channels with the largest advertising market share in 2003 and 2006.
Ranked by the largest percentage share

Country	Channel	Share of TV revenue (per cent)		Type of channel
		2003	2006	
Slovakia	TV Markíza	76.2	53.8	Private
Republic of Macedonia	A1	38.3	51.0	Private
Czech Republic	TV Nova	66.5	48.6	Private
Lithuania	TV 3	48.4	46.3	Private
Bulgaria	BTV	45.1	43.3	Private
Italy	Canale 5	33.1	30.3	Private
Poland	TVN	25.5 (TVP1)	27.2	Private
Romania	Pro TV	26.6 (Prima TV)	15.2	Private
Albania	NA	NA	NA	NA

Source: *Television 2007*

Lack of transparency concerning ownership and funding continue to vitiate broadcasting. In this respect, Albania and the Republic of Macedonia remain the worst examples. In Albania, sources of media funding remain unknown due to the lack of research and to broadcasters' blunt refusal to provide data. The only official source for such data continues to be the declarations on the annual budget that broadcasters should submit to the KKRT. However, only a small number of them do this. Many outlets survive because of the revenues generated by their owners' other businesses, such as construction, trade, advertising or internet services.

In a move to cut the umbilical cord between the media and the State, the Albanian Government decided in 2006 to stop allocating Government advertising to the media and publish them instead in the Bulletin of Official Notices. These allocations have never been transparent, and the Government was accused repeatedly of trading advertising for favourable coverage. The Government still has the resources to circumvent the new regulations and place advertisements in the media. Even so, this decision was hailed as a positive step.

In the Republic of Macedonia, new legislation from 2005 introduced clearer provisions on illegal media concentration, but the Broadcasting Council is failing to implement the law. Broadcasting companies register under different names, and in the absence of mechanisms to trace the real owners, it is rarely possible to prove media concentration. Most damaging for the broadcasters' independence is that influential politicians, including party leaders, are, in fact, behind Macedonian broadcasters.

This combination of non-transparent ownership and a dearth of accurate audience and advertising spending data in Albania and the Republic of Macedonia continue to scare

off foreign investors. Although Macedonia's 2005 Broadcasting Law gave a green light to foreigners to own broadcast companies, foreign entities are not investing.⁴⁵ In Albania, Julien Roche, a French businessman living in the country, sold his stake in the commercial TV station TV Klan to local buyers in 2005. The intentions of the German WAZ corporation in Albania (*see above*) are not yet clear.

5.3 Local and regional players

Fraught with harsh economic difficulties, local and regional broadcasting is foundering in most of the countries included in this study. Financed most often by municipalities, these broadcasters are in cahoots with local government. Some manage to survive by selling local news coverage to nationwide stations. Otherwise, local broadcasting is in a deplorable situation, airing low-quality programming. Some public service broadcasters still operate local studios, which in other countries have been sold off. There are local channels run by cable operators, but the quality of their programming is also low.

In Albania, the 48 local stations outside the capital Tirana cannot keep up with technological developments. In Bulgaria, the public broadcaster Bulgarian National Television (BNT, *Българска национална телевизия*) operates centres in Varna, Plovdiv, Blagoevgrad and Rousse. It spends generously on these centres, but their programming is still thin, based mostly on repeats.

Local TV stations in Poland have gradually lost their editorial and financial independence since they linked up with the nationwide networks. In 2006, Niezależna Telewizja Lokalna Radomsko was included in TVN's network and Telewizja ODRA, which airs two hours of local programming in nine municipalities, joined TV4. TVP's regional network of stations, operating as TVP3, reduced local production and started to air more programmes produced in TVP's Warsaw studios. In 2008, the Government announced plans to dismantle TVP3 and divide it up into 16 local public TV stations that would be financed in part by local authorities.

In Romania, local broadcasting has entered the hands of rich businessmen who use the stations to pursue their political ambitions and interests. Local journalists face constant censorship and economic pressure.

Macedonian local TV stations struggle to survive, mostly filling their schedules with entertainment. Three years after the 2005 Broadcasting Law introduced the concept of non-profit broadcasting, this sector is still practically non-existent. Only one licence has been awarded, to a student radio station.

In Slovakia, local TV stations are 80 per cent financed by municipalities. Some of them, in places such as Nitra and Trenčín and the capital Bratislava, started to fare better economically due to subventions from the municipalities. However, this support

⁴⁵ The only foreign investment is in cable television.

obviously increases their dependence on the local authorities and reduces their editorial independence. Generally, local TV content has been improving because of the sustained training of their journalists.

In Lithuania, regional and local broadcasting are marginal. However, the audience share and reach of these stations have slowly increased over recent years. In Italy, local TV broadcasting is fragmented, being covered mostly by a few nationwide networks and syndicated content. Italy has some 500 local stations, but the sector is characterised by a chaotic distribution of frequencies, dating back to the 1980s when broadcasting developed without a regulatory framework. The high number of local channels is, however, officially justified in Italy as contributing to the pluralism of information.

6. PROGRAMMING

6.1 Output

News

News output is traditionally a priority for both print and electronic media, and a litmus test of public service quality. Editorial independence continues to suffer in almost all the countries of our sample, and sensationalism and tabloid fare often dominate the TV news agenda. Investigative reporting and serious talk shows are being marginalised or cut altogether. Reality shows continue to inundate the screens, mostly on commercial stations.

Except in Lithuania and Poland, private TV stations gain the highest ratings for primetime newscasts (*see table 13*). In Lithuania, the news on the private channels LNK and TV 3 also gains high ratings, very close to the public broadcaster's results.

Table 13. Most watched newscasts in 2006

Country	Channel	Type of channel
Bulgaria	BTV	Private
Czech Republic	TV Nova	Private
Italy	Canale 5	Private
Lithuania	LTV	Public
Republic of Macedonia	A1	Private
Poland	TVP1	Public
Romania	Pro TV	Private
Slovakia	TV Markíza	Private

Source: OSI research

In Poland, genres such as drama, classical music and documentaries are produced almost exclusively by TVP. Combined with news, educational and religious programming, they amount to about 35 per cent of TVP1's output. However, programmes of a public service nature are relegated to unattractive time slots. The renowned film director Agnieszka Holland has said:

In TVP, the low quality of programmes and lack of standards are more painful than the one-sidedness of its news programmes because news viewers have an alternative on private TV. They do not have a choice for real cultural [programming].⁴⁶

Bulgarian broadcasting does not offer much variety. The newscasts have become increasingly popular. Private bTV and TV Nova have improved their news ratings, while BNT has seen a steady decline in its primetime news viewing figures. Programmes for young viewers are almost non-existent. In general, only public service broadcasters show educational programming; even there, these programmes are marginal.

Newscasts on all major TV stations in Albania have clearly improved. After the change of management in 2006, higher-quality programmes began to appear on Albanian Television (TVSH, *Televizioni Shqiptar*). Nevertheless, the news is neither impartial nor fair, because all outlets mould their coverage according to their economic or political interests. TVSH gives extensive coverage to the activities of the Government and political parties, neglecting civic perspectives.

Lithuanian broadcasting has seen a clear shift from information, cultural and educational programmes to entertainment on both public and commercial channels. The number of serious talk shows dropped from ten in 2004 to four in early 2007.

The programmes on Macedonian Television (MTV, *Makedonska televizija*) are not very different in quality from those on the private stations. MTV, however, airs significantly less entertainment and more educational programming. News programmes occupy a central place in the in-house production of most Macedonian TV stations. This is also due to the repeated political crises in the country that keep the viewers glued to their screens. News has become the strand in which the media compete directly, both in content and in the number of engaged journalists. For example, 51.0 per cent of the nationwide audience watches the news on A1 every day, 33.0 per cent on Kanal 5 and 26.0 per cent on Sitel TV. MTV news attract the smallest audience.

In Romania, news programmes dominate both the first channel of public service Romanian Television (TVR, *Televiziunea Română*) and private Pro TV. News accounts for more than 25 per cent of total programming on both these stations. Other

⁴⁶ Tadeusz Sobolewski, "Ratujmy w TVP, co się da" (Let's Save What We Can at TVP), *Gazeta Wyborcza*, 15–16 March, 2008, p. 16.

private stations such as Antena1 and Prima TV also air a significant amount of news. Realitatea TV, an all-news channel with a much smaller average audience than its rivals, beats TVR1 in the ratings for current affairs programmes and talk shows.

In Slovakia, news and current affairs come second after drama, which is the most popular strand on public STV. Since 2006, STV has visibly favoured the Government whose share in the station's political news output rose to almost 75 per cent. This bias, which has tainted STV's reputation, came after almost a decade of neutral and even critical news coverage. Czech public TV also devotes generous airtime to news.

In both Slovakia and the Czech Republic, the major private channels continue to provide a typical commercial diet, including soaps, films, foreign series, reality shows and entertainment.

Minority programming

Programming for national or ethnic minorities continues to be provided almost exclusively by public service broadcasters. In Lithuania, Poland, the Republic of Macedonia, Romania, Slovakia and the Czech Republic, the public service stations devote special programmes to national minorities. However, in most cases, the time devoted to this programming strand is insignificant in terms of the schedule as a whole. Despite broadcasting in many minority languages, Macedonian MRT has not managed to promote social cohesion between the various ethnic groups. The public space of the Macedonian majority and the Albanian minority differ because of the often disparate and sometimes conflicting accounts of events served up by their respective media outlets. In Albania, public service TV and some commercial channels occasionally air programmes for national minorities; media that specialise in minority coverage are struggling to survive. They are all individual initiatives, without any support from the Government.

6.2 Editorial independence

Despite improvements related mostly to the establishment of self-regulatory structures, higher legal standards of independence and more robust statutes of public service broadcasters, the broadcast media continue to be subject to heavy pressures from political and business interests. Real editorial independence of both public and private media has continued to deteriorate in most countries covered by this report. Pressures on public service broadcasters in particular have intensified.

Public service television

Between 2004 and 2006, Polish TVP saw higher levels of pluralism and professionalism, especially among the team producing the primetime newscast, which was led by a renowned journalist who had formerly worked for the BBC. Since 2006, however, the station's news coverage has become politically biased once again, with the ruling parties enjoying more extensive and more positive coverage.

Despite accusations from reporters at ČT that politicians and lobbyists continue to exert pressure on the station, the Czech public service broadcaster now resists such interference more effectively than in the past. Clashes between journalists and management were more like office politics than systematic attacks on the station's independence.

At the Romanian TVR, attempts at independent reporting continue to be dashed. In 2007, the station showed film featuring the minister of agriculture, Decebal Traian Reșeș, receiving a bribe from one of his predecessors as an inducement to favour a particular businessman in a public tender. Instead of triggering an investigation, the report attracted the ire of the Prime Minister, who denounced the station for "executing" his colleague.

In Albania, journalists with TVSH have little protection. Underpaid, often working without contracts, journalists have little incentive to pursue editorial independence or produce better-quality programmes. Some commercial TV stations in Albania have gained greater political independence, but TVSH still grapples with gross political interference, especially after changes of government. Following the 2005 elections, more than 80 TVSH employees were fired, including 10 journalists known to have leftist preferences.

In Italy, the political establishment continued to treat RAI as its own broadcaster. Although it did not achieve the degree of control that Berlusconi had enjoyed, the Prodi Government (2006–2008) did not chart a different course. The editor of the station's main newscast (*TG Uno*) was immediately replaced with a prominent journalist from the daily newspaper *Il Corriere della Sera*, who openly declared his sympathy for Prodi's centre-left coalition.

In Slovakia, following the change of management in 2006, STV became highly politicised, and its programming suffered accordingly. Soon after taking charge at STV, Radim Hreha sacked Roland Kyška, the director of STV's news department, and Eugen Korda, the editor-in-chief of the investigation programme "*Reportéri*" (Reporters). Both moves are said to have been made under political pressure. The crusade against independent-minded journalists continued in 2007 when another STV reporter, Štefan Hríb, was fired and his programme, considered one of the best shows to appear on STV in a long time, was cancelled. That summer, a third of STV's news team left the station, complaining about the lack of editorial freedom. They said that they were asked to report positively about the Government and ruling coalition parties. These crises badly damaged STV's reputation.

Commercial television

The picture of editorial independence in the commercial sector is not rosier. In Italy, the collusion between news and politics that characterises RAI journalism is also found in Canale 5, Rete 4 and Italia 1, channels owned by Berlusconi, which account for 40 per cent of TV news and current affairs.

In Poland, editorial independence has continued to suffer in the private broadcasting sector despite journalists' efforts to wrest as much freedom as possible from political and business interests. The owners of private media behave no differently from politicians, using their assets as a weapon to pursue their business interests.

Like their colleagues at TVSH, Albanian journalists in the private media have to work amid poor and insecure conditions. The overwhelming majority have to work without contracts. In the Republic of Macedonia, broadcasting continues to be treated by private owners as a tool for pursuing personal or business interests. Political neutrality and lack of bias are hard to sustain because the most influential stations are owned by leaders of political parties or other individuals with political connections.

Romanian private broadcasting is increasingly "tabloid" in character. Newscasts on private TV lead with scandal and sensationalism, focusing mostly on accidents, domestic violence and other crimes. Information is packaged in a way that seeks to shock. Unlike the news on public TV, which provides better reporting, closely following the most relevant issues of the day, news on the private media is preoccupied with trivial events and is poorly documented.

Slovak private media have improved somewhat over recent years. The use of private broadcast media for political purposes – as seen during Pavol Rusko's ownership of TV Markíza – is no longer common. More worrying is the increasing commercialisation of the public service broadcaster, which has a negative impact on the pluralism of news and current affairs. But the independence of private broadcasting has again been hurt by the incumbent Government, which treats the media in general as a wing of the political opposition.

7. RECOMMENDATIONS

7.1 Original recommendations from the 2005 report⁴⁷

In most countries covered by this monitoring, the recommendations put forward in the original report remain pertinent. Albania and the Republic of Macedonia are partial exceptions. In Albania, many of the recommendations from 2005, in particular in the area of legislation and distribution of State advertising, have been adopted over the past three years. In the Republic of Macedonia, a clutch of recommendations in media legislation, broadcasting policy and industrial relations have been adopted, at least in part. Italy is a case apart. It is not probable that the tentative reforms launched by Prodi’s minister of communications, Gentiloni, will be carried forward by the new Berlusconi Government.

7.1.1 Policy

<i>Public consultation</i>	
Recommendation (2005)	Comment (2008)
<p>1. Governments and Parliaments should provide for broad public consultations about media policy and media legislation. Public authorities, particularly in transition countries, should pay particular attention to involving civil society representatives, including from consumers’ groups, media rights organisations and NGOs, professional organisations, academia and other civic partners, in media policy and legislation. In particular, such civil society representatives should be consulted on:</p> <ul style="list-style-type: none"> • measures to ensure that broadcast regulators, and the broadcasters themselves, are fully independent; • digitisation and other technological developments relating to broadcasting; • measures to ensure that the public interest is served by broadcasters; • monitoring for compliance of broadcasters with their legislative and licence obligations. 	<p>Although broader debate on media policy and reform has intensified in most of these countries, Governments and Parliaments still avoid consulting civil society in a meaningful manner. In Romania, the most extreme case, Parliament has not consulted with the regulator even over legal changes that affect the regulator itself. In Poland, no public debate has been organised on the future of the Polish public service broadcaster. However, following the 2007 elections, the Government’s plans to reform the regulatory framework and PSB stirred up an unprecedented broad debate. In Albania, the Government has consulted the main interest groups over media legislation, albeit at the last minute, and under pressure from these groups. In Bulgaria, the regulator has been more open, for example consulting with media organisations over licensing criteria. Hence, this recommendation remains pertinent. It is crucial for Governments and Parliaments to involve civil society and media organisations when preparing policy and legislation for the media.</p>

⁴⁷ OSI/Overview, pp. 25–32. This follow-up report assesses developments in nine of the countries that were monitored in the original report.

<i>Public education and awareness-building</i>	
<p>Recommendations (2005) 2. Governments, Parliaments and broadcasters should engage in, and support, serious and extended education efforts to inform the public on all aspects of media policy and media developments that are of public interest. Training 3. Governments, together with media owners, the universities and civil society organisations, should increase their efforts to ensure training and professional development of media staff, both through support of on-site training and further development of specialised training institutions.</p>	<p>Comment (2008) There is no combined effort from the Government, Parliaments or broadcasters to promote the education of the general public in the media. Where it is done at all, such work is usually carried out by NGOs. In Romania, for example, the Media Monitoring Agency (AMP, Agenția de Monitorizare a Presei) has done concerted work in supporting the introduction of media literacy as a discipline in the country's secondary schools. In Macedonia, the Open Society Institute has supported various NGO projects to improve media literacy</p>
<i>Programming</i>	
<p>Recommendations (2005) 4. Governments and regulators should either impose basic public service obligations for commercial broadcasters, as a necessary and desirable instrument of broadcasting regulation, or should encourage commercial broadcasters to broadcast public interest content, through appropriate incentives. 5. Governments or regulators, as applicable, should provide financial and other support to producers who create programming for ethnic, linguistic and other minorities, and for broadcasters which broadcast such content. At the same time, regulators should recognise the fundamental importance of such content in the licence granting process, where appropriate for the context. 6. Parliaments should, where necessary, amend legislation to empower broadcasting regulators to monitor closely the programming of TV broadcasters, to ensure their compliance with legal and licence obligations.</p>	<p>Comment (2008) There have been no significant efforts by governments or regulators to boost public service content either through incentives or obligations. In Poland, the Government and Parliament have yet to clarify the public service role of PSB. This should be addressed by legal amendments that are now in preparation. Romanian broadcasters made no effort to join forces to support better-quality TV programming. In Slovakia, broadcasters have begun to support educational and cultural policy on broadcasting by producing their own formats and programmes and by increasingly cooperating with independent producers. Programming for minorities is left to public service broadcasters. Commercial broadcasters have little if any incentive to address this important constituency. In the Republic of Macedonia, there are repeated calls for a debate about how to overcome the segregation of the public sphere along ethnic lines. To foster understanding of various ethnic communities, the broadcast regulator has been called on to support the non-profit media sector.</p>

	<p>There has been no major change in the capacity of the regulators to help them adapt to the new complex broadcast environment. With the rise of digitisation and new technologies, broadcasting regulators are passing through turbulent times. Only in Bulgaria, at least in terms of technical infrastructure, has the regulator's administrative capacity been increased.</p>
<p><i>Digitisation</i></p>	
<p>Recommendations (2005) 7. Governments should adopt national policies on digitisation and draw up action plans for the transition to digitisation. 8. Governments should initiate legislation that provides for the automatic granting of licences for digital broadcasting to public service broadcasters, with the aim of ensuring that PSB is preserved in the digital environment. 9. Parliaments should initiate legislation to forbid the formation of conglomerates grouping operators involved in the digital chain – such as digital multiplex operators, TV stations, programmes packagers and software providers – in order to prevent the development of dominant positions in the digital TV market. 10. Parliaments and Governments should, in view of the likely transformative effects that digitisation will have on broadcasting, encourage public education campaigns and debate on the introduction of digitisation.</p>	<p>Comment (2008) In most of the monitored countries legislation on digitisation has been adopted. Romania and Bulgaria, which lag behind in this respect, have seen some progress in this area in 2008. Albania is still in need of a strategy for digitisation. PSB is usually safeguarded in the digital environment. In those countries with more advanced digital legislation, such as the Czech Republic, public service TV has been assigned a good number of frequencies. Provisions on preventing the formation of dominant positions in the digital chain are being developed in some countries. Recent Czech legislation, for example, prevents cross-ownership between operators of electronic communications networks and holders of broadcast licences. There is a gradual growth in knowledge about digital technologies, supported partly by the Government, partly by civil society. In Slovakia and the Czech Republic, special information strategies on digitisation have been produced.</p>
<p><i>Local television and community media</i></p>	
<p>Recommendation (2005) 11. Governments should include in their national media policies strategies for the development of local TV stations and community media. Such stations and media should have fair access to the frequency spectrum, and should, where a reasonable showing of need has been made, benefit from support to start up their operations.</p>	<p>Comment (2008) Local TV stations are still struggling with financial crisis, often functioning as tools in the hands of their owners, either municipalities or entrepreneurs with numerous other businesses. The Republic of Macedonia is the only example where legislation supports the concept of a non-profit sector in broadcasting.</p>

7.1.2 Broadcasting regulators

<i>Independence and transparency</i>	
<p>Recommendations (2005)</p> <p>12. Governments should ensure, both in legislation and in practice, the political and operational independence of broadcasting regulators, in line with the Council of Europe's recommendations.⁴⁸</p> <p>13. Governments should ensure that broadcasting regulatory bodies are provided with sufficient funding to carry out all aspects of their remits. This should, in particular, include the duties of the regulators with respect to monitoring broadcasters' compliance with legislative and contractual licence conditions, their enquiries into non-compliance, and, where appropriate, the handing down of appropriate sanctions.</p> <p>14. Governments should move to enact detailed conflict-of-interest rules for appointment to, and continued membership of, broadcasting regulatory bodies, where these are not already present in legislation, and they should ensure proper implementation.</p>	<p>Comment (2008)</p> <p>Broadcast regulators have gained more operational independence. This progress is undermined, however, by the increasingly overt politicisation of these bodies, as recent appointments clearly show. A positive exception is Poland, where legal amendments in 2008 should serve to reduce political influence over appointments to the national regulatory body.</p> <p>Many broadcast regulators still lack powers, expertise or capacity (or a combination of these) to carry out their tasks. The Italian regulator, for example, has seen no reform of its governing structures or increase in its powers so that it can implement its decisions. In Albania, recommendations to boost the independence of the regulator have been addressed, but further steps are needed to buttress its autonomy.</p>

⁴⁸ The key recommendation in this regard is the Council of Europe's recommendation on the independence and functions of regulatory authorities for the broadcasting sector of 2000, and its guidelines concerning the independence and functions of regulatory authorities for the broadcasting sector (Council of Europe, Committee of Ministers, Recommendation (2000) 23 of the Committee of Ministers to the member states on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the Committee of Ministers on 20 December 2000, at the 735th meeting of the Ministers' Deputies).

<i>Frequency allocation</i>	
15. Broadcasting regulators should ensure transparent, non-discriminatory and proportional procedures for the allocation of radio-electrical frequencies. EU member States should ensure, in particular, that the provisions of EU Directives 2002/21/CE (the Framework Directive) ⁴⁹ and 2002/22/CE (the Universal Service Directive) ⁵⁰ are fully transferred to national legislation.	Some broadcast regulators have taken initiatives that show their willingness to allow a more diverse range of operators to enter the market. However, the regulators are still struggling with political pressures and increased lobbying by established broadcasters. In the Czech Republic, a market that stands in urgent need of more competition for the two nationwide private broadcasters, the regulator awarded the first digital licences in 2006. But the first digital stations only managed to launch in 2008, after two years of legal disputes instigated by commercial broadcasters.
<i>Licensing for digital broadcasting</i>	
16. Broadcasting regulators should ensure that digital licences are distributed to a diverse range of operators, in order to ensure that the current dominant positions in the analogue broadcasting are not perpetuated.	

7.1.3 Public service broadcasting

Recommendations (2005) 17. Governments should continue to support PSB as a vital element of democracy. Policy and legislation should respect the principle that market forces alone cannot, and should not, determine PSB policy.	Comment (2008) Governments continue to try to control PSB systems. In all but one of the monitored countries, public service broadcasters have experienced mounting politicisation and pressure. (The exception is the Czech Republic.)
<i>Independence and funding</i>	
18. Governments should initiate legislation where needed, and implement existing legislation as required, to ensure that for public service broadcasters, the appointments procedures for the Director-Generals and for members of the Boards are independent, transparent and fair. 19. Governments should initiate legislation to oblige the public service broadcasters to put in place mechanisms to ensure the transparency of their expenditures, and in particular of their	As well as coping with the challenges of actual or attempted political manipulation, public service broadcasters have had to deal with their own flawed funding models and disintegrating reputations. Governments have not adopted legislation that would ensure the independence and stable financing of public service broadcasters. On the contrary, they have turned these broadcasters into political institutions responding more to

⁴⁹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, L108/33, Brussels, 24 April 2002 (*Framework Directive*).

⁵⁰ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services, L108/51, Brussels, 24 April 2002 (*Universal Service Directive*).

<p>utilisation of public funds.</p> <p>20. The Boards of PSB should be obliged – and where they are so obliged, these obligations should be enforced – to ensure that the programming of the broadcasters is in compliance with their public service remit. This is particularly important in view of the fact that public service broadcasters have tended to yield to commercial pressures, adjusting their programming with a view merely to increasing audience share.</p>	<p>governmental and political interests than to the public interest. In Romania, for example, for the first time after the collapse of communism in 1989, the public service broadcaster is now managed by a politician. In several countries, public service broadcasters are on the brink of financial collapse. Macedonian public service TV has lost almost its entire funding over the past few years, and had to be rescued by an injection of funds from the state-owned airport authority.</p>
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7.1.4 Commercial television broadcasting

<i>Transparency</i>	
<p>Recommendation (2005)</p> <p>21. Governments should adopt and implement legislation ensuring transparency of ownership of all media outlets, including external investors.</p>	<p>Comment (2008)</p> <p>With the exception of Romania, where the regulator has managed to compel broadcasters to disclose their real owners, there has been no progress in improving transparency. For example, calls for a public register of broadcasters' owners in Bulgaria have been ignored. In the Republic of Macedonia, the 2005 broadcasting law introduced provisions on transparency of ownership. These provisions are not implemented, however, and politicians continue to control TV stations that are owned by cronies.</p>

7.1.5 Other

<i>General employment protections</i>	
<p>Recommendation (2005)</p> <p>22. Governments should, where such legislation is not in place, adopt legislation to ensure social and labour protection for media professionals employed both in commercial broadcasters and in public service broadcasters.</p>	<p>Comment (2008)</p> <p>Little or no advance is perceptible in this respect. This recommendation remains pertinent especially in countries where such measures are badly needed due to a harsh environment for journalists. In Albania, for example, the Government did not address requests for specific steps to enforce the Labour Code in media outlets.</p>

7.2 New recommendations based on the 2008 monitoring

7.2.1 Policy

1. In countries where legislation on digitisation and new technologies is lacking, such laws should be adopted as soon as possible. In preparing these laws, Governments should consult with the main stakeholders and actively involve civil society.

7.2.2 Regulatory authorities

2. Given the new realities brought about by technical convergence, Governments should support the unification of technical and content regulators into a single body. Parliaments should adopt legislation ensuring the independence of these regulators and sufficient capacity to cover the integrated sector. The councils of these bodies should be composed as much as possible of people with sufficient expertise and knowledge of the communications fields.

3. Representatives of civil society should be included in the membership of the regulatory bodies. However, experience in some countries shows that the mechanisms of delegation by civil society organisations need to meet the need for professional expertise and for commitment to the autonomy of the regulator.

4. The quantum increase in audiovisual output will present a huge challenge to the monitoring remit of the broadcast regulators. If they were to extend their analogue monitoring to the full range of digital outlets, these regulators would need extra resources on a scale that is simply unrealistic to expect. Moreover, if these resources were to be provided, they would be absorbed by round-the-clock scrutiny of largely blameless broadcasting. Accordingly, the old model of comprehensive monitoring should be replaced with a looser system that combines proactive expertise on the part of the regulator (acting as researcher as well as adjudicator), with external comments, complaints and recommendations from professional and civil society organisations.⁵¹ Government, parliament, the regulator, the media professionals and civil society groups in each country should initiate the process of transforming the monitoring practices, making them fit for purpose in the digital age.

7.2.3 Public service broadcasting

5. Parliaments, Governments, regulators and other interested parties should start a public debate about the future of PSB, with an emphasis on depoliticised governing structures, access to new platforms and independent public funding.

⁵¹ One example of such an organisation is the Voice of the Listener & Viewer (VLV), in the UK. The VLV is an independent NGO that “represents the citizen and consumer interests in broadcasting, and speaks for listeners and viewers on the full range of broadcasting issues”. For more information, see <http://www.vlv.org.uk> (accessed 10 September 2008).

6. With local broadcasters foundering under pressure from local owners and municipalities, broadcast regulators should adopt strategies aimed at fostering this sector, by supporting, for example, functioning non-profit and community media sectors. They should earmark licences and envisage sources of financing for these outlets.

7.2.4 Commercial broadcasting

7. Parliaments should ensure that digital laws contain provisions on ownership concentration among players in the digital chain, including broadcasters, telecoms companies, multiplex operators and other service providers.

ANNEX 1. Legislation cited in this report

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ANNEX 3. Glossary of acronyms

DTT (Digital Terrestrial Television): deployment of digital technology through aerial broadcasts to a conventional antenna.

DVB-H (Digital Video Broadcasting – Handheld): one of the three predominant mobile TV formats, allowing broadcast services transmission to mobile handsets. As of March 2008, it has become the EU's preferred technology for terrestrial mobile broadcasting.

IPTV (Internet Protocol Television): a system of delivering digital TV content using internet protocol over a network infrastructure. The content is received not via traditional broadcast and cable formats, but through technologies employed for computer networks. IPTV is usually packaged with internet services such as internet connection and VoIP (Voice over Internet Protocol). The package of internet, telephony and internet access is known as triple play. If mobile telephony services are included, it is called quadruple play.

UHF (Ultra High Frequency): a range of electromagnetic waves with frequencies between 300 MHz and 3 GHz. UHF is one of the most commonly used frequencies for the transmission of TV signals. Mobile phone companies also use UHF for their transmission. UHF is used broadly by public service agencies for two-way radio communication.

VoD (Video on Demand): a system of streaming content to view it in real time or downloading content for viewing it at any time. Telecom companies and cable TV operators offer VoD streaming or downloads of programmes to a Digital Video Recorder (DVR).

Television across Europe:
Follow-up Reports 2008

Albania

By Ilda Londo

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List of Abbreviations

EBU	European Broadcasting Union
KESH	Albanian Power Corporation, <i>Korporata Elektroenergjitike Shqiptare</i>
KKRT	National Council of Radio Television, <i>Këshilli Kombëtar i Radios dhe Televizionit</i>
KLSH	Supreme State Audit, <i>Kontrolli i Lartë i Shtetit</i>
OSCE	Organisation for Security and Co-operation in Europe
RRC-06	Geneva Regional Radio-communications Conference in 2006
RT	Radio Tirana
RTSH	Radio-Television of Albania, <i>Radio Televizioni Shqiptar</i>
TVSH	Albanian Television, <i>Televizioni Shqiptar</i>
WAZ	Westdeutsche Allgemeine Zeitung

A. Executive Summary

The electronic media form the most important sector in the Albanian media market. Despite their continuing professional development, electronic media are still subject to suspicions about the sources of their funding and their economic performance. They continue to be economically unstable and depend largely on revenue from their owners' other interests. This situation casts serious doubt over their editorial independence and the quality of the information they offer to the public. The Government has tried to solve the controversial issue of the allocation of State advertising, but it has not yet made a clear break with past practices. The Government decided to place State advertising only in the official bulletin to relieve the media from its dependence on the Government. But the law does not clearly define State advertising, leaving room for arbitrary patronage.

The Government has also initiated several controversial legal amendments concerning regulators and digital broadcasting. They claimed that these efforts were aimed at improving the independence of the media, but critics alleged that the real motive was to gain more control over the regulators and to silence independent media. The lack of public debate and consultation with stakeholders during the preparation of legal changes made suspicions even stronger.

Despite undergoing substantial reform, the National Council of Radio Television (KKRT, *Këshilli Kombëtar i Radio dhe Televizionit*) has failed to make progress in fulfilling its mission. Its decisions on granting broadcast licences and removing antennas have been contested. The granting of digital licences in the near future will be the ultimate test of the KKRT's authority and independence. Digital television has made significant progress since its emergence, in a legal vacuum, three years ago. Its popularity is on the rise.

Proper implementation of the law is especially needed for strengthening the role of the public service broadcaster, the Radio-Television of Albania (RTSH, *Radio Televizioni Shqiptar*), and enabling it to fulfil its mission. The role of the public service broadcaster has steadily faded, as private television stations have been continuously investing in their operations. The reform of RTSH has stagnated; accusations that it favours the Government have continued. The current management has finally drafted a strategy to transform the institution into an efficient public service broadcaster. However, funding is still a conundrum that must find a solution, especially as digitalisation looms.

An efficient self-regulation system has not yet taken root despite some attempts in that direction. Given the lack of employment contracts for journalists and the extremely unstable labour market, self-censorship rather than self-regulation is the norm among journalists. Moreover, the lack of reliable research, monitoring, surveys and other ways of collecting solid data on electronic media continues to prevent better analysis of the Albanian media market.

B. Recommendations

1. ORIGINAL RECOMMENDATIONS FROM THE 2005 REPORT¹

Many of the recommendations from the original report have been fulfilled, mostly in the area of legislation and distribution of State advertisements and funds. International organisations have continued their support in research, monitoring and assistance on legislation. Although the public service broadcaster has embarked on a serious reform, it is too early to assess how the recommendations on public service broadcasters are fulfilled. There was no progress made in making the ownership of broadcasters more transparent and in enforcing the Labour Code in the media sector.

1.1 Policy

<i>Legislation</i>	
<p>1. The Government should take steps to fill the gaps in media legislation, especially those relating to new broadcasting technologies and services, with reference to international instruments on digital broadcasting and competition.</p> <p>2. International and intergovernmental organisations should continue assistance to the Government and Parliament, and to the regulator – the National Council of Radio and Television (KKRT) – for the drafting of media legislation. They should urge consultation with Albanian media freedom NGOs, and associations of media professionals, as part of the drafting process.</p> <p>3. International and intergovernmental organisations should continue giving their assistance to law enforcement agencies on improving the implementation of media legislation.</p>	<p>These recommendations have been adopted in part. The Law on Radio and Television was amended to accommodate digitalisation and is now continuously revisited to keep it in line with EU legislation.</p> <p>International organisations were prompt in supporting the reform of the regulatory authorities and the public service broadcaster, and in advising on legislation. This assistance should continue. However, the government's consultation of local interest groups has been sporadic and half-hearted.</p>

¹ "Albania" in Open Society Institute, *Television across Europe: regulation, policy and independence*, Budapest, 2005 (hereafter OSI/Albania), pp. 247–250.

<i>Public debate</i>	
4. Local NGOs working on freedom of expression and access to information, as well as organisations dealing with civil rights more widely, should generate a public debate on important issues related to media development in an informed and impartial spirit, raising awareness of how the media affect citizens. Such an initiative should be strongly supported by international and European institutions, such as the European Union, the OSCE and the Council of Europe.	The media themselves have brought media-related issues to the heart of public debate. But there is still a need for richer public debate on important issues related to media development. Local NGOs are best placed to bring this about.
<i>Research</i>	
5. The Government should encourage the in-depth analysis of the media sector, with particular attention to audience research. To guarantee the independence of such research, the Government might function solely as (co-)financer of work conducted by academic institutions, local or foreign NGOs or other non-State establishments. 6. Civil society organisations should urge the Government to support such independent research in the media sector.	This recommendation has not been fulfilled. Under pressure, the Government consulted the main interest groups on amendments to media legislation. However, these consultations took place at the last minute, on an exceptional basis.
<i>Consultation</i>	
7. The Government should consult the media owners, media freedom NGOs, associations of media professionals, and the international community – especially the Council of Europe – when taking steps that affect the media, and take their responses into account.	This recommendation has not been fulfilled. Under pressure, the Government consulted the main interest groups on amendments to media legislation. However, these consultations took place at the last minute, on an exceptional basis.
<i>New technologies</i>	
8. The Government should prepare a long-term strategy for media development that would anticipate the evolution of new technologies, including digital broadcasting and the Internet. 9. The Government should, as a priority, propose to Parliament amendments to the Law on Radio and Television aimed at regulating digital broadcasting, in conformity with international and European standards.	The first recommendation has yet to be fulfilled. The KKRT is drafting a strategy for digitalisation. The second recommendation has been fulfilled. Parliament amended the Law on Radio and Television to accommodate provisions on digital broadcasting, in line with international standards.

1.2 The regulatory authorities (KKRT)

<i>Independence</i>	
10. The Government and Parliament should ensure the full implementation of existing legislation, in order to respect and reinforce the independence of the regulatory authority, the KKRT, in particular with respect to the nomination of KKRT members and the preparation of the KKRT's annual report.	The recommendation has been addressed. Although it stirred much controversy, the formula of nominating the KKRT's members was changed. Despite sustained reform over the past years, the Government and Parliament should still adopt changes in legislation to buttress the independence of the regulator.

1.3 Public and private broadcasters

<i>Media diversity</i>	
11. The Government and Parliament should enforce media transparency through the full implementation of media legislation, and by regular reviews of media ownership and funding.	There has not been much progress in shedding light on the ownership of broadcasters. The Government and Parliament should do more to achieve this. Reviews of media ownership and funding should be carried out by stronger, more efficient and independent enforcement agencies, such as the KKRT or the Tax Police.
<i>Journalists' rights</i>	
12. The Government should take specific steps to enforce the Labour Code in media organisations and regularly monitor its implementation. 13. Journalists' associations, with the assistance of other civil society actors, should demand the enforcement of the Labour Code in media companies, and eventually collective bargaining. 14. Civil society organisations should support individual journalists whose rights are violated by media owners, State authorities or other parties.	These recommendations have not been fulfilled. The Government has not taken steps to enforce implementation of the Labour Code. (These steps would include enhancing the capacity of law enforcement agencies such as the Supreme Inspectorate of Labour, and the Tax Police to regularly monitor the implementation of the Labour Code in all media outlets.) At the same time, civil society and journalists' associations have been slow in demanding the enforcement of the Code in media organisations.

<i>Funding</i>	
15. The Government should establish an independent body to be responsible for the allocation of all Government subsidies to media outlets, in accordance with the principles and procedures set forth in the relevant recommendations of the Council of Europe. This allocation process should be clear and transparent.	This recommendation has been fulfilled. The Government has set up the Agency of Public Procurements that publishes a weekly bulletin of official notifications, including state advertisements and notifications previously published in newspapers. However, the law is not entirely clear in defining State advertisements and therefore needs further clarification.
<i>State advertising</i>	
16. The Government should take immediate steps to ensure the unbiased and apolitical allocation of State advertising and to increase the transparency of the allocation of such advertising.	The Government has taken steps to ensure an objective distribution of State advertising distribution. However, the system of State advertising distribution still needs improvement.
<i>Independence</i>	
17. The Government should regularly investigate allegations of violations of media freedom and independence.	The Government has not shown much willingness to investigate violations of media freedom on a regular basis. Hence this recommendation remains pertinent.
<i>Research and monitoring</i>	
18. International and intergovernmental organisations should monitor and report publicly on violations of media independence. 19. International and intergovernmental organisations should assist with research and monitoring of particular areas of media activity, such as its independence, law enforcement, and media ethics.	International and intergovernmental organisations have continued to fulfil their monitoring role. Their monitoring and research work is essential and should continue.

1.4 The public broadcaster (RTSH)

<i>Reform of RTSH</i>	
<p>20. The Government should support the transformation of Radio-Television of Albania (RTSH) into a genuine public service broadcaster, by clarifying roles and responsibilities and guaranteeing the transparency of management.</p> <p>21. Journalists' associations and intergovernmental organisations should take appropriate steps of their own to support the transformation of RTSH.</p> <p>22. The Government and relevant NGOs should seek to engage all involved actors in a public debate on the future of RTSH. This should include RTSH journalists, past and present directors, the regulatory authority (KKRT), NGOs and the journalism community in general.</p> <p>23. Civil society organisations should bring concerns over RTSH to public attention and request solutions from the competent authorities. Regarding TVSH, these concerns include, but are not limited to, programme quality, transparency of administration, effectiveness of management, and independence from government and political factions.</p>	<p>The new management of RTSH seems to have embarked on serious reform. It is too soon to draw conclusions about its strategy, but it is safe to say that they will need financial and technical assistance and will have to put in place wise and efficient management of resources.</p> <p>Therefore, the recommendations from the initial report are still valid. The Government should support the reform of RTSH, and journalists' associations should organise public debates and offer their expertise to help this reform. Programme quality, transparency of administration, and management efficiency should continue to feature among the topics that civil society brings to wider attention.</p>
<i>Funding</i>	
<p>24. The Government should ascertain and publish the revenue levied through the licence fee. When this has been done, thought should be given to ways of improving the rate of payment of this fee.</p>	<p>This recommendation has not been fulfilled. The Government still has to make the use of licence fee income more transparent.</p>
<i>Programming</i>	
<p>25. The management and staff of TVSH should improve the quality of programming output and define a programme framework that would increase the public interest and appeal of the station.</p>	<p>Despite the recent changes at RTSH, the station's management and staff should improve programming.</p>

1.5 Civil society

<i>Codes of ethics</i>	
26. Journalists' associations should draft codes of ethics or amend the existing one, raise awareness of these codes, and promote compliance with them.	In September 2006, journalism associations approved a code of ethics for all media in the country. However, the code has not been "officially" adopted by any media outlet and there is no mechanism for implementing it. Journalists are free to decide whether they want to observe it or not. An efficient self-regulatory system and a safe environment for journalists are still distant goals.
<i>Media associations</i>	
27. Journalists' associations should significantly strengthen the capacities for public debate and awareness of media organisations and associations, particularly through improved cooperation and by promoting journalists' rights vis-à-vis media owners and the Government. 28. International and intergovernmental organisations should provide experience and assistance for strengthening media associations.	There has not been much progress in this respect. Journalists' associations should continue to improve their capacities. International and intergovernmental organisations, which have assisted this process to date, should continue their support.

2. NEW RECOMMENDATION BASED ON THE 2008 REPORT

2.1 Legislation

Digital television

1. The KKRT should draft a Strategy for Digital Switch-over and then start the digital licensing process.
2. The drafting of the Strategy should be approved after public debate with relevant stakeholders. It should take into account issues such as consumer protection, investments in digital platforms already done in the country, and media pluralism and competition.

C. Main Findings of the Follow-up Monitoring

1. GENERAL BROADCASTING ENVIRONMENT

1.1 Key developments in legislation and policy

Since the “TV Across Europe” reports were published in 2005, Albania’s experience has been quite eventful in terms of media legislation and policy, with heated debates on the future of the regulatory authorities, the transparency of media funding, and digital broadcasting. The composition of the regulatory authorities has been changed by law. Other legal amendments seek to reduce the economic dependence of electronic media on State advertising and hence potential abuse.

After lengthy and spirited debates among broadcast owners, members of parliament, regulators, RTSH and industry associations, Albania is primed to legalise its digital platform, as required by the Law on Digital Broadcasting.² Digital broadcasting, via satellite and terrestrial platforms, has developed rapidly over the past three years, reaching a significant penetration. After almost four years in operation, the digital TV platform DigitAlb boasted 120,000 subscribers in early 2006 in Albania and among Albanians abroad.³ Assessing the law’s impact on DigitAlb and its subscribers will be a further test for the regulatory authority. On the other hand, it remains to be seen whether the other broadcasters, especially TVSH, will be able to invest in digitalisation and compete with DigitAlb.

TVSH continues to fail in fulfilling its mission. The management appointed in late 2006 faces the formidable task of making the station a truly public service operator despite suffering a continuous decline in popularity while the commercial stations gained loyal viewers. A long overdue step in this regard was taken in August 2007 with the joint drafting of a development strategy for RTSH in the digital era by TVSH and the European Broadcasting Union (EBU), with the benefit of advice from the Council of Europe’s Media Division.

1.2 EU legal provisions

Albania has partly incorporated European media legislation and standards. In 1999, the country signed and ratified the Council of Europe’s Convention on Transfrontier Television and its Additional Protocol. Many provisions of the Law on Radio and

² Law no. 9742 of 28 May 2007 on Digital Broadcasting in the Republic of Albania (hereafter Law on Digital Broadcasting).

³ According to data from DigitAlb (available at <http://www.digitalb.tv/kompania/>, accessed 31 July 2007).

Television⁴ derive from this agreement and in a way also fulfil some requirements of the Television Without Frontiers (TVWF) Directive,⁵ such as provisions on sponsorship, advertising, the right to reply, and the protection of minors.

Albanian media legislation did not incorporate the TVWF Directive's requirements on teleshopping and broadcasting European works. The Law on Digital Broadcasting introduced the requirement that European works should account for 50 per cent of a station's programming, stipulating that this proportion could be achieved progressively. However, compliance with these standards has yet to be monitored, as this law is still very young. There was an idea of setting up a working group comprising three independent media experts who would review the Law on Radio and Television and propose changes to bring it in line with EU law. This never materialised. The Parliamentary Standing Commission on the Means of Public Information (hereafter, the Parliamentary Media Commission) does this work instead, but its pace is slow, due to Parliament's absorption by other matters – currently, judicial reform. However, there are efforts to reform media legislation. The regulators and experts in the Parliamentary Media Commission submitted their proposals for legal amendments, but it is not clear yet what the next steps will be.⁶

Although there has been no continual monitoring of how these provisions have been implemented, no problems have yet emerged.⁷ On the other hand, implementation of other provisions inspired by EU legislation affecting media has been sloppy. As in many other sectors in Albania, the media industry lacks transparency and the provisions guaranteeing transparency of ownership and funding remain difficult to implement. This is due to the overall lack of transparency in the market. A step forward was an amendment in July 2006 to the Law on Radio and Television, prohibiting media owners from participating in public tenders.⁸ However, again,

⁴ Law no. 8410 of 30 September 1998 on the Public and Private Radio and Television in the Republic of Albania, as amended by Law no. 8657 of 31 July 2000; Law no. 8794 of 10 May 2001; Law no. 9016 of 20 February 2003; Law no. 9124 of 29 July 2003, and Law no. 9677 of 13 January 2007 (hereafter, Law on Radio and Television).

⁵ Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, *Official Journal*, L 202, 30 July 1997, P. 0060 – 0070. (The directive was amended last year: Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, *Official Journal of the European Union*, 18 December 2007, L 332/27.)

⁶ Interview with Vjollca Meçe, advisor to the Speaker of the Parliament, Tirana, 17 January 2008.

⁷ Interview with Andrea Nathanaili, Director of Programming at the KKRT, Tirana, 6 July 2007.

⁸ Law on Radio and Television, Art. 20.

because of the general lack of transparency and low accountability on the part of both the media and the Government, this provision is easily circumvented.

1.3 Broadcasting market

TV stations keep growing in number and arguably in quality, but without systematic and credible audience research, the real market share of each station is not known. The Institute of Surveys and Opinions, which earlier attempted to measure audience ratings, launched a new venture in audience research in 2007. However, it is still too early to have clear results. For example, Top Channel, a station that did not have a nationwide licence until January 2008, is reckoned to enjoy an average audience share of 70 per cent.⁹ Although the station is indisputably popular, this figure is just a loose estimate by local experts and observers, with no official data behind it. The other most-watched TV stations are believed to be TV Klan, Vizion+, TV Koha, and the all-news channels News24 and Alsat. Although TVSH still has the largest coverage of territory, its “decreasing programming quality”¹⁰ has led to a loss of competitive edge.

2. REGULATION AND LICENSING OF THE TELEVISION SECTOR

2.1 Regulatory authorities and framework

Until 2006, the Law on Radio and Television stated that the KKRT was an independent body, consisting of a Chair, a deputy Chair and five other members, elected on the basis of experience and qualifications in social, judicial, economic, educational, and media fields. The President of the Republic proposed one candidate, while the other six were proposed by the Parliamentary Media Commission. Parliament then selected the members and the Chair by simple majority voting.¹¹

In February 2006, the Government proposed a legal amendment to cut the KKRT to five members, and to change the nomination formula. Claiming that the formula of balanced representation of parliamentary parties in the regulatory body had clearly not worked, the Government proposed a greater involvement of civil society, media associations, academia, and other similar organisations in the nomination process. The proposal sparked an intense debate, creating a climate of suspicion among stakeholders,

⁹ A. Stefani, “‘Të pavarurit’, kali i Trojës në media” (“The independent”, the Trojan horse in the media) *Panorama*, 16 February 2006, p. 17.

¹⁰ IREX, Media Sustainability Index 2006 – Albania, IREX, Washington D.C., 2007, p. 6, available on the IREX website at http://www.irex.org/programs/MSI_EUR/2006/albania.asp (accessed 1 August 2007) (hereafter IREX, *MSI 2006 – Albania*).

¹¹ OSI/Albania, chapter on regulatory authority, pp. 194–199.

most of whom believed that the Government wanted to bring the KKRT under control. While everybody agreed there was a strong need for reform, many voiced the concern that this proposal did not guarantee any improvement: “As a member of the Parliamentary Media Commission I believe that changes need to be made in this area, but sneaking in this proposal, especially from the Government, and particularly when we are talking about the fourth estate that is the media, leaves a bad taste.”¹²

In addition to concerns over the content of the draft amendments, many TV stations, journalists’ associations, civil society representatives and media experts objected to the lack of debate and consultation prior to the amendments’ submission to Parliament. As a result, the Parliamentary Media Commission invited the most important media owners and directors along with heads of journalism associations, lawyers, and civil society representatives to present their proposals.

The current law was approved by Parliament in May 2006, after heated debate. Vetoed by the President, the law was approved again in June 2006 and became statutory. The Government’s idea of cutting the KKRT’s membership to five was accepted, with the proviso that the following associations and groups may propose at least four candidates for each seat:¹³

- electronic media associations and groupings,
- print media associations,
- universities and associations of electric and electronic engineering,
- lawyers’ associations, faculties of law, and the National Chamber of Lawyers,
- parliamentary parties.

From these candidates, the Media Commission shortlists no more than two candidates for each seat, and proposes them to Parliament for the final vote.¹⁴ The amended law also states that candidates with doctoral degrees are preferred and that such a degree is mandatory for candidates nominated by universities and associations of electric and electronic engineering.¹⁵

The amended Law on Radio and Television also narrowed the eligibility criteria for the KKRT’s members. For example, members of parties or political associations, or persons

¹² N. Lesi, “A duhet të merremi me ligjin për mediat elektronike?” (Should we deal with the law on broadcasting?), *Koha Jonë*, 10 February 2007, p. 3. (Nikollë Lesi is an MP and former media owner.)

¹³ Law no. 9531 amending the Law on Radio and Television with the chapter “On Public and Commercial Radio and Television”, 11 May 2006, *Official Gazette*, no. 65, 2006, Art. 2, paragraph 1.

¹⁴ *Ibid.*, paragraph 2.

¹⁵ *Ibid.*, paragraphs 3 and 4.

who have served or run for the mayor's office and/or Parliament, or who have been members in the Council of Ministers or prefects over the last two governing terms are not eligible.¹⁶ This change was part of the general ethos of making the KKRT into a more professional body.

The debate that followed the election of the KKRT's members according to the new formula was even more heated. They were appointed on 29 July 2006 during the final session of Parliament before the summer break. Opposition MPs declined to vote. The appointment of the KKRT's members, along with that of the TVSH Steering Council members, came at a time when a crisis between the majority and the opposition politicians had reached its peak. The reason behind the clash was disagreement over the amendments to the legislation on broadcasting and electoral reform, which is ongoing in Albania. But in summer 2006, all these issues were especially controversial in view of the upcoming (February 2007) local elections. When the parties in Parliament reached agreement on 30 July 2006, it included a commitment to restore the number of the KKRT members to seven, with the two extra members appointed by opposition MPs from civil society candidates.¹⁷

However, instead of increasing, the KKRT's membership sank to four after the June 2007 resignation of its chairman Ledi Bianku. Until the vacancy was filled in September 2007, the KKRT only made decisions that did not require a quorum. This impeded its work.

In the meantime, amid a climate of suspicion and general criticism from opposition politicians and some TV stations that claimed the KKRT was still a politicised body, the regulator has been carrying on with internal reform. In December 2006, Parliament approved a revision of the administration scheme, which increased the KKRT's staff from 32 to 48,¹⁸ and restructured its departments with a view to improving its monitoring of both airwave piracy and territorial coverage by electronic media. It also proposed to establish a public relations unit to improve the regulator's transparency. The most significant reform involved increasing the programming unit from six to 15 employees, to improve the monitoring of electronic media content. As and when these changes are put in place, the unit is expected to be able to monitor news programmes on a daily basis, as well as advertising, ethical problems and other issues which the KKRT has not covered before.¹⁹

The plan also proposed changes to the KKRT's complaints council, an advisory body responsible for dealing with moral and ethical aspects of programming. Its decisions

¹⁶ *Ibid.*, Art. 4.

¹⁷ Agreement of 30 July 2006, cited in D. Ndrenika, "Arrihet marrëveshja PD-PS; plotësohen kërkesat e opozitës" (PD-PS agreement is reached; opposition's demands are satisfied), *Shekulli*, 31 August 2006, p. 3.

¹⁸ KKRT, Explanatory Report to Parliament, received from the KKRT.

¹⁹ *Ibid.*

lack, however, any legal binding force.²⁰ Under the reform plans, the body has been renamed the Council of Ethics. Comprising three members as before, who are three media experts appointed by the regulator, the Council of Ethics is responsible for raising public awareness of ethical norms and violations in programming: “This vision stems from the concept that institutions should not only follow public preferences regarding ethical aspects in the media; with professionalism and specialised judgment they should guide society to higher standards.”²¹

The Council of Ethics is thus expected to assume a more active role than just accepting complaints from the public. However, it is too early to assess the impact of these changes as the Council was constituted in June 2007 and has just started its activity. The reform plan is in its final stage of implementation.²²

2.2 Licensing system

The reform of the KKRT had no effect on the system of awarding broadcast licences. The only change pertains to the power to grant licences for digital broadcasting, a law which passed in June 2007 but has yet to be implemented.²³

As far as licensing is concerned, two of the KKRT’s decisions have been controversial in the past three years: one regarded the awarding of a broadcast licence to a local TV station; and the second was about the removal of broadcasting antennas of some TV stations.

In mid April 2007, the KKRT announced an inspection of the frequency spectrum across the country. Electronic media outlets operating without licences were told to cease broadcasting.²⁴ According to the then-KKRT Chair, Ledi Bianku, this spectrum clean-up was meant to enable the implementation of the Frequency Plan, so strengthening competition among existing operators before the introduction of digital broadcasting.²⁵ On 9 May 2007, the KKRT decided to remove unauthorised broadcasting antennas in several cities. These antennas belonged to Top Channel TV, Vizion Plus TV, Telesport and TV Koha, which accused the regulator of playing

²⁰ OSI/Albania, chapter on regulatory authority, pp. 194–199.

²¹ KKRT, *2006 Raport Vjetor në Kuvendin e Shqipërisë* (2006 Annual Report to Parliament), available at <http://www.kkrt.gov.al/images/stories/kkrt/files/Raporti-Perfundimtar-2006.zip> (accessed 15 June 2007) (hereafter KKRT, 2006 Annual Report).

²² Interview with Elona Kana, Director of the Department of Jurisdiction and Licences at the KKRT, Tirana, 18 January 2008.

²³ OSI/Albania, chapter on regulatory authority, pp. 194–199.

²⁴ KKRT, Press Release “Inspection of All Frequency Spectrum in Albania,” available at <http://www.kkrt.gov.al/content/view/26/1/> (accessed 15 June 2007).

²⁵ The KKRT’s 2002 study on the frequency plan for analogue television was updated in 2007 in line with the redistribution of frequencies as decided by the Regional Radiocommunications Conference in 2006 (RRC-06).

politics, and shutting them down because of their critical stance towards the Government.

The KKRT argued that the inspection had been announced seven months in advance, in accordance with the legal licensing criteria.²⁶ Bianku reiterated that the regulator was obliged to overhaul the national frequency plan in order to make room for a new nationwide broadcaster and the launch of digital licensing.²⁷ Indeed, one month after this decision, the KKRT announced a tender for a fourth nationwide TV station.²⁸ Top Channel and Vizion Plus applied for the new national licence, and on 21 January 2008, by a unanimous decision, Top Channel became the fourth nationwide commercial TV station.

In parallel with this tender, the KKRT resumed its campaign to remove illegal antennas in October 2007 in Elbasan, central Albania, and Korca, in South East Albania. In Gjirokastra, the KKRT also confiscated the antennas and equipment of several Greek TV channels that were broadcasting without licences in the southern part of the country.²⁹

The TV antenna saga was preceded by another controversy, involving the award of a broadcast licence to a Tirana-based all-news TV station. The KKRT, with its old membership, froze the licensing process for Tirana and the town of Durrës in Central Albania in May 2003.³⁰ On 17 July 2006, the KKRT decided to freeze the licensing process across the whole country.³¹ Both decisions were prompted by the chaos marring the frequency spectrum, especially around the capital, and by the lack of a national frequency plan.³² The KKRT now says that neither of these decisions had any legal basis;³³ on the contrary, they were “absurd” and “discriminatory”, as the former KKRT team had already granted licences in the areas where they then prohibited

²⁶ KKRT Press release, “KKRT will complete the Spectrum Inspection Plan,” 10 May 2007, available at <http://www.kkrt.gov.al/content/view/33/> (accessed 10 June 2007); see also: Unpublished interview with Ledi Bianku, KKRT chairman, available at <http://www.kkrt.gov.al/content/view/33/1/> (accessed on 10 June 2007). (It was an interview that an Albanian newspaper carried with the Chair of the KKRT, but which then was never published. The KKRT published it on its own website).

²⁷ *Ibid.*

²⁸ KKRT Press Release, available at <http://www.kkrt.gov.al/content/view/31/1/> (accessed 10 June 2007).

²⁹ KKRT Press Releases, October 2007, available at <http://www.kkrt.gov.al/content/archivecategory/2007/10/1/> (accessed 24 January 2008).

³⁰ KKRT Decision no. 143, cited in KKRT Annual Report 2006, *op. cit.*, p.6.

³¹ KKRT Decision no. 501, cited in KKRT Annual Report 2006, *op. cit.*, p.6.

³² Interview with the ex-Chair of the KKRT, Sefedin Cela, “Të gjitha gabimet e Biankus dhe Dodës për licensën e re”, (All the mistakes of Bianku and Doda on the new licence), *Gazeta Shqiptare*, 25 December 2006, p. 7.

³³ KKRT Annual Report 2006, *op. cit.*, p. 7.

licensing of TV stations.³⁴ Therefore, the KKRT ended the licensing freeze and gave a green light for broadcasting to 21 new operators, seven local TV stations, 12 cable TV providers and two local radios, in 2006 and early 2007.³⁵

The most controversial of these decisions concerned Ora TV, an all-news channel. Several parties, including other TV stations, journalists and opposition politicians, said that Ora TV should not have been given a licence. The most critical was the most-watched news channel, News24 TV, which claimed that the KKRT had broken the law by licensing a company that lacked the necessary capital required by law to start a station. For Ora sh.p.k., the company behind Ora TV, admitted to possessing capital of ALL 100,000 (€816), whereas the minimum required by the regulator was a guarantee of ALL 25 million (€204,000).³⁶

Moreover, News24 TV alleged that Ora TV was caught in a conflict of interests as Ilda Prifti, the owner of Ora sh.p.k.,³⁷ is the cousin of Alba Gina, who owns 40 per cent of the company that owns the nationwide TV Klan, according to press reports.³⁸ The law prohibits the owners of one nationwide broadcaster from directly or indirectly owning shares in another.³⁹ In this case, there is no strict breach of the law, since the owners are different individuals. However, critics pointed to the fact that Prifti, who was 18 when Ora TV received the licence, lacks the professional experience and capital to start a TV channel, being merely a pawn for the real owners.⁴⁰ Following News24 TV's complaints, the General Prosecutor's Office started an investigation into this matter in December 2006. Insisting that its decision was in full accordance with the law, the KKRT claimed that it had even consulted the Competition Authority (*Autoriteti i Konkurrencës*) and the Office of the Commercial Register.⁴¹

Under the broadcasting law, the KKRT is responsible for granting licences for digital broadcasting. The law distinguishes between three sorts of licences: for service providers, network operators and content providers.

The licences for terrestrial digital networks are divided as follows:

³⁴ *Ibid.*, p.8.

³⁵ *Ibid.*, p.15.

³⁶ *Ibid.*

³⁷ Information obtained by the author from the KKRT, Department of Jurisdiction and Licences, 13 July 2007.

³⁸ *Ibid.*

³⁹ OSI/Albania, section on commercial broadcasters, p. 226.

⁴⁰ Gazmend Janku, "Prokuroria nis hetimin për skandalin e licensës në KKRT (The Prosecutor's office starts investigating the scandal of KKRT licensing), *Gazeta Shqiptare*, 24 December 2006, p. 10.

⁴¹ KKRT Annual Report 2006, p. 18.

- *nationwide* (valid for ten years) when they cover not less than 80 per cent of the country,
- *regional* (valid for eight years) when they reach up to four geographically adjacent administrative units,
- *local* (valid for eight years) when they cover only one administrative unit.⁴²

The KKRT has to allocate the licences in full agreement with the Plan of Frequencies adopted by the RRC-06. If a digital operator plans to build a network using a frequency that is occupied by an analogue operator, then the KKRT has to grant a different frequency to the analogue operator and cover any expenses incurred by the transfer. If the regulator cannot meet such expenses, the digital operator has to share the costs.⁴³

The law obliges analogue operators to simulcast until the percentage of households receiving analogue broadcasting sinks below 10 per cent of the total area where they air. On the other hand, RTSH has the right to use two of the seven nationwide frequencies assigned by the RRC-06 to Albania for digital use.

The KKRT is also responsible for licensing content providers.⁴⁴ Licences can be granted to broadcasters who broadcast either one TV or radio programme or a “bouquet” of programmes. Each programme service also has to be licensed by the KKRT, which defines the criteria and conditions for the programmes as well as the rights and obligations of the licensee. In this framework, the existing analogue broadcasters can be considered already licensed as content providers until the analogue signal is switched off.

The law also imposes some obligations on digital network operators. They must offer at least 50 per cent of their services free-to-air, while the public service broadcaster may not charge for any of its programmes.

Although the KKRT has not yet started to grant digital licences, it has defined the criteria for granting licences to network operators.⁴⁵ They require a minimum capital of ALL 1 billion (Lek), or €8.17 million, for a nationwide licence, ALL 400 million (€3.27 million) for a regional licence, and ALL 100 million (€817,000) for a local licence. In addition, the digital broadcasters should comply with several other requirements, including fairness and editorial independence in their news and information services.

⁴² Law on Digital Broadcasting, Art. 3.

⁴³ *Ibid.*, Art. 3.

⁴⁴ *Ibid.*, Art.5.

⁴⁵ KKRT Criteria for digital licensing.

At first sight, the licensing criteria seem fair and public-oriented, especially with regard to the emphasis on choosing non-proprietary standards, transparency of costs and broad choice on content. The regulator is vested with power to scrutinise the licensing criteria and choose the licensees. Normally, this would call for an independent, strong, and professional authority. Unfortunately, despite the progress it has made, the KKRT has yet to show that it fully merits these epithets.

Although the digital licensing process has yet to start, digital television arrived in Albania when DigitAlb started broadcasting on 15 July 2004, despite strong opposition from both the regulatory authority and other TV stations. DigitAlb has aired for almost four years now, boasting an increasingly high number of subscribers: 120,000 by early 2006, according to the latest figures available.⁴⁶ The company has said that the numbers of subscribers has increased since then. DigitAlb covered Western Albania, from Shkodra in the north to Vlora in the south until 2006.⁴⁷ Presently, the company claims that it covers the entire country.⁴⁸ Under the digital law, however, its operations could become problematic, for the company's footprint would require four nationwide licences while the law states that no operator can own more than one nationwide licence. DigitAlb offers a terrestrial bouquet of 38 thematic and generalist TV channels, and two radio stations. To be in line with the law, the station would have to drastically cut the number of channels offered. This will be even more complicated as DigitAlb already has a significant number of clients and only a few companies seem interested in entering this new and rather costly sector.

In fact, the debates preceding the adoption of the law focused on its impact on the existing market, where DigitAlb has become a successful player. DigitAlb's representatives insisted that they asked for nothing more than legalisation of their activity, without having to start from scratch.⁴⁹ The Government submitted the law to Parliament in February 2007, at a time when Parliament had already adopted – in cooperation with the Council of Europe – an action plan to review the media legislation and draft a law on digital broadcasting by the end of the year. Media owners and directors protested that they were not consulted on such an important law. Moreover, after several hearings with the stakeholders and receiving comments and suggestions from the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, and European Commission, the ruling majority passed the law without the consent of the minority, which refused to vote. The debates on the amendments to the law rarely focused on their purpose and effects, which raises questions about how efficiently this law will be implemented.

⁴⁶ DigitAlb website, available at <http://www.digitalb.tv/kompania/> (accessed 12 March 2008).

⁴⁷ Interview with Altin Petre, IT Manager with DigitAlb, Tirana, 16 May 2006.

⁴⁸ DigitAlb website, <http://www.digitalb.al/kompania.php> (accessed 17 March 2008).

⁴⁹ Minutes of Meeting of Parliamentary Media Commission, 20 April 2007, available at <http://www.parlament.al/dokumenti.asp?id=2351&kujam=Komisioni> (accessed 18 October 2007).

The law does not specify an analogue switch-off date, although it obliges broadcasters to make their programme available both in analogue and digital signals until their digital signal reaches more than 90 per cent of the licensed area. This provision might prompt the service providers and network operators to speed up the digitalisation process, but on the other hand, broadcasters will incur higher costs during the simulcast period. Moreover, it will be difficult to speed up the digitalisation process without subsidies for set-top boxes.

Since approving the law, the KKRT has been consulting with DigitAlb on the licensing criteria. The KKRT has received assistance from the OSCE in drafting a Strategy for Digital Switch-over. The digital licensing process is frozen until the Strategy has been approved. The Strategy has yet to be completed and published. It will have to take into account the role of DigitAlb.

3. REGULATION AND MANAGEMENT OF PUBLIC SERVICE TELEVISION BROADCASTING (PSB)

3.1 PSB legislation and policy

The 2006 amendments to the Law on Radio and Television, which regulates RTSH, affected the regulation of the public service broadcaster. However, the main provisions on the station's public mission and content have remained the same.

The new legislation on digital broadcasting preserves a special role for RTSH. Two out of seven nationwide frequencies assigned to Albania until 2015 are reserved for RTSH. The KKRT has recommended RTSH to launch a second channel directly on digital broadcasting.⁵⁰ In fact, in July 2007, TVSH prepared a plan of reform in co-operation with the European Broadcasting Union (EBU), which focuses on the transition to digitalisation. It is too soon to predict whether this strategy will be feasible, let alone successful. It will certainly need substantial financial support, as well as rigorous and energetic implementation by TVSH.

3.2 PSB governance structure

The Steering Council is still the highest body in RTSH. Until July 2006, it consisted of 15 members, appointed by Parliament for a period of five years, with the possibility of re-election after a break of three years. Members had to be elected from among well-known personalities in culture, art, cinema, journalism, law, economics, media, public relations, international relations, the universities and the Academy of Sciences. Under this formula, the members were proposed in an equal number by the ruling majority, political opposition and civil society. The then-opposition considered that this formula

⁵⁰ KKRT Annual Report 2006, p. 21.

hurt the independence of the institution, arguing that in fact the civil society representatives supported the parliamentary majority. Whether this was actually the case, would be very difficult to assess. Supporters of this formula argued that, on the contrary, this was the only way to ensure the essential civil society element in the membership of the public institution.

The current ruling majority presented an amendment to the law in February 2006 that aimed to change the formula and composition of both the KKRT and RTSH's Steering Council so that the governing bodies of RTSH could resist politicisation. The former Chair of the Steering Council, Kico Blushi, explained: "It is not we who decide, but they, the party heads, who want the directors and members of the council to act as puppets without dignity of their own, who are easily and remotely controlled via mobile phones."⁵¹ After extensive and heated debate, the amendments were approved in July 2006 despite opposition protests.

Under the amended law, the Steering Council membership is slashed from 15 to seven. The logic and procedure of nomination and appointment are similar to those in place for the KKRT. The following associations and groups can propose at least four candidates for each Steering Council member:⁵²

- electronic and print media associations,
- University of Tirana,
- associations of electric and electronic engineering,
- lawyers' associations, legal academics, and the National Chamber of Lawyers,
- Parliamentary groups,
- NGOs dealing with human and children's rights,
- advisory boards of the National Centre of Cinematography and the League of Writers.

The Parliamentary Media Commission has the task of shortlisting up to two candidates for each seat.⁵³ Candidates with doctoral degrees are preferred. Such degrees are mandatory for candidates proposed by the university and the associations of electric and electronic engineering.⁵⁴ In order to guarantee continuity, the Chair and three

⁵¹ Kico Blushi, "Televizioni që ka mbetur peng i partive" (The television that has remained hostage to the parties), *Standard*, 17 March 2006, p. 23.

⁵² Law n. 9531, 11 May 2006, *Official Gazette*, 65, 2006, Art. 2, paragraph 1.

⁵³ *Ibid.*, paragraph 2.

⁵⁴ *Ibid.*, paragraphs 3 & 4.

members are elected for a five-year period while the other three are elected for a three-and-a-half-year term.⁵⁵

Under the old law, MPs, ministers, senior government officials, leading members of political parties, RTSH employees or employees and owners of private media were barred from membership in the Steering Council. Under the new law, more restrictions were added. Barred from membership are now also people who own, or are related to owners of shares in companies operating in audiovisual broadcasting, advertising, production, the press, telecommunications, and members and/or employees of the governance structure of these structures. Persons who have been removed from civil service for disciplinary reasons and current RTSH employees or former RTSH employees in the last three years are also ineligible.

The opposition and some other observers argued that the new composition of the RTSH Steering Council offers no guarantees of editorial independence: “The so-called independent representatives have until today been ‘the Trojan horse’ of the politics in these institutions. In order to avoid the risk that ‘the independents’ would serve power or political parties instead of the public, it is necessary for the [representation of the] independents to be [politically] balanced as well.”⁵⁶

The Steering Council was elected by the ruling majority in July 2006, according to the new formula. However, because the opposition refused to co-operate in the reform of the electoral procedure preceding the 2007 local and presidential elections, the ruling coalition agreed to change the Council’s composition once again. According to an August 2006 agreement between the governing and opposition MPs, the composition of the Steering Council would increase from seven to 11, with the four additional members to be nominated from civil society by the opposition members of the Parliamentary Media Commission.⁵⁷ However, the Council functioned with only seven members until September 2007 as Parliament failed to elect the additional members of both the KKRT and the Steering Council due to continual presidential crises and sustained work on the Law on Digital Broadcasting. Once again, political bickering and the tendency to take sides rather than unite for the common good have hindered the normal and independent functioning of the station’s regulatory body.

In its 2006 Annual Report, the Steering Council highlighted the difficulties facing it and commended the public broadcaster’s progress in terms of editorial independence and programming structure. In addition, while calling for greater government assistance to RTSH, Parliament pledged to draft and approve the full plan for reform

⁵⁵ *Ibid.*, Art. 9.

⁵⁶ A. Stefani, “‘Të pavarurit’, kali i Trojës në media,” (“The independent”, the Trojan horse in the media), in *Panorama*, 16 February 2006, p. 17.

⁵⁷ Agreement of July 30 2006 cited in Denion Ndrenika, “Arrihet marreveshja PD–PS; plotësohen kërkesat e opozitës” (PD–PS agreement is reached; opposition’s demands are satisfied), *Shekulli*, 31 August 2006, p. 3.

of RTSH by the end of 2007. In August 2007, RTSH put together a development strategy for the period 2008 to 2010 and submitted it to the Government. Busy with other laws, Parliament has thus far failed to discuss this strategy.

The General Director continues to wield substantial authority, reporting to the Steering Council but not obliged to execute its orders.⁵⁸ The Steering Council is in charge of appointing and has the right to dismiss the General Director. The Council that was appointed in 2006 sacked the then-General Director, Artur Zheji, on grounds of mismanagement and lack of reform, which, they say, was still prone to political dependence. In a public letter, Mero Baze, a member of the Steering Council, said that, “with the full awareness of its directors, RTSH has avoided public debate for years and has turned into an almost banal station, which served only the limited interests of its directors and their political relations.”⁵⁹

Zheji rejected all the criticism and said that his dismissal was against democratic principles. “It is impossible to start the reform of RTSH by violating one of the principles of media democracy, which is the mandate of the General Director.” He added that his removal was a hasty decision, based more on political affiliations than pragmatic reasons.⁶⁰ The current General Director, Petrit Beci, was elected on 10 November 2006. Beci previously served as a Deputy Director of the public broadcaster and has broad experience as a manager of one of the nationwide commercial televisions.

The third layer of power in the public broadcaster is the Management Council, which serves as a consultative organ to the General Director, advising the Director on a number of important financial and property-related issues. Without any role in programming, the Management Council’s consent is mandatory in a number of decisions such as property transactions, employment contracts and other negotiations and agreements with the staff and the unions.

The governing structure is intended to guarantee RTSH’s balanced and impartial work as well as its legitimacy as a public institution. Unfortunately, this has not been achieved. In fact, many observers, including members of the RTSH governing structures, complain that the way the system is set up is the main source of the problem. Members of the Steering Council say that their powers in relation to the General Director are too limited. Some members say that the main decisions are made by the General Director, while their role in the decision-making process is not significant. For instance, the former Chair of the Steering Council, Kiço Blushi, claimed that “for two years the [Steering] Council did not approve adequate

⁵⁸ OSI/Albania, pp. 214–216.

⁵⁹ Mero Baze, “Përse ndryshimi në RTSH duhet të nisë nga Drejtori i Pergjithshëm?” (Why the change in RTSH should start from General Director?), *Shqip*, 26 October 2006, p. 11.

⁶⁰ Artur Zheji, “Stili vrastar i një shkarkimi” (The murderous style of a dismissal), *Shqip*, 28 October 2006, p. 7.

programming structures due to the political submission of the General Director who is appointed by us, but not through our own choice”.⁶¹

3.3 PSB funding

The annual licence fee stands at ALL 500 (€4.1) per household. It is supposed to constitute one of the main sources of income for the public service broadcaster. Until 2006, the RTSH budget did not detail the total sum collected from the licence fee. The station’s 2006 report indicated a 362 per cent increase in licence fee revenue in 2006, from the planned ALL 19 million (€155,000) to ALL 68.7 million (€563,000).⁶² Despite this spectacular growth, calculations reveal that the revenues represent the licence fee as paid by approximately 8,600 TV households, which is significantly low in a country of three million with more than 500,000 TV households.⁶³ Hence, more efficient collection of the licence fee is desperately needed as this could be central to TVSH’s independence from the State budget.

The licence fee is collected in January, with the energy bill. Until 2006, the Electric Energy Corporation (KESH) remitted the licence fee money to the State budget and only then did Ministry of Finance channel the funds to RTSH, without revealing how much had been received from the energy utility. In 2006, RTSH signed an agreement with Albanian Power Corporation (KESH, *Korporata Elektroenergjitike Shqiptare*) and the Directorate of Taxes, securing direct payment of the licence fee revenues to RTSH. However, due to its recent economic difficulties, KESH is not expected to improve its collection of the licence fee in the near future.⁶⁴

The station’s self-generated revenue has also increased over recent years, reaching 65 per cent of RTSH’s total budget in 2006.⁶⁵ However, RTSH is still slow at pulling in healthy advertising cash. The station managed to collect only 44 per cent of its planned income from advertising in 2006. This was probably due to competition from more powerful commercial stations. In addition, the financing from the State budget was also down. In 2006, TVSH received ALL 300 million (€2.46 million) from the State budget, which was about half the sum it had received in previous years.⁶⁶ The financing from the State budget started to increase modestly again. In 2007, RTSH’s

⁶¹ Kiço Blushi, “Televizioni që ka mbetur peng i partive” (The television that has remained hostage to the parties), *Standard*, 17 March 2006, p. 23.

⁶² RTSH, *Raporti Vjetor për Veprimtarinë e RTSH 2006*, (Annual Report on the Activity of RTSH), RTSH Steering Council, 2007, p. 15. (hereafter RTSH Annual Report 2006).

⁶³ Source: Instat and EBU, cited in OSI/Albania, p. 134.

⁶⁴ Interview with Diana Kalaja, Deputy General Director of RTSH, Tirana, 21 January 2008.

⁶⁵ RTSH Annual Report 2006, p. 15.

⁶⁶ OSI/ Albania, pp. 208–212.

subsidy from the State budget was ALL 312 million (€2.52 million).⁶⁷ In 2008, the State allocated ALL 438 million (€3.65 million) to RTSH.⁶⁸

An important source of revenue is the rental of broadcasting antennas over which the station has a legal monopoly. However, in the past the collection of these fees was problematic. The accumulated debt of those using these antennas reached ALL 194.1 million (€1.59 million) by the end of 2006.⁶⁹ Although the law allows RTSH to cut off the signal of the antennas for those entities that did not pay their fees after due warning, the public broadcaster has never done this because it would entail a series of lengthy legal actions.⁷⁰ Therefore, debts have accrued, creating a series of precedents whereby other operators use RTSH's services for free. RTSH has now initiated legal action against the main debtors.⁷¹

3.4 Editorial standards

Like the other media, RTSH has no internal code of ethics and no body to supervise compliance with standards. In September 2006, journalism associations approved a code of ethics for all media outlets in Albania. The process was launched by a Tirana-based media NGO, the Albanian Media Institute, and comprised debates with journalists, editors, media owners, managers and others.⁷² However, the code has not been "officially" adopted by any media and there is no mechanism for its implementation. Its observance is thus left to the will of journalists. (*See also section 4.4*)

TVSH journalists do not enjoy any greater protection in their work than their colleagues in commercial television. The lack of working contracts, coupled with the relatively low wages, do not encourage them to pursue editorial independence or produce quality programmes. The station has had in place special working contracts with arbitrary payment methods. Former General Director Artur Zheji claimed that these contracts were introduced to motivate journalists and improve professionalism as the station was paying journalists according to the amount and quality of their work. But the Supreme State Audit (KLSH, *Kontrolli i Lartë i Shtetit*) concluded that these contracts were not legal, and asked RTSH to correct the situation before the next

⁶⁷ Law no. 9645, "On State budget 2007," of 27 November, 2006, available at http://www.qpz.gov.al/botime/fletore_zyrtare/2006/PDF-2006/135-2006.pdf (accessed 15 July 2007).

⁶⁸ Law no. 9836, "On State Budget 2008," of 26 November, 2007, available at <http://www.minfin.gov.al/downloads/l-9836.doc> (accessed 25 January 2008).

⁶⁹ RTSH Annual Report 2006, p.16.

⁷⁰ Supreme State Audit Bulletin of First Quarter of 2007, available at http://www.klsh.org.al/doc/20070507132319_v._departamenti_i_kontrollit_te_institucioneve_fi_nanciare,_ndermarrjeve_dhe_shoqerive_publike_nr.1-2007.pdf (accessed 10 July 2007).

⁷¹ RTSH Annual Report 2006, p. 16.

⁷² The author of this report works with the Albanian Media Institute.

audit.⁷³ The RTSH trade unions have repeatedly alleged that these contracts reflected the General Director's own preferences rather than professional motivation.⁷⁴

Unlike some commercial TV stations that seemed to have gained a greater degree of political independence, TVSH still faces political interference. As former Steering Council Chair, Kiço Blushi, put it:

Instead of taking their hands off this institution and assisting its independence as guaranteed by law, through their statements, labelling, pressure, and orders that start from their mobile phones, both political parties and their leaders have forced the public screen to change from blue to pink and vice versa, in accordance with the taste of the heads of two main parties, who measure RTSH's 'quality' and independence by the length of their appearances on this station.⁷⁵

Political interference is especially visible after changes of Government. After the 2005 elections, the coalition of right-wing parties led by the Democratic Party that grabbed power after eight years in opposition, changed the Steering Council, management and some of TVSH's staff. More than 80 TVSH employees were fired, including 10 journalists known to have leftist preferences. Instead, the station hired people who were known not so much for their professional standards as for their closeness to the ruling party and Government.⁷⁶

4. COMMERCIAL BROADCASTING

4.1 Regulation and management

The commercial broadcasting sector in Albania is large, comprising two nationwide TV stations, 68 local TV stations, two satellite and 44 cable television operators. Nonetheless, the lack of professional research and information from the broadcasters themselves makes it difficult to get a detailed picture of the sector. The sources of financing such a small, but overcrowded market remain a mystery, which raises serious

⁷³ Supreme State Audit Bulletin of First Quarter of 2007, available at http://www.klsh.org.al/doc/20070507132319_v._departamenti_i_kontrollit_te_institucioneve_financiare_ndermarrjeve_dhe_shoqerive_publike_nr.1-2007.pdf (accessed 10 July 2007).

⁷⁴ Letter of RTSH employees, "RTSH ka nevojë për ndryshime urgjente" (RTSH needs urgent changes), *Tema*, 17 February 2006, p. 11.

⁷⁵ Kico Blushi, "Televizioni që ka mbetur peng i partive" (The television that has remained hostage to the parties), *Standard*, 17 March 2006, p. 23. (Note: In Albanian political life, pink or red symbolises the Socialist Party or the leftists in general while blue is related with the Democratic Party, and the right-wing forces in general.)

⁷⁶ IREX, "Albania" in *Media Sustainability Index 2006*, p. 5, available at http://www.irex.org/programs/MSI_EUR/2005/MSI05-Albania.pdf (accessed 20 June 2007).

questions about the link between these stations' sources of capital on one hand, and their content and editorial independence on the other.

4.2 Ownership and cross-ownership

Although foreign ownership is not restricted, the presence of foreign investors has decreased. The media market continues to be unattractive to outside investors because it operates in a small economy, with poor or non-existent infrastructure, and generous space for unfair competition. Julien Roche, a French businessman living in Albania, sold his 33 per cent stake in the commercial TV station TV Klan to Albanian parties in 2005.⁷⁷ In January 2008, the German media group Westdeutsche Allgemeine Zeitung (WAZ) expressed interest in investing in Albanian media, but at the moment they are only studying the market.⁷⁸

Only the Law on Digital Broadcasting contains provisions on limiting concentration of ownership with the aim of achieving media pluralism.⁷⁹ An entity cannot own more than one licence for a terrestrial digital network. The law also prohibits entities with economic interests or in a decision-making position in a company owning a licence for digital terrestrial broadcasting from having economic interests or being in a decision-making position in another holder of a digital terrestrial broadcasting licence. However, a network operator may obtain a licence for broadcasting a TV programme and vice versa. No operator may take more than 30 per cent of national TV advertising revenue. In general, the legal provisions on ownership from the broadcasting law retain their validity for digital broadcasters as well.

4.3 The advertising market

Lack of transparency of ownership and of media funding remain unresolved and controversial problems. Sources of media funding remain unknown due to lack of research in this area and broadcasters' refusal to provide such data. The only official source for this market continues to be the annual budget declarations that operators submit to the KKRT. However, only a small number of broadcasters do that. In 2006, only 39 out of more than 100 broadcasters submitted their annual balance. Outside Tirana, only 30 per cent of operators submitted their balance sheets. Two nationwide commercial TV stations, TV Klan and TV Arberia, also failed to do so.⁸⁰

⁷⁷ KKRT, Department of Jurisdiction and Licences, 13 July 2007.

⁷⁸ Aida Cama, "Koncerni gjerman i mediave, WAZ, do të hyjë në tregun shqiptar," (WAZ, German media consortium, will enter Albanian market), in *Tema*, 16 January 2008, p. 2.

⁷⁹ *Ibid.*, Art. 13.

⁸⁰ KKRT Annual Report 2006, p. 62.

In general, TV operators continue to incur losses. Few of them report any profits. For example, after a loss of ALL 33 million (€270,000) in 2003, Top Channel TV had a profit of ALL 4.5 million (€37,000) and ALL 28 million (€230,000) in 2004 and 2005, respectively.⁸¹ Similarly, after two years in the red, TV Vizion+ had a profit of ALL 7 million (€57,000) in 2005.⁸² However, the KKRT stated that an analysis of the financial statements over the past three years revealed significant inconsistencies, which made the regulator suspect some stations of faking their figures or reports.⁸³

The question of the transparency of the capital behind the media became even more controversial when Prime Minister Sali Berisha declared on 28 March 2007 that media in Albania were linked to mafia groups, which use the media as a tool to demonise Government members and actions, especially in the battle against corruption.⁸⁴ Following this declaration, media editors and owners demanded specific facts and names from Berisha and asked him to provide the prosecuting authorities with the necessary information to start lawsuits.

The Government reacted by excluding media owners from participating in public tenders. The KKRT has signalled in recent years that half the revenues pulled in by the media operators came from “other sources”, meaning the numerous other businesses run by most of the media owners, including construction, which is the most lucrative business in Albania today, or import-export, advertising or Internet services.⁸⁵ The current Government therefore proposed to prohibit persons or companies owning shares in both a media company and another company from entering any public tender. According to the current law, shareholders in a radio or television station cannot take part directly or indirectly in public tenders or privatisation of State property.⁸⁶

The Government also decided in 2006 to stop allocating Government advertising and notices to the media and publish them instead in the Bulletin of Official Notices.⁸⁷ The allocation of State advertising has never been transparent. On the contrary, without detailed legal provisions on the allocation of State advertising, the Government traded advertising against favourable coverage.⁸⁸ There are no exact data on the overall

⁸¹ *Ibid.*, p. 63.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ Albanian Media Institute Newsletter, available at <http://www.institutemedia.org/pages/news-2007.html#57> (accessed 17 June 2007).

⁸⁵ OSI/Albania, pp. 225–228.

⁸⁶ Law on broadcasting, Art 7.

⁸⁷ Decision on Publication of Official Notices, 29 March 2006, available at <http://www.keshilliministrave.al/shqip/qeveria/vendimet/buletini%20i%20njoftimeve.asp> (accessed 29 July 2007) (hereafter Council of Ministers Decision on Bulletin).

⁸⁸ OSI/Albania, pp. 225–228.

spending of State companies or bodies on advertising. The only public source for such information was an experimental study carried out by the regulator. It revealed that the State-owned energy company KESH spent US\$560,000 on advertising in 2004, which was more than three times the sum spent three years before. The same study also showed that Albtelekom, the State-owned fixed telephony utility, spent €320,000 on advertising in 2004.⁸⁹ These were the only important advertisers that provided information on their expenditure.

The Government's decision to channel State advertising to the official bulletin was an important step towards reducing media dependence on the Government. "This is an important and positive act, even only in its moral aspect, although there are contradictions and the act does not definitely solve the problem of alienation of our media [from the public]."⁹⁰ The distinction, for instance, between State advertisements and notices is not entirely clear and leaves room for interpretation. According to the Government's decision, advertisements for State-owned companies and not-for-profit organizations established and supported by the State are not classified as public notices.⁹¹ This could leave room for State-owned entities to continue to place their adverts in the media. Without transparency, it is difficult to assess the impact of the Government's decision on the television sector.

A well-known Albanian editorialist wrote that, "most of the daily newspapers in the country are in a coma while television stations' audience has polarised, pushing most of the peripheral stations out of the market".⁹² All data on the advertising market are pure speculation. The only respectable effort in this direction was made by the KKRT, which monitored the advertising in ten TV stations in April and May 2005. According to this study, the amount of advertising and teleshopping accounted for 10 per cent of the total broadcasting time.⁹³ The law obliges television stations to allot no more than 15 per cent of their daily transmission time, or more than 12 minutes per hour, to advertising. This provision was generally respected by TV operators. Exceptions included TV Klan, which aired advertising for 22 per cent of its broadcasting time.⁹⁴

The study indicated that the approximate value of the entire Albanian TV advertising market hovers around €21 million.⁹⁵ Comparing this estimation to the annual

⁸⁹ KKRT, Estimation of Advertising Revenue from Monitoring, April–May 2005, p. 5 (hereafter, KKRT Ad Study).

⁹⁰ "Përpjekja" (Endeavour), Interview with Fatos Lubonja, *Standard*, 27 May 2006, p. 35. (Note: Lubonja is a media analyst. He has signed editorials in most large newspapers in the country).

⁹¹ Council of Ministers Decision on Bulletin.

⁹² Mero Baze, "Përpjekja e 'regjimit mediatik' drejt konkurrencës" (The struggle of the "media regime" for competition), *Tema*, p. 1, 23 April 2006.

⁹³ KKRT Ad Study, p. 2.

⁹⁴ KKRT Ad Study, p. 3.

⁹⁵ *Ibid.*, p. 5.

financial statements submitted by TV stations, the study concluded that TV operators reported only between 17 and 22 per cent of their advertising revenues.⁹⁶ This sparked suspicions of tax evasion.⁹⁷ The authors of this study admitted that, as they lacked experience in assessing the advertising market, their figures should be treated with caution.⁹⁸ But the tax police took the study seriously and imposed a fine worth €12 million on Top Channel TV in July 2007. The KKRT study was used as a basis for calculating tax evasion on advertising for the years 2002–2005. It helped assume that Top Channel TV had reported only 23 per cent of its revenues for those years.⁹⁹

This fine followed repeated scrutiny of Top Channel TV by the tax police during 2007, when the station took a rather critical stance towards the Government. The owner said that he had expected to be fined, but the level of the fine was totally unreasonable and was meant to silence a critical voice.¹⁰⁰ The tax police's move spurred the media community to issue a common declaration in support of Top Channel TV.¹⁰¹ An investigation was launched by the Parliamentary Committee on the Media and the General Prosecutor. Following these pressures, the Government apparently reconsidered the fine. The station has not yet paid, and is still negotiating with the authorities. Top Channel TV is a clear example of how the lack of data and systematic monitoring and research of the advertising market, combined with lack of transparency on the part of advertisers, media and the Government, can be misused or abused.

4.4 Editorial standards and independence

In 2005, the Albanian Media Institute started to revise the Code of Ethics for journalists, which was drafted in 1996. The institute began this work as a reaction to the inefficient implementation of the Code and to the need to adjust it to the changes that have affected the media over the past decade. Another reason was the institute's intention to introduce a system of effective self-regulation by the media. The legal amendments aiming to decriminalise defamation and libel are pending in Parliament, and likely to be adopted in the near future.

⁹⁶ *Ibid.*, p. 6.

⁹⁷ *Ibid.*, p. 7.

⁹⁸ The study's methodology was based on a formula according to which the value of advertising revenue was calculated by multiplying the advertising time with the fixed rates as reported by TV stations. It did not and could not take into account discounts and barbers that applied to clients or the length of time of a contract of a TV station with a client. (p. 1).

⁹⁹ Press Release of Tax Police, available at <http://www.tatime.gov.al/?fq=info&metod=shfaqart&artID=362> (accessed 25 July 2007).

¹⁰⁰ Dritan Hoxha, Comment at Top Channel TV Roundtable, Tirana, 14 July 2007.

¹⁰¹ The Declaration is available at [http://www.institutemedia.org/documenta/PRESS_DECLARATION_dt\[1\].13_korrik.doc](http://www.institutemedia.org/documenta/PRESS_DECLARATION_dt[1].13_korrik.doc) (accessed 20 July 2007).

In the revision process, the institute tried to involve all main stakeholders, including media owners, directors and managers, editors, journalists, civil society activists, MPs, media lawyers, etc. The institute completed a new Code of Ethics and a statute of a self-regulation body. In general, journalists, owners and managers agreed in principle to the need for having self-regulation in the sector. It remains to be seen whether they will unite to make it happen.

Except for general editorial rules imposed by editors-in-chief, there are no internal codes of ethics in the television stations.¹⁰² The KKRT has constantly pointed out in its reports that the media must have their own codes of ethics.¹⁰³ In addition, quality journalism is difficult to achieve as journalists are very often deprived of their rights. The overwhelming majority of journalists work without contracts due to weak implementation of the Labour Code and the lack of regular supervision of its implementation. A positive step in this respect was the establishment in 2005 of a trade union of journalists with the support of IREX. The union has set up branches in the main towns and negotiated better conditions for journalists with the Ministry of Labour. The two parties signed a memorandum that would enable introduction of a collective agreement in the sector.

However, the union and the media community are aware that this process will take some time because of the scale of the problem. In 2005, about 95 per cent of journalists in Albania worked without contracts or social security.¹⁰⁴ Other journalism associations did not offer any help in this campaign. They seem to exist only on paper. The Chair of one of these organisations stated:

Even though we have 15 years of free press in Albania, there are only a few cases when colleagues of one media outlet raise their voice or protest against the fate of other colleagues who are unjustly fired, censored, or threatened. This is a topic only in the cafés where journalists gather and are never revealed to the public, leading to a situation where nobody talks about a phenomenon that affects everybody.¹⁰⁵

This situation renders journalists highly vulnerable to the desires and whims of their owners. “They are almost helpless when faced with the arbitrary decisions of owners,

¹⁰² OSI/Albania, pp. 238–239.

¹⁰³ KKRT Annual Report 2006, p. 55.

¹⁰⁴ Union of Albanian Journalists, “Mbrotjtja në punë dhe sigurimi social i punonjësve të medias, një domosdoshmëri për shtypin e lirë” (Labour protection and social security of media employees, a must for a free press), p. 6.

¹⁰⁵ Interview with Armand Shkullaku, “Media, transparence per lajmet brenda saj” (Media, transparency for its own news), *Shqip*, 10 May 2006, p. 12. Shkullaku is the Chair of Association of Albanian Journalists and Editor-in-Chief for news with TV Klan.

who can fire their staff without cause.”¹⁰⁶ This situation has not changed over the past two years and it is unlikely to improve without shedding light on media ownership and their funding. The large number of newspapers and television stations in Albania owe their existence mainly to funding by parallel businesses and to the weak implementation of the law. “From the professional point of view, this parallel funding makes many outlets vulnerable to the pressure or censorship of the businesses that support them, to a greater or lesser extent.”¹⁰⁷

4.5 Regional and local broadcasting

There are today 68 local television stations, of which 20 are Tirana-based. Most of the advertising spend is pumped into Tirana-based television stations. They have better economic performance and programming than local stations, which find it difficult to survive and produce quality programming. “The media located in the Western plain have had more ample opportunities to benefit from a richer advertising market, which is not the case for the media located in other distant areas.”¹⁰⁸

Due to economic restraints, local television stations in the country can hardly keep up with the technological development. While most TV stations in Tirana possess rather up-to-date equipment, local stations still operate with old equipment, which affects the quality of their product.

5. PROGRAMMING

5.1 Output

Without independent monitoring, there are no statistics for annual output by genre, either for commercial or for public broadcasters. The most recent monitoring, which was carried out by the KKRT during one month in long-ago 2003, covered the main stations’ output. Although commercial stations are obliged by law to submit their annual output to the KKRT, they have so far failed either to comply with this requirement or to explain their failure. The regulator has taken no measures against them.

The only data come from TVSH. Some 70 per cent of TVSH’s airtime from April to November 2006 was not produced in-house. The station’s programme framework

¹⁰⁶ IREX, *Media Sustainability Index 2005 – Albania*, IREX, Washington DC, 2006, p. 14, available on the IREX website at http://www.irex.org/programs/MSI_EUR/2005.asp (accessed on 20 July 2007) (hereafter, IREX, *MSI 2005 – Albania*).

¹⁰⁷ IREX, *MSI 2005 – Albania*, p.12

¹⁰⁸ IREX, *MSI 2006 – Albania*, p. 5.

could not avoid routine and monotony, which hurt its position in the market.¹⁰⁹ With the change of management in the end of 2006, higher quality programmes began to appear. With all these changes, the ratio of self-made programmes is expected to reach 70 per cent of the station's total airtime in 2007.¹¹⁰ The RTSH Steering Council also promised that more programmes are under review and new programmes covering topics such as social issues, gender balance, culture and health will be launched.¹¹¹

However, the changes in the programme framework are rather attempts to satisfy some minimum requirements than to boost public service standards. The station's annual report bragged about such achievements as increasing the broadcasting time from 17 to 24 hours a day, reinstating weekly sports programmes, opening a new broadcast studio, usage of a mobile studio on election days, etc.¹¹² The station's current director, Mirela Oktrova, said: "The existence of public radio and television cannot be justified either by entertainment programmes or the free offer [of programming] from EBU, or by the organisation of song contests and the fuss over [Albanian winners'] participation in the Eurovision song contest."¹¹³

On a more positive note, TVSH organised televised debates with the mayoral candidates during the 2007 local elections, enabling the public to make a more informed choice. On the other hand, TVSH was not able to broadcast a major event like the football World Cup in 2006, whose broadcasting rights were acquired by DigitAlb. TVSH said at the time that it could not afford to buy the rights, but the KKRT replied that the station could have asked for Government aid.¹¹⁴ They added sarcastically that TVSH management did not insist on this because they were busy negotiating the rights for a locally produced programme, "Kafazi i Arte" (Golden Cage), a local replica of the "Big Brother" reality show format.¹¹⁵

Despite the lack of clear data on programme output, it can safely be said that the most important stations, like TV Klan, Top Channel, Vizion+, TV Koha and some thematic news channels like News24 or Alsat have gained more or less loyal followings. They produce news of generally satisfactory standards and various information and entertainment programmes. Information and news have become priorities for both print and electronic media, according to various observers.¹¹⁶ An exception is the nationwide commercial station, TVA, which following numerous changes of

¹⁰⁹ RTSH Annual Report 2006, p. 3.

¹¹⁰ RTSH Annual Report 2006, p. 5.

¹¹¹ RTSH Annual Report 2006, p.5.

¹¹² RTSH Annual Report 2006, p. 4.

¹¹³ Mirela Oktrova, "'Lehja' kundër demokracisë dhe interesave të publikut" ("Barking" at democracy and public interests), *Shekulli*, 4 September 2006, p. 23.

¹¹⁴ KKRT Annual Report 2006, p. 52.

¹¹⁵ *Ibid.*

¹¹⁶ IREX, *MSI 2006 – Albania*, p. 9.

ownership in 2006, could hardly fulfil its obligations as a nationwide channel. They stopped airing newscasts completely in March and April 2006.¹¹⁷ As the station could not fulfil for most of 2006 the programme requirements imposed by its licence contract, the KKRT decided to reduce TVA's licence by one year and withdrew it in October 2007. The station appealed the decision. The two parties took the dispute to the court.¹¹⁸

Some of the news and debates on relevant, often political, issues are believed to have a healthy audience and have become emblematic for the TV stations airing them. In addition to news bulletins, some of the most popular programmes are "Opinion" on TV Klan, "Shqip" (Albanian) on Top Channel, "Logos" and "60 minuta" (60 minutes) on TV Koha. They are weekly programmes featuring interviews or debates on a topical issue. Another surprisingly popular programme is "Fiks fare" (Just like that), a daily satirical magazine built on solid investigative reporting. Some entertainment programmes and game shows are also very popular. They include "Portokalli" (Orange) and "Top Show" on Top Channel, "Kutia e fundit" (Last box) on TV Klan and "Bypass" on Vizion+. There is a growing tendency among television stations to focus on programmes of a more social nature, attempting to cover more everyday life and human interest stories. These programmes include "Jëtë në kërkim" (In search of lives) on News24 TV, "Njerëz të humbur" (Missing people), "Femra" (Women) and "S.O.S." on Vizion+.

5.2 General provisions on news

Several provisions of the Law on Radio and Television deal with programming content, applying to both public and private broadcasters. They concern editorial independence, censorship, the right to information and other human rights and freedoms.¹¹⁹ But although the fundamental principles of impartial and accurate information are guaranteed by law, there are no instruments or bodies to monitor their implementation. The KKRT monitors the main newscasts of the nationwide public and private TV stations, but this effort only consists of quantitative measuring of the percentage dedicated to coverage of political parties and figures.

Television stations have made significant progress in defining themselves through their newscasts, which have marked the greatest improvement in programming of all TV stations.¹²⁰ Nevertheless, information is neither impartial nor fair. There is almost no media outlet without vested economic or political interests and therefore, professional standards are applied only insofar as these interests allow. The news agenda is very close

¹¹⁷ KKRT Annual Report 2006, p. 54.

¹¹⁸ Decision on TVA in KKRT Annual Report 2006, p. 25.

¹¹⁹ OSI/Albania, p. 234

¹²⁰ KKRT Annual Report 2006, p. 47.

to the agenda of the Government or politics in general, or to that of the TV management and its cronies.¹²¹ Newscasts choose clips that fit the interests of the operator and not the public interest.¹²²

The Electoral Code also imposes requirements of accuracy, fairness and balance on all TV stations.¹²³ The public service broadcaster has additional responsibilities, such as granting free time to every political party taking part in elections. The latest test for respecting these rules was the local elections of February 2007. The main TV stations passed this test rather successfully. TVSH allocated 28 per cent of the news coverage to the Democratic Party and 29 per cent to the Socialist Party. Similar coverage was found on the other large stations such as Vizion+, News24, and TVA. An exception was TV Klan, which devoted more time to the Government than any other station. TV Klan's representatives argued that they were merely covering the work of State officials. However, these officials were featured during the electoral campaign. Although these campaigns were considered balanced and fair in terms of coverage of political parties, during the pre-campaign periods, all TV stations favoured one party over others.¹²⁴

5.3 General programme production guidelines

The Law on Radio and Television sets some general obligations for all television stations, pertaining mainly to human dignity, respect for law, and human rights.¹²⁵ However, these provisions are rather loose and general and have not been transformed into more detailed rules or regulations by the KKRT. These general principles have been generally upheld. The only problems were related to pornography, which is totally banned from broadcasting. There are no pornographic programmes on terrestrial analogue television stations. But DigitAlb hosts one channel airing pornography throughout the entire day in an encrypted form, and two pornographic programmes starting close to midnight.

5.4 Quotas

There are no special quotas for languages or minority group representation. The public service TV station and some of the commercial channels occasionally air programmes

¹²¹ Research was carried out in the framework of "TV Primetime domestic news – monitoring and analysis of TV news programs in 10 South-Eastern European countries", published in Media Plan Institute, *Indicator of Public Interest*, Sarajevo, 2007.

¹²² KKRT Annual Report 2006, p. 54.

¹²³ Electoral Code, Art. 136, art. 140, available at <http://www.osce.org/item/14076.html?html=1> (accessed 10 July 2007).

¹²⁴ OSCE/ODIHR report on elections of 18 February 2007, available at <http://www.osce.org/item/24859.html?html=1> (accessed on 12 July 2007).

¹²⁵ OSI/Albania, pp. 235–236.

for national minorities. In recent years, the Albanian Media Institute has engaged in co-ordination of projects of production of radio and TV programmes on ethnic and linguistic minorities in the country and articles on such issues published in the print media.

Media specialising in minority issues struggle to survive. Radio Prespa, for example, set up in 2003 in the border area with the Republic of Macedonia and airing programmes in Macedonian, does not function regularly due to financial constraints. Radio stations for the Greek minority in the south of the country are in the same situation. All these outlets are individual initiatives; the State does not subsidise minority media. However, there are no legal obstacles to granting broadcast licences for minority radio or television stations. In fact, the KKRT granted a TV and a radio licence to the radio/TV outlet Armonia, a project for the Greek minority, the largest ethnic minority in the country. However, the station lacks financial power and is likely to face difficulties. They are not on air at the moment.¹²⁶

The only content-related quota imposed by law on local licensees is to have non-commercial and local information programmes on at least 15 per cent of their weekly programming. The law does not define “non-commercial”. According to the 2003 amendments, nationwide licensees must devote at least 15 per cent of their broadcasting time to their own programmes and at least 30 per cent to programmes produced in Albania. Television stations generally meet this quota.¹²⁷ The law also imposes quotas on advertising, forbidding TV stations to air advertising on more than 15 per cent of their daily transmission time, or more than 12 minutes per hour. Although Albania, as a non-EU member, is not obliged to comply with the European legislation, many of these quotas stem from the European Convention on Transfrontier Television (ECTT) and its Additional Protocol, which Albania ratified in 1999. On the other hand, Albanian legislation does not require broadcasters to devote the majority of their airtime to European works. The law on digitalisation stated that TV stations should progressively comply with the obligation of broadcasting European programmes for 50 per cent of their airtime.

5.5 Obligations on PSB

Apart from the general production guidelines, the Law on Radio and Television obliges both public and private broadcasters to carry certain content free of charge. This includes programmes of high interest to the general public such as announcements on national health, public order or national emergencies. The law also requires RTSH to broadcast free of charge religious services or ceremonies held on official religious holidays and sessions of Parliament. The Law on Radio and Television imposes additional obligations on RTSH. Its programmes should be of high quality, reflect the

¹²⁶ KKRT, Annual Report 2006, p. 25.

¹²⁷ KKRT, Annual Report 2006, p. 47.

variety of Albanian life and serve all groups of society, including national minorities. Coverage of national and international news should be comprehensive and impartial. RTSH is forbidden to broadcast political or religious propaganda.

Despite these obligations, the public service broadcaster is far from fulfilling its public mission. “It is paradoxical to see how the public interest is the first one to be neglected by a television called ‘public’. The newscasts start with news on the activities of the Government and political parties, neglecting the real problems that concern the citizens.”¹²⁸ The station claims to have made significant progress, and that its alleged lack of competitiveness is a lie spread by commercial rivals.¹²⁹ But the general opinion is that commercial stations are dominant. “Commercial televisions are killing the public television and absorbing all the audience the same way supermarkets are killing the grocery stores and kiosks from communism by absorbing all the buyers.”¹³⁰

5.6 Obligations on commercial broadcasters

There are no detailed programme obligations on commercial broadcasters. The only legal provisions pertain to the duration of broadcasting and the frequency of newscasts. National television stations must broadcast at least six hours, and local stations at least four hours a day. Nationwide television stations must air original news programmes every day. Commercial television stations are required to broadcast messages and information of great public interest free of charge, in accordance with the relevant regulation drafted by the KKRT, or at the request of local Government bodies. Such information usually included short communications of particular interest to the public, especially in emergency situations, such as natural disasters, or on issues such as health and safety, and public order. In general, there have been no problems with the observation of this provision.

6. CONCLUSIONS

Television, still the most influential of Albanian media, has gone through an era of changes. Important, albeit controversial, legal amendments were introduced, changing the composition of the regulatory authorities. The structure, based on a formula of balanced political representation, was turned into one including civil society, academia and professionals. These moves were officially intended to reduce political influence on the regulator, but some of the regulator’s latest actions were seen as politically biased.

¹²⁸ IREX, *MSI 2006 – Albania*, p. 10.

¹²⁹ RTSH Annual Report 2006, p. 3.

¹³⁰ IREX, *MSI 2006 – Albania*, p. 6.

Moreover, the regulator failed to achieve full membership, an indication that its appointment mechanism does not work smoothly.

The regulator will soon face a difficult test: allocation of digital licences. Like other laws adopted over the past three years, the Law on Digital Broadcasting was prepared by the Government without consulting the relevant stakeholders, which casts serious doubt on the Government's intentions and the consequences of this law on Albanian broadcasting. The implementation of this law raises serious questions about the future of the digital platform operator DigitAlb, which has established itself after three years as a strong player with a substantial customer base. The KKRT's authority and the independence in the licensing process, as well as the stance of the public service broadcaster towards this process, will be of much importance.

RTSH faces the formidable task of challenging the growth of DigitAlb, which will not be easy, especially after its own poor economic performance in recent years, reduced State funding and incomplete reform. RTSH's popularity has not improved. Its poor management and backwardness compared with the commercial broadcasters, coupled with the general view that RTSH is politically controlled, are the broadcasters' main problems. The station is far from fulfilling its public mission. It is hoped that the station's new management will draft a coherent strategy and start a sustained reform. However, the reform of RTSH will be painful and therefore, the station will need significant assistance in managing to achieve its mission.

Professional, good quality output is increasing. However, the market remains overcrowded and despite the fuss over the sources of funding the media, no concrete measures in this respect have been taken. Transparency over the sources of capital behind the media is desperately needed in a country where journalists, lacking working contracts and rights, often fear to risk provoking the owners by writing independently. Media organisations have made numerous attempts to raise awareness on the codes of ethics among journalists, but effective self-regulation has yet to start. The shortage of market research or any other data seriously impedes assessments of the condition of the Albanian media.

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Television across Europe:
Follow-up Reports 2008

Bulgaria

By Assya Kavrakova

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List of Abbreviations

ABBRO	Association of Bulgarian Broadcasters, <i>Асоциация на българските радио- и телевизионни оператори</i> (АБРО)
BNR	Bulgarian National Radio, <i>Българско национално радио</i> (БНР)
BNT	Bulgarian National Television, <i>Българска национална телевизия</i> (БНТ)
CEM	Council for Electronic Media, <i>Съвет за електронни медии</i> (СЕМ)
CRC	Communications Regulation Commission, <i>Комисия за регулиране на съобщенията</i> (КРС)
ARA	Association of Advertising Agencies, <i>Асоциация на рекламните агенции – България</i> (АРА-България)
KZK	Commission for Competition Protection, <i>Комисия за защита на конкуренцията</i> (КЗК)
NCRT	National Radio and Television Council, <i>Национален съвет за радио и телевизия</i> (НСРТ)

- NCJE National Council for Journalism Ethics, *Национален съвет за журналистическа етика*
- BTA Bulgarian News Agency, *Българската телеграфна агенция (БТА)*

A. Executive Summary

Business interests rather than policy decisions have dominated Bulgarian broadcasting in recent years. Although Parliament and the media regulatory bodies have made a series of important moves, in terms of both policy and legislation, the dominant market players have outmanoeuvred the regulators, managing to achieve healthy financial growth, prevent the entrance of newcomers into the market and strengthen their positions before the digital switch-over.

While the State-controlled broadcaster, Bulgarian National Television (BNT, *Българска национална телевизия*), has stabilised its position on the TV market, it has made no significant progress in its transition to becoming a public service broadcaster. The independent fund that is intended to nourish public service broadcasting is unlikely to start functioning in the near future, meaning that BNT will remain dependent on ever increasing State subsidies.

On the regulatory level, the 2005 adoption by the National Assembly of the long-delayed Strategy for the Development of the Radio and Television Activities,¹ (hereafter Broadcasting Strategy) which was expected to unblock the licensing process, brought no practical results. The content regulator, the Council for Electronic Media (CEM, *Съвет за електронни медии*), and the technical regulator, the Communications Regulation Commission (CRC, *Комисия за регулиране на съобщенията*), developed contradictory interpretations of the Strategy, with the CEM pushing for more analogue licences to be granted, while the CRC tried to impose digital licensing as a priority. As a result, the licensing process ended in another stalemate.

In 2005, amendments to the Law on Radio and Television² envisaged that the radio and television fund was to become operational in 2008, but there are no signs that this will happen. Instead, the public service broadcasters, Bulgarian National Radio (BNR, *Българско национално радио*) and BNT, are in dire need of stable funding. This could involve an increased allocation from the State budget, which has been the stations' main source of finance. Since the adoption of the Law on Radio and Television in 1998, the fund was envisaged as a source of financing for the public service broadcasters and the regulatory authority. But the fund never became functional because there was no system in place to collect the licence fee from households. The Law has been amended several times since then in order to postpone the functioning of the fund.

¹ Decision of the National Assembly of the Republic of Bulgaria from 28 September 2005, published in *State Gazette* 82, 14 October 2005, in force as of 1 January 2006. "Стратегия за развитие на радио- и телевизионната дейност чрез наземно радиоразпръскване" (Strategy for Development of the Radio and Television Activities), available at http://www.cem.bg/r.php?sitemap_id=100 (accessed on 10 December 2007).

² Provisional and Concluding Provisions of the Law on Radio and Television, §2(1), (2), (3), (4).

When Bulgaria joined the European Union on 1 January 2007, the country's media legislation was already in line with the provisions of the Television Without Frontiers (TVWF) Directive, now the Audiovisual Media Services (AVMS) Directive.³ Parliament then adopted the Law on Electronic Communications,⁴ which incorporated a series of EU provisions related to the regulatory framework for electronic communications.⁵ The Law creates a legal framework for the introduction of digital broadcasting. The Law on Radio and Television had to be amended within six months of the Law on Electronic Communications as a complement to the legal process allowing the transition to digital broadcasting.⁶ As of February 2008, this has not happened. The amendments have never been presented to Parliament.

With the recently amended TVWF Directive, which would prompt a new legal harmonisation process, and developments in new technologies and the media market, it has become clear that lawmakers must revise the Law on Radio and Television, in order to reflect these changes. Media legislation has not been a priority for the Bulgarian Government. The Plan for the Introduction of Terrestrial Digital Broadcasting (DVB-T) was finally adopted on 31 January 2008, although a draft reportedly reached ministers' desks in mid-2007. All moves in the media policy sector take a long time, with two exceptions: first, when economic interests are strong enough to speed up the adoption of legislation; and second, when a new political party comes to power and changes the legislation to gain control over the regulators.

After unsuccessful attempts by the media community in 2004–2005 to achieve journalists' consensus on a new Law on Radio and Television, a draft of which was put together at the time, media professionals significantly lowered the pressure of their advocacy. Today, the main driving force for the legislative process is represented by the business interests of the media owners.

Over recent years, the CEM has set up six regional bureaus across the country with the aim of improving its monitoring work. The regulator concentrated investment in technical infrastructure rather than human resources. As a result, its experts lack solid expertise and most of the operators are still not being monitored by the regulator. With

³ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007, amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, *Official Journal of the European Union*, 18 December 2007, L 332/27.

⁴ Law on Electronic Communications, *State Gazette* 41, 22 May 2007. (Hereafter the Law on Electronic Communications).

⁵ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), *Official Journal of the European Communities*, 24 April 2002, L 108/33.

⁶ Law on Radio and Television, prom. *SG* 138, 26 November 1998; amend. *SG* 60, 1999; amend. *SG* 81, 1999; amend. and suppl. *SG* 79, 2000; amend. and suppl. *SG* 80, 2001; amend. and suppl. *SG* 96, 2001; amend. *SG* 112, 2001; amend. and suppl. *SG* 77, 2002; amend. *SG* 99, 2003; *SG* 99, 2004. (hereafter the Law on Radio and Television).

the arrival of digitalisation, the CEM and the CRC, which manages the frequency spectrum, have collided several times, making better co-operation and even union of the two regulators imperative if the digital switch-over is to be timely and successful.

In commercial broadcasting, the lack of ownership transparency has not been addressed. Effective measures would require a range of mechanisms for registering media ownership, and legal provisions that would stop licence holders from swapping ownership of their stations “behind the curtain”. Far from this, the legal environment actually favours media concentration by failing to restrict ownership consolidation.

A positive development in 2006 for media independence in general was the beginning of work by two commissions responsible for overseeing compliance with the journalistic Code of Ethics. Likewise positive was the introduction in 2006 of a second system of people-meter measurement of audiences that brought about an opportunity to compare market data.

B. Recommendations

1. ORIGINAL RECOMMENDATIONS FROM THE 2005 REPORT⁷

Most of the recommendations from the previous OSI report are still valid. Except for the recommendation for the implementation of a comprehensive self-regulatory system, which many in the industry see as a positive development, not much has been achieved in the intervening years.

1.1 Media policy

<i>Legislation</i>	
1. The Government should ensure that the Law on Radio and Television is completely harmonised with the EU <i>acquis communautaire</i> to ensure predictability, transparency and effective implementation of audiovisual policy.	This recommendation was fulfilled before Bulgaria's accession to the European Union in 2007.
2. Parliament should, as a priority, accept an updated Broadcasting Strategy as is stipulated in the Law on Radio and Television, in order to de block broadcasting licensing procedures as soon as possible.	The Strategy was adopted, but with a delay, and was therefore already old at the time. As a result, the Strategy should be updated to respond to the current situation of the broadcast market.
<i>Digitalisation</i>	
3. The Government should accept a concrete strategy on digitalisation. The draft "Strategy for the Planning of Digital Terrestrial Broadcasting in the 174–230 MHz and 470–862 MHz Frequency Bands" needs to be updated, and, moreover, has never been officially approved.	The Plan for the Introduction of Terrestrial Digital Broadcasting (DVB-T) was finally adopted on 31 January 2008. As it contains elements of a strategy, it can be concluded that this recommendation has been fulfilled.

⁷ "Bulgaria" in Open Society Institute, *Television across Europe: regulation, policy and independence*, Budapest, 2005 (hereafter OSI/Bulgaria), pp. 419–421.

1.2 Regulatory authorities

<i>Independence</i>	
<p>4. Parliament should, following a process of wide consultation with media experts and NGOs, introduce amendments to the Law on Radio and Television to better ensure the independence of the main regulatory body, the Council for Electronic Media (CEM). These amendments should, in particular, do the following:</p> <ul style="list-style-type: none"> • introduce a civic quota in the CEM's composition, capable of providing adequate checks and balances; • introduce mandatory qualified majority voting for the election of the members from the parliamentary quota, in order to guarantee the economic and political independence of the regulatory authority (even if this might require a change in the Constitution); • envisage a mechanism to hold CEM members responsible (as individuals, or collegially) for those of their decisions that have proven to be in breach of the law as decided by the Supreme Administrative Court; • create new mechanisms to guarantee the financial independence of the regulatory authority as an alternative source of funding to the State subsidy. 	<p>The recommendation was not fulfilled and remains pertinent. There have been no major changes in the CEM's composition or legal framework.</p> <p>There was no political will to establish a truly independent and professional regulator. Current CEM members do not have adequate education or experience in licensing, technology or intellectual property, but have been appointed for their loyalty towards different political or social groups.</p>
<i>Copyrighting</i>	
<p>5. The Government should amend the Law on Radio and Television to increase the remit and the responsibilities of the CEM with respect to the observation of the copyright and related rights.</p>	<p>This recommendation was not fulfilled. Much of the European financing for regulatory structures was invested more in infrastructure than in human resources.</p>
<i>Monitoring</i>	
<p>6. The Government should increase the administrative capacity of the CEM, with respect to the monitoring of local and regional broadcasters, in order to ensure equal treatment of broadcasters at the national and local levels. This should include the provision of higher levels of funding.</p>	<p>The recommendation was fulfilled, at least in terms of technical infrastructure.</p>
<i>Professional ethics</i>	
<p>7. The regulatory authorities – the CEM and the CRC – should develop a Code of Ethics with detailed clauses on preventing any conflict of interests.</p>	<p>There has been no development in this field. Moreover, the two regulators have clashed several times over the scope of the regulatory framework.</p>

1.3 Public broadcasters

<i>Funding</i>		
<p>8. The Law on Radio and Television should be changed to envisage new mechanisms that can guarantee the financial independence of public service radio and television, as an alternative to the Radio and Television Fund.</p> <p>9. The Government and Parliament should amend the Law on Radio and Television to define concrete principles for targeted funding of the public broadcasters, and for the production and broadcast of public service programmes, along with the relevant mechanisms for civic control over their expenditures.</p>	<p>The recommendations to public broadcasters have not been fulfilled.</p> <p>With media not being a priority for decision-makers, the regulatory framework for public service funding, management and programming has not changed. BNT overcame the management crises in 2004. However, its management still needs restructuring, as the station's performance is almost wholly dependent on the director's personal qualities, affiliations and professionalism.</p>	
<i>Management</i>		
<p>10. The Government and Parliament should amend the Law on Radio and Television to define new mechanisms of election and appointment for the management of BNR and BNT, as well as a new division of rights and responsibilities between the Management Board and the Director General, in order to optimise the effectiveness of their performance and administrative structure.</p>		
<i>Programming</i>		
<p>11. BNR and BNT should develop new programme schemes that better respond to concrete social needs and public expectations of the public service broadcasters.</p>		

1.4 Commercial broadcasters

<i>Transparency and media diversity</i>	
<p>12. A public register for media ownership in Bulgaria should be implemented as a self-regulatory mechanism within the media community.</p> <p>13. The Government and Parliament should take steps to liberalise all procedures related to changes in the ownership of the broadcasting licences, and make them transparent to the public.</p> <p>14. Journalists' associations and other media NGOs should debate media concentration in order to try and define thresholds needed to protect pluralism. The Government and Parliament should take account of these proposals when preparing new or amended legislation on this matter.</p>	<p>These recommendations were not fulfilled. The regulation and management of commercial broadcasting remain unchanged. The sector is still characterised by lack of transparency over ownership. The general opinion among media professionals is that a self-regulatory system for registering media ownership could only be effective on the basis of consensus on the need for this step.</p>
<i>Public service content</i>	
<p>15. The Government and Parliament should amend the Law on Radio and Television to offer chances for commercial operators to compete for public financing to produce programmes that meet the public interest. The provisions of the Law on Radio and Television on commercial operators defined as public service providers should be reviewed to allow additional stimuli.</p>	<p>The Law on Radio and Television has not been amended to offer financial incentives to commercial broadcasters to produce and air public service content.</p>

1.5 Media ethics and professionalism

<p>16. All parties signatory to the Ethical Code of the Bulgarian Media should ensure that the Code is respected in practice.</p>	<p>These recommendations were fulfilled. In 2006, two commissions responsible for overseeing compliance with the journalistic Code of Ethics started work.</p>
<p>17. The Bulgarian media community should adopt new self-regulation mechanisms with respect to the fair implementation of the people-meter system, which is currently being argued about and its results disputed in the community.</p>	<p>In the same year, a second system of people-meter measurement of audiences was introduced, thus bringing about an opportunity to compare market data.</p>

2. NEW RECOMMENDATIONS BASED ON THE 2008 REPORT

2.1 Legislation

1. With the revision of Television Without Frontiers (TVWF) Directive, Bulgarian legislation needs to be further amended to incorporate the new EU provisions on audiovisual media services.

2.2 Regulatory authorities

2. With the advent of digital broadcasting, the Government should seek to improve the regulatory framework for the electronic communications sector by, for example, proposing the creation of a single regulatory authority for the entire electronic communications market.

2.3 Public broadcasters

Funding

3. Parliament should amend the Law on Radio and Television to introduce new mechanisms that guarantee the financial independence of public service radio and television. An alternative to the Radio and Television Fund would be a State subsidy. Mechanisms should be designed to ensure that financing is in line with EU competition rules.
4. An independent body should be tasked to estimate the funds that are needed for public service broadcasters to perform their public service function.

C. Main Findings of the Follow-up Monitoring

1. GENERAL BROADCASTING ENVIRONMENT

1.1 Key developments in legislation and policy

The major developments in the Bulgarian media environment in 2006 and 2007 were:

- resumption of licensing broadcasters;
- launching a debate on digital broadcasting;
- consolidation and concentration of media ownership, involving foreign investment;
- growth of cable penetration, digital reception of TV and radio and Internet coverage.⁸

The advertising market has continued to expand. As well as an overall increase, there has been growth in emerging sectors such as outdoor advertising and online media.

The two major developments in the Bulgarian media environment for the past three years were the relaunch of the licensing process and the introduction of a system of self-regulation for journalists. Another achievement was the increasing ability of the media to operate as well managed businesses, which also allowed for more editorial independence. Other indicators of sustainability were the access to international news and the easier access to the journalism.

On the other hand, the general legal and social climate in which the media have to operate was much criticised. The licensing of new broadcasters and the legal environment in which journalists work were particularly censured. The economic interests of media owners and businesses often compromise the independence of news coverage, with editors and reporters sometimes preferring self-censorship. This is especially marked in the countryside where economic and even political interests often interfere with the work of the media. Moreover, the lack of ownership transparency harms their economic and political independence. The legal protection of journalists is still inadequate in cases where the targets of their investigations try to influence their objectivity and independence by threatening them with lawsuits.⁹

⁸ International Research and Exchanges Board (IREX), *Media Sustainability Index (MSI)*, “Bulgaria 2006/2007”, available at http://irex.org/programs/MSI_EUR/2006/bulgaria.asp (accessed 19 November 2007). (Note: the author of this study was one of the panelists who took part in the assessment of the Bulgarian media on which the MSI was based.)

⁹ *Media Sustainability Index*, Bulgaria, 2006, p. 6.

The adoption of the Broadcasting Strategy opened the doors to the revival of the licensing process, which had been blocked for almost four years.¹⁰ The Strategy was put together by the regulatory authorities, the CEM and the CRC, and submitted to Parliament in early 2003. But by the time of its adoption in 2005, it was already outdated and was downgraded to a legal formality needed to unblock the licensing process.

The Strategy identifies digitalisation as a main priority, defining two stages in the development of the broadcast sector. In the first stage (2005–2006), the Strategy envisaged, among other things: the development of nationwide television broadcasters with polythematic profiles covering the least populated and border areas of the country; the development of BNT as a public service broadcaster; licensing local television operators and regional broadcasters; and the development of a national frequency plan for digital terrestrial broadcasting. The second stage, scheduled for 2007–2008, envisages, among other things: the development of pilot projects for digital television; the development of a third nationwide broadcaster; guaranteed conditions for BNT’s transition to digital broadcasting; and the development of BNT’s regional networks.

However, the Strategy contains neither concrete plans for the development of the radio and television market, which broadcasters have wanted for a long time, nor a clear vision of an appropriate State policy for the sector. Another weakness is that the Strategy does not set benchmarks for digitalisation. Nor does it include the opinion of the two regulators on the launch of digital broadcasting in Bulgaria.¹¹ The Strategy covers only analogue broadcasting, but states that digitalisation is the main priority.

The lack of a clear and consistent vision, as well as of any preliminary assessment of the media market before the launch of digitalisation, created confusion among current broadcasters and those companies interested in entering the broadcast market, giving at the same time serious headaches to the regulators tasked with putting in place the new analogue licensing framework for the first time since its adoption in 2001.¹² The process became even more complicated in early 2006 because of the following factors:

- the outdated and inadequate media regulatory framework,
- the limited frequency spectrum,

¹⁰ The process was frozen in August 2002 when amendments to the Law on Radio and Television envisaged that the adoption of the Strategy would be the prerequisite for any further licensing of the radio and television broadcasters in the country.

¹¹ Janet Zaharieva, “Лицензиране и регистрация на радио и телевизионните оператори” (Licensing and Registration of the Radio and Television Operators) in Bulgarian Media Coalition, *Issues of Media Regulation*, Sofia, December 2006, p. 28.

¹² Amendments to the Law on Radio and Television and the Telecommunications Law were passed in 2001 and entered into force on 5 February 2002.

- the lack of information about available frequencies at the national, regional and local levels, which prevented broadcasters from adequately and effectively planning their applications for licences,
- the non-enforcement before 2006 of the provisions on fees that commercial broadcasters pay for licences,¹³
- the instability caused by the conflicting interests of the three main groups of applicants:
 - licensed broadcasters which do not want competition,
 - broadcasters with temporary telecommunications permits, issued by the CRC,¹⁴ who seek preferential treatment, so they can “upgrade” automatically to broadcast licences in future tenders,
 - newcomers that want fast and fair tenders for analogue broadcasting at the beginning of the digitalisation process and equal treatment for all the participants.
 - the lack of an official strategy or national plan for the digitalisation of the radio and television broadcasting.¹⁵

In May 2006, the CEM issued an expert report that aimed to formulate the main principles and priorities that would guide the CEM in the forthcoming licensing of radio and television programmes.¹⁶ According to the CEM, the development of the television sector is uneven and concentrated primarily in Sofia. The sector also suffers from a lack of diversity of television formats, insufficient transparency of the capital behind the broadcasters, and a lack of conditions for the development of BNT as a public service television broadcaster.¹⁷

According to the CEM, the priorities in the forthcoming analogue licensing process were as follows:

¹³ The tariff for the fees for radio and television activity was scrapped through the Decision no. 9028 of the Supreme Administrative Court (4 November 2004). A new tariff was adopted in 2006 (Council of Ministers, Decision no. 135 of 5 June 2006, *State Gazette* 49, 16 June 2006).

¹⁴ According to Art. 9a of the Law on Radio and Television, those frequencies used by broadcasters with temporary permits are considered available until a tender for the use of those frequencies is carried out.

¹⁵ Dessislava Velkova, “Analysis and Evaluation of the Adopted Procedures and Actions of the Regulators” in *Monitoring of the Licensing of the Radio and Television Operators in Bulgaria 2006–2007*, p. 72, available at <http://open-bg.net/> (accessed 10 December 2007).

¹⁶ CEM, “Development of the Radio and Television Activity in the Republic of Bulgaria (2001–2006)”, Sofia, 23 May 2006, available online at <http://www.cem.bg/docs/doklad.doc> (accessed 19 November 2007).

¹⁷ CEM, *op. cit.*, p. 8.

- improving the national and regional networks of public service broadcasters to reach less populated and border areas of the country,
- developing the commercial radio and television networks with national coverage,
- enforcing licensing provisions on broadcasters with temporary licences,
- launching tenders for new broadcast licences,
- ensuring a smooth transition from analogue to digital terrestrial broadcasting.¹⁸

The licensing of new television programmes within the analogue spectrum had to be co-ordinated with the new frequency plan for digital terrestrial distribution adopted at continental level at the ITU's 2006 Regional Radiocommunication Conference (RRC-06).¹⁹ The broadcast frequencies are used for both analogue and digital broadcasting, which means that licensing analogue channels reduces the spectrum available for digital channels.²⁰

1.2 EU legal provisions

Bulgaria's media environment is now approaching sustainability, and its stability is robust enough not to depend on any particular government or businesses. General economic and social improvements have boosted the sustainability of Bulgarian media over recent years.

Bulgaria became a fully-fledged member of the EU on 1 January 2007. A number of amendments to the Law on Radio and Television were made in order to further incorporate the EU *acquis* into national law. Following an amendment that transposed EC Treaty provisions concerning freedom of establishment into the Bulgarian law, foreigners and foreign companies were allowed to apply directly for broadcast licences as of 1 January 2007.²¹ Another change was the prohibition of alcohol advertising before 10p.m.²² The Association of Bulgarian Broadcasters (ABBRO) and the Association of Advertising Agencies (APA) are negotiating the adoption of an ethical code on alcohol advertising, which would be the first self-regulatory mechanism in the country's advertising sector.²³

¹⁸ CEM, *op. cit.*, p. 161.

¹⁹ CEM, *op. cit.*, p. 153.

²⁰ For more on the history of licensing see OSI/Bulgaria, pp. 361–366.

²¹ Law on Radio and Television, Art. 105(2).

²² Law on Health, *State Gazette* 70, 10 August 2004, last amended in October 2007, Art. 55.

²³ Janet Zaharieva, "Commercial regulations", in *Issues of Media Regulation, cit.*, p. 82.

CEM has tried to fill the gaps in copyright law by introducing a new element to the licensing process: candidates are required to submit proof of copyright and related rights for the programmes that they intend to air. However, this served to create additional problems as the contracts are signed with entities that are not television operators at the time of application, and therefore cannot guarantee compliance with these rights. Broadcasters presented contracts which stated that their broadcasting operations should comply with copyright rules for a six-month duration, after which there is no guarantee that they would continue to uphold those provisions.²⁴ The regulator lacks the authority and capacity to enforce the execution of court rulings on copyrights.²⁵

In 2007, Parliament adopted the Law on Electronic Communications. It harmonises Bulgarian legislation with the EC regulatory framework on electronic communications, replacing the Telecommunications Law. According to this law, the management of electronic communications is carried out by the Council of Ministers, by the Chair of the State Agency for Information Technologies and Communications and by the Council on the National Radio Frequency Spectrum, which brings together representatives of the Government, the CRC, the National Security Office and the National Intelligence Office. The Council is chaired by the head of the State Agency for Information Technology and Communications, or a representative. The Council of Ministers adopts regulatory provisions on the operation of the Council on the National Radio Frequency Spectrum upon proposal of the latter Council's Chair.²⁶

The State Agency for Information Technologies and Communications is a State-financed body in charge of putting together policy for electronic communications and information society. Its Chair is appointed by the Prime Minister at the Council of Ministers' proposal.²⁷ The Council of Ministers adopts the policy in the two areas. These policies should be updated at least once every two years. The Council of Ministers also adopts the policy and the national plan for distribution of the radio frequency spectrum at the suggestion of the Council on the National Radio Frequency Spectrum. The national plan is subject to revision at least once every two years.²⁸

The CRC is responsible for regulation and control in the field of electronic communications.²⁹ It co-operates with the CEM in the area of digital broadcasting. Upon request, the CRC must inform the CEM of available spectrum for digital terrestrial broadcasting. The CEM then chooses two radio and two television

²⁴ Ivailo Lukanov, "Protection of the Intellectual Property" in *Issues of Media Regulation, cit.*, p. 145.

²⁵ Law on Copyrights and Related Rights, *State Gazette*, 56, 29 June 1993, last amended in July 2007, Art. 95.

²⁶ Law on Electronic Communications, Art. 10.

²⁷ Law on Electronic Communications, Art. 15.

²⁸ Law on Electronic Communications, Art. 6-8.

²⁹ Law on Electronic Communications, Art. 21(1).

programmes for each digital network that would receive broadcast licences. They include the public service broadcasters. The CEM is also in charge of licensing the other digital radio and television broadcasters.³⁰

The CRC is responsible for organising a tender³¹ to select the operator that receives a licence for using the radio frequency spectrum for electronic communications via networks for terrestrial digital broadcasting.³² Representatives of the CEM, chosen by the CRC, are part of the expert commission organising the tender. The operators must air the programmes that CEM licences for a certain network. According to the Law on Radio and Television, they could also broadcast any other licensed or registered programme. The Law on Radio and Television was to be amended in line with the Law on Electronic Communications by 20 November 2007, but this did not happen.

On 31 January 2008, the Council of Ministers adopted the Plan for the Introduction of Terrestrial Digital Broadcasting (DVB-T), which was prepared by the State Agency for Information Technologies and Communications. The plan defines as a priority the creation of the necessary conditions for the start of the transition to digital terrestrial broadcasting in 2008. The process should be completed in 2012, according to the plan. The transition is envisaged as taking place in two phases based on the so-called “island” principle, meaning gradual coverage of a certain area with simulcast for no longer than a year, followed by the total switch off of the analogue signal. The terrestrial analogue switch off is scheduled to take place before December 2012. The State Agency for Information Technologies and Communications will be responsible for organising and financing a public relations and educational campaign around digital broadcasting. The plan states that a package of regulatory measures and updated legislation is necessary to ensure the transition.

1.3 Broadcasting market

The broadcasting market has not seen any major developments with regard to TV transmission platforms. Cable penetration increased only slightly in 2006, up to 61.3 per cent of television households from 58.4 per cent in 2004. Likewise, satellite use reached over 9 per cent of households in 2006, up from some 8 per cent in 2004. Almost 30 per cent of households still accessed TV only via the analogue terrestrial platform in 2006.³³

According to the CEM, 203 television channels are currently operating in Bulgaria: seven terrestrial and 196 via cable or satellite. The terrestrial channels include the nationwide Kanal 1 of BNT, and commercial stations bTV and TV Nova. The

³⁰ Law on Electronic Communications, Art. 47(2).

³¹ Law on Electronic Communications, chapter 5.

³² Law on Electronic Communications, Art. 48.

³³ Source for these data is the research company Noema Bulgaria.

remaining four terrestrial channels are BNT regional programming for the towns of Varna, Rousse, Plovdiv and Blagoevgrad.

There are telecom operators, which have diversified into broadcasting, airing in 42 Bulgarian towns on the basis of temporary licences.³⁴ Some of them have their own programming, others are only technical distributors. In Sofia, for example, GTV, TV2 and 7 Dni are aired terrestrially, but the latter now carries terrestrially the signal of the commercial broadcaster Balkan Bulgarian Television (BBT), and its own programming only via cable. They will use these licences until new tenders have been organised.³⁵

More than 100 of the cable and satellite television channels have generalist formats and over 80 are thematic channels. Generalist formats are typical mostly for the regional channels while the thematic ones usually have nationwide coverage. Out of these channels, 169 television programmes are broadcast by commercial broadcasters and 17 by public television operators.³⁶

Television viewing time has decreased in recent years among younger people who have increasingly turned to other platforms such as the Internet or magazines. People over 70 years of age, retired people, the unemployed, people living in Sofia and citizens of larger towns spend the largest amount of time in front of the TV. Some 98 per cent watch Bulgarian channels, while 37 per cent also watch foreign channels.³⁷ Channel 1 of BNT has lost younger viewers, but it has strengthened its position in small towns. Overall, Channel 1 has seen its audience share go down from 25 per cent in 2003 to 13.3 per cent in 2007.³⁸

bTV was losing viewers between 2003 and 2005, but ratings for its morning programming and primetime newscast have improved sharply. It is watched mainly by urban viewers and people aged between 15 and 69. Its audience share was hovering around 40 per cent in 2007.³⁹

Nova TV has also increased its ratings. Thanks to additional distribution by cable, the station boosted its reach from 61 per cent of households in 2003 to 84 per cent in 2005. The station boasts a younger demographic, with 35 per cent of its viewers below 35 years of age. The station increased its audience by buying reality formats such as “Big Brother”. Nova TV has the largest urban audience: some 77 per cent come from

³⁴ Law on Radio and Television, chapter §9a (1) and (3) of the provisional and concluding provisions.

³⁵ CEM, *op. cit.*, p. 152.

³⁶ CEM, *op. cit.*, p. 43.

³⁷ CEM, *op. cit.*, p. 159.

³⁸ CEM, *op. cit.*, p. 159; Data from TV Plan/TNS peplemeter panel

³⁹ Data from TV Plan/TNS peplemetry panel, average daily for the period January–March 2007.

large towns and about 20 per cent from the capital.⁴⁰ In 2007, the station had an average audience share of 18.5 per cent.⁴¹

The overall audience share of the three largest nationwide channels declined from 84.2 per cent in 2003 to 79.2 per cent in 2006.⁴² However, the cable channels did not benefit from this, due to the oversupply of new cable stations, which fragmented the audience.⁴³

Table 1. Audience shares of the main channels in 2004–2006

Channel	Audience share		
	2004	2005	2006
bTV	36.5	37.8	37.5
Nova TV	18.8	21.7	21.9
Kanal 1	26.6	19.5	19.8
Planeta	2.5	3.6	3.2
Diema+	3.5	3.3	2.7
Fox Life	n.a.	n.a.	1.8
Skat	n.a.	n.a.	1.6
Evrokom	1.9	1.5	1.1
Other	8.2	10.8	10.4

Source: IP International Marketing Committee⁴⁴

⁴⁰ CEM, *op. cit.*, p. 107.

⁴¹ Data from TV Plan/TNS peplemetry panel, average daily for the period January–March 2007.

⁴² Open Society Institute, *Television across Europe: regulation, policy and independence*, Budapest, 2005, Overview, p. 137.

⁴³ CEM, *op. cit.*, p. 160.

⁴⁴ IP International Marketing Committee, *Television 2006. International Key Facts*, October 2006, p. 101 (hereafter, *Television 2006*); IP International Marketing Committee, *Television 2007. International Key Facts*, October 2007, p. 105, (hereafter, *Television 2007*).

2. REGULATION AND LICENSING OF THE TELEVISION SECTOR

2.1 Regulatory authorities and framework

According to the newly adopted Law on Electronic Communications, the CRC is responsible for regulating the electronic communications sector.⁴⁵ The CRC is entitled to adopt secondary or delegated legislation and general administrative acts in electronic communications and policy. The CEM's functions as a content regulator for the sector are to be redefined when the Law on Radio and Television has been amended. There have not been any major changes in the CEM's composition or legal framework.

The licensing process remains highly controversial mainly because there is no political will to establish a truly independent and professional regulator.⁴⁶ None of the CEM's current members has adequate education or experience in licensing, technology or intellectual property. They have been appointed for their loyalty towards different political or social groups. Much of the European financing for regulatory structures was invested more in infrastructure than in human resources. This explains the low administrative capacity of the regulator.

2.2 Licensing system

After an interruption of four years, the analogue licensing process was resumed in early 2006, but no concrete results on television licensing were achieved. Rather than taking account of the public interest or broadcasters' interests, the process was shaped by private interests. The regulator's move to launch tenders for analogue frequencies in big towns was driven by the lobbying of companies that wanted to break into the television market. The poor performance of the two regulators in respect of compliance with the law or sheer commonsense could jeopardise the entire transition to digitalisation. Bulgaria will not be ready to switch off its analogue transmitters in 2012. The CRC's and CEM's record to date raises serious doubts about their capacity to regulate effectively in the digital era.

The CEM's licensing tender, launched at the beginning of 2006, drew 771 applications for radio and TV channels.⁴⁷ The tender criteria covered the whole country, down to the smallest settlements, in order to plug existing gaps. This

⁴⁵ Law on Electronic Communications, sections I–II.

⁴⁶ “Мониторинг на лицензирането на радио и телевизионните оператори в България 2006–2007”, изготвен от доц. Нели Огнянова, Десислава Велкова, Северина Любенова, Светлана Божилова, Александър Кашъмов и доц. Георги Лозанов (Monitoring of the Licensing of the Radio and Television Operators in Bulgaria 2006–2007), Sofia, November 2007, pp. 6–9.

⁴⁷ Monitoring of the Licensing of the Radio and Television Operators in Bulgaria 2006–2007, *op. cit.*, p. 17.

approach, however, did not reflect audience needs or market potential. Moreover, it was based on an approach that served the logic of analogue broadcasting rather than the challenges posed by digitalisation. They did not take into account any scenarios on how digitalisation will change the broadcasting landscape.

The main problem is the lack of strategic vision regarding the licensing process combined with a lack of solid research into the media market. Applicants were not required to identify or address the needs of different regions, or to come up with diverse programming. Moreover, the regulator kicked off tenders for TV channels in the country's three largest cities, where the public already has sufficient sources of information, instead of focusing on smaller settlements, and in particular on the border regions where there is a chronic lack of information. On top of that, neither the legislator nor the CEM took any decision on the status of those operators functioning with temporary permits. The frequencies on which those operators have aired for years were declared "available" and were then tendered. The final straw was the CRC's decision to withdraw from the licensing process and stop announcing available frequencies, which led to tensions between the two regulators. Eventually, the whole TV licensing process froze again. As the law imposes no limits on territorial coverage, most of the applicants sought licences in more than one area.⁴⁸

Cable and satellite broadcasters Balkan Bulgarian Television and Television Europe applied for broadcast licences with national coverage. Such licensing of a fourth nationwide television broadcaster was not envisaged in the Broadcasting Strategy, but the CEM still asked the CRC about the technical possibilities for issuing such a licence.⁴⁹ The CRC responded that there was no available frequency for a fourth nationwide analogue television station, arguing that such a broadcaster could not cover the 85 per cent of the country's territory required by the Strategy.⁵⁰

Media experts from the non-governmental sector criticised the CRC for not always providing information on the availability of frequencies within the legal three-month term.⁵¹ However, the CRC issued positive decisions for available frequencies for analogue television broadcasting for the towns of Varna, Plovdiv and Sofia, paving the way for tenders for licensing analogue broadcasting on these frequencies.⁵²

The CEM adopted its licensing criteria after months of consultations with the broadcasters and media non-governmental organizations (NGOs).⁵³ They put forward

⁴⁸ Dessislava Velkova, *op. cit.*, p. 74.

⁴⁹ Decision of CEM no. 13, 2006.

⁵⁰ Decision of CRC no. 796, 20 April 2006.

⁵¹ For example, the CRC did not reply within three months to a CEM inquiry of February 2006. (Decision of CRC no. 969, 11 May 2006 on a request by the CEM filed on 6 February 2006.)

⁵² Decision of CRC nos. 765, 781 and 788 of 20 April 2006.

⁵³ Decision of CEM no. 1013, 29 June 2006, available at http://www.cem.bg/r.php?sitemap_id=78&cid=1984 (accessed on 19 November 2007).

four main criteria, with the programming project having priority. In the CEM's assessment guide, this criterion is worth 55 points, of which 35 are given for programming profile, concept and schedule, local coverage, a balanced ratio between national, European and other works, terms for fulfilling the intentions on programmes, and innovation and diversity of the programming. The remaining 20 points are given for organisational structure including the professional qualification of the employees, the station's editorial and professional standards, etc. The other three criteria, financial capacity, technical plans and the track record in broadcasting were worth 15 points each.⁵⁴

On 12 October 2006 the CEM adopted a set of "Regulations for organising and carrying out tenders for licensing terrestrial radio and television broadcasters".⁵⁵ The Regulations define the steps and conditions of the tender including the launch, the submission of applications, the establishment of expert commissions, the assessment and ranking of applicants, and the licence issuance. Some of the tender procedures had already been completed by the time the Regulations were adopted. At the same time, the CEM adopted the "Regulations for Setting up the Expert Commissions", as required by the law.⁵⁶ These five-member commissions include three representatives of the CEM, the Chair of each expert commission and two members, and two representatives of the CRC, the commission's vice-Chair and one member.⁵⁷

On 10 July 2006, the CEM announced licensing tenders for two new TV operators for the town of Plovdiv⁵⁸ and for three channels for the town of Varna.⁵⁹ The tenders were scheduled to take place in early December 2006. The CEM did not respect the legal 14-day term for announcing tenders following the CRC's decision on available frequencies. The CRC had announced the available frequencies almost three months before.⁶⁰ The delay was caused by late adoption of the evaluation criteria.⁶¹ ABBRO contested these criteria. They were eventually published in the *State Gazette* only at the end of August 2006, almost a month and a half after their adoption.⁶² The CEM decided to go ahead with the process, arguing at the time that any further delay could lead to "significant or hardly repairable damage" to the operators and the licensing

⁵⁴ Protocol of CEM no. 56, 14 September 2006.

⁵⁵ Available at http://www.cem.bg/r.php?sitemap_id=78&id=2096 (accessed on 19 November 2007).

⁵⁶ Law on Radio and Television, Art. 116C(1); available at http://www.cem.bg/r.php?sitemap_id=78&id=2095 (accessed on 19 November 2007).

⁵⁷ CEM, "Regulations for Setting up the Expert Commissions", Art. 18(3).

⁵⁸ Decisions of CEM nos. 1017 and 1018 from 2006.

⁵⁹ Decisions of CEM nos. 1019, 1020 and 1021 from 2006.

⁶⁰ Dessislava Velkova, *op. cit.*, p. 74.

⁶¹ Decision of CEM no. 1013 from 29 June 2006.

⁶² *State Gazette* 70, 29 August 2006.

process itself.⁶³ The delay forced the regulator to reschedule the tenders for early 2007, when the CEM eliminated two out of 17 applicants for the Plovdiv area and two out of 24 applicants for the Varna area because they did not comply with the legal provisions on licensing.⁶⁴

But the process did not end positively. On 11 July 2006, a day after announcing the tenders for Plovdiv and Varna, the CRC revoked all its decisions on the technical parameters for analogue terrestrial broadcasting of television programmes for which the CEM had requested information. The CRC argued that the revocation followed the agreements from the RRC-06 and that if all available frequencies were used, no frequencies for the digital broadcasting would be left. But some of the applicants questioned this argument, saying that, in fact, the real reason behind the move was the interest of current broadcasters to maintain the *status quo* and block competition from newcomers.

The tender for three channels covering the city of Sofia was announced by the CEM in September 2006.⁶⁵ The frequency for the fourth channel was put on hold at the request of BNT, which has the right to automatically receive a licence to broadcast a regional programme.⁶⁶ The tender was announced despite the CRC's decision to stop announcing available frequencies.⁶⁷ In February 2007, the CEM announced the candidates that fulfilled the conditions necessary to enter the tender,⁶⁸ approving 25 of 32 applicants. Later on, the CEM allowed one of the applicants who was rejected in the first instance to participate in the tender after submitting additional documentation.

In July 2007, the CEM decided to postpone the tender for all three towns until the adoption of a national strategy for digitalisation.⁶⁹ The decision followed a letter that the Supreme Administrative Prosecutor's office sent to the CEM, asking the regulator to comply with the CRC's decisions to suspend tenders before the frequencies become

⁶³ CEM, Administrative Procedure Code, Art. 60 (Preliminary execution).

⁶⁴ Decisions of CEM nos. 4 and 8 from 4 January 2007 (Plovdiv); Decisions of the CEM nos. 11–13 from 9 January 2007 (Varna).

⁶⁵ Decisions of CEM nos. 1137, 1138 and 1139 from 21 September 2006.

⁶⁶ An amendment to the Law on Radio and Television of 2005 envisages that the Bulgarian National Television and the Bulgarian National Radio obtain their licences by virtue of the law without any tenders or contests. The amendment poses the question if every future request of the public broadcasters for licensing would be fulfilled regardless of market conditions and other circumstances. (Law on Radio and Television, Art. 105(3).)

⁶⁷ Decision of CRC no. 1497 from 11 July 2006; Decision of the CRC no. 788 from 20 April 2006.

⁶⁸ Decisions of CEM nos. 18, 19 and 20 from 6 February 2007.

⁶⁹ Declaration of CEM, available at http://www.cem.bg/r.php?sitemap_id=93&cid=2438 (accessed on 19 November 2007).

available.⁷⁰ TV7, one of the applicants, appealed the CEM's decision to suspend the tenders, and the Supreme Administrative Court found in TV7's favour.⁷¹ The court considered that the CEM's decision to postpone the licensing process exceeded its competence and was therefore null and void. The CEM appealed the courts' decision, but the court rejected the appeal in January 2008. The CEM now faces the dilemma of whether to continue or halt the licensing process.

The fiercest fight is for Sofia frequencies, according to various observers.⁷² The applicants for licences to air in the capital included: Balkan Bulgarian Television (BBT), formerly owned by Petar Mandzukov, an arms dealer and publisher of the daily newspaper *Duma*; TV7, controlled by Lubomir Pavlov, the former boss of the Municipal Bank; Max, a channel, owned by the advertising mogul Krassimir Gergov; Television Europe, co-owned by Emil Stoyanov, brother of former president Petar Stoyanov, and Maria Kapon, a member of parliament; and Diema Vision, owned by Apace Media, a UK company.

At the moment, GTV, City TV and TV 7 Dni broadcast with temporary licences. The battle is waged between these temporary operators, which want to keep the frequencies, and the newcomers, which want access to the spectrum. Initially, the CEM rejected the applications from TV7, Television Europe and Diema Vision as they did not comply with transparency rules on their sources of finance and on their relations with advertising agencies. Later, the CEM re-admitted TV7 and Diema Vision. The latter was given this right through a decision of the Supreme Administrative Court. According to media industry sources, BBT, TV7 and Max will win the licences for Sofia. Meanwhile, the CEM has decided to suspend the tenders until the adoption of a Strategy for digitalisation.

3. REGULATION AND MANAGEMENT OF PUBLIC SERVICE TELEVISION BROADCASTING (PSB)

3.1 PSB legislation and policy

The regulatory framework for public service funding, management and programming has not changed. Although the management crises at BNT in 2004 have been overcome, management at the national broadcaster still needs restructuring. At present,

⁷⁰ "CEM спря конкурсите за ефирните телевизии" (CEM stopped the tenders for terrestrial televisions), <http://www.mediapool.bg/show/?storyid=129941&srcpos=2> (accessed 10 December 2007).

⁷¹ SAC Decision 8898, 2007.

⁷² "CEM спря конкурсите за ефирните телевизии" (CEM stopped the tenders for terrestrial televisions), <http://www.mediapool.bg/show/?storyid=129941&srcpos=2> (accessed 10 December 2007).

the station's performance is almost wholly dependent on the Director's personal qualities, affiliations and professionalism. The station needs new mechanisms for appointing its management as well as a new division of rights and responsibilities between the Management Board and the Director General.

The station's funding also needs reform. As the Radio and Television Fund⁷³ will not start functioning soon, a possible solution would be to channel more funds from the State budget for producing public service content. Although State subsidy is theoretically a hazardous form of funding as it can threaten the independence of the public service broadcasters, it currently appears to be the only way of ensuring their survival. Politicians have avoided introducing a licence fee because they fear making themselves unpopular with viewers who would see the licence fee as disguised taxation. Secondly, it is difficult to convince viewers to pay this fee in a country where the average standard of living is not high. The station also needs a clear mechanism for evaluation of the programming cost, which would include spending on digital technologies and services. The station has also lacked transparency on how it spends the money from the State budget.

3.2 PSB governance structure

The only major development at BNT over the past three years has been the appointment of a new Director General. On 19 April 2007, CEM adopted the rules for selecting a new BNT head.⁷⁴ It scheduled the appointment process for June 2007. The mandate of the current Director General, Uliana Pramova, expired on 25 September 2007.

On 20 June 2007, the CEM interviewed three candidates for the position of Director General, including Pramova. Journalists covered the meeting and reported on the candidates' presentations.⁷⁵ A week before the interviews, the CEM met BNT's Board, management and Director General and discussed BNT's performance during Pramova's tenure (2004–2007). At the meeting, the CEM approved BNT's annual report, which has not yet been made public.⁷⁶ On 26 June 2007, the CEM unanimously reappointed Pramova.⁷⁷

⁷³ OSI/Bulgaria, pp. 374–375.

⁷⁴ Decision of CEM no. 106, 19 April 2007; CEM Press Release 19 April 2007, available at <http://www.cem.bg> (accessed on 19 November 2007).

⁷⁵ CEM, Press Release, 20 June 2007, available at <http://www.cem.bg> (accessed on 20 November 2007).

⁷⁶ CEM, Press Release, 14 June 2007, available at <http://www.cem.bg> (accessed on 20 November 2007).

⁷⁷ CEM, Press Release, 26 June 2007, available at <http://www.cem.bg> (accessed on 20 November 2007).

3.3 PSB funding

Under the 2005 amendments to the Law on Radio and Television, the functioning of the Radio and Television Fund was postponed until 2008. There are no signs that the fund will become operational this year. Therefore, there is a need for a new regulatory framework on funding. This could be the State budget, which has always been the main funder of BNT and BNR.

The Law on the State Budget for 2008 envisages a State subsidy for BNT of BGN 66.73 million (Bulgarian Lev), or €4.1 million. Of this sum, BGN 57.76 million (€9.5 million) are allocated for the production of nearly 22,000 hours of programmes for BNT's Channel 1, BNT regional programmes and the TV Bulgaria satellite channel. The remainder is to be invested in long-term material assets. BNT's State subsidy in 2007 was BGN 60.66 million (€1 million).⁷⁸

The State money for BNT is allocated on the basis of hours of programming, without clear requirement for types of programming. The law should also give commercial broadcasters the chance to compete for public financing to produce public service-type programmes. They should also be given by law incentives to produce more such programming.

4. COMMERCIAL BROADCASTING

4.1 Regulation and management

The regulation and management of commercial broadcasting remain unchanged. Lack of transparency over ownership still persists, calling for various solutions. One would be the establishment of a voluntary register of media ownership as an industry self-regulatory mechanism. The general opinion among media professionals is that a self-regulatory system for registering media ownership could only be effective on the basis of consensus on the need. It is also important to create mechanisms obliging broadcasters to reveal changes in their ownership, which have continued to happen "behind closed doors". Georgi Lozanov, chairman of the Bulgarian Media Coalition, said: "After the freezing of the licensing [process], the media sector suffered a difficult crisis of legitimacy. The appearance and disappearance of players, the changes in ownership and programming have a very limited visibility and take place behind the [backs of the] regulators."⁷⁹

⁷⁸ Attachment 1 to the Report on the Law of the State Budget of the Republic of Bulgaria for 2008, p. 70, available at <http://www.minfin.government.bg> (accessed 10 December 2007).

⁷⁹ Monitoring of the Licensing of the Radio and Television Operators in Bulgaria 2006–2007, *op. cit.*, p. 11.

4.2 Ownership and cross-ownership

The concentration of media ownership has continued, thanks mainly to the lack of legally binding preventions. The sector needs a debate on appropriate thresholds to protect media pluralism. In 2005–2006, the Commission to Protect Competition (KZK, *Комисия за защита на конкуренцията*) reviewed and permitted concentrations in all media markets.

In October 2006, the Balkan News Corporation, which owns nationwide bTV, took over Radio Company CJ, which operates the local radio stations NJoy, Classic FM Radio and Jazz FM.

Along with the endless licensing saga, the television market has seen other developments that have proved crass ignorance and helplessness on the side of the regulators. A new television station, with almost nationwide coverage, TV2, completely ignored the licensing process and announced that it would start airing.⁸⁰ The station is allegedly owned by the advertising mogul Krassimir Gergov and is slated to broadcast on 27 regional frequencies throughout Bulgaria. This has become possible thanks to a combination of a package of telecommunications licences owned by the company CTN to broadcast on 27 regional frequencies, and a broadcast licence that TV2 obtained in 2000 from the regulatory authority at that time (NCRT).

4.3 The advertising market

The advertising market has grown continuously over recent years. The total advertising spend in 2006 grew by almost 30 per cent on a yearly basis to BGN 626.8 million (€20.48 million) in gross figures, with television pulling in over 70 per cent of that.

⁸⁰ Biserka Borisova, “Нова национална тръгва без конкурс за лиценз Краси Гергов пак направи за смях СЕМ, КРС и депутатите, Бисерка Борисова” (New national station starts without a contest for a licence. Krasni Georgov made fun of the СЕМ, CRC and MPs), *168 hours*, 20 September 2007, p. 33.

Table 2. Share of ad spending by media sector in 2006⁸¹

Media	Share
Television	70.8
Daily press	10.5
Magazines	6.8
Radio	4.6
Outdoor	3.1
Other press	1.9
Internet	1.3
Cinema	1.0

Source: IP International Marketing Committee⁸²

The advertising market has continued to be dominated by the three nationwide television broadcasters: bTV, Nova TV, and BNT Kanal 1 command over 80 per cent of the television ad spend. However, the leading station bTV has lost money to its rival Nova TV.

⁸¹ In gross figures.

⁸² *Television 2006*, p. 104; *Television 2007*, p. 107.

Table 3. Share of TV advertising income in 2004–2006⁸³

Station	Share		
	2004	2005	2006
bTV	49.7	48.2	43.3
Nova TV	25.4	30.5	34.7
Kanal 1	10.4	6.7	6.5
Fox Life	n.a.	2.2	3.1
7 Dni	4.9	2.0	2.7
Evrokom	2.0	2.0	1.6
M-Sat	2.8	1.5	1.3
Evropa	2.4	1.0	1.2
Diema+	n.a.	1.6	1.0
Other	2.4	4.3	4.6

Source: IP International Marketing Committee⁸⁴

4.4 Regional and local broadcasting

Regional and local broadcasting is still underdeveloped in Bulgaria, mainly due to the licensing deadlock. Terrestrial television broadcasting is chiefly carried out by the three nationwide television broadcasters. BNT operates regional centres in Varna, Plovdiv, Blagoevgrad and Rousse. An exception is the private station TV7 that has regional TV centres with one to two hours of daily programming in the towns of Haskovo, Stara Zagora, Veliko Tarnovo and Varna.

Tenders have not yet been held for regional terrestrial television broadcasting. Analogue broadcasting in the regions is currently done by telecom operators that air in 42 towns on the basis of temporary permits from the CEM. These operators are mainly interested in attracting viewers from larger towns. The 196 television channels, transmitted via cable and satellite, have some regional coverage. More than half of them are generalist and the rest are thematic channels.

There is a pressing need for local television programmes of good quality. At BNT, the generous budget for BNT's regional centres is not visible in their output. For example, the yearly budget of BNT's Rousse centre is approximately BGN 2 million (€1.02

⁸³ In gross figures.

⁸⁴ *Television 2006*, p. 104; *Television 2007*, p. 107.

million). This covers some eight hours of daily programming, including up to two newscasts, a one-hour current affairs programme and documentaries for the region. Some 70 full-time staff employees work on the two hours of in-house production while the rest is filled with old series and movies from the BNT's archives. Only in October 2006 were some independent productions made.⁸⁵

The quality of programmes produced by cable TV operators is generally very low. Most of the local cable distribution companies that produce their own programming lack the resources or the willingness to invest in the professional training of their staff. As a result, the local newscasts they produce are of very poor quality. People still watch, in order to find out what is happening in their town.

5. EDITORIAL STANDARDS AND INDEPENDENCE

The foundation National Council for Journalism Ethics (NCJE, *Национален съвет за журналистическа етика*) was established in 2005 by the Association of Bulgarian Radio and Television Broadcasters (ABBRO), the Bulgarian Media Coalition, the Union of Publishers in Bulgaria, the Union of the Bulgarian Journalists and the Media Development Center. Its goal is to create a self-regulatory framework for print and electronic media through which to implement the Ethical Code that was adopted at the end of 2004 by some 100 media outlets.⁸⁶

A first responsibility of the NCJE was to create structures that would monitor compliance with the Code of Ethics. This process started at the end of 2005. In March 2006, the NCJE adopted the Regulations for the Activity of the Commission for Ethics in the Print Media, and of the Commission for Ethics in the Electronic Media.⁸⁷ In June 2006, the two bodies started to accept complaints against breaches of ethical norms.

Each commission consists of 12 members, representing journalists, media owners and the public. The journalists' seats on each commission are occupied by four acting journalists nominated by the journalists' community at a general assembly of Bulgarian journalists. The owners' representatives in the print commission are three, selected by the Union of Publishers and one by the Association of Regional Media. The owners' representatives in the electronic commission are three selected by the Association of

⁸⁵ Phone interview with Dimitar Lipovanski, owner of the independent production company Arena Media, which organises in Rousse the annual festival for media production "The Bulgarian Europe," 12 December 2007.

⁸⁶ The Code of Ethics is available at <http://www.mediaethics-bg.org/?op=page&clan=BG&page=mediaList> (accessed on 20 November 2007).

⁸⁷ Available at <http://www.mediaethics-bg.org/?op=page&clan=EN2&page=kak> (accessed on 20 November 2007).

Bulgarian Radio and Television Broadcasters and one jointly by the state-financed Bulgarian News Agency (*Българската телеграфна агенция*, BTA), BNR and BNT. The seats reserved for the public are personalities renowned for their work and contribution to ensuring freedom of expression in Bulgaria. Two are selected by the general assembly of the journalists' community, and two by media owners. The nominating parties have the right to veto each other's nominees. If this happens, the two parties make new nominations until they are accepted by the other side.

The basic functions of the two commissions are:

- reviewing complaints regarding editorial content;
- mediating between the complainant and the media with the aim of solving the dispute through an agreement;
- issuing recommendations, warnings or public condemnation against media outlets found to have breached the Code of Ethics;
- issuing recommendations to improve journalists' work;
- recommending amendments of the Code of Ethics.

In cases of breaches of the Code, when all means for reaching a voluntary agreement between the disputing parties have been exhausted, the commissions can ask the offending outlet to publish or air correction and remedies, to give the right to reply or to apologise. If the media outlet does not do that, the commissions can threaten to issue a public condemnation. If the outlet still does not implement the commissions' recommendation, the commissions can issue a public condemnation.⁸⁸ The commissions do not handle cases of stories or programmes older than two months at the date of the complaint, complaints against a media outlet that is not a signatory of the Code of Ethics, anonymous complaints, or cases under litigation.

The activity of the two commissions is based on principles such as:

- accessibility (any citizen or organisation that feels affected by a story or programme can easily file a complaint with the commission, which investigates the issues in a simple and fast manner; the procedure is described on the commissions' Internet pages⁸⁹);
- participation (the parties involved have access to the meetings of the commissions and can be represented by third parties);
- mediation (the commissions try in the first instance to settle the dispute amicably);

⁸⁸ Regulations for the Activity of the Commission for Ethics in the Print Media and the Commission for Ethics in the Electronic Media, Art. 17.

⁸⁹ See <http://www.mediaethics-bg.org> (accessed on 20 November 2007).

- independence and impartiality (commission members are banned from participating and voting where there is a conflict of interests and from commenting on pending complaints);⁹⁰
- transparency (the commissions must justify their decisions to the parties involved; at the same time, all the decisions of the commissions are public and must be published on the commissions' Internet pages).

During the first year of work ending June 2007, the commission received 90 complaints, letters and opinions from citizens.⁹¹ Each commission met five times during the year. The two commissions had three joint meetings.⁹²

The commission dealing with electronic media received 26 complaints, of which eight were judged as worth reviewing. Of these, the commission found that four were in breach of the Code of Ethics. One of them was found justified because it was made in the public interest. The commission clearly stated that the Code of Ethics was breached, but did not impose any sanction. Most of the breaches were related to the Code's requirements for reliable, accurate information media must supply to the public.⁹³

It is too early to assess the overall value of the commissions' work and their contribution to encouraging ethical behaviour. But the existence of both the Code of Ethics and the self-regulatory mechanisms for its implementation is clearly a positive sign for the maturity of the Bulgarian media sector. Such broad self-regulation is not in place in any other sector of Bulgarian public life and therefore the experience of the self-regulatory framework for the media could be a model to follow.

Nevertheless, political pressures and interference with the broadcasters' work have continued. In May 2006, Georgi Koritarov, a renowned Bulgarian journalist who co-hosts Nova TV's morning talk show, confessed on Nova TV and Radio New Europe his cooperation with the former communist State security service. His public statement was prompted by an announcement of the Minister of Interior Rumen Petkov about

⁹⁰ Regulations for the Activity of the Commission on Ethics in the Print Media and the Commission for Ethics in the Electronic Media, Art. 13 and Art. 18(5).

⁹¹ Reports of the Commission on Ethics in the Print Media and the Commission for Ethics in the Electronic Media (19 June 2006–19 June 2007), available at http://mediaethics-bg.org/images/razni/File/OtchetiStatistika/Otchet_June2006-June2007.pdf (accessed 11 December 2007).

⁹² The author of this report is a member of the Commission for Ethics in the Electronic Media and its Chair for the first year of its operation.

⁹³ The Code states that journalists will supply the public with accurate and verified information and will not deliberately suppress or distort facts; will not mislead the public and will clearly indicate where manipulated texts, documents, images and sounds have been used; will distinguish clearly between comments and facts; and will ensure that when reporting on a controversial issue, all parties involved have the opportunity to state their position. (1.1.2–1.1.6).

Koritarov's work with the communist political police. Koritarov explained the context of his involvement with the communist police and apologised publicly to those he may have harmed in any way. The discussions sparked by the Koritarov affair focused on two issues. On the one hand, it re-affirmed the necessity to adopt relevant legislation on access to the archives of the former state security service in order to prevent politically motivated exposure or even blackmailing of public figures. The second issue, heatedly debated, had an entirely ethical character, raising the question of the extent to which people who co-operated with the political police during communism can play the role of opinion-makers in a democratic society. Nova TV backed Koritarov and kept his talk show on air, leaving the ethical dilemmas to be judged by its viewers.

In a different story, on 8 October 2006, during the electoral campaign for the presidential elections in Bulgaria, Ivo Indjev, the host of the programme "*V Decetkata*" (In the Bull's Eye) on commercial bTV announced that the station received electronic messages from an anonymous source saying that President Georgi Parvanov had not publicly declared all his properties. Parvanov, a Socialist Party leader since 1996 who was then running for a second presidential mandate, allegedly owned an apartment in the centre of Sofia worth €100,000. Indjev admitted that he did not check the information and asked his guest on the talk show, Mihail Mirchev, a sociologist from Parvanov's Party, if he wanted to comment on the allegations. Mirchev said that the emails were part of a negative PR campaign against the Socialists. After the show, Indjev resigned, saying that he was forced to do so under pressure from the President's office. The station alleged that Indjev had breached journalistic ethical rules by not double-checking the information before airing it. The Commission stated that Indjev did not break the Code of Ethics as he clearly said that the information was from an anonymous source and did not label it as a fact. Overall, the media community was somewhat divided over whether Indjev breached the Code of Ethics. The political pressure on bTV mentioned by Indjev was, however, impossible to substantiate.

6. PROGRAMMING

6.1 Output

There have been no major changes in the programme requirements for the nationwide broadcasters. Overall, the programming of nationwide television stations does not offer much variety, especially for young people who are often acquainted with the newest cultural productions, including movies and music, long before they reach Bulgarian TV stations. Exceptions are the specialised music TV channels like MM, Veselina and Planeta.⁹⁴

⁹⁴ CEM, "Development of the Radio and Television Activity in the Republic of Bulgaria (2001–2006)", *op. cit.*, p. 104.

In 2004, the reality-show format entered Bulgarian broadcasting, attracting massive interest very quickly, particularly among young viewers. In 2006, this format strengthened its position in the TV schedules. The success of the “Big Brother” programme in 2005–2006 prompted Nova TV to launch two more series of “Big Brother” and “VIP Brother” in 2007. In the autumn of 2006, bTV followed suit, with the reality show “Survivor”.

Following a controversy around the accuracy of audience data supplied to the market by TNS TV Plan, BNT and TV Nova signed up for people-meter measurement with a competing research company, GfK.⁹⁵ The second people-meter system in the country led to improved accuracy, with the results of both companies being more or less similar.

A large number of viewers do not want new Bulgarian television channels, but better quality and more diverse output from existing stations.⁹⁶ A continuing trend among viewers is the popularity of the newscasts, which have scored high ratings in the past six years. bTV retains a leading position, with an average 17 per cent audience share for its primetime newscasts in 2007.⁹⁷ The other commercial station, Nova TV, also improved the ratings for its main newscast “*Kalendar*” (Calendar) from 4 per cent in 2005 to 9.3 per cent in 2007.⁹⁸ Only the first channel of BNT suffered a ratings decline for its news programmes. The station’s main newscast, “*Po sveta i u nas*” (Around the World and at Home), has seen a continual drop in audience between 2003 and 2006. The programme slightly improved its audience to 10.9 per cent in 2007.⁹⁹

Viewers’ preferences are divided among films, news, sports and entertainment programmes. The Bulgarian television market is dominated by the three national stations with generalist formats. There is still room on the market for films, local news, drama series, entertainment programmes, international news, health programmes and science documentaries.

In 2005, fiction, news and information and entertainment dominated the programming of BNT’s Channel 1. There is no consolidated data on the output by genre of the private stations.

⁹⁵ GfK Audience Research Bulgaria (GARb) started functioning at the end of 2006.

⁹⁶ CEM, “Development of the Radio and Television Activity in the Republic of Bulgaria (2001–2006)”, *op. cit.*, p. 160.

⁹⁷ The data for 2007 is for the period 1 January–31 March 2007.

⁹⁸ Research of BBSS Gallup/TNS and Market Test for the period January–March 2007. The data has been submitted upon the author’s request.

⁹⁹ Research of BBSS Gallup/TNS and Market Test for the period January–March 2007. The data has been submitted upon the author’s request.

Table 4. Output BNT in 2005

Genre	Number of hours	Percentage of total programming
Fiction	3,404	45.1
News and information	1,636	21.6
Entertainment	1,048	13.9
Arts/Science/Culture	475	6.3
Sports	456	6.0
Promos	404	5.3
Advertising	81	1.1
Other	48	0.7
Music	0	0
Total	7,552	100

Source: European Audiovisual Observatory¹⁰⁰

6.2 General provisions on news

There have been no changes in the general provisions on news aired by broadcasters. According to the Law on Radio and Television, only BNT and BNR can produce the news and current affairs programmes on political and economic subjects that they broadcast. This provision has been criticised by foreign experts as a clause limiting the broadcasters' editorial independence.¹⁰¹

BNR and BNT have the right to include in their news, free of charge, reports and information about events for which another radio or television operator has exclusive reporting rights. In compliance with the Law on Copyright and Related Rights, the source of information must be announced.

¹⁰⁰ European Audiovisual Observatory, *Yearbook 2007. Film, Television and Video in Europe*, 2007 Edition, Vol. 1, "Television in 36 European States", Strasbourg, 2007, p. 34.

¹⁰¹ OSI/Bulgaria, p. 385.

6.3 General programme production guidelines

The general programme obligations and guidelines remain unchanged. They apply to commercial and public service broadcasters alike, and are enshrined in the Law on Radio and Television.¹⁰²

6.4 Quotas

The programme obligations and quotas of both public service and commercial broadcasters are defined in their broadcast licence conditions, which are set by the CEM.¹⁰³ Interestingly, a comparison between the programme obligations envisaged in the broadcast licences of the three nationwide television broadcasters reveals that they have strikingly similar commitments in terms of thematic programmes and quotas. This makes it even more difficult to justify BNT's privileged position in the media market.¹⁰⁴ Without a clear and distinct identity, BNT will have difficulties in justifying its funding from the State budget.

6.5 Obligations on PSB

No major changes have been introduced to the programme obligations of public radio and television. The Law on Radio and Television determines the programming obligations of BNR and BNT¹⁰⁵ and stipulates additional requirements of the programme content broadcast by BNT.¹⁰⁶ Public service television is also obliged to provide airtime, immediately and free of charge, for official announcements by representatives of state bodies.

6.6 Obligations on commercial broadcasters

Commercial broadcasting has seen no significant changes. The Law on Radio and Television determines the basic principles that should be observed by all broadcasters with respect to programme content. The commercial broadcasters' programme obligations and quotas are defined in their broadcast licences, issued by the CEM.

¹⁰² Law on Radio and Television, Art. 10–19.

¹⁰³ For programming quotas on BNT, see OSI/Bulgaria, pp. 387–389.

¹⁰⁴ For quotas on commercial broadcasters see OSI/Bulgaria, pp. 402–404.

¹⁰⁵ Law on Radio and Television, Art. 6.

¹⁰⁶ Law on Radio and Television, Art. 7.

7. CONCLUSIONS

The Bulgarian media environment has seen two major developments in recent years. On a negative note, the sector has failed to welcome new players on the television market, as it was hoped after the government's Broadcasting Strategy seemed to be able to unfreeze the analogue licensing of commercial broadcasters, after a four-year paralysis, and to prepare for digital switch-over. On the other hand, the media sector in general finally saw a system of self-regulation working.

On the policy and legislation front, Bulgaria incorporated the most important elements of the EC audiovisual *acquis*. It will, however, have to revise its media regulatory framework in line with the new AVMS Directive. The country has adopted a new law on electronic communications, which paves the way for the arrival of digital broadcasting, but it has yet to amend the relevant broadcasting legislation, namely the Law on Radio and Television, to complete the legal framework for the introduction of digitalisation.

The new legislation should create a unitary regulatory framework for broadcasting, which could even mean marrying the current two regulators under a single roof. It should also improve the working framework for the public service broadcasters, particularly its funding model. An important step was the adoption of the Plan for the Introduction of Terrestrial Digital Broadcasting (DVB-T) on 31 January 2008, which paves the way for the digital transition.

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Television across Europe:

Follow-up Reports 2008

Czech Republic

By Eva Rybková

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List of Abbreviations

AVMS	Audiovisual Media Services
CME	Central European Media Enterprises
ČSSD	Social Democratic Party, <i>Česká strana sociálně demokratická</i>
ČSZV	Czech Association for Branded Products, <i>České sdružení pro značkové výrobky</i>
ČT	Czech Television, <i>Česká televize</i>
ČTK	Czech News Agency, <i>Česká tisková kancelář</i>

ČTÚ	Czech Telecommunications Office, <i>Český Telekomunikační Úřad</i>
KDU-ČSL	Christian and Democratic Union – Czechoslovak People’s Party, <i>Křesťanská a demokratická unie – Československá strana lidová</i>
MTG	Modern Times Group
NKS	National Coordination Group for Digitisation, <i>Národní koordinační skupina pro digitalizaci</i>
ODA	Civic Democratic Alliance, <i>Občanská demokratická aliance</i>
ODS	Civic Democratic Party, <i>Občanská demokratická strana</i>
RRTV	Council for Radio and Television Broadcasting, <i>Rada pro rozhlasové a televizní vysílání</i>
RTA	Regional Television Agency, <i>Regionální Televizní Agentura</i>
ÚOHS	Office for Protection of Economic Competition, <i>Úřad pro ochranu hospodářské soutěže</i>
US-DEU	Freedom Union–Democratic Union, <i>Unie Svobody–Demokratická unie</i>
ÚSP AV ČR	Institute of State and Law at the Academy of the Czech Republic, <i>Ústav státu a práva Akademie věd České republiky</i>

A. Executive Summary

The most important development in Czech broadcasting over the past three years has been the launch of the digitisation process. The first private digital channels began to operate in 2008, after lengthy delays. The adoption of legal provisions to enable this process was a long-drawn-out and convoluted process, dominated by political wrangling between the most influential interest groups, and preventing new players from entering what remains an underpowered and uncompetitive market. Already ten years have passed since the Government adopted its first decree on the digitisation of electronic media; the central piece of legislation, the Broadcasting Act, has been amended more than ten times since 2003.

On the positive side, technological progress and, to some extent, pressure from the European Union (EU) to move ahead with digitisation succeeded in sparking a broader debate among all major players and stakeholders. This discussion takes place on specialised websites, at conferences and seminars, and on radio and television, which are now more open than they used to be in admitting the extent of media politicisation.

The television industry still lacks healthy competition. Four nationwide terrestrial channels – the commercial TV Nova and Prima TV, and the two public service channels – still command almost the entire audience. The advertising industry continues to crave more competition that would be brought by fresh digital channels.

The latest amendments to the Broadcasting Act (2007) finally unblocked the digitisation process. For the first time, politicians reached consensus in adopting media legislation, albeit under pressure from the industry. Politicians finally understood that analogue broadcasting will not be protected after 2015¹ and therefore they cannot postpone digitisation any longer.

The entrance of the first six digital TV stations in 2008 is not likely to change the Czech broadcasting market in the short term, mainly because they still lack the footprint and reach of the two incumbent nationwide commercial stations. Gaining audience and recognition with the viewers also requires sustained marketing and brand-awareness campaigns, which take time. However, with the footprint of the digital baby stations expected to increase in the coming years (as more regions switch off the analogue signal), they are expected to bring significant changes to the broadcasting landscape in the medium to long term.

The overall TV offer has not changed much. TV Nova and Prima TV continue to serve up their unvarying diet of soap operas, sensational news, game shows and reality formats. But the public service broadcaster Czech Television (ČT, *Česká televize*) has made progress in fulfilling its public service mission. Its news, current affairs, and

¹ Geneva Regional Radio-communications Conference in 2006 (RRC-06).

documentary and drama output dominate the station's schedules. Although suspicions of politicisation persist – and will do so for as long as the Chamber of Deputies controls the ČT Council – there is no clear evidence of significant manipulation.

B. Recommendations

Some important recommendations have been adopted, mostly related to the debate on digitisation and to measures aimed at maintaining a balance on the advertising market before the full switch-off of analogue broadcasting. However, in terms of ensuring more organisational independence for both the regulator and the public service broadcaster, not much has been achieved in the past three years.

1. ORIGINAL RECOMMENDATIONS FROM THE 2005 REPORT,² WITH COMMENTARY

1.1 Media policy

<i>Digitisation</i>	
<p>1. The Government should initiate a public debate on digitisation policy.</p> <p>2. Government policy on digitisation should be that public service broadcasting should be retained under certain circumstances.</p>	<p>Recommendations 1-2 have been adopted. The Government initiated a debate through an information campaign run by the public service broadcasters. At the same time, a major debate was initiated by the unsuccessful applicants for digital licences and other parties involved in digitisation, such as media experts, service providers and advertising agencies.</p> <p>Public service broadcasting was given privileged treatment in Government policy, automatically receiving the right to operate on multiplex A, which has the largest footprint.</p>
<i>Public consultation</i>	
<p>3. The Government should develop and implement a policy to set up new mechanisms of supervision of broadcasting by the public.</p>	<p>This recommendation has not been adopted. There have been no changes in legislation that would allow for more public participation in the oversight of broadcasting through bodies such as the broadcast regulator. The recommendation remains pertinent.</p>

² “Czech Republic”, in Open Society Institute, *Television across Europe: regulation, policy and independence*, Budapest, 2005 (hereafter OSI/Czech Republic), pp. 549–551.

1.2 Regulatory authorities

<i>Independence</i>	
<p>4. The Government should put forward legislative changes to increase the independence, sanctioning power and effectiveness of the Council for Radio and Television Broadcasting (RRTV).</p> <p>5. The Government should initiate a public debate, involving media experts and NGOs, on the issue of nomination of the members of the RRTV, and should initiate legislative changes to reform it so that its membership ceases to reflect the distribution of power in the Chamber of Deputies. This reform should ensure a broad social and professional representation.</p> <p>6. The Government should propose legislative changes to ensure that the RRTV has a stable and long-term source of financing. This funding should be sufficient to secure the Council's independence and should not be used by the Government as an instrument to exert influence over the activities of the Council.</p>	<p>None of these recommendations has been adopted. There have been no legislative initiatives aimed at reforming the structure of the RRTV to increase its independence. Its membership continues to reflect the distribution of power in the Chamber of Deputies, the lower house of Parliament.</p> <p>However, the composition of the RRTV has improved since 2000. The membership of the regulator, although it reflects the political representation in the Chamber of Deputies, is less overtly politicised than in the early 1990s when RRTV Council members were appointed strictly along political lines.</p> <p>These recommendations remain pertinent.</p>
<i>Media diversity</i>	
<p>7. The Government should propose legislative changes to entitle and oblige the RRTV to ensure transparency of ownership structures of the holders of broadcast licences.</p>	<p>This recommendation has not been adopted. However, the RRTV has taken all the steps within its authority to improve the transparency of broadcast ownership.</p>
<i>Regional and local broadcasters</i>	
<p>8. The RRTV should develop a strategy for encouraging the development of regional and local television stations.</p>	<p>This recommendation was partly adopted. Although it did not come up with a strategy on regional and local broadcasting, the RRTV awarded a digital licence to a network of regional TV stations, which pledges to focus its programming solely on regional issues.</p>
<i>Media diversity</i>	
<p>9. The Government should initiate changes in legislation to entitle the RRTV to monitor all tiers of ownership in companies owning broadcasters.</p>	<p>This recommendation has not been adopted. However, the RRTV took steps to shed more light on the ownership of broadcasters. (<i>See recommendation 7.</i>)</p>
<i>Public consultation</i>	
<p>10. The RRTV should support the formation of an association of viewers, and oblige television stations to allot it broadcasting time to express its views.</p>	<p>This recommendation has not been adopted. The RRTV, however, continues to receive and process complaints from viewers. The establishment of a representative association of viewers would still be a step forward in ensuring more public participation in broadcasting.</p>

1.3 Public service television (ČT)

<i>Independence</i>	
<p>11. The Government should initiate a public debate on the issue of nomination of the members of the ČT Council and the Czech Radio Council.</p> <p>12. The Government and Parliament should ensure the status of ČT as an independent public service corporation, by abolishing the Chamber of Deputies' control over the station's Council and management.</p>	<p>None of these recommendations has been adopted. There is no political consensus to cut the tie between the public service broadcasters and the political authorities.</p>
<i>Funding</i>	
<p>13. The Government should initiate legislation that would allow ČT to carry advertising until the switchover to digitisation, in order to maintain a certain degree of competitiveness in the television market.</p> <p>14. The Government should propose changes of legislation to regularly raise the TV and radio licence fees in line with the rate of inflation or the retail price index.</p>	<p>Recommendation 13 has been adopted. The Government has allowed ČT to carry advertising until the switch-off of the analogue signal. Recommendation 14 has not been adopted and is still pertinent. Although Parliament approved a higher licence fee in 2007, there is no mechanism to ensure the automatic increase of the licence fee according to inflation or other indicators.</p>
<i>Professional ethics</i>	
<p>15. The Government should ensure that the ČT code, especially the part concerning editorial activity, is drafted and agreed upon by the editorial staff, rather than approved by Parliament. The code should be publicly disseminated.</p>	<p>This recommendation has not been adopted. ČT works according to the code that was approved by Parliament.</p>

1.4 Commercial broadcasters

<i>Media diversity</i>	
16. Parliament should take steps to amend legislation to impose limits on cross-ownership in the print and broadcasting sectors.	This recommendation has not been adopted. Although there has been no major merger between these sectors, the market has seen several cross-ownership deals. Parliament, however, introduced provisions preventing cross-ownership between network communications operators and digital licence holders, which is a positive move towards preventing concentration of ownership in the digital chain.
<i>Professional ethics</i>	
17. The RRTV should require applicants for broadcast licences to submit internal codes of conduct or ethics, as a precondition for receiving a licence to run a commercial television station.	This recommendation has not been adopted. With digitisation, the licensing criteria are expected to be more relaxed.
<i>Enforcement</i>	
18. Parliament should amend the Broadcasting Act to empower the RRTV to enforce the licensing conditions, based on which television stations have been granted their broadcast licences.	This recommendation has not been adopted. However, the entire licensing system is changing, making this recommendation obsolete. (<i>See section 2.</i>)

2. NEW RECOMMENDATIONS BASED ON THE 2008 REPORT

2.1 Regulatory authorities

1. The Government and Parliament should push forward legislative changes to increase the independence, sanctioning power and effectiveness of the RRTV, turning it into a regulator that would be able to monitor the rapid changes in the broadcasting market. The RRTV should, for example, be entitled to adopt bylaws for the sector.
2. The Government and Parliament should ensure that the newly adopted, liberal licensing system will not endanger diversity and standards in the broadcasting market.

2.2 Public service broadcaster (ČT)

3. The Government and Parliament should adopt legislative changes to guarantee the independence of the public service broadcaster.
4. The Government should initiate changes in legislation to increase the TV and radio licence fee regularly and in line with the rate of inflation or the retail price index.

C. Main findings of the Follow-up Monitoring

1. GENERAL BROADCASTING ENVIRONMENT

1.1 Key developments in legislation and policy

The most important policy and legal changes over the past three years are related to digitisation. Beginning at the end of 2004, the transition has had a significant impact on the general broadcasting environment. All the stakeholders, lawmakers, broadcasters and regulators were, however, enmeshed in endless argument. Most attempts to move ahead with digitisation were blocked by legal disputes instigated either by unsuccessful applicants for digital licences or by politicians who were accused of succumbing to commercial lobbying rather than focusing on the adoption of adequate legislation.

However, the rapid spread of new technologies and developments in digitisation at the European level shaped events in the television market. New players showed intense interest in entering the digital market. Debates among media professionals heated up.

The main changes in television legislation and policy have been the adoption of the Electronic Communications Act in May 2005³ and the amendments to the Broadcasting Act⁴ in 2006 and 2007.⁵ The former was intended to create the legal framework for digitisation and the latter was adopted in order to unblock the digital licensing process.

The Electronic Communications Act incorporated parts of the Broadcasting Act and the Czech Television Act.⁶ It contains regulatory provisions for the entire sphere of electronic communications. More specifically, it defines the role of the regulators in digital broadcasting (*see section 2.1*), dividing their competences between regulation of

³ Act no. 127/2005 on Electronic Communications, *Sbírka zákonů*, 22 February 2005 (hereafter Electronic Communications Act).

⁴ Since 2003, Parliament has passed at least 11 amendments to Act no. 231/2001 of 17 May 2001 on Radio and Television Broadcasting Operation and on amending other laws, *Sbírka zákonů* 87, 4 June 2001 (hereafter Broadcasting Act). Here is a summary of these amendments: 274/2003, 341/2004, 501/2004, 626/2004, 82/2005, 127/2005, 348/2005, 235/2006, 160/2007, 296/2007, 304/2007. N.B. The Broadcasting Act replaced the Act on Operation of Radio and Television Broadcasting 1991 (subsequently amended).

⁵ Act no. 304/2007 Coll., which amends some acts in connection with the switchover from the terrestrial analogue broadcasting to terrestrial digital broadcasting, *Sbírka zákonů*, 1 November 2007.

⁶ Act no. 483/1991 on Czech Television, *Sbírka zákonů*, part 93 of 29 November 1991, as last amended by Act no. 82/2005, which changes Act no. 483/1991 on Czech Television in its latest version (hereafter Czech Television Act); Act no. 231/2001 on Radio and Television Broadcasting Operation and on the change of other acts in their latest versions, *Sbírka zákonů*, part 23 of 23 February 2005.

content and regulation of transmission. It also created a legal framework for the so-called Public Service Multiplex, reserved for ČT. (*See section 3.1.*)

The Electronic Communications Act did not turn out as originally planned, namely a comprehensive electronic media law that would provide a basis for digitisation. Initially, the idea was to incorporate the provisions on digital broadcasting from the Broadcasting Act. Zdeněk Duspiva, chairman of the National Coordination Group for Digitisation (NKS, *Národní koordinační skupina pro digitalizaci*), said:

There has been a [...] “political agreement” during the preparation of the Electronic Communications Act, according to which digitisation and digital broadcasting will be removed from the Act and dealt with separately. But during the second reading [of the Electronic Communications Act by the Chamber of Deputies] unilateral steps were taken towards the creation of a public service multiplex for ČT. [...] The second reading took place on Tuesday and the third on Friday. There was no opportunity for discussion, for agreement. On the contrary, the agreement was broken. Nevertheless, the creation of a public service multiplex has been in my personal opinion a positive step. It created a precedent.⁷

In April 2006, the newly amended Broadcasting Act came into force.⁸ The amendments aimed to create the legal framework for the introduction of digitisation, including the distribution of digital broadcast licences. These amendments had taken some 15 months to prepare. This delay hurt the applicants for digital licences who wanted to start their operations as soon as possible in order to recoup their investments.

The final vote on the law was chaotic. Members of Parliament and media experts alike had to wait for the official transcripts of the law to find out what the amendments said. In total, the entire process of adopting legislation on digitisation had taken some five years. The MPs approved 80 changes to the Broadcasting Act in only two hours. The new law came into force a month after the first six digital licences were distributed. Soon after the adoption of the law, it became clear that further amendments were urgently needed.

While the amended Act finally enabled the distribution of digital licences, the clause about the almost automatic extension of broadcasting licences remained. “The State lost control of the frequency spectrum as the [frequencies] have been distributed almost indefinitely to the existing broadcasters,” Duspiva said.⁹

⁷ Zdeněk Duspiva, speaking at the 7th Media Conference in the town of Český Krumlov on “How to unblock the way to digitisation”, 19–20 April 2007 (hereafter Český Krumlov 2007 conference).

⁸ Act no. 235/2006 of 25 April 2006, which amends the Broadcasting Act.

⁹ Interview with Zdeněk Duspiva, Prague, 25 March 2008.

When the Government adopted a Technical Plan for the Transfer to Digital Broadcasting,¹⁰ the Czech Telecommunications Office (ČTÚ, *Český Telekomunikační Úřad*), the technical regulator in charge of implementing the plan, did not have the legal tools to force existing broadcasters, specifically the commercial stations TV Nova and Prima TV, and the regional analogue TV stations, to comply. These broadcasters had their analogue licences automatically extended until 2018. The Technical Plan was further amended in 2008.¹¹ (*See section 4.1.*)

Vladimír Balaš, a legal expert from the Institute of State and Law at the Academy of the Czech Republic (ÚSP AV ČR, *Ústav státu a práva Akademie věd České republiky*), commented:

[The amended 2006 Broadcasting Act] is as chaotic as many other acts. It reflects the feeling of MPs to push for their own or others' vested interests that they believe are the best and the most straightforward way to regulate or fix something. The Act is a typical example of chaos in the legislative process.¹²

Persistent lobbying by commercial stations strongly influenced the media legislation that emerged in the 1990s. This has continued and had a major impact on the most recent legal developments.¹³

In March 2006, the Government adopted a “Policy on Developing Digital Broadcasting in the Czech Republic”.¹⁴ It also created the NKS, chaired by Duspiva. He had previously served as a member of the RRTV and adviser at the now defunct Ministry of Informatics. The main tasks of the NKS are to coordinate the transfer to digital broadcasting between different institutions and regulators, and to prepare the information and communication campaigns and overall support for digitisation.

General elections in June 2006 changed the political landscape, bringing to power the right-wing Civic Democratic Party (ODS, *Občanská demokratická strana*), which formed a coalition with the Christian Democrats (KDU-ČSL, *Křesťanská a*

¹⁰ “Opatření obecné povahy č. OOP/15/12.2006-39” (General Provision no. OOP/15/12.2006-39), available online (in Czech) at http://www.ctu.cz/1/download/OOP/TPP/TPP_OOP_15_12_2006_39.pdf (accessed 25 April 2008).

¹¹ “Technický plán přechodu zemského analogového televizního vysílání na zemské digitální televizní vysílání” (161/2008 Sb.) (Technical Plan for Transition of Terrestrial Analogue Television Broadcasting to Terrestrial Digital Television Broadcasting) (hereafter Technical Plan for the Transfer to the Digital Broadcasting).

¹² Vladimír Balaš, speaking at the Český Krumlov 2007 conference.

¹³ OSI/Czech Republic, p. 487.

¹⁴ “Konceptce rozvoje digitálního televizního vysílání v České republice” (Policy on Digital Broadcasting Development in the Czech Republic), 15 March 2006, available online (in Czech) at <http://www.mpo.cz/dokument37351.html> (accessed 3 April 2008).

demokratická unie – Československá strana lidová) and the Green Party.¹⁵ The new coalition closed down the Ministry of Informatics in June 2007, distributing its responsibilities among the Ministry of the Interior, the Ministry for Regional Development and the Ministry of Industry and Trade. (The real reason for creating the Ministry of Informatics in January 2003 had been to give a portfolio to the centre-right Freedom Union–Democratic Union (US–DEU, *Unie Svobody–Demokratická unie*), which was a coalition partner at the time.)¹⁶

The 2007 amendments to the Broadcasting Act let digital roll-out get going, but under conditions that greatly favoured the existing broadcasters. The involvement of the Ministry of the Interior and the Ministry of Culture in drafting the amendments was viewed positively by media observers. It was the first time that legal provisions had been drafted by Government experts instead of MPs.

The amended Broadcasting Act brought revolutionary changes in the distribution of TV licences, introducing a registration system similar to the one already in place for cable and satellite broadcasting.¹⁷ (See section 2.2.) The amendments also aimed to motivate current nationwide licence holders to give up their analogue frequencies in exchange for digital licences. TV Nova and Prima TV were automatically awarded “compensatory” digital licences in exchange for their analogue ones. The Technical Plan for the Transfer to Digital Broadcasting became a legally binding document, obliging broadcasters to release their analogue licences in order to make room for digital channels.¹⁸ ČT was allowed to carry advertising until analogue switch-off, in order to ensure balance on the quasi-monopolistic broadcast market, where TV Nova pulls in over 60 per cent of the advertising revenues.¹⁹

¹⁵ ODS won 81 seats, KDU–ČSL 13 seats and Green Party 6 seats out of 200 seats in the Chamber of Deputies. The opposition Social Democrats (ČSSD, *Česká strana sociálně demokratická*) won 74 seats.

¹⁶ This was the opinion of numerous politicians and political observers. The Ministry functioned for only four years. Most of its staff were transferred to the ministries mentioned where they work on the same issues. The Ministry’s disappearance was not seen as important and triggered no controversy.

¹⁷ See section 3.2.2 in OSI/Czech Republic, pp. 505–506.

¹⁸ Before the adoption of the amended law, the Technical Plan had not been legally binding. The content regulator, the RRTV, had to ask the commercial TV stations to give up their analogue licences before their expiration, but it had no legal power to force them to do this. This is why inclusion of the Technical Plan in the law was important. (RRTV, “Zpráva o stavu vysílání a činnosti Rady pro rozhlasové a televizní vysílání 2007” (Report on the state of broadcasting and activity of the Council for Radio and Television Broadcasting for 2007) (hereafter RRTV, *Annual Report 2007*, pp. 18–19, available online (in Czech) at http://www.rrtv.cz/cz/files/zpravy/VZzprava_2007.pdf (accessed 3 April 2008).

¹⁹ The Act allows ČT to air advertisements on 0.75–1 per cent of broadcasting time on its first channel and 0.5 per cent of the total broadcast time on other channels (Act no. 304/2007 Coll., art. IV/ 12).

The main purpose of the Act was to unblock the digitisation process. Although it favours the current commercial nationwide broadcasters, it creates a legal framework that is likely to open the market to new players at last, ending the duopoly of TV Nova and Prima TV.²⁰ While it is too early to analyse their impact, the 2007 amendments were embraced with open arms by the six companies that received licences in the first digital tender. “Other commercial stations will finally enter the market and the programme offer will expand,” according to the head of one of these stations. “The decrease in viewing time is really significant, and it is obvious that viewers are fed up with the current offer and want some fresh programmes.”²¹

TV Nova and Prima TV welcomed the automatic award of digital licences, but protested at the increase of ČT’s advertising limit from 0.5 per cent to 0.75 per cent. Cable operators expressed dissatisfaction with new “must carry” provisions, obliging them to transmit all nationwide programmes that are available via terrestrial digital broadcasting.

Table 1. Overview of the main legal changes in 2006 and 2007 amendments

2006 amendments	Provided the legal framework for digital broadcasting Introduced rules on the distribution of digital licences Maintained the almost automatic renewal of broadcast licences
2007 amendments	Introduced a new, simpler system of licensing based on registration similar to cable and satellite broadcasting Awarded digital licences to the main commercial TV stations, TV Nova and Prima TV, in exchange for giving up their analogue licences Awarded “compensatory licences” to the first six digital broadcasters after a court did not allow them to start broadcasting Allowed the public service broadcaster to carry advertising until analogue switch-off Obligated cable broadcasters to air all the terrestrial TV channels

Source: OSI research

²⁰ Jan Cizner, “Televizní revoluce může začít” (Television revolution can start), *Hospodářské noviny*, 2 November 2007, available online (in Czech) at http://ihned.cz/3-22340580-diginovela-000000_d-16 (accessed 15 March 2008).

²¹ Jiří Balvín, Director-General of the music cable and satellite transmitted TV station Óčko in an interview with *Český rozhlas*: Filip Rožánek, “Hlavní změny, které přináší diginovela” (Main changes brought by the digital amendment), 28 September 2008, *Český rozhlas*, available online (in Czech) at http://www.rozhlas.cz/digital/cesko/_zprava/384134 (accessed 19 March 2008).

1.2 EU legal provisions

The main EU directives on audiovisual policy have been incorporated in the relevant Czech legislation on electronic communications and broadcasting.²² Under the amended Broadcasting Act, the distributors of content will be regulated by the ČTÚ while the content providers will be regulated by the RRTV. The incorporation of the Audiovisual Media Services (AVMS) Directive²³ into Czech legislation is currently under discussion.

The Broadcasting Act requires broadcasters to air European works for at least half of their total broadcasting time and to devote 10 per cent of this time to independent production.²⁴ In 2006, for the first time, the RRTV asked all TV broadcasters to report on their compliance with EU quotas. The data showed that all nationwide terrestrial TV broadcasters were in compliance.

²² European Union, Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, published in the *Official Journal of the European Communities*, L108/7, 24 April 2004 (Access Directive).

European Union, Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services, published in the *Official Journal of the European Communities*, L108/21, 24 April 2002 (Authorisation Directive).

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

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

²³ European Union, Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, *Official Journal of the European Union*, L332/27, 18 December 2007 (Audiovisual Media Services Directive).

²⁴ Broadcasting Act, sections 42–44.

Table 2. Share of European works in television broadcasts in 2006 (as percentage)

Channel	TV Nova	Prima TV	ČT 1	ČT2
European works	52.1	57.0	88.1	86.7
European independent Works	27.2	22.0	21.1	16.9
Current independent Works	34.1	98.0	67.5	62.0
Czech works	30.6	28.0	71.1	66.6

Source: RRTV²⁵

The implementation of EU quotas by satellite operators is problematic. Some of them circumvent these requirements, thanks to special conditions in their licence contracts. Regional broadcasters comply with the EU quotas. Usually, TV stations fulfil this duty by airing Czech production, such as the drama series *Pojišťovna štěstí* (Insurer of Happiness), which ran on TV Nova. All nationwide TV stations have realised that investment in such production pays off.²⁶

1.3 The broadcasting market

There have been no significant changes since 2005. The same three nationwide players are dominant: ČT with its two channels, ČT1 and ČT2, and the commercial stations TV Nova and Prima TV. The number of Czech and foreign cable and satellite broadcasters available in the Czech Republic jumped from 78 in 2004 to 126 in 2007.

The six new digital nationwide TV stations all intend to come on air during 2008 and 2009. The all-news channel Z1 started broadcasting in June 2008 with a schedule of news, talk shows and documentaries, reaching some 30 per cent of viewers. Óčko, a music television station which has been broadcasting via cable and satellite for six years, also had its digital launch in June. A network of regional stations called the Regional Television Agency (RTA, *Regionální Televizní Agentura*), which has been airing its own programming on shared frequencies with Prima TV in five Czech regions,²⁷ started airing digitally in some parts of the country in July 2008. The other stations that have

²⁵ RRTV, *Annual Report 2007*, p. 124.

²⁶ “A station without one or two original Czech series is completely out [of the game]. The popularity of big entertainment shows has decreased. People want to see more ‘local’ types of entertainment such as talk-shows and original sitcoms,” said a member of Prima TV’s marketing department, on condition of anonymity.

²⁷ RTA has regional studios in the towns of Brno, České Budějovice, Hradec Králové, Ostrava and Zlín.

received digital licences, the children's channel TV Pohoda and the generalist channels Barrandov TV and Febio TV, are preparing to launch at the end of 2008 or early in 2009.

Table 3. Total number of broadcast licences in 2006 and 2007

Stations	As of 31 December 2006	As of 31 December 2007
Terrestrial TV stations	29	28
TV stations transmitting via Cable	86	97
TV stations transmitting via Satellite	21	29

Source: RRTV

TV Nova still dominates the TV market but its audience share has fallen slightly from 42 per cent in 2004 to 40 per cent in 2007. Its main commercial rival, Prima TV, has seen a more significant fall. The aggregate audience share of ČT's two channels hovers at around 30 per cent.

Table 4. Audience shares of television stations in 2005–2007 (as percentage)

Channels	2005	2006	2007
ČT 1	21.69	21.41	22.59
ČT2	8.08	9.44	8.23
TV Nova	40.95	41.76	40.81
Prima TV	23.13	20.28	19.96
Others	6.15	7.11	8.40

Source: *Mediaresearch*

Average viewing time fell by 12 per cent between 2006 and 2007,²⁸ as viewers moved to other platforms, mainly the Internet. Nevertheless, the Czech Republic is still one of the European countries with the largest share of viewers watching mostly terrestrial TV stations.

²⁸ ATO-MediaResearch, Regular monthly reports on viewership December 2006 and 2007, data available online at <http://www.ato.cz> and <http://www.mediaResearch.cz/main.php?file=prod&n=2&subid=0.1.2> (accessed 25 April 2008).

Table 5. Share of various systems in reception of television broadcasting in 2006

Total number of TV households		3,800,000
With cable connection	analogue	800,000
	digital	40,000
With satellite reception		500,000
With terrestrial Reception	analogue	3,800,000
	digital	200,000

Source: RRTV²⁹

2. REGULATION AND LICENSING OF THE TELEVISION SECTOR

2.1 Regulatory authorities and framework

The competencies of the two main regulators of the broadcasting market, the RRTV and the ČTÚ, are enshrined in the Broadcasting Act and the Electronic Communications Act. The former regulates broadcast content and the latter deals mainly with managing the frequency spectrum. Prompted by developments in digitisation, the RRTV established a special commission in 2005 to coordinate work between the two regulators.³⁰

The RRTV has recently been criticised more for lacking professionalism than for politicisation. Critics say that its members do not have sufficient knowledge of broadcasting and do not take their job seriously. Some members see their work as part-time although they receive the equivalent of an MP's salary. The introduction of staggered terms would increase the regulator's independence as membership would not then reflect the distribution of political power in the Chamber of Deputies, which appoints them. However, this idea has not yet appeared on the political agenda.

²⁹ Broadcasting Council, "Report on the state of broadcasting and the activity of the Council for Radio and Television Broadcasting for 2006" (hereafter RRTV, *Annual Report* 2006), p. 16, available online (in English) at http://www.rrtv.cz/cz/files/zpravy/VZ2006_eng.pdf (accessed 22 January 2008), p. 13.

³⁰ RRTV, "Zpráva o stavu vysílání a činnosti rady pro rozhlasové a televizní vysílání za rok 2005" (Report on the state of broadcasting and the activity of the Council for Radio and Television Broadcasting for 2005), available online (in Czech) at <http://www.rrtv.cz/cz/files/zpravy/vz05RRTVweb.pdf> (accessed 25 April 2008) (hereafter RRTV, *Annual Report* 2005), p. 23.

According to Petr Pleva, deputy chair of the Permanent Commission for Mass Media in the Parliament, there was simply no political will to introduce legal criteria of professionalism for the RRTV members.³¹

Prima TV's former Director General, Martin Dvořák, even mooted the idea of dissolving the RRTV as well as all the governing bodies of the public service broadcasters.³² "I believe that today the access to television broadcasting is basically unlimited and therefore it does not make sense to regulate it."³³

According to Václav Žák, the RRTV Chairman, the RRTV is in an impossible position. It is tasked to make independent decisions in concrete cases such as sanctioning broadcasters and awarding licences, but at the same time it has to follow closely the decisions of Parliament and the Government, which are not taken into account by the courts. Žák explained how convoluted the decision-making process in the RRTV has become. He said that Government policy on digitisation states that in the first stage of transition, digital licences should not be awarded to pay-TV stations. When the RRTV explained that it had not licensed Galaxie Sport, a pay-TV channel, because of this policy, the Prague Municipal Court ruled that the regulator had exceeded its remit. "If these things are not connected, we are getting into a really absurd situation where the regulator cannot refer to agreed government policy," Žák said.³⁴

2.2 The licensing system

The 2007 amendments to the Broadcasting Act brought major changes in the area of digital licensing, stripping the RRTV of decision-making power and introducing the concept of compensatory licences, which are awarded to the first six digital TV channels that lost their licences following a court dispute, and to current analogue stations.

According to the new provisions,³⁵ the licensing tender and application procedures administered by the RRTV will be dropped and replaced by a short application procedure almost identical with the application for the registration of cable and satellite

³¹ Speaking at the Český Krumlov 2007 conference, see above.

³² This idea was contributed to <http://www.estat.cz>, a think-tank that wants to prepare a detailed plan of radical reform of the country's public administration structures.

³³ "Martin Dvořák navrhuje změnit veřejnoprávní média na státní" (Martin Dvořák proposes to change public service media to State media), *ceskamedia.cz*, 28 February 2007, available online (in Czech) at http://archive.ceskamedia.cz/article.html?id=188579_nw_M&qqqq=medi%E1In%ED%2legislativa (accessed 18 April 2008).

³⁴ Speaking at the Český Krumlov 2007 conference, see above.

³⁵ 2007 Broadcasting Act, art. 25 (1).

broadcasters.³⁶ Any party interested in airing digitally, whether via cable, satellite or terrestrially, will only be required to apply for a licence from the regulator.³⁷ The RRTV will no longer organise contests for licences, instead receiving individual applications with information about the applicant's financial, organisational and technical readiness to start broadcasting, and an agreement with a cable or satellite provider to host its programme. The RRTV is obliged to interview the applicant within 30 days and can reject the application only if he or she is late in paying State taxes, has been imprisoned, or has already had a licence withdrawn for violating legal provisions on programming.³⁸ In other words, the RRTV will have to grant licences to any party with the money and an agreement with a network operator. This new procedure will only be implemented after the completion of digitisation.

Politicians claim that the amended legislation is a breakthrough that will liberalise the TV market in an unprecedented way and strengthen pluralism in broadcasting. The Minister of the Interior and Informatics, Ivan Langer, said that the legislation marked the end of the "beauty contest era" in broadcasting, when the RRTV decided by itself who would be able to broadcast and who would not.³⁹

One of the bill's fathers, the Deputy Minister of the Interior, Zdeněk Zajíček, has said that "anybody who applies for a [broadcast] licence will get it". He added that he was aware that the terrestrial frequency spectrum would continue to be limited, but there will be much more space on it. In total, the country will have up to seven nationwide digital multiplexes able to host 70 individual channels. As now, on cable and satellite, there will be no limit to the number of programmes. On the other hand, the State will be able to withdraw licences in cases of breaches of legislation.⁴⁰ "After analogue switch-off, probably in 2010 or 2012, anybody with enough money and ideas to launch a new TV station will be able to enter the TV market. It will not be necessary to apply for a licence [in a contest]."⁴¹

There have been no changes in the RRTV's monitoring of compliance with licence conditions. The RRTV continues to be blamed for lack of expertise and double standards. The RRTV blames legal loopholes, as well as shortages of staff and technical

³⁶ OSI/Czech Republic, p. 550.

³⁷ RRTV, *Annual Report 2007*, p. 19.

³⁸ Broadcasting Act, arts. 32 and 33, stating the basic duties of broadcasters such as to ensure that programmes do not promote hatred for reasons relating to race, gender, religion, nationality or membership to a certain group of the population, etc.

³⁹ Ivan Langer's speech at the Chamber of Deputies, 15 August 2007 (official transcript of the Chamber of Deputies (PSP, *Poslanecká sněmovna parlamentu*), available online (in Czech) at http://www.rozhlas.cz/digital/info/_zprava/371778 (accessed 25 April 2008).

⁴⁰ Zdeněk Zajíček TV Debate on 24 hours ČT News Channel. Studio ČT24, 17 August 2007.

⁴¹ Jana Perglerová, "Co přinesl televizní rok 2007" (What the television year 2007 brought), *Právo*, available online (in Czech) at <http://special.novinky.cz/2007/kultura-co-prinesl-televizni-rok-2007.html> (accessed 18 April 2008).

equipment to carry out proper monitoring. It has warned that it will not be able to carry out proper monitoring when digitisation kicks off, as the number of broadcasters will rocket. It has also pointed out that its work will continue to be hampered by shortcomings in the law. For example, the law contains unclear definitions of terms related to TV programming such as the broadcaster's obligation to maintain records of programme units, without stating clearly what exact unit and in what format they should be archived.⁴² Broadcasters believe that the obligation to archive its programme units for 30 days is an excessive burden.⁴³

The RRTV also continues to complain that the law does not allow the regulator to force broadcasters to comply with the conditions stated in their licence contract. Broadcasters say that the regulator should employ more preventive measures, such as issuing warnings before penalising them.

The boom in reality-show formats over the past several years has also triggered a cascade of penalties and legal disputes, unprecedented in Czech broadcasting. In 2006, the RRTV imposed the highest number of fines in its history, 460, double the number in 2004, mostly for legal breaches by the reality shows *Big Brother* on TV Nova and its replica *VyVolení* (The Chosen) on Prima TV. In 2007, the RRTV imposed a total of 100 fines, worth a combined CZK 10.8 million (€431,000).⁴⁴ The broadcasters usually appeal against the fines in court. In the recent past, the RRTV has won an increasing number of disputes in court. The Prague Municipal Court still cancelled 68 per cent of the RRTV's sanctions in 2007.⁴⁵ The largest single fines were imposed in 2006: CZK 22 million (€878,000) on Prima TV and CZK 25 million (€998,000) on TV Nova for broadcasting unsuitable programming in 2005 before the 10 pm watershed.⁴⁶ Most of the fines were for hidden advertising and broadcasting programmes that endanger the physical, mental or moral development of children and young people before 10 pm. *Big Brother*, for example, showed participants having sex, consuming drugs and alcohol, smoking, behaving aggressively and speaking dirtily.

The biggest licensing-related controversy was provoked by digital broadcasting. The RRTV announced a contest for two multiplexes in November 2004. It took another year and a half before the licences were awarded. In fact, digitisation had been blocked for years by lengthy and bitter disputes over whether the 2001 Broadcasting Act

⁴² Broadcasting Act, art. 31(j) obliges broadcasters to maintain records of all programme units for at least 30 days from the date of broadcasting and make them available to the Council.

⁴³ Email comment from Prima TV legal department (3 April 2008).

⁴⁴ Jan Kálal, "Pokuty RRTV přinesly vloni do státní kasy 10,8 milionu korun" (RRTV fines brought CZK 10.8 million to State coffers last year), 28 February 2008, *Digizone.cz*, available online (in Czech) at <http://www.digizone.cz/aktuality/pokuty-rtv-prinesly-vloni-do-statni-kasy-108/> (accessed 18 April 2008). See also RRTV *Annual Report* 2006, p. 19.

⁴⁵ RRTV, *Annual Report* 2007, p. 80.

⁴⁶ RRTV *Annual Report* 2005, p. 37. (The Report shows, based on research by psychologists, how reality shows such as *Big Brother* were damaging young viewers.)

entitled the regulator to license digital stations at all. In April 2006, the RRTV took the bull by the horns and issued the first six digital licences to Febio TV, TV Pohoda, TV Barrandov, Z1, Óčko and RTA. A week later, the Broadcasting Act was amended to accommodate digitisation.⁴⁷ The winners of the tender had to start airing within a year, according to the law.

Soon after the adoption of the amended Broadcasting Act, it became clear that this law did not provide an adequate legal basis for digitisation. The need for further amendments complicated the whole process again. To make matters worse, a group of unsuccessful bidders, including the incumbent TV Nova, Galaxie Sport, Prima TV and the aspirants Step PR, Lyra TV and Minority TV, appealed against the RRTV's decision in the Prague Municipal Court, which in September 2006 declared the licensing decision to be null and void, freezing the entire digitisation process.⁴⁸ The court justified its ruling by stating that the regulator had exceeded its remit and calling RRTV's licensing procedure "incomprehensible". The successful applicants have never broadcast. The delay hurt their capital investment, as these broadcasters had spent massively in preparing programming and hiring staff, believing that they could recoup with advertising revenues. The court's decision delayed the introduction of digitisation for almost two years.

The six winning companies threatened to seek international arbitration over their claims for compensation. According to Fero Fenič of Febio TV, the investors behind his company had already spent "hundreds of millions of crowns".⁴⁹ According to some media buyers, the delay was orchestrated by TV Nova and Prima TV. By challenging the licensing process they wanted to buy time and maintain their grip on the advertising money in the country for as long as possible. In the end, the 2007 amendments to the Broadcasting Act put an end to this conflict,⁵⁰ by stating that the six winning digital applicants were entitled to compensatory licences.

Court cases are likely to continue, however, because the current legislation no longer gives unsuccessful candidates the chance to challenge the regulator's decisions. The Prague Municipal Court is likely to find this amendment to be both unconstitutional and discriminatory, and to lodge a complaint with the Constitutional Court which, if it were upheld, would oblige Parliament to restore this possibility.⁵¹

⁴⁷ Act no. 235/2006 Coll.

⁴⁸ RRTV, *Annual Report* 2006, p. 16.

⁴⁹ Ondřej Aust, "Žaloba Novy zpozdí digitalizaci" (Nova lawsuit will delay digitisation) on Aust's website, <http://www.aust.cz/2006-09-07/zaloba-novy-zpozdi-digitalizaci/>, 7 September 2006 (accessed 7 March 2008).

⁵⁰ Article IV of Act no. 304/2007, Transitional Provisions.

⁵¹ Jan Potůček, "Přijdou digitální televize znovu o licence?" (Will digital television lose its licences again?), *digizone.cz*, 6 March 2008.

3. REGULATION AND MANAGEMENT OF PUBLIC SERVICE TELEVISION BROADCASTING (PSB)

3.1 PSB legislation and policy

A special provision in the Electronic Telecommunications Act⁵² tasked ČT to lead the process of digitisation, reserving Multiplex A for its exclusive use.⁵³ The latest amendments to the Czech Television Act entitled the station to operate at least two more TV channels on top of its two nationwide analogue channels, ČT1 and ČT2.⁵⁴

In May 2005, ČT launched an all-news channel, ČT24, which airs digitally and via satellite, cable and internet. The following February, it launched ČT4 Sport, which is aired digitally and via satellite and cable. Today, some 13 per cent of Czech households have access to ČT24.

ČT wanted to launch digital terrestrial broadcasting on Multiplex A, known also as the Public Service Multiplex, in all regions of the country in 2007. This plan was delayed until May 2008, then again until autumn 2008.⁵⁵

3.2 PSB governance structure

The 2005 amendments to the Czech Television Act did not change the governance of Czech public service broadcasting. The ČT Council still has the right to appoint and recall the director and senior management, to settle the director's salary and bonuses, and oversee the broadcasting. MPs still control the appointment of Council members.⁵⁶

Unlike the RRTV Council, the ČT Council has staggered terms, but the nomination by civil-society organisations that was introduced after the ČT crisis in 2001 is still farcical. Politicians still believe that Council membership should reflect the distribution of power in Parliament.

⁵² Electronic Communications Act.

⁵³ The digital spectrum in the Czech Republic has been divided into three multiplexes: A, B and C. Multiplex A, hosting four channels, is the most attractive, as its frequencies cover 70 per cent of the country's territory. Multiplexes B and C together accommodate 12 channels covering 30 per cent of the country.

⁵⁴ Czech Television Act, art. 3 (Amendment no. 82/2005 and no. 127/2005).

⁵⁵ Petr Ježek, "Další odklad digitalizace. Vysílání na Plzeňsku začne až v září" (Another delay of digitisation. [Digital] broadcasting will start in September), *iDnes.cz*, 6 April 2008, available (in Czech) online at http://zpravy.idnes.cz/dalsi-odklad-digitalizace-vysilani-na-plzensku-zacne-az-v-zari-pb4-/media.asp?c=A080406_173653_media_dp (accessed 25 April 2008).

⁵⁶ OSI/Czech Republic, pp. 518–522.

The outcome of the 2006 general elections raised new issues in the debate on the Council's political influence over ČT. The Green Party, which gained representation in the Government, protested in June 2007 at the election of five new Council members. They were all former politicians close to the largest political forces in the country, the Civic Democratic Party (ODS, *Občanská demokratická strana*) and the Social Democrats. Following this dispute, Parliament dismissed the entire ČT Council by twice rejecting the Annual Report.⁵⁷

It took almost a year of bargaining in the Chamber of Deputies before a decision was taken to appoint the missing ČT Council members. The Council has functioned with 10 instead of 15 members since May 2007. In the end, Parliament appointed the new members in March 2008. They are: a former senator, Josef Jařab, from the now defunct Civic Democratic Alliance (ODA, *Občanská demokratická aliance*); the writer and former chair of the Chamber of Deputies, Milan Uhde (ODS); a former RRTV Council member, Radek Mezulánik; a former TV anchor, Dana Marklíková; and a drug-prevention specialist, Jiří Presl.

The mainstream press reports openly on the political influence over the ČT Council. Worryingly, politicians themselves no longer trouble to hide their affiliations. They say openly that the ČT Council should be nominated by the parties in Parliament. "Why should I pretend that I am a beekeeper⁵⁸ when I am a Social Democrat? I do not like this kind of hypocrisy," said the current chair of the Chamber of Deputies' Permanent Media Commission, Vítězslav Jandák, Social Democratic Party (ČSSD, *Česká strana sociálně demokratická*).⁵⁹ He thinks the ČT Council should be filled with representatives of all parties in Parliament and one non-parliamentary party. In his opinion, the Council's mission should primarily be to monitor non-stop the news on ČT to count how frequently representatives of political parties appear on the screen.⁶⁰

⁵⁷ Jan Kubita, "Poslanci chtějí odvolat celou radu ČT" (MPs want to sack the entire ČT Council), *Hospodářské noviny*, 20 June 2007, available online (in Czech) at http://ihned.cz/109-21436980-onposlanci+cht%ECj%ED+odvolat+celou+radu+%E8t-000000_d-08 (accessed 25 April 2008).

⁵⁸ He was alluding to the fact that ČT Council members are nominated by civil-society organisations, and that obscure organisations such as the beekeepers' union are very often able to push through their candidates. In fact, even the civil-society component in the appointment of the ČT Council has been hijacked by politicians who recruit representatives of such organisations to push them on to the Council.

⁵⁹ Ondřej Aust, "Zase problém jak volit Radu ČT" (Again a problem with election of ČT Council), *Lidové noviny*, 6 April 2007, also available online (in Czech) at <http://www.aust.cz/2007-04-06/zase-problem-jak-volit-radu-ct/> (accessed 25 April 2008).

⁶⁰ *Ibid.*

3.3 PSB funding

The main source of income for ČT remains the licence fee. The ČT management has tried hard over recent years to collect the licence fee more effectively. ČT has had a balanced budget since 2004. In 2007, the station took CZK 5.065 billion (€201.8 million) from the licence fee, an increase of nearly CZK 1 billion (€39.8 million) over 2006. In 2007, it registered a total of 3.58 million TV households, a growth of more than 66,000, or some 2 per cent over 2006. According to the Act on Radio and Television Licence Fees, the licence fee increased gradually from CZK 120 (€4.8) a month in 2007 to CZK 135 (€5.4) in 2008.⁶¹

Table 6. ČT licence fee revenues in 2005–2008

Year	CZK billion
2005	3.24
2006	4.10
2007	5.07
Estimate for 2008	5.69

Source: Czech News Agency (ČTK, *Česká tisková kancelář*), 12 March 2008

ČT also generates income from advertising and sponsorship, selling services and rights, teleshopping and programme production. With the increase in the licence fee, advertising should have stopped in 2008. However, it has been allowed to continue to broadcast commercials during the digital transition, in order to preserve some balance on the TV market. The extra income will cover the development of terrestrial digital television broadcasting, digitisation of the station's archives and the development of Czech cinematography.⁶²

Since 2004, ČT has succeeded in balancing its accounts. The licence fee revenue remains the main source of income. In 2007, ČT's total revenues were CZK 6.15 billion (€231.6 million), with licence fees accounting for some 69 per cent of this sum. Advertising represented approximately 14 per cent of the station's total income.⁶³

⁶¹ Act no. 348/2005 of 5 August 2005 on Radio and Television Licence Fees (hereafter Licence Fees Act), amended in 2007.

⁶² This provision was introduced in the amended Act no. 304/2007 Coll.

⁶³ "Výroční zpráva o činnosti České televize v roce 2007" (The Annual report on the activities of Czech Television in the year 2007) approved by the ČT Council on 26 March 2008, available online (in Czech) at <http://master.ceskatelevize.cz/ct/publikace/rocnky.php> (accessed 25 April 2008) (hereafter ČT, *Annual Report* 2007).

Table 7. Costs and revenues of ČT in 2006–2007⁶⁴

		2006		2007	
		€ million	Share (%)	€ million	Share (%)
Income	Licence fee	121.7	60.3	159.7	69
	Commercial income	43.5	21.5	31.9	13.7
	Other income	36.7	18.2	40.0	17.3
	Total	201.9	100	231.6	100
Costs	Production and broadcasting costs	99.3	49.2	117.1	50.6
	Service department costs (wages, depreciation, etc)	45.3	22.4	52.2	22.5
	Other non-production costs	57.2	28.3	62.3	26.9
	Total	201.9	100	231.6	100

Source: ČT, *Annual Report 2007*

With the introduction of ČT24 and ČT4 Sport, ČT has slightly increased its staff. In 2007, it had 2,813 employees, 133 more than in 2006 and 302 more than in 2005. The new personnel work mainly on internet content and services. The station also expanded its network of foreign correspondents.

3.4 Editorial standards

There have been no changes in the editorial standards of ČT over the past three years. It has continued to come under political pressure and interference from various interest groups.

In 2007, some ČT reporters and the station's management clashed over the issue of editorial independence. While these clashes do not appear particularly ominous, Adam Komers, the chief of ČT regional news, has claimed that politicians and lobbyists continue to put pressure on the station's journalists. He said that he knows concrete cases of such pressures, but cannot discuss them because they cannot be proven.⁶⁵ Some of these disputes were part of the usual office politics, according to other ČT

⁶⁴ The exchange rates used were: for 2006, €1 = CZK27.53; for 2007, €1 = CZK26.67.

⁶⁵ Jan Mates, "V České televizi vládní cenzura, stěžují si redaktoři" (Censorship rules in ČT, reporters complain), 15 November 2007, *Mladá Fronta Dnes*, available online (in Czech) at http://zpravy.idnes.cz/tiskni.asp?r=media&c=A071114_220348_media_mia (accessed 30 April 2008).

journalists and anchors interviewed for this report. They argue that professional standards at ČT, far from deteriorating, have improved.

4. COMMERCIAL BROADCASTING

4.1 Regulation and management

TV Nova and Prima TV continue to dominate the country's broadcast market, holding analogue broadcast licences until 2018 and 2019 respectively. However, the six new digital channels are expected to alter the broadcasting landscape dramatically. The next wave of digital stations will be licensed after analogue switch-off in 2011 and 2012, according to the final Technical Plan for the Transfer to the Digital Broadcasting, as approved by the Government in April 2008.⁶⁶

While the 2007 legal amendments radically changed the licensing system, they did not alter the general regulation of commercial broadcasting in any way.

Both TV Nova and Prima TV have experienced turbulent changes among their senior managers, with foreigners taking the helm at both stations. In February 2006, Adrian Sârbu, a Romanian national, was appointed CEO of Central European Media Enterprises (CME) in the Czech Republic, Slovakia and Romania. TV Nova is CME's most important asset. Sârbu made great efforts to boost competitiveness among his staff. TV Nova adopted a strategy of cutting expenses as much as possible, with original production significantly trimmed.⁶⁷

Prima TV's owners reacted to the station's poor economic performance and plummeting ratings over the past three years by making changes at all levels of management. Aleksandras Česnavičius, a Lithuanian, was imported in 2006 to replace Martin Dvořák, who had been the station's head since 2000. A number of key personnel in production, marketing, sales and news were also replaced. These changes did not, however, bring the desired results and Česnavičius was replaced at the beginning of 2008 by Czech Marek Singer, who has international experience in marketing. Departing staff blamed the downturn at Prima TV on the management system introduced by its new owners, Sweden's Modern Times Group (MTG). (*See section 4.2.*) Some former employees accused MTG of running Prima TV, as well as its

⁶⁶ Dušan Kütner, "Analogová zemská TV ve většině ČR skončí do listopadu 2011" (Analogue terrestrial TV will terminate by November 2011 in most of the Czech Republic), ČTK, 28 April 2008.

⁶⁷ Adéla Vopěnková, "Sârbu adds to his media empire", *Czech Business Weekly*, 23 June 2008, available online (in English) at <http://www.cbw.cz/en/sarbu-adds-to-his-media-empire-/8219.html?search=Prima%20CEO> (accessed 22 June 2008).

cable TV operations, from its London headquarters without really understanding the tastes of Czech viewers.

4.2 Ownership and cross-ownership

The major ownership disputes have been settled and the ownership structures in broadcasting media are now more transparent than they were. The bulk of the capital in the media, including broadcasting, is foreign.

The 2006 amendments to the Broadcasting Act⁶⁸ introduced provisions preventing cross-ownership between the operator of an electronic communications network (such as digital multiplexes or cable TV) and the holder of a broadcasting licence. This includes entities that are financially or personally connected to the parties.⁶⁹ This provision affected the two largest cable companies in the Czech Republic, UPC and Karneval, which had merged in 2006. They wanted to build new optical networks, but the regulator invoked the new cross-ownership provisions and forbade them to carry out the plan.⁷⁰ The same provision also hit the Czech Digital Group, which has ownership ties with Prima TV and is licensed to operate Multiplex B. The station criticised this provision, saying that they had pioneered digitisation in the country as they had made the first investment in experimental digital broadcasting through the Czech Digital Group. Mobile phone operators supported Prima TV's protests, and it is likely that this provision will be struck from the legislation in the next round of amendments, slated for 2008.⁷¹

The main change in ownership since 2005 was the purchase in September 2005 by MTG of a 50 per cent stake in GES Media Holding, owner of Prima TV, for the sum of €96 million. In 2005, when the deal was signed, Prima TV was beginning to threaten TV Nova's market leadership, thanks to reality TV shows such as *VyVolení* (The Chosen). But expectations that MTG, which has television investments in more than 30 countries, would improve the station's business strategy were not fulfilled. Instead, the existence of two co-owners with equal stakes in the station made decision-making more difficult and less flexible. The station now lacks a clear concept and is slowly losing its stable audience. As a result, its ratings have slumped since 2006. The

⁶⁸ Act of 25 April 2006, which amends the Broadcasting Act.

⁶⁹ The financial or personal connection is defined as entities with direct or indirect participation in the management or assets of either the multiplex operator or licence holder. This participation is defined as ownership of more than 20 per cent of the firm's registered capital or voting rights (Act of 25 April 2006, section 17(4)).

⁷⁰ RRTV, *Annual Report* 2006, p. 17.

⁷¹ Filip Rožánek, "Návrh další digitální novely je na světě" (The proposal of another digital amendment was born), *Český rozhlas*, 26 June 2008 available online (in Czech) at http://www.rozhlas.cz/digital/cesko/_zprava/469295 (accessed 23 July 2008).

staff changes further sapped the broadcaster's performance and reputation, helping TV Nova to regain its position.⁷²

The Swiss publisher Ringier, after following the digital licensing process closely, has expressed interest in entering the broadcast market. Ringier already has a strong presence in the print media market, with more than ten newspapers and magazines, including the tabloid daily newspaper *Blesk*, the highest-selling title in this category in the country.

A number of new owners have recently entered the broadcasting market after acquiring digital licences. The music channel Óčko is owned by the German publishing house Mafra, which has had an eye on Czech broadcast assets for a long time. After failing to obtain a licence for a radio station, it bought two Prague radio stations, Classic FM and Expres. Mafra also owns two nationwide daily newspapers, *Mladá fronta Dnes* and *Lidové noviny*, the free daily newspaper *Metropolitní Expres*, news portals and several lifestyle magazines.

The licence holder of the all-news station Z1, První zpravodajská, is fully owned by the Slovak financial corporation, the J&T Finance Group, which has so far invested some CZK 150 million (€4.14 million) in Z1. The founder and owner of TV Barrandov is the Slovak financier Tomáš Chrenek whose businesses cover a broad range of activities. He controls the steelmaker Třinecké železárny and the film production facility Barrandov Studios. TV Pohoda is majority-owned by Radim Pařízek, who also holds the licence of the radio station Čas and co-owns the radio network Hey. Febio TV is wholly owned by the film director and TV producer Fero Fenič, the founder of Prague's largest film festival. He has refused to identify his financial backers. The network of regional channels, RTA, is owned by Jaroslav Berka, a local lobbyist who owns a news portal and is known for supporting the centre-right ODS party, which is currently in Government.

4.3 The advertising market

The advertising industry has desperately needed more competition for years. The arrival of digitisation is expected to shake the dominant position enjoyed for years by TV Nova, which has grown used to imposing its own rules and tariffs on advertisers.

After the first six digital licences were awarded in April 2006, MPs decided to help commercial broadcasters by reducing advertising on ČT and increasing the licence fee. The amendments to the Licence Fee Act halved ČT's limit on advertising to only 0.5 per cent of its total airtime in 2007, and banned advertising completely from 2008. With commercial digital broadcasting delayed by legal disputes, the new situation was

⁷² In the first quarter of 2008, TV Nova drew 54 per cent of the total TV advertising spend, which was 10 per cent more than over the same period in 2007. Prima TV took only some 30 per cent of the spend, according to the research company CCD Data.

richly exploited by TV Nova and Prima TV. However, as explained, ČT was eventually allowed to continue to broadcast advertisements during the digital transition. (See section 3.3.)

The total advertising market in the Czech Republic had a net worth of CZK 18.06 billion (€657.2 million) in 2006. Television again took the lion's share, attracting some 47 per cent or some CZK 8.42 billion (€306.35 million).

Table 8. Share of the advertising market in 2006, net figures (as percentage)

Medium	Share (%)
Television	46.6
Print media	34.7
Radio	7.5
Outdoor	6.5
Internet	3.0
Other (including cinema)	1.7

Source: ARBOmedia Praha

With the market in TV Nova's stranglehold, the bitter war between advertisers and TV Nova has flamed up again. The large advertisers grouped in the Czech Association for Branded Products (ČSZV, *České sdružení pro značkové výrobky*) lodged a complaint in 2005 against TV Nova with the Office for Protection of Economic Competition (ÚOHS, *Úřad pro ochranu hospodářské soutěže*), the anti-monopoly watchdog. The plaintiffs alleged that TV Nova gave preferential treatment to clients who did not also buy time on Prima TV.⁷³ In early 2006, the ÚOHS ordered TV Nova to halt these practices. After several months of dispute, the station managed to reach agreement with most of the largest advertisers. It continues to command the largest part of the advertising spending in the country.

⁷³ David Macháček, "Stát šetří naši reklamu, přiznala Nova" (The State protects our advertising, TV Nova admitted), *aktualne.cz*, 23 November 2005, available online (in Czech) at <http://aktualne.centrum.cz/domaci/kauzy/clanek.phtml?id=2902> (accessed 23 July 2008).

Table 9. Share of TV advertising spending in 2006, gross figures (as percentage)

Station	%
TV Nova	48.6
Prima TV	34.8
CT 1	15.7
CT 2	0.9

Source: IP International Marketing Committee⁷⁴

High demand for advertising slots has increased the price of advertising. This trend has been exacerbated by the overall fall in viewing time, which observers trace to a complex of reasons, including the lifestyle changes due to economic growth. At the same time, Czechs are dissatisfied with the limited TV offer, which also explains the scarcity of advertising space. The most attractive advertising slots, in prime time, are sold far in advance. The situation is worsened by the harsh limits on advertising on ČT and the low penetration of satellite and cable TV.⁷⁵

Eager for a decrease in prices and to reach younger audiences, advertisers are increasingly drawn to other forms of communications and media such as the internet. The entrance of the six new digital players in 2008 is not expected to dent the pre-eminence of TV Nova and Prima TV in the short term. However, as the digital newcomers' footprint increases over the coming years, they are naturally expected to break the current quasi-monopoly in commercial broadcasting.

4.4 Editorial standards and independence

Journalists working for commercial TV stations do not feel that their proprietors interfere with editorial content. They claim that they produce unbiased news.⁷⁶

Prima TV journalists are obliged to respect a basic code of ethics that the station adopted in 2003.⁷⁷ In 2005, TV Nova adopted only a code of ethics on protecting the rights of children and young people. This code drew inspiration from various sources

⁷⁴ IP International Marketing Committee, *Television 2007. International Key Facts*, October 2007 (hereafter IP International Marketing Committee, *Television 2007*), p. 136.

⁷⁵ Conference Digimedia 2007, presentation by Martin Nováček, OMD media agency (17 May 2007, Prague).

⁷⁶ OSI/Czech Republic, p. 538.

⁷⁷ OSI/Czech Republic, p. 536.

such as provisions on pornography in the Czech Broadcasting Act, decisions made by Czech courts in pornography cases and the BBC provisions on ethics.⁷⁸

However, the industry still lacks sufficient well-trained, professional journalists to uphold the basic rules of accurate and impartial reporting. This was proved once again by the launch of the news channel Z1 in June 2008. The station managers realised that professional journalists were a scarce commodity as they had to seek recruits from other media.⁷⁹ Among the new digital players, Febio TV pledged prior to its launch to uphold the strictest ethical principles and become the third TV station to impose a code of conduct on its journalists, after ČT and Prima TV.⁸⁰

4.5 Regional and local broadcasting

The amended 2006 Broadcasting Act introduced a definition of regional and local broadcasting. Regional broadcasting is defined as covering less than 70 per cent and more than 1 per cent of the country's territory. Local broadcasting, by definition, covers less than 1 per cent of the country.⁸¹

There are currently 12 regional broadcasters. One group of five stations is part of the network of the Regional Television Agency (RTA, *Regionální Televizní Agentura*) and the second group of the remaining seven feeds into the programming of Prima TV.

⁷⁸ “Nova přijala kodex ochrany dětí a mladistvých ve svém vysílání” (Nova adopted code on protection of children and youth in its broadcasting), ČTK, 25 April 2005.

⁷⁹ Martin Petera, “Z1 získala úspěšné novináře” (Z1 recruited successful journalists), *Český rozhlas*, 2 February 2008, available online (in Czech) at <http://www.radiotv.cz/digital-clanky/5040/z1-ziskala-uspesne-novinare.html> (accessed 23 July 2008).

⁸⁰ Febio TV announcement available online (in Czech) at http://www.febiotv.cz/en/code_of_conduct.php (accessed 22 July 2008).

⁸¹ Act no. 235/2006 Coll.

Table 10. List of regional stations in the Czech Republic

RTA	RTA Zlín
	Fatem TV/RTA Jižní Morava
	RTA Jižní Čechy
	RTA Ostrava
	RTA Východní Čechy
Independent regional stations	Genus TV
	Regionální televize Dakr
	Českomoravská televizní/Vysočina TV
	TV Lyrá
	TV Morava
	TV Vřídlo
	Zak TV

Source: RRTV, *Annual Report 2007*

Regional broadcasting has been overshadowed in recent years by a fight between RTA and Prima TV over shared frequencies. The RTA network is owned by Jaroslav Berka. In 2004, Berka bought regional TV stations that shared frequencies with Prima TV.⁸² (See section 4.2.) Prima TV is obliged by its original licence contract, dating from 1994, to share frequencies with regional stations. Prima TV had initially wanted to buy these stations to avoid clashes over frequency-sharing, but Berka moved first.

Licence conditions allow Berka's regional stations to broadcast three hours a day on Prima TV frequencies: one hour in the morning and two hours in the late afternoon, before prime time. Prima TV struck a deal with most of the regional broadcasters in the past, both RTA and others, whereby they would air regional news in only a short part of their afternoon slots. The move, which was approved by the RRTV, was meant to ensure that the regional TV stations would not alienate Prima TV's viewers in the regions with programmes that did not fit the profile of Prima TV's regular viewers. More importantly, Prima TV wanted the regional stations to coordinate their schedules, in order to maintain the flow of advertising sold by Prima TV for those slots.

In 2007, Berka made a deal with the music station Óčko, and RTA started to use its entire three hours of daily broadcasting, filling part of it with music from Óčko, and stopped following Prima TV's interests. This meant in practice that Prima TV viewers in the regions where RTA operates were cut off from the traditional afternoon soap

⁸² OSI/Czech Republic, pp. 527–528.

opera or series that Prima TV has aired for a long time. Many viewers thought it was pirate broadcasting and complained to Prima TV. This indicates the popularity of these stations at the regional level.

In 2006, RTA also received a digital licence. The station is obliged to broadcast a minimum of 90 minutes a day of original, regional programming. All of it (including sports coverage, entertainment, films and educational programmes) is focused on the region. It plans also to air news from partners in the regions of neighbouring countries such as Slovakia, Austria, Poland and Germany. RTA is also obliged by its digital licence to provide space to local civil society and minority groups. RTA is to air digitally between 6 a.m. and midnight.

With the exception of Vysočina TV, all the independent regional stations formed a company called Regio Media, which is owned by Prima TV.

In addition to the regional stations, more than 60 local TV stations operate in the Czech Republic. They cover only small towns and districts, usually airing information and reports on local issues. There are no data or research on their impact.

5. PROGRAMMING

5.1 Output

The public service broadcaster ČT has distinguished itself more clearly as an alternative to commercial TV. It has continued to make a difference compared with its commercial peers, which are geared mostly to providing low-brow entertainment and blockbusters. There have been no major changes in ČT's output over recent years. It has continued its strategy of airing more elitist and cultural programming on its second channel, which targets a smaller, more highbrow audience. However, the first channel, which attracts a much bigger audience, also broadcasts a significant amount of public service programming. Drama and news occupy the largest proportion of the schedule, followed by documentaries, reportage and current affairs. There was a slight increase in the entertainment output in 2007, and a significant increase in documentaries. (*see Table 10*) The station does not specify in its reports the amount of programming devoted to minorities. However, it is common knowledge that important parts of their documentaries and reportages are often dedicated to such coverage.

Table 11. Output of the ČT by genre in 2006–2007

Genre	2006						2007					
	ČT1		ČT2		ČT1+2		ČT1		ČT2		ČT1+2	
	Hours	% ⁸³	Hours	%	Hours	%	Hours	%	Hours	%	Hours	%
News	1,446.9	16.5	2,092.8	23.9	3,539.7	20.2	1,387.8	15.8	1,890.3	21.6	3,278	18.7
Reportage and current affairs	1,430.3	16.3	623.2	7.1	2,053.5	11.7	1,486.8	17	860.2	9.8	2,347	13.4
Documentary	760.3	8.7	1,400.6	16	2,161	12.4	920.3	10.5	1,516.7	17.3	2,437.1	13.9
Educational programmes	276.4	3.2	426.7	4.9	703.1	4	204.2	2.3	520.8	5.9	724.9	4.1
Religious programmes	43.7	0.5	65.1	0.7	108.8	0.6	38.7	0.4	67.5	0.8	106.2	0.6
Sports	120.1	1.4	1,439.5	16.4	1,559.6	8.9	130.1	1.5	888	10.1	1,018.1	5.8
Drama	2,641.8	30.2	1,117.5	12.8	3,759.3	21.5	2,458.2	28.1	1,280.6	14.6	3,738.8	21.3
Music	270.9	3.1	796.8	9.1	1,067.7	6.1	319.1	3.8	831.9	7.3	1,151.1	6.1
Entertainment	1,046.8	11.9	419.1	4.8	1,465.9	8.4	1,125.3	12.8	491.3	5.6	1,616.6	9.2
Specific programmes ⁸⁴	378.5	4.2	242.2	2.8	620	3.4	NA ⁸⁵	NA	NA	NA	NA	NA
Teleshopping	179.7	2.1	129.5	1.5	309.2	1.8	266.7	3	144.8	1.7	411.4	2.3
Advertising	164.6	1.9	7	0.1	171.6	1						
Other	NA	NA	NA	NA	NA	NA	422.6	4.8	269.8	3.1	692.4	4.1
Total	8,760	100	8,760	100	17,520	100	8,760	100	8,760	100	17,520	100

Sources: ČT, *Annual Report 2006*;⁸⁶ ČT, *Annual Report 2007*

TV Nova broadcasts mainly entertainment, movies, news and sports. A significant part of its programming consists of in-house Czech series such as *Ordinace v růžové zahradě* (Surgery in the pink garden) and *Ulice* (Street). Some 33 per cent of TV Nova's programming is produced locally. Its primetime newscast continues to score record ratings. It was the most watched single programme in 2006, with an audience share of over 74 per cent.⁸⁷ The programme sustained these levels of popularity into 2008.⁸⁸ Based on its success, TV Nova launched an afternoon newscast, which covers

⁸³ Percentage of total programming.

⁸⁴ On charities, foundations, programmes about television, etc.

⁸⁵ In 2007, the station relegated its "specific programmes" category to "Other".

⁸⁶ "Výroční zpráva o činnosti České televize v roce 2006" (Annual report on the activities of Czech Television in the year 2006), approved by the ČT Council on 21 March 2007 (hereafter ČT, *Annual Report 2006*, available online (in Czech) at <http://www.ceskatelevize.cz/ct/publikace/rocnky/2006/zprava2006.pdf> (accessed 25 July 2008).

⁸⁷ IP International Marketing Committee, *Television 2007*, p. 132.

⁸⁸ TV Nova news release, 11 February 2008, available online (in Czech) at <http://www.nova.cz/tvnova/?138c=%3Bsled-&138e=DO288886&cex28886=sledovanost-televiznich-novin-i-nadale-roste> (accessed 24 July 2008).

exclusively sensational and shocking stories such as crimes and scandals.⁸⁹ The newscast was modelled on a similar news programme produced and shown by TV Nova's sister in Romania, Pro TV, which centres on gory and scandalous news.

Prima TV's programming is based on a similar formula to TV Nova, with entertainment dominating the schedules. Its most popular shows include the Sunday primetime TV contest *Ber nebo neber* (Take it or leave it), their own Czech series *Letiště* (Airport) and *Velmi křehké vztahy* (Very fragile relations), as well as afternoon soap operas targeting a female audience.

The most watched programmes on ČT are series, variety shows, such as *Dancing with the stars*, and documentaries.

The ratings war between Prima TV and TV Nova reached a new pitch of intensity in 2008. Prima TV revamped its main newscast and rescheduled it from 7:15 pm to 7.30 pm, when TV Nova's newscast begins, in a direct challenge to its competitor's most successful slot. After an initial surge, Prima TV's newscast did not improve its ratings. In May, the station reverted to its original schedule. With ČT's news channel and new all-news channels such as Z1 already up and running, incumbent stations pay increasing attention to their news output.

5.2 General provisions on news and programme production guidelines

There has been no change in the legal provisions for news broadcasting. The RRTV continues to be in charge of monitoring balance and impartiality in the output of all broadcasters.⁹⁰ In 2007, the RRTV Council investigated 134 potential breaches of the requirement for objectivity and balance in news programming.⁹¹

Programme guidelines are enshrined in the licence conditions. The basic rights and duties for commercial as well as public service broadcasters are contained in the Broadcasting Act.⁹²

⁸⁹ "We want to bring live and attractive news, free of big politics, which will focus on problems of ordinary people," said TV Nova's editor-in-chief Martin Ondráček before the launch of the afternoon newscast in February 2007. TV Nova news release, 22 January 2008, available online (in Czech) at <http://www.nova.cz/tvnova/?138c=-zpravy-&138e=DO4173&ex4173=novinka-odpoledni-televizni-noviny> (accessed 24 July 2008).

⁹⁰ Broadcasting Act, section 31 (see OSI/Czech Republic, p. 537).

⁹¹ RRTV, *Annual Report 2007*, p. 153.

⁹² OSI/Czech Republic, p. 523.

5.3 Quotas

Czech broadcasters customarily meet all the quotas stemming from the Television without Frontiers (TVWF) Directive.⁹³ All nationwide television broadcasters complied in 2007 with the requirements on airing European independent works. Regional broadcasters air such works, mostly Czech, on almost their entire broadcasting time.⁹⁴

5.4 Obligations on PSB and commercial broadcasters

The specific obligations on public service broadcasters, as defined mainly in the Czech Television Act, have not changed over the past three years. Commercial broadcasters continue to have no specific public service obligations imposed by legislation, such as requirements to air regional or minority programming.

6. CONCLUSIONS

After a decade of legal wrangling, digitisation is finally under way. The positive side of the delays was that the unsuccessful applicants for digital licences, frustrated advertisers and broadcast media professionals, including journalists, instigated a fairly productive debate on digitisation, which reached the general public through the media themselves, including a number of news servers specialising in digitisation and new technologies. These heated discussions also led to legal changes that contributed to unblocking the digitisation process and opening the market to new players. The six new digital channels should finally go on air by spring 2009. More digital channels are slated to appear after digital switchover, scheduled for 2012.

The new amendments to broadcasting legislation did not, however, change the structure and functioning of the RRTV. There are still many questions about the independence and competencies of the regulatory body. The RRTV managed to fulfil more administrative tasks. Unfortunately, it still acts more as executor of the State legislation than a proactive regulator because it still lacks clear legal guidelines, sustainable financing and competencies to be able to cope with digital broadcasting.

With a new procedure that makes licensing more like a mere formality, the Czech Republic has one of the most liberal licensing systems in Europe. It has yet to be seen how this will shape the media market and whether this system will bring more diversity or, on the contrary, more chaos. A lot of the regulation has been left to the market. The experience of a similar liberal system of broadcast regulation in the 1990s brought

⁹³ Directive 2007/65/EC, see above.

⁹⁴ RRTV, *Annual Report 2007*.

about costly international arbitrations and lawsuits from broadcasting investors. The newly-adopted licensing system resembles the licensing of satellite and cable broadcasting.

Within a year, Czech viewers will be able to watch six new channels, after almost two decades of a scarce diet of television programming. The change is likely to intensify competition in the broadcast market, which is something that advertisers have wanted to see happen for a long time. How much the new offer will serve the viewers is a question that only time will be able to answer.

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Television across Europe:

Follow-up Reports 2008

Italy

By Gianpietro Mazzoleni and Giulio Enea Vigevani

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List of Abbreviations

AGCM	Antitrust Authority, <i>Autorità garante della concorrenza e del mercato</i>
AGCOM	Communications Guarantee Authority, <i>Autorità per le Garanzie nelle Comunicazioni</i>
ECJ	European Court of Justice
DTT	Digital Terrestrial Television
RAI	Italian Radio-television, <i>Radiotelevisione Italiana</i>
SIC	Integrated communications system, <i>Il sistema integrato delle comunicazioni</i>

A. Executive Summary

After some early hopes of change, thick clouds are again looming over the Italian broadcasting scene. The *Italian anomaly* described in the OSI's 2005 report¹ still persists. Broadcasting reform was one of the priorities of the centre-left coalition, led by Romano Prodi, that won the April 2006 elections. However, the Prodi Government's attempts to introduce a set of rules that would respond to technological developments while respecting constitutional and European principles did not bear fruit. The Government's unexpected fall in February 2008 dashed all reformist initiatives.

It is very likely that the return to power of media mogul Silvio Berlusconi² will bring things back to where they were when he left power in spring 2006. Nevertheless, the new cabinet will have to face a new European legal framework, the Audiovisual Media Services (AVMS) Directive,³ a ruling of the European Court of Justice (ECJ) on a major dispute over TV frequencies, and a marketplace that is quickly changing due to the fast spread of new media platforms.

The Prodi Government had introduced two bills to amend the country's broadcasting legislation. These bills aimed on the one hand at creating conditions for a more competitive and pluralistic market by introducing a ceiling on TV advertising, a more equitable and effective distribution of frequencies, and the automatic transfer of one network each from RAI (a public service broadcaster) and Mediaset (a commercial broadcaster) to the digital platform; and on the other hand at guaranteeing greater independence and efficiency for RAI by radically revamping the appointment criteria of its governing structures.

Both bills went through a painfully slow and bumpy procedure in Parliament. The likelihood of both chambers accepting them was never great, due to the serious political difficulties that the Prodi Government faced from the outset, and the ruling coalition's weak majority in the Senate. This vulnerability did not, however, entirely explain Parliament's attitude to these bills. Pluralism of information and the independence of RAI were strangely neglected, as if the mere fact that Berlusconi's rule had ended made these matters less urgent.

¹ "Italy" in Open Society Institute, *Television across Europe: regulation, policy and independence*, Budapest, 2005 (hereafter OSI/Italy), pp. 866–954.

² Berlusconi won control of both the Senate and the lower house of Parliament in the early elections on 13–14 April 2008. That gave him a fourth term as Prime Minister. It is Italy's 62nd government since World War II. Berlusconi last resigned as Prime Minister in May 2006 after losing elections.

³ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, *Official Journal of the European Union*, 18 December 2007, L 332/27.

A similar fate met the debate on how to regulate the conflicts of interests in broadcasting. Obviously, with the change of government in 2006, the anomaly of having a prime minister who also owned the nation's three largest commercial TV networks came to an end – but only because he lost the elections. The danger remained. The interruption of the Berlusconi era in 2006 also diminished the suspicion that the Government was more interested in supporting private rather than public interests in the broadcasting sector. The centre-left majority concocted a bill which, although it failed to bar Government officials from controlling the means of mass communication, tried to identify effective tools for preventing conflicts of interest. The ruling coalition did not demonstrate either the strength or the political support to push through changes in legislation on conflicts of interest.

Again, serious legal reform was shown to be possible in Italy only if propelled from outside. The European Commission launched infringement proceedings against Italy, because the Gasparri Law⁴ was suspected of breaching key provisions in European directives on electronic communication. At the end of January 2008, the ECJ ruled on a dispute involving the Italian broadcaster Centro Europa 7. The Court acknowledged the right of Centro Europa 7, which has owned a broadcasting concession since 1999, to be assigned the frequencies necessary for it to broadcast.

While the legislature did not make any decisive moves, the Prodi Government and the regulatory authority, the Communications Guarantee Authority (AGCOM, *Autorità per le Garanzie nelle Comunicazioni*) were more pro-active. They approved various regulations and provisions to put in place a more equitable use of frequencies, motivate broadcasters to make a quicker transfer to new technologies, and clarify the role and tasks of RAI.

Overall however, the broadcasting market has stagnated. It continues to be highly concentrated, with the two largest broadcasting operators, RAI and Mediaset, still holding about 85 per cent of both the audience and TV advertising. Television continues to take more than half of the national advertising spend, while print media and the Internet record some of the lowest advertising market shares in Europe.

The Gasparri Law wagered everything on two solutions to the lack of diversity and pluralism in broadcasting, namely the magic of new technology and the privatisation of RAI. These have failed to deliver; indeed, they have proven to be completely insubstantial. Digital terrestrial television has so far been unable to break the *status quo* by encouraging new operators into the market, in part because of provisions in the Gasparri Law that impede newcomers' access to the digital market. Nor did the Law liberate RAI from politics: another of its purported aims. The privatisation of RAI was

⁴ Law on Regulations and Principles Governing the Set-up of the Broadcasting System and the RAI-Radiotelevisione italiana S.p.a., as well as Authorising the Government to Issue a Consolidated Broadcasting Act, no. 112 of 3 May 2004, *Gazzetta Ufficiale* 104, 5 May 2004 (Gasparri Law).

abandoned by the Berlusconi Government itself, in order to further strengthen the control of political parties. At the same time, the Mediaset channels' political coverage became even more biased in favour of Berlusconi, Mediaset's major shareholder.

The only truly important change since 2005 has been the growing success of satellite television, with its increasing share of the television advertising spend, reaching 28 per cent in 2006 (the same as Mediaset). The rise of satellite broadcasting has been monopolistic, for it is driven by Sky Holding, which controls 91 per cent of pay-TV in Italy. There is almost no cable television.

The lack of dynamism in the television market has had a negative impact on broadcasting innovation, which has seen major developments in recent years, brought by convergence. This has prompted AGCOM president Corrado Calabrò to say that television's contribution to transforming the communications business in Italy is "slow and insignificant".⁵

⁵ AGCOM, Annual Report On activities carried out in 2007, available (in English) at http://www.AGCOM.it/rel_07/eng/rel_07_eng.pdf, hereafter AGCOM, Annual Report 2007.

B. Recommendations

1. ORIGINAL RECOMMENDATIONS FROM THE 2005 REPORT⁶

The recommendations from the OSI's 2005 report, addressed in particular to Parliament and the Government, were in line with those that had already been supported by international institutions, the President of the Republic, the Constitutional Court and AGCOM. One purpose of the 2005 report was to open up dialogue with public authorities in order to introduce the concept of a broadcasting system based on exercising fundamental liberties and the value of pluralism. The Ministry of Communications showed interest in the report's viewpoints and recommendations. The Undersecretary of State at the Ministry, Luigi Vimercati, commented favourably on these recommendations at the presentation of the OSI's work at the Eurovisioni Festival on 22 October 2006 in Rome.⁷ On 26 April 2007, Minister of Communications Paolo Gentiloni discussed the reform of RAI with the report's authors and editors. The Government's broadcasting initiatives, particularly those of Minister Gentiloni, were broadly in line with the report's standpoints and recommendations. At the launch of the report in December 2005, Gentiloni, then an opposition politician and President of the Parliamentary Commission for General Guidance and Supervision of Broadcasting Services, announced that the report's recommendations would be included in the policy proposals that the centre-left coalition was formulating at that time. The two reforming bills drafted by the Prodi Government include many of the report's recommendations. However, following the political turmoil that led to the Government's fall in February 2008, the fate of the reforms is unknown. It will fall to the next Government and Parliament to adopt reforming legislation.

⁶ OSI/Italy, pp. 942–945.

⁷ See <http://www.mediapolicy.org/advocacy-1/advocacy-on-the-television-across-europe-2005-reports/debate-rais-public-service-contract-a-chance-to-relaunch-a-real-radio-and-television-public-service-in-italy> (accessed 23 April 2008).

1.1 Policy

<i>Digitalisation</i>	
<p>1. The Government should postpone the deadline for the switch-over to digital television, allowing analogue television for at least five or six more years. The Government should enact “neutral” policies with respect to the different media, so that cable and satellite are not penalised by a preference for digital television.</p>	<p>This recommendation was fulfilled. Legal provisions on postponing the deadline for digital switch-over to 2012 were introduced.⁸</p> <p>The change responds to obvious technical and industrial demands and allows for a more gradual and rational transition to digitalisation. It is important, however, to point out that the mere deferral of the switch-off deadline, without provisions that encourage competition and pluralism during the simulcast period, risks maintaining the duopoly for an even longer period of time.</p> <p>At the same time, State incentives for purchasing TV sets to encourage the spread of digitalisation were extended to cover all platforms: terrestrial, cable, satellite and the Internet. This set of incentives respects the principle of technological neutrality. Such a policy, however, cannot have a major impact without additional policies. The incentives have undoubtedly boosted the sales of set-top boxes, but without attractive free-to-air programmes on the digital platform, this equipment is quite useless.</p>

⁸ Law by decree, 1 October 2007, no. 159, Art. 16.

1.2 Regulatory authorities

<i>Enforcement powers</i>	
2. Parliament should adopt changes to legislation to strengthen the powers of the regulatory authorities. In particular, AGCOM should be assigned more sanction powers to enforce its decisions.	This recommendation has not been adopted. There have been no changes in the governing structures of AGCOM. Although the regulator was active in adopting secondary legislation, it still needs more sanction powers to be able to implement its decisions.
<i>Independence</i>	
3. Parliament should initiate changes in legislation to ensure the independence of AGCOM, by changing the procedure of appointing its members so that the Prime Minister no longer appoints AGCOM's Chair and Parliament no longer appoints the other members based on political criteria (lottizzazione). One possible solution would be to entitle the President of the Republic with the power to elect AGCOM's members.	This recommendation has not been adopted. The appointment procedure of AGCOM's members remains unchanged.
<i>Frequency allocation</i>	
4. AGCOM should ensure compliance by the Italian State with European Council Directives 2002/21/CE and 2002/22/CE, which call for transparent, non-discriminatory and proportional procedures for the allocation of radio-electrical frequencies. 5. Parliament should amend legislation in order to prevent the legalisation of broadcasters who illegally occupy frequencies.	Along with the Ministry of Communications, AGCOM set up the first register of frequencies and their usage. This database is essential for a rational and more equitable distribution of frequencies to national and local operators, and for an efficient management of the switch-over to a digital signal. In autumn 2007, the Government also announced that it would award analogue frequencies to those broadcasters that do not have sufficient coverage at national level. This would be the first time that analogue frequencies have been distributed in a non-discriminatory and transparent way.

1.3 Public and private broadcasters

<i>Local broadcasters</i>	
6. Parliament should take steps to introduce legislation to give more financial and technological aid to private local television broadcasters to promote the establishment of alternative networks to the national ones.	This recommendation has not been adopted. Parliament has shown no interest whatsoever in introducing legal provisions to help local broadcasters. The recommendation remains pertinent.

1.4 Public service broadcaster

<i>Restructuring</i>	
<p>7. Parliament should halt the ongoing process of privatisation of RAI, which is unrealistic from an economic point of view (as the Gasparri Law stipulates that a shareholder cannot own more than one per cent of RAI's shares) and unconstitutional (as it sets up a complete privatisation of a public service).</p> <p>8. Parliament should take steps to split RAI into two separate companies, one with public service obligations and the other with a commercial profile, in line with the recommendations of the Competition Authority in its report of 16 November 2004 (AGCM Ruling no. 13770).</p> <p>9. Parliament should take steps to make the public service broadcasting offered by the new RAI an independent public service (non-governmental) with the legal structure of a foundation like the British Broadcasting Corporation (BBC). The commercial part of RAI should be privatised and sold on capital markets, with no restrictions.</p>	<p>Most of the recommendations on RAI were taken into account in the "Guidelines for the reform of RAI", which, after broad public consultations (also involving OSI), led to the bill that was presented to the Senate on 22 May 2007. The Gentiloni Bill's starting point is the abandonment of the RAI privatisation idea advanced by the Gasparri Law.</p> <p>In order to restructure RAI as a more efficient and more independent broadcaster, the Gentiloni Bill wanted to create a Foundation to which the RAI shares were transferred. This Foundation was to guarantee the independence of RAI from political and economic interests. The same Bill envisaged appointing the Board of the Foundation from a variety of organisations and institutions.</p>
<i>Independence</i>	
<p>10. Parliament should take steps to amend the Gasparri Law to ensure that RAI becomes a truly independent institution, like the Constitutional Court or the Bank of Italy.</p> <p>11. Parliament should take steps to guarantee that the members of the RAI Board are politically independent from the influence and control of the Government and political parties. This can be achieved for example, if Board members are elected by a qualified majority vote, and serve staggered terms. Another way would be to entrust the appointment of a part of the Board to AGCOM or to the Antitrust Authority (AGCM, Autorità garante della concorrenza e del mercato)</p>	<p>The Bill proposed to finance RAI's public service output through the licence fee and its commercial activities through advertising.</p> <p>The Bill also included provisions to ensure the transparency of appointments and candidates' experience.</p> <p>The reaction of Parliament and the political parties to these proposals has so far been lukewarm.</p>

<i>Professionalisation</i>	
<p>12. Parliament should adopt changes in legislation to ensure that members of the RAI Board are appointed according to their professional expertise and qualifications. To ensure this, candidates running for the RAI Board should be subjected to rigorous hearings in Parliament.</p> <p>13. Parliament should make changes in legislation to introduce stricter incompatibility criteria for the members of the RAI Board. Individuals who have served in Parliament or been members of political parties, or had interests in communication businesses, should be forbidden from becoming members of the RAI Board.</p> <p>14. Parliament should make changes in legislation so that the General Director of RAI is appointed solely by the RAI Board, without consultation with the Government.</p>	

1.5 Private broadcasters

<i>Diversity and pluralism</i>	
<p>15. Parliament should take steps aimed at solving the Italian anomaly by breaking Mediaset's monopoly on commercial broadcasting before the switch-over to digital television.</p> <p>16. Parliament should amend the Gasparri Law to ensure the implementation of the Decision of the Constitutional Court – which demands a 20 per cent threshold for each analogue television broadcaster and guarantees an effective variety of sources of information to citizens – before the switch-over to digital television.</p> <p>17. The Government should promote diversity and pluralism in broadcasting by supporting financially new entrants into the broadcasting market.</p>	<p>These recommendations were taken into account, albeit not implemented entirely.</p> <p>AGCOM carried out an analysis of the broadcasting market, which highlighted the dominant position of RAI and Mediaset in analogue terrestrial broadcasting. The regulator pointed out in October 2007 that one solution would be to allow newcomers to share the technical infrastructures of the two broadcasters. Under the same logic of market development, AGCOM adopted secondary legislation allowing new TV content providers to be able to transmit their production via 40 per cent of the digital terrestrial networks. In October 2007, the regulator also approved rules guaranteeing neutral criteria in choosing independent content providers. Arguing that the two largest players control the bulk of the market, which harms pluralism, AGCOM also adopted a set of rules aimed at disciplining the advertising market. They include lowering the advertising ceiling from 18 to 12 per cent for</p>

	Mediaset's programmes transmitted via a terrestrial digital signal (other than simulcast).
18. The Government should follow European best practice in defining a monopoly in the broadcasting market, in terms of the audience share or the percentage of television advertising market.	This recommendation has not been adopted. The Government has not put forward any proposals to introduce a definition of monopoly in broadcasting. The recommendation remains pertinent.
19. Parliament should amend the articles of the Gasparri Law defining the integrated communication system (SIC), ⁹ to establish clear definitions of the separate markets inside the SIC, and introduce new rules providing clear thresholds to identify dominant positions, in order to protect pluralism and competition. Parliament should also adopt legislation imposing limits on the advertising revenues that a media company can control.	This recommendation has not been implemented. AGCOM carried out an analysis of the market, calculating the SIC in 2005 to be worth €22.1 billion, but it did not adopt legal provisions to establish clear definitions of the separate markets in the SIC.
20. Parliament should introduce legal provisions to ensure that television audience measurement is carried out by an agency independent of any corporate interests. Television companies should be banned from holding stakes in any such agency.	None of these recommendations have been adopted.
21. The Law on Conflict of Interest should be amended to introduce explicit incompatibility between the holding of elected or governmental positions and the ownership of media outlets.	

These measures show that in recent years, the Ministry of Communications and AGCOM has not waited for Parliament to initiate changes in broadcasting, but they have used their prerogatives to make a difference. However, it is clear that only legal reform can truly move the TV market towards greater pluralism and competition. Many recommendations are still valid. The most significant and urgent of these should be addressed by the new Parliament and Government after the general elections in April 2008. They include:

- The Government should respond to the observations put forward by the European Commission to prevent Italy from being sued at the ECJ for violation

⁹ The integrated communication system (SIC) is a wide and heterogeneous concept that encompasses all sorts of advertising in various media, including: television; publishing; radio; the Internet; direct advertising activities; sponsorships; revenues from RAI's yearly licence fee; sales of cinema tickets; video cassettes; and rentals or sales of DVDs.

of Community requirements. The Government could do this through a Decree-Law, a legally binding regulatory act which can be adopted in emergencies and take effect immediately;

- Parliament should modify the appointment criteria for the RAI Board of Administration and the mandate for the current directors, in order to avoid a new division of control over RAI between the ruling majority and the opposition;
- Parliament should introduce antitrust provisions for the analogue television market to stimulate competition in the TV market to ensure that the transition to digitalisation does not take place in the current duopolistic context.

2. NEW RECOMMENDATIONS BASED ON THE 2008 REPORT

2.1 Digitalisation

1. Parliament should introduce legal provisions that would allow regions to go digital and that would envisage the early transfer to digital signal of the major operators in order to encourage a balanced development of the system.
2. The Government should adopt policies, in particular for the public service broadcaster, to support serious investment in programming for the new platforms.

C. Main Findings of the Follow-up Monitoring

1. GENERAL BROADCASTING ENVIRONMENT

1.1 Key developments in legislation and policy

In 2006-2007, the most significant political initiatives for the broadcast sector were two bills prepared by Minister of Communications Paolo Gentiloni on the transition to digital broadcasting and public service reform.¹⁰ (*See section 3 for the second bill.*) These bills were meant to create a more competitive and pluralistic market and guarantee RAI's greater independence and efficiency by radically changing the criteria for appointing its governing structures.

The Gentiloni bill for a reform of the broadcasting system, presented to the House of Deputies on 16 October 2006, introduces a novelty from the methodological point of view compared to the previous interventions on the part of the legislators in 1990, 1997 and 2004. The Government, indeed, does not aspire to reform the regulations in effect at the moment in their entirety (the Decree no. 177 of 31 July 2005, Consolidated Broadcasting Law). The Government preferred to concentrate on certain critical structural points, in particular the excessive concentration of advertising resources in a few private hands and the distribution and use of frequencies. In other words, the Government realised that unless digital transition is accompanied by a series of antitrust regulations, it will perpetuate today's dominant positions in broadcasting.

If this is to be achieved, the licensing system that was put in place by the laws of 1990¹¹ and 1997¹² must be overhauled. Concretely, the bill proposed to:

- introduce a ceiling of 45 per cent on the amount of advertising revenue of terrestrial analogue, digital cable and satellite television. Surpassing this ceiling would be considered a “dominant position” in the sector and would allow the regulator to lower the ceiling from 18 to 16 per cent of the hourly advertising time for analogue broadcasters;
- include all kinds of advertising, including the station's self-promotion clips, in the advertising ceilings;

¹⁰ Bill no. 1825 on the safeguarding of pluralism in the transition from analogue to digital broadcasting; Bill no. 1588 on the public broadcasting service.

¹¹ Law Regulating Public and Private Broadcasting, no. 223, 6 August 1990, *Gazzetta Ufficiale* 185, 9 August 1990 (*Mammi Law*).

¹² Law setting up the Italian Communications Guarantee Authority and Introducing Regulations of the Telecommunications and Broadcasting Systems, no. 249, 31 July 1997, *Gazzetta Ufficiale* 177, 31 July 1997 (*Maccanico Law*).

- require operators which own more than two nationwide networks (i.e. RAI and Mediaset) to start airing digitally on one of their networks within 15 months of the adoption of the law;
- reclaim surplus frequencies and frequencies that have been illegally occupied;
- ensure efficient management of the frequency spectrum and the equitable distribution of frequencies;
- suspend the power of RAI and Mediaset to gain more frequencies;
- reform the people-meter audience measurement system to include all platforms;
- guarantee broadband access for all operators in a transparent, proportional and non-discriminatory way;
- strengthen AGCOM's powers of supervision and sanction;
- stop the "privatisation" of RAI initiated by the Gasparri Law.

The Gentiloni Bill provoked caustic reactions from the opposition, which accused the Government of designing a law *contra personam* (i.e. against one individual, namely Berlusconi). Some scholars¹³ questioned the Bill's compatibility with the Constitution and European antitrust legislation, saying that it would automatically establish dominant positions, without taking licence fees into account as another source of revenue. These attacks could not be decisive because information pluralism is considered to be a basic principle in European legislation, permitting Member States to adopt *ad hoc* rules on television, which is still considered the most influential mass medium.¹⁴

The Italian media are subject to a special legal regime, complemented by general antitrust regulations. They are in general more strictly regulated than other sectors as they involve issues of access for the largest number of citizens. A summary of more than 40 years of Italian constitutional jurisprudence shows that general antitrust law only works as *ex post* regulation while protection of pluralism functions as *ex ante* regulation.

The real issue, therefore, is not how legitimate it is to impose a 45 per cent ceiling on advertising revenues, but rather to introduce rules that would eliminate entrance

¹³ Fondazione Magna Carta, Papers, "Dominante per legge o dominante per il Mercato?" (Dominant legally or economically?), Roma, 2006.

¹⁴ "Recommendation no. 2/2007 of the Committee of Ministers to Member States on media pluralism and diversity of media content, adopted on 31 January 2007", advises the Member States to adopt "rules aimed at limiting the influence which a single person, company or group may have in one or more media sectors as well as ensuring a sufficient number of diverse media outlets". It says "rules may include introducing thresholds based on objective and realistic criteria, such as the audience share, circulation, turnover/revenue, the share capital or voting rights".

barriers to new operators and shake the strong positions of broadcasters currently operating on the market. There are doubts mainly regarding the enforcement mechanisms including the reduction of the hourly advertising cap to 16 per cent unless the broadcaster transferred one of its networks to a digital or satellite platform; and the enforcement timeframe (within two years of the law entering into force). The mechanisms do not encourage the dominant operators to correct their behaviour; rather, they make it easier for them to take as much advertising as possible because they face trivial sanctions.

The other provision at the heart of the Gentiloni reform is related to frequency regulation, including the digital transfer by broadcasters with more than two nationwide analogue stations. This is a serious attempt to regulate a market of extreme economic and political importance and to put an end to the “wild west” situation that still dominates Italian broadcasting. The law aims at encouraging the transition to digitalisation rather than forcing broadcasters to do so. The real task is to build a more pluralistic market after more than 20 years of transitory provisions that have continually postponed the enforcement of antitrust legislation.

1.2 EU legal provisions

The European Union has continued to move against any Italian broadcast law that is not fully in line with relevant EU directives and basic principles.

On 19 July 2006, the European Commission sent the Government a default notice,¹⁵ contesting in particular Italy’s violation of certain community requirements enshrined in the 2002 directives on electronic communications¹⁶ as well as in the directive on market competition and electronic communications services.¹⁷

By limiting market access to companies that were already operating when it was enacted in 2004, the Gasparri Law blocked new broadcasters from the market. The European Commission claimed that the exclusion of companies not already operating

¹⁵ European Commission, “Letter of Formal Notice to Italy concerning Rules on Electronic Communications”, available online at <http://merlin.obs.coe.int/iris/2006/8/article5.en.html> (accessed 5 March 2008).

¹⁶ European Union, Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services, *Official Journal of the European Communities*, L 108/21, 24 April 2002. (*Authorisation Directive*); European Union, Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, *Official Journal of the European Communities*, L108/33, 24 April 2002 (*Framework Directive*).

¹⁷ European Commission, Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services, *Official Journal of the European Communities*, L 249/21, 17 September 2002.

on the market from gaining frequencies was a violation of EU legislation. It also defined as illegal the lack of provision in Italian law to oblige broadcasters to return analogue frequencies after switching to digital platforms. The Commission further found that the Gasparri Law¹⁸ violated EU competition provisions by deferring a licence to broadcast in analogue signal those operators not holding analogical concessions until the switch-off and by hindering broadcasting of those operators holding analogue concessions because of a lack of frequencies.

In September 2006, the Government acknowledged the legitimacy of the Commission's observations and, with the Bill no. 1825, pledged to delete those provisions of the Italian Law that clashed with EU law. The Bill was received relatively well by the Commission. In July 2007, however, the Commission again criticised Italy for delaying the Bill's passage and asked for enactment within two months. The next step will involve opening a case against Italy at the ECJ for breach of EU regulations. If Italy loses, it will be heavily fined.

Another important case at the ECJ was launched by the Italian broadcaster Centro Europa 7, which has held a broadcast concession since 1999, but has been unable to obtain the frequencies needed to broadcast. On 12 September 2007, ECJ Advocate General Miguel Poyares Maduro criticised the Italian situation and supported Centro Europa 7's right to be granted frequencies. On 31 January 2008, the ECJ confirmed the conclusion of Poyares Maduro by ruling on the "discriminatory nature" of Italian frequency allocation.¹⁹

In January 2007, the European Commission decided that subsidies for digital set-top boxes granted by the Government in 2004 and 2005 were incompatible with EU regulations on State aid as they were not technologically "neutral" and distorted competition. It demanded manufacturers of set-top boxes to return the money to the State. It is not known whether reimbursement is forthcoming.

1.3 Broadcasting market

The map of television in 2006 (the latest available consolidated data) shows the same old picture, with RAI and Mediaset channels commanding more than 85 per cent of the primetime audience. Terrestrial analogue television continues to be the main way

¹⁸ Gasparri Law, Art. 25 (11).

¹⁹ Judgment of the Court (Fourth Chamber), 31 January 2008 (Freedom to provide services – Electronic communications – Television broadcasting activities – New common regulatory framework – Allocation of radio frequencies), available online at [http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher\\$docrequire=alldocs&numaff=C-380/05&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100](http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher$docrequire=alldocs&numaff=C-380/05&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100) (accessed 10 March 2008).

of watching TV for the 85 per cent of Italian viewers who watch an average of some four hours a day.²⁰

Table 1. TV audience shares in 2006 (as percentage)

Networks	Primetime (8.30 p.m.–10.30 p.m.)	Night time (10.30 p.m.–12.00 p.m.)
RAI (RAI 1, RAI 2, RAI 3)	45.01	40.18
Mediaset (Canale 5, Rete 4, Italia 1)	40.58	40.97
La 7 (Telecom Italia)	2.42	3.50
Other channels	5.98	7.73
Satellite channels (Sky Italia)	6.01	7.62
Total	100.0	100.0

Source: AGB-Nielsen Media Research

The satellite television audience has grown steadily, revealing its potential to gain a key position in the market. In 2004, satellite TV reached 20.2 per cent of the population; by 2006, this figure was 22.3 per cent.²¹ In mid 2007, the combined audience of satellite channels reached about 8 per cent. However, it must be noted that satellite television is a monopoly, fully controlled by Rupert Murdoch's News Corporation. AGCOM has asked Auditel, the company conducting people-meter audience measurement in Italy, to include satellite channels in their surveys.

Over recent years, Mediaset's three channels, Canale 5, Italia 1 and Rete 4, have seen their combined audience decrease slightly but steadily, from 43.2 per cent in 2003 to 39.6 per cent in 2006. RAI's three channels saw a much smaller drop in ratings, from a combined 45.7 per cent in 2003 to 44.7 per cent three years later.

²⁰ AGCOM, Annual Report 2007.

²¹ The source of this information is Auditel RdB.

Table 2. Audience shares in 2003–2006 (as percentage)

Channel	Year			
	2003	2004	2005	2006
RAI 1	24.2	23.7	23.7	23.8
Canale 5	23.2	22.7	22.0	21.1
RAI 2	12.0	12.2	11.3	11.3
Italia 1	10.5	10.2	10.2	9.9
RAI 3	9.5	9.4	9.4	9.6
Rete 4	9.5	9.3	9.0	8.6
La 7	2.3	2.5	2.9	3.2
Other	8.8	10.0	11.5	12.5
Total	100.0	100.0	100.0	100.0

Source: IP International Marketing Committee²²

Digital Terrestrial Television (DTT) is slowly expanding despite lack of clear legislation. By mid 2007, some 3.7 million digital set-top boxes had been sold in Italy, meaning that about 48 per cent of Italian households have access to DTT.

²² IP International Marketing Committee, *Television 2006. International Key Facts*, October 2006, p. 231 (hereafter, IP International Marketing Committee, *Television 2006*); IP International Marketing Committee, *Television 2007. International Key Facts*, October 2007, p. 233 (hereafter, IP International Marketing Committee, *Television 2007*).

2. REGULATION AND LICENSING OF THE TELEVISION SECTOR

2.1 Regulatory authorities and framework

The regulatory authorities and framework have not been reformed in any way since 2005. Broadcasting is policed by AGCOM, which also covers the telecommunications sector. This body was created in 1997 partly to comply with EU laws and partly in response to the political crisis of the 1990s, which prompted calls for more independent regulatory authorities. Nevertheless, the Government still plays an important role in broadcast regulation.

2.2 Licensing system

Management of the frequency spectrum, including the licensing of broadcasters and assigning frequencies, has been a “black hole” in the judicial system since the mid 1970s. These matters continue to be very badly legislated.

3. REGULATION AND MANAGEMENT OF PUBLIC SERVICE TELEVISION BROADCASTING (PSB)

3.1 PSB legislation and policy

RAI’s prestige has continued to slide. As was foreseen by the OSI’s 2005 report, the Gasparri Law intensified the political struggle over senior positions. The appointment of the Board of Directors in 2005 followed the same political logic and directors have often made important decisions based on their political affiliation. The Board, comprising members linked with the former ruling parties before the political elections in 2006, the centre-right coalition, several times thwarted the Director General’s initiatives, which led to paralysis. That caused further delays in digital innovation and media convergence. More generally, it provoked widespread hostility towards RAI, which has become despised as a fiefdom of politicians and is ever harder to distinguish from the commercial networks.

There are many examples of political interference in RAI’s policy and governance. Three cases are particularly grave, prompting demands for comprehensive legal reform. The first and most serious has become known as the “Meocci case”. Alfredo Meocci was appointed in 2005 as General Director of RAI by the then Minister of the Economy Domenico Siniscalco and the five members of the Board, close to the previous centre-right coalition. His incompatibility with the position was obvious as he had previously been a member of the AGCOM Board. Ruling that the appointment was illegal, AGCOM fined RAI the sum of €14.3 million and Meocci €373,000. AGCOM’s decision was buttressed by both the Regional Administrative Court of

Rome and the Council of State. The five board members who endorsed the appointment are now under investigation by the Public Prosecutor's Office in Rome, accused of abuse of authority. The Court of Accounts asked them to pay a total of €50 million in compensation for the damage they caused to RAI. It is not known whether this fine has been paid.

Just as controversial and still unresolved is the case related to the attempt of Minister of the Economy Padoa Schioppa to replace a member of the RAI Board. In September 2007, following a lengthy political and legal battle with the opposition, the Minister replaced the Board member Angelo Petroni, appointed in 2005 by the Berlusconi Government, with Fabiano Fabiani, who had centre-left political ties. By rebalancing the Board, this gave the centre-left Government considerable power over the station. Many observers questioned the legitimacy of the Minister's move. In November 2007, the Regional Administrative Court of Lazio found the dismissal illegal and ordered the restoration of the centre-right majority on the RAI's Board.

The most recent case of blatant political interference began in November 2007. The publication of tapped telephone conversations revealed the existence in 2004 and 2005 of a continual exchange of information between the managers of RAI and Mediaset, with the general purpose of agreeing on favourable editorial coverage of Prime Minister Berlusconi. If proven, these accusations are serious. In particular, it is alleged that the stations conspired to delay the announcement of partial results of regional elections in 2005, in which the opposition parties clearly triumphed, and to create at the same time a serene atmosphere in order to prevent abstention from the polls of Catholic voters who were then mourning the death of the Pope.

In the wake of these incidents, the Government made moves in two directions.

It renewed the Service Contract between the Ministry of Communications and RAI for the period 2007–2009. Along with the Auditel measurement of RAI's audience share, the new contract introduced the task of measuring RAI's quality, requiring the station to increase its content destined solely for terrestrial digital television with the aim of accelerating its transition.

On the legal front, Minister Gentiloni presented his "Guidelines for the reform of RAI" in January 2007. After public consultations (involving OSI among others), these guidelines led to the presentation of the so-called Gentiloni Bill to the Senate on 22 May 2007.²³ Gentiloni's reforms were premised on abandoning the idea of privatising RAI that was advanced by the Gasparri Law, and on accepting that there were still technical, economic and cultural reasons for justifying the presence of a public service entity. It is, however, broadly acknowledged that the mission, role and governance of RAI must be thoroughly modified, after the 30 years since its last reform in 1975.

The goals of Gentiloni's Bill were:

²³ Bill no. 1588 on "Discipline and reorganisation of the public service broadcasting".

- to make RAI more efficient through restructuring;
- to increase RAI's autonomy and independence from political and economic interests;
- to guarantee the greater quality of RAI's programming in order to increase public awareness of the difference between public service and commercial television;
- to reduce dependence on advertising;
- to encourage innovation and the capacity to compete in the digital market.

3.2 PSB governance structure

To pursue these ambitious objectives, the Bill aimed to re-organise the public service broadcasting by changing in particular RAI's governance structure. In brief, the Government proposed:

- to create a Foundation that would own RAI shares. This Foundation would guarantee RAI's independence from political and economic interests. It would not have daily managerial tasks but would be in charge of implementing RAI's strategy and operational top-level management;
- that the Board of the Foundation should comprise 11 members appointed from a variety of organisations and institutions:
 - four from Parliament (with the consent of two thirds of the Commission for Broadcasting),
 - two from the regions,
 - one nominated by each RAI's employees' union and various cultural institutions, or personalities renowned for their public prestige and political independence.
- that the Board of the Foundation should appoint RAI's Board of Directors, according to standard corporate practice;
- to schedule a thorough restructuring of RAI, retaining the unity of the corporation and its public legal status, while separating administrative and editorial management. As a consequence, the Bill proposed to finance RAI's public service activities through the licence fee and its commercial activities through advertising.

The Bill also included provisions to ensure the transparency of appointments and candidates' experience, and transparency of parliamentary hearings of the candidates

and incompatibility rules on representatives of State institutions or individuals affiliated with political parties or broadcasting companies.

The Bill has seriously drawn on the BBC model in attempting to erect a shield between the Government (and the political establishment in general) and RAI. Overall, Gentiloni's Bill promoted an integral vision of public service broadcasting, without implying the segregation of cultural or other high-end programmes on a single channel.

The reaction of Parliament and the political parties to these proposals has been lukewarm, as had happened often in the past. The political class hardly likes the idea of losing control over the public service broadcasting company.

3.3 PSB funding

RAI continues to be a 100 per cent publicly owned company, but in reality it is in the Government's hands through the majority shareholder, the Ministry of the Economy. The licence fee remains the station's major source of income (51.8 per cent in 2006). Advertising revenues are also stable. However, they had increased in 2006 over the previous year by less than the rate of inflation.

Table 3. Budget of RAI in 2005–2006 (in € million)

Source of financing	2005	2006	Change	Change (in percentage)
Licence fee	1,482.5	1,491	8.5	0.6
Advertising	1,121.2	1,133.3	12.1	1.1
Other income	228.8	254.1	25.3	11.1
Total	2,832.5	2,878.4	45.9	1.6

Source: RAI, Annual Report for 2006²⁴

3.4 Editorial standards and independence

Although strict standards of independence are enshrined in numerous documents, such as RAI's Service Contract, these standards are remote from reality. In relation to RAI, the Prodi Government did not behave much differently from its predecessors, although it did not reach the degree of control that Berlusconi had achieved. For example, Prodi tried to have allies in RAI's governing body, but his attempt was dashed by legal steps taken by the opposition. The editor of the main newscast (*TG Uno*) was immediately

²⁴ RAI, Annual report for 2006, available online (in Italian) at <http://www.bilancio2006.rai.it/ita/bilancio/civ02.htm> (accessed 5 March 2008).

replaced with a prominent journalist from the daily newspaper *Il Corriere della Sera*, who openly declared his sympathy for the centre-left coalition. Such indirect interventions by the ruling coalition are normal when the political power shifts. Overall, RAI journalism has always been subservient, to different degrees and in different styles, to the political logic imposed by the parties in power.

4. COMMERCIAL BROADCASTING

4.1 Regulation and management

(See section 1. General Broadcasting Environment)

4.2 Ownership and management

The major TV broadcasters have not seen major changes in their ownership in the past four years. One development in this respect has been the composition of Mediaset's ownership. In 2005, Berlusconi sold 17 per cent of his stake in Mediaset (held through Fininvest), decreasing his ownership in the company from 51 per cent to 34 per cent.

The sale did not, however, reduce Berlusconi's control of the holding. The remaining shares in Mediaset are owned by the investment bank Lehman Brothers, the investment management firm Capital Research and Management and part floated on the Milan Stock Exchange.

4.3 The advertising market

Italy's gross advertising spend in 2006 was €9.2 billion, representing a growth of 2.6 per cent over 2005. Television continued to take the lion's share.

Table 4. Share of advertising spending in 2004–2006

Medium	Year		
	2004	2005	2006
Television	53.6	53.7	53.5
Print media	32.2	32.2	32.1
Outdoor	6.0	5.9	6.0
Radio	6.1	6.0	5.9
Internet	1.2	1.4	1.8
Cinema	0.9	0.8	0.7
Total	100.0	100.0	100.0

Source: AGCOM, Annual Report 2007

Overall, the domestic TV advertising market is still characterised by high concentration. In 2006, Mediaset took 55 per cent of TV advertising and RAI took 29 per cent. Although there was a slight decrease of some 2.7 per cent in TV advertising during the first five months of 2007, coupled with an increase of 3.6 per cent in the advertising revenues of daily print media, the ratio between print media and TV in Italy remains unbalanced.

Advertising remained the primary source of revenue for the TV sector in 2006, followed by licence fees.

Table 5. Revenues of the television sector in 2005–2006 (as percentage)

Source of financing	2005	2006
Advertising	54.4	50.3
Licence fees (only RAI)	20.5	19.2
Pay services	23.7	28.5
Other	1.4	2.0
Total	100.0	100.0

Source: AGCOM, Annual Report 2007

However, both licence fees and advertising have seen a significant decrease whereas paid-TV services (including pay-TV, satellite subscription, pay-per-view, etc.) are on the rise.

4.4 Editorial standards and independence

No new provisions regarding commercial broadcasting have been introduced. The parallelism and collusion between news and politics that characterises RAI journalism²⁵ can be seen also in commercial broadcasting, especially in the Mediaset channels, which represent the other 40 per cent of the TV information offer. This has been influenced to a great extent by the Berlusconi factor, which led to the *anomaly* of Italian broadcast journalism.

4.5 Regional and local broadcasting

Local television broadcasting is still fragmented, being covered by a few nationwide networks and syndicated content, and about 500 local stations. The field is still characterised by a chaotic distribution of frequencies with roots in the 1980s when the sector experienced an explosion of commercial broadcasters in a context of lack of regulations. To discipline this field, the Ministry of Communications and AGCOM created a “Database of Frequencies” in 2007. This is supposed to be the basis for reforming the licensing of private TV enterprises at national as well as local levels.

The high number of local channels is healthy for the pluralism of information in a country dominated by the oligopolies of the nationwide networks. There is no research available on the profile of local TV journalism. However, the general opinion is that the frailties of journalists at the national level are also present at local level. The hypersensitivity of local broadcasters and print media towards local politicians is all too obvious.

²⁵ See Hallin and Mancini, p. 26.

5. PROGRAMMING

5.1 Output

Programme strands on public service and commercial channels have not seen any major changes over the past years.

Table 6. RAI output by genre in 2005–2006 (in percentage of total programming)

Genre	Share of programming	
	2005	2006
Entertainment	10.9	19.8
Non-European film/Fiction	10.2	
European film/Fiction	8.0	7.6
Art films	1.6	1.4
Sports	6.7	8.4
Science and environment	5.1	4.9
Educational	3.7	3.7
Children	9.2	9.2
Programs of general interest	13.8	14.3
Institutional programmes (such as Presidential speeches)	1.3	1.5
News and current affairs	29.5	29.2
Total	100.0	100.0

Source: RAI-Relazione Bilancio 2005, Rome 2006; RAI, Annuario 2006, Roma, 2007

The three major private channels, run by Mediaset, have maintained the same programming patterns. They are clearly more commercially oriented than RAI. According to the latest data (for 2006), most programming on the Mediaset channels consisted of news programmes (over 25 per cent), entertainment and talk-shows (20 per cent), followed by culture and news and current affairs, and sports.

The most popular strand among Italian viewers remained sports programmes. Football and Formula 1 car racing dominated the top 20 programmes list in Italy in 2006, all broadcast by RAI 1. Otherwise, the most popular programmes on RAI during this period included games, serials and reality shows. In 2006, the most-watched programmes on RAI 1 were the San Remo music festival and the quiz show *Deal or No Deal*. Similar programming, variety shows, soaps, serials, reality and quiz shows, score high ratings on all three Mediaset channels. The top programme on Canale 5 in 2006

was the comedy show *Striscia la notizia* (The news is sneaking), Italia 1's most watched programme was the US series *House M.D.* and Rete 4's top programme was a variety show, *All you need is love*.

5.2 General provisions on news

RAI's Service Contract for the period 2007–2009 contains general and specific provisions regarding programme quality.²⁶ It also contains provisions on news, which are based on the Code of Practice that RAI adopted in 1999. As before, the Contract obliges RAI to air news guided by principles such as freedom, completeness, objectivity and pluralism. The Contract states that training RAI's young journalists is a priority. The Code of Practice contains detailed norms on news coverage, tackling issues of pluralism, election campaigns, privacy protection, news balance and the protection of minors. No other new provisions on news have been introduced in the past three years.

5.3 General programme guidelines

There have been no changes on programming guidelines, except for those that are included in the new Service Contract for RAI. (See section 5.5 *Obligations on PSB*)

5.4 Quotas

The main quotas on programming are imposed on RAI through the Service Contract, which obliges the public service broadcaster to allocate 15 per cent of its total annual revenue to producing and co-producing films and cartoons, documentaries, drama, ballet, classical and popular music. RAI must also reserve at least 20 per cent of its total programming on the terrestrial analogue signal to European works by independent producers. It is not known whether RAI fulfils these quotas, as no reports are available from AGCOM or RAI on this topic. There have been no changes in the system of quotas in the new Service Contract. As before, the new contract also envisages programming for minorities, without imposing any quotas.²⁷ Commercial broadcasters do not have to comply with any system of quotas.

²⁶ RAI, "Contratto di Servizio 2007–2009" (Service Contract), 5 April 2007, Rome, available online (in Italian) at http://www.comunicazioni.it/binary/min_comunicazioni/televisione_rai/contratto_servizio_5_aprile_2007.pdf (accessed 6 March 2008), Art. 2, pp. 2–3. (hereafter Service Contract).

²⁷ Service Contract, Art. 11.

5.5 Obligations on PSB

The current Service Contract obliges RAI to air a wide range of content in order to give citizens a positive perception of the public service broadcaster and to clearly distinguish RAI from commercial broadcasting.²⁸ The guiding principles are:

- freedom, completeness, balance and pluralism of information;
- safeguarding national identity, local cultures and linguistic minorities;
- enhancing national culture, history, traditions and artistic heritage;
- representing the reality of daily life in the country;
- promoting safe conditions for labour and covering developments on the labour market
- covering family life;
- protecting minors, underprivileged and disadvantaged social groups.

The Service Contract also stipulates that the station must air “balanced” editorial and information content throughout the day.²⁹ Programmes must include:

- political information, talk-shows, sports and significant national and international events, and local information;
- socially relevant information on a wide range of topics such as the environment, health, quality of life, human and civic rights, disabilities, the elderly, offering reasonable airtime to civil society associations and organisations, ethnic and language groups, consumer organizations;
- education-related information such as the promotion of foreign languages, computer literacy, music and e-learning;
- promotion of Italian and European culture with special attention to drama, documentaries, films of special art value.

The Service Contract introduces a concept for measuring programme quality by combining indicators of cultural and civil enrichment, respect for the feelings of audiences, innovation, pluralism, independence, balance, ability to entertain and originality.³⁰ It is hard to forecast how this system will perform in practice. As envisaged, it seems more like a wish list from the authors of the Service Contract than a viable proposal. The new Service Contract is an improvement on the older one. It is based on progressive thinking and contains noble principles and guidelines. However,

²⁸ Service Contract, Art. 2/3.

²⁹ Service Contract, Arts. 2/4-5.

³⁰ Service Contract, Art. 3.

there are still no mechanisms controlling its implementation and therefore any detailed assessment is impossible.

The policies over the past few years have not brought any new obligations for commercial broadcasters.

6. CONCLUSIONS

The past two years have been characterised by a legal struggle to break down the RAI-Mediaset duopoly in order to ensure greater diversity. Concentration in the hands of only a few powerful entities is a trend common to many European democracies. Lingering hopes that the Prodi Government would bring some changes to this system were dashed by the political crisis that toppled the Government and froze Parliament's work in January 2008. It is difficult to view the future with optimism. Berlusconi's return to power will most probably end all the efforts by the former Government to overcome the *Italian anomaly* for good, and to make Italy a more diverse and competitive media market.

Through his Mediaset empire, he [Berlusconi] controls most of Italian private television. Now that he is back in government, he will indirectly control state-run television too, giving him influence over some 90 per cent of Italian TV. It is to the central-left's eternal discredit that in its two recent periods in office it did nothing to deal with Mr. Berlusconi's conflicts of interest in the media.³¹

Whereas many parliaments in Europe now face the challenge of maintaining and increasing competition in the new technological context shaped by digitalisation, Italian lawmakers have to create the conditions for competition and pluralism from scratch, during the transition to digitalisation, in order to avoid perpetuating the same dominant positions after the analogue switch-off.

The general reasons why many international institutions are anxiously studying Italian broadcasting remain the same: the presence of a dominant private operator; the concentration of broadcasting capacity and resources in the hands of oligopolies; and the overt mingling of broadcasting with politics.

AGCOM President Calabrò has said: "Digital television is the drawbridge that permits the two lords of analogue television to leave the castle courtyard." At the same time, it is true that the transition from "feudal" analogue broadcasting to the modern digital era will depend on the ability and will of the next Parliament to reform the legislation on broadcasting and to align with the standards of more mature democracies.

³¹ "Mamma mia", *The Economist*, 19–25 April 2008, p. 12.

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Television across Europe:
Follow-up Reports 2008

Lithuania

By Artūras Račas

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List of Abbreviations

BNS	Baltic News Service
LRT	Lithuanian National Radio and Television, <i>Lietuvos nacionalinis radijas ir televizija</i>
LRTK	Lithuanian Radio and Television Commission, <i>Lietuvos radijo ir televizijos komisija</i>
LRTT	Council of Lithuanian Radio and Television, <i>Lietuvos radijo ir televizijos taryba</i>
LTV	Lithuanian Television, <i>Lietuvos televizija</i>
LŽLEK	Lithuanian Ethics Commission of Journalists and Publishers, <i>Lietuvos žurnalistų ir leidėjų etikos komisija</i>
LŽS	Lithuanian Journalist Union, <i>Lietuvos žurnalistų sąjunga</i>
NVTAT	National Consumer Rights Protection Board, <i>Nacionalinė vartotojų teisių apsaugos taryba</i>
VVKT	State Medicines Control Agency, <i>Valstybinė vaistų kontrolės tarnyba</i>

A. Executive Summary

Television in Lithuania has not experienced any major shocks or transformations over the past three years. In spite of the launch of a new channel in 2006, the key market players have remained the same. Their ownership structures have remained unchanged, but the concentration of the media market has continued, with television channels swallowed by larger media holdings, due to the lack of regulation of cross-ownership.

New powers of monitoring and enforcement were granted to the key regulatory body, the Lithuanian Radio and Television Commission (LRTK), such as monitoring the regulations on protection of minors and hidden advertising. Ironically, the number of violations on TV programmes has been rising.

Legal sanctions against broadcasters continue to be too soft and therefore decisions by the industry's main regulatory body and other regulators are sometimes compromises. Moreover, they are imposed on the management and not on the company. The sanctioning powers are too dispersed among too many regulatory bodies. Besides the LTRK, a number of other state agencies and boards are involved in regulating broadcasting.

The content of all television stations has deteriorated over the past two years. There has been a considerable shift from original production to foreign-made programmes, and from culture, science and debate towards music, entertainment and reality shows. The public service broadcaster is no exception. On the contrary, it has shown clear political bias and affiliation with some commercial media, thus failing to fulfil its public service role.

Lithuanian legislation related to broadcasting has seen few important changes. Some of them have had an immediate impact on the market and others are expected to bring changes in the future. First of all, the status and health of Lithuanian National Radio and Television (LRT) have seen major changes. A provision on the introduction of the licence fee to finance LRT was dropped from the Law on LRT, leaving the station completely dependent on State subsidies. At the same time, there have been no amendments aimed at ensuring a stable and transparent system for State subsidies and an effective control of the costs and spending of a public service broadcaster in relation to its content. In December 2006, the Lithuanian Constitutional Court also ruled that State subsidies for LRT did not conflict with the station's right to take commercial advertising.

The failure to introduce the licence fee was contrary to the recommendations in the first OSI report, which called for "reform of the system for financing LRT in order to ensure its stability and the independence of the public broadcaster", and stressed that this goal may be achieved "either by introducing licence fees as the main source of

financing, or by introducing a longer-term system of State subsidies, for example on a three- to five-year basis”.¹

Similarly, the Constitutional Court’s ruling to allow the public service broadcaster to jockey for advertising money was also against the report’s recommendation, which called for “banning or restricting advertising on LRT in order to ensure that public service broadcaster is de-commercialised and its mission can be pursued fully”.² This ruling fostered LRT’s “commercial” identity, negatively impacting on external pluralism in the Lithuanian media sector.

¹ “Lithuania” in Open Society Institute, *Television across Europe: regulation, policy and independence*, Budapest, 2005 (hereafter OSI/Lithuania), p 1,067 (recommendation no. 4/9.3 Public broadcasting).

² OSI/Lithuania, p. 1,067 (recommendation no. 5/9.3 Public broadcasting)

B. Recommendations

1. ORIGINAL RECOMMENDATIONS FROM THE 2005 REPORT³

Except for the adoption of a legislative framework for digital television and the monitoring of the broadcasting sector, none of the recommendations from the 2005 report have been fulfilled.

1.1 Media policy

<i>Digitalisation</i>	
1. Parliament and the Government should develop and formulate a legislative framework and strategy for digital television.	This recommendation has been fulfilled. The process of digitalisation has started and has a concrete timeframe.

1.2 Regulatory authorities

<i>Monitoring</i>	
2. The Lithuanian Radio and Television Commission (LRTK) should continue with more detailed monitoring of the broadcasting sector, and make its monitoring data available to the public.	This recommendation has not been fulfilled to any great extent. The LRTK should monitor more accurately the obligations of broadcasters and make these data available to the public.

³ OSI/Lithuania, pp. 1,066–1,067.

1.3 Public broadcasting

<i>Funding</i>	
<p>4. The Government should initiate reform of the system for financing Lithuanian Radio and Television (LRT) in order to ensure its stability and the independence of the public broadcaster. This could be achieved either by introducing licence fees as the main source of financing, or by introducing a longer-term system of State subsidies – for example, on a three- to five-year basis.</p> <p>5. Parliament and the Government should, after the introduction of an alternative model of financing for LRT, consider banning or restricting advertising on LRT in order to ensure that the public service broadcaster is decriminalised and its mission can be pursued fully.</p>	<p>None of the recommendations on the funding of public service broadcasting have been fulfilled. On the contrary, Parliament and the Constitutional Court acted against them. A provision on the introduction of a licence fee to finance LRT was dropped from the Law on LRT, leaving the station completely dependent on State subsidies. Moreover, Parliament did not adopt amendments to ensure a stable and transparent system for State subsidies. On top of that, a decision by the Lithuanian Constitutional Court ruling that State subsidies for LRT should not conflict with the station's right to take commercial advertising led to the commercialisation of LRT.</p>

1.4 Commercial broadcasting

<i>Professional ethics</i>	
<p>6. Commercial broadcasters should consider the adoption of codes of ethics to give the independence of journalists from internal and external pressures a stronger basis.</p>	<p>This recommendation has not been fulfilled. Commercial broadcasters still have no codes of ethics in place.</p>
<i>Media diversity</i>	
<p>3. Parliament, in consultation with the Lithuanian Radio and Television Commission (LRTK), should introduce limitations on ownership concentration and media cross-ownership.</p>	<p>This recommendation has not been fulfilled and remains pertinent. Parliament has not passed any legal amendments introducing special provisions on media concentration. The sector comes under the more general competition law, which forbids dominant positions, meaning over 40 per cent of a market. The legislation also lacks restrictions on cross-ownership. Parliament should introduce restrictions based on audience size, in order to prevent dominant positions in the sector.</p>

2. NEW RECOMMENDATIONS BASED ON THE 2008 REPORT

2.1 Public service broadcasting

Funding

1. The Government and Parliament should put in place a transparent system of financing Lithuanian Television (LTV), ensuring that funds would be allocated on a long-term basis. This could be done by introducing a licence fee or by guaranteeing concrete State subsidies, for example as a share of the State budget. At the same time, they should ensure more effective control over public funds in LRT, recognising the separation between its public functions and commercial activities.
2. Parliament should consider imposing a ban or tighter restrictions on advertising on LTV as this would restrain public service broadcaster from “tabloidising” its programmes.

Governing structures

3. Parliament should reform LTV’s governance structures, with more powers given to the Council of Lithuanian Radio and Television (LRTT) so that it can ensure effective control of the station’s duties, including the requirement to reflect a diversity of opinions.
4. Parliament should introduce restrictions on LRTT membership to avoid conflict of interests. It should also consider reforming the structure of the LRTT to include representatives of the viewers.

2.2 Regulatory authorities

Governing structures

5. Parliament should amend legislation to concentrate the broadcasting regulatory powers in the hands of a single regulator.
6. Parliament should initiate amendments to legislation to build the LRTK based on fair representation and professionalism. Parliament should also introduce legislation on conflicts of interests for the position of the LTRK’s director.

Funding

7. 7. Parliament should introduce legal provisions to change the system of financing the LRTK to release the regulator from its dependence on the broadcasters’ commercial revenues.

2.3 Commercial broadcasting

8. The LRTK should impose harsher sanctions for violations of broadcast legislation, especially provisions related to advertising. These sanctions should apply not only to the stations' management, but also to the companies operating the broadcasters.
9. The LRTK should adopt secondary legislation to impose certain restrictions on the volume of self-promotional content aired by the TV stations.

C. Main Findings of the Follow-up Monitoring

1. GENERAL BROADCASTING ENVIRONMENT

1.1 Key developments in legislation and policy

Lithuanian legislation on broadcasting has seen some changes over the past few years. The Law on Lithuanian Radio and Television⁴ was amended, scrapping the possibility to finance the public service broadcaster from the licence fee (*See section 3.3*). The Mass Media Law⁵ also saw some important amendments aimed at instituting a clearer distribution of responsibilities among the various regulators (*See section 2*). Changes to other laws relevant for the broadcasting sector have taken place including, for example, the introduction of a ban on alcohol advertising on electronic media between 6 a.m. and 11 p.m. from 1 January 2008. (*See section 4.3*)

1.2 EU legal provisions

There have been no major changes in legislation or policy inspired by EU legislation or practices. The Mass Media Law had been amended three times between 2000 and 2004 to incorporate requirements of the Television Without Frontiers (TVWF)⁶ Directive in respect of unrestricted reception, broadcasting of major events, quotas for European audiovisual works, quotas for independent producers, the right of reply, protection of minors and advertising rules.⁷

1.3 Broadcasting market

The Lithuanian broadcasting sector has been stable over recent years. Cable penetration has remained steady at some 42 per cent of the total population. In 2006, over 57 per cent of television households were watching TV only via the analogue terrestrial broadcasting platform.⁸

⁴ Law on Lithuanian Radio and Television, *Official Gazette*, 2005, 153-5639 (hereafter Law on LRT).

⁵ Law on Provision of Information to the Public, *Official Gazette*, 2007, 82-3254 (hereafter Mass Media Law)

⁶ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, *Official Journal of the European Union*, L 332/27, 18 December 2007.

⁷ OSI/Lithuania, pp. 1,062–1,063.

⁸ The source of these data is TNS Gallup.

No new major players have entered the market since 2004. Over the past three years, the two largest commercial broadcasters, LNK and TV3, have maintained their key positions in the market while the public service broadcaster slightly increased its audience share, after making considerable changes to its programme framework. Despite these improvements, LNK's audience is half the audience of each of the two largest commercial stations in the country.

**Table 1. Nationwide television audience share
(as percentage of total viewing time)**

Station	2003	2004	2005	2006
TV3	25.2	27.5	25.7	24.5
LNK	28.3	26.2	24.8	23.4
LTV	11.8	12.5	13.0	14.8
BTV	10.7	8.8	9.8	9.2

Source: TNS Gallup⁹

**Table 2. Daily reach of nationwide TV channels
(as percentage of all TV viewers)**

Station	2004	2005	2006
TV3	59.2	56.2	53
LNK	59.5	56.9	53.5
LTV	48.5	46.7	45.6
BTV	41.5	41.5	38.7

Source: TNS Gallup¹⁰

The four major broadcasters account for some 84 per cent of the entire TV viewing time in rural areas, for about 76 per cent in smaller cities of up to 100,000 inhabitants and for around 59 per cent in larger cities.¹¹ Mass media, including television, were among the most trusted institutions in Lithuania for many years after the country regained its independence in 1991. However, trust in the media has steadily eroded

⁹ TNS-Gallup, "Annual report of media surveys 2005", Vilnius, 2006; "Annual report of media surveys 2006", Vilnius, 2007 (available at <http://www.tns-gallup.lt>, accessed 22 October 2007).

¹⁰ *Ibid.*

¹¹ *Ibid.*

over the past decade from more than 60 per cent in 1996 to 42 per cent in July 2007.¹² Television may have contributed to the deterioration of the media's trustworthiness, too. A survey by Transparency International Lithuania conducted in February and March 2007 showed that local businessmen see television as one of the most corrupt media.

**Table 3. Corruption perception of Lithuanian media
(as percentage of respondents)**

Media	Not corrupted at all	Not corrupted	Corrupted	Very corrupted	No answer
National newspapers	2.2	18.9	65.9	7.8	5.2
Regional newspapers	2	25.7	52.2	8	12.2
National television	3.8	40.2	47.2	4	4.8
Regional television	3.2	40.2	35.3	4	17.3
National radio stations	7.8	52.6	22.9	2.2	14.5
Regional radio stations	7.6	46	22.6	2.6	21.3
Internet sites	12.4	51.8	21.1	3.4	11.4
News agencies	11.2	54	18.7	2	14.1

Source: Transparency International Lithuania¹³

It is difficult to say whether some of the developments in the media pushed viewers away from TV screens. Individual viewing time has been shrinking since 2004. In 2004, this time was 213 minutes, but it diminished to 199 minutes in 2005 and then 192 minutes in 2006.¹⁴

¹² Vilmorus, "Survey of Lithuania's public institutions 1994–2004, and 2005–2006, Vilnius", available at <http://www.vilmorus.lt> (accessed 16 January 2008).

¹³ Transparency International, "Towards transparent media", Vilnius, 2007 p. 15, available at <http://www.transparency.lt> (accessed 18 June 2007).

¹⁴ TNS-Gallup "Annual report of media surveys 2006", Vilnius, *op. cit.*, p. 11.

2. REGULATION AND LICENSING OF THE TELEVISION SECTOR

2.1 Regulatory authorities and framework

Basic regulation and licensing of public and private broadcasters is concentrated primarily in two public institutions: the Lithuanian Radio and Television Commission (LRTK) and the Council of Lithuanian Radio and Television (LRTT). But several other bodies are also involved in the regulation of broadcasting. Some regulatory functions in the area of advertising are attributed to the National Consumer Rights Protection Board (NVTAT), the Competition Council (*Konkurencijos taryba*) and the State Medicines Control Agency (VVKT).¹⁵ The Journalists' Ethics Inspector and the Ethics Commission of Journalists and Publishers (LŽLEK) perform self-regulatory functions and monitor compliance with ethical standards, including protection of privacy and the rights of minors.¹⁶ With the exception of the LRTK, which was granted slightly more rights for control and imposing sanctions on broadcasters, the regulation and licensing system did not see major changes during recent years.

The main regulator of commercial broadcasters is the LRTK. Its 13 members are appointed as follows: one by the President, three by Parliament and eight by non-governmental organisations (NGOs). The legitimacy of the NGOs in delegating representatives to the LRTK has been questioned because of their lack of representativeness. For example, the Lithuanian Journalists' Union (LŽS), which has the right to promote representatives to this body, has a total membership of up to only 50 members and is not seen as representing the community of Lithuanian journalism.¹⁷ Another example of questionable representativeness is the Lithuanian Congregation of Bishops, which is the only NGO with representatives in both the LRTK and LRTT. The Congregation is also the only religion that has been granted the right to nominate their representatives to the regulators.

The LRTK's managing director plays a key regulatory role, with responsibility for organising the monitoring of broadcasters' programmes, implementing the LRTK's decisions, and drafting the institution's budget.¹⁸ The incumbent, Nerijus Maliukevičius, has been in office since 2002.

The LRTK is responsible for organising tenders for broadcasting and re-broadcasting licences, granting licences and setting fees for them. It also supervises whether

¹⁵ Mass Media Law, Art. 39 (13).

¹⁶ Mass Media Law, Articles 46, 49 and 50.

¹⁷ Interview with Dainius Radzevičius, chairman of Lithuanian Journalists' Union (LŽS), Vilnius, 5 June 2007.

¹⁸ LRTK, "Regulation of Radio and Television Commission", 27 September 2006, available at <http://www.rtk.lt> (accessed 22 October 2007).

broadcasters fulfil their licence conditions and whether they follow the requirements of the Mass Media Law.

Amendments to the Mass Media Law, which came into force on 1 September 2006, granted more powers to the LRTK for supervising how broadcasters comply with their legal requirements. The LRTK was, for example, authorised to monitor whether broadcasters follow the regulations on protection of minors – a function earlier assigned to the Journalists’ Ethics Inspector – and regulations on hidden advertising, a task which was earlier fulfilled by the National Consumer Rights Protection Board.¹⁹

The LRTK is financed from a charge of 0.8 per cent of the total income of commercial broadcasters. According to some experts, this financing model forces the LRTK to take a soft and sometimes even compromising position towards commercial broadcasters, especially over compliance with advertising rules because its interest is to help commercial broadcasters attract a higher income.²⁰ The LRTK admitted that it was not quick in applying financial sanctions against commercial broadcasters, but claimed that it first tries to advise and warn them.²¹

Table 4. Sanctions against commercial broadcasters imposed by the LRTK in 2004–2006

Sanctions	2004	2005	2006
Warnings issued	4	10	3
Financial sanctions	3	4	5
Financial sanctions (total in €)	724	3,041	2,751

Source: LRTK²²

The size of financial sanctions is enshrined in the Code on violations of administrative law, which provides for fines from LTL 1,000 (Litas), or €289, to LTL 10,000 (€2,896) for violations of advertising regulations and rules related to protection of minors.²³ The LRTK may impose financial sanctions only on individuals, for example, directors of television channels, but not on companies. At the same time, the LRTK is

¹⁹ Law on Mass Media, Art. 48.

²⁰ Interview with Rytis Juozapavičius, director of Transparency International, Vilnius, 2 July 2007.

²¹ Interview with Nerijus Maliukevičius.

²² LRTK, “Lietuvos radijo ir televizijos komisijos 2005-ųjų metų ataskaita Lietuvos Respublikos Seimui” (hereafter LRTT Annual Report 2005); LRTK, “Lietuvos radijo ir televizijos komisijos 2006-ųjų metų ataskaita Lietuvos Respublikos Seimui” (hereafter LRTT Annual Report 2006).

²³ Lithuanian Code on violations of administrative law, Art. 214 (19, 20, 21, 22).

entitled to warn companies about such violations and withdraw their broadcast licence in cases of major and repeated violations.

These financial sanctions are inadequate compared to the advertising rates charged by TV stations. For example, the price of one minute of advertising in primetime ranges from LTL 15,000 (€4,344) to LTL 25,000 (€7,240).

Another problem of the regulatory system is the separation of powers among regulators. While the LRTK can impose sanctions for violation of rules related to protection of minors and some advertising rules, it does not have powers to punish violations of alcohol and medicine advertising or misleading advertising.

The National Consumer Rights Protection Board is responsible for overseeing the regulations on alcohol advertising and hidden advertising. As of September 2006, the Competition Council has been in charge of supervising deceptive and comparative advertising, which was within the realm of the consumer board. The consumer rights body twice imposed sanctions on broadcasters for violations of alcohol advertising rules during 2006–2007.²⁴ Although the Board in 2005 said that its surveys found cases of hidden advertising on all four nationwide channels, no sanctions were enforced.²⁵ They did not say why they failed to impose sanctions. The LRTK also claims that it sent numerous letters, at least one every month, to the consumers body with the request for sanctions against broadcasters during 2005–2006, but they did not take any measures. The Competition Council, which is responsible for monitoring misleading advertising, has been much more active, but it usually imposes fines on companies that advertise their products, and not on broadcasters that air this advertising. All decisions by regulators on sanctions against broadcasters are published on their websites and available to the public.

Under current legislation, the public service broadcaster is also monitored by the same regulators involved in monitoring the commercial broadcasting sector. In addition to that, the public service broadcaster is supervised by the LRTT, which is in charge of formulating the station's strategy and monitoring its public functions. (*See section 3.2*)

Self-regulation, which is carried out by the Journalists' Ethic Inspector and the Ethics Commission of Journalists and Publishers, is also part of the overall regulation system. There have been no major changes in the functioning of both institutions in the past two years.

All regulatory authorities are theoretically independent from the Government. Most of them are obliged by law to present their annual report to Parliament. Two controversial decisions by the LRTK in the past two years showed the regulator coming under political pressure. On 29 March 2006, the LRTK banned all cable TV operators

²⁴ Decisions by National Consumer Rights Protection Board, available at <http://www.vartotojoteises.lt> (accessed 30 October 2007).

²⁵ Source: Baltic News Service (BNS), 24 May 2005.

from re-broadcasting Belarus television programmes.²⁶ The decision came after reports aired by the first national channel, claiming that riots in Minsk in the aftermath of the country's presidential elections were organised at the behest of the European Union, including the then Lithuanian Foreign Minister, Antanas Valionis.²⁷ The LRTK argued that it made this decision based on the Mass Media Law prohibiting disinformation and incitement to hatred.²⁸ The LRTK also said that it took into account a resolution by the Lithuanian Parliament at the time, which did not recognise the results of the presidential elections in neighbouring Belarus. Cable television operators appealed the decision in court. A Vilnius administrative court rejected the appeal on 22 September 2006.²⁹

Another controversial decision by Lithuanian regulators was related to the animation series "Pope Town", which was broadcast by MTV Lithuania. On 22 March 2007, the LRTK imposed a LTL 3,000 (€868) fine on the channel's director Marius Veselis, accusing the channel of airing "controversial" cartoons about Catholic clergy and the Pope.³⁰ The LRTK's decision was based on the conclusions of the Journalists' Ethics Inspector, who found that the cartoons portrayed the clergy as "destructive", since they incited to religious discrimination. However, the Vilnius Court in December 2006 rejected the request of the Lithuanian Catholic Church to ban the broadcasting of the series.³¹ MTV's representatives said that they were surprised by the LRTK's decision, stressing that broadcasting the series in Latvia and Estonia had not provoked the same reactions as in Lithuania where 80 per cent of population declare themselves Catholics.³²

2.2 Licensing system

The general licensing rules are defined in the amended Mass Media Law, while the LRTK's Rules on Licensing of Broadcasting and Re-Broadcasting Activities provide a more specific description of the licensing system.³³

²⁶ LRTK decision no. 35 "On re-broadcasting of Belarus state television in the territory of republic of Lithuania", 29 March 2006.

²⁷ Source: BNS, 26 March 2006.

²⁸ Mass Media Law, Art. 19.

²⁹ Source: BNS, 22 September 2006.

³⁰ Statement by LRTK, 22 March 2007, available at <http://www.rtl.lt> (accessed 30 October 2007).

³¹ Source: BNS, 3 January 2007.

³² Lithuanian Department of Statistics, "Population and Housing Census 2001", available at <http://www.stat.gov.lt> (accessed 16 January 2008).

³³ LRTK decision no. 112, 12 December 2006, available at <http://www.rtk.lt>. (accessed 30 October 2007).

Licensing procedures are generally clear and transparent. The LRTK's decisions can be appealed in court. The LRTK monitors how broadcasters fulfil their commitments under the licence conditions, but in reality no data are available on the outcome of their monitoring process (*See section 5.3*). The Lithuanian licensing system does not present any major deficiencies.³⁴

The only new element in the system since 2007 is an amendment to the Mass Media Law, authorising licences to be issued without a tender for "broadcasting and/or re-broadcasting programmes by electronic communications networks, the main purpose of which is not the broadcasting and/or re-broadcasting of programmes".³⁵ In brief, that means that broadcast licences can be awarded without a tender to companies that do not specialise in broadcasting, such as the telecommunications company Teo, which has plans to broadcast programmes digitally.

3. REGULATION AND MANAGEMENT OF PUBLIC SERVICE TELEVISION BROADCASTING (PSB)

3.1 PSB legislation and policy

The legislation regulating public service broadcasting has seen one major amendment in the past two years. This was the elimination of the licence fee as a source of financing LRT in 2005. The station fought for a licence fee-based funding system, but it lost the battle. Therefore, with no clear funding system, LRT is trapped between its duties as a public service broadcaster on one side, and the struggle to generate more money on the other. This in turn has had a considerable impact on programming and the station's policy as a whole. LRT has always been politically much more sensitive and at times more biased than commercial broadcasters. The LRT's governance structure does not ensure effective control over editorial policy.

Another important decision with implications for LRT was a ruling by the Constitutional Court on 21 December 2006, stating that provisions of the Law on LRT permitting advertising on the PSB programmes and allowing the station to carry other commercial activities do not violate the Lithuanian Constitution.³⁶

These two developments had a major impact on LRT policy. At the end of 2006, the station's management reviewed the programme framework with the aim of increasing the station's ratings and pulling in more advertising. Most of the core public service programmes were crammed into the LRT2 channel, which has a small audience compared to LRT's main channel, which is now focusing more on entertainment and

³⁴ Interviews with representatives of commercial television stations interviewed for this report.

³⁵ Mass Media Law, Art. 31 (11, 3).

³⁶ Decision by Constitutional Court, *Official Gazette*, 141-5430, December 2006.

movies. The final result of LRT's transformation is not yet clear. The ratings increased slightly, and it saw its advertising income rise healthily. However, LRT still ended 2006 in the red (*See section 3.3*). Data for 2007 will be released at the end of May.

3.2 PSB governance structure

LRT's governance structure has not changed. The main governance body is the Council of Lithuanian Radio and Television (LRTT), which appoints the Director General, formulates policy and oversees its implementation.

The LRTT is composed of 12 members appointed for a six-year term. Two thirds of the appointments are "political", with four members appointed by the President and another four by Parliament, including two nominated by the opposition parties. The remaining four members are delegated by NGOs.³⁷ Although it is designed to ensure the LRTT's independence and a balance between various interests inside the LRTT, the composition shows signs of apathy with too many members serving for long periods and no fresh blood. Four members have been serving since 2000; their term is due to expire in 2008. Three members were appointed by the President for a second term in April 2006 and are to serve for a total of 12 years. However, one of these has since resigned. (*See section 5.3*)

The appointment of LRTT members by Parliament has always provoked political bickering. This was the case with the appointment of Edmundas Ganusauskas in October 2005, when lawmakers got enmeshed in a debate over who was the "real" opposition in Parliament. The winner was the Liberal Democratic Party, which managed to push its candidate to the LRTT, edging out the competition from the other opposition parties, the Lithuanian Conservative Party and the Liberal Centre Union. Chaired by the impeached President Rolandas Paksas,³⁸ the Liberal Democratic Party had only nine MPs.³⁹ It was only one example of how political rather than professional criteria have guided the appointments to the LRTT.

One of the LRTT members appointed by the President, Rimvydas Valatka, also stirred controversy. Valatka, who has served on the LRTT since 2000, is the deputy editor of the largest Lithuanian daily *Lietuvos Rytas*, which is part of a media group that also owns the TV production company Spaudos Televizija. The company sells its productions to broadcasters including LTV. Valatka and other journalists working with *Lietuvos Rytas* have been the most frequent guests on Spaudos Televizija's talk shows, including "Forumas" (Forum) moderated since 2006 by the station's Editor-in-

³⁷ OSI/Lithuania, p 1,045.

³⁸ President Rolandas Paksas was impeached in April 2004. He was accused of violating the Lithuanian Constitution when he granted Lithuanian citizenship to the Russian businessman Jurij Borisov in exchange for the financial support during presidential election campaign.

³⁹ Source: BNS, 5 October 2005.

Chief Edmundas Jakilaitis, and on LTV shows such as “Spaudos Klubas” (Media Club) (See sections 4.2 and 5.1). The LRTT is entitled to make decisions on programmes, having a strong say in the adoption of the programming framework. That was clearly demonstrated during a conflict between LRT Director General, Kęstutis Petrauskis, and the LRTT over the airing of an entertainment programme (See section 5.3). Some observers believe that Spaudos Televizija production lacks internal pluralism, serving mainly the interests of *Lietuvos Rytas* owner, Gedvydas Vainauskas.⁴⁰

The LRTT is entitled by law to monitor both the adoption of LTV’s broadcasting strategy and also to monitor the programmes, but no data are available on how they fulfil this function.⁴¹ The LRTT’s lack of control was confirmed by an audit by the National Audit Office of Lithuania (*Lietuvos Respublikos valstybės kontrolė*).⁴² The report stated that the LRTT had not exercised its legal duties and “did not establish the output and structure of the broadcast programmes”. It also stressed that LTV’s programmes in 2005 were not planned in line with the station’s goals and tasks, and that it was not clear what public services, which had been financed from State budget money, LTV should offer, adding that there was no possibility of assessing to what extent these funds were, in fact, used for public services.

In its 2006 Annual Report to Parliament, the LRTT wrote that it had drafted a text on the output and structure of LTV programmes in mid-2006. However, this document was never made public.⁴³ The report provided no data on how the planned output and structure of LTV programmes were carried out in practice.

3.3 PSB funding

LTV is financed from the State budget and commercial revenues, including advertising.⁴⁴ State subsidies constitute the bulk of LRT’s budget. However, the share of commercial revenues has slightly increased during recent years, with the year 2006 witnessing a growth in both subsidies and commercial revenues. No detailed data are available on LTV’s budget. All reports provide data only for LRT as a whole. However, according to estimates from the National Audit Office, the rate of costs and expenditures for TV programming against radio programmes was 4.8 to 1 in 2005,

⁴⁰ Written comments from Rytis Juozapavičius, director of Transparency International Lithuania, formerly journalist with LRT.

⁴¹ Law on LRT, Art. 10.

⁴² National Audit Office of Lithuania. “VšĮ Lietuvos nacionalinio radijo ir televizijos finansavimas ir lėšų panaudojimas” (Financing and use of funds in Lithuanian Television and Radio), 19 July 2006, available at <http://www.vkontrolė.lt> (accessed 31 October 2007).

⁴³ LRT, Annual Report 2006. p. 50.

⁴⁴ Law on LRT, Art. 15.

which means that television accounts for roughly four-fifths of the total LRT budget. There are no fresher data as the audit is only conducted every several years.

Table 5. LRT revenues (in LTL million)

Year	State budget	Percentage of total	Commercial revenues	Percentage of total
2003	37.3	71.5	14.9	28.5
2004	38.2	65.7	19.9	34.3
2005	39.5	66.3	20.1	33.7
2006	42.3	62.9	24.9	37.1

Source: National Audit Office of Lithuania,⁴⁵ LRTT 2006 Annual Report

A provision on the licence fee was introduced in the Law on LRT in 2000 and foresaw the introduction of the fee in 2001. But for five years, Parliament postponed the introduction of the fee and in December 2005 decided to scrap it completely from the Law on LRT.⁴⁶

Due to a considerable increase in advertising revenue, LRT's ad income grew in 2006 by 31.2 per cent from LTL 16.1 million (€4.66 million) in the previous year to LTL 21.1 million (€6.11 million).⁴⁷ With the prospects of the introduction of the licence fee severely dented, and the ruling of the Constitutional Court ensuring LRT's right to carry advertising, the income from ad sales is likely to go up. At the same time, the fight for ad revenue is likely to prompt LRT to seek higher ratings, which is expected to have a negative impact on its function as a public service broadcaster.

Despite the growth in commercial revenues, LRT stayed in the red for many years. In 2005 and 2006, LRT posted losses of LTL 1.51 million (€437,000) and LTL 1.25 million (€362,000), respectively.⁴⁸ But the National Audit Office of Lithuania noted that the negative financial results were related not only to poor financing but also to mismanagement. The report pointed at an imperfect system of salaries in LRT, with too high salaries in the ad sales department where the monthly income of its head, bonuses included, was reaching €5,300 – double the salary of LRT's Director General, and more than ten times the national average salary. Salaries of employees in the

⁴⁵ National Audit Office of Lithuania, "Financing and use of funds in Lithuanian Television and Radio", cit.

⁴⁶ Law on LRT, Art. 15.1. (Note: When the Law was amended on 22 December 2005, the part "income obtained from State taxes for the services provided to the public by LRT" was dropped.)

⁴⁷ LRTT Annual Report 2005, LRTT Annual report 2006, pp. 28–29.

⁴⁸ *Ibid.*

advertising department also topped by a considerable margin the average salaries of the station.⁴⁹

The National Audit Office also found that the public service broadcaster mismanaged funds in the purchase of programmes and concluded contracts on its property that were financially detrimental to the station. The report stated that it was not clear whether State money was used in LRT's commercial activities as it was not clear exactly what public functions LTV should provide with State subsidies.

3.4 Editorial standards

The main regulatory tool for editorial policy in LRT is the Code of Ethics for Journalists and Publishers, approved by the Lithuanian Journalists Union in 2005.⁵⁰ The Code sets basic requirements for news reporting, ethical standards, and protection of individual privacy. It also speaks about the relations between journalists and owners, and among journalists themselves. The station's News Department also has internal rules of its own, similar to the Code's basic principles. These rules are based on a similar code used by BBC journalists. However, unlike the Code of Ethics for Journalists and Publishers, the journalists in the News Department are not obliged to sign the department's own code.⁵¹

There is no evidence of any serious violation of basic ethical standards in LRT. There have been no major attempts by the station's management to influence the content of the news. However, the public service broadcaster's management tried sometimes to promote in its morning information programmes the interests of certain groups, mainly associated with culture, music, theatre or other arts. The management's representatives, however, said that they did not try to influence the content of the main evening newscast.

4. COMMERCIAL BROADCASTING

4.1 Regulation and management

Commercial broadcasters are subject to regulations enshrined in the Mass Media Law. The main regulatory bodies are the LRTK, the Journalists' Ethics Inspector and the

⁴⁹ National Audit Office of Lithuania, "Financing and use of funds in Lithuanian Television and Radio", *op. cit.*

⁵⁰ Available on the Lithuanian Journalist Union website (<http://www.lzs.lt>, accessed 31 October 2007).

⁵¹ Interview with Audrius Lelkaitis, former head of LTV News Department, today freelance journalist and lecturer at Vilnius University, Vilnius, 12 July 2007.

Lithuanian Ethics Commission of Journalists and Publishers. There has been no noticeable change in the regulation of commercial broadcasting.

Nationwide terrestrial television stations LNK and TV3 remained the sector's leaders, with a combined audience of nearly 50 per cent. Television revenues continued to grow at an annual rate of some 20 per cent between 2004 and 2006, with television taking some 40 per cent of total ad spending in the country. The four largest TV broadcasters accounted for about 95 per cent of all TV advertising revenues.⁵² The increase in advertising income of commercial TV stations varied widely, with only TV3 enjoying steady growth.

The only significant new player on the market was MTV, which started broadcasting in September 2006. The regional channel 5 kanalas and the channels Tango TV and TV1 increased their reach and audience share, and may aim to turn into national TV channels in the future.

The legislation regulating the operations of commercial broadcasters have not seen major changes either over recent years. The only change concerns the amendments to the Mass Media Law, which granted greater rights to the LRTK in supervising all broadcasters⁵³ and liberalised the licensing rules for broadband broadcasting based on Internet Protocol.⁵⁴

New legislation forbidding alcohol advertising by all broadcasters was adopted by Parliament in June 2007 and was to come into force on 1 January 2008.⁵⁵ However, with resistance to this legislation from television stations and alcohol producers, Parliament reviewed the legislation in January 2008 and rejected the industry's proposal to accept advertising on weaker alcohol drinks (including beer, cider and wine). Parliament announced that they would debate this issue again this year.

4.2 Ownership and cross-ownership

There have been no major changes in the ownership of commercial broadcasters over recent years. Two of the three nationwide commercial broadcasters are owned by local businesses: LNK is owned by MG Baltic and BTV by Achema Group. Sweden's Modern Times Group owns TV3. The Swedes also own Tango TV, which can be viewed terrestrially in the largest cities and via cable in smaller towns.⁵⁶ Tango TV claims it reaches some 70 per cent of the country's population.⁵⁷ The largest regional

⁵² Interview with Nerijus Maliukevičius, director of LRTK's administration, Vilnius, 14 June 2007.

⁵³ Mass Media Law, Art. 48.

⁵⁴ Mass Media Law, Art. 31(11).

⁵⁵ Law on Alcohol Control, *Official Gazette*, July 2007, n. 77-3041, Art. 29.

⁵⁶ LRTK, Annual Report 2006, *op. cit.*

⁵⁷ Source: Report by Tango TV, available online at <http://www.tangotv.lt> (11 February 2008).

commercial broadcaster 5 kanalas, which claims that it reaches two thirds of the country's population (or some 2.2 million viewers), was owned by domestic company Rubicon Group, which in October 2007 sold 51 per cent of the station to the Lietuvos Rytas media group.⁵⁸

Lithuanian legislation does not restrict foreign ownership of broadcasters, except that owners of broadcasting companies must be registered in Lithuania. At the same time, legislation contains no special provisions on media concentration. The sector comes under the more general competition law, which forbids dominant positions, meaning over 40 per cent of a market.⁵⁹ The lack of special restrictions on cross-ownership has paved the way for a consolidation of the media markets in recent years.

Table 6. Media holdings formed by owners of commercial broadcasters

MG Baltic	LNK	Internet portal Alfa, publishing houses Neo-press and UPG Baltic
Modern Times Group	TV3	Tango TV, the radio station Power Hit Radio
Achema Group	BTV	Radio stations Radiocentras, RC2, Zip FM, Ruskoje Radio Baltija, the daily <i>Lietuvos žinios</i> , the regional newspaper <i>Naujienos</i> , printing houses Titnagas and Ausra, and advertising agency Tango reklama.

Source: OSI research

Other large media groups are the Lietuvos Rytas Group, the owner of Lithuania's biggest daily and a few other journals, and of Spaudos televizija company, which has already secured a licence for digital broadcasting. Spaudos televizija currently produces TV programmes for nationwide TV channels.

No sanctions have ever been imposed in Lithuania for abuse of dominant positions by owners of more media in pursuing their personal or business interests. There are some indications that cross-ownership has a negative impact on broadcasters' editorial policy. LNK, for example, gave special attention to the scandal related to the former Vilnius mayor Artūras Zuokas, who was suspected of pursuing the business interests of Rubicon Group, seen as a direct competitor to LNK's owners.⁶⁰ Also, political talk shows on LTV tend to support the position taken by the daily *Lietuvos Rytas*, which is under the same ownership as LTV. The Journalists' Ethics Inspector publicly criticised LTV for not ensuring diversity of opinions in its shows by repeatedly inviting the same guests to its talk shows.⁶¹

⁵⁸ Baltic News Service (BNS), 8 October 2007.

⁵⁹ Law on Competition, *Official Gazette*, 63-2244, Art. 3, April 2004.

⁶⁰ Interview with Rytis Juozapavičius, director of Transparency International Lithuania, Vilnius, 2 July 2007.

⁶¹ Parliament's stenograph, 22 May 2007.

Commercial broadcasters that are part of media holdings owned by domestic businesses are considered to be less transparent than the foreign-owned broadcasters and the public service broadcaster.⁶²

Table 7. Evaluation of media transparency

TV channel	Evaluation (as percentage)		
	Transparent	Not transparent	Do not know
TV3	61.6	28.2	10.3
LTV	74	14.0	12.0
LNK	47.1	45.1	7.8
BTV	40.9	37.5	22.7

Source: Transparency International Lithuania

A smaller-scale, informal survey by the author of this report among journalists from various media, excluding television and public relations experts, revealed the same tendencies. The respondents were asked to evaluate the objectivity and relevance of the newscasts and political talk shows on various channels.

Table 8. Average scores for objectivity and relevance of newscasts

	LTV score	TV3 score	LNK score
Objectivity and impartiality of newscasts	7.5	6.1	5.2
Actuality of news programmes	8.1	6.8	7.0

Source: EUMAP survey⁶³

⁶² Transparency International, "Towards transparent media", *op. cit.*

⁶³ The survey used a scale from 1 to 10 where 1 was the least objective, most biased and least relevant, and 10 the most objective, unbiased and relevant. The survey was conducted among 98 randomly selected journalists. Results for BTV news were not included in the table as more than half the respondents (53) said that they did not watch it.

Table 9. Average scores for objectivity and relevance of talk shows

Talk show	Score
“Spaudos klubas” (Media Club) (LTV)	5.4
“Forumas” (Forum) (LTV)	5.2
“Šamokslo teorija” (Conspiracy theory) (5 kanalas)	3.7

Source: EUMAP survey⁶⁴

4.3 Advertising market

The advertising market has grown steadily since 2004. TV advertising has been growing at the same pace as the entire market and faster than print media and radio advertising. The total advertising market in 2006 was worth LTL 430.1 million (€124.57 million) net, which was an increase of about 18 per cent over the previous year.

Table 10. Advertising market in Lithuania in 2004–2006 (in LTL million)

Media	2004	2005	Change 04/05 (as percentage)	2006	Change 05/06 (as percentage)
TV	146	155	+ 6.2	187	+ 20.6
Newspapers	100	106	+ 6.0	120	+ 13.2
Magazines	38	44	+ 15.8	53	+ 20.5
Radio	25	25.5	+ 2.0	28	+ 9.8
Outdoor	21	25	+ 19	29.8	+ 18.4
Internet	4.6	8	+ 73.9	12	+ 50
Total	334.8	363.6	+ 8.6	430.1	+18.3

Source: LRTK annual reports, TNS Gallup surveys.⁶⁵

The LRTK used to publish the share of advertising revenues for every TV channel, but stopped this practice following a request from broadcasters in 2004.⁶⁶ The public service broadcaster pulled in net ad revenues worth LTL 21 million (€6.08 million) in

⁶⁴ The score for “Šamokslo teorija” talk show was calculated based on answers from 56 respondents.

⁶⁵ Some minor categories such as cinema advertising were not included.

⁶⁶ Interview with Nerijus Maliukevičius.

2006.⁶⁷ The total net revenues of all commercial broadcasters accounted for some LTL 165 million (€47.78 million) in the same year. TV 3 and LNK together command almost 80 per cent of the ad spending in the market. The growth of TV advertising market between 2004 and 2006 was, in fact, accompanied by a considerable increase in the total ad sales of TV3 and LRT. The combined share of ad revenues of the three largest channels dropped from some 90 per cent in 2004 to about 85 per cent in 2006.

Table 11. Share of TV advertising revenue (gross figures) 2004–2006

TV station	Share (as percentage)		
	2004	2005	2006
TV 3	43.1	42.1	46.2
LNK	37.1	40.0	33.2
BTV	10.3	7.4	6.3
LTV	4.6	3.2	4.6
1 Baltyjskij	2.4	3.7	4.6
TV 1	0.1	1.1	1.8
Tango TV	1.6	1.6	1.3
MTV Lithuania	n.a.	n.a.	1.0
5 Kanalas	0.8	0.9	1.0

Source: IP International Marketing Committee⁶⁸

Legal requirements on TV advertising are monitored and enforced by the LRTK in cooperation with some other institutions. The LRTK states that nationwide TV channels in general do not infringe these requirements.⁶⁹ Fines for violating the advertising rules are very small compared to the cost of advertising, which encourages violations. The LRTK and the nationwide channels got enmeshed in 2006–2007 in legal disputes over advertising during TV newscasts. The LRTK decided in 2006 that TV newscasts including political, economic, crime-related and other news, as well as sports and weather forecast, could not be interrupted by advertising.⁷⁰ All national channels appealed against the decision, but the Vilnius county administrative court rejected the

⁶⁷ LRTT Annual Report 2006.

⁶⁸ IP International Marketing Committee, *Television 2007. International Key Facts*, October 2007, p. 256; IP International Marketing Committee, *Television 2006. International Key Facts*, October 2007, p. 254.

⁶⁹ LRTK Annual report 2005, pp. 6–7, LRTK report 2006, pp. 5–6.

⁷⁰ LRTK decision no. 95, 20 September 2006.

appeal.⁷¹ The LRTK later softened its position and announced in August 2007 that the insertion of advertising spots before sports, culture news and weather forecasts would be permitted.⁷²

These LRTK rules, the first ever regulation on advertising, included concrete provisions on advertising during TV films. They basically repeated the general provisions on advertising from the Mass Media Law and the Television Without Frontiers (TVWF) Directive,⁷³ but also regulated the frequency of commercials.

Table 12. Allowed frequency of advertising clips in TV films

Length of TV film	Number of advertising clips allowed
Up to 45 minutes	0
46–89 minutes	1
90–109 minutes	2
110–135 minutes	3
136–180 minutes	4
181–225 minutes	5

Source: LRTK

There are no rules limiting the time a station devotes to promoting its own programmes in Lithuania. These breaks often exceed the quantity of commercials. The LRTK admits this is becoming a problem and plans to survey the self-promotional spots on television, and prepare a regulation based on the findings. No timeframe for this plan has been announced.

Another major change in the regulation of TV advertising was the amendment to the Law on Alcohol Control adopted in June 2007, which prohibits advertising of all alcoholic drinks between 6 a.m. and 11 p.m.⁷⁴ Some experts expected the new provision to hit the TV advertising sales when it came into force on 1 January 2008. The previous Law of Alcohol Control prohibited the advertising of strong alcohol (beverages with the ethyl alcohol strength exceeding 22 per cent) from 3 p.m. to 10.30 p.m. on weekdays and from 8 a.m. to 10.30 p.m. on Sundays, Saturdays and school

⁷¹ Source: BNS, 26 January 2007.

⁷² LRTK decision no. 90, 1 August 2007.

⁷³ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, *Official Journal of the European Union*, L 332/27, 18 December 2007.

⁷⁴ Law on Alcohol Control, Art. 29, *Official Gazette*, 77-3041, July 2007.

holidays. Advertising weaker alcohol drinks (including beer, cider and wine) was allowed both on commercial and public service channels.

The new legislation stirred heated debate. Opponents claimed that advertising did not increase consumption and warned that it could have negative effects on sports financing. For example, the breweries Švyturys-Utenos alus, Gubernija and Kalnapilis are the major sponsors of Lithuanian basketball teams in a country where basketball is extremely popular. The alcohol lobbyists urged the President to veto the bill, but he signed it into law. The row resumed at the end of 2007, when TV3 announced that it would not air the Euroleague's basketball games as it feared sanctions for violating the new provisions on alcohol advertising, for alcohol brands are advertised in the sports hall and on the players' strip.⁷⁵

TV3 did not broadcast the Euroleague matches in the first week of January 2008. Its decision was backed by public service LTV, which cancelled its planned live broadcasts of the Baltic Basketball League and Lithuanian Basketball League games. TV3's decision was seen by some observers as a tool of pressure on MPs who were to convene on 11 January 2008. The station hoped Parliament would amend the legislation, softening the restrictions on alcohol advertising. But Parliament did not change the law, instead it established a special commission in charge of preparing amendments to the Law on Alcohol Control by 31 March 2008. TV3 and LTV again started to air live broadcasts of sports following signals from regulators that alcohol brands in sports halls or players' clothing would not be treated as advertising. Regulators have not yet imposed fines on any of the stations.

4.4 Editorial standards and independence

Basic editorial standards are defined in the Mass Media Law and are legally binding on all commercial broadcasters. The law prohibits any pressure on journalists to air false or biased information.⁷⁶ It obliges stations to protect individual rights, human dignity and privacy.⁷⁷ The law also provides for general principles on how information should be presented to the public, including requirements for unbiased, accurate information, diversity of opinions and so forth.⁷⁸

The law requires producers of public information programmes to have their own internal codes of ethics, which “must set the journalist's rights, duties, responsibility, employments relations, as well as the journalist's protection against restriction of his rights”.⁷⁹ It pins down the journalists' duties including the duty “to refuse an

⁷⁵ Baltic News Service (BNS), 27 December 2007.

⁷⁶ Mass Media Law, Art. 7.

⁷⁷ Mass Media Law, Arts. 13–14.

⁷⁸ Mass Media Law, Art. 22.

⁷⁹ Mass Media Law, Art. 23.

assignment by the producer, the disseminator of public information, their representative or a responsible person appointed by them, if this assignment compels [the journalist] to violate the laws or the Code of Ethics of Lithuanian Journalists and Publishers".⁸⁰ This Code is, in fact, part of the Mass Media Law.⁸¹ The Code was also amended in April 2005 to include provisions on transparency of information, hidden advertising and the rights of private individuals and minors. However, this hardly changed the real situation in the Lithuanian media. Most of the decisions by the Journalists' Ethics Inspector in recent years were primarily related to violation of privacy and protection of minors.

The requirement for an internal code of ethics is implemented only formally. Many journalists working with commercial broadcasters admit that they do not know the content of the code, and some have not even seen it. Real editorial independence could hardly be ensured by commercial broadcasters as none of them had signed collective agreements with journalists. So, in fact, there is no legally binding commitment to ensure editorial independence.

However, the majority of journalists say they are independent in choosing their topics and feel no pressure from the owners. At the same time, they would not in most cases produce a negative report on the owners of their station. There is no censorship in commercial broadcasters, but a degree of self-censorship exists. The owners of two commercial channels are large domestic companies with interests in many different industries. Although there is not yet any proven grounds for concern, this raises questions regarding their real editorial independence. (*See also section 4.2*)

4.5 Regional and local broadcasting

Regional and local broadcasting do not play a major role in Lithuanian broadcasting. However, the audience share and reach of local and regional TV channels has slowly increased over recent years. In 2006, this market included one regional broadcaster and 27 local commercial TV stations. The country was served at the time by 57 cable operators and four Multichannel Multipoint Distributed Service (MMDS) operators.⁸² The number of regional, local broadcasters and cable operators has been stable.

According to the Mass Media Law, a regional broadcaster shows terrestrial programming to a territory inhabited by less than 60 per cent of Lithuania's population. Local broadcasting is defined as programming aired by one radio or television station, regardless of its reach and penetration.⁸³

⁸⁰ Mass Media Law, Art. 41.

⁸¹ Mass Media Law, Art. 43.

⁸² Data provided by the LRTK.

⁸³ Mass Media Law, Art. 2.

However, because some channels are transmitted via more platforms, including terrestrial, satellite or cable television networks, there is some confusion in the classification of broadcasters. Some local TV channels claim that they are regional broadcasters as the area of their broadcasting, covering from 50 to 150 kilometres, spreads beyond the town from where they operate.⁸⁴

On the other hand, TV channels owned by nationwide broadcasters, such as Tango TV (controlled by Modern Times Group), TV1 (owned by LNK), LTV2 (LRT's second channel) and Pervij Baltijskij Kanal (broadcast from Latvia) are not classified as regional broadcasters although they cover a large part of the Lithuanian territory and achieve at least 1 per cent of the nationwide audience, reaching daily 10 per cent or more of the audience.

**Table 13. Regional and local television audience share
(as percentage of total audience)**

Channel	2005	2006
PBK	4.7	5.2
Tango TV	1.6	1.7
TV1	1.7	1.7
5 kanalas	1.5	1.3
LTV2	0.6	0.9
Other channels	15.7	16

Source: TNS Gallup⁸⁵

⁸⁴ A number of 12 such broadcasters are grouped in their own association of regional stations.

⁸⁵ TNS Gallup, "Annual report of mass media surveys", 2005, p. 11; TNS Gallup, "Annual report of mass media surveys", 2006, p. 10.

**Table 14. Daily reach of regional and local TV channels
(as percentage of all TV viewers)**

Channel	2004	2005	2006
Tango TV	15.1	14.8	15.3
TV1	12.8	14.8	13.8
PBK	12.7	13.4	13.3
5 kanalas	9.8	12.3	12.4
LTV2	7.6	9.3	11.1
Other channels	38.5	37.7	36.6

Source: TNS Gallup⁸⁶

Tango TV and 5 kanalas claim that they are available to more than two thirds of the country's viewers, which means more than 2 million. However, only 5 kanalas is recognised as a regional broadcaster. Rules on licensing regional and local broadcasters are the same as for nationwide broadcasters. The LRTK says in its annual reports that regional and local broadcasters are monitored on a regular basis. Sanctions against them were exceptionally rare: once in 2005 and three times in 2006.⁸⁷ No comprehensive data on this monitoring are publicly available.

5. PROGRAMMING

5.1 Output

Recent years have seen a clear shift from information, culture and education programmes to entertainment on the public service and, particularly, commercial channels.

⁸⁶ Annual report of mass media surveys, 2005, Annual report of mass media surveys, 2006.

⁸⁷ LRTK, Annual report 2005; LRTK, Annual report 2006.

Table 15. Output of public service broadcaster (LTV) by genre 2005–2006

Genres	Output (hours)	
	2005	2006
Information programmes	1,234	1,098
News (including sports)	427	447
Other information programmes	807	651
Education	0	0
Culture	350	248
Religion	76	47
Entertainment	1,970	2,103
Movies, soap	1,082	2,830
Music	350	119
Sports, excluding sports news	184	219
Other entertainment	355	261
Other unclassified programmes	1,215	1,319
Advertising	91	402
Total	8,141	9,744

Source: Lithuanian Department of Statistics⁸⁸

⁸⁸ Lithuanian Department of Statistics, “Culture, press and sports 2005”, pp. 40–41 and “Culture press and sports 2006”, pp. 42–43.

Table 16. Output of Lithuania's commercial broadcasters by genre 2005–2006

Genres	Output (hours)	
	2005	2006
Information programmes	16,855	8,227
News (including sports)	14,922	4,161
Other information programmes	1,933	4,065
Education	805	1,409
Culture	1,617	3,592
Religion	79	146
Entertainment	31,256	20,226
Movies, soap	6,260	31,491
Music	2,410	3,591
Sports (excluding sports news)	850	1,135
Other entertainment	12,926	12,028
Other unclassified programmes	10,205	12,116
Advertising	4,123	5,402
Total	104,241	107,589

Source: Lithuanian Department of Statistics⁸⁹

The shift to entertainment and movies has continued in 2007, with TV reality shows, game, dances and singing competitions filling primetime on LNK and TV3, and also on LTV. At the same time, serious talk shows have been steadily disappearing from the screen. Their number dropped from ten in 2004 to four in early 2007. Three of them cover political and economic issues and the fourth deals mainly with social and gender issues. Two of them are broadcast by LRT, one by 5 kanalas and one by LNK. The talk shows on LTV, “Spaudos klubas” and “Forumas”, however, are criticised for bias by some experts and viewers. In the presentation of his 2006 Annual Report in Parliament on 22 May 2007, the Journalists' Ethics Inspector Romas Gudaitis urged the hosts of LTV's talk shows to offer a wider choice of experts and commentators and to “ensure the diversity of opinions and expressions”.⁹⁰

⁸⁹ *Ibid.*

⁹⁰ Parliament's stenograph, 22 May 2007.

5.2 General provisions on news

The Mass Media Law requires all media outlets to present information in a fair, accurate and unbiased manner.⁹¹ To ensure freedom of information, the law also prohibits any kind of pressure on the programme producer, the disseminators of public information, their representatives or journalists, compelling them to present false and biased information.⁹² The restrictions on collecting and publishing information are mainly aimed at protecting individual rights and human dignity.⁹³ The Journalists' Ethics Inspector and the Lithuanian Ethics Commission of Journalists and Publishers are the main instruments of control over implementation of these legal provisions.

According to the law, the LRTK has to focus on violations of professional ethical standards by journalists and on the relations between journalists and producers or publishers. The Journalists' Ethics Inspector is mainly responsible for investigating complaints submitted by private individuals on violations of their honour, dignity and privacy.

5.3 General programme production guidelines

The Mass Media Law contains general guidelines on programming that apply to all broadcasters. They include the requirement to air unbiased information, with as many opinions as possible on controversial issues related to politics, economic and social issues. Journalists are obliged by law to protect and respect the right to privacy in the event of death or disease. They must not mention personal data when covering suicides or suicide attempts and must not propagate or depict attractively smoking, drinking or the use of narcotics. Such topics can be covered only when needed for the realistic presentation of various issues.⁹⁴

Commercial broadcasters are also obliged by their licence contract with the regulator to air a certain proportion of generic programming every week. The LRTK's representatives say that they monitor periodically how commercial broadcasters fulfil these obligations. However, no data are available.

⁹¹ Mass Media Law, Art. 3.

⁹² Mass Media Law, Art. 7.

⁹³ Mass Media Law, Art. 13.

⁹⁴ Mass Media Law, Art. 22.

**Table 17. Programming obligations on commercial broadcasters
(minimum weekly length of broadcast by genres)**

Genres	Number of hours		
	TV3	LNK	BTV
News	3:00	3:21	2:00
Information programmes			3:00
Sports	2:30	0:39	
Reportages	2:00		2:00
Animation	4:00	4:12	2:00
Soap	30:00	33:21	16:00
Culture and arts programmes		1:00	
Education and science programmes		2:18	
Documentaries		1:18	1:00
Movies	24:00	12:12	15:00
Music		0:18	
Children's programmes		1:48	
Entertainment programmes, games, lotteries	28:00		6:00
Total mandatory hours of programming	126	126	126

Source: Licence contracts of TV3, LNK, BTV⁹⁵

The Law on LRT also sets general principles for content broadcast by LRT. However, they are similar to the provisions from the Mass Media Law.⁹⁶ The Law on LRT also stipulates specific requirements for programmes with the aim of ensuring a “diversity of topics and genres,” obliging broadcasters to cover diverse social layers and “people of all ages, diverse nationalities and convictions”. The law also requires that “biased political views should not be allowed to predominate in the programmes,” and that information and commentaries on TV screens must be balanced and reflect diverse political views. The law states that opinions by journalists and commentators must be clearly labelled as such, while factual news must be substantiated and comprehensive.

⁹⁵ LRTK, Licence N. T064st, issued 13 April 2005-LRTK decision N. 50 (TV3); Licence N. T191t, issued 30 March 2005-LRTK decision N. 45 (BTV); Licence N. T027st, issued 18 May 2005-LRTK decision N. 59 (LNK).

⁹⁶ Law on LRT, Art. 3.

The law also obliges the public service broadcaster to give priority to national culture and broadcasts on information, world cultures, journalistic investigation, analytical, educational and art broadcasts.⁹⁷

The public service broadcaster is not obliged to comply with any rules on a minimum length of programmes by genre. It is the responsibility of the LRTT to make decisions on LTV's content and to monitor its programmes. However, there are no data available on monitoring LTV programmes. The LRTT is also responsible for putting together a State strategy on programming of the public service broadcaster.⁹⁸ The Journalists' Ethics Inspector and the Lithuanian Ethics Commission of Journalists and Publishers carry the same duties in relation to the content on both the public service and commercial broadcasters.

However, practice showed that the key decisions on programming are not made by the LRTT, but by the station management. In March 2007, for example, the LRTT did not approve the music show "Lietuvos dainų dešimtukas" (Lithuania's Top Ten Songs), but the programme was still broadcast following the orders of LRT Director General Kęstutis Petrauskis.⁹⁹ As a result, the LRTT later called for a no-confidence vote for Petrauskis, but this was not successful. The non-confidence vote is one of the ways to remove LRT's director general. Petrauskis received a warning and the show went on. In a sign of protest, Diana Vilytė, a member of the LRTT appointed by the President later resigned.¹⁰⁰ It is not known why Petrauskis staked so much on this. His main argument was that the show was popular.

5.4 Quotas

Lithuanian legislation on broadcasting does not include any special quotas for language and minority groups, or quotas for specific programmes for commercial broadcasters. Specific guidelines for programming in relation to the TVWF Directive were incorporated in the Lithuanian legislation in 2000. They include the provisions on European works and the quota on independent producers. However, as the law states that these requirements should be put in place "where practicable", broadcasters have room for interpreting this law as they wish.¹⁰¹ The same requirements are imposed on LTV. Recent practice shows that two major commercial broadcasters do not follow the European requirements. At the same time, the share of European works has decreased dramatically during the past three years on LTV.

⁹⁷ Law on LRT, art. 4.

⁹⁸ Law on LRT, art. 10.

⁹⁹ Report by BNS, 13 March 2007.

¹⁰⁰ Report by BNS, 27 March 2007.

¹⁰¹ Law on Mass Media, art. 38.

**Table 18. European works on Lithuanian broadcasters 2004–2006
(as a proportion of entire programming)**

Station	European works (as percentage)		
	2004	2005	2006
LTV	81.8	71.2	58.9
TV3	47	48.7	36
LNK	33	41	42
BTV	52	53	51

Source: LRTK¹⁰²

**Table 19. Independent production as a proportion of total programming in
Lithuanian broadcasters 2004–2006**

Station	Independent production (as percentage)		
	2004	2005	2006
LTV	63.2	43.7	26.6
TV3	20	19	21
LNK	15	9	7
BTV	38	31	38

Source: LRTK¹⁰³

The LRTK is aware of these tendencies, but according to its head, it has no instruments to force broadcasters to increase their proportion of European works and independent production. The Lithuanian Code on Administrative Violations provides for financial sanctions between LTL 500 (€144) and LTL 7,000 (€2,027) for not complying with the European quotas.¹⁰⁴ No broadcaster has been ever fined for non-compliance with these requirements.

¹⁰² LRTK, Annual Report 2005; LRTK, Annual Report 2006.

¹⁰³ *Ibid.*

¹⁰⁴ Lithuanian Code on violations of administrative law, Art. 214 (21).

5.5 Obligations on PSB

The Law on LRT also does not set specific quotas, but includes some specific requirements for LTV. It obliges LTV to allot time for Lithuania's traditional and State-recognized religious communities to broadcast religious services in accordance with the conditions and procedure stipulated in bilateral agreements between the public broadcaster and various religious communities.¹⁰⁵ The legal amendments that came into force on 31 December 2005 added requirements on broadcasters to air programmes for national minorities and people with sight and hearing disabilities.

LTV generally follows the legal requirements and offers five programmes for national minorities, including "Vilniaus albumas" (Vilnius Album) in Polish, "Rusu gatvė" (Russian Street) in Russian, and "Trembita"¹⁰⁶ in Ukrainian. The station also airs programmes such as "Menora" on the Jewish community in Lithuania and "Labas" (Hello) on the culture, traditions and religion of other nations. The station also used to air a 10-minute daily newscast in Russian, but following recommendations from LTV management, the LRTT decided to end the programme in the autumn of 2007.¹⁰⁷ The reason was that by airing a newscast only in Russian, the station was discriminating against other minorities.¹⁰⁸

Lithuania is in general an ethnically homogenous country. Lithuanians in 2007 accounted for 84.6 per cent of the country's entire population, with none of the national minorities topping the 10 per cent threshold. The largest minority in Lithuania is Polish, 6.3 per cent, followed by Russians (5.1 per cent) and Belarussians (1.1 per cent). Other minorities account for less than 1 per cent of the population.¹⁰⁹

LTV also airs three weekly programmes for religious communities: "Šventadienio mintys" (Holiday Thoughts) for Catholics, "Kelias" (A way) for the Evangelical community and "Krikščionio žodis" (Christian Word) for the Christian Orthodox community. It also airs masses during the most important Catholic religious events. Roman Catholics in Lithuania comprise a majority. There are 2.7 million Catholics in a country of 3.4 million, according to the last census in 2001. None of the other religious confessions account for more than one per cent of the population. The other largest religious communities include Christian Orthodox with over 141,000 believers and the Evangelical community (Lutherans and Reformists) with 26,000.

¹⁰⁵ Law on LRT, Art. 5 (7).

¹⁰⁶ "Trembita" is a traditional Ukrainian musical instrument similar to a guitar.

¹⁰⁷ Source: BNS, 4 July 2007.

¹⁰⁸ Sarūnas Kalinauskas, Director of LTV, Baltic News Service, 4 July 2007.

¹⁰⁹ Lithuanian Department of Statistics.

In 2006, programming for national minorities accounted for 1 per cent and 2 per cent of LTV1's and LTV2's broadcasting time, respectively, while religious programmes accounted for 0.8 per cent and 1 per cent of LTV1's and LTV2's broadcasting time.¹¹⁰

Table 20. Programmes in languages other than Lithuanian

Television programmes	Broadcasted (hours)		
	2004	2005	2006
Russian language	60	60	65
Polish language	10	10	13
Other languages	21	28	30
Lithuanian language	3,886	4,936	5,217

Source: Lithuanian Department of Statistics¹¹¹

5.6 Obligations on commercial broadcasters

Legislation imposes no specific programme requirements on commercial broadcasters. They only have to air state announcements quickly and free of charge in the event of natural disasters and calamities, major accidents or epidemics, war or martial law.¹¹² Commercial broadcasters are only required to comply with their licence conditions (*See section 5.3*).

6. CONCLUSIONS

A strong commercial broadcasting sector has developed in Lithuania since 1991. Commercial revenues have grown at a constant pace for several recent years. However, the new restrictions on advertising alcohol are likely to hit the broadcasters' pockets in the coming years.

On the other hand, financial health did not necessarily translate into qualitative, diverse programming. The standard of programme on offer has been going down during recent years with a massive shift from information programming towards entertainment and movies.

¹¹⁰ LRTT, Annual Report 2006. p. 11.

¹¹¹ Culture Press and Sports 2005, Culture Press and Sports 2006

¹¹² Law on Mass media, Art. 21.

Broadcast regulation has generally been transparent, but the regulatory powers are too dispersed among many regulators, sometimes impacting negatively on the regulation and supervision of the sector. Regulators themselves often make compromises. On top of this, financial sanctions for violating the legal requirements in the broadcasting market, mainly those related to advertising, are too lenient and do not serve as an effective measure of enforcement.

Not regulated by legislation, cross-ownership and media concentration have shown the first signs of negative influence on the stations' content and could become a serious problem in the future.

Although the public service broadcaster is expected to fill the gap in quality programming left by commercial players, it does not yet make a difference. LTV does not have a clear and transparent funding system, continuing to be dependent on the goodwill of the politicians in power. At the same time, it was proved that the station's funds have been used improperly.

Parliament's failure to introduce a licence fee and the court decision in favour of advertising on the public service broadcaster have led to a significant increase in the volume of advertising during LTV's programmes, which have swung perceptibly towards entertainment.

With the advent of digitalisation, the top priorities in Lithuanian broadcasting are to strengthen the regulatory framework so the regulator can carry out its duties more effectively, and to reform the public service broadcasting system.

ANNEX 1. LEGISLATION CITED IN THIS REPORT

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Television across Europe:
Follow-up Reports 2008

Poland

By Andrzej Krajewski

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List of Abbreviations

IPN	Institute of National Remembrance, <i>Instytut Pamięci Narodowej</i>
KRRiT	National Broadcasting Council, <i>Krajowa Rada Radiofonii i Telewizji</i>
LPR	League of Polish Families, <i>Liga Polskich Rodzin</i>
NSA	Supreme Administrative Court, <i>Naczelny Sąd Administracyjny</i>
OSCE	Organisation for Security and Co-operation in Europe

PAP	Polish Press Agency, <i>Polska Agencja Prasowa</i>
PiS	Law and Justice party, <i>Prawo i Sprawiedliwość</i>
PO	Citizens' Platform, <i>Platforma Obywatelska</i>
SDP	Polish Journalists' Association, <i>Stowarzyszenie Dziennikarzy Polskich</i>
SLD	Democratic Left Alliance, <i>Sojusz Lewicy Demokratycznej</i>
TVP	Polish Television, <i>Telewizja Polska</i>
UKE	Office of Electronic Communications, <i>Urząd Komunikacji Elektronicznej</i>
UOKiK	Office for Competition and Consumer Protection, <i>Urząd Ochrony Konkurencji i Konsumentów</i>

A. Executive Summary

Polish electronic media are at a crucial moment of their development. The public service broadcaster, Polish Television (TVP, *Telewizja Polska*) which still commands more than half of the country's audience and advertising revenue, is a grizzled political and commercial behemoth. With dwindling income from the licence fee, which the Government wants to abolish in any case by the end of 2008, fierce fighting for advertising revenue, and TVP losing its younger, more educated and wealthier viewers, the future looks bleak for Polish public service broadcasting.

The new Government badly wants to change the management of TVP, which was nominated by the previous Government. The future of TVP is at the heart of a heated debate. If the licence fee is indeed scrapped by Parliament, the public service broadcaster will be financed from the State budget through a Public Mission Fund. The sources for this fund would also include income from taxing private TV broadcasters, as compensation for TVP relinquishing part of its current share of advertising revenue.

Some politicians talk about privatising TVP 2, TVP Info and bestowing 16 TVP regional branches upon municipalities, however the government denies any privatisation of TVP. However, if such plans are implemented, it would lead to a halving of TVP's current staff of 4,600. The move would be expected to terminate hundreds of sinecures given to allies of the political parties that have ruled Poland since 1989 and even before. It is no surprise that the strongest opponents of mission-driven, depoliticised public service media are TVP's current managers. Today, in order to watch TVP's public service programmes (other than news, political talk shows and children's programming) viewers have to stay awake after midnight. In primetime, ratings prevail over the noble mission.

Private TV stations are flourishing, launching new channels and gearing up for the digital switch-over scheduled for 2012, the year when Poland and Ukraine will host the European Football Championships. TV Polsat and TVN are the strongest operators, running their own digital platforms. But the smaller TV Puls, strengthened by News Corporation investments, is also flexing its muscles. The process of analogue switch-off may happen gradually before 2012.

The plurality of the media market helps to keep up editorial standards. However, the politicisation of public service media and the commercialisation of all media outlets threaten journalistic ethics. The lack of strong professional organisations contributes to the politicisation of the media. At the same time, the lack of media trade unions makes journalists even more vulnerable to pressures from both owners and managers.

B. Recommendations

1. ORIGINAL RECOMMENDATIONS FROM THE 2005 REPORT¹

In general, despite some progress made by the KRRiT in various areas (such as the adoption of clear rules to make appointments to positions in the TVP's Supervisory Board and Management Board conditional on professional experience and subject to effective conflict of interest provisions), the recommendations from the original OSI report have not been adopted and many of them remain pertinent.

1.1 Policy

<i>Digitalisation</i>	
1. The Government should clarify plans for the transition to digital television, including, in particular, a clear strategy for how broadcasters and viewers should be motivated to participate, as well as a clear conception of State financial involvement.	This recommendation has been partially adopted. However the State's financial involvement in digital transition is still not clear, the choice of technical requirements was completed and the strategy to motivate broadcasters and viewers was presented by UKE. The process was delayed by shifting responsibilities from one regulatory agency, KRRiT, to another, UKE, but in 2008 it has picked up the speed.

¹ "Poland" in Open Society Institute, *Television across Europe: regulation, policy and independence*, Budapest, 2005 (hereafter OSI/Poland), pp. 1,146–1,147.

1.2 Regulatory authorities (KRRiT)

<i>Public debate</i>	
<p>2. The National Broadcasting Council (KRRiT), the parliamentary Culture and Mass Media Committee and media experts should organise a structured public debate on the future of broadcasting regulation in Poland and on the role and mission of TVP in particular. The debate should be defined as an attempt to achieve consensus on these issues and to yield specific policy recommendations that would then be pursued by the Government. It should involve former and current representatives of public and private television, politicians, media experts and civil society representatives, and allow input from the public.</p>	<p>This recommendation has recently begun to be adopted. No public debate has yet been organised and attempts to focus attention on changes in broadcasting regulation and the role and mission of public TV have failed. The Kaczyński Government politicised both issues to the extreme. After the 2007 elections, the Tusk Government worked on changes to shift more responsibilities from the KRRiT to the UKE and eliminate the licence fee. Broad debate on the organisation of public service media kicked off in 2008.</p>
<i>Independence</i>	
<p>3. The Government should initiate changes in the Broadcasting Act to alter the procedure for appointment (or nomination) of members of the KRRiT, in order to ensure its independence from both governing and opposition political parties. This could, for example, be done by ensuring that nominees of the Polish Parliament and President constitute a minority on the Council, inter alia, through the inclusion of nominees of civil society organisations and non-State media organisations. In addition, existing provisions requiring members to be experienced media professionals should be observed by Parliament and the President when making appointments.</p>	<p>This recommendation has been partly adopted with the 2008 amendments to the Broadcasting Law that included the appointment of seven KRRiT members by political bodies, but only from the list of candidates nominated by at least two civil society organisations or universities.</p>
<p>4. The KRRiT should implement measures to make licensing procedures more transparent; for example, through public hearings.</p>	<p>This recommendation has not been adopted. According to the latest proposed changes to the Broadcasting Act, licensing will be completely taken over by the UKE.</p>

1.3 Public broadcaster (TVP)

<i>Professionalisation</i>	
5. The KRRiT should adopt clear rules to make appointments to positions in the Supervisory Board and Management Board of TVP conditional on professional experience and subject to effective conflict of interest provisions.	This recommendation has been listened to. The Government's current proposals to reform the Broadcasting Law include the right of the KRRiT to appoint and dismiss (for important reasons) members of the Supervisory Board and Management Board of TVP, only from those who win a contest organised by the KRRiT.
6. TVP should undergo a fundamental structural audit and management review, in order to streamline its operations and increase its efficiency and transparency. This review could include recommendations on the privatisation of parts of TVP's activities (for example, TVP2) as well as remedies necessary to stop its negative impact on the advertising market.	The audit has been carried out at the request of the Minister of the Treasury, but its results are being kept secret by TVP's Supervisory Board. Despite a steady decline in the rate of licence fee payment, the privatisation of TVP, at least in part, has been taboo among top politicians from the ruling party. Further debate and changes of legislation may change this in 2008.
<i>Public service role</i>	
7. The Government and Parliament should clarify, through amendments to the Broadcasting Act or other relevant binding rules, the public service obligations of the public broadcaster. Such clarification should also include both the rules governing its commercial operations and the extent to which its commercial activities should be allowed.	This recommendation has not been adopted. The previous Council of the KRRiT made the same recommendation, but the current Council does not support it. The obligations of the public service broadcaster are part of the current debate on the public media bill, which is expected to be passed later in 2008.
<i>Funding</i>	
8. The Government and Parliament should reform the system for financing TVP in line with restrictions on its commercial activities in order to make funding transparent, predictable and sufficient for the public broadcaster to fulfil its remit. This might be done either by making the current licence fee into a tax, or by creating a special fund financed by payments from commercial broadcasters. However, consensus and consistency in reform are at least as important as the details of reform.	This recommendation has not been adopted. There is no political consensus over changes in the system. The ruling party has to anticipate the President's use of his veto by reaching a compromise with the leftist parties. The licence fee is likely to be abolished. Instead, TVP will be financed from the State budget through a fund supported also by private broadcasters. To ensure more independence for TVP, funding from the State budget should be based on long-term planning and its management depoliticised.

9. The KRRiT should commission an independent analysis of TVP's advertising practices, and provisions of the Competition and Consumer Protection Law should be applied strictly to prevent uncompetitive practices.	This recommendation has not been adopted. A general audit of TVP was carried out early in 2008, but its results are kept secret by TVP.
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1.4 Private broadcasters

Professional ethics	
10. Private broadcasters should support the development of codes of ethics and professional standards for journalists and other media employees.	This recommendation has been partly adopted. Some private media organised public debates on the increasing political involvement of journalists. Some of them, such as TVN, adopted their own codes of ethics.

2. NEW RECOMMENDATIONS BASED ON THE 2008 REPORT

2.1 Digitalisation

1. Plans for digital transition, including a clear strategy for motivating broadcasters and viewers to participate, as well as a clear conception of State financial involvement, should be developed with professional organisations of broadcasters and experts.

2.2 Public debate

2. Government proposals to reform public service media financing should be presented for public discussion; the public, including listeners and viewers, professional organisations, broadcast unions and experts, should have a platform to express their opinions, ask questions and analyse the proposals. A committee of experts, professionals, KRRiT and Government representatives should prepare a proposal for the reform of the PSB; only then should it be formalised as a bill and discussed in Parliament.

2.3 Public Service Broadcasting

3. The upcoming amendments to Article 21 of the Broadcasting Act should define precisely the terms for fulfilling the public mission in information, opinion-making, education, entertainment, and sports programmes, including the required time quotas.

C. Main Findings of the Follow-up Monitoring

1. GENERAL BROADCASTING ENVIRONMENT

1.1 Key developments in legislation and policy

The parliamentary elections in autumn 2005 gave power to the right-wing Law and Justice Party (PiS, *Prawo i Sprawiedliwość*), led by Jarosław Kaczyński. A month later his twin brother, Lech Kaczyński was elected the country's President. One of the President's first moves at the end of 2005, only a week after his inauguration, was to sign an amendment to the 1992 Broadcasting Act² that reduced the National Broadcasting Council (KRRiT, *Krajowa Rada Radiofonii i Telewizji*) from nine to five members, with the transparent motive of removing representatives of opposition parties. All the KRRiT members were replaced. There have been no other major changes in legislation and policy over the past three years, but many changes are expected in 2008. They include amendments to the 1992 Broadcasting Act to increase the number of KRRiT members to seven and to transfer most of the regulatory tasks of the KRRiT to the Office of Electronic Communications (UKE, *Urząd Komunikacji Elektronicznej*). If signed by the President or if his veto is overrun, this will lead to changes in the KRRiT's staff.

1.2 EU legal provisions

Before acceding to EU membership in 2004, Poland agreed to harmonise its Broadcasting Act³ with the legal provisions of the Television Without Frontiers (TVWF) Directive, which was amended in 2007.⁴ However, only minor amendments to the Act have been passed. They included quota requirements for European and independent production. The KRRiT monitors broadcasters' compliance with these quotas.

Much broader changes are required to accommodate EU provisions on digital broadcasting, especially the "must-carry" rule as defined in the Universal Service

² Broadcasting Act of 29 December 1992, *Official Gazette* 1993, no. 7, item 34; amended in 1995, no. 66, item 335 and no. 142, item 701; 1996, no. 106, item 496; 1997, no. 88, item 554, and no. 121, item 770; 1999, no. 90, item 999; 2000, No. 29, item 356 and 358, No. 73, item 852.

³ Broadcasting Act of 2001, *Official Gazette* no. 101, item 1114; further amended by 2002, no. 25, item 253; 2002, no. 56, item 517; 2003, no. 96, item 874; 2004, no. 91, item 874 (hereafter Broadcasting Act).

⁴ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, *Official Journal of the European Union*, 18 December 2007, L 332/27.

Directive.⁵ According to a 2006 report by the KRRiT, operators which own at the same time broadcasters and digital multiplexes should be obliged to carry competing broadcasters on their multiplexes. “Therefore, it is so important to separate the positions of network operator and service provider,” the KRRiT report stated.⁶

Another important conclusion of the report was that TVP should participate in the competition for digital broadcasting licences (to be organised by the regulator), rather than automatically receive licences to operate on a certain multiplex. The KRRiT noted that if the newer MPEG-4 standard were to be used, TVP would have no chance of filling up a multiplex with its own programming. TVP says it can do this by setting up new thematic channels. The KRRiT stressed that if TVP does not win the contest, “must-carry” rules for its programming should be implemented, ensuring that TVP programming would be carried by multiplexes operated by other players. The Office of Electronic Communications, the telecom regulatory agency in Poland, was also given responsibilities for digital licensing.

1.3 Broadcasting market

Between 2005 and 2007, the broadcasting market has seen steady growth, mainly in the satellite TV sector. Both public and private broadcasters have launched thematic TV channels as part of their transition to digital broadcasting. The commercial success of the TVN24 news channel prompted TVP to transform its TVP3 local channel into a news channel, TVP Info, and Polsat to start its own news channel. In April 2008, Polsat received a broadcast licence for a new channel, Polsat24, which is slated to start in June 2008.⁷ There is also a growing market for High-Definition (HD) channels thanks to the rapid sales of flat screen HDTV sets.

Cable penetration has slightly increased year-on-year from 34.2 per cent in 2004 to 35.5 per cent in 2006. At the same time, satellite coverage has dropped from 21.4 per cent in 2004 to 20.3 per cent in 2006 when the percentage of TV households served only by terrestrial analogue broadcasting was above 46 per cent.⁸ Cable TV networks predominantly cover cities, leaving inhabitants of smaller communities only with the satellite TV option. Over 400 satellite channels are available, some 50 of which are in Polish. The aggregate audience share for satellite-only channels is below 2 per cent.

⁵ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services (Universal Service Directive).

⁶ “Działalność KRRiT w zakresie wprowadzania naziemnej telewizji cyfrowej w Polsce” (KRRiT activity on introduction of terrestrial digital TV in Poland), 5 April 2006, p. 39.

⁷ “Polsat 24 ma koncesję” (Polsat 24 has licence), *Gazeta Wyborcza*, 2 April 2008, p. 27.

⁸ Source: AGB Nielsen Media Research.

Despite a slight but steady drop in audience, TVP1 has maintained its supremacy in viewership. TVP2 saw a massive drop in its audience in 2005 when it lost second position in audience share to private TVN, which has seen the most spectacular increase in audience over the past three years. Although it still commands the largest part of the advertising market, TVP continues to lose audiences with its public service mission programmes. For example, the first three shows of renowned commentator Tomasz Lis's political talk show, aired on Monday nights on TVP2 after the extremely popular *M jak miłość* (L for Love), had much lower ratings than its direct competitor, *The Szymon Majewski Show*, on private TVN.⁹

Table 1. Audience share of the main television channels in 2002–2006

Channel	Audience share (percentage)				
	2002	2003	2004	2005	2006
TVP1	25.9	25.8	25.1	24.7	24.1
TVN	13.7	14.0	15.0	22.3	20.6
TVP2	20.7	21.1	21.1	15.2	17.0
Polsat	17.4	15.7	15.6	16.2	15.7
TVP Regional/TVP3	4.8	5.8	5.4	5.3	5.2
TV 4	3.7	3.6	2.8	1.3	2.2
TVN7	2.4	2.0	2.1	2.3	2.1
TV Polonia	1.6	1.6	1.4	1.0	0.8
TVN24	0.5	0.8	1.0	1.6	1.5
Eurosport	0.6	0.7	0.7	0.7	0.6
Other	8.7	8.9	9.9	9.4	10.4

Source: IP International Marketing Committee and TNS OBOP¹⁰

⁹ Anna Nalewajk, Barbara Sowa, "TVN ogłasza zwycięstwo" (TVN proclaims victory), *Dziennik*, 14 March 2008, p. 5.

¹⁰ IP International Marketing Committee, *Television 2007. International Key Facts*, October 2007, p. 304, (hereafter, IP International Marketing Committee, *Television 2007*); IP International Marketing Committee, *Television 2006. International Key Facts*, October 2006, p. 298 (hereafter, IP International Marketing Committee, *Television 2006*); TNS OBOP.

2. REGULATION AND LICENSING OF THE TELEVISION SECTOR

2.1 Regulatory authorities and framework

Since 1993, in order to enhance the regulator's political independence, its membership terms were staggered; one third of the KRRiT's nine members were elected every two years. Four were chosen by the *Sejm* (the lower chamber of Parliament), two by the Senate (the upper chamber), and three by the President, all appointed for six-year terms. The Democratic Left Alliance (SLD, *Sojusz Lewicy Demokratycznej*), which ruled between 2001 and 2005, and Aleksander Kwaśniewski, the country's leftist President between 1995 and 2005, has secured a leftist majority in the KRRiT until 2009. The so-called "Rywingate" scandal of 2003,¹¹ in which TVP director Robert Kwiatkowski was implicated, greatly changed the political climate in Poland, paving the way for the appointment of Jan Dworak, from the right-centrist Citizens' Platform (PO, *Platforma Obywatelska*) opposition party, as TVP Director in February 2004.

Then, for almost two years, the KRRiT and the Minister of the Treasury on one side and TVP's director and Supervisory Board on the other were locked in legal wrangling. In September 2004, at Dworak's request, the station's Supervisory Board suspended Dworak's own deputy, Ryszard Pałowski, who was supported by the SLD. Dworak stated that he "lost confidence in him". In June 2005, TVP's other deputy director, Marek Hołyński, was suspended on the same pretext. In early 2005, to break the deadlock at the top of TVP, the KRRiT and the Ministry of the Treasury tried to change the TVP statute and install a new member on the station's Supervisory Board to replace its head, Marek Ostrowski, who had briefly worked for TVP. When Ostrowski refused to go, KRRiT started a lawsuit against him, and later in 2005 – before the court's verdict – it appointed Krzysztof Czeszejko-Sochacki to take his place. When the court confirmed Ostrowski in his position, both of TVP's Deputy Directors were suspended. They continued to be paid until May 2006, when the entire TVP management was changed as a result of the PiS victory in the autumn 2005 elections. This lengthy infighting helped to weaken the political control over TVP, which rebuilt its independence and journalistic standards after a long period when the station had openly supported the left wing, under the aegis of Dworak's predecessor, Robert Kwiatkowski.

On the eve of the presidential and parliamentary elections in 2005, it appeared that the only way to end the leftist domination over the KRRiT was to have the *Sejm*, the Senate and the President reject the KRRiT's Annual Report, which would compel the Council to resign within two weeks.¹² With its majority in the *Sejm* and Senate and an ally in the President, the PiS could have done this in spring 2006. However, instead of

¹¹ For detailed information of the "Rywingate" affair, see OSI/Poland, pp. 1,097–1,098.

¹² Broadcasting Act, Art. 16.

waiting for the report, the PiS amended the Broadcasting Act to replace the entire membership of the KRRiT immediately after the 2005 elections. The President signed the amended law on 30 December 2005. PiS justified this hurry on the grounds that the old KRRiT would have appointed new supervisory boards for public service radio and TV broadcasters. These boards, whose tenures were due to end in May 2006, could then nominate the stations' management.¹³ However, there was no evidence that the KRRiT had planned to do this.

In early 2006, the KRRiT officially ceased to exist, leaving a regulatory vacuum until new members were appointed between 27 and 31 January 2006: two by the *Sejm*, one by the Senate, and two by the President. Only one of these five, the media lawyer Wojciech Dziomdziora, nominated by the President, fulfilled the criteria required by law, namely "a distinguished record of knowledge and experience in mass media".¹⁴ The second presidential appointee was Lech Kaczyński's close associate, Elżbieta Kruk, who was appointed as chair of the KRRiT. The *Sejm's* and Senate's appointees included two TVP editors, Witold Kołodziejcki and Tomasz Borysiuk (the former was Warsaw's PiS councillor and the latter was the son of an MP from the Samoobrona Party); and Lech Haydukiewicz, a geographer and anti-abortion activist.

In March 2006, the presidential prerogative to nominate the KRRiT's Chair was scrapped by the Constitutional Court, which also challenged both the privileged position of "social broadcasters" (in reality Radio Maryja) in the process of licence renewal, and also the KRRiT's ability to judge ethics in broadcast media. The Constitutional Court found that the amended Broadcasting Law conflicted with ten articles of the Constitution and asked the *Sejm* to revise it. After a six-week break in the spring of 2006, which was needed to change the Law, Elżbieta Kruk was re-elected Chair by the KRRiT's other members.

In January 2007, the KRRiT's appointment of two members of the TVP's Supervisory Board was linked with the appointment of the Director of the Polish National Bank. The regulator accepted the two Board members who had been proposed by the small ruling coalition parties only after these parties had backed the appointment of the Polish National Bank Director. (Before voting for the new Director, one of these parties, the League of Polish Families (*Liga Polskich Rodzin*, LPR), demanded an additional seat on the TVP Supervisory Board. LPR got this seat after a day of negotiations.) Following this trade-off, the KRRiT's Dziomdziora admitted that the "KRRiT should cease to exist in its present form and be replaced by a new media and

¹³ "Błyskawiczny druk ustawy medialnej" (Media law printed with lightning speed), *Gazeta Wyborcza*, 3 January 2006, p. 22.

¹⁴ Broadcasting Act, art. 7(1).

telecommunications regulatory body”.¹⁵ Three months later, he resigned as a protest against political machinations.

In June 2007, the *Sejm Committee* rejected the KRRiT 2006 Annual Report, only to reverse this decision after political manoeuvring.¹⁶ The *Sejm* has only once definitively turned down a KRRiT Annual Report, and that was in mid 2004, as a result of “Rywingate”.

2.2 Licensing system

One change in the broadcast licensing regime, introduced by the 2005 amendment to the Broadcasting Act, was the extension of broadcast licences to 10 years. Another change was the introduction of a simplified procedure for renewing a licence, with no competition involved.¹⁷ In 2006, the KRRiT granted 36 licences for satellite TV programmes, six of them generalist channels, five specialising in films, two in news and the rest focused on education, medical and religious issues. Among others, the KRRiT issued broadcast licences to four new TVP satellite channels (TVP Sport, TVP Rozrywka (Entertainment), TVP Historia and TVP Film), two new satellite channels from TVN (TVN Sport and TVN Lingua) and two channels from the satellite platform operator CANAL+ Cyfrowy (CANAL+ Sport 2 and Kuchnia TV). The ITI Group, which owns TVN, also received a broadcast licence for a new satellite platform, nHDTV, comprising seven TVN programmes. The first tabloid TV channel in the country, TV Superstacja, originally owned jointly by the Polish television production companies Astro and K&R Enterprises, also received a broadcast licence. In 2007, half of the stake in TV Superstacja was bought by the advertising sales house Ster, which belongs to the Polsat group.¹⁸

In 2006 and 2007, the KRRiT found that broadcasters generally complied with the licence conditions. However, in July 2006 the Supreme Administrative Court (NSA, *Naczelny Sąd Administracyjny*) ruled against imposing certain public obligations on private broadcasters. According to TV Polsat’s licence conditions, its programming should have a “generalist character”, and the station should air at least seven hours of information programmes and six hours of educational content every week. The

¹⁵ Agnieszka Kublik, Piotr Bernas, “Dziomdziora: W takim kształcie KRRiT nie powinna istnieć” (KRRiT should not exist in such a form), *Gazeta Wyborcza*, 16 January 2007, p. 3.

¹⁶ “Sprawozdaniem KRRiT ponownie zajmie się komisja kultury” (Culture commission will take care of KRRiT report again), available at http://wirtualnemedial.pl/article/151016_Sprawozdaniem_KRRiT_ponownie_zajmie_sie_komisja_kultury.htm (accessed 30 June 2007).

¹⁷ Broadcasting Act, Art. 116.8, available at <http://www.krrit.gov.pl/angielska/index.htm> (accessed 1 March 2008).

¹⁸ Adrian Gąbka, “Wbrew regułom” (Against the rules), *Press monthly*, January 2008, p. 64.

“KRRiT could not arrogate the right to dictate the percentage of programmes in the licence,” said NSA judge Stanisław Biernat.¹⁹

The KRRiT was very active in the first months of 2006. Elżbieta Kruk issued 176 decisions before her appointment as Chair being questioned by the Constitutional Court. They included two fines in February 2006 worth PLN 500,000 each (€135,000) on TV Polsat. One of the fines was imposed for disrespecting religious beliefs: a talk show guest mocked Radio Maryja’s anchor. The second fine was imposed for the show *Fear Factor 3*, which in the KRRiT’s judgment had aired offensive, inappropriate content (participants were asked to eat worms). TV Polsat appealed both sanctions with the Administrative Court. It lost the first case in November 2007. A decision on the second case is still pending. In July 2006, the KRRiT issued a statement against TV Polsat’s planned show *Gay Army*, based on letters of complaint from angry viewers.²⁰ The station decided not to air the show.

TV Polsat has received severe treatment from the KRRiT in the past. In 2004, it was obliged to pay a fine of PLN 400,000 (€108,000) for the “cruel” content of the first series of *Fear Factor*. This fine was worth half the station’s annual fee for using its frequency. For a comparable offence by TVP, the KRRiT in 2004 fined TVP only PLN 10,000 (€2,700). TVP’s fine was for broadcasting the programme *Ballada o lekkim zabarwieniu erotycznym* (Slightly Erotic Ballad), a documentary about prostitution, on Sunday evenings for more than six months. In 2008, the KRRiT fined TVN for featuring the Polish national flag amongst faeces in a satirical programme. The broadcaster risks a fine of PLN 1 million (€291,000). It said that it would appeal such a decision in court.²¹

The KRRiT also imposed fines for breach of advertising and sponsorship provisions, mainly for exceeding advertising limits. However, these fines were not harsh. In 2006, they only amounted to PLN 21,000 (€5,600). Monitoring of 73 broadcasters also revealed 22 cases of airing improper advertisements²² The KRRiT did not impose any financial penalty on Radio Maryja despite complaints about anti-Semitic remarks broadcast by right-wing journalist and politician Stanisław Michalkiewicz.

In 2006, the KRRiT started 14 cases of licence withdrawal. These included the renewal of the licence for TV 4, which is tied financially to TV Polsat. The KRRiT hesitated to

¹⁹ Danuta Frey, “W koncesji dla Polsatu było za dużo ograniczeń” (Too many restrictions on Polsat’s licence), *Rzeczpospolita*, 19 July 2006, available online at <http://new-arch.rp.pl/artukul/627970.html> (accessed 8 February 2008).

²⁰ “Stanowisko KRRiT z 11 lipca 2006 r.” (KRRiT Position from July 26, 2006), available online at www.krit.gov.pl (accessed 23 November 2007).

²¹ Anna Nalewajk, “Rada nakłada kary, stacje sie buntują” (Council fines, broadcasters are rebelling), *Dziennik*, 24 April 2008, p. 7.

²² KRRiT, 2007 Annual Report, p. 65, available online at www.krit.gov.pl/sprawozdania/spr2007/krrit_spraw_2007.pdf (accessed 23 November 2007).

extend TV 4's licence as some big broadcasting companies were fighting for a few local terrestrial frequencies used by TV 4. They included Rupert Murdoch's News Corporation, which bought half of the stake in the religious station TV Puls in June 2006 and wanted more stations, and the German publisher Axel Springer, which purchased 25 per cent of Polsat a few months later, but then had to back out following legal objections from the Office for Competition and Consumer Protection (UOKiK, *Urząd Ochrony Konkurencji i Konsumentów*).²³ Rupert Murdoch's visit to Poland in June 2007 fuelled speculation about the KRRiT's preferential treatment of TV Puls. The regulator denied that Murdoch's and Springer's interests were behind its hesitation over TV 4. After considering the case for five months, the KRRiT decided to extend TV 4's licence. Other cases included stations that failed to air and one station whose licence holder died. Broadcast licences are not transferable. In February 2008, TV Puls also received terrestrial frequencies for the towns of Szczecin, Wrocław, Nowy Sącz and Leszno, doubling its coverage to 30 per cent.²⁴

The television sector in 2006 and 2007 showed obvious signs of constrained development due to both a lack of valuable frequencies and the need to preserve the existing frequency spectrum for digital terrestrial networks. Therefore, there was almost no economically viable room for expansion, particularly for regional broadcasters such as TV 4, TVN and TV Puls. Four available terrestrial TV frequencies were distributed among the stronger players on the regional market – TVN, TV 4 and TV Puls – to help them improve their reach. Their licences are valid until 2014, when the frequencies are to be used for digital broadcasting.

Digital terrestrial TV licensing has been the subject of debate since 2005. "This process is comparable to the licensing of private television stations in the early 1990s, which led to the formation of the current media empires in Poland," said Danuta Waniek, a former KRRiT Chair.²⁵ The 2005 amendments to the Broadcasting Act shifted responsibility for digital licensing from the KRRiT to the UKE. "For me the reasons [behind this move] were obvious. The tender for digital terrestrial broadcasting rights should not be run by an independent, collegial regulatory body, but by the Government office," Waniek commented ironically.²⁶

Before the law was amended, the KRRiT stated that the tender for digital terrestrial TV licences should only be launched after all decisions on the number of slots in multiplexes and timeframe for the start of broadcasting had been taken. Fees for digital

²³ Vadim Makarenko, "TV 4 na celowniku medialnych magnatów" (TV 4 targeted by media moguls), *Gazeta Wyborcza*, 30 November 2006, p. 29; Vadim Makarenko, "TV 4 ma wreszcie koncesje" (TV 4 has finally a licence), *Gazeta Wyborcza*, 1 December 2006, p. 35.

²⁴ Vadim Makarenko, "Murdoch bierze wszystko" (Murdoch takes all), *Gazeta Wyborcza*, 9 February 2008, p. 33.

²⁵ Danuta Waniek, "Telewizja dla wybranych" (TV for chosen ones), *Gazeta Wyborcza*, 30 December 2005, p. 17.

²⁶ *Ibid.*

licences should not be as high as for analogue licences, in order to promote pluralism on the market. Today, 95 per cent of terrestrial TV broadcasting is under the control of three groups: ITI, which runs TVN, TV7, TVN24 and other specialist channels; Polsat, which controls TV Polsat, TV4 and the channels on the Polsat digital satellite platform; and TVP, which airs TVP1, TVP2, TVP3, TVP Polonia and other thematic channels. These groups favour higher licence fees because this will keep smaller players out of the market.²⁷ As a first step, the regulator planned two free-to-air digital multiplexes, hosting existing terrestrial programmes. Later, it increased the number of multiplexes to six.

The MPEG-2 standard is already present in Poland. By 2006, over 1.3 million households had set-top boxes with this standard, subscribing to the digital platforms CYFRA+, Cyfrowy Polsat and TVN's N. A few thousand households purchased MPEG-2 set-top boxes to receive TVP's digital signal outside Warsaw; those who wanted to watch digital TVP Sport bought over 30,000 set-top boxes.²⁸ Adopting the MPEG-4 standard would force all these households to buy new set-top boxes, but the Minister of Infrastructure is convinced the effort would be worthwhile.²⁹

Analogue switch-off will take place when at least 6–7 million households have set-top boxes. Some 4 million households connected to cable television will already have boxes from the cable companies.³⁰ Financial support for helping households go digital may be allocated from the licence fee or from the State budget. This should be decided by the middle of 2008. The UKE estimates that about 30 per cent of Poland's 13 million households will need financial support to buy set-top-boxes.³¹ Polski Operator Telewizyjny (Polish TV Operator), the joint company of TVN and Polsat funded in 2005 as a common platform for digital broadcasting, proposed to the UKE that they co-finance the purchase of set-top boxes for viewers on low incomes. According to them, there are only some 200,000 such households. They want in exchange the regulator to close the market to further competition until 2012 when three multiplexes are expected to be fully operational.³²

²⁷ KRRiT, "Działalność KRRiT w zakresie wprowadzania naziemnej telewizji cyfrowej w Polsce" (KRRiT activity in introducing terrestrial digital TV in Poland), 5 April 2006, p. 49.

²⁸ Elżbieta Kindler-Jaworska, "Czy zdążymy z TV cyfrową?" (Will we be on time with digital TV?), *Gazeta Wyborcza*, 21 January 2008, p. 30.

²⁹ Interview with Cezary Grabarczyk, Minister of Infrastructure, Warsaw, 10 March 2008.

³⁰ KRRiT, "Raport o stanie rynku RTV" (Radio and TV market report), 11 July 2006, p. 125, available at www.krit.gov.pl/dokumenty/cyfryzacja/naz_tv_cyrfowa-pl.pdf (accessed 23 November 2007)

³¹ Vadim Makarenko, "Wszyscy milczą w sprawie telewizji cyfrowej" (General silence about digital TV), *Gazeta Wyborcza*, 22 January 2008, p. 28.

³² Vadim Makarenko, Przemysław Poznański "Telewizje chcą płacić za dekodery dla biednych" (TV want to pay for set-top boxes for poor), *Gazeta Wyborcza*, 17 April 2008, p. 31.

According to UKE plans, the first two multiplexes start in early 2009. Seven terrestrial channels are to be located on the first multiplex, the second one will be auctioned or channels set by the UKE, as broadcasters (TVP, TVN, Polsat and TV Puls) want. Finally there will be six multiplexes, one for TVP, TVN and Polsat, one for mobile TV, and two to be auctioned.³³ The KRRiT expressed the opinion that mobile phone broadcasters should be licensed in the same way as traditional broadcasters, which is against the UKE position on such matters.³⁴ DVB-H standard mobile TV was tested in Warsaw in 2008 with the aim of being introduced in 31 cities by 2012 by winners of a public tender announced in April.³⁵

Both TVN and Polsat have prepared their satellite TV channels to go digital. All three digital platforms (Cyfrowy Polsat, CYFRA+ and N) started to broadcast digital programs. TVP is in talks with SES Astra as it attempts to start its own digital satellite platform. Before the 2007 elections, TVP also signed a letter of intention to set up a digital platform in co-operation with Polish Radio and the State mobile phone company Polkomtel.³⁶ There have been no developments in this initiative.

³³ Magdalena Lemańska, Łukasz Dec “Nadawcy kontra UKE”, *Rzeczpospolita*, 24 April 2008, p.B2

³⁴ “Koncesje dla telewizji w komórkach?” (Mobile TV licensing?), *Gazeta Wyborcza*, 23 April 2008, p. 40.

³⁵ Przemysław Poznański, “Coraz bliżej telewizji w komórce” (Closer to mobile TV), *Gazeta Wyborcza*, 1 April 2008, p. 23.

³⁶ Magdalena Lemańska, “TVP znacznie bliżej platformy” (TVP much closer to a platform), *Rzeczpospolita*, 11 March 2008. p. B4.

Table 2. The digital channels of the largest private broadcasters in Poland

Broadcaster	Platform	Programme	Type of programme
TV Polsat	Cyfrowy Polsat (owned by Polsat)	Polsat Sport	Sports
		Polsat Sport 2	Sports
		Polsat International	Foreign News
		Polsat Zdrowie i Uroda	Health and beauty
		Playboy Polska	Erotic content
		TV Biznes	Business
TVN	N (owned by TVN)	TVN7	Movies and entertainment
		TVN24	News
		TVN Turbo	Cars
		TVN Meteo	Weather forecast
		TVN Style	Women's programming
		TVN Med	Health
		TVN Gra	Entertainment
		TVN Religia	Religion

Source: OSI research

In March 2007, the Government updated the calendar for digitalisation. It decided that the first and only multiplex in MPEG-4 standard would unfold in 2009 and carry all the current terrestrial TV programmes. The UKE will organise a tender to allot slots on future multiplexes.³⁷

The Ministry of Infrastructure published a new plan for digital switch-over, including projects for co-financing the purchase of set-top boxes to be implemented before 30 June 2008, and for launching digital broadcasting on mobile phones in 2009.³⁸ In January 2008, the new Government announced that the entire broadcast licensing process would be transferred from the KRRiT to the UKE in 2008.

³⁷ Jarosław Murawski, Magdalena Lemańska "Zielone światło dla cyfrowej rewolucji w telewizji" (Green light for digital revolution in TV), *Rzeczpospolita*, 8 February 2007, available online at <http://new-arch.rp.pl/artukul/664291.html> (accessed 2 March 2008).

³⁸ Vadim Makarenko, "Cyfrowa niemoc" (Digital impotence), *Gazeta Wyborcza*, 24 January 2008, p. 29.

3. REGULATION AND MANAGEMENT OF PUBLIC SERVICE TELEVISION BROADCASTING (PSB)

3.1 PSB legislation and policy

There has been no major change in the public service remit and obligations over the past three years. With digitalisation knocking at the door, TVP works diligently on developing more channels that could be hosted on one of the digital multiplexes.

Table 3. TVP digital programmes

Programme	Type of programme	Year of launch
TVP Kultura	Culture	2005
TVP Sport	Sports	2006
TVP Historia	History	2007
TVP Rozrywka	Entertainment	Received licence
TVP Film	Movies	Received licence
TVP Dokument	Documentaries	Planned
TVP Parlament	Parliamentary affairs	Planned 2009
TVP Wiadomości	News	Planned
TVP 5-10-15	Children	Planned
TVP Kino	Elderly people-targeted	Planned
TVP Sonda	Science and technology	Planned
TVP Edukacja.	Education	Planned

Source: OSI research

One or two of TVP's digital channels will be broadcast in high definition (HD) technology. TVP is also investing in interactive TV (iTVP), allowing viewers to decide what to watch on their home TV set, computer or mobile phone.³⁹

3.2 PSB governance structure

A month before the TVP Supervisory Board was changed in April 2006, Elżbieta Kruk tried to replace TVP's five-member Executive Board with a single manager, the TVP

³⁹ RRiT, "Raport o stanie rynku RTV" (Radio and TV market report), September 2004, p. 129, available at www.krrit.gov.pl/dokumenty/polityka/raport_o_stanie_rynku_caly.pdf (accessed 23 November 2007).

Director, Janusz Pietkiewicz, a person with known ties to Lech Kaczyński. Her plan failed.⁴⁰ Five members of the new TVP Supervisory Board came from the PiS and two from each of the coalition parties. They included the owner of a local hippodrome, a close associate of the mayor of Warsaw, a retired lawyer and the provider of herbal remedies to Kaczyński's mother. For ordinary decisions, five votes sufficed, but to remove the TVP Director, six votes were needed, which meant PiS had to shop for them.

Early in 2007, when two minority coalition parties gained control of five seats on the Supervisory Board, these parties removed TVP Director Bronisław Wildstein. The PiS blocked the removal process for some days by refusing to nominate the new representative of the Ministry of the Treasury to the Supervisory Board, but finally gave in. The TVP Executive Board has also been composed along party lines: Anna Milewska was supported by Samoobrona, Piotr Farfał was backed by the LPR and Sławomir Siwek by the PiS. Wildstein was not a party member, but his right-wing politics were well known.

As they lacked real influence over TVP and other public media – Polish Radio (*Polskie Radio*) and its local stations, and the Polish Press Agency (PAP, *Polska Agencja Prasowa*) – the Programming Boards were the only place where some political pluralism was allowed. Their members were picked by the KRRiT from candidates proposed by political factions in Parliament and by organisations of journalists, filmmakers and independent media producers.

In 2008, the new Government revealed its intention to change the TVP management structure. It wants all members on TVP and Polish Radio boards to be selected and nominated by the KRRiT from candidates recommended by universities or professional organisations. But the Minister of the Treasury, representing the State, which owns the public service media, will be authorised to dismiss them in case of mismanagement. The President said that he would oppose these changes. To override the President's veto, the ruling coalition will need the support of the leftist parties in the opposition. The left wants the Boards of public media to be nominated by the KRRiT and the UKE's Chair by the lower chamber of Parliament. They also want to enlarge the KRRiT Board from five to 11 members. The same parties demand introduction of programme licences for public media to be part of a separate bill.⁴¹ The Government is ready to negotiate, but the whole process may take several months within 2008.

According to a bill on public media to be submitted to Parliament in mid-2008, the Government will propose the restructuring of TVP into one non-commercial channel,

⁴⁰ Agnieszka Kublik, "PiS chce mieć prezesa TVP" (PiS wants to have TVP President), *Gazeta Wyborcza*, 22 March, 2006, p. 4.

⁴¹ Agnieszka Kublik, "Lewica nie pomoże PO w sprawie mediów" (The left will not help the PO in media case), *Gazeta Wyborcza*, 13 March 2008, p. 4.

fulfilling the public service mission and financed from the Public Mission Fund, and a second commercial channel. The same bill envisages ceding 16 local TVP branches to municipalities and financing TVP satellite channels through money from the Public Mission Fund and advertising.⁴²

History of politicisation

2005

TVP director Jan Dworak was accused by the parties that won the 2005 elections of favouring PO, the party to which he had belonged before his appointment in 2004. Dworak's appointment had been part of a carefully orchestrated political process after his predecessor Robert Kwiatkowski, supporter of the SLD, was investigated by Parliament on suspicion of belonging to the "power-holding group" involved in the 2003 "Rywingate" scandal. Kwiatkowski, however, was never convicted.⁴³

2006

In May 2006, Bronisław Wildstein replaced Dworak at the top of TVP without a contest. Wildstein was a journalist who in 2004 had copied from the files of the Institute of National Remembrance (IPN, *Instytut Pamięci Narodowej*)⁴⁴ a list of 170,000 opponents of the communist regime and former informants to the political police during communism, in order to speed up the lustration process. Wildstein admitted that he accepted the post following talks with PiS leader Jarosław Kaczyński.

During Wildstein's ten-month rule, several key positions were filled by close associates of the Kaczyński brothers.⁴⁵ "Professionals are being replaced by loyal mediocrities," said Robert Rynkun-Werner, a stern critic of Wildstein, nominated to TVP's

⁴² Anna Nalewajk "Ministrowie nie chcą abonamentu" (The ministers do not want licence fee), *Dziennik*, 28 April 2008, p. 5.

⁴³ Observers noted that during the televised debates in the 2005 electoral campaign, TVP journalists put tougher questions to Lech Kaczyński than to his rival in the presidential race, PO's Donald Tusk. Kaczyński was so frustrated by TVP's electoral coverage that he proposed to solve the problem by giving TVP1 to the Government and TVP2 to the opposition. (See Jarosław Murawski, "Nie jestem antyrządowy" (I am not anti-government), Interview with Maciej Grzywaczewski, TVP1 director, *Rzeczpospolita*, 28 November 2005, available at <http://new-arch.rp.pl/artykul/583864.html> (accessed 7 February 2008).

⁴⁴ IPN is a research institute set up by the Polish government in charge of carrying out legal provisions on lustration. The IPN has also prosecution powers.

⁴⁵ Małgorzata Raczyńska, a close friend of the Prime Minister, was appointed director of TVP1 and Wojciech Pawlak, of Kaczyński's PiS party election committee, was put at the helm of TVP2. The regional TVP3 network was given to Aleksandra Zawłocka, who worked with the weekly *Tygodnik Solidarność* when Jarosław Kaczyński was its editor-in-chief. There were no more contests for the directors of TVP regional stations. All were nominated by the TVP Board.

Supervisory Council by Samoobrona, then a minor coalition partner of the PiS.⁴⁶ It was clear to observers that these staff changes impacted on TVP programming, but it was difficult to prove. Monitoring by the Stefan Batory Foundation, an independent private Polish foundation set up by US financier and philanthropist George Soros, showed that in the November 2006 local elections, TVP consistently favoured the ruling PiS party. (*See 3.4 Editorial standards*)

One of Wildstein's first decisions was to require all TVP employees to sign declarations that they had not co-operated with the communist secret police. Promotion depended on making this declaration. Journalists had to ask the IPN for their records to prove they had not been informants before 1990. This was in 2006, even before the passage of amendments to the Lustration Law that would include journalists among those who had to pass the lustration test.⁴⁷ Declarations by TVP employees were collected after the law was amended in April 2007. However, the process was not completed because the Constitutional Court found on 12 May 2007 that the changes to the Lustration Law were unconstitutional.

"In Wildstein's TVP, people with different opinions are treated as enemies, second or third class creatures," said Piotr Dejmek, TVP1's former Deputy Director, who was fired by Wildstein. "Destroying standards is easy, but rebuilding them takes years," he added.⁴⁸ A number of films and series, including *Ekipa* (The Team), a production by the well-known film director Agnieszka Holland about fairness in politics, and *War and Peace*, a European Broadcasting Union multinational co-production, were scrapped from TVP schedules.

2007

In February 2007, Wildstein was replaced by Andrzej Urbański, a former journalist and the first Chief of Staff to President Lech Kaczyński.⁴⁹ The reason given for Wildstein's removal was his resistance to the demands of the LPR and Samoobrona, two minor coalition parties, which wanted more coverage on TVP and more jobs there for their preferred journalists. "For months I have been confronted with an alternative: either Wildstein or the coalition," explained Prime Minister Jarosław Kaczyński.⁵⁰

⁴⁶ Robert Rynkun-Werner, "TVP potrzebuje świeżego powietrza" (TVP needs fresh air), *Gazeta Wyborcza*, 1 December 2006, p. 25.

⁴⁷ Ustawa z dnia 13 kwietnia 2007 r. o zmianie ustawy o ujawnianiu informacji o dokumentach organów bezpieczeństwa państwa z lat 1944–1990 (13 April 2007 changes to Lustration Law), available (in Polish) at <http://isip.sejm.gov.pl/prawo/index.html> (accessed 16 March 2008).

⁴⁸ Piotr Dejmek, "Wildstein krzywdzi TVP" (Wildstein harms TVP), *Gazeta Wyborcza*, 20 December 2006, p. 19.

⁴⁹ Paweł Lisicki, Joanna Lichocka, "IV Rzeczpospolita warta jest dymisji Wildsteina" (The Fourth Republic is worth Wildstein's dismissal), interview with Jarosław Kaczyński, *Rzeczpospolita*, 8 March 2007, available at <http://new-arch.rp.pl/artykul/669473.html> (accessed 4 March 2008).

⁵⁰ *Ibid.*

“The way the government deals with public media raises fundamental doubts in my mind,” Wildstein replied, adding that “the Kaczyński brothers are unhealthily obsessed with the media and have allergic reactions to any criticism.”⁵¹

Urbański presented himself as a civil servant, but even PiS members agreed that through his nomination the President wanted to have more influence on TVP. One of Urbański’s first moves was to confirm Małgorzata Raczyńska as TVP1 director. Raczyńska had been ill for half a year since the autumn of 2006, when her clash with Wildstein began. Urbański also changed the station’s News Director. Criticising Urbański’s appointment, a few renowned TVP journalists resigned. The new TVP News Director, Jarosław Grzelak, called for a more positive approach to politics and politicians and for an end to competing with private stations to cover political disputes, scandals and incidents.⁵²

Only a few months later, on the eve of the 2007 parliamentary elections, *Wiadomości* was effectively the ruling party’s bulletin. The former PiS-affiliated Minister of Interior Janusz Kaczmarek revealed in a book published in 2008 that the Minister of Justice Zbigniew Ziobro recommended Patrycja Kotecka to Urbański, saying that she was an editor who “will work for us”.⁵³ In June 2007, Kotecka was promoted to Deputy Manager of TVP news. Kaczmarek wrote in his book that he witnessed conversations about TVP’s staff between Ziobro and President Lech Kaczyński in the presidential chancellery. Ziobro denied any wrongdoing, while the President declined to comment.⁵⁴

⁵¹ Joanna Lichočka, “Uznano mnie za obce ciało, które trzeba usunąć” (I was an alien whom they decided to remove), Interview with Bronisław Wildstein, *Rzeczpospolita*, 28 February 2007, <http://new-arch.rp.pl/artukul/667952.html> (accessed 4 March 2008).

⁵² Agnieszka Kublik, Robert Kowalewski, “Nie dostałem politycznych warunków” (I was not given political conditions), Interview with Jarosław Grzelak, *Gazeta Wyborcza*, 10–11 March 2007, p. 6. TVP journalists soon found out what this meant in practice. When the police forcibly removed nurses protesting outside the Prime Minister’s office in June 2007, it led the news on two private TV stations, Polsat and TVN. But TVP1’s news manager wanted to lead the station’s main news bulletin, *Wiadomości* (Information), with an item on an EU summit in Brussels, addressing the Union’s institutional reform, which was not at all newsworthy in the reporters’ terms at the time. Fighting back, the journalists managed to put the Prime Minister report first, winning the battle that time. Nevertheless, they knew an uphill battle was coming. (See “Reporterzy ‘Wiadomości’ oskarżają swoją szefową Dorotę Macieję o naciski polityczne” (*Wiadomości* reporters accusing their boss Dorota Macieję of political pressure), *WirtualneMedia.pl*, 27 June 2007 http://www.wirtualnemedi.pl/document,,2111344,Bunt_reporterow_Wiadomosci.html (accessed 30 June 2007).

⁵³ Kotecka was reported to have worked from Ziobro’s personal notebook. “Kotecka jest narzeczoną Ziobry” (Kotecka is Ziobro’s fiancée), Jacek Kurski in interview by Monika Olejnik, TVN24, 23 April 2008, available at <http://www.tvn24.pl/-1,1547232,wiadomosc.html>, (accessed 24 April 2008).

⁵⁴ “Kaczmarek: Ziobro załatwiał posady w TVP” (Kaczmarek: Ziobro was fixing jobs at TVP), *Gazeta Wyborcza*, 24 January 2008, p. 1.

“Formerly, TVP’s directors asked you as a favour to find a way of supporting a certain party or politician,” said a long-time TVP journalist.⁵⁵ “Today they just give you orders to follow, no matter what.” Kotecka was accused of having offered TVP news journalists additional money to show the new cars purchased by opposition politicians before 2007 elections.⁵⁶ Inevitably, the motto of *Wiadomości*, TVP’s most influential programme, became “All the news that’s fit to PiS”.

In parallel with the changes at TVP, the Kaczyński Government has boosted the role of TV Trwam, part of a religious media conglomerate encompassing Radio Maryja and the daily newspaper *Nasz Dziennik*, founded by the Catholic fundamentalist, Father Tadeusz Rydzyk. The ministers and right-wing politicians became frequent visitors to the city of Toruń, headquarters of Father Rydzyk’s media empire, which includes a media school. The signing of the February 2006 coalition agreement between the PiS, Samoobrona and the LPR was covered exclusively by TV Trwam, triggering unprecedented protests from other media, which were refused permission to cover the event. Father Rydzyk’s outlets have been so influential among conservative voters that his support became crucial for every right-wing party. In 2007, TVP signed a contract with TV Trwam, securing space on the Astra satellite temporarily not being used by the public broadcaster.⁵⁷

2008

After the 2007 early elections won by the opposition Civic Platform, TVP Director Urbański and the Director of public service Polish Radio, Krzysztof Czabański, became fervent supporters of the principle that public media must be independent of the Government and the licence fee. Tomasz Lis, a well-known critic of the PiS who had lambasted TVP for its pro-Kaczyński slant, was offered a two-year contract after the elections to moderate a talk show on TVP2. TVP1 director Małgorzata Raczynska was transferred to another, lower position. Although Kotecka was under investigation by the state prosecutor, she was not removed from TVP1. The Civic Platform pledged to fire Urbański after amending the Broadcasting Law, and to appoint new KRRiT and TVP Boards. However, with the President expected to veto the move, and a lack of support from the left-wing parties to override the President’s veto, this is unlikely to happen soon.

⁵⁵ Interview by the author of the report with a TVP journalist, Warsaw, 16 September, 2007. Note: The journalist spoke on condition of anonymity fearing dismissal.

⁵⁶ Agnieszka Kublik, “Propozycja Koteckiej była nieetyczna?” (Was Kotecka’s proposal unethical?), *Gazeta Wyborcza*, 7 December 2007, p. 4.

⁵⁷ Vadim Makarenko, “Telewizja o. Rydzyka trwa przy TVP” (F. Rydzyk’s TV stays with TVP), *Gazeta Wyborcza*, 8 February 2008, p. 31.

3.3 PSB funding

The 2005 amendments to the Broadcasting Act had no positive impact on licence fee collection as the Polish Post company maintained its monopoly over the collection process. Indeed, it allowed more households to be exempt from paying the fee.

Table 4. TVP budget in 2004–2007 (breakdown by the source of revenue)

		2004		2005		2006		2007	
		PLN	€	PLN	€	PLN	€	PLN	€
Total revenue (million) ⁵⁸	Licence fee	531	132.8	526	131.5	541.5	135.4	515.8	147.4
	Advertising & sponsorship	938	234.5	1,132	283	1,171	293	1,287	367.7
	Other revenues	197	49.0	304	76.0	202.5	50.6	332.2	94.9
	Total	1,666	416.3	1,859	464.8	1,912	461	2,135	610
	Share of total income (per cent)								
	Licence fee	31.9		28.3		28.3		24.6	
	Advertising	56.3		55.3		57		55.1	
	Sponsorship	4.5		5.5		5.7		5.2	
	Other revenue	7.3		10.9		8.9		15.1	
	Total	100		100		100		100	

Source: KRRiT⁵⁹

⁵⁸ The rates of €1 = PLN 4 for 2004–2006 and €1 = PLN 3.5 for 2007 were used.

⁵⁹ KRRiT, “Informacja o podstawowych problemach radiofonii i telewizji 2008” (KRRiT information about basic problems of Radio and TV 2008), p. 20, available at <http://www.krrit.gov.pl/> (accessed 24 April 2008).

According to the 2006 census, there were about 13 million households in Poland, with 96 per cent (or 12.8 million) owning at least one TV set. Over 4.6 million households and 3.4 million companies did not register any radio or TV set and did not pay the licence fee in 2006. Out of 8.05 million households with registered radio or TV sets, 2.8 million (or 35 per cent of them) were exempt from paying the licence fee mainly because they were over 75 years of age or disabled. Another 1.81 million households with registered radio or TV did not pay the licence fee at all, or were late in doing so. The ensuing losses were estimated at PLN 120 million (€32.5 million) a year. The estimated value of the fee from non-registered TV and radio sets was PLN 1.5 billion (€407 million) a year.

“Increasing non-payment of the licence fee will put the whole system of public media financing in Poland into question within two or three years,” the KRRiT stated in a 2006 report.⁶⁰ The main cause for the low payment rate is the lack of sanctions. Even with the statutory seven days’ notice, householders and businesses can refuse to let the authorities check for possession of a TV set. In 2005, Poland’s 250 postal service controllers imposed fines totalling less than PLN 400,000 (€108,000), which represents 0.04 per cent of the total licence fee revenue.

Table 5. Who does and does not pay the licence fee? (in thousands)

	2004	2005	2006
Households with registered TV sets exempted from paying the licence fee	2,804	2,836	2,167
Households without registered TV sets	4,323	4,623	5,370
Households with registered TV sets paying the licence fee	6,211	5,879	5,801
Total number of households	13,338	13,338	13,338

Source: KRRiT⁶¹

There have been several proposals to increase the rate of payment and change how the fee is collected. In 2006, the PiS-majority government started work on a scheme to have the licence fee paid with income tax or electricity bills. Both options were criticised as unrealistic; the former would bypass farmers who do not pay income tax, while the latter was reckoned to be unconstitutional. Following the 2007 elections, the

⁶⁰ KRRiT, “Raport otwarcia: rynek radiowo-telewizyjny w Polsce” (Opening Report: Radio and TV Market in Poland), Warsaw, 2006, p. 17, available online at www.krrit.gov.pl/dokumenty/polityka/raport_otwarcia%20_071106.pdf (accessed on 23 November 2007).

⁶¹ KRRiT Annual Reports 2005, 2006.

Government said that it wanted to scrap the licence fee completely or at least change the way it is collected, but postponed debate on this issue. According to the latest plans, the licence fee will finally be scrapped by the end of 2008.⁶²

Especially under Dworak's leadership, TVP tried to increase its funding from different, sometimes dubious, sources. In 2005, it demanded fees from cable TV operators and digital TV platforms for transmission of its programmes, but without success. TVP also looked for sponsorship of its public mission programmes. For example, *AAAbsolutnie każdą pracę* (AAAbsolutely looking for work), a show giving advice to the unemployed, asked for money from the State employment offices and the European Social Fund.⁶³

Some experts say that one way to increase the rate of licence fee payment would be to bring in Conditional Access (CA) systems, which are used by cable and satellite TV operators. However, this would require paid-TV systems on digital multiplexes.

In 2006, the Przychodnia Association (*Stowarzyszenie Przychodnia*), a little-known organisation,⁶⁴ complained to the European Commission that TVP was receiving illegal State aid, meaning funds that were not being used to fulfil its public service mission. TVP claims that all its programmes serve to fulfil this mission, but Przychodnia argues the contrary.⁶⁵ In February 2008, TVN complained to the European Commission that TVP had illegally received PLN 600 million (€170 million) as “unwarranted public aid” between 2001 and 2006. TVN argued that the “public mission” remit in the Broadcasting Law is so vaguely defined that TVP can freely decide what mission to follow.⁶⁶ The former Head of the Office for Competition and Consumer Protection had already argued that Poland's public service broadcasters were receiving illegal forms of State aid,⁶⁷ contravening the European Council

⁶² “Wykańczanie abonamentu TV” (Finishing off the TV fee), *Gazeta Wyborcza*, 7 March 2008, p. 17.

⁶³ Krzysztof Katka, “AAAbsolutnie dajcie kasę” (AAAbsolutely give money), *Gazeta Wyborcza*, 9 August 2005, p. 4.

⁶⁴ The Przychodnia Association claims to strive for high ethical and moral standards in everyday life, politics and business. One of its members, Przemysław Schmidt leads Trigon Polska, a company advising to Polsat group. See: http://www.pfo.net.pl/index.php?option=com_content&task=view&id=106 (accessed 20 January 2008).

⁶⁵ See: http://www.dobrowol.org/przejrzystemedia/TV_abonament_briefing.pdf (accessed 17 September 2007) and Vadim Makarenko, “TVN pisze do Brukseli” (TVN writes to Brussels), *Gazeta Wyborcza*, 27 February 2008, p. 31.

⁶⁶ The TVN complaint was prepared by the same attorneys who successfully won a similar case in Denmark. See: Vadim Makarenko, “TVN pisze do Brukseli” (TVN writes to Brussels), *Gazeta Wyborcza*, 27 February 2008, p. 31.

⁶⁷ Anna Słojewska, Andrzej Krakowiak, “Wpływy z abonamentu bez zgody Brukseli” (Licence fee income without approval from Brussels), *Rzeczpospolita*, 16 July 2005, available at <http://new-arch.rp.pl/artukul/558760.html> (accessed 4 March 2008).

Directive 659/99.⁶⁸ It is not clear what the outcome of this pressure will be, but Przychodnia's complaint had been taken into account by the investigators of the European Commission in January 2007.

Amendments to the Broadcasting Act proposed by the ruling party (PO) in January 2008 make no mention of changes to licence fee rules and collection. However, following the debate on the future of the licence fee, TVP recorded a 30 per cent drop in the rate of payment. In an April 2008 bill, the Government proposed to exempt retired people from paying the licence fee and to scrap it completely from the law on PSB later in 2008. Many high-calibre intellectuals are against the elimination of the licence fee.⁶⁹ However, recent opinion polls show that Poles favour financing of the public service media from the State budget. Only 23 per cent of respondents want the licence fee in place.⁷⁰

3.4 Editorial standards

Political pressure and bias have been commonplace at TVP, but between 2004 and 2006, the levels of pluralism and professionalism increased, especially among the team producing the primetime newscast *Wiadomości*, which was led by a former BBC journalist, Robert Kozak. In spring 2006, TVP Director Wildstein fired Kozak, who then accused TVP1 director Maciej Grzywaczewski of having pushed for the promotion of PO's presidential candidate Donald Tusk on the station's programmes before the 2005 elections, by featuring Tusk's book in *Wiadomości*.

After the elections, Grzywaczewski switched loyalties and started to watch out for PiS interests, according to Kozak, who added that he had opposed Grzywaczewski's line.⁷¹ Kozak was convinced that the station achieved political independence with *Wiadomości*: "It was the period of this programme's greatest independence since 1989. I created conditions that made it futile to try to influence the programme. All decisions were made collectively. Even when I wanted to change something, I had to convince

⁶⁸ Council Regulation no. 659/1999 of 22 March 1999, laying down detailed rules for the application of Article 93 (now Art. 88) of the EC Treaty, *Official Journal*, L 83/1, 27 March 1999, pp. 1–9.

⁶⁹ An open letter to Donald Tusk signed by a group of intellectuals was published as a full page paid advertisement in the major Polish newspapers on 27 March 2008. See more at <http://www.publicznemedia.org.pl>, accessed 25 April 2008.

⁷⁰ "62% Polaków za finansowaniem publicznych mediów z budżetu" (62 per cent of Poles favor State budget financing of public media), *wirtualnemedi.pl*, 28 March 2008, available online (in Polish) at <http://www.wirtualnemedi.pl/article/2275545> (accessed 24 April 2008).

⁷¹ Agnieszka Kublik, Wojciech Surdziel, "Kozak: broniłem także PiS" (Kozak: I was also defending PiS), *Gazeta Wyborcza*, 30 May 2006, p. 34.

the producer of the programme and the journalists. There was simply no way to introduce political instructions.”⁷²

In the autumn of 2006, when Kozak was no longer at TVP, the station’s news programmes were found to be politically biased, according to an analysis of election coverage by the Stefan Batory Foundation. These programmes included TVP1’s *Wiadomości*, TVP2’s *Panorama* and the local news magazines aired by TVP3 in the capital Warsaw and the cities of Gdańsk, Białystok, Szczecin and Cracow. The main conclusion of the study was that in covering the local elections, TVP gave much more attention to the governing parties than to the opposition. In *Wiadomości*, the ruling party was given twice as much time as the main opposition party and three times more than any other party. In local TVP programmes, incumbents were given preferential coverage.⁷³

**Table 6. Politicians on nationwide TVP news programmes
16 October–25 November 2006**

	PiS	PMin.	Govt.	PO	Pres.	LPR	SLD	Sam.	Pres. Chanc.	PSL
Time (in hours)	3:25:54	2:55:05	2:41:19	1:12:15	1:06:31	0:55:44	0:28:58	0:25:18	0:12:47	0:08:53
Per cent	25	21	19	9	8	7	3	3	2	1

Source: TVP Programme Monitoring Unit

When State office-holders were included, the balance was even more skewed in favour of the ruling coalition. The combined share of the PiS and its coalition partners (the LPR and Samoobrona), the Prime Minister and his cabinet colleagues, the President and his chancellery accounted for nearly 85 per cent of the total time allotted to political coverage. On this count, the PiS beat the opposition PO by 3:1, and the SLD by 8:1 in terms of coverage time. There was also a tendency to push the opposition politicians into less attractive time slots, when the audience was minimal.

Wildstein responded to the Stefan Batory Foundation study: “Counting how much time a given party occupies in broadcasting is absurd because there is no way to prove

⁷² Jarosław Murawski, “Byłem jak aptekarz” (I was like a pharmacist), *Rzeczpospolita*, 27–28 May 2006, *op. cit.*

⁷³ “Report from monitoring of selected TVP information newscasts at the time of local elections 2006” available online at http://www.batory.org.pl/english/pre_election/index.htm (accessed 4 March 2008).

by numbers whom TVP is supporting. One may devote a lot of time to the government's deeds, but criticising them all the time."⁷⁴

However, the Foundation also carried out content analysis. It found that PiS politicians spoke on camera more often than politicians did from other parties; they were allowed to talk longer than the others and were the most frequently covered in the leading items of a given bulletin. The study also revealed that on TVP1's *Wiadomości*, the PiS had a major presence in 23 reports. The other parties, including the ruling coalition and opposition alike, were only covered in the same way in three reports. Out of the 23 reports on the PiS, six were "negative" and one "very negative"; six were judged as "positive" and two as "very positive". The remaining reports were neutral. In terms of how balanced the reports were, 16 were considered low- (5) and mid- (11) balanced. In such reports, the arguments of the other side were absent or insignificant. In 15 out of the 23 reports on the PiS, there was manipulation, including omission of important information.

In conclusion, it is fair to say that the PiS was disproportionately prominent on public television during the election campaign. Whether it worked out to the advantage of the ruling party is another matter, but the constant pressure by minority coalition parties to get rid of Wildstein proved that politicians wanted desperately to be on TV.

According to the KKRiT, during the 2007 parliamentary election campaign, the opposition PO party got the most coverage on TVP while the ruling PiS party was only covered by TVP. However, according to TVP's own monitoring, the PiS received the highest coverage ahead of the PO, without including the time devoted to the Government and Parliament officials or the President, all from the ruling coalition.⁷⁵ International observers from the Organisation for Security and Co-operation in Europe (OSCE), who followed the Polish media before elections, concluded that coverage of the PO on TVP news was mostly "neutral and negative" while coverage of the PiS was "balanced".⁷⁶

Journalists of the public media lost their battle for independence. In this war, they had to fight not only the State, but also their own managers. Only after going into opposition did Jarosław Kaczyński start to talk about journalists' independence. "Never before were media used by politicians so openly and on such a scale as in the period of Jarosław Kaczyński's mandate as Prime Minister," wrote journalist Tomasz Wołek. He

⁷⁴ Jarosław Murawski, "Nie jestem przyśrubowany" (I am not tied down), interview with Bronisław Wildstein, *Rzeczpospolita*, 21 November 2006, available online at <http://new-arch.rp.pl/artykul/650244.html> (accessed 2 March 2008).

⁷⁵ KRRiT, Monitoring, available online at [www.krrit.gov.pl/dokumenty i opracowania/monitoring](http://www.krrit.gov.pl/dokumenty_i_opracowania/monitoring) (accessed on 18 January 2008).

⁷⁶ Dominik Uhlig, "OBWE: prezydent był stronniczy przed wyborami" (OSCE: the President was one-sided before elections), *Gazeta Wyborcza*, 21 March 2008, p. 6.

called for public debate on this “sad period” in Polish journalism.⁷⁷ The Congress of the Polish Journalists’ Association (SDP, *Stowarzyszenie Dziennikarzy Polskich*), held in April 2008, was expected to tackle this issue, but instead wasted time on personal arguments. The right of journalists’ trade unions and associations to recommend candidates for the new KRRiT is being contested because of the weakness and politicisation of these organisations.

4. COMMERCIAL BROADCASTING

4.1 Regulation and management

There have been no significant changes in regulation and management of commercial broadcasters, which are regulated by the KRRiT, UKE and the Office for Competition and Consumer Protection. The last two bodies have had growing influence in regulating private broadcasters. As well as a mixture of entertainment targeted at a mass audience, these broadcasters compete with TVP in providing public service quality news and current affairs. Concentration and cross-ownership of broadcasters and other media ventures is not clearly regulated, partly as a result of the “Rywingate” affair.

4.2 Ownership and cross ownership

In a report for the European Parliament, Poland was listed as one of only six countries in Europe with no restrictions on media cross-ownership.⁷⁸ The April 2004 amendments to the Broadcasting Act lifted the 33 per cent capital restrictions on foreign ownership by entities based in EU countries. The only restriction on ownership is a limit of 49 per cent applying to investors from outside the EU, which in practice means mostly American investors and their European subsidiaries. Under the Broadcasting Act, a licence cannot be awarded if transmission of programming by an applicant could result in achievement of a dominant position in the mass media in the

⁷⁷ Tomasz Wołek, “Gdzieście byli dziennikarze” (Where were you, the journalists?), *Gazeta Wyborcza*, 2 February 2008, p. 19.

⁷⁸ Deirdre Kevin, Thorsten Ader, Oliver Carsten Fueg, Eleftheria Pertzimidou, Max Schoenthal, Final report of the study on “The Information of the Citizen in the EU: Obligations for the Media and the Institutions Concerning the Citizen’s Right to be Fully and Objectively Informed”, prepared on behalf of the European Parliament by the European Institute for the Media, Düsseldorf, 31 August 2004, available online at <http://www.pedz.uni-mannheim.de/daten/edz-ma/ep/04/pe358896-en.pdf> (accessed 8 April 2008).

given territory.⁷⁹ Since 1992, a broadcast licence could also be revoked on the same grounds.⁸⁰

Although the Broadcasting Act does not define exactly what is meant by a “dominant position”, the Act on Competition and Consumer Protection defines it as a situation when a business is able to prevent efficient competition on the relevant market. It is assumed that this can happen when the business’s share of the market exceeds 40 per cent.⁸¹ The KRRiT evaluates whether an applicant or existing player may achieve a dominant position, taking into account the “open and pluralistic nature of broadcasting”. No licence has yet been revoked for this reason. A decision by the antitrust watchdog preventing Axel Springer from purchasing 25 per cent of Polsat TV could create the base for defining such a position in the future. UOKiK argued that it did not give a green light to the deal because despite Springer’s ownership of only 25 per cent of the stake in Polsat TV, “some crucial decisions may not be made without its [Axel Springer’s] consent”.⁸²

The KRRiT’s “Polish State Strategy for Electronic Media for 2005–2020” calls for a 30 per cent limit in cross-media ownership, including both electronic and print media. Karol Jakubowicz, then Director of KRRiT’s Strategy Department, explained that the aim of these regulations is to ensure at least three independent TV and radio stations on national and local markets.⁸³ The concept of a 30 per cent threshold was immediately criticised by media owners who oppose any restrictions in this matter.

In its first document of 2006, released after its new members were appointed, the KRRiT stated: “Our experience proves that without a system of special protection, local radio and TV stations cannot withstand market competition and have to join the large networks, losing programming independence and ability to create a programme tied to local community life.”⁸⁴ According to the KRRiT, local radio stations could remain independent if there were legal provisions preventing them from being swallowed by large networks. This could be done if local electronic media were

⁷⁹ Broadcasting Act, Art. 36(2.2).

⁸⁰ Broadcasting Act, Art. 38(2).

⁸¹ Act on Competition and Consumer Protection of 15 December 2000, *Official Gazette*, no. 86, item 804, Art. 4(9).

⁸² Vadim Makarenko, “UOKiK przystopował Springera” (UOKiK’s stop over for Springer), *Gazeta Wyborcza*, 21–22 April 2007, p. 34.

⁸³ Personal interview with Karol Jakubowicz, September 2004.

⁸⁴ KRRiT, “Raport otwarcia: rynek rtv w Polsce” (Opening Report: Polish radio and TV market), Warsaw, 2006, pp. 38–39, available at www.krrit.gov.pl/dokumenty/polityka/raport_o_stanie_ryнку_caly.pdf (accessed on 26 November 2007).

compelled to promote the “public interest” in their programming, especially in terms of pluralism and diversity.⁸⁵

The only major change in ownership took place in 2006 when 25 per cent of the religious station TV Puls, owned by the Franciscan Brothers, was purchased by News Corporation. Once the deal was completed, the KRRiT allowed the new owners to change the station’s programming into generalist.

Issues of concentration and cross-ownership came to the fore during the “Rywingate” affair. An example of cross-ownership between electronic and print media is the Agora group, which owns the leading daily *Gazeta Wyborcza* and 29 local radio stations, including the news/talk-format radio station Tok FM, operating in nine cities. At the end of 2006, the German Bauer Publishing Group, owner of over 30 glossy magazines in Poland, bought RMF FM, a private radio station with the largest audience in the country. The UK’s Mecom Group, owned by David Montgomery, formerly of the Mirror Group, owns 51 per cent of the daily newspaper *Rzeczpospolita* (with the remainder owned by the State), and stakes in 12 local dailies and five radio stations.

4.3 The advertising market

The maximum advertising time set by law on commercial broadcasters is 12 minutes per hour and 15 per cent of the total daily amount of broadcasting. Teleshopping programs are the fastest growing advertising vehicle; their maximum daily time is set as three hours.

Table 7. Advertising as percentage of programme time

	2005	2006
TVP1	7.6	7.35
TVP2	7.0	7.25
Polsat TV	14.52	14.54
TVN	12.52	12.68
TV 4	14.68	14.53

Source: AGB Nielsen Media Research

The total TV advertising market in 2006 was PLN 7.83 billion (€2.04 billion), which exceeded 50 per cent of the total advertising spend in the country. The private station TVN took the largest share of the TV advertising spend.

⁸⁵ KRRiT, “Raport otwarcia: rynek rtv w Polsce”, *op. cit.*, p. 28.

Table 8. Share of TV advertising income in 2006 (as gross percentage)

Station	Share
TVN	26.2
Polsat TV	24.4
TVP1	17.2
TVP2	13.3
TV 4	2.1
MTV Polska	2.1
Tele 5	1.8
TVN 24	1.6
TVN7	1.5
Discovery Channel	1.1
Other	8.7

Source: Expert Monitor⁸⁶

According to the media buying agency Starlink TV, the advertising market grew by 16.5 per cent in the first half of 2007. TVN was the most dynamic player, enjoying growth of some 17 per cent, thanks mainly to its TVN24 news channel. TVP's advertising revenues grew by 14 per cent, reaching a net of PLN 584 million (€170 million) during this period. Polsat TV saw the slowest growth, of only 8 per cent. Specialist channels had the fastest audience growth, however, albeit from a smaller base. They still enjoy a modest audience share. The four most popular were the news channels TVN24 and Eurosport, and the children's channels Cartoon Network/TCM and Jetix.⁸⁷ The prospects for 2008 are good; the price of TV advertising is expected to rise by about 15 per cent, doubling the growth of previous years.⁸⁸

4.4 Editorial standards and independence

Editorial independence has continued to suffer also in the private sector in Poland, however political interference here has been much less visible than in public media.

⁸⁶ IP International Marketing Committee, *Television 2007. International Key Facts*, October 2007, p. 307, (hereafter, IP International Marketing Committee, *Television 2007*).

⁸⁷ KRRiT, "2006: The Broadcasting Landscape in Poland", p.19, av. at www.krrit.gov.pl/angielska/index.htm (accessed on 24 January 2008).

⁸⁸ Vadim Makarenko, "Gotowanie żaby, czyli szklany ekran porządzi" (Boiling a frog or how a glass plate rules), *Gazeta Wyborcza*, 4 January 2008, p. 32.

Broadcasters continued to fight to gain as much freedom as possible from political and business interests.

“Political commentators cannot accept positions from political parties,” said Jacek Żakowski, a well-known print and TV journalist. “If they do so, one may suspect that the party pays them back [for their ideological support of the party] or sends them out as political commissars.” Żakowski added that by stating before the 2005 elections that he would vote for SLD, he was aware that this would bar him from accepting any future public positions from this party. After the 2005 elections, “high-level public media positions were distributed by the PiS to those political commentators who supported the party during the electoral campaign. For me it was a classic case of political corruption.”⁸⁹

Czabański replied:

In all mass media, private and public alike, there is the same problem: the relationship between the owner or the manager and the editorial team. Does a Chinese Wall, to use Adam Michnik’s expression, really exist between the publisher and the editors? I guarantee that the situation is the same in both private and public media: the editorial [department] has as much independence as they are able to win. For Springer, [Jan] Wejchert (TVN), [Zygmunt] Solorz (Polsat) and other media moguls, the temptation to use their own media as a weapon is no less attractive than for politicians.⁹⁰

4.5 Regional and local broadcasting

Local TV stations have been gradually losing their editorial and financial independence because of the ownership concentration process and their ties with larger broadcasters. In 2006, Niezależna Telewizja Lokalna Radomsko was included in TVN’s network and Telewizja ODRA, which airs two hours of local programming in nine municipalities in west Poland (Wrocław, Opole, Świdnica, Głogów, Legnica, Lubin, Gorzów Wielkopolski, Jelenia Góra and Zielona Góra) joined TV 4. “The whole idea of local TV broadcasting failed because local TV broadcasters lost their independence,” the KRRiT stated.⁹¹

The KRRiT also called for an end to the centralising trend at TVP3, which is a network of local stations. TVP3 has cut down on local production, favouring programmes produced by the central Warsaw-based station. In the years 2000–2005,

⁸⁹ Jacek Żakowski, “Dziennikarze politycznie skorumpowani” (Politically corrupted journalists), *Rzeczpospolita*, 30 October 2006, available online at <http://new-arch.rp.pl/artykul/646670.html> (accessed 25 February 2008).

⁹⁰ Krzysztof Czabański, “Mikrofon dla obywateli” (Microphone for citizens), *op. cit.*

⁹¹ KRRiT, Informacja 2007, p. 27, available at www.krrit.gov.pl/sprawozdania (accessed 4 March 2008).

the share of programmes made by the 14 local TVP branches feeding TVP3's programming shrank from 23.4 to 18.3 per cent. This meant that their combined programming was no more than 3.5 hours a day.⁹²

In 2008, the Government announced plans to dismantle TVP3 into 16 local public TV stations, financed in part by local authorities. The opposition, TVP and the KRRiT are against this idea.⁹³ Local news found some room on the news programmes of cable operators licensed by the KRRiT. At the end of 2006, there were 360 licensed cable operators. Those who produce their own programmes air from 30 minutes to several hours a day.⁹⁴

5. PROGRAMMING

5.1 Output

Some genres, such as drama, classical music and documentaries are so expensive to produce and relatively unappealing to the public that only TVP can afford to show them. TVP1 and TVP2 air such programmes. Combined with news, information, education and religion programming, such programming makes up about 35 per cent of TVP1's output. However, these programs are difficult to find at peak time, from 5 p.m to 11 p.m, with the exception of news and political programmes. In the first week of 2008, the documentary series *Notacje* (Notes) was shown on TVP1 twice after 2 a.m.; cultural magazine *Loskot* was aired once at midnight and a French documentary about Russian oligarchs was scheduled after midnight.

Only political interviews and some investigative reporting programs such as *Autografy* (Autographs) and *Misja Specjalna* (Special Mission) made it to primetime. "In TVP low quality of programmes and lack of standards are more painful than the one-sidedness of its news programmes because the news viewers have an alternative on private TV. They do not have a choice for real cultural [programming]," said Agnieszka Holland.⁹⁵

⁹² KRRiT, Opening report, *op. cit.*, p. 26.

⁹³ "Stanowisko KRRiT dotyczące poselskiego projektu ustawy o zmianie ustawy o radiofonii i telewizji i innych ustaw", (KRRiT standpoint versus MPs' project to change radio and television and other laws), p. 15, available online at www.krrit.gov.pl/ accessed 24 January 2008.

⁹⁴ KRRiT, Informacja 2007, p. 29, *op. cit.*

⁹⁵ Tadeusz Sobolewski, "Ratujmy w TVP, co się da" (Let's save in TVP what we can), *Gazeta Wyborcza*, 15–16 March, 2008 p. 16.

Table 9. Shares of public and private broadcasters' output in 2006 (by genre)

Per cent of yearly broadcast	TVP1	TVP2	TVP3	TV Polsat	TVN	TV 4	TV Puls
News	7.3	5.3	33	3.9	2.5	1.1	1.2
Commentaries	13.1	5.4	20.7	2.0	5.4	9.8	15.1
Films	43.2	43.2	11.4	38.8	29.2	24.7	21.5
Documentaries	6.3	8.5	12.8	0.6	0.5	1.6	15.4
Entertainment	1.2	8.2	1.0	25.8	30.7	14.8	0.0
Education	4.9	6.2	1.6	0.7	5.3	1.1	5.8
Sport	5.5	4.7	5.8	5.7	2.0	5.6	5.8
Religion	2.6	0.7	1.9	0.2	0.0	0.2	10.3
Classical music	0.3	0.5	0.0	0.1	0.0	0.2	1.9
Theatre	0.4	0.3	0.0	0.0	0.0	0.0	0.0
Pop music	2.9	4.3	0.2	1.8	0.4	8.7	0.5
Self-promotion	3.3	3.7	5.0	5.3	5.5	6.8	4.5
Advertising	9.1	9.0	6.7	15.3	18.5	15.5	21.1

Source: KRRiT⁹⁶

5.2 General provisions on news

In May 2006, the Senate adopted a resolution that included the most important issues that the KRRiT should follow. These were: protecting minors effectively against violence and immorality, taking action against the increasing concentration of ownership on the local radio market, and securing more pluralism and impartiality in public service broadcasting. The Senate also called on the KRRiT to regulate the editorial and organisational independence of TVP's regional stations.⁹⁷ The KRRiT produced two extensive reports on these issues.⁹⁸ No major provisions on news have been introduced in the past three years.

⁹⁶ KRRiT, "Informacja o podstawowych problemach radiofonii i telewizji 2007" (KRRiT information about basic problems of Radio and TV 2007", p. 103 and 108, *op. cit.*

⁹⁷ "Uchwała Senatu RP w sprawie sprawozdania KRRiT z działalności w 2005 r." (Senate resolution concerning KRRiT yearly report for 2005), available at www.senat.gov.pl/arch.htm, (accessed 24 January 2008).

⁹⁸ KRRiT, "Defence of locality and local democracy: KRRiT strategy of actions to defend local character and programme pluralism in local electronic media", December 2005, "KRRiT position on children presentations in TV", January 2008.

5.3 General programme production guidelines

Broadcasters' independence in determining programme content is guaranteed in general terms by the Broadcasting Act, which states that a television broadcaster may broadcast live coverage of an event of major importance for society only on a nationwide free-to-air channel, or on an encrypted or paid TV service if the event is also free-to-air.

5.4 Quotas

In June 2005, the KRRiT issued a bylaw on the use of labels for broadcasts that may have a negative impact on minors.⁹⁹ Weekly round-the-clock monitoring of TVP1, TVP2, Polsat TV and TVN by the KRRiT in March 2006 showed that the new system was more or less respected. The KRRiT judged that TVP1's programmes for children were the best. (TVN paid no attention to the young audience.) TV 4 is the leading commercial station for youth programming. The KRRiT concluded that there was a general lack of educational programmes on TV.¹⁰⁰

5.5 Obligations on PSB

The main tasks of public service broadcasting are to strengthen family ties, support a pro-health attitude, contribute to combating "social pathologies" and respect the needs of ethnic groups and minorities.¹⁰¹ (see Table 8) Programs that fulfilled general public broadcasting obligations accounted for above one third of total programming in 2003 and for less than 30 per cent of the main TVP1 channel in 2006, a drop of 5 per cent. Public service programmes were moved to the less popular TVP2 and to specialist channels, above all TVP Kultura, which is only available by subscription to satellite or cable channels and has a marginal viewership of 0.15 per cent.¹⁰²

Critics of TVP say that the station's "public mission programmes", including educational, religious, children's programming, drama, European production and

⁹⁹ "Rozporządzenie KRRiT w sprawie kwalifikowania audycji lub innych przekazów mogących mieć negatywny wpływ na prawidłowy fizyczny, psychiczny lub moralny rozwój małoletnich oraz audycji lub innych przekazów przeznaczonych dla danej kategorii wiekowej małoletnich, stosowania wzorów symboli graficznych i formuł zapowiedzi" (KRRiT order for broadcast labelling of programmes, which might have negative impact on correct physical, psychological and moral development of a certain age category of minors, using appropriate graphic symbols and announcements), available at www.krrit.gov.pl/ (accessed on 24 January 2008).

¹⁰⁰ KRRiT, "Informacja o podstawowych problemach radiofonii i telewizji 2007", p. 135, *op. cit.*

¹⁰¹ Broadcasting Act, Art. 21. (The law does not clearly define these tasks).

¹⁰² Donatta Subbotko, "Misja dla 0,15 proc. widzów" (Mission for 0.15 per cent of viewers), *Gazeta Wyborcza*, 23 April 2008 p. 20.

classical music, account for no more than 6.5 per cent of the station's total airtime, pulling in no more than 2.5 per cent of TVP's viewers.¹⁰³

Programmes for ethnic minorities and in languages other than Polish were not shown on TVP1 and TVP2, due to "the nationwide character of these channels".¹⁰⁴ They were shown instead on TVP3, accounting for 0.3 per cent of the channel's annual broadcast time. Broadcasting for ethnic minorities is done in Polish: *Tydzień Białoruski* (Bielorussian Week); *Przegląd Ukraiński* (Ukrainian Review); *Panorama Litewska* (Lithuanian Panorama); *Rosyjski Głos* (Russian Voice); *My Romowie* (We, Roma); and *Podlaski Orient* (Orient of Podlasie, Tatar magazine). TVP programmes in minority languages are: *Telenowyny* in Ukrainian (TV News, cancelled in 2007); *Schlesische Journal* in German, aired weekly; and *Rodno Zemja* (Native Country) in Kashubian, which is not aired regularly.

The general opinion is that TVP is being increasingly commercialised.

For many years, TVP has been criticised for its lack of a public service mission in broadcasting. The lack of programmes for children and young people, educational and high culture programmes is of special concern. The new Article 21 [of the Broadcasting Act] should define precisely the fulfilment of the public mission in information, opinion-making, education, entertainment, and sport programmes, including the required time quotas.¹⁰⁵

¹⁰³ Jakub Bierzyński, "Spór o media publiczne" (Public media debate), *Rzeczpospolita*, 7 January 2008, p. 12.

¹⁰⁴ KRRiT, "Informacja o podstawowych problemach radiofonii i telewizji 2007", p. 88, *op. cit.*

¹⁰⁵ KRRiT, Opening Report, p. 25, *op. cit.*

Table 10. TVP programmes fulfilling general public broadcasting obligations in 2003–2006 (share of total programming as percentage)

Type of programme	2003		2006	
	TVP1	TVP2	TVP1	TVP2
Culture, science and education development	17.4	17.4	19.8	25.6
Family strengthening	13.4	12.1	5.8	10.4
Pro-health	1.5	1.8	2	1.5
Against “social pathologies”	1.8	1.1	1.5	0.9
National minorities and ethnic groups	0.2	0.4	0	0
Total	34.3	32.8	29.1	38.4

Source: KRRiT¹⁰⁶

5.6 Obligations on commercial broadcasters

In the broadcast licences granted to some private broadcasters, the KRRiT specified additional conditions or the broadcasters agreed to fulfil a set of conditions going beyond legal provisions.¹⁰⁷ However, the Supreme Administrative Court (NSA) declared this practice to be illegal in its judgment on the Polsat licence case, in July 2006. “The KRRiT could not arrogate from the Broadcasting Act its right to dictate the percentage of certain programmes in the licence [contract],” said NSA judge, Stanisław Biernat, explaining the decision.¹⁰⁸

The KRRiT, however, continued to monitor private broadcasters to check fulfilment of their licence conditions. Most of them fulfilled their licence requirements. According to the KRRiT’s monitoring in March 2006, TV Polsat fulfilled such conditions as to air at least seven hours a week of news, six hours a week of education, economy and health programmes, and 1.5 hours a week of documentary films. It has to air also cultural events, drama formats and concerts of classical and pop music.¹⁰⁹ According to KRRiT’s monitoring in October 2006, TVN fulfilled its requirements to air at least seven hours a week of news and at least three hours a week of educational programmes and how-to-do magazines. Similar monitoring in September 2006

¹⁰⁶ KRRiT, 2003 Annual Report, p. 46 and KRRiT, Opening Report, *op. cit.*, p. 25.

¹⁰⁷ Broadcasting Act, Art. 37(2).

¹⁰⁸ Danuta Frey, “W koncesji dla Polsatu było za dużo ograniczeń” (Too many restrictions in the Polsat licence), *Rzeczpospolita*, 19 July 2006, available online at <http://new-arch.rp.pl/artykul/627970.html> (accessed 5 March 2008).

¹⁰⁹ KRRiT, 2007 Annual Report, Informacja, p. 119, *op. cit.*

showed that TV 4 complied with requirements to air news for at least 6 per cent of monthly broadcasting time, educational and children programming for at least 3 per cent and art on at least 2 per cent. Monitoring of TV Puls in November and December 2006 showed that they fulfilled their requirements to air mostly social and religious programming.¹¹⁰ The only station that did not comply with its licence requirements, according to KRRiT monitoring, was local Telewizja Odra, airing in eight municipalities in western Poland.

6. CONCLUSIONS

Since the collapse of communism in Poland in 1989, every political party coming to power has been tempted to take control of the public service media and carry out reform of these media according to their own vision. But in reality, there has been no reform of the public service media. Only their management changed following the results in elections.

With the falling rate of licence fee payments and the advent of digitalisation after 2000, reform of public service broadcasting has become pressing. The “Polish State Strategy on Electronic Media for the years 2005–2015”, released along with the 2005 KRRiT Annual Report, advanced a series of reform proposals. These included creating a single governing structure composed from representatives of the State and civil society, the gradual reduction of advertising time, and the establishment of a fund for financing regional and local broadcasters from a tax on broadcasting advertising on private media.

The same strategy proposed to introduce a system of better monitoring of the licence conditions for all broadcasters, particularly those related to local news and information and a system of measures against concentration of ownership at both national and local levels. At the same time, professional organisations and civil society groups have called countless times for the broadcast regulatory bodies to be depoliticised.

After the 2007 elections, the ruling PO party stressed the need for real changes in the public service media, but nothing has been done in practice. More than six months after elections, the bill on the reform of the public service media is still being drafted by the Government. Another bill on broadcasting, which was adopted by Parliament, but is likely to be vetoed by the President, has not brought any changes in this direction. The new law envisages contests for the seat of KRRiT members and TVP management, allowing civil society organisations to participate in the process. It foresees dropping the licence fee and replacing it with funding from both the State budget and taxes on private broadcasters, which would create the Public Mission Fund.

¹¹⁰ KRRiT, 2007 Annual Report, Informacja, p. 120–122, *op. cit.*

If the reform is carried out, the ecology of the public service media will be substantially changed. It remains to be seen if the changes will be for the good of the public service media. But without reform, these media, increasingly commercial and heavily politicised, are likely to alienate listeners and viewers, and finally advertisers.

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Television across Europe:

Follow-up Reports 2008

Republic of Macedonia

By Vesna Šopar

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List of Abbreviations

AEK	Agency for Electronic Communications, <i>Agencija za elektronski komunikacii</i>
APEMM	Association of Private Electronic Media in Macedonia
MDC	Media Development Center
MRD	Macedonian Broadcasting, <i>Makedonska Radiodifuzija</i>
MR	Macedonia Radio, <i>Makedonsko radio</i>
MRT	Macedonian Radio and Television, <i>Makedonska radio-televizija</i>
MTV	Macedonian Television, <i>Makedonska televizija</i>
OSCE	Organisation for Security and Co-operation in Europe
PEAS	Public Enterprise for Airport Services
SMMRI	Strategic Marketing and Media Research

- VMRO-DPMNE Internal Macedonian Revolutionary Organisation –
Democratic Party for Macedonian National Unity, *Vnatrešna
makedonska revolucionerna organizacija – Demokratska partija za
makedonsko nacionalno edinstvo*)
- ZNM Association of Journalists of Macedonia, *Zdruzenie na Novinarite na
Makedonija*

A. Executive Summary

The past three years – since the original *Television Across Europe* report on Macedonia was written – have seen paradoxical developments in Macedonian broadcasting. On one hand, Parliament finally adopted progressive legislation that brought the Republic of Macedonia into line with European standards on regulatory independence and public service broadcasting. On the other hand, this progress has had little effect on the massive structural problems afflicting the broadcast sector.

Legally, television in Macedonia consists of public, commercial and non-profit terrestrial stations as well as cable and satellite networks. The public broadcaster is beset by problems so profound that it is hard to see how they can be resolved. Despite a drawn-out process of restructuring, public service broadcasting is still paralysed by crisis in the areas of financing, personnel and programming. Commercial television dominates the ratings with a programme output that neither gets close to meeting public service standards, nor stimulates high-quality local production.

Licences for cable and satellite broadcasters have not been awarded. The only cable operators in Macedonia package foreign channels with a large offer of programmes and services. The non-profit broadcasters are still grassroots enterprises on a very small scale. The Macedonian market is still overcrowded, with 114 radio and television stations, and the quality of programming is far from satisfactory. Programmes are monotonous and poor, with entertainment dominating the schedules and few locally produced programmes of quality.

The legal framework has changed significantly since 2005, due to the adoption of new broadcast legislation in that year, subsequently amended in 2007. This legislation upholds European standards for media and the audiovisual *acquis communautaire*, especially the provisions on European works, advertising, sponsorship and teleshopping. The procedure for obtaining broadcast licences has been liberalised for both local and foreign broadcasters. Media concentration is precisely regulated, but the relevant provisions have not been implemented. The autonomy of the public service broadcaster and the broadcast regulator has been bolstered through legislation.

In general, however, despite turbulence in some areas, the implementation of new legislation has gone according to plan. The members of the new Broadcasting Council (*Sovet za radiodifuzija*) were appointed, albeit under pressure from civil society and the European Commission which insisted on excluding political parties. The Council was given many extra powers by the new legislation and has attempted to implement the law more efficiently thanks also to support from local and foreign experts. The Broadcasting Council adopted a Strategy for the Development of Broadcasting, including an Action Plan. Although the Government refused to endorse this strategy, the Broadcasting Council started to implement the Action Plan.

What is still lacking is efficient implementation of concrete measures against those broadcast entities breaking the law, especially as regards ownership, programme standards and advertising.

Macedonian Radio and Television (MRT, *Makedonska radio-televizija*) has seen numerous management changes. In 2006 and 2007, heads and editors were replaced more than once, which had negative effects on the output and the ratings. MRT's financial plight is deepening. Licence fee funding, on which MRT partly depends, has collapsed; payment dropped dramatically in 2007 to a mere 0.5 per cent of households. Funding from Government handouts and the State budget is a temporary measure that damages the station's independence. It is also dubious as the State is only allowed to fund specific public service output such as programmes for the diaspora. The main problem today is the reluctance of MRT's management to try and collect the licence fee more efficiently because it is easier to wait for Government handouts. This tacit acceptance of a disastrous situation is systematically perpetuated by politicians who wish to keep MRT financially dependent on the State.

Commercial radio and TV stations completed the process of replacing their old concession agreements with broadcast licences issued by the Broadcasting Council. Along with moves to increase the independence of the Council, this step is expected to reduce Government interference in broadcast regulation. Their programme offer has not improved, however, and there have been no changes in their ownership structure although the regulations covering media concentration are sometimes blatantly breached.

The cable market is undergoing dynamic, yet turbulent developments. There are more than 118 local operators, but only 53 have registered their programme packages with the Broadcasting Council. The others continue to work without programme copyrights. In the meantime, the cable sector is consolidating; one foreign investor bought 13 cable operators in central Macedonia and plans more acquisitions. Eight cable operators from central and south Macedonia are forming a telecommunications consortium to try and protect themselves against a foreign buyout.

B. Recommendations

1. ORIGINAL RECOMMENDATIONS FROM THE 2005 REPORT¹

<i>Media legislation</i>	
<p>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 <i>acquis</i> for European membership.²</p> <p>2. Civil society, the media industry and academia should insist on the fulfilment of this obligation and intensively monitor and assist the parliamentary procedure.</p> <p>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.</p>	<p>Recommendations 1 and 2 have been adopted. The Broadcasting Law (2005) has had a positive impact. Recommendation 3 has not been adopted and remains pertinent. However, instead of Parliament and the Government, the Broadcasting Council should be more pro-active in fully implementing the provisions of the Broadcasting Law.</p>
<i>Broadcasting policy</i>	
<p>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.</p>	<p>This recommendation has not been adopted. According to the 2005 Broadcasting Law, Parliament is no longer the founder of MRT. But debate on the future of MRT is still needed. The Broadcasting Council should initiate a broad debate with ministries, MRT and media experts on the future of the public service broadcaster. Following the debate, the Broadcasting Council should push the Council and the Management Board of MRT to implement the recommendations arising from the debate.</p>

¹ "Republic of Macedonia" in Open Society Institute, *Television across Europe: regulation, policy and independence*, Budapest, 2005 (hereafter OSI/Republic of Macedonia), pp. 1,224–1,226.

² 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 online (in English) at <http://www.sei.gov.mk/prasalnik> (accessed 14 August 2005).

1.1 Policy

<p>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.</p> <p>6. The Government should ensure that a National Strategy for the Broadcasting Sector is drafted, incorporating both national experiences and European standards and trends.</p> <p>7. Parliament should, as a priority, ensure the passage of the Strategy and its full implementation in practice.</p>	<p>Recommendations 5, 6 and 7 were partly adopted. The Broadcasting Council adopted the Strategy for the Development of Broadcasting, which was then accepted by the Parliamentary Commission for Transport and Communications. However, the Government rejected this Strategy in January 2008. The Government should adopt this Strategy as a State policy.</p>
<p>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.</p> <p>9. The Government should adopt a National Strategy for Electronic Communications 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.</p>	<p>These recommendations have been partly adopted. The Government drafted the National Strategy for Electronic Communications and Information Technology, but Parliament has yet to adopt it. Despite this delay, the measures that it foresees are being implemented by Government bodies as part of their action plans.</p>
<p><i>International support</i></p>	
<p>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.</p> <p>11. The Stability Pact for South Eastern 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.</p>	<p>Due to external factors that affected international organisations, recommendation 10 could not be adopted. International organisations should resume their financial, technical and professional support. Recommendation 11 was followed by the Media Development Centre (MDC), a non-governmental organisation which played a leading role in the Media Working Group until the Stability Pact's Media Task Force ceased operations in 2006. The MDC has continued to monitor the implementation of the Broadcasting Law.</p>

1.2 Regulatory bodies

<i>Public service broadcasting</i>	
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 public service broadcasting in Macedonia, to support the process of further transformation in this sphere.	This recommendation was not followed. It remains pertinent. A broad debate on the future of MRT is still needed. (See recommendation 4 in 1.1 Policy.)
<i>Minority representation</i>	
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.	This recommendation was not followed. There is still need for such a debate, complemented with further measures. To encourage the media to contribute to fostering understanding among the various communities, the Broadcasting Council should help to build the non-profit media sector by supporting outlets that focus on interethnic communication. MRT, which broadcasts in many minority languages, but does not manage to promote social cohesion, should clearly define its goals of promoting multiculturalism through its programming.

1.3 Industrial relations and ethical issues

<p>14. The Association of Journalists of Macedonia (ZNM) and other professional associations of journalists should establish a system of regular debates about journalistic professional standards.</p> <p>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.</p> <p>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.</p>	<p>These recommendations have been partly followed. The ZNM became more active in 2007 and started to carry out more activities beneficial for journalists. It should continue its initiatives in the areas highlighted by these recommendations.</p>
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2. NEW RECOMMENDATIONS BASED ON THE 2008 REPORT

2.1 Media policy and legislation

1. The EU Directorate should assess the implementation of the 2005 Law on Broadcasting Activity and the Law on Electronic Communications. The civil sector, the media and the communications academics should insist on the efficient implementation of these obligations.

2.2 The Broadcasting Council

2. The Broadcasting Council, in co-operation with independent monitoring agencies, should develop a set of benchmark standards for the broadcast sector, with measurable indicators. This would help the Ministry of Transport and Communications to identify the gaps and failures in implementing media legislation, and to gradually update the legal framework for broadcasting. The benchmarking system should also be used by the regulators, the Broadcasting Council and the Agency for Electronic Communications, in their licensing work.
3. The Broadcasting Council should organise more debates with the main stakeholders to ensure transparency of policy-making.
4. Before launching a tender for digital licences, the Broadcasting Council should co-operate with the Agency for Electronic Communications to organise a broad debate with all interested stakeholders on the regulatory model that would best fit the digital environment, especially the model of regulation for digital terrestrial broadcasting.

2.3 Public service broadcasting

5. MRT should develop mechanisms for efficient collection of the licence fee. The Government should support MRT in this endeavour through financial institutions such as the tax collecting authorities.
6. The MRT Council should order an independent audit of the financial flow in MRT and make the results generally available.

2.3 Commercial broadcasting

7. The Association of Private Electronic Media in Macedonia (APEMM) should make clear its strategy for developing the commercial broadcast sector.
8. Parliament should amend the Broadcasting Law to introduce legal provisions obliging the anti-monopoly regulator, the Commission for Protection of Competition (*Komisija za zastita na konkurencijata*), to enforce the regulation on concentration of media ownership. The anti-monopoly regulator should review cases of concentration in the broadcast sector and remedy the faults.
9. Parliament should amend the Broadcasting Law to ban politicians from owning broadcasters.
10. The Broadcasting Council should establish an independent body within the regulator to carry out a new people-metering measurement of audiences, thus providing a clearer picture of the broadcasting market. The body should be financed from a portion of the licence fee collected from viewers.

C. Main Findings of the Follow-up Monitoring

1. GENERAL BROADCASTING ENVIRONMENT

1.1 Key developments in legislation and policy

Over the past few years, broadcasting in Macedonia has undergone major changes in several key areas. In February 2005, a new Law on Electronic Communications was adopted.³ In November the same year, Parliament adopted a new Broadcasting Law.⁴ Communications academics, media experts and civil society representatives were involved in drafting the law, which was hailed by local and foreign media experts as bringing positive changes to the regulation of broadcast ownership, the editorial policy of public service broadcasting, and the status of the regulatory bodies.

The members of the Broadcasting Council, the Agency for Electronic Communications (AEK, *Agencija za elektronski komunikacii*) and the governing bodies of the public broadcaster were all appointed during 2006.⁵ In February 2007, Parliament amended the Broadcasting Law.⁶ The main changes were related to the management of MRT, namely the appointment of a two-member executive body instead of a single Chair.

A major policy development was the adoption of the new Strategy for the Development of Broadcasting after a lengthy and convoluted process. The Broadcasting Council had been working on this strategy since June 2006, consulting several expert teams including TAIEX, a European Commission (EC) programme, which offers expertise in the implementation of EU legislation. The strategy covers the broadcasting market, pluralism and diversity of TV programming, development of new technologies and digitalisation, and content piracy, one of the worst afflictions holding back the audiovisual market in Macedonia. A draft version of the strategy was published on the Council's website and opened up to public debate in September 2007. The regulator organised several debates on the Strategy with experts in the media, law and economy, as well as broadcasters, representatives of the civil society, MRT and the AEK.

The Strategy was criticised by various civil society groups and media experts for describing the situation of Macedonian broadcasting rather than defining a strategy to

³ Law on Electronic Communications, *Official Gazette of the Republic of Macedonia*, no. 13/05.

⁴ Law on Broadcasting Activity, *Official Gazette of the Republic of Macedonia*, no. 100/05. (Hereafter Broadcasting Law).

⁵ The members of the Broadcasting Council were appointed on 18 April 2006 (seven members) and on 23 May 2006 (two members). The members of the Macedonian Radio and Television (MRT) Council were appointed on 23 May 2006.

⁶ Law amending and appending the Law on Broadcasting Activity, *Official Gazette of the Republic of Macedonia*, no. 10/07.

build a solid broadcast environment. In the end, the regulator incorporated some concrete recommendations from media experts on copyrights, digitalisation and the Council's own institutional capacity. The Strategy was adopted by the regulator, but in January 2008 it was rejected by the Government, on the grounds that it clashed with the Government's overall policy on communications. In March 2008, disregarding this snub, the Broadcasting Council adopted an Action Plan with concrete steps for implementing the Strategy.

Parliament and the Broadcasting Council did not organise debates on the future of MRT, namely financial consolidation, modernisation and strengthening of MRT's human resources. Instead, several debates were organised by the Media Development Center (MDC, *Centar za razvoj na medijumite*), a non-governmental organisation. The most recent of these debates, addressing MRT's operation under the new broadcasting law, took place in June 2007.

Back in September 2005, Parliament adopted a National Strategy for the Development of the Information Society for 2005–2007. The main goal of the Strategy was to build a sustainable and inclusive information society through the co-operation of the public and private sectors, academics, and other stakeholders. The Strategy had seven pillars: infrastructure; e-business; e-government; e-education; e-health; e-citizens and regulation. It was supported by all the parties in Parliament, marking the first time that such a document gained comprehensive political backing. Along with the Strategy, the Government adopted an Action Plan which allocated responsibility for implementing the provisions of the Strategy to one State institution or another.

But the Government that took power after the 2006 parliamentary elections made no commitment to implementing this strategy.⁷ According to the AEK's preliminary estimations, only 20 to 30 per cent of the Action Plan has been implemented, mainly because the Government did not allocate sufficient funding.⁸ Even this limited achievement was due to the work of international organisations and donors.

The Strategy also proposed to set up an Agency for the Information Society, to be supervised by a council formed of representatives from all the ministries and civil society. The new Government scrapped this plan, arguing that it wanted to establish an IT Ministry instead. The opposition opposed this plan and continued to support the idea of an agency. When the Government failed to push legal provisions to establish the ministry through Parliament, it chose to create a Ministry of IT without portfolio.

⁷ The centre-right opposition Internal Macedonian Revolutionary Organisation – Democratic Party for Macedonian National Unity (VMRO-DPMNE, *Vnatrešna makedonska revolucionerna organizacija – Demokratska partija za makedonsko nacionalno edinstvo*) won the parliamentary elections in July 2006.

⁸ An assessment of the implementation of this plan is expected to be released by AEK in the near future. (Interview with Bardhyl Jashari, member of AEK and Executive Director of Metamorphosis, a Skopje-based foundation specialising in ICT, Skopje, 9 April 2008.)

In April 2007, the Ministry of Transport and Communications prepared a draft version of the National Strategy for Electronic Communications and Information Technology. The National Council for the Information Society, an advisory body intended to assess the implementation of the Strategy, is to be set up by the end of May 2008. It is not clear when Parliament will vote on the Strategy.

The international support of the Media Development Unit in the mission of the OSCE focused mostly on the transformation of the state broadcaster into a public service broadcaster, and on the implementation of the new Broadcasting Law. Monitoring the implementation of the law is being performed by a special working group under the MDC.

Ethical issues affecting the media continue to be marginalised. There has been scant interest in debates concerning professional standards for journalists. The principal exception is the Macedonian Institute for Media (*Makedonski institut za medijumi*), a non-governmental organisation specialising in the training of journalists and other media professionals, which in December 2006 organised a conference on professional journalism and development of media in Macedonia with a special focus on self-regulation. The conference conclusions underscored the need to improve compliance with the professional code of conduct by the journalists and to introduce mechanisms ensuring professional journalism.

There is still no platform for protecting the rights of employees in the media industry. The ZNM, the largest journalists' organisation, started to be more pro-active after a new leadership, including the renowned journalist and moderator Robert Popovski as ZNM Chair, took the helm in 2007. The other reason why ZNM has become more active is the resumption of foreign donations during the past two years. The ZNM now monitors issues affecting the work of journalists more closely than before; for example, it has campaigned against corruption among journalists and reacted more vigorously to incidents of hate speech.

Three new laws are now being prepared: a bill on broadcasting activity; a bill on electronic communications; and a bill on the transmission company Macedonian Broadcasting (MRD, *Makedonska Radiodifuzija*). The last of these envisages the transformation of MRD from a State company into a shareholding company, with a view to full privatisation in 2015.

1.2 EU legal provisions

The ownership system has been relaxed, albeit very precise ceilings for media concentration are still missing. Moreover, all restrictions on foreign investments in the field of broadcasting have been dropped. The 2005 Broadcasting Law has also introduced provisions on transparency of media ownership. These regulations followed European recommendations on rules on advertising, teleshopping and sponsorship.

Following the replacement of the system of concessions with licences, private radio and television stations have started to redefine their formats.⁹ All broadcasters, both public and commercial, are adapting their programme structure to comply with the regulations including provisions on European audiovisual works, works produced originally in the Macedonian language or the languages of other communities, and on vocal music of Macedonian or other languages.

⁹ Broadcasting Council, “Handbook for the formats of the radio and television programme services”, 30 October 2006.

Table 1. Overview of legal developments in Macedonia in 2005–2007

Law	MRT	Broadcasting Council	Private broadcasters
2005 Broadcasting Act	<p><i>Governing structures</i></p> <ul style="list-style-type: none"> – Changed the system of appointing the MRT Council, which is formed from representatives of civil society, with its Executive Director selected through open competition. (The Council and MRT’s Executive Director had been nominated and appointed by Parliament.) – Changed MRT management structure, which is composed of the MRT Council, the Management Board and the General Director. (It previously consisted of the Management Board, the Financial Board and the Executive Director.) – Reduced the Management Board from 11 to 7 members, to be elected by the MRT Council through a public contest. (Before, the Management Board was nominated and appointed by Parliament and MRT’s employees.) <p><i>Programming</i></p> <ul style="list-style-type: none"> – Obligated MTV to air one programme service in Macedonian language (MTV1) and one programme service in the languages of the country’s other non-majority communities (MTV2). – Imposed quotas for European programming. – Banned advertising on MTV between 5 p.m. and 9 p.m. – Banned political advertising. 	<p><i>Composition</i></p> <ul style="list-style-type: none"> – Reduced the mandates of the Broadcasting Council members from two to one. – Increased the ineligibility criteria for Council members. <p><i>Powers</i></p> <ul style="list-style-type: none"> – Increased the powers of the Broadcasting Council from mere “advisory” functions to broader competences covering licensing, monitoring, adoption of secondary legislation, sanctions, and participation in drafting legislation. <p><i>Transparency</i></p> <ul style="list-style-type: none"> – Obligated the Broadcasting Council to organise public meetings with all the stakeholders at least once in every three months to give them the opportunity to present their opinions on broadcasting-related issues. – Introduced provisions allowing applicants unsatisfied with the Council’s decisions to lodge lawsuits against the regulator. 	<p><i>Services</i></p> <ul style="list-style-type: none"> – Increased the minimum amount of daily broadcasting. <p><i>New sectors</i></p> <ul style="list-style-type: none"> – Introduced the concept of the non-profit broadcast sector. – Introduced the concept of regional broadcasting (in addition to broadcasting at local and national levels). – Replaced the system of concessions with broadcast licences. <p><i>Ownership</i></p> <ul style="list-style-type: none"> – Dropped all the restrictions on foreign investments in broadcasting. – Changed provisions on concentration of ownership, allowing a nationwide broadcaster to own 50 per cent in a second broadcasting company (from 25 per cent previously). – Defined media ownership concentration in cases of radio or TV founders who also own: <ul style="list-style-type: none"> • broadcast companies over the legally allowed number; • a publisher running a daily in the area covered by the broadcaster; • a news agency; • advertising companies, market and public opinion research companies, broadcast distributors, film producers, or telecoms.
2007 Amended Broadcasting Act	<p><i>Governing structures</i></p> <ul style="list-style-type: none"> – Changed the Executive Director position from a single Chair into an executive team comprising two top executives and their deputies. – Allowed foreigners to be appointed executives of MRT.¹⁰ 		

¹⁰ This provision was later struck down by the Constitutional Court. (See Section 3.1 PSB legislation and policy.)

1.3 Broadcasting market

The electronic media market consists of 114 broadcasters, 52 TV broadcasters and 62 radio stations. The public stations now comprise MRT's three TV channels and five radio channels.¹¹ The commercial sector comprises: eight nationwide stations (five TV stations and three radio stations); 27 operators with regional coverage (11 TV and 16 radio stations); and 79 local broadcasters (36 TV and 43 radio stations). The cable market totals 118 operators, which are obliged by law to notify the Agency for Electronic Communications about their operations. Then they have to register their programme packages with the Broadcasting Council. Only 53 of them have done so. The Broadcasting Council has ordered the remainder to cease operations.¹²

Competition at the national level is fierce. Commercial stations dominate, controlling more than 95 per cent of the advertising market (A1 TV, 51 per cent; Kanal 5, 21.6 per cent; and Sitel TV, 17.1 per cent). The three channels of Macedonian Television (MTV, *Makedonska televizija*) have only a combined 0.9 per cent share of the market. Commercial nationwide stations also enjoy leading positions in terms of audience. (*See table 2*)

¹¹ In line with the Broadcasting Law, the Broadcasting Council decided that the 29 local public radio stations should be transformed into commercial broadcasters.

¹² "Izvestaj za rabotata na Sovetot za radiodifuzija na RM za periodot od 01.01.2007 do 31.12.2007 godina" (Report of the Broadcasting Council of the Republic of Macedonia from 1 January 2007 to 31 December 2007), Skopje, March 2008, available online (in Macedonian) at http://www.srd.org.mk/WBStorage/Files/IZVESTAJ_POSLEDEN.doc (accessed 24 April 2008), hereafter Broadcasting Council, Annual Report 2007.

Table 2. Audience share of the main TV channels in 2007

Channel	Audience share (as percentage)
A1	23.7
Sitel	12.3
MTV 1	9.4
Kanal 5	7.6
Telma	3.9
MTV 2	2.3
Alsat M	1.5
Satellite channels	23.2
Other channels	15.3

Source: SMMRI¹³

Most local radio and TV stations are barely surviving. They used to attract foreign donations, but as of 2002, donors stopped pumping cash into these stations, arguing that the aid had not improved their situation. Those outlets operating in small, economically underdeveloped places face the harshest conditions.

2. REGULATION AND LICENSING OF THE TELEVISION SECTOR

2.1 Regulatory authorities and framework

Under the 2005 Broadcasting Act, the Broadcasting Council, which is established as an independent body, gained greater powers, especially in granting and revoking broadcast licences, implementing legislation, and adopting strategies and policies.

The main entities with responsibilities in the field of broadcasting are the Broadcasting Council, the AEK, the Ministry of Transport and Communications, and the Ministry of Culture. The Ministry of Transport and Communications is responsible for the construction, maintenance and use of the networks and means of broadcasting and transmission. The AEK issues permissions for using the frequencies and supervises how they are used. The supervision of the implementation of the provisions on respecting

¹³ Strategic Marketing and Media Research (SMMRI), "Programski potrebi na televiziskata publika vo Republika Makedonija" (Programme needs of television audiences in the Republic of Macedonia), June 2007.

copyrights and related rights was transferred in 2007 from the Ministry of Culture to the State Market Inspectorate under the Ministry of Economy. Provisions on the use of the Macedonian language in broadcasting are implemented by the Ministry of Culture.¹⁴

A key role belongs to the Broadcasting Council, defined as “an independent non-profit regulatory body, with public competences and authority in the field of broadcasting activity.” Its mission is to ensure “the freedom and pluralism of expression, existence of diverse, independent and autonomous media, economic and technological development of broadcasting activity, and protection of the interests of citizens in broadcasting.”¹⁵

Unlike before 2005, when they could be re-appointed, the Council’s nine members can now only serve one term. One of the Council’s vice-presidents and one of its members are Albanians, and one member is Bosnian. The tenure of the Council members is six years.¹⁶ They are appointed by Parliament, but are nominated by:

- the Inter-University Conference, a body comprising all State universities in Macedonia (three candidates);
- the Committee of Elections and Appointments of the Assembly of the Republic of Macedonia (three candidates);
- the ZNM (two candidates);
- the Macedonian Academy of Arts and Sciences (one candidate).¹⁷

The mandates are staggered. In the first constituency of the Broadcasting Council, three members are chosen for two years, three for four years and the remainder for six years.

Parliament can no longer dismiss the Broadcasting Council members directly, but only at the request of the regulator itself, when a quorum of members agrees to ask Parliament to take this step. This dilution of Parliament’s power is considered to be a positive move towards increasing the regulator’s independence. More ineligibility criteria were added with the 2005 Broadcasting Law to the ineligibility conditions stipulated by the old legislation.¹⁸ Persons working in broadcasting-related sectors such as advertising, electronic communications, production and the sale of broadcasting equipment have been barred from Council membership. At the same time, persons whose relatives own shares or sit on the management of broadcasters, and persons

¹⁴ Broadcasting Law, Arts. 164–165.

¹⁵ Broadcasting Law, Art. 21.

¹⁶ Broadcasting Law, Arts. 24, 28 and 30.

¹⁷ Broadcasting Law, Arts. 26–27.

¹⁸ OSI/Republic of Macedonia, p 1,179.

prohibited from performing any professional activity or duties for longer than six months cannot be appointed.¹⁹

The 2005 law gives the Council much broader powers. It can now:

- adopt and implement the Strategy for the Development of Broadcasting;
- decide on the allocation, revocation and renewal of broadcast licences;
- co-ordinate the allocation and use of radio frequencies for broadcast in co-operation with the AEK;
- supervise the work of broadcasters and issue certificates to register radio and television programme services retransmitted via a public communications network;
- adopt decisions, rules, conclusions and recommendations for implementing legislation;
- take legal measures against broadcasters and cable operators that fail to fulfil their duties as laid down by law;
- participate in drafting relevant legislation, regulations and other acts;
- approve the list of major events of public interest;
- adopt and implement measures in accordance with the legislation;
- inform competent bodies on matters of protection of copyrights and related rights about suspected violations;
- review requests and complaints regarding radio and television programmes submitted by citizens;
- inform the public about its measures and decisions;
- initiate misdemeanour and criminal proceedings.²⁰

After the adoption of the 2005 Broadcasting Law, the Broadcasting Council introduced a Plan for Implementation of the Law. At the same time, it adopted a set of bylaws on issues such as:

- events of major importance for society,
- fair coverage of the general elections in 2006,
- the right to short reporting,

¹⁹ Broadcasting Law, Art. 25.

²⁰ Broadcasting Law, Art. 37.

- protection of cultural identity,
- list of formats for radio and TV stations,
- European audiovisual works,
- protection of youth by broadcasters,
- preservation and distribution of broadcast programmes,
- technical standards and parameters for work in broadcast studios,
- classification of radio and TV programmes.²¹

Transparency is addressed by allowing public access to the Council's work. Its decisions are published, and its sessions are open to the public except when it discusses confidential information.²² The Broadcasting Council is also obliged to publish in either print or electronic media, and on its website, information about open competitions for broadcast licences, the number of applicants in such tenders, and the decisions and minutes of its meetings. The Council must also inform the public about its work in the media at least once every three months. So far, the regulator has published such information only on its website.

According to the 2005 Broadcasting Law, the Council must organise public meetings with the main stakeholders at least once every three months in order to give them the opportunity to present their views and opinions on broadcasting-related issues.²³ Three such meetings have been organised so far. The first one focused on the reform of public radio stations, the second on rules for protecting younger viewers from programme content that could harm their development, and the third on broadcasting strategy. To increase transparency in the sector, the Broadcasting Council should organise more such debates. The Council continues to be accountable to Parliament, to which it must submit an annual report. If Parliament finds irregularities in the report, it can ask the Broadcasting Council to present a new financial report within 60 days.²⁴

²¹ These by-laws can be found on the Broadcasting Council's website (www.srd.org.mk, accessed 16 October 2007).

²² Broadcasting Law, Art. 33. The law does not, however, define what "confidential" information means. According to article 49 of the Rulebook of the Broadcasting Council, adopted on 19 June 2006, the Council defines confidential information as "data that are classified as state, military or business secret." (Rulebook of the Broadcasting Council and the Conclusion for amending the Rulebook No.02-1643/3, adopted on the 15th session the Broadcasting Council held on 19 June 2006, available online, in English, at <http://www.srd.org.mk/default-en.asp?ItemID=814684FAE9355D4D8AC4357EA8FF7E95>, accessed 16 October 2007). The rationale behind this provision was, among other things, to protect data on broadcasters that, if made public, could influence competition. In its current form, this provision fails to protect broadcasters.

²³ Broadcasting Law, Art. 33.

²⁴ Broadcasting Law, Art. 35.

The Council supervises the enforcement of the legal requirements and restrictions on programming, and the licence conditions.²⁵ The 2005 Broadcasting Law envisages several measures in case of breach of legal provisions and licence conditions.

Table 3. New sanction powers of the Broadcasting Council

Written warnings	Any violations of legal provisions, by-laws adopted by the Broadcasting Council, and licence conditions
Warnings that must be aired by the broadcaster.	Repeated violation of legal provisions by a broadcaster.
Temporary prohibition (from one to seven days) on broadcasting advertising and teleshopping.	Violations of provisions on programme standards, advertising, teleshopping and sponsorship.
Temporary prohibition on broadcasting for a period of up to three months.	<ul style="list-style-type: none"> • Repeated violations by a broadcaster after three previous sanctions. • Airing content that instigates the violent overthrow of the constitutional order of the country or to military aggression. • Airing content that incites national, racial or religious hatred and intolerance. • Airing pornographic content, excessive violence, or content that may seriously harm the physical, mental and moral development of children and young people.²⁶ • The broadcaster's failure to publish a report on its operations (including changes in ownership structure, management and governing bodies, in sources of financing, and statutory changes), at least in one daily newspaper and in its own programming.²⁷

Source: OSI research

In 2006, the Broadcasting Council issued 16 written warnings (eight to TV stations and eight to radio stations) and two written warnings with the request of being aired (both to TV stations). The former 16 written warnings were imposed for broadcasting programmes that did not comply with the licence conditions, for breaching programme principles, inciting national, religious and gender intolerance, for pornographic programmes, for breaching advertising limits, and for broadcasting programmes without copyrights. The latter two written warnings with a request to be

²⁵ Broadcasting Law, Art. 163.

²⁶ Broadcasting Law, Arts. 69–70.

²⁷ This obligation was never fulfilled by any broadcaster and the Broadcasting Council has never applied this sanction. The provision was crucial for ownership transparency, one of the most controversial issues in Macedonian broadcasting.

aired²⁸ were issued for the repeated broadcasting of pornographic content and a breach of advertising limits, respectively.²⁹ In 2007, the Broadcasting Council imposed 166 sanctions on private broadcasters and seven sanctions against MRT.³⁰

A hazardous development that could have reduced regulatory independence was the Government's plan to merge the two regulatory authorities, the Broadcasting Council and the AEK. This move was supposed to consolidate the broadcasting and electronic communications market,³¹ but some feared that it was really aimed at restoring political control. A new Electronic Communications bill, drafted in 2007, proposed merging the two bodies into a single entity, tentatively called the Agency for Electronic Communications and Broadcasting. The agency's five-member board would be nominated, and could be replaced, by the Parliamentary Commission for Appointments and Nominations. Under pressure from media organisations in Macedonia and recommendations from the EU to implement the existing legislation,³² the Government dropped this plan. Although the merger is likely to happen in the future, independent observers find it inappropriate because the two institutions were just established and have not yet had time to mature.³³

2.2 Licensing system

Under the 2005 Broadcasting Law, the Broadcasting Council is responsible for allocating, revoking and renewing broadcast licences.³⁴ Previously, these tasks were fulfilled by the Government, albeit at the Council's proposal. All the rules and procedures on licensing are stipulated in the Law. Thus, the Broadcasting Council

²⁸ Broadcasters are obliged by law to air this warning (Broadcasting Law, Art. 38). But the Broadcasting Council did not monitor to check whether the faulty broadcasters did so. The Broadcasting Council regularly publishes all the offences on its website.

²⁹ Report of Broadcasting Council of the Republic of Macedonia from 1 January 2006 to 31 December 2006. (hereafter Broadcasting Council 2006 Annual Report), available online (in English) at <http://www.srd.org.mk/?ItemID=F9F443A05EB69245AF39F200984AA8BB> (accessed 16 October 2007).

³⁰ Broadcasting Council, Annual Report 2007, *op. cit.*

³¹ Verce Georgievska, "Mediumite stravuvaat od noviot zakon za radiodifuzija" (Media are afraid of the new broadcasting law), *Utrinski vesnik*, 31 March 2007.

³² Commission of the European Communities, The Former Yugoslav Republic of Macedonia 2007, Progress Report accompanying the communication from the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges 2007–2008, COM (2007) 663 Final, Brussels, 6 November 2007, SEC(2007) 1432 (hereafter 2007 EU Annual Report Republic of Macedonia).

³³ Interview with Bardhyl Jashari, *op. cit.*

³⁴ Broadcasting Law, Art. 37.

must announce a public tender for licences.³⁵ They then make a decision based on the following criteria:

- the nature of the programme service;
- the generic and thematic diversity of programme contents;
- the percentage of total planned daily programming originally produced in the Macedonian language or in the languages of ethnic minorities;
- the ratio of programmes covering events and cases of relevance for the area covered by the broadcast programmes;
- the ratio of European audiovisual works and programmes promoting the development and preservation of the national culture;
- technical requirements for producing and transmitting programmes in compliance with the prescribed standards;
- available space and facilities;
- volume and structure of human resources;
- financial capacity;
- the planned contribution to the promotion of pluralism in broadcasting activity.³⁶

(The references to diversity and pluralism, and to European programming, were new in the 2005 Law.) After the Broadcasting Council has decided who shall receive a broadcast licence, the AEK issues a technical licence for the use of the frequency. The last step belongs to the Broadcasting Council, which grants a broadcast licence based on the certificate of registration issued by the AEK. Under the 2005 Broadcasting Law, applicants who are not satisfied with the Council's decision may challenge the decision by law.³⁷ Previously, they did not have this right.

The licensing system applies to all electronic media at national, regional and local levels. The 2005 Broadcasting Law changed the minimum amount of daily broadcasting that broadcasters must provide. At national level, they are obliged to broadcast at least 18 hours of daily radio programming and 12 hours of daily television programming. At regional level, radio stations must air at least 12 hours of daily programming, and television channels at least eight hours. Local radio stations must air

³⁵ Broadcasting Law, Art. 43.

³⁶ Broadcasting Law, Art. 51.

³⁷ Broadcasting Law, Arts 54–55.

a minimum of 10 hours of daily programming and local TV stations at least six hours.³⁸

The broadcast licence should include data on the licence holder, technical means of transmission, the serviced area, location of the technical means, deadlines for the launch of broadcasting, duration of the licence, etc. The licence is granted for nine years, cannot be transferred to a third party, and must be paid for by an annual fee.³⁹ The new legal provisions are implemented according to expectations. A total of 115 out of 123 private radio and television broadcasters responded to a call from the Broadcasting Council to turn in their concession titles in exchange for broadcast licences. The remaining eight broadcasters did not do that and as a result they are to see their concessions revoked.

The elimination of concessions in favour of broadcast licences is expected to reduce Government interference in broadcast regulation. The Broadcasting Council has become the sole body in charge of allocating, revoking and renewing broadcast licences. Under the previous law, at the proposal of the Broadcasting Council, the Government only offered broadcasters concessions for the use of frequencies, which was considered to be direct interference in broadcasting matters.

A total of 114 private radio and television broadcasters received broadcast licences. They comprise:

- 8 nationwide broadcasters (5 TV and 3 radio stations);
- 27 regional broadcasters (11 TV and 16 radio stations);⁴⁰
- 79 local broadcasters (36 TV and 43 radio stations).

The most serious problem is the implementation of the new legislation during the harmonisation between the “Transitional and final regulations”.⁴¹ For example, turning the concession titles into broadcast licences has proved to be difficult for the Council. The law obliges the regulator to complete this process within 18 months of the law coming into force.⁴² The Council’s April 2007 demand to revoke the concessions for 23 private radio and TV stations that had failed to pay the fee for using

³⁸ Broadcasting Law, Art. 72.

³⁹ Broadcasting Law, Arts. 56, 58 and 60.

⁴⁰ According to the Broadcasting Law (Art. 4), all these local radio and television stations airing on the territory of the City of Skopje have become regional broadcasters because the City of Skopje and its surroundings are considered a separate region.

⁴¹ The “transitional and final regulations” (Arts. 168–180) define the period for harmonisation of the Broadcasting Law as the period when new members of the Broadcasting Council, the MRT Council and the MRT Management Board are appointed, along with the station’s Executive Director and its Deputy Executive Director, the change of the concession agreements into licences, and the adoption of the national Strategy for the Development of Broadcasting.

⁴² Broadcasting Law, Art. 172.

their licences has not been resolved.⁴³ Instead, two months later, the regulator gave these stations broadcast licences.

In the cable television market, the registration of programme packages is now under way.⁴⁴ Of the 118 cable operators, only 53 registered their operations with the Broadcasting Council. Other requests were rejected mainly because they did not have the confirmation from the Ministry of Culture of compliance with copyrights and related rights.⁴⁵ Foreign investments in the cable networks are expected. The Bulgarian company CableTel, with U.S. capital, is taking over 13 cable operators in Skopje, and in the towns of Kumanovo, Veles and Tetovo. They are said to be negotiating for more acquisitions as part of a larger process of consolidation in the cable sector. Besides television, the company is planning to introduce other services such as broadband Internet and telephony. It also plans to buy into more operators.⁴⁶

According to various local media critics, instead of focusing on the implementation of new legislation, the Broadcasting Council had to waste its time fending off external pressures. Over the past two years, the regulator has adopted a set of by-laws and rulebooks, but has been slow to implement them. Over the past year, the Broadcasting Council has been more active in implementing the law and in monitoring the sector more efficiently.

Serious problems are expected to arise in the transition to digital broadcasting, which has already started. In February 2008, despite the lack of a legal or policy framework, the State wanted to announce a tender for the digital multiplexes that would carry broadcast programmes. The Slovenian telecom operator On.net is tipped as the favourite to gain control of three out of four multiplexes that are up for grabs in the first phase of transition. The fourth multiplex is expected to be reserved for MRD and would host the programmes of the public service broadcaster. The tender was postponed but is likely to be carried in June 2008. The AEK is working on a set of criteria for this tender. Civil society organisations such as the MDC argue that such an important process should be preceded by a broad debate with all interested

⁴³ On 19 February 2007, the Broadcasting Council requested that the Government revoke the concessions for these stations. On 27 April 2007, the Government informed the Council that they were delaying the decision. The Broadcasting Council dropped the request on 3 May 2007, arguing that as the licensing procedure was at the end, they have decided to grant broadcast licences to all those parties that met the legal requirements.

⁴⁴ According to the Broadcasting Law (Art. 109), cable TV operators must register the programme services as a whole package with the Broadcasting Council. They also must submit proof from the Ministry of Culture confirming compliance with copyrights and related rights.

⁴⁵ Broadcasting Law, Art. 109.

⁴⁶ Verce Georgievska, "Osum kabliski operatori formiraa konzorcium" (Eight cable operators form a consortium), *Utrinski vesnik*, 11 June 2007, available online (in Macedonian) at <http://www.utrinskivesnik.com.mk/> (accessed 11 April 2008).

stakeholders on the regulatory model that would best fit the digital environment, especially the model of regulation for digital terrestrial broadcasting.

3. REGULATION AND MANAGEMENT OF PUBLIC SERVICE TELEVISION BROADCASTING (PSB)

3.1 PSB legislation and policy

The 2005 Broadcasting Act brought some important changes for MRT, which is no longer regulated by a separate law.⁴⁷ MRT's management structure, which had consisted of the Board, the Financial Supervisory Board and the Executive Director, is now composed of the MRT Council, the Management Board and the General Director. Under the 2007 amendments, the General Director can be also a foreigner. Later that year, the Constitutional Court challenged the constitutional basis of this provision and found it unconstitutional, on the grounds that it was against the national interest to have foreigners appointed to manage public institutions.

MRT consists of three TV channels and four radio channels. MTV is required by the 2005 Broadcasting Act to air one TV service in the Macedonian language (MTV1) and one in the languages of the country's other non-majority communities (MTV2). Before, MTV2 used to air entertainment and sports programming. The third channel (MTV3), which used to broadcast minority programming, has been transformed into a Parliamentary channel airing programmes exclusively about the Macedonian Parliament. It began broadcasting in the new format in early 2005. Macedonian Radio (MR, *Makedonsko radio*) broadcasts two channels (MR1 and MR2) in the Macedonian language, and one channel (MR3) in the languages of the non-majority communities. MRT also broadcasts one radio and one television programme service (MKTV) via satellite.⁴⁸

The 2005 Broadcasting Law elaborated the editorial and professional standards required of MRT programmes. Accordingly, MRT is obliged to produce and broadcast programmes of public interest that reflect the social and cultural diversity of Macedonia and consist of informative, cultural, educational, and scientific and entertainment content. To fulfil this mission, MRT should:

- ensure the protection of the programmes from any kind of influence from the Government, political organisations, or economic circles;

⁴⁷ MRT used to be regulated according to the Law on the Establishment of the Public Enterprise Macedonian Radio-Television, *Official Gazette of the Republic of Macedonia*, no. 6/98, and the Law amending and appending the Law on the Establishment of the Public Enterprise Macedonian Radio-Television, *Official Gazette of the Republic of Macedonia*, no. 78/04. These provisions were incorporated in the 2005 Broadcasting Law, amended in 2007.

⁴⁸ Broadcasting Law, Art. 117.

- develop and plan the programme schedule in the interest of the entire public and produce and broadcast programmes for all segments of society without discrimination;
- ensure that the programmes reflect diverse ideas, nurture the cultural identity of the country's communities, respect cultural and religious differences and promote a culture of public dialogue with the aim of strengthening mutual understanding and tolerance for better relations between the communities in a multi-ethnic and multi-cultural environment;
- nurture, promote and develop all forms of national audiovisual works that contribute to the development of Macedonian culture as well as to the international affirmation of Macedonian cultural identity;
- nurture and develop the speech and language standards of all communities in the Republic of Macedonia;
- promote respect for fundamental human rights and freedoms, democratic values and institutions, for the privacy, dignity, reputation and honour of citizens;
- develop, plan and broadcast programmes, informative shows and news intended for deaf persons;
- provide free of charge balanced amounts of time during election campaigns for broadcasting programmes made by political parties, coalitions, and candidates running for general, local, and presidential elections, in accordance with the rules for media presentation;⁴⁹
- provide regional and local news coverage;
- create conditions for the use and development of modern technical and technological standards in producing and broadcasting programmes, and prepare a plan for digital transition in compliance with the national broadcasting strategy;
- safeguard and archive its own radio and TV recordings and documents as part of the audiovisual heritage of the Republic of Macedonia.⁵⁰

MRT is also obliged in the process of producing and broadcasting its programmes to “adhere to professional principles and to provide equal access to different interests in society, to commit for the freedom and pluralism of expression the public opinion, as

⁴⁹ The electoral rules are itemised in the Electoral Law, *Official Gazette of the Republic of Macedonia*, no. 40/06.

⁵⁰ Broadcasting Law, Art. 121.

well as to prevent any kind of racial, religious, national, ethnic and other kind of intolerance”⁵¹.

The 2005 Law states for the first time that MTV1 and MTV2 should each carry European audiovisual works on at least 60 per cent of the total annual broadcasting time, not including news, sports events, games, advertising and teletext. Between 6 p.m. and 10 p.m., at least 40 per cent of MTV programmes (calculated annually) must have been produced in the Macedonian language or in the languages of the non-majority communities. This mandatory minimum falls to 30 per cent for daytime programmes. All channels of Macedonian Radio are obliged to broadcast at least 40 per cent of daily programming originally produced in the Macedonian language or in the languages of the non-majority communities, and at least 45 per cent of vocal-musical compositions in the Macedonian language or the languages of the ethnic communities.⁵²

Programming restrictions on MTV include prohibition of: programmes that may have dangerous implications for the constitutional order; programmes that contain calls for belligerent aggression or incite national, ethnic, religious or gender hatred and intolerance; content that could harm the development of children and young people; and violations of provisions on teleshopping, sponsorship, and broadcasting of lotteries.⁵³ With the 2005 Broadcasting Law, the legal provisions on advertising became more restrictive. On TV, advertising is not allowed after 5 p.m. On radio, advertising between 9 a.m. and 2 p.m. is forbidden except during live coverage of full sport matches, cultural or major events as specified in the law.⁵⁴

At MRT, digitalisation is still in an embryonic state. There is no budget to develop new media technologies and services, primarily due to the continuing financial crisis. In the framework of the national Strategy for the Development of Broadcasting, a special expert group on digitalisation, comprising professors of electro-technical studies and experts in electronic communications, was formed in March 2007.⁵⁵ In March 2008, the Broadcasting Council established a national advisory body for digitalisation, with a remit including MRT. It has held only one meeting. Its responsibilities and function are still unclear.

⁵¹ Broadcasting Law, Art. 122.

⁵² Broadcasting Law, Arts. 123–124.

⁵³ Broadcasting Law, Arts. 69–70.

⁵⁴ Broadcasting Law, Art. 91.

⁵⁵ Plans for the implementation of digital broadcasting are part of the Strategy for the Development of Broadcasting, which is published on the Broadcasting Council website.

3.2 PSB governance structure

The governance structure of MRT consists of the MRT Council, the Management Board and the MRT General Directors. The MRT Council protects the public interest in MRT programmes and oversees the broadcaster's operation. The Management Board handles the daily management of the station. The General Directors manage and represent MRT.

The Management Board consists of seven members with a five-year mandate and the right to be re-elected once. They are now elected by the MRT Council through a public contest.⁵⁶ Before, the Management Board was composed of 11 members who were appointed by Parliament from among the nominees by the Parliamentary Commission for Appointments and Nominations and the Council of the MRT Employees, a body representing the station's employees.

The Management Board cannot include:

- Members of Parliament,
- members of the Government,
- managers of State bodies, State administration bodies or "local self-government units" (meaning Macedonia's capital city, Skopje, and the country's 84 municipalities),
- directors or members of executive boards of public enterprises,
- people working for political parties,
- people with shares in broadcasting organisations, news agencies, advertising companies, market and public opinion research companies, film distribution companies, film production companies and telecom operators,
- members of the MRT Council and employees of MRT.⁵⁷

The Management Board has tasks such as managing all of the MRT's property, monitoring the work of MRT and the implementation of the annual financial plan, approving the operational plan and the annual accounts, and submitting the annual report.⁵⁸ The Management Board appoints the General Directors and their deputies.

The MRT Council consists of 23 members appointed for five years with the right to be re-elected once.⁵⁹ The following number of nominees are appointed by Parliament from the organisations listed below.

⁵⁶ Broadcasting Law, Art. 134.

⁵⁷ Broadcasting Law, Art. 136.

⁵⁸ Broadcasting Law, Art. 138.

⁵⁹ Broadcasting Law, Art. 127.

five nominees:

- the Parliamentary Commission for Appointments and Nominations.

two nominees:

- the Skopje-based Ss. Cyril and Methodius University,
- Tetovo State University,
- the ZNM.

one nominee:

- St. Clement of Ohrid University in Bitola,
- the University of South Eastern Europe in Tetovo,
- the Albanian Theatre,
- the Turkish Theatre,
- the Association of Local Self-Governments,
- the Olympic Committee of the Republic of Macedonia,
- the Chamber of Commerce of the Republic of Macedonia,
- the Macedonian Association for Information Technology,
- the Music Academy,
- the Association of Composers,
- the Faculty of Dramatic Arts,
- the Community of Disabled Persons Associations in Macedonia.

More or less the same ineligibility criteria for the Management Board also apply to the MRT Council. In assessing the different candidates, Parliament must take into account the need for fair and equitable representation of the citizens of all communities.⁶⁰ In the current composition, ten of the Council's 23 members are from the Albanian, Turkish, Vlach and Roma ethnic communities.

The MRT Council is tasked with protecting the public interest in MRT's programmes based on the principles of editorial independence and autonomy, adopting the station's programming policy, and proposing and ensuring implementation of the programming guidelines. When these guidelines are breached, the Council has to send a written warning to the station's management or ask the management to stop airing the programme in question. The Council is also responsible for: appointing the members

⁶⁰ Broadcasting Law, Art. 128.

of the Management Board; adopting the station's Statute; the station's annual balance sheet and annual report; acts regulating ethical and professional standards in MRT programmes; and the MRT development plan. The Council also adopts the annual budget and submits it to Parliament.⁶¹

Under the new structure, the MRT Council has been trying to influence the broadcaster, especially its editorial and programming policies. Given MRT's deep financial crisis and the 80-day strike by its employees in July 2006, the Council has had a difficult task since its appointment in May 2006. Six months later, the President of the Council, Goran Koevski, resigned saying that the strikers had no respect for the governing structures. Zoran Bojarovski, a journalist and teacher of journalism, was appointed Chair of the Council.⁶² However, there are still frictions between the Council and MRT. A rescue plan for MRT, prepared by MRT's own managers, has not been accepted by the MRT Council.⁶³

The General Director has a four-year mandate and may be re-elected once. The Director is appointed by the MRT Management Board through a public contest. Before 2005, MRT's Executive Director was nominated and appointed by Parliament, with the ruling coalition usually having decisive power. Under the 2005 Broadcasting Law, the Directors are tasked with representing MRT publicly, managing the station's business policy, proposing the MRT Development Programme, proposing and implementing the annual budget, implementing the editorial and business policy, organising and managing the operational processes, enforcing the decisions adopted by the MRT Council and MRT Management Board, and appointing and dismissing management staff.⁶⁴

Boris Stavrov was appointed MRT Director by the MRT Management Board on 13 November 2006. He has an MA in business administration and lectures at the American College in Skopje. Stavrov was coming from Makedonski Telekomunikacii, a national telecom operator, majority-owned by the Hungarian telecom provider Matáv. Stavrov was a member of the Board of Directors of T-Mobile, an affiliate of Makedonski Telekomunikacii.⁶⁵

The 2007 amendments changed the MRT management structure once again. Instead of the General Director, the law introduced a management team consisting of two

⁶¹ Broadcasting Law, Art. 133.

⁶² Verce Georgievska, "Pretsdatelot na Sovetot na MRT podnese ostavka" (The President of the MTR Council resigned), *Utrinski vesnik*, 7 November 2006, available online (in Macedonian) at <http://www.utrinskivesnik.com.mk/> (accessed 25 October 2007).

⁶³ Interview with Zoran Bojarovski, President of the MRT Council, 20 October 2007.

⁶⁴ Broadcasting Law, Art. 141.

⁶⁵ Verce Georgievska, "Menadzer od 'Telekom' doaga na celo na MRT" (Manager of the "Telecom" has become the head of MRT), *Utrinski vesnik*, 14 November 2006, available online (in Macedonian) at <http://www.utrinskivesnik.com.mk/> (accessed 1 April 2008).

executives and their deputies, equally responsible for the work of MRT. Another change is that it also allows foreigners to take over executive positions.⁶⁶ All other provisions regarding the appointment of the station's governing bodies and its tasks remained the same. The new provisions have been implemented and the station's current executive directors are Boris Stavrov and Slovenian national Janez Sajovic, who has worked on projects for the transformation of State broadcasting in Montenegro and Kosovo. He first joined MRTV as an OSCE consultant and was granted Macedonian citizenship a week before the Constitutional Court ruled that foreigners could not hold management positions in public companies.

In January 2008, Stavrov resigned on grounds of ill health. His place was taken in late March 2008 by Maja Mišovska, formerly a journalist with the weekly magazine *Puls* and the daily newspaper *Nova Makedonija*. She served as a member of the Supervisory Board of the pharmaceutical and chemical company Ohis. She was nominated by the Government for this position.

3.3 PSB funding

MRT is funded by the licence fee, advertising, sponsorship, donations, sales of programmes and services, and the State Budget.⁶⁷ The main source of financing should be the licence fee, levied on all households, hotels and motels, companies and office space owners, catering companies and other public facilities. It is calculated annually at 2.5 per cent of the average net monthly salary over the previous four-month period.⁶⁸ An amendment now pending in Parliament would reduce the fee to 1 per cent of the average net salary, as an incentive for people to pay.⁶⁹

The current system of calculating the licence fee was introduced by the 1997 Law on Broadcasting Activity. Until 2006, the average collection rate was between 60 and 70 per cent. In 2006, the collection of the fee plummeted to 6 per cent amidst confusion caused by changing the mode of collection. This decline almost led MRT to collapse, and prompted the station's then Executive Director to resign. The employees were not paid for months on end. Combined with growing politicisation at the station, this prompted the staff to go on strike. In order to cool off the situation, the Government provided a cash injection by transferring money from the Public Enterprise for Airport

⁶⁶ Law amending and appending the Law on Broadcasting (2007), Art. 4.

⁶⁷ Broadcasting Law, Art. 116.

⁶⁸ Broadcasting Law, Arts. 146–148.

⁶⁹ Draft Broadcasting Law, Art. 134.

Services (PEAS). The APEMM condemned this move as tantamount to Government sponsorship of MTV without addressing MRT's underlying problems.⁷⁰

The budgets of MTV1 and MTV2, as well as those of the radio channels MR1, MR2 and MR3 are secured from the licence fee. The costs for producing the programme of the station's Parliament channel are covered by Parliament.⁷¹

The licence fee income is divided as follows:

- 72 per cent to meet MRT's production and broadcasting costs;
- 4.5 per cent to meet MRT's technical and technological development;
- 16 per cent to meet the costs on maintenance and use of the public broadcasting network incurred by MRD;
- 3.5 per cent towards MRD's public broadcasting network development;
- 4 per cent for the Broadcasting Council to regulate and develop broadcasting in Macedonia.⁷²

The 2005 Broadcasting Law brought no significant change to the provisions on advertising on MRT. MTV continues to have a limit of 7 per cent or 4 minutes and 12 seconds per hour. This applies only to film, sports and entertainment programmes. MTV cannot carry advertising between 5 p.m. and 9 p.m.⁷³

Most worrying is MRT's negative balance between its income and spending due mostly to the collapse of licence fee funding. In the last six months of 2006, the collection rate sank to a mere 6 per cent. During that period, collection was transferred from the Electrical Power Company of Macedonia (EVN Macedonia) to MRT.⁷⁴ The Government pledged to provide a sum equivalent to 80 per cent of the total licence fee revenue for the last six months of 2006, from the State budget, so that MRT could

⁷⁰ Marjan Blazevski, "APEM protestira poradi MRTV" (APEMM protests against MRT), *Dnevnik*, 9 May 2007, available online (in Macedonian) at <http://www.dnevnik.com.mk/?itemID=42DB9B4796728F458AADE88E7862A5B3&arc=1> (accessed 1 April 2008).

⁷¹ Broadcasting Law, Art. 119.

⁷² Broadcasting Law, Art. 149.

⁷³ Broadcasting Law, Art. 51 and *The Bulletin of the Broadcasting Council of the Republic of Macedonia*, Vol. 1, 1998.

⁷⁴ Broadcasting Law, Art. 147.

pursue its reform strategy before it started to collect the licence fee itself.⁷⁵ However, payment of the first instalment was delayed by more than a year.⁷⁶

Making matters even worse, the licence fee has not even been collected since January 2007 because MRT claimed not to have a list of the households that should pay the tax. (Only a year before, almost every household in the country had received the licence fee bill.)⁷⁷ Thus, payment dropped dramatically in 2007 to a mere 0.5 per cent of households. In MRT's working plan for 2007, the station planned to cover only 9 per cent of its budget from the licence fee, although the fee had previously been considered the basic source of MRT's income. The exact figure of MRT's annual budget is unknown. As things stand today, MRT is so under-resourced that it can hardly meet its basic obligations.

Table 4. MRT budget in 2005–2006

Types of revenues	Share of total income (as percentage)	
	2005	2006
Broadcasting tax	86.9	16.5
Revenue from advertising	6.8	56.8
Revenue from sponsorship	0.1	0.5
Revenue from donations	0.0	2.2
Other revenue	6.2	24.0
Total	100.0	100.0

Source: Broadcasting Council⁷⁸

The main problem with financing MRT is the reluctance of management to try and collect the fee more efficiently because it is easier to wait for Government handouts. This tacit acceptance of a disastrous situation is systematically perpetuated by politicians who want to keep MRT financially dependent on the State. Others blame MRT for failing to collect the fee efficiently.

⁷⁵ Broadcasting Law, Art. 178.

⁷⁶ Verce Georgievska "Krizata vo MRT ke se sanira so pari od javnite pretprijatija" (The crisis at MRT will be overcome with the money from public enterprises), *Utrinski vesnik*, 3 February 2007, available online (in Macedonian) at <http://www.utrinski.com.mk/?ItemID=F118F374B9C87A46A7EBCF1BD25942F6> (accessed 1 April 2008).

⁷⁷ Interviews with media experts and activists, Skopje, 7–10 April 2008.

⁷⁸ Broadcasting Council, 2006 Annual Report and 2007 Annual Report.

3.4 Editorial standards

The 2005 Broadcasting Law obliges all broadcasters, both commercial and public service, to base their work on the principles of “objective and unbiased presentation of events, with equal treatment of diverse views and opinions, enabling the free creation of a public opinion on individual events and issues”, as well as on “autonomy, independence and accountability of broadcasters, editors, journalists and other actors involved in the creation of programmes and editorial policy”.⁷⁹ MRT has implemented the same principles in its Declaration on Professional and Ethical Principles for Programmes, a self-regulatory ethical code that was introduced in 2003. The Declaration states that “the information presented by the broadcaster should not be biased, while the facts and positions that are presented [in programmes] must be balanced and ethically proper”. The same declaration states that “the information and the other contents must be precise and properly cited”.⁸⁰

Responsibility for upholding these standards rests with the MRT Council. According to the Broadcasting Law, the Council “takes care of the realisation of the public interest in the programmes of MRT on the basis of the principles of editorial independence”.⁸¹ This stipulation also appears in the MRT Statute.⁸²

However, the implementation of these obligations has sometimes been flawed. For example, the documentary *Mojot zivot za Makedonija* (My life for Macedonia) was found by media experts and observers to have offended the office of the president, having branded President Branko Crvenkovski a “recycled communist” who had failed as a Prime Minister and managed to gain the presidency by making promises that he never fulfilled. It was a documentary about the former Minister of Interior Ljube Boskovski who is now standing trial at the International Criminal Tribunal for the former Yugoslavia in The Hague, indicted over his actions during the inter-ethnic conflict in 2001 in Macedonia. The documentary’s author was Zoran Krstevski, an associate producer with MRT. In a separate documentary about the ethnic group known in Macedonia as Mijaci, Albanians were characterised as criminals.⁸³

In both cases, MRT reacted under the pressure of media experts, NGOs and journalists. In the first case the MRT Council asked for MTV1’s editor-in-chief to respond. In the second case the Council publicly apologised to Albanians and the journalist who produced the documentary came close to losing his job.

⁷⁹ Broadcasting Law, Art. 68.

⁸⁰ MRT, “Declaration on Professional and Ethical Principles for Programmes”, 2003, Skopje, internal MRT document, available in the MRT archives.

⁸¹ Broadcasting Law, Art. 133.

⁸² Statute of the public enterprise Macedonian Radio Television, Art. 32. Available online (in Macedonian) at <http://www.mkrtv.org.mk> (accessed 25 October 2007).

⁸³ *Mojot zivot za Makedonija* was aired on 16 April 2007 and *Mijaci* on 5 June 2007, both on MTV1.

4. COMMERCIAL BROADCASTING

4.1 Regulation and management

Private radio and TV stations are organised and regulated at three levels: national, regional and local. The nationwide broadcasters reap most of the revenues. There have been no significant changes in their structure and programmes. A commercial broadcaster could be run by a legal entity or individual. Political parties, State institutions and administration bodies, public enterprises, local self-government units, public office holders and members of their families are barred from running broadcasting activities.

Broadcasters are obliged to have a logo continuously displayed during their television programmes. Radio stations must air their names at least once every hour of programming. They must broadcast programmes in the Macedonian language except for cases of programmes directed at a non-majority community. Foreign-language programmes must be translated into the Macedonian language, or into a language of the non-majority communities.

The Broadcasting Law obliges every broadcaster to have an editor-in-chief in charge of the programming and responsible for the content and the accuracy of all information broadcast during programmes. The name and the surname of the editor-in-chief and the programme editor must be displayed at least once a day during the programme. These obligations are imposed on all broadcasters.⁸⁴

4.2 Ownership and cross-ownership

The 2005 Broadcasting Law liberalised the rules on media ownership, for both local and foreign subjects. A nationwide broadcaster can have an ownership stake in one more broadcaster, but no more than 50 per cent. It can co-own only a regional broadcaster and maximum of two local broadcasters. A regional broadcaster can have a majority stake in only one more regional broadcaster and a maximum of two local broadcasters if the two regions where the stations operate do not share a common border. The 2005 Broadcasting Law did not bring any changes for local broadcasters. As in the past, a local broadcaster can own a majority stake in no more than two other local broadcasters.⁸⁵ However, local broadcasters are allowed to form networks and to broadcast a unified programme for several hours per day.

As of 2005, foreigners were given the green light to own broadcast companies under the same terms applied to Macedonian individuals and legal entities.⁸⁶ Before 2005,

⁸⁴ Broadcasting Law, Art. 141.

⁸⁵ Broadcasting Law, Arts. 82–84.

⁸⁶ Broadcasting Law, Art. 14.

foreigners could co-found a broadcasting company and own a maximum 25 per cent of its capital share. Currently, no foreign companies operate in the Macedonian broadcast media. The sole foreign investment is in cable television operators. Foreign investment in general is still slow in the Republic of Macedonia for a range of economic, political and legal reasons. It is particularly slow in the media market because of a dearth of accurate data, due to an inadequate system of people-metering. Research companies do not want to carry out a people-meter measurement based on a larger viewer sample because this is costly and does not pay off in such a small market. A parallel system put in place, for example, by the regulator could help to yield more accurate data that would bring more competition to the advertising market and at the same time attract foreign broadcasters.

In a chapter on the protection of pluralism, diversity and transparency, the 2005 Broadcasting Law defines illegal media cross-ownership as occurring when the “founders” of a radio or TV station:

- own more than the maximum legal number of broadcast companies;
- own a publishing company that publishes a daily newspaper which is distributed in the area covered by the broadcast radio and/or television programmes of the station they want to buy into;
- own a news agency;
- own advertising companies, market and public opinion research companies, audiovisual distributors, film production companies, or telecommunication providers;
- are “related persons”.⁸⁷

Illegal media concentration is monitored by the Broadcasting Council, which is obliged to give the owners in question a period of three months to bring their operations into line with the law. If the broadcaster fails to act, the Broadcasting Council should implement the procedure for revoking their licence.⁸⁸

⁸⁷ The term “related persons” is defined as the following: family members (parents, children, siblings, adoptive parents and adoptees); married and unmarried couples; members of the spouse’s immediate family; shareholders or holders of other rights on basis of which they participate in the management of the broadcaster, with at least 25 per cent of the voting rights; persons that hold a total share of ownership in two broadcasters or other rights on the basis of which they participate in the management of each of the voting rights; persons who, on the basis of a marketing or another business co-operation contract, generate over 30 per cent of the advertising, teleshopping or sponsorship income of a given broadcaster in a year; members of the managing or supervisory board of a given broadcaster; and persons related to the member of the managing and supervisory board of the organisation.

⁸⁸ Broadcasting Law, Art. 15.

However, this procedure is hard to implement. For example, although ownership of a TV station and a print media outlet is not allowed under the law, this provision is not complied with, and the Broadcasting Council does not react. Formally, the companies are registered under different names and there are no mechanisms to track down the real ownership and thus prove media concentration. An example is the owner of the private station A1 TV, who also owns the daily newspapers *Spic* and *Vreme*, and the weekly *Nedelno vreme* (now bankrupt). The Government should either ensure that the law is strictly implemented, or amend it to allow a full liberalisation of the market.⁸⁹

Another problem is that influential politicians, including party leaders, are the real owners of electronic outlets whose legal owners are listed in the Central Register as other people, close to those politicians. The Commission for Protection of Competition (*Komisija za zastita na konkurencijata*) is authorised to launch investigations and legal procedures, and may do so also at the request of citizens. In practice, it has done very little.

The Broadcasting Law obliges broadcasters to inform the Broadcasting Council about all changes in their ownership structure. Broadcasters are obliged to publish a report on their operations once a year, including changes in ownership structure, statutory changes, changes in the managing and governing bodies and sources of financing. The regulator has been reacting to such situations. It castigated the TV station Skaj Net for changing its ownership structure without informing the regulator, which then took legal action,⁹⁰ proposing to the Government to take away Skaj Net's licence. In the end, Skaj Net managed to keep its licence.

Restrictions concerning ownership concentration are related to cases when:

- the broadcast entity resulting from a merger gains a dominant position in the advertising market, i.e. its share of the total advertising time in radio and television exceeds 30 per cent;⁹¹
- the broadcast entity resulting from a merger gains a dominant position in the creation of public opinion, i.e. its share of the total audience exceeds 40 per cent;⁹²

⁸⁹ Erol Rizaov, "Novinarskata fabrika stana koncern" (Journalists' factory has become a cartel), *Utrinski vesnik*, 7 April 2007, available online (in Macedonian) at <http://www.utrinski.com.mk/?ItemID=1F83A863BE62FE4FBA6DD0B05732B7F4> (accessed 13 March 2008).

⁹⁰ Broadcasting Law, Art. 17 and Art. 166 (part for "Penalty provisions").

⁹¹ The advertising market encompasses the total TV advertising revenues during the year preceding the merger.

⁹² The total audience is calculated on the basis of indicators of audience measurements for the entire calendar year preceding the merger.

- mergers of regional and local broadcasters lead to a situation whereby the newly-created broadcasting company covers more than 50 per cent of the total population of the country.⁹³

No such cases have yet been registered.

4.3 The advertising market

The structure of the media industry has not changed significantly for many years. The main actors are the national commercial TV stations while a large number of local radio and TV stations struggle to survive. The situation is even worse in small towns with poor economies.

The largest slice of the advertising pie is shared by A1, Kanal 5 and Sitel, with MTV taking an insignificant portion of this revenue. The gross TV advertising spend in 2006 was MKD 7.4 billion (€121.1 million), which was 79.8 per cent of the total advertising spend in the country.⁹⁴

Table 5. Share of TV advertising revenues in gross figures in 2006

Channel	Market share (as percentage)
A1	51.0
Kanal 5	21.6
Sitel	17.1
Telma	7.7
Alsat M	0.9
Era Skopje	0.8
MTV1	0.8
MTV2	0.1

Source: Media & Advertising⁹⁵

⁹³ The coverage is calculated on the basis of indicators of the last population census in the Republic of Macedonia (Broadcasting Law, Art. 17).

⁹⁴ IP International Marketing Committee, *Television 2007. International Key Facts*, October 2007, p. 272.

⁹⁵ Media & Advertising, "Analytica", Skopje, 2007.

Most of the violations of legal provisions are related to advertising. According to the latest data from the Broadcasting Council, the stations that pull in most of the TV advertising money break the law by often airing advertisements during newscasts, programmes for children, or by broadcasting hidden advertising, and exceeding the advertising caps.⁹⁶

4.4 Editorial standards and independence

The Broadcasting Law regulates the issue of editorial independence from the Government and businesses. Every broadcaster must have an editor-in-chief, responsible for the contents and accuracy of all information broadcast in a given programme.⁹⁷ At the same time, journalists from all media are ensured the protection of their sources used in the programmes.⁹⁸

However, in reality, political neutrality and lack of bias in reporting are hard to preserve when the most influential TV stations are owned by leaders of political parties or other persons with political connections. The owner of Sitel is the silicon manufacturer Sileks, which is controlled by Ljubisav Ivanov, an MP and Chair of the Socialist Party. His son, Goran Ivanov, is the Director of the station.⁹⁹ The owner of Kanal 5 is Emil Stojmenov, son of Boris Stojmenov, former Minister of Finance.¹⁰⁰

Favourable coverage of a certain political party or circle is visible especially during election campaigns. This was the case in 2006, according to the monitoring by the Broadcasting Council, which imposed 90 sanctions for violation of the provisions on equal opportunities for presentation in the media during parliamentary elections. They were related to unbalanced coverage of the elections and broadcasting of paid political advertising. Commercial broadcasters were found at fault when they gave more time than allowed to a certain political party.¹⁰¹

⁹⁶ Database of the Broadcasting Council, Programming Unit, 2007.

⁹⁷ Broadcasting Law, Art. 84.

⁹⁸ Broadcasting Law, Art. 162.

⁹⁹ For more information on the ownership structure of TV stations in Macedonia see *Mediumskata sopstvenost i nejinoto vlijanie vrz nezavisnosta na mediumite i pluralizmot* (Media ownership and its influence on independence of media and pluralism), Makedonski Institut za mediumi (Macedonian Institute for Media), Skopje, 2004, pp. 63–68.

¹⁰⁰ Broadcasting Council, 2007 Annual Report.

¹⁰¹ Monitoring report by the Broadcasting Council on coverage of the election campaign of the 2006 parliamentary elections. Available at <http://srd.org.mk> (accessed 16 October 2007).

4.5 Regional and local broadcasting

The 2005 Broadcasting Law introduced the concept of regional broadcasting, defining it as “broadcasting activity pursued by a broadcaster that provides coverage, in terms of listeners and viewers, for a territory of several municipalities that form a natural geographic or demographic entity, with a population [ranging] from 150,000 to 400,000 citizens. The City of Skopje and its surroundings shall be considered as separate region.”¹⁰²

In accordance with the new regulations, from the existing stations that received broadcast licences, those airing in the Skopje area, a total of 27 stations (11 TV stations and 16 radio channels) received regional licences. Most of them are generalist channels geared towards entertainment. The radio stations mostly fill their schedules with music and talk shows. Local TV stations are defined by law as broadcasters covering areas of a single settlement and its surroundings with a total population of up to 150,000 citizens.¹⁰³ Concerning the number of local stations and their programmes, there have been no significant changes. Entertainment dominates their programming too. Local stations are struggling to survive as a result of the scarcity of financial resources and the underdeveloped local economy.

Although the 2005 Broadcasting Law also introduced the concept of non-profit broadcasting, this sector is practically non-existent. Only one licence has been awarded so far – to a student radio station. To develop this sector, the Broadcasting Council should adopt by-laws containing provisions to help boost non-profit broadcasters. The regulator should also discuss with civil society groups and assess the potential of the non-profit sector before doing this.

5. PROGRAMMING

5.1 Output

Programmes on MTV are not very different in quality from those on private stations, despite differences in generic output, as MTV airs significantly less entertainment and more educational programming than its commercial rivals.

¹⁰² Broadcasting Law, Art. 4.

¹⁰³ Broadcasting Law, Art. 4.

Table 6. Output of the largest nationwide TV stations in 2006 (as percentage)

Channel	Genre		
	Entertainment	Information and news	Educational programming
MTV1	47.4	27.1	25.5
A1	72.6	22.7	3.3
Sitel TV	74.0	22.3	3.6

Source: Database of the Broadcasting Council¹⁰⁴

On local TV stations, drama serials, mainly US or Latin American soap operas, dominated the schedules last year, while the remainder of the output focused on entertainment and music.¹⁰⁵

The public retains its preference for reality formats, newscasts, sports and drama serials (soap operas). The most viewed programme in the country in 2006 was the quiz show *Who Wants to be a Millionaire?*, aired on A1 TV, which scored an average audience rating of 29.3 per cent. The main newscast on A1 TV also achieved high average audience ratings (27.5 per cent). It was followed by the football World Cup (23.5 per cent), which was aired by MTV, and the Macedonian animated show *Ednooki* (One-eyed Man) on A1 TV with 22.1 per cent.¹⁰⁶

All nationwide TV stations are generalist. They give generous room to films. News programmes occupy a central place in their in-house production. Newscasts are aired several times a day, with primetime bulletins lasting up to one hour. News is the genre in which these media compete directly, both in content and in the number of engaged journalists, which is understandable, given that news is one of the favourite genres of the Macedonian audience. News is mostly watched on private TV stations. For example, 51.0 per cent of the nationwide audience watches the news on A1 every day, 33.0 per cent on Kanal 5, and 26.0 per cent on Sitel television. MTV1 newscasts are watched by 18.0 per cent of the audience, and MTV2 by 11.0 per cent.¹⁰⁷

Unfortunately, programming continues to be plagued by blatant breaches of copyright. Pirated broadcasts by cable networks, for example, seriously damage the State budget and indirectly the advertising market. Civil society groups such as the MDC try to institutionalise co-operation between various State bodies to fight piracy. The steps in

¹⁰⁴ Database of the Broadcasting Council, monitoring of the public and private radio and television stations, internal material, February 2007.

¹⁰⁵ Monitoring of radio and television programmes, Broadcasting Council, internal document, 2007.

¹⁰⁶ SMMRI, "Top 20 programmes in 2006", Skopje.

¹⁰⁷ SMMRI, "Programski potrebi na televiziskata publika vo Republika Makedonija" (Programme needs of television audiences in the Republic of Macedonia), June 2007.

their fight include implementing the legislation on piracy, educating the actors involved in combating piracy, co-ordinating the work with judges and courts, and creating a database of copyright holders.

5.2 General provisions and quotas

The Broadcasting Law follows all the European standards for media and the audiovisual *acquis communautaire*. The programme standards for European works, original works in Macedonian and other local languages, are elaborated in detail. National private broadcasters are obliged to air European audiovisual works on at least 51 per cent of their total annual broadcast programming. MRT must fill at least 60 per cent of their total broadcast output with such works.

Private broadcasters are obliged to dedicate at least 30 per cent of their daily broadcast time to programmes created in the Macedonian language or in the languages of other communities, and MRT at least 40 per cent. MRT complies with this obligation, and even exceeds it. MR programming on all three radio services is entirely original. In the private broadcasting sector, nationwide and regional radio and TV stations fulfil these quotas. Most of the local private stations fall far short, however, because they cannot afford to buy the programmes that would help them to achieve the required minimum.

All broadcasters are obliged to devote at least 30 per cent of their broadcasting to vocal-musical compositions in the Macedonian language or in the language of the ethnic communities. MRT fulfils this obligation especially on its radio services. Local private radio and TV stations largely comply with this quota.¹⁰⁸

In the category of special obligations on programming for all broadcasters, the Broadcasting Council defined in its decisions and regulations all the issues regarding the events of major importance, events with exclusive rights for broadcasting, protection of cultural identity, promotion of European audiovisual works, protection of youth, obligations for advertising and sponsoring.

For the first time, broadcasters now define their programming according to the formats put forward by the Broadcasting Council on 30 November 2006. TV stations on all levels broadcast predominantly programmes with a “generalist format of entertaining character”. Nationwide and regional radio stations employ predominantly “music/talk show” formats. Local radio stations employ “the talk show/music” format.¹⁰⁹ Programmes are modest and unvarying, especially on local broadcasters.

¹⁰⁸ Broadcasting Council, “Monitoring of the radio and televisions’ programmes”, 2007.

¹⁰⁹ Broadcasting Council, “Analysis of the programmes offered for the harmonisation of the concession titles with the broadcast licenses”, 2007.

5.3 Obligations on PSB

MTV has additional programme obligations. They include the obligation to provide regional and local coverage. Every day, MTV1 has a programme with such coverage and MR1 airs two such programmes. MR is also obliged to broadcast special programmes for neighbouring countries and Europe, as well as programmes for the citizens of Macedonia living in diaspora. Also, MRT must provide a programme service covering exclusively the activities of the Assembly of the Republic of Macedonia. The Parliamentary channel has a special legal status. It is organised by Parliament, and the monitoring of its work is an obligation of a special commission within Parliament.

MRT also has special obligations regarding language. It has to offer programmes not only in Macedonian, but also in the languages of the ethnic communities in the country. This principle was fully observed and the length of the programmes is appropriate for the size of the ethnic communities. Programmes for ethnic communities are broadcast on MTV2 and MR3. The latter is known as “Channel of the ethnic communities”. The programmes are broadcast in Albanian, Turkish, Serbian, Roma, Vlach and Bosnian.

6. CONCLUSIONS

Broadcasting in Macedonia has been undergoing significant changes and development. After the adoption of the Broadcasting Law in 2005, the process of regulatory and organisational restructuring began in earnest.

For the first time, besides the public and the commercial sector, the new legislation defines a third sector in broadcasting, which is the non-profit one. The first broadcast licence was granted to a non-profit broadcaster in July 2007, a student radio station run by the Ss. Cyril and Methodius University. Experts believe that this sector could play an important role in promoting the needs and interests of specific target groups, if the regulator provides continuing support. The Broadcasting Council is willing to grant more licences to non-profit broadcasters, but there have been no applications so far and this sector is for the moment non-existent, facing problems in defining its professional standards, criteria for work, and funding.

MRT has undergone structural and organisational changes. It reduced its services to two TV and four radio channels. In line with the Broadcasting Law, the Broadcasting Council decided that the 29 local public radio stations should be transformed into commercial broadcasters. The task of covering regional and local news has been taken over by MTV.

Commercial broadcasting has been liberalised, but there is still no foreign investment. Even though it is not yet properly regulated, the cable television market is the only

exception: it has seen the first foreign investment, by a party which plans further expansion.

The 2005 Broadcasting Law offers a good basis for the development of broadcasting in Macedonia. Implementation has, however, been slow and patchy. Breaches of the law often go unpunished, and the strong influence of political and business interests is still heavily present.

The public service broadcaster is in the most critical situation. All the reforms carried out thus far, chiefly on the institutional level, have proven fruitless. MRT is financially drained and this seriously affects the station's capacity to fulfil its basic functions. On top of this, continual changes in the station's management and editorial structure, combined with failed attempts to improve the programming, have negatively impacted on the station's transformation.

The main challenges for the commercial sector in the near future will be the quantitative and qualitative redefinition of their programming and digitalisation.

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Television across Europe:
Follow-up Reports 2008

Romania

By Manuela Preoteasa

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List of Abbreviations

AMP	Media Monitoring Agency, <i>Agenția de Monitorizare a Presei</i>
ANRCTI	National Authority for Communication and Information Technology, <i>Autoritatea Națională pentru Reglementare în Comunicații și Tehnologia Informației</i>
ARCA	Romanian Association for Audiovisual Communication, <i>Asociația Română de Comunicații Audiovizuale</i>
ARMA	Romanian Association for Audience Measuring, <i>Asociația Română pentru Măsurarea Audiențelor</i>
CA	<i>Board of Directors, Consiliul de Administrație</i>
CJI	Center for Independent Journalism, <i>Centrul pentru Jurnalism Independent</i>
CME	Central European Media Enterprises
CNA	National Audiovisual Council, <i>Consiliul Național al Audiovizualului</i>
CNSAS	National Council for the Study of the <i>Securitate</i> Files, <i>Consiliul Național pentru Studierea Arhivelor Securității</i>
DA	Justice and Truth Alliance, <i>Alianța Dreptate și Adevăr</i>
IGCTI	General Inspectorate for Communications and Information Technology, <i>Inspectoratul General pentru Comunicații și Tehnologia Informației</i>
MCTI	Ministry of Communications and Information Technology, <i>Ministerul Comunicațiilor și Tehnologiei Informației</i>
ORDA	Romanian Office for Copyright, <i>Oficiul Român pentru Drepturile de Autor</i>
OSCE	Organization for Security and Co-operation in Europe
PD	Democrat Party, <i>Partidul Democrat</i>
PLD	Liberal Democrat Party, <i>Partidul Liberal Democrat</i>
PNL	National Liberal Party, <i>Partidul Național Liberal</i>
PSD	Social Democratic Party, <i>Partidul Social Democrat</i>
RAAA	The Romanian Association of Advertising Agencies, <i>Asociația Română a Agențiilor de Publicitate</i>
SRR	Romanian Public Radio, <i>Societatea Română de Radiodifuziune</i>
SRTV	Romanian Television Company, <i>Societatea Română de Televiziune</i>
TVR	Romanian Television, <i>Televiziunea Română</i>

A. Executive Summary

Despite laudable intentions of reform following the end of Social Democrat rule in the 2004 elections, Romanian broadcasting has been faring worse and worse over recent years. It remains the playground of media moguls whose decisions are dictated by their political and business interests rather than by any endeavour to produce high-quality, independent and diverse television.

There are hundreds of investors in the audiovisual field, but the market continues to be controlled by four large players, while public service television continues to fail in fulfilling its mission as it awaits its perennially deferred restructuring.

The country's four broadcasting behemoths are Central European Media Enterprises (CME), based in Bermuda with an American founder; ProSiebenSat.1, a German broadcast group; the family of an allegedly former collaborator with Romania's *Securitate* (communist secret police); and an entrepreneur behind the most controversial bankruptcy of an open-end fund in the country.

As foreseen by the OSI's 2005 report,¹ the concentration of capital in the broadcast market has continued. The broadcast regulator and the anti-monopoly watchdog, the Competition Council (*Consiliul Concurenței*), lack the tools to prevent cross-ownership concentration as the law has not been amended to include provisions against cross-ownership. CME, founded by a former U.S. diplomat, Ronald S. Lauder, and ProSiebenSat.1 have significantly beefed up their established positions in Romania. CME increased its stake in the four channels licensed under Pro TV company, maintained its radio interests, bought a sports channel and entered publishing, printing houses, the cinema and entertainment markets. ProSiebenSat.1, which took over SBS Broadcasting in June 2007, enjoys a dominant position in the radio market where it holds 75 local licences out of a total of 660 radio licences in use.

The National Audiovisual Council (*Consiliul Național al Audiovizualului*, CNA), the industry's main regulator, persevered in forcing applicants for broadcast licences to disclose their ownership. Such was the case of Realitatea Media, holder of a few TV and radio licences, which in December 2005 was obliged by the regulator, acting on one of OSI's recommendations, to clarify the role of controversial businessman Sorin Ovidiu Vântu in its holding. Certain acquisitions in the radio industry were also subject to clarifications regarding ownership. This was the case with the Radio Mix network when it was taken over by SBS Broadcasting. However, the source of investments in commercial broadcasting remains unknown in most cases. Again, legislation still does not require the media to shed light on the source of their financing.

¹ "Romania", in Open Society Institute, *Television across Europe: regulation, policy and independence*, Budapest, 2005 (hereafter OSI/Romania).

Audience data are still unavailable to the public, with only paid subscribers to the people-measurement companies and the CNA having access to them. The newly adopted Audiovisual Code gathered in a single document all of the CNA's decisions for the sector. Monitoring the implementation of these provisions is part of the CNA's remit. However, the monitoring of compliance with licence conditions is still insufficient, especially with local broadcasters whose ratings are not measured and whose content is not monitored.

The CNA held public consultations before proposing and adopting important decisions. But the same level of transparency was not found in Parliament's work. In some cases of relevant legislation, Parliament ignored both the relevant broadcasting actors and the regulator, even when regulation was at the heart of the debate. There have been isolated cases of MPs trying to be transparent, but in general Parliament has buried good legal initiatives in the broadcasting sector. The bill on the reform of the public service broadcasters, which enjoyed significant public participation in the initial stage, got stuck in the Senate, which has repeatedly come under fierce critical scrutiny for its appalling lack of transparency. The Senate, for example, cancelled the legal process to introduce digitalisation despite the approaching deadline for analogue switch-off in 2012.

As it had done before, Parliament showed interest in reforming the public service broadcasters during the run-up to the autumn 2004 elections. But soon after elections, they lost their reforming zeal. On top of this, Parliament contributed to the further politicisation of public service broadcasting by inadequate legislation and the perpetuation of oversized public broadcasters, which have been struggling to finance their operations. Contrary to OSI's 2005 recommendations on the need for increased transparency around spectrum management, the administration of frequencies was put under direct Government control. In 2007, Parliament adopted legal provisions giving the Chamber of Deputies this responsibility, but the country's President vetoed the amendment, asking Parliament to re-examine the situation.

Commercial media outlets still rely on entertainment and tabloid news, totally ignoring their educational obligations. Emerging niche channels mostly cover news, sports and movies, and not yet education or culture. Public service television and radio focus significantly on the daily agenda in their news programme, ignoring in-depth reporting. Although they try to attract young viewers by changing the format of some programmes, the elderly are their staunchest viewers.

B. Recommendations

1. ORIGINAL RECOMMENDATIONS FROM THE 2005 REPORT²

Most of the recommendations from the previous OSI report remain valid. There have been attempts to reform the public service broadcaster, which took into account the OSI's recommendations, but in the end Parliament did not vote to amend legislation, dashing all the efforts in this respect.

1.1 Policy

<ol style="list-style-type: none"> 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 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. 	<p>None of the original recommendations on policy has been fulfilled. On the contrary, Parliament did not even consult the CNA before adopting legislation concerning its legal status and responsibilities.</p> <p>Those recommendations remain pertinent. In particular, Parliament should consult with the CNA and ministries before debating a bill on digitalisation.</p> <p>A strategy for digitalisation is now an urgent priority.</p>
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² OSI/Romania, pp. 1,305–1,307.

1.2 Regulatory authorities (CNA and IGCTI³)

<i>Media diversity and transparency</i>	
<p>4. The CNA should oblige applicants for broadcast licences to disclose their ownership, especially the identity of their shareholders.</p> <p>5. The CNA, in co-operation 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.</p> <p>6. The CNA should monitor transfers of broadcast licences, and movements of shares of companies owning such licences, to prevent unlawful concentration of ownership.</p> <p>7. The CNA should publish audience shares of all television stations every month, to strengthen the transparency of the broadcasting market.</p>	<p>The CNA has partly implemented the recommendation on forcing applicants for broadcasting licences to disclose their ownership. At the same time, the regulator has been monitoring the transfer of broadcast licences and movements of shares between broadcasters. However, the regulator has not fulfilled the recommendation on publishing the audience shares of TV stations.</p>
<i>Independence</i>	
<p>8. The Government should ensure the autonomy of the body administrating the frequency spectrum, the General Inspectorate for Communications and Information Technology (IGCTI), by changing the procedure of appointing its chair so that the Prime Minister no longer makes the appointment.</p>	<p>This recommendation has not been fulfilled. The IGCTI was dissolved, and management of the frequency spectrum transferred to the National Authority for Communication and Information Technology (ANRCTI). Politicians are now struggling for control over the ANRCTI.</p>
<i>Local television</i>	
<p>9. The CNA should monitor the ownership structures and sources of financing of local television stations.</p> <p>10. The CNA should monitor the content of the local television market to ensure compliance with their remit.</p>	<p>This recommendation has been fulfilled to a certain extent. The CNA published on its website data on ownership structures of broadcasters, based on the broadcasters' own reporting. A bill obliging the media to publish their sources of financing was initiated by the CNA, but it has not yet been adopted by Parliament.</p>

³ The spectrum management tasks have been taken over by the National Authority for Communication and Information Technology, (*Autoritatea Națională pentru Reglementare în Comunicații și Tehnologie Informației*, ANRCTI).

1.3 Public and private broadcasters

<p>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.</p>	<p>Broadcasters have made no combined efforts to establish a fund for the support of quality television programming. On the contrary, television on nationwide TV stations continues to be dominated by low-grade content.</p>
<p>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).⁴</p>	<p>Parliament has not initiated any legal measures to oblige broadcasters to publicise the names of former collaborators with the Securitate.</p>

⁴ 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 those of their employees who had collaborated with the *Securitate*.

1.4 Public service broadcasters (SRTV and SRR)

<i>Independence</i>	
<p>13. Parliament should take steps to amend the Law on the Romanian Television Company (SRTV) and the Romanian Public Radio (SRR) to ensure the independence and efficiency of public broadcasters.</p> <p>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.</p> <p>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 the SRR and SRTV.</p> <p>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.</p> <p>17. Parliament should initiate amendments to the Law on SRR and SRTV to forbid former collaborators with the communist secret police (the Securitate) from being employed in public service broadcasting.⁵</p>	<p>None of the recommendations on the independence of public service broadcasters has been fulfilled. They remain highly relevant. The public broadcasters continue to be at the mercy of Parliament, which can sack their entire management by rejecting its annual report.</p> <p>A reformist bill on public broadcasting, taking into account most of the recommendations (including separation of the positions of the SRTV's Council of Administration's President and Director General, involvement of the civil society in appointing the board members and criteria of professional competence) was prepared by a group of reformist MPs in 2006, but it has not been passed as the political will is still lacking. The bill was debated by representatives of the public service broadcasters and media NGOs and approved by the Chamber of Deputies in April 2006, but it never made it to the Senate agenda.</p> <p>The boards of the public service broadcasters continued to be selected on the same old mechanism that keeps both institutions captive to political will. Parliament did not introduce legal provisions ensuring all segments of society are represented in the boards of the public service broadcasters.</p>
<i>Auditing</i>	
<p>18. Parliament should adopt legislation to ensure an independent financial and editorial assessment of the SRR and SRTV.</p>	<p>Parliament has not adopted legal provisions to ensure an independent audit of the public service broadcasters. This recommendation remains pertinent.</p>
<p>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.</p>	<p>This recommendation was fulfilled. After a period of intense activity, however, civil society has almost given up organising debates on how the public service broadcaster fulfils its mission.</p>

5 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.

1.5 Private broadcasters

<i>Transparency</i>	
20. The CNA should oblige private broadcasters to reveal their sources of financing. ⁶	This recommendation has not been fulfilled. Civil society organised debates on the need to reveal the sources of financing broadcasters, but the regulator has not made any steps in this regard.
<i>Local broadcasters</i>	
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 co-operate 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.	This recommendation has not been fulfilled. Local broadcasters continued to be ignored and marginalised by both the regulator and the media community. At the same time, local broadcasters are not taken into account by the advertising industry and continue to struggle economically.

2. NEW RECOMMENDATIONS BASED ON THE 2008 REPORT

2.1 Regulatory authorities (CNA, ANRCTI)

Media diversity and transparency

1. The CNA should launch an investigation into cases of illegal ownership.
2. The CNA should initiate a legal proposal aimed at preventing cross-ownership between broadcasters and related fields such as telecommunications, advertising and print media.
3. Parliament should adopt a bill initiated by the CNA, which obliges broadcasters to make public their sources of financing.

⁶ 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.

Independence

4. The ANRCTI should be organised as an autonomous independent authority under the control of Parliament as a whole, not a single chamber of Parliament.

2.2 Public service broadcasters (SRTV and SRR)*Independence*

5. Parliament should change the Law on SRR and SRTV forbidding politicians from becoming Chairs of the public service broadcasters' board. The law should institute strict rules on conflict of interests for board members.
6. Article 14 of the Statute of SRTV Journalists, which restricts journalists' freedom in pursuing investigative stories or reporting in the public interest, should be eliminated.

2.3 Private broadcasters*National and local broadcasters*

7. The management of private TV stations and journalists should adopt together a Code of Ethics guaranteeing news journalists' independence from media owners.
8. The management of private broadcasters should invest in training their journalists to raise the standards of professionalism in news reporting.

C. Main Findings of the Follow-up Monitoring

1. GENERAL BROADCASTING ENVIRONMENT

1.1 Key developments in legislation and policy

The legal basis and the strength of the main broadcasting regulator have been much affected by the unexpected death of CNA president Ralu Filip in May 2007. After years during which the CNA had tried to build up its neutrality and credibility, the vacancy left by Filip's death triggered a new wave of political bickering before the elections for European Parliament held on 25 November 2007. (There were political pressures on the CNA even before Filip's disappearance, especially when six of the 11 CNA members ended their mandates in 2006.) (See section 2.1)

With different interest groups visibly determined to control the key institutional mechanisms, two reforming bills got stuck in Parliament. One aimed to reform public service broadcasting, while the second was for digitalisation. Both were abandoned after months of public consultations with stakeholders and non-governmental organisations (NGO).

As “the great challenge” for broadcasting in the coming years, as the CNA put it, the digital switch-over requires immediate “compulsory preparations”.⁷ In summer 2006, the CNA set up a working group of key stakeholders, including the industry and civil society, to prepare a bill amending the broadcasting law in order to lay the legal ground for digitalisation.⁸ The Commission produced a draft law which was then proposed in Parliament by the MPs Valentin Frâncu, Cătălin Micula and Ion Mihai Dumitrescu. Adopted by the Chamber of Deputies on 20 February 2007, this law set up principles for the transition to digitalisation, introduced a new category of licences (for content providers) and a set of conditions limiting the number of licences that a broadcasting company could hold. The law defined nationwide programmes as those reaching over 70 per cent and 60 per cent of the population for radio and television stations, respectively. Regional licences were defined as those covering one or more than one county. Local licences were defined as programmes covering a single local community. Licences to cover only the capital Bucharest were pegged as local.⁹

The anti-concentration provisions of the draft law were scrapped by the Senate Commission for Media, Culture and Arts, on the proposal of the senatorial Judicial Commission. They were then sent to the Government for adoption. The amendments

⁷ CNA, “Raport 2006” (Annual Activity report 2006), p. 8, available online (in Romanian) at http://www.cna.ro/activitate/rapanual/raport_cna_2006.pdf (accessed 10 October 2007).

⁸ Law on Audiovisual 504/2002 (Legea Audiovizualului), *Monitorul Oficial* 534, 22 July 2002 (hereafter Audiovisual Law).

⁹ Bill concerning the modification of the Audiovisual Law, registered at the Chamber of Deputies under no. 905, 27 November 2006, Art. 44.

were made to a draft put together by the Ministry of Communications and Information Technology (MCTI).¹⁰ Nobody saw that draft, however. Not even the CNA members were informed about the draft although it contained provisions on the regulator's work. "Digital switch-over will completely reconfigure the broadcasting map. Putting a political body in charge of drawing up anti-concentration rules is an unacceptable [act of] politicisation," said Ioana Avădani, executive director of the Center for Independent Journalism (*Centrul pentru Jurnalism Independent*, CJI) in Romania, a media NGO in Bucharest.¹¹

Moreover, the Senate Commission for Media, Culture and Arts, represented by Senators Adrian Păunescu, the commission's Chair, and Otilian Neagoe, introduced an additional provision increasing the tenure of CNA members from six to nine years, and reducing the president's tenure from six to three years. The Senators never explained the reasons behind their move, but according to industry sources who want to remain anonymous, fearing repercussions from the CNA, it was part of a deal between Păunescu, who wanted the CNA to let him produce TV shows despite his political affiliations, and some of the CNA's members who wanted longer terms. Păunescu became a permanent guest at a primetime talk show on Realitatea TV. Eventually, on 8 October 2007, criticism of these articles from civil society and the crass lack of interest in the digitalisation process prompted the Senate to reject the entire bill, bringing to nothing all efforts carried out for launching the complex process of digitalisation. Avădani commented: "It took more than a year and a half to bring all the stakeholders, the regulatory bodies, the industry and the media NGOs together at the same table agreeing on a way to start regulating the field. In the new context, digital switch-over seems impossible by the established deadline."¹²

Besides licensing, the bill contained other important provisions such as an increase from 20 per cent to 40 per cent in the shares that an investor could hold in a second broadcaster and the first regulations of the content aired during electoral campaigns.¹³ Another legal initiative of major importance, the bill on public service television and radio, had a similar fate. It was stuck endlessly in the Senate. (*See section 3.1*)

A major development for the entire media was the elimination of prison terms and penal fines for libel passed unexpectedly by the Parliament in 2006. However, the Constitutional Court reversed this decision on 18 January 2007. As the Court's verdict cannot be overruled, Parliament has been forced to maintain libel in the Criminal

¹⁰ Amendment by the Committee for Culture, Art and Mass-Media, the Senate, Art. 44(1), Bucharest, 11 September 2007.

¹¹ Interview with Ioana Avădani, Bucharest, 4 October 2007.

¹² *Ibid.*

¹³ OSI/Romania, *op. cit.*, p. 1,267.

Code.¹⁴ Miklós Haraszti, the Representative on Freedom of the Media at the Organisation for Security and Co-operation in Europe (OSCE), mentioned his concerns regarding this decision in the course of his periodic report to the OSCE Permanent Council, in March 2007.¹⁵

Despite journalists' protests, Parliament not only did nothing to scrap the prison terms, but paradoxically started to adopt provisions further restricting the freedom of journalists. This culminated in the adoption of jail terms of up to seven years for journalists broadcasting material that was intercepted or recorded without permission. These amendments to the Criminal Procedure Code were made in October 2007.¹⁶ The move followed a scandal involving the public service television that aired a video featuring the Minister of Agriculture, Decebal Traian Remeş, allegedly receiving a bribe (*See 3.2 PSB governance structure*). Media and human rights NGOs called on Parliament not to introduce these penalties against journalists.¹⁷ With the profession's clout, the penalties were dropped in February 2008.

1.2 EU legal provisions

A series of regulations gradually issued by the CNA were unified in the Audiovisual Code audiovisual content regulation, which was approved by the regulator in 2006.¹⁸ The Code contains rules on broadcast content aimed at "harmonising and updating the domestic legislation to the new text of the Television without Frontiers Directive".¹⁹ It introduced a set of new provisions on:

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- ¹⁴ International Research and Exchanges Board (IREX), *Media Sustainability Index (MSI)*, conclusions of a panel moderated by Cristian Ghinea, Bucharest, 18 April 2007 (available online at http://www.irex.org/programs/MSI_EUR/2006/romania.asp#2, accessed 29 November 2007).
- ¹⁵ Organization for Security and Co-operation in Europe (OSCE), Regular Report to the Permanent Council by the Representative on Freedom of the Media, Miklós Haraszti, 29 March 2007, p. 9, available online at http://www.osce.org/documents/rfm/2007/03/23842_en.pdf (accessed 19 December 2007).
- ¹⁶ D. Tăpălagă, "Închisoare pentru ziaristii care difuzează filme de tip Remeş" (Jail for journalists broadcasting such films as the one about Remeş), *HotNews.ro*, 25 October 2007, available online (in Romanian) at http://www.hotnews.ro/articol_87868-Inchisoare-pentru-ziaristii-care-difuzeaza-filme-de-tip-%27%27Remes%27%27.htm (accessed 21 January 2008).
- ¹⁷ The NGOs The Initiative for a Clean Justice (*Inițiativa pentru o Justiție Curată*), the Media Monitoring Agency (*Agenția de Monitorizare a Presei – AMP*), the Pro Democracy Association (*Asociația ProDemocrația*), and the CIJ, put out a public protest on 28 October 2007. The Association for the Defence of Human Rights in Romania – the Helsinki Committee (APADOR-CH) released their protest on 26 October 2007. The Initiative for a Clean Justice is a coalition of NGOs.
- ¹⁸ The CNA Decision no. 187/2006 (*Decizia nr. 187/2006 privind codul de reglementare a conținutului audiovizual*) (hereafter the Audiovisual Code).
- ¹⁹ CNA, Annual Activity report, 2006, *op. cit.*, p. 8.

- regulations on the use of the hidden camera, voice messages and mobile phone texts;
- sponsorship;
- cultural responsibilities of broadcasters;
- quotas on European and national productions;
- restrictions on the insertion of self-promotional video clips in advertising slots;
- apologetic presentation by broadcasters of crimes and abuses by totalitarian regimes, of authors of such deeds, as well as denigration of their victims.

The Audiovisual Code also imposes specific restrictions on advertising, such as airing the exact concentration of fruit in advertising for juices, etc. “We have very strict regulations on advertising, even tougher than in other EU countries, but we adopted them after consultation with the industry,” said Attila Gasparik, CNA’s vice-President.²⁰ There was a need to reinforce, for instance, regulations aimed at protecting children as audience studies commissioned by the CNA showed that TV consumption among children was significantly higher than in other European countries, according to Gasparik. On the other hand, the regulator softened certain restrictions after the industry agreed to take care of them through self-regulation, in accordance with European practice. For example, the CNA introduced rules on 23 May 2005 forbidding direct and indirect advertising of print media outlets during newscasts, sports and talk shows.²¹ Such provisions were eventually removed from the Audiovisual Code with the regulator hoping that the industry would deal with them through self-regulation.

In February 2006, the Government allowed free retransmission in Romania of programmes aired by broadcasters registered in other EU countries.²² This prompted some channels to circumvent Romanian regulations by registering outside the country. As a result, the broadcasting of violent and aggressive programmes not allowed by the Romanian Audiovisual Code makes its way to TV screens in the country. By registering in the U.K., for example, channels dedicated to children’s programming sometimes show more violence than a generalist channel headquartered in Romania. Such channels, including Cartoon Network, Fox Kids or Jetix, are accountable to foreign broadcast regulators. The Romanian regulator has warned its U.K. counterpart Ofcom about this practice, but they have not received any reaction because European legislation is not clear in this respect, according to Gasparik. The Romanian regulator

²⁰ Interview with Attila Gasparik, CNA vice-President, Bucharest, 14 August 2007.

²¹ CNA, Instruction of 23 May 2005, available at <http://www.cna.ro/comunicare/comunic/2005/c0523.html> (accessed 21 January 2008).

²² Government Emergency Ordinance 3/2006 amending the Law 544/2002, *Monitorul Oficial* 133, 13 February 2006, Art. 1 (Art. 72(2) in the amended law).

then complained to the broadcasting companies themselves, but has received only invitations to visit the broadcasters' studios abroad.²³

In spite of rejecting the digitalisation bill, the Government paradoxically decided in autumn 2007 that all TV receivers sold in Romania as of 1 January 2008 must be digitally ready, according to EU legislation on universal service and electronic communication networks and services.²⁴

1.3 Broadcasting market

Romanians trust television a lot, while trust in Government and Parliament has decreased.²⁵ Nevertheless, despite its huge credibility in polls, television has been losing ground. Overall, the broadcast industry has been faced with a serious slump in viewers. For the first time, TVR lost its lead in the ratings in the first three quarters of 2007 when Pro TV took the lead. In urban areas, TVR's first channel is placed third after Pro TV and Antena 1.²⁶

The main reasons behind this shift are the increase of the commercial stations' technical reach thanks to growing cable penetration in the countryside,²⁷ and a series of financial difficulties and management crises at TVR in summer 2007. As a result, TVR1 aired mostly repeats during the summer, which hit its ratings badly.

Cable coverage increased from 66.4 per cent in 2004 to 76.6 per cent in 2006. Satellite had a slight growth, from 3 per cent of total households in 2004 to 3.7 per cent in 2006. By 2006, just 18.5 per cent of households had only terrestrial analogue television.²⁸

Despite overtaking TVR, Pro TV also lost viewers in the first nine months of the year, which was a source of concern for the station's owners, CME.²⁹ The combined nationwide audience share of CME's three stations – Pro TV, Acasă TV and Pro Cinema – was down 2.4 percentage points on the year to 22.2 per cent in the three-

²³ Interview with Attila Gasparik, *op. cit.*

²⁴ I. Avădani, "Televizoarele din comerț, pregătite obligatoriu pentru televiziunea digitală" (TV sets, compulsorily ready for digital TV), *Avădani's blog*, posted on 6 October 2007, <http://avadani.hotnews.ro/index.php> (accessed on 29 November 2007).

²⁵ European Commission Mission, Standard Eurobarometer, TNS Opinions and Social, Bucharest, 11 July 2007, p. 8.

²⁶ TNS-AGB, data provided by Gabriela Stoica, Communications Director with CNA, 9 October 2007.

²⁷ According to data released at a news conference of Sweden's mobile phone holding Ericsson, 7 May 2007.

²⁸ The source of these data is Establishment Survey 2006 (TNS-CSOP and IMAS)

²⁹ CME, "Quarterly report for the quarterly period ended 30 September 2007", as filed with the Security and Exchange Commission (SEC), U.S.A., 1 November 2007, p. 52.

quarter period. With the popularity of South American *telenovelas* plummeting and other channels airing similar productions, women-oriented Acasă TV also saw its audience share sink by 3.1 per cent during the period. The whole market lost in the same period three percentage points. This was due to unusually warm weather, which prompted people to spend more time outdoors, and to the increasing popularity of other forms of entertainment.³⁰

Concerns about loss of viewers were also found at the public service broadcaster. “It is highly important to maintain the quality, but we have to pack the message in a commercial way, otherwise we risk becoming a niche channel,” read the Annual report of the Romanian Television Company (*Societatea Română de Televiziune*, SRTV).³¹ At the same time, niche channels such as all-news Realitatea TV and tabloid OTV have consolidated their positions.

Table 1. TV audiences³²

Channel	2005		2006		1 January – 30 September 2007	
	Rating	Audience share	Rating	Audience share	Rating	Audience share
Pro TV	2.7	15.7	2.6	15.6	2.2	14.2
TVR1	3.2	18.9	2.8	16.7	1.9	12.3
Antena 1	2.3	13.6	2.3	13.5	1.8	11.8
Acasă TV	1.4	8.1	1.3	7.7	1.1	4.7
TVR2	0.9	5.2	0.9	5.3	0.7	4.7
Prima TV	0.8	4.5	0.7	4.2	0.7	4.7
Realitatea TV	0.6	3.4	0.8	3.7	0.6	3.9
B1TV	0.2	1.2	0.3	1.4	0.2	1.4

Source: TNS-AGB, data provided by CNA and SRTV

³⁰ According to CME report, *op. cit.*, p. 52.

³¹ SRTV, Annual Activity report, 2006, p. 9.

³² Nationwide, all-day average, 2005–2007, as a percentage.

Table 2. Urban TV audiences³³

Channel	2005		2006		1 January – 30 September 2007	
	Rating	Audience share	Rating	Audience share	Rating	Audience share
Pro TV	3.0	17.5	3.0	17.5	2.5	15.6
Antena 1	2.4	13.7	2.3	13.6	1.9	12.2
TVR1	1.9	11.1	1.9	11.4	1.3	8.4
Acasă TV	1.8	10.1	1.5	8.9	1.1	7
Prima TV	0.9	5.1	0.8	4.7	0.8	5
Realitatea TV	0.8	4.4	0.8	4.7	0.7	4.7
TVR2	0.7	4	0.6	3.4	0.5	3.2
B1TV	0.3	1.6	0.3	1.8	0.3	1.7

Source: TNS-AGB, data provided by CNA (obtained on 9 October 2007)

2. REGULATION AND LICENSING OF THE TELEVISION SECTOR (NATIONAL, REGIONAL AND LOCAL BROADCASTERS)

2.1 Regulatory authorities and framework

The mandates of six of the 11 CNA members expired in 2006 and Parliament appointed new members. Five of these were nominated jointly by the Senate and the Chamber of Deputies and one by the Presidency. Parliament, however, postponed the appointments, blocking the activity of the CNA for three months.³⁴ This was the result of some politicians' will to change the appointment procedures and increase the number of members in a way that "would have jeopardised the independence of the Council", as it would have selected members for purely political reasons.³⁵ In the end, Parliament rejected the new procedures and appointed the new members.

Ralu Filip ran the CNA until his sudden death on 22 May 2007. He had been appointed in 2002 with a six-year mandate. Although the law did not allow for an

³³ All-day, 2005–2007, as a percentage.

³⁴ CNA, Annual Activity report, 2006, op. cit., p. 6.

³⁵ CNA, Annual Activity report, 2006, op. cit., p. 7.

interim position, Parliament decided to “test” Filip’s replacement by granting them a probationary position in the first instance. (According to the Audiovisual Law, the president of the CNA is appointed by Parliament at the proposal of the CNA members.)

Coincidentally, the regulator’s presidency became vacant shortly before the head of SRTV resigned. This was an opportunity for politicians to negotiate the two positions on a “one for you – one for me” principle. First, the opposition Social Democratic Party (PSD) tried to push Valentin Nicolau, controversial head of SRTV between 2002 and 2005,³⁶ for the vacancy at the CNA. He was appointed as a member of the CNA in June 2007, with PSD politicians hoping his promotion to President would soon follow. Instead, one week after his appointment, the presidency went to writer Răsvan Popescu, a CNA member since September 2000, and the preferred candidate of the governing National Liberal Party (PNL). Popescu worked as a journalist with the BBC and TVR between 1992 and 1998. After 1998, he worked as a Government spokesman and then advisor to the country’s Presidency.

In exchange, PSD executive secretary Alexandru Sassu was given the top position at SRTV. It was the first time in SRTV’s post-communist history that a politician had taken the helm. Sassu had the advantage of knowing the legislation well, as he had spent ten years on the Senate Commission for Media, Culture and Arts. The new heads of both the CNA and SRTV were appointed on an interim basis.

In 2007, ANRCTI took over responsibility for technical authorisation and management of the frequency spectrum from the IGCTI, which entered under the ANRCTI’s wing.³⁷ The IGCTI is an autonomous public institution fully financed by its own revenues and directly accountable to the Government.³⁸ The ANRCTI is one of 22 agencies under Government control.³⁹ But its status was intended to be changed in October 2007 when it was put under the control of the Chamber of Deputies. However, President Traian Băsescu vetoed the bill, changing ANRCTI’s status and referring the bill to the Constitutional Court, asking for the regulator to be put under the control of both chambers of Parliament. A verdict in this case is still expected. However, a national strategy for frequency allocation is still lacking despite repeated calls from the CNA for its adoption.⁴⁰

³⁶ OSI/Romania, *op. cit.*, pp. 1,264–1,274.

³⁷ The Government Emergency Ordinance no. 25/2007 concerning the establishment of certain measures for re-organizing the working body of the Government, *Monitorul Oficial* 270/2007, 23 April 2007.

³⁸ OSI/Romania, *op. cit.*, pp. 1,247–1,248.

³⁹ Government Emergency Ordinance 134/2006 concerning the establishment of the National Regulatory Authority for Communications and Information Technology, *Monitorul Oficial*, 1046/2006, 29 December 2006.

⁴⁰ Interview with Attila Gasparik, *op. cit.*

2.2 Licensing system

Over the past three years, a major development in broadcasting has been the issue of 62 local television licences and 53 local radio licences. This brought the total number of broadcasters in mid-2007 to 662 radio and 260 TV broadcasters, making Romania “the second largest broadcasting market in Central and Eastern Europe”.⁴¹

Valentin Nicolau, former President and Director General of SRTV and a CNA member for just a week, received a licence for Nemira FM, a radio channel focused on culture and science. Targeted at children, Radio Itsy-Bitsy was launched in 2005 by Nadia and Felix Tătaru, a couple working in the advertising industry. The Romanian Christian Orthodox Church, dominant in the country, received a licence for Radio Trinitas, the second religious channel in the country to Vocea Speranței (Voice of Hope) run by the Seventh-day Adventist Church.

Without any national licences up for grabs, the big players in broadcasting shopped around for local networks. Two such transactions have been concluded over the recent years. The first was the Radio Mix network. Its owner, the company Canet, controlled by the liberal politician Aristotel Căncescu, head of the County Council of Brașov, was purchased by two firms. The Scandinavian media giant, SBS Broadcasting, bought 20 per cent of the company, with the rest acquired by Media Office Services, controlled by Nora Marcovici, CEO of the Kiss FM radio network. She then ceded the stake to New Century Media Holding BV, apparently controlled by Gabor Benke, Chief Advisor to MTM SBS Television in Hungary. At the time of the transaction, SBS Broadcasting owned Prima TV and the Kiss FM and Star FM radio networks, which link 52 local stations across the country. None of the parties would reveal the price of the transaction. In June 2007, ProSiebenSat.1 Media entered the Romanian market when it bought the entire SBS Broadcasting Group in a deal worth €3.3 billion.

In a separate deal, Europa FM radio network bought the DEEA radio network.⁴² Europa FM is majority-owned by the French media conglomerate Lagardère, which also holds 20 per cent of Radio XXI, the leading commercial radio network in urban areas, with the remainder in the hands of a Czech company, Corsum Invest, represented by Michal Lobkowicz and Adam Blecha, the latter a vice-President of the Czech Lagardère Group.

Fotbal Club Steaua, a football club partly owned by controversial politician and businessman George Becali, asked the CNA for a licence to operate Becali TV. The regulator postponed the decision several times, most recently in September 2007. The CNA members expressed reservations regarding Becali’s programme plan. At the same time, the CNA’s Gasparik asked for the station’s ownership details. The CNA granted

⁴¹ CNA, “Statistici cu privire la licențe” (Statistics regarding licences), 29 June 2007, available online (in Romanian) at <http://www.cna.ro/licente/concurslic/statistica.jpg> (accessed on 17 October 2007).

⁴² CNA website, http://www.cna.ro/licente/concurslic/act_site.pdf (accessed 30 October 2007).

several new TV licences, mostly for niche channels such as all-news Antena 2, two music channels, the life-style channel Good Life, and the police documentary station Crime+.

In 2006, the CNA monitored 36 TV channels and a total of 8,823 TV programmes, accounting for 16,000 broadcast hours. It imposed a number of fines, most of them (19) for failure to protect children and breaching rules on sponsorship, advertising, teleshopping, correctly informing, and pluralism. The highest number of warnings (39) was issued for failure to inform correctly.⁴³

Run as an apartment-based TV studio, Oglinda TV (OTV) has seen its popularity skyrocket thanks to its abysmal tabloid programming, which includes long debates with interviewees making personal confessions or accusations often without evidence. Despite its overall low professional standards, the station is extremely attractive for a certain scandal-oriented audience. Owned by Dan Diaconescu, who hosts many of the channel's programmes, OTV has received the highest number of warnings, sanctions and penalties. These included an order to interrupt programming for three hours during primetime on 11 October 2007, with an obligation to air the warning. This decision was triggered by a talk show during which a child was asked on TV about his missing mother. That was against the Audiovisual Code, which does not allow TV stations to interview children under 14 about dramatic events or situations. In 2006, the station had to switch off its programmes once for three hours and twice for 10 minutes. It had also received 25 fines and 15 warnings. In October 2007, controversial businessman Sorin Ovidiu Vântu⁴⁴ was reported to be closing a deal to take over a majority stake in OTV. However, the transaction cannot be completed without the CNA's approval.⁴⁵

The second worst offender was Antena 1, which was penalised and warned mostly for breaching provisions on protection of children and human dignity. Few broadcasters contested CNA's sanctions in court and when they did, they won.

⁴³ CNA Annual report, *op. cit.*, p. 10.

⁴⁴ Vântu was involved in one of the largest financial scandals in the country, the bankruptcy of the National Investments Fund (FNI). He was indicted in several lawsuits under accusations of fraud. Most of the charges have been dropped due to the length of the trials.

⁴⁵ E. Şercan, "Vântu cumpără OTV" (Vântu buys OTV), *Evenimentul Zilei*, 26 October 2007, available online (in Romanian) at <http://www.evz.ro/article.php?artid=328155> (accessed 31 October 2007).

3. REGULATION AND MANAGEMENT OF PUBLIC SERVICE TELEVISION BROADCASTING (PSB)

3.1 PSB legislation and policy

TVR continued to be at the mercy of Parliament, which has the authority to sack the station's entire management by rejecting its annual report.⁴⁶ Over the past three years, two Boards of Directors (*Consiliul de Administrație, CA*) were dismissed by Parliament in this way. In both cases, the President-Directors General (Nicolau and Tudor Giurgiu) resigned to avoid being sacked. In early 2005, a parliamentary commission was set up to investigate public service radio and television, following accusations of censorship by a group of employees from both the SRR and SRTV, targeting Dragoș Șeuleanu and Valentin Nicolau (then the heads of SRR and SRTV, respectively). The public hearings were lengthy, with MPs examining the finances of both institutions. They criticised the broadcasters, asking the governmental National Anti-Corruption Department to look into the matter. According to the MPs' final report, neither SRTV nor SRR fulfilled its public service mandate, often defaulting on the obligation to ensure political and social pluralism, the free expression of ideas and opinions, the free delivery of information and impartially informing the public.⁴⁷

The report revealed four areas where public service obligations were breached:

- distortion of public service obligations,
- faults in the managerial and institutional performance,
- severe infringements of the law such as unreasonable spending of public money, followed by no sanctions against those responsible,
- infringements of the Audiovisual Law and the Law on SRR and SRTV⁴⁸ by enforcing them arbitrarily.

Contrary to its public service mission, SRTV aired sensationalist news in primetime programmes, promoted low diversity of political points of view in favour of highly placed politicians, manipulated the news programmes in order to avoid Government criticism, hosted tedious debates during the electoral campaigns, lacked a critical stance

⁴⁶ OSI/Romania, *op. cit.*, p. 1,257.

⁴⁷ Report of the Parliamentary Commission of investigation on SRR and SRTV activity, voted on 12 May 2005, Bucharest, available online (in Romanian) at http://www.cdep.ro/comisii/ancheta_tvrr-srr/pdf/2005/rd_0520.pdf, (accessed on 5 October 2007), p. 69, (hereafter Parliamentary Report on SRR and SRTV).

⁴⁸ Law on SRR and SRTV no. 41/1994, republished (Legea Societății Române de Radiodifuziune și a Societății Române de Televiziune), *Monitorul Oficial*, 153/1994, 18 June 1994.

towards the ruling parties, and misinformed the viewers by omitting events and topics that would have harmed the image of the public authorities.⁴⁹

The head of SRTV, Valentin Nicolau, stated during parliamentary hearings that he always tried to be a screen against political pressures. When he opposed them, the pressures were redirected towards lower management and even the newsroom. SRR's former head Dragoş Şeuleanu admitted that to a certain extent it became normal to receive phone calls from politicians with suggestions on what to broadcast. The parliamentary report also criticised "the anticipatory obedience of certain journalists, producers, editors-in-chief and department directors".⁵⁰ The report concluded that the station's objectivity and neutrality were vitiated. However, the parliamentary investigation did not bring any judicial outcome or audit. Instead, it had a tremendous psychological impact, prompting several managers to resign, including the station's Programme Director Titi Dincă and the News Director Lucian Sârb. Their quitting followed the resignation of the station head himself – who tried, however, to keep his seat until the last moment.

Knowing very well how the Romanian political system works, Nicolau anticipated that a highly reformist bill on public broadcasting would never pass. On 12 May 2005, when the parliamentary report was released, Nicolau said: "As for changing Law 41/1994 on SRR and SRTV, have you ever heard of a ruling party politician really wanting it? They will postpone it again and again until fate puts them back in opposition. Only then they will become the defenders of public television's independence."⁵¹

Nicolau's predictions came more or less true. The initiators of public broadcasting reform, Raluca Turcan, Valentin Iliescu and Cristian Rădulescu, were gradually kicked out from the ruling Justice and Truth Alliance (*Dreptate și Adevăr*, DA), which split in March 2007 into three separate entities: the National Liberal Party (*Partidul Național Liberal*, PNL), headed by the country's Prime Minister Călin Popescu-Tăriceanu; the Liberal Democrat Party (PLD); and the Democratic Party (PD).

"The planned postponement of a new regulatory framework still put those institutions under suspicions of politicisation, which will be a major weakness during the electoral campaigns," said Raluca Turcan from PLD, former President of the Commission for Culture, Art and Media in the Chamber of Deputies.⁵² Romania is to host local and national elections in 2008 and presidential elections in 2009.

⁴⁹ Parliamentary Report on SRR and SRTV, *op. cit.*, pp. 69–72.

⁵⁰ *Ibid.*

⁵¹ "Declarația lui Valentin Nicolau referitoare la antepunerea comisiei de anchetă" (Valentin Nicolau's statement concerning the ante-pronouncing of the investigation commission), news release, Bucharest, 12 May 2005.

⁵² Interview with Raluca Turcan, Bucharest, 25 September 2007.

3.2 PSB governance structure

The boards of SRR and SRTV managers (appointed in two rounds, in 2005 and 2007) continued to be selected on the same old mechanism that keeps both institutions captive to the political will. After the appointment of the boards in the autumn of 2005, the stations gradually organised contests to fill the key executive positions in both radio and TV broadcasters. Some journalists renowned for their professionalism and credibility were selected. They included Dana Deac, who took over the TVR1 channel, and Rodica Culcer, who was appointed to run TVR's News Department.

TVR's President-Director General between autumn 2005 and summer 2007 was Tudor Giurgiu, a film director. Giurgiu started to re-organise SRTV a few months after his appointment, which was too late, as he later admitted. Shortly after he dismissed SRTV's Financial Director, Sabina Petre, a media campaign against Giurgiu was launched by *Jurnalul Național*, a daily newspaper belonging to a media group where Petre and her former boss Nicolau went to work after they left TVR. The final blow to Giurgiu, however, came from inside. The station's financial department did not secure the funds that SRTV needed to pay for the broadcasting rights of retransmission of European Champions' League football matches. This provoked public outrage against Giurgiu. The critics focused on SRTV's financial difficulties, which furnished politicians with a perfect excuse to sack him. After losing the support of board members, Giurgiu resigned instead of waiting to be dismissed by means of rejecting his annual report. He said:

Zero moment came once I received the memo of the [SRTV's trade] unions, with a recommendation on behalf of the President of the Senate, Mr. Nicolae Văcăroiu [PSD]: 'Let's be careful with the co-operation with the unions.' It became obvious to me that they tried to get rid of me. The PSD had anyway the majority on the CA [board], [and] the representatives of the employees were in the same boat, so I had the feeling of a dead end.⁵³

Giurgiu initially supported SRTV News Director, Rodica Culcer. When political controversies worsened, especially in the highly sensitive period prior to the referendum on sacking the country's President Traian Băsescu in May 2007, Culcer and Giurgiu went to war. On 4 March 2007, Giurgiu announced at a news conference that he was going to fire Culcer. He could do that only by giving her a low mark for her regular work evaluation. Her previous mark was 9.15 on a scale of 0 to 10 where 10 is the best. But the whole affair ended in a stalemate as Culcer took a three-month sick leave. Meanwhile, the situation at SRTV worsened and Giurgiu resigned on 4 May 2007.

⁵³ Interview with Tudor Giurgiu, Bucharest, 26 September 2007.

After his appointment by Parliament, Sassu denied intentions to sack Rodica Culcer. Sassu intends to re-organise the institution, but not by firing people.⁵⁴ This would anyway be almost impossible due to strong legislation protecting the SRTV's employees. He wants to distribute responsibilities differently. That was, however, a practice that PSD had used in previous years to get rid of people they did not want.

Giurgiu left Sassu a favourable legacy. During Giurgiu's mandate, the News Department was controlled by the President-Director General. This stirred a fierce controversy. While TVR1's director has no power over the channel's news programmes, the subordination of the news department to the station head was seen as an anomaly because the Director General is at the same time the President of the Board (CA), a function controlled by politicians.

Commenting on the alleged politicisation of TVR, especially given his political ties, Sassu said that he has "connections" and "friends" in all parties. He added that in the two months of interim management, he had not received or executed any demands by politicians.⁵⁵ However, the first clash between Sassu and the station's News Director erupted faster than expected. On 10 October 2007, TVR broadcast in its primetime newscast a video featuring the minister of agriculture Decebal Traian Remeş allegedly receiving a bribe from Ioan Mureşan, a former Minister of Agriculture, in exchange for favouring businessman Gheorghe Ciorbă in a public tender. The secretly filmed video showed Remeş accepting €15,000, 20 kilos of sausages and 100 litres of plum brandy via a middleman. Remeş resigned, without making any statement. Instead of criticising his colleague, Prime Minister Tăriceanu threw a tantrum against TVR for what he called Remeş's "public execution".⁵⁶

The video stirred a heated debate. Sassu's official position was that the video was illegal and incorrect because it breached the presumption of innocence. He added that the station failed to give Remeş an opportunity to respond. The Media Monitoring Agency (*Agenția de Monitorizare a Presei*, AMP) in Bucharest accused Sassu of censorship. The issue was analysed the next day by the CNA whose members unanimously decided that TVR had served the public interest. Two weeks later, the Ethics Commission of TVR also concluded that the video served the public interest, but criticised the way the footage was packaged. The Commission said that the footage should have been accompanied by a note saying that TVR could not guarantee the authenticity of the video.⁵⁷

⁵⁴ Interview with Alexandru Sassu, President-Director General of SRTV, Bucharest, 27 September 2007.

⁵⁵ Interview with Alexandru Sassu, *op. cit.*

⁵⁶ "Justice for Some", *The Economist*, available online at http://www.economist.com/world/europe/displaystory.cfm?story_id=10064734#Scene_1, 1 November 2007.

⁵⁷ TVR, "Conclusions of the Ethical and Arbitrage Commission on the broadcasting of the footage shot with hidden camera", available at http://www.tvr.ro/articol_organizatie.php?id=20356 (accessed 16 January 2008).

In the meantime, the Senate Commission for Media, Culture and Arts called Sassu for hearings. The station's board then voted for the news department to be re-organised in two divisions, one dealing with news and sports, which would have an interim manager, Mădălina Rădulescu, and the other working on research for the news programmes. Culcer's role in the department's agenda-setting diminished. Her main responsibility is the management of the two structures. The position of Editor-in-Chief remained vacant. Such re-organisation inside state institutions has been a typical practice through which ruling parties, especially the PSD, managed to reduce the decisional power of non-loyal people. They preferred such strategies to other moves that would have been considered either illegal or as forms of censorship. Further steps to annihilate the independent journalists followed Culcer's isolation. The main editors of the primetime newscast, the Executive Producer Anca Lăzărescu and a group of editors and journalists were shifted by the CA from the primetime news programme to unattractive afternoon or night news slots or to TVR's second channel without Culcer's consultation. These journalists, whose contribution to the news programme has been highly praised by professionals, were replaced by low-profile journalists. Culcer said: "I believe that these changes were made with bad will towards those editors and producers who proved their value and released the TVR news from political servility. I am sorry that they are paying for their association with me. Those changes are a combination of [political] restoration and revenge."⁵⁸

Meanwhile, Culcer sued the SRTV Administration Board protesting against the substantial change of its managerial tasks. "The separation of the position of Director General and President of CA would be a guarantee of non-interference in editorial content," Culcer said.⁵⁹ Sassu does not favour the separation, saying it "will create a gap between the Administration Board and the Board of Directors [management]".⁶⁰

The separation of the President and Director General positions was proposed in the reform bill initiated by the MPs Turcan, Iliescu and Rădulescu in February 2006. Hotly debated by the representatives of the public service broadcasters and media NGOs, a draft of the bill seemed to be agreed upon by all parties raising hopes for a favourable vote. Approved by the Chamber of Deputies in April 2006, the bill went to the Senate the same month, but it never made it to the Senate agenda. According to the bill, the Administration Board members were to be appointed on criteria of performance and competence, without a conflict of interests.

⁵⁸ A. Pora, "În TVR a început reorganizarea prin restaurație: Editorii aduși de Rodica Culcer au fost scoși de la Jurnalul de ora 19.00" (Re-organisation through restoration: Editors brought by Rodica Culcer were eliminated from the 7 p.m. Newscast), *HotNews.ro*, available online (in Romanian) at http://www.hotnews.ro/articol_87498-Editorii-adusi-de-Rodica-Culcer-au-fost-scosi-de-la-Jurnalul-de-ora-19-00.htm (accessed on 22 October 2007).

⁵⁹ Interview with Rodica Culcer, Bucharest, 21 September 2007.

⁶⁰ Interview with Alexandru Sassu, *op. cit.*

The bill proposed:

- a different composition of the Administration Board: seven members nominated by parliamentary parties; two from the civil society; three by each Presidency; the Government and minorities;
- barring politicians with executive position in a certain party from being appointed to the Administration Board;
- enforcing conflict of interests rules;
- separation of the position of Director General from the President of the Administration Board;
- a contest for the position of Director General of the two public service broadcasters;
- increased transparency with yearly editorial and organisational audits and publicly available board decisions;
- moving the decision on setting the licence fee from the Government to Parliament.

In its 17-year post-communist history, SRR and SRTV served the mercantile interests of a group of politicians who tried to use them as tools of manipulation, said Turcan.⁶¹

3.3 PSB funding

The funding of public service broadcasting still cannot sustain SRTV and SRR at their current sizes. The bulk of financing for both the public service broadcasters comes from the licence fee collected from households. Individuals pay a fee of €1.2 and companies €4.5 per month. The fee has not been linked to inflation since 2003. According to Maria Țoghină, the current President-Director General of SRR, only 60 per cent of households pay the fee. The remainder are exempt. Many of them gain exemption based only on their own statement that they do not possess a radio or TV set.⁶²

Tudor Giurgiu called on Parliament to increase the television fee, but when he lost the MPs' favour his initiative was dropped. His successor said that he wanted to achieve "some results" before asking Parliament to increase the fee.⁶³ The licence fee share in SRTV's total revenues decreased from 74 per cent in 2004 to 60 per cent in 2006. At

⁶¹ Interview with Raluca Turcan, *op. cit.*

⁶² Interview with Maria Țoghină, Bucharest, 27 September 2007.

⁶³ CJI, "Vulnerabilități și puncte forte ale media publice înainte de alegeri" (Weaknesses and strengths of the public media before the elections), Bucharest, 4 October 2007, available (in Romanian) at <http://www.cji.ro/userfiles/file/documente/tendinte4.doc> (accessed 24 January 2008), pp. 60–67.

the same time, expenses have increased every year. As for SRR, its financial difficulties are so pressing that, Țoghină says, they threaten its daily operations.

Table 3. SRTV total budget in 2004–2006

	Total income (€ million)	Source of income (as percentage of total income) ⁶⁴		
		Licence fee	State subsidies	Advertising and sponsorship
2006	142.4	60.0	23.0	15.0
2005	121.4	68.1	19.2	11.0
2004	103	74.0	14.0	11.0

Source: SRTV, Activity Report for 2006

Table 4. SRTV total expenses in 2004–2006

	Total expenses (€ million)	Breakdown of expenses (as a percentage of total expenses)				
		Outsourced operation costs ⁶⁵	Human resources	Taxes	Amortisation costs	Risk provision
2006 ⁶⁶	148	44.4	33.8	11.5	8.0	0.4
2005	114.5	48.0	33.0	9.9	8.8	0.3
2004	89.5	73.0	29.0	7.0	7.0	-16.0

Source: SRTV, Activity Report for 2006

3.4 Editorial standards

The Journalists' De-ontological Code became part of the Collective Salary Agreement in the media sector in 2006. It was the initiative of MediaSind, an umbrella organisation for trade unions from mostly the public media.⁶⁷ It claims to represent the

⁶⁴ Some additional minor sources of income were not included.

⁶⁵ This includes copyrights for feature films and programmes, payment for part-time collaborators, building's maintenance, insurance, etc.

⁶⁶ Some additional minor expenses for 2006 were not included.

⁶⁷ An online version of this contract is available (in Romanian) at <http://www.mediasind.ro/ccm.doc> (accessed 25 January 2008).

journalism profession at large. MediaSind promoted a Collective Salary Agreement with various rights for journalists such as entitlement to a salary at least 25 per cent higher than the statutory minimum wage.

The Code includes a set of principles and norms guiding journalists' work such as honest behaviour, incompatibility with membership in political parties and encouragement to use ethical means to obtain information. The Code states that conflicts among journalists should be resolved amiably or addressed to the Parity Commission, a 12-member body tasked to solve a broad set of complaints, including breach of the right to reply. The Commission's members represent equally the unions and the media owners. It has not yet issued any decisions.

4. COMMERCIAL BROADCASTING

4.1 Regulation and management

The newly adopted Audiovisual Code has become the industry's Bible, nailing down the main rules of the broadcasting sector. Nevertheless, there are channels that continue to ignore these rules registering abroad. In addition to this, most of the broadcasters drafted their own de-ontological codes. But those apply mostly to journalists and cannot save the broadcasters' managers from the proprietors' interference and pressures.

4.2 Ownership and cross-ownership

Competition and professionalism have increased on the Romanian broadcasting market, which is characterised by oligopoly.⁶⁸ A few media groups have continued to dominate the broadcasting industry. Most of the major media owners have close connections with business or political circles. Some of the owners are "wolves in sheep's clothing". But "they are the only dance partners for individuals and institutions who want media aid in their political and economic endeavours".⁶⁹

American journalism professor Peter Gross wrote:

[Dan] Voiculescu, a former agent of the notorious *Securitate*, Romania's version of the KGB, is not alone in using his media outlets for political purposes while claiming to be the victim of a system he is innocent of creating; Sorin Ovidiu

⁶⁸ G. Doyle, *Understanding Media Economics*, Sage Publications (fourth edition), London, Thousand Oaks, New Delhi, 2005.

⁶⁹ M. Coman, Dean of the Faculty of Journalism and Communication Sciences, cited in P. Gross, *Dances With Wolves. A meditation on the media and political system in the European Union's Romania*, a paper based on a presentation at the "Hour of Romania" conference organised by the Russian and East European Institute at Indiana University, Bloomington, 22–24 March 2007, p. 5.

Vântu, Dinu Patriciu, Valentin Păunescu, Viorel and Ioan Mîcula, Liviu Luca, Verestoy Attila, Sorin Marin [in 2006 apparently withdrawn from the media business], and Adrian Sârbu own major media enterprises and are also leaders of political parties, MPs or businessmen with strong political interests, ties or ambitions who wield their media outlets like broadswords.⁷⁰

For the first time, the National Council for the Study of the *Securitate* Files (*Consiliul Național pentru Studierea Arhivelor Securității*, CNSAS) stated that Senator Dan Voiculescu collaborated with the *Securitate* during communism. Owner of the second largest media empire in Romania, Voiculescu transferred his shares in the holding owning Antena 1 TV station to his daughters a few years ago. One of them is an executive in the company. In mid-2007, soon after receiving the announcement on his involvement with *Securitate*, Voiculescu attacked the CNSAS' finding in court. In late January 2008, in a stunning decision, the Constitutional Court decided to dissolve the CNSAS. The decision stirred outrage in the civil society, with numerous organisations calling on the Government to reverse the Court's decision.

In the 1990s, Voiculescu founded a media group that now controls the TV stations Antena 1, Antena 2 and Antena 3, the daily newspaper *Jurnalul Național*, and the weekly *Săptămâna financiară*. He exerts a lot of influence on the outlets that he owns. For example, on 2 May 2007 he called a talk-show on Antena 3 and was allowed to insult the Minister of Justice Monica Macovei. He stated during the show that "it was a real pleasure for him to insult her". Following the programme, the CNA issued a public letter saying that "Voiculescu had an insidious, aggressive attitude towards Macovei's statements." When the moderator tried to intervene to balance the debate, as requested by the audiovisual legislation, Voiculescu admonished her.⁷¹ Macovei was one of the ministers who fought corruption in the country and was therefore much praised by Brussels.

Politicians at local level are also deeply involved in the media business.⁷² Media Index, a website (www.mediaindex.ro) launched in 2006, published ownership data on all media outlets in the country.⁷³ Overall, the transparency of media ownership has improved, but some companies still hide their ownership in offshore jurisdictions. They include the Bucharest channel B1TV, with its major shareholder Ismar

⁷⁰ P. Gross, *Dances With Wolves, A meditation on the media and political system in the European Union's Romania*, op. cit., p. 5.

⁷¹ CNA, Letter, 3 May 2007, quoted by HotNews.ro, "Jignirile lui Dan Voiculescu la adresa Monicăi Macovei stărnesc îngrijorarea CNA" (Dan Voiculescu' insults to Macovei raise CNA's concern," available at http://www.hotnews.ro/arhiva/articol_1083372/jignirile_voiculescu_adresa_monica_macovei_starnesc_ingrijorarea.htm (accessed 21 January 2008).

⁷² M. Coman, P. Gross, *Media and Journalism in Romania*, European Journalism Review Series, Berlin, Germany, Vistas Verlag, 2006, p. 66.

⁷³ The Media Index was a 2006 project of several media NGOs led by the Center for Independent Journalism (CJI) and sponsored by the U.S. Embassy in Bucharest.

International NV based in the Netherlands Antilles; Radio Total, controlled by a company called Comac Ltd. Cyprus (reportedly in the hands of Sorin Ovidiu Vântu and his cronies); local Pratech TV owned by the Cyprus-based Central and Eastern European Investment Fund Ltd (CEEIF); Radio XXI controlled by the firm Czech Corsum Invest A.S.; and Radio Mix owned by News Century Media Holding BV based in the Netherlands.

The broadcast media continue to be in the hands of a small group of players. As of July 2007, the CME group and its Romanian partner Adrian Sârbu, the Voiculescu family, businessman Sorin Ovidiu Vântu, public service SRTV and SBS Broadcasting controlled a combined 72 per cent of the entire broadcast market.⁷⁴

Table 5. The audience of the major players (breakdown by ownership)

Major owner	CME (95 per cent), Adrian Sârbu (5 per cent)	SRTV	Voiculescu family	SBS Broadcasting	Sorin Ovidiu Vântu	Other
Share	26	22.1	15.1	4.7	3.7	28.4

Source: I. Comănescu⁷⁵

CME increased its stake in Romanian broadcasting from 80 per cent in 2005 to 95 per cent in autumn 2007, following a multi-year payment to the current minority shareholder and COO of CME's Pro TV station, Adrian Sârbu who had been appointed to lead CME's Eastern and Central European operations in 2006.⁷⁶ CME also made a set of new acquisitions. It bought the full stake in TV Sport and beefed up its investments in 2007 with a series of media outlets controlled by Sârbu, including the private news agency Mediafax, which serves nearly 90 per cent of the Romanian media, the daily newspaper *Ziarul Financiar*, and the local weekly newspapers *Bănăţeanul*, *Işeanul*, *Bihoreanul*, *Sibianul*, *Hunedoreanul*, and *Ziarul Clujeanului*. All the remaining shares in Media Pro are owned directly or indirectly by Sârbu. Media Pro-related companies operate in the fields of publishing, information, printing, cinema, entertainment and radio in Romania.⁷⁷

In a joint venture with the Swiss Ringier group, Kanal D, owned by the Turkish group Dogan, entered the Romanian market in 2007. However, its audience was very modest

⁷⁴ I. Comănescu, *Trends on the media coverage by media III: Concentration of ownership and competences in Romanian media*, p. 28, available (in Romanian) at <http://www.cji.ro/userfiles/file/documente/tendinte3.pdf> (accessed 10 October 2007).

⁷⁵ I. Comănescu, *Trends on the media coverage by media III, op. cit.*

⁷⁶ CME report, *op. cit.*, p. 11.

⁷⁷ CME report, *op. cit.*, p. 11.

in the first nine months of 2007. Ringier is a large publisher, running on the Romanian market the tabloid daily *Libertatea*, the daily *Evenimentul Zilei*, the sports daily *Gazeta Sporturilor*, and the economic weekly *Capital* plus a number of women's, youth, and TV schedule magazines. There are no regulations on cross-ownership; the Audiovisual Law only imposes restrictions within the broadcast sector, more specifically within the radio and TV industries.⁷⁸ An entity can be a majority stakeholder in one "broadcasting company" and can hold a maximum of 20 per cent in other such companies. Despite this clear limitation, a company can hold an unlimited number of broadcast licences.⁷⁹ For example, when the group Realitatea Media, majority-owned by Sorin Ovidiu Vântu, took over Radio Guerilla in May 2006, it exceeded the 20 per cent limit. But Realitatea Media asked the CNA to approve the transfer of Radio Guerilla to Realitatea Media, the company holding the licences for all the outlets in the group. So the 20 per cent limit can be bypassed by simply asking the regulator to allow for the transfer of the licence to the majority owner. Media companies can do this as long as they do not gain a national market share above 30 per cent.⁸⁰

Under pressure from civil society groups, media owners have had to become more transparent. Following the launch in 2005 of the "Romania" chapter in the OSI's *Television across Europe* report, the CNA asked Realitatea Media to disclose the identity of the group's real owner within 60 days. The regulator knew only that the company was owned by an entity registered in Cyprus where confidentiality of ownership data is ensured. Businessman Sorin Ovidiu Vântu declared in early 2006 that he was the full owner of Realitatea Media, which owns the all-news channel Realitatea TV and a few local TV and radio stations. Vântu's ownership is problematic as the Audiovisual Law forbids a convicted criminal from holding audiovisual licences. (Vântu reportedly spent years in jail for fraud between November 1982 and September 1987.)⁸¹ Offshore registration continues to be one of the favourite tricks that Romanian media owners employ to hide their ownership. Antena 4, a recently launched entertainment channel belonging to the Voiculescu family is 30 per cent-owned by the Cyprus-based business Abacus, according to data reported by the company to the regulator. Abacus is at the same time the company owning the myriad of businesses controlled by the renowned tennis player and businessman Ion Țiriac.⁸²

⁷⁸ Audiovisual Law, Art. 44 (1–10).

⁷⁹ Audiovisual Law, Art. 44 (9).

⁸⁰ Audiovisual Law, Art. 44 (3).

⁸¹ M. Minca, "Vântu, haiducul brânzoiacelor", *Evenimentul Zilei*, 23 January 2007, available (in Romanian) at <http://www.evz.ro/article.php?artid=288977> (accessed 20 January 2008).

⁸² M. Ciorcan, "Țiriac reinventează sistemul firmă în firmă prin off-shore în off-shore" (Țiriac reinvents the system "company in company" through "off-shore in off-shore", *Romania liberă*, 19 May 2005, available (in Romanian) at <http://www.9am.ro/stiri-revista-presei/Business/11010/Tiriac-reinventeaza-sistemul-firma-in-firma-prin-off-shore-in-off-shore-.html> (accessed 20 January 2008).

4.3 The advertising market

The total advertising market in Romania was estimated at €520 million in net figures in 2007, with television controlling more than half. According to other sources, the net value of the ad market was €485 million in 2007.⁸³ The advertising companies estimate a growth of up to 20 per cent for the year 2008.⁸⁴

Table 6. Share of ad spending in 2006–2007 (as percentage)

Medium	Share	
	2006	2007
Television	60.4	57.0
Print media	23.4	25.0
Radio	7.4	9.0
Outdoor	6.6	8.0
Other (including Internet)	2.2	1.0

Source: ARBO media estimates⁸⁵ and Media Hub⁸⁶

Pro TV continued to control the largest chunk of the TV ad spending in the country although its share went down, due mainly to the continual fragmentation of the TV ad market. The total ad revenues of the three largest channels in the country dropped significantly, from 48.7 per cent in 2004 to 40 per cent in 2006.

⁸³ Initiative Media, *Media Fact Book 2007*, 13 July 2007, Bucharest.

⁸⁴ C. Ionescu, “Romania advertising map 2008: who will get the laurels on a market of over 600 million euro”, *HotNews.ro*, available online at http://english.hotnews.ro/stiri-business-2262273-romania_advertising_map_2008_who_will_get_the_laurels_market_over_600_million_euro.htm (accessed on 29 January 2008).

⁸⁵ IP International Marketing Committee, *Television 2007. International Key Facts*, October 2007, p. 327, (hereafter IP International Marketing Committee, *Television 2007*).

⁸⁶ P. Barbu, “Piața publicității românești a depășit 500 milioane de euro în 2007” (The advertising market went over €500 million in 2007), *Adevărul*, 9 January 2008, available online (in Romanian) at <http://www.adevarul.ro/articole/piata-publicitatii-romanesti-a-depasit-500-milioane-de-euro/337225> (accessed on 29 January 2008).

Table 7. Share of TV advertising revenues in 2004–2006

Station	Share		
	2004	2005	2006
Pro TV	18.7	16.7	15.2
Prima TV	5.6	14.2	14.2
Antena 1	13.0	11.2	11.0
Acasa TV	7.1	8.2	10.8
National TV	1.7	5.9	8.7
TVR 1	17.0	9.3	8.4
Realitatea TV	2.0	7.9	7.7
B1 TV	1.4	7.9	7.5
Pro Cinema	n.a.	4.5	4.9
TVR 2	6.7	2.1	4.5
Discovery	n.a.	0.5	3.0
MTV Romania	0.9	2.6	2.9
Other	23.9	8.1	1.2

Source: Alfa Cont Mediatrack⁸⁷

Advertising growth has been upset by high pressures on production costs. Overall, Pro TV, for example, saw its programming costs go up by approximately €1 million a month in 2007, compared with 2006.⁸⁸ These pressures were mainly triggered by the increase in the copyright fees and the introduction of VAT on film broadcast rights in 2005. In autumn 2005, the Government increased several-fold the fee paid to the collective copyright bodies under the Romanian Office for Copyright (*Oficiul Român pentru Drepturile de Autor*, ORDA). The Minister of Culture, Adrian Iorgulescu, who initiated the document, used to be the head of one of these bodies. The Romanian Association for Audiovisual Communication (*Asociația Română de Comunicații Audiovizuale*, ARCA), the main association of the private broadcast industry, protested repeatedly against this move, arguing that the hike in fees would have a negative effect on the broadcasting sector and pointing out that Romania has become the most expensive country in terms of copyright fees, which are 15.4 per cent for television and

⁸⁷ IP International Marketing Committee, *Television 2007*.

⁸⁸ CME Annual Report, *op. cit.*, p. 52.

12.8 per cent for radio.⁸⁹ With the increase in the copyright fees, SRTV saw its expenses go up by €230,000 a month in 2006 against the previous year.⁹⁰ On top of that, SRTV must contribute 15 per cent of its advertising revenues every year to financing Romanian movies.⁹¹ In January 2006, SRTV financed 22 television film projects, out of 570 applications.⁹²

4.4 Editorial standards and independence

A trend dating back to the mid-1990s, tabloidisation has become a permanent characteristic of Romanian television. Scandal and sensationalism have invaded both entertainment and news.⁹³ “Emotional vampirism”, as it has been called, characterises TV programmes that bristle with accidents, violent deaths and fires.⁹⁴ Primetime news programmes on commercial channels have little relevance or consistency. Information is packaged in a way that seeks only to shock or move viewers, ordinary occurrences become news, and concealed cameras are exaggeratedly used to make the programme more appealing.⁹⁵ News programmes on public TV provide better reporting and documentation, closely following the most relevant issues of the day, but they are less attractively packaged.

Pro TV’s primetime newscast, which enjoys the highest ratings in the country, lost its credibility after it dedicated excessive time to George Becali, the owner of the Steaua football club. Becali has become the dominant character on Pro TV’s newscast. He appears in the sports news linked with Steaua’s performance or when he makes vitriolic and scandalous attacks on other people, and on the general news programme where he is featured throwing money to the poor. Almost unknown a few years ago, Becali, who also set up his own, right-wing-oriented party, has gradually become the second most popular politician in the country after President Traian Băsescu, according to polls. TV stations throng to air Becali’s appearances, very often peppered with uncivil language.

⁸⁹ Emergency Government Ordinance 123/2005 concerning the modification and completion of the Law 8/1996, *Monitorul Oficial* 843, 19 September 2005.

⁹⁰ ARCA, news conferences, Bucharest, 29 November 2005 and 13 March 2006.

⁹¹ Government Ordinance 39/2005 as amended by Law 14/2006, *Monitorul Oficial* 641, 21 July 2005, Art. 17.

⁹² SRTV Annual Activity Report, 2006, p. 13.

⁹³ M. Coman, *Mass-media în societatea post-comunistă* (Mass-Media in post-communist society), Polirom, Iași, 2003, p. 74.

⁹⁴ AMP, “Un om a mușcat o știre” (A man bit news), Bucharest, 2006, available in Romanian at http://www.mma.ro/BAZA%20DE%20DATE/Politic/campanie_final1.pdf, p. 9 (accessed on 30 September 2007).

⁹⁵ M. Preoteasa, “Two TV networks: two realities” in R. Udovičić, *Indicator of public interest: TV prime time domestic news – monitoring and analysis of TV news programmes in 10 SEENPM countries*, a SEENPM project, Sarajevo, Media Plan Institute, 2007, pp. 190–191.

Becali himself involuntarily shed light on the reasons behind his exposure on Pro TV. On a TV talk show on B1 TV on 7 February 2007, he said that Steaua, Pro TV and the Marriott Hotel concluded an agreement on his promotion on Pro TV in exchange for a settlement of debts between the three parties.⁹⁶ A company collaborating with Pro TV had debts to Steaua. The football club owned US\$ 200,000 to the Marriott hotel, where the club had its headquarters. Companies linked with the Pro TV group had similar debts to the hotel. The station would give Becali and Marriott positive coverage in the primetime news programmes in exchange for cancelling the station's debts to the club and the hotel. One way of promoting Becali and Marriott was to shoot the interviews with Becali in his lavish office based in the Marriott.⁹⁷ In February 2007, a group of media NGOs called on various authorities including the Financial Guard and the CNA to look into the affair. But there was no outcome. The authorities all said that they could not investigate the matter because relevant documents were lacking.

In June 2007, the CNA set a dangerous precedent by allowing politicians to act as TV moderators in cultural and artistic fields.⁹⁸ The move seemed to be a gift to the President of the senatorial media commission, the poet Adrian Păunescu, an artist known for his close links with dictator Ceausescu's communist regime. After 1989, Păunescu moderated hours of talk shows.⁹⁹

Changes in the broadcasters' editorial teams could be noticed on the eve of major political events. On 26 October 2007, Antena 1's management replaced Vlad Petreanu from the position of News Director with a less known journalist. None of the parties commented on the move, but the switch was feared to weaken the independence of the station's news programme just before the launch of the electoral campaign for the first European elections, on 25 November 2007.

4.5 Regional and local broadcasting

The censorship case of Canal 7 TL+ in the town of Baia-Mare, in north-west Romania, was eventually won by the journalist Ioan Romeo Roşiiianu. He had his contract terminated in 2004 after airing a series of reports on how public money was spent by

⁹⁶ G. Lăcătuş, D. Lazăr, "Becali şi-a cumpărat ştirile Pro TV" (Becali bought the Pro TV news), *Cotidianul*, 10 February 2007, available online (in Romanian) at <http://www.cotidianul.ro/index.php?id=9236&art=24395&cHash=85b33aca85> (accessed on 10 October 2007).

⁹⁷ Ş. Căndea, „Ghici cine vine la ştiri?” (Guess who comes to the news programme?), *MediaIndex.ro*, the site of the Romanian Centre for Investigative Journalism, available online (in Romanian) at <http://crji.org/news.php?id=127&l=1> (accessed 3 December 2007).

⁹⁸ Excerpt from the CNA public works, Bucharest, 13 June 2007, available online (in Romanian) at <http://www.cna.ro/activitate/extras/070613.html> (accessed 20 September 2007).

⁹⁹ See OSI/Romania, p. 1,275.

the town's mayor, Cristian Anghel.¹⁰⁰ Roşianu accused Anghel of pressuring the Canal 7 TL+'s management to replace Roşianu's critical talk show with a programme promoting Anghel's activities. Roşianu also revealed that the City Hall had an advertising contract with the station. Roşianu won, and the courts obliged the mayor to pay damages worth RON 50,000 (Romanian New Lei), or €14,000. Roşianu received the compensation. He did not ask to be reinstated at Canal 7 TL+ as he had in the mean time founded his own publication.¹⁰¹

Journalists working with local broadcasters often face cases where rich businessmen who own the outlets in question use them as tools to pursue their political ambitions and interests. Dan Tăpălagă, a journalist who has worked for both nationwide and local media outlets, said: "The supreme gods are media owners, a few moguls, oligarchs, very powerful people (Vântu, Voiculescu, Sârbu, Patriciu); the marketing divisions are the lesser gods; sometimes advertising salesmen use the information [produced by journalists] to conclude a[n advertising] contract."¹⁰²

Apart from censorship and economic pressures, excessive tabloidisation spoils the quality of local television programmes. Adrian Voinea, Editor-in-Chief of the regional daily *Gazeta de Sud*, criticised the predominance of entertainment on television. "I do not see an increase in quality. From my point of view, we have only entertainment. Serious issues are dealt with as if they were entertainment."¹⁰³ Investigative reporting has been almost absent on TV screens, with a few exceptions mainly on social topics.

5. PROGRAMMING

5.1 Output

News programmes dominate on TVR1 and Pro TV (some 25 per cent of total programming). Antena1 and Prima TV also air a substantial amount of news programmes (some 20 per cent). The largest amount of news is paradoxically aired by OTV and B1TV, stations with modest ratings under one per cent. They do so because it is cheap to produce tabloid news programmes based on reporting without serious checking on scandal, rumours and gossip. Entertainment predominates on Antena1 while Pro TV focuses on movies. Some stations have pioneered innovative, interactive television programmes, including opinion polls. They included the talk show *Zece*

¹⁰⁰ See OSI/Romania, p. 1,277.

¹⁰¹ Interview with Romeo Roşianu, via phone, 16 January 2008.

¹⁰² D. Tăpălagă, editor with *HotNews.ro*, made these statements at the TV talk-show "Who makes the law in media business?", *Realitatea TV*, transcript by Media Monitoring, published on *Comanescu's Blog*, available online (in Romanian) at <http://comanescu.hotnews.ro/la-realitatea-despre-cine-face-legea-in-pres.html#more-1629>, 10 June 2007, (accessed 3 December 2007).

¹⁰³ IREX, *Media Sustainability Index*, *op. cit.*

pentru România (Ten people for Romania) with the participation of a large number of people, and *Mari români* (Great Romanians), a programme modelled on the BBC's *Greatest Britons* format aired by TVR1. The public TVR1, Antena 1 and B1 TV rely mostly on in-house productions while Pro TV outsources more than half of its programming.

Overall, sports and weather attract the largest audience. On public television, the World Football Championship 2006 and the UEFA Football championship scored the highest ratings in 2006, followed by *Mari români* and the reality show *Surpriza, surpriza* (Suprises, surprises), one of the most popular programmes on public television in many years. However, TVR1 saw its ratings fall over the first nine months of 2007. Highly praised in 2006 for its quality programmes such as the scientific magazine *Dincolo de hartă* (Beyond the map), the travel programme *Bazar* (Bazaar), and the in-depth news show *Top 7*, TVR2 had to suspend some of these programmes in 2007 because of financial difficulties. A programme such as *Bazar* costs only €2,000 per programme. But even that is too expensive today for SRTV, which incurred losses of € million in the first six months of 2007. In 2006, TVR2 managed to attract a more educated audience after it gave up soap operas in favour of better programmes.¹⁰⁴ Following the censorship scandals in October 2007, the situation at SRTV is confusing. This follows appreciations in 2006 when certain observers considered the public service television to be “a trend-setter, both in terms of news programmes but also in terms of good movies”.¹⁰⁵ The station's arts and culture programmes such as *Profesioniștii* (Professionals), *Garantat 100%* (100 per cent Guaranteed) or *Lumea citește* (People read) scored good ratings.

All-news Realitatea TV beat TVR1 in the ratings of debates and talk shows. Their programmes gained an average audience of 18.3 per cent against TVR1's 12.2 per cent.¹⁰⁶

¹⁰⁴ SRTV Annual Activity Report, 2006, p. 10.

¹⁰⁵ Interview with Ioana Avădani, *op. cit.*

¹⁰⁶ Centre for Urban and Regional Sociology (CURS), audience research commissioned by CNA, June 2006, available in SRTV Annual Activity Report, 2006, p. 33.

Table 8. Output (main broadcasters – breakdown by genre)

Channel	News	Education, culture, religion	Movies (including documentaries and cartoons)	Entertainment		Advertising		Minorities	Latest data reported at CNA as of
				Total	Games	Total	Teleshopping		
Antena 1	19	0	25	56	0	0	0		31 August 2006
BITV	33.73	0.74	14.43	41.98	4.16	9.12	4.96	0	20 November 2003
Național TV	21	1	43	35	0	0	0	n.a.	10 March 2006
OTV	58.57	12	0	14.43	0	15	0	0	20 April 2004
Prima TV	20	4	37	19	0	20	4.59	0	16 September 2004
Pro TV	23.80	2.48	46.33	11.02	0	16.37	1.48	0	8 May 2005
Pro TV International	27	2	31	40					8 September 2005
TVR1	25.67	19.27	24.42	30.64	n.a.	8*	2.53*	4	15 March 2007
TVR2	16.88	25.82	38.09	19.41	n.a.	8.97*	2.29	n.a.	15 March 2007
TVR International	51.44	15.82	12.20	20.54	0	0	0	0	15 March 2007

Source: Companies reports, cited by CNA, 9 October 2007.

(*data at the end of year 2006, according to the SRTV, Activity report for year 2006)

5.2 General provisions on news

The Audiovisual Code, which entered into force on 14 April 2007, set up the market's main mechanism for accurate and balanced reporting in the broadcasting field. The Code also makes references to the industry self-regulation instruments.

Television and radio programmes must be in line with the editorial standards put forward by self-regulatory mechanisms, with the European provisions and specific national legislation. They must reflect cultural diversity and respect national and European identity.¹⁰⁷ Each of the two media associations, one representing owners of print media and the second representing broadcasters, has a Code of Ethics that

¹⁰⁷ Audiovisual Code, *op. cit.*, Art. 89.

journalists must comply with.¹⁰⁸ The Romanian Association of Advertising Agencies (RAAA), which represents the advertising industry, set up its own Code of Advertising Practice, officially recognised by the CNA in October 2003. The Code should be observed by all of the association's members.

SRTV is the broadcaster with by far the most complex self-regulation system in place. SRTV employs a set of internal norms regulating the organisation and its functioning. The work of TVR's journalists is also watched by an internal Commission for Ethics and Arbitration (CEA) and an Ombudsman. However, the work of the Ombudsman is carried out with difficulties due to the lack of a team in charge of monitoring and processing feedback from viewers. Moreover, the CEA's decisions do not seem to have much weight at TVR.

Both the referendum on the impeachment of President Băsescu, in spring 2007, and the referendum on the uninominal vote in November 2007 laid the ground for the introduction of a new set of specific rules for broadcasters, chiefly on principles of accurate and balanced reporting, drawn and adopted by CNA.¹⁰⁹ Coverage of the latest referendum by public service media was, however, very limited.

5.3 General programme production guidelines

The three-thirds-rule in the news programme (equal broadcasting time for ruling coalition, opposition and independent politicians) changed in 2007. This rule was introduced in 2002, a period when the government was covered excessively while the activity of the political opposition was rarely given time in news programmes. Moreover, certain Government members, such as Adrian Năstase, Prime Minister between 2000 and 2004, were covered excessively. At the same time, the rule could be hardly applied as, in reality, most of the news came from the Government because the opposition and especially the non-Parliamentary parties could not "produce" any newsworthy events.

Therefore, broadcasters said that they have been incorrectly fined for not meeting this provision.¹¹⁰ The CNA changed the rules of the game, and stated in the Audiovisual Code that ruling parties should benefit from 60 per cent of the time allotted for

¹⁰⁸ R. Martin, "Romania", in M. Preoteasa, *The Business of Ethics, the Ethics of Business*, SEENPM – CJI, Bucharest, 2005, p. 21.

¹⁰⁹ CNA Decision 369/2007 concerning the coverage by the radio and television channels of the referendum of the impeachment of president Băsescu, *Monitorul Oficial* 271, 24 April 2007, Arts. 1–4, 8, 9.

¹¹⁰ M. Bercea, "Audiovizualul sub lupă" (Broadcasting sector under the magnifying glass), *Revista 22* *nr. 824*, 19–25 December 2005), available online (in Romanian) at <http://www.revista22.ro/html/index.php?art=2294&nr=2005-12-19> (accessed 20 January 2008).

political parties, with the remainder to be shared by both opposition and independent politicians. The rule applies to all broadcasters.

5.4 Quotas

Incorporated in Romanian legislation, the TVWF Directive, recently amended,¹¹¹ obliges broadcasters to reserve the bulk of their air time for European works, with 10 per cent for European works created by independent producers. Most of the stations reported fulfillment of these quotas in 2006. Correlating these figures with the station's output by genre, it turns out that the European works slots were often filled with entertainment and movies while educational and cultural programming has been neglected. All broadcasters should devote at least 30 per cent of their programming to Romanian works.¹¹² All the channels that reported their figures to the CNA met the requirement, with TVR holding the leading position.

Table 9. Quota fulfillment by the major Romanian television channels in 2006

	European Works (per cent)		
	General	Independent productions	Recent independent productions (Article 5, TVWF Directive)
Pro TV	n.a.	n.a.	n.a.
Antena 1	54.92	28.66	27.56
Național TV	54.65	n.a.	n.a.
Prima TV	53.8	48.57	48.57
B1 TV*	76	3.8	15.2
Național TV	54.65	n.a.	n.a.
TVR1	68	20	12

Sources: Stations' own data, as reported to CNA
(*1 January 2005–31 December 2006)

Compliance with the rules in the licensing contracts is, however, difficult to assess as most of the channels do not report updated data on their broadcast genres and in-

¹¹¹ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, *Official Journal of the European Union*, 18 December 2007, L 332/27.

¹¹² Audiovisual Code, *op. cit.*, Art. 90.

house productions. TVR is the exception. The CNA cannot impose any penalties against the stations that fail to report these data.

5.5 Obligations on PSB

Only public service broadcasters are obliged to air programmes for minorities. TVR1 airs programmes such as *Kronika* (Chronicle) while TVR2 shows *Szieszta* (Siesta), intended for Hungarians, the largest minority. TVR devotes to the Hungarian minority half of the quota of roughly 4 per cent of aired programming for minorities. Hungarian programmes are followed by German and Roma language programmes.

Table 10. Minority language programming on TVR in 2006 – hours/year

Channel	Hungarian	German	Other (including Roma)	Annual programme hours
TVR 1	106	63.07	41.17	210.24
TVR 2	94.61	47.30	47.30	236.52

Source: SRTV, Annual Report 2006

Apart from news, SRTV is obliged to provide diverse content ranging from documentaries to TV film productions. In autumn 2007, DOCUmentor, an NGO supporting the production of documentaries, accused SRTV in an open letter of severing their relations with all independent producers of documentaries because of cash shortages. SRTV significantly reduced the acquisition of independent productions in autumn 2007 compared to the previous year. SRTV is trying to fulfil its cultural mission through the channel TVR Cultural, which scores Lilliputian ratings of a bit over zero.

The journalists working with SRTV face constraints imposed by internal regulations such as the 1999 Statute of the journalists working with SRTV, which forbids use of illegal or immoral means to obtain information and shooting with hidden camera and recording of private discussions without the full agreement of those recorded.¹¹³ The problem is that the Statute does not distinguish between recording carried out in the public interest and other ways of surreptitious recording, a distinction that appears in the Audiovisual Code.¹¹⁴

¹¹³ SRTV, *The Statute of the journalist working with SRTV*, Art. 14, available online (in Romanian) at http://www.tvr.ro/articol_organizatie.php?id=1505 (accessed 7 February 2008).

¹¹⁴ CNA, *The Audiovisual Code*, *op. cit.*, Art. 38.

5.6 Obligations on commercial broadcasters

There have been no major changes in the obligations on commercial broadcasters. In 2006 and 2007, the CNA adopted a few decisions and recommendations applying to commercial broadcasters, including the obligation to include announcements about missing children in primetime newscasts.

6. CONCLUSIONS

Television in Romania consists of a mature market of generalist networks, with a few large players betting on sensationalism and entertainment, and an emerging market of niche channels, only a few of them managing to establish their brand recognition. The digital market is still virgin ground. Parliament has failed to lay the legal grounds for the introduction of digitalisation, but the private sector was faster than the authorities. Many of the large broadcasters have started to air digitally, after investing heavily in new digital equipment.

Provisions on broadcasting content have been gathered in a single code. Overall, there are over 200 TV stations in the country, which shows an appetite for investment in the television business. However, the source of the capital in the industry has in most cases remained a mystery, despite constitutional provisions requiring transparency of financing. Anti-concentration provisions can now be better monitored thanks to improved access to ownership data. But there is still a lack of legal tools to prevent concentration as there are no legal restrictions on cross-ownership.

The public service broadcasters face serious financial troubles. Their governing structures still reflect the balance of political power, with civil society still barred from getting their representatives onto these bodies. Moreover, the law lacks any provisions on conflict of interests and the level of competence required for membership of these boards.

SRTV managed to improve the quality and balance of its news programmes. Highly reputed talk shows as well as prize-winning movies and art films helped SRTV gain credibility. However, the station is still under tight political control. The dismissal of the SRTV board in mid-2007 showed that political will still rules in public service broadcasting. The rage of the political establishment after the station aired a video featuring a case of high-level corruption confirmed the corrupt political climate that surrounds SRTV.

In today's Romania, when corruption is exposed in the media, politicians and State authorities prefer to investigate the journalists who broke the story rather than the story itself. Although their coverage of political disputes is still biased, broadcasters are slowly starting to be treated like real businesses by their owners rather than tools for pursuing personal or business interests. Many of these broadcasters are part of large media

conglomerates or in the process of attracting fresh investors. Yet, after years of stark manipulation, lack of professionalism and cheap sensationalism, it is hard to rebuild the viewers' trust in broadcasting. Viewers today access television mainly for entertainment and look for alternative sources such as niche channels and Internet to get their news. The main challenge for the television of the future in Romania is how to shape a better, more professional sector in the digital age.

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Television across Europe:

Follow-up Reports 2008

Slovakia

By Rasto Kužel and Ivan Godársky

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List of Abbreviations

CME	Central European Media Enterprises
ECHR	European Court for Human Rights
IVO	Institute for Public Affairs, <i>Inštitút pre verejné otázky</i>
ES-HZDS	People's Party – Movement for a Democratic Slovakia, <i>Ludová strana – Hnutie za demokratické Slovensko</i>
MDPT	Ministry of Transport, Posts and Telecommunications, <i>Ministerstvo dopravy, pôšt a telekomunikácií</i>
OSCE	Organisation for Security and Cooperation in Europe
PMÚ	Anti-monopoly Office, <i>Protimonopolný úrad</i>
SDKÚ-DS	Slovak Democratic and Christian Union – Democratic Party, <i>Slovenská demokratická a kresťanská únia – Demokratická strana</i>
SITA	Slovak News Agency, <i>Slovenská tlačová agentúra</i>

SMER-SD	Smer-Social Democracy, <i>Smer-Sociálna demokracia</i>
SNS	Slovak National Party, <i>Slovenská národná strana</i>
SRo	Slovak Radio, <i>Slovenský rozhlas</i>
STV	Slovak Television, <i>Slovenská televízia</i>
TASR	Press Agency of the Slovak Republic, <i>Tlačová agentúra Slovenskej republiky</i>
TÚ SR	Telecommunications Office of the Slovak Republic, <i>Telekomunikačný úrad SR</i>

A. Executive Summary

Political interference has marked the development of Slovak media since 1989. The media succumbed to political pressure, especially during electoral campaigns, while the public service broadcasters were explicitly dominated by political circles. Since the latest parliamentary elections in 2006, attempts at political interference have increased significantly. Under the present governing coalition, almost the entire media environment has come under permanent verbal attack by State representatives, primarily the Prime Minister. They have created an atmosphere of hostility, going as far as to identify the media as political opposition, blaming them for bias and lack of professionalism, boycotting the “oppositional” outlets or adopting restrictive legislation against journalists. Some coalition politicians have tried to gain general acceptance of the idea that it is their legitimate right to intervene in the work of media. In early 2008, President Ivan Gašparovič even said that State authorities such as the Government and Parliament should have their own media.

There are still questions about the adequate functioning of the public service media. There has been no broad public debate about their role. Slovak Television (STV, *Slovenská televízia*), in particular, has experienced much turbulence. Richard Rybníček, the general director from 2003 to mid-2006, made substantial structural changes that improved STV’s financial situation and increased its ratings. At the same time, however, he was accused in some quarters of being driven only by ratings and turning STV into a commercial outlet. Rybníček resigned before his mandate expired and STV had no director for five months. After Radim Hreha was appointed, political interference increased at STV. Moreover, the station’s finances worsened and once again STV became dependent on State subsidies handed out by the governing coalition. Hreha was fired in 2007 after only a year in office. In April 2008, Štefan Nižňanský, formerly a news anchor at Czechoslovak Television during communism, became the new Director.

The commercial sector, by contrast, has become more transparent, which marks another step in the process of standardising the media market. In 2006, local entrepreneurs sold their shares in TV Markíza and the daily newspaper *Pravda* to foreign groups. This was seen as helping to reduce pressures on those media, especially given their owners’ business and political involvements.¹ The ownership of TV Joj and the all-news channel TA3 also changed in 2007.

The nationwide private broadcasters have consolidated their positions on the market, creating a solid sector. TV Markíza continues to increase its dominance after it returned to the format of family TV, with which it made its name in the mid-1990s.

¹ Gabriel Šipoš, “Slovenské médiá 2006 – etika sa zlepšila, profesionalita stagnuje” (Slovak media 2006 – ethics has improved, professionalism is stagnating), 5 February 2007, available on Šipoš’s blog (in Slovak) at http://spw.blog.sme.sk/clanok_tlac.asp?cl=80526 (accessed 19 January 2008).

The private broadcasters have also managed to cement their positions, due to STV's inability to resist repeated political attacks on its editorial independence, which naturally had an impact on its overall credibility, weakening its market position.

In recent years, media legislation has undergone major changes, triggered mainly by the imminent transition from analogue to digital broadcasting. A new law on digital broadcasting, adopted in March 2007, appears to postpone the real introduction of digital terrestrial broadcasting by several years, possibly until 2011. New legislation was also adopted on public service licence fees, allowing public service broadcasters to collect the fee from all users of electricity. Although this arrangement is contentious, it is expected to improve the collection of the fee.

The most worrying legal development was the adoption in April 2008 of a controversial press law prepared by the Ministry of Culture, despite fierce criticism and protests. The law, which replaced 40-year-old legislation, introduced dubious wording of certain provisions, in particular the right to reply, which could have negative repercussions for media freedom. Numerous international organisations, the media themselves, professional associations and non-governmental organisations (NGOs) criticised the regressive character of the law.

In 2007, for the first time, the Slovak Supreme Court disregarded a ruling of the European Court for Human Rights (ECHR).² Instead, the Court chose to uphold its original verdict in the case of a journalist who had been found guilty by the Košice District Court of defaming nation, race and belief.³

Attacks on journalists in 2007 give grounds for concern. There was an arson attempt on the home of an investigative journalist working with a tabloid magazine. The perpetrators are yet to be found. The police used excessive force to stop a peaceful, authorised demonstration by a Kazakh journalist protesting against the antidemocratic policies of Nursultan Nazarbaev, President of Kazakhstan, during his official visit to Slovakia. The Ministry of the Interior later apologised to the journalist.

Slovakia is awakening to the digital age. Better-resourced media outlets have scrambled to get a presence on new platforms. The number of blogs and the quantity of content on the Internet have boomed. However, old problems remain intractable. Although the media in general have started to show more respect for ethical codes and principles,

² The ECHR stated in 2006 that Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms was violated by the Slovak Supreme Court, in the case of the journalist Martin Klein.

³ In the weekly magazine *Domino efekt*, Martin Klein had criticised the personal request of Archbishop Jan Sokol to ban the movie *The People vs. Larry Flynt* and its publicity poster in Slovakia. Klein was fined the sum of €350 in 2000. (Tomáš Czwitkovicz and Miroslav Kollár, "Média", in M. Kollár, G. Mesežnikov and M. Bútor, *Slovensko 2007. Súhrnná správa o stave spoločnosti* (Slovakia 2007. A Global Report on the State of Society), IVO, Bratislava, 2008, pp. 551–552.)

they still have not made significant progress in their professionalism: plagiarism, a refusal to make corrections, and hidden conflicts of interests are still relatively frequent.⁴

⁴ Gabriel Šipoš, “Slovenské médiá 2007 – plusom nové technológie, mínusom politizácia” (Slovak media 2007 – plus are the new technologies, minus is the politicisation), 19 December 2007, available online on Šipoš’s blog at <http://spw.blog.sme.sk/c/125353/Slovenske-media-2007-plusom-nove-technologie-minusom-politizacia.html> (accessed 19 January 2008).

B. Recommendations

1. ORIGINAL RECOMMENDATIONS FROM THE 2005 REPORT⁵

Although the media landscape has seen many changes in the past three years, only a few of the recommendations from the original 2005 report were adopted, and even those only partly.

1.1 Policy

<p>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.</p>	<p>This recommendation has not been adopted. The Ministry of Culture should prepare a nationwide media strategy to clarify the role of public service broadcasting.</p>
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⁵ “Slovakia” in Open Society Institute, *Television across Europe: regulation, policy and independence*, Budapest, 2005, pp. 1463–1465 (hereafter OSI/Slovakia).

1.2 Regulatory authorities

<i>Transparency and media diversity</i>	
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.	This recommendation has not been adopted. There has been no legal amendment to enlarge the jurisdiction of the Broadcasting Council.
3. Parliament should amend the Law on Broadcasting and Retransmission to sharpen Articles 42–44, in order to prevent unlawful bypassing of the law.	This recommendation has not been adopted and remains valid. Articles 42 to 44 of the Broadcasting Law, which limit cross-ownership, have not been sharpened. As they stand, the constraints on cross-ownership continue to be easily bypassed by hiding ownership links within a bigger group of companies.
4. The Council for Broadcasting and Retransmission should utilise its competence and publish the names of all licence stakeholders, together with their shares.	This recommendation has been partly adopted. The Broadcasting Council makes public the names of licence holders. However, it does not publish the exact shareholding behind these companies and the owners of affiliate companies associated with the licence owners.
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.	This recommendation has not been adopted, and remains valid. Parliament did not change the law to oblige applicants for broadcast licences to adopt ethical codes.
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.	This recommendation has been adopted. It is now possible for the Broadcasting Council to strip a broadcaster of its licence.

1.3 Public service broadcasters

<i>Independence and professionalization</i>	
<p>7. Parliament should amend the Law on Slovak Public Television (STV) and the Law on Slovak Public Radio (SRO), to introduce a new system for 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.</p> <p>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.</p>	<p>These recommendations have not been adopted and are still pertinent. The public service media continue to be highly politicised.</p>
<i>Public service mission</i>	
<p>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.</p>	<p>This recommendation has been partly adopted. A different system of licence fee collection was introduced in 2008. It remains to be seen whether it will be well implemented.</p>
<p>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 and other relevant institutions to participate.</p>	<p>This recommendation has not been followed. The regular debates, or so-called 'focus groups' with viewers – organised under STV Director Richard Rybníček – ended with Rybníček's resignation in 2006. No other serious public debates have been held on the issue.</p>

1.4 Public and private broadcasters

<i>Training</i>	
11. Professional organisations such as the Slovak Union 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.	This recommendation has not been adopted. Training of journalists is still needed. The Slovak Union of Journalists has become more active, but has not done much in this respect.
12. Broadcasters should support educational and cultural policy in broadcasting, by producing their own programmes and formats, and by cooperating with independent producers.	This recommendation is slowly being adopted by broadcasters, which increasingly produce their own formats and programmes.
<i>Local broadcasters</i>	
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.	This recommendation has not been adopted and is still valid. Local broadcasters continue to face economic hardship.

1.5 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.	The Government has not done anything in this area and therefore this recommendation remains valid.
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 for the e-government policy by supporting online services for citizens as well as for business enterprises.	While the knowledge about these technologies is steadily growing, older, rural and less educated people are still under-informed and not motivated to learn. In March 2008, the Government adopted a Strategy on Informatisation of the Public Sector, which defines goals and steps to achieve e-government policy by 2013.
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.	No real effort has been made in this respect. While the latest data suggest that the cost is no longer such an impediment to Internet expansion, it remains a key element for older and financially weaker groups.

2. NEW RECOMMENDATIONS BASED ON THE 2008 REPORT

1. Politicians should abstain from attacking, interfering with or intervening in the work of the media. The irreplaceable role of the media in a democratic society should be respected regardless of the contents they produce and air.
2. Politicians should put an end to their custom of appointing political nominees to the councils that are to oversee the performance of the public service broadcasters.
3. The technical regulator, the Telecommunications Office of the Slovak Republic (TÚ SR, *Telekomunikačný úrad SR*), should look for a larger and more diverse pool of applicants when granting authorisations for digital multiplexes, in order to prevent the formation of monopolies in the digital market.
4. The Press Act should be revised in line with the recommendations of international and domestic media organisations dealing with freedom of expression, such as the OSCE Representative on Freedom of the Media.

C. Main Findings of the Follow-up Monitoring

1. GENERAL BROADCASTING ENVIRONMENT

1.1 Key developments in legislation and policy

Since 2005, three main developments have primarily shaped Slovakia's media landscape: the start of digitalisation, the weakened credibility of the public service broadcaster STV due to political interference,⁶ and Prime Minister Róbert Fico's personal hostility to the media.

The transition to digital broadcasting, which will shape the entire media industry, has been discussed by experts and policy makers, without any more inclusive public debate. In July 2006, the Government adopted a Strategy for Transition from Analogue to Digital Terrestrial TV Broadcasting in the Slovak Republic. This strategy foresaw the launch of digital terrestrial broadcasting before 30 June 2007. It also envisaged the existence of three operational nationwide multiplexes by 2011. However, most of the deadlines were not met due to various factors, primarily the time needed for the adoption of the Law on Digital Broadcasting, which was approved in March 2007.⁷ The Conditions of Transition,⁸ which set concrete deadlines, confirm that Slovakia will lag behind western Europe in terrestrial digital rollout. This delay was also the result of pressures and lobbying from commercial broadcasters that want to avoid more competition by postponing the arrival of digital broadcasting for as long as possible. STV lobbied successfully to secure its own exclusive multiplex, which should be

⁶ According to a May 2008 survey by the Institute for Public Affairs (IVO, *Inštitút pre verejné otázky*), the news programmes of commercial broadcasters are the main source of information for 38 per cent of respondents. The news programmes of STV are the main source for 27 per cent of respondents. (IVO, "Polovica slovenskej populácie je spokojná s STV, na športový kanál sa teší len každý štvrtý" (Half of the Slovak population is satisfied with STV; only the fourth person is looking forward to the sport channel), 30 May 2008, available (in Slovak) at http://www.ivo.sk/buxus/docs//rozne/Vyskum_STV_press.pdf (accessed 9 June 2008).

⁷ Tomáš Czwikovicz and Miroslav Kollár, "Médiá", *op. cit.*, p. 567; Act No. 220/2007 of the Collection of Laws on Digital Broadcasting of Programme Services and Provision of Other Programme Services via Digital Transmission and on Amendment and Supplement of Some Laws (hereafter, Law on Digital Broadcasting), *Official Gazette* 99 of 5 May 2007 (came into force 31 May 2007).

⁸ Notification of the Telecommunications Office of the Slovak Republic No. 138/2008 of the Collection of Laws on issuing the Provision of 18 April 2008 n. O-17/2008 on stipulating details on conditions of switch-over from the analogue terrestrial TV broadcasting system of signal transmission to the digital terrestrial TV broadcasting system of signal transmission (conditions of switchover), *Official Gazette* 59 of 24 April 2008 (came into force 1 May 2008).

launched by the end of 2012.⁹ STV is legally allowed to transmit its analogue signal on both channels until 2011 at the earliest.

STV has had a turbulent few years. The ructions began after the 2006 parliamentary elections with Richard Rybníček's resignation. His successor at the helm, Radim Hreha, lost no time before dismissing a number of respected journalists and axing their programmes. One-third of STV's news team left en masse, criticising a lack of freedom and even censorship during the summer of 2007. Together with other factors, predominantly a lack of vision, Hreha had not managed to establish a basis for public broadcasting in terms of financing, professional standards and codes of conducts. This crisis led the STV Council to remove Hreha in December 2007, after only one year in office. (*See section 3.2.*) Hreha faced a lack of trust, due in part to his very low public profile.¹⁰ He was also accused of yielding to political pressure. Under his management, STV's finances went into the red. This had been anticipated, and was expected to improve after the introduction on 1 April 2008 of a new system of paying and collecting licence fees. The position was vacant until 16 April 2008, when Štefan Nižňanský was appointed Director-General. (*See section 3.3.*)

The growing politicisation of public service television is probably the most marked development in the Slovak media over the past two years. The same trend was expressed, among other things, by the open hostility of State officials, in particular by Prime Minister Fico. After coming to power in the 2006 elections, Fico started a "relentless" battle with representatives of almost all media. For example, he refused to take part in political talk shows with opposition members during 2007, becoming the first Prime Minister in 10 years to do so.¹¹ One partial exception (after Hreha's appointment) was STV. The Prime Minister's arrogance and aggression have further marred the poor relations between the ruling coalition and most of the media.¹²

Fico's reactions were not in line with his Government's pledges "to create legislation and institutional preconditions in the interest of improving the quality of

⁹ Tomáš Czwitkovicz, "Slovenská digitalizácia sa odkladá" (Slovak digitalisation is being suspended), *Trend*, 22 May 2007, available (in Slovak) at <http://technologie.etrend.sk/101444/digitalna-domacnost/slovenska-digitalizacia-sa-odklada> (accessed 22 January 2008).

¹⁰ Hreha had worked for public service television in the Czech Republic, leaving after a conflict with the popular Czech TV presenter Jan Kraus.

¹¹ In September 2007, the Government convened in an extraordinary session that resulted in a resolution that requested the Broadcasting Council and the Press Council to punish gross violations of ethical journalistic principles. (Gabriel Šipoš, *Slovak media 2007, op. cit.*)

¹² The coalition consists of: the centre-left SMER-Social Democracy (SMER-SD, *Smer-sociálna demokracia*) headed by Fico; the People's Party – Movement for a Democratic Slovakia (ĽS-HZDS, *Ludová strana – Hnutie za demokratické Slovensko*), led by former Prime Minister Vladimír Mečiar; and the Slovak National Party (SNS, *Slovenská národná strana*), headed by Ján Slota.

constitutional rights of citizens to freedom of expression and information”.¹³ The Government had promised among other things to adopt new legislation and create a new financial and organisational framework for the public service media.¹⁴ As promised in its manifesto, the Government introduced a new law on the State-owned Press Agency of the Slovak Republic (TASR, *Tlačová agentúra Slovenskej republiky*), and media literacy in the education system.

At the end of 2007, the Prime Minister stated that the ruling coalition agreed on the appointment procedures and changes to the governance structures of Slovak Television and Slovak Radio (SRo, *Slovenský rozhlas*). “We are naturally interested in electing people who would represent our views.”¹⁵ These plans were carried out in the first months of 2008, when the ruling coalition elected candidates who were perceived as pro-government to the boards of public service media.¹⁶

The most significant attack on the media was the recently adopted Press Law.¹⁷ A revised draft of this law, submitted early in 2008 by the Ministry of Culture, provoked fierce controversy and criticism. One of the most criticised provisions, according to which the Ministry of Culture would be in a position to regulate media content, was removed following adverse comment by the OSCE Representative on Freedom of the Media,¹⁸ civil society groups and experts.¹⁹ However, another – equally controversial – provision remained. This provision, which conflicts with European best practice, recognises a right to reply to any statement that “touches on the honour, dignity or privacy” of a person or legal entity. There is no requirement to prove that the original statement was false or misleading.²⁰ In addition, the law forbids

¹³ Programme manifesto of the Government of the Slovak Republic, available (in Slovak) at <http://www-8.vlada.gov.sk/index.php?ID=1695> (accessed 2 February 2008).

¹⁴ *Ibid.*

¹⁵ Video interview with R. Fico on sme.sk, 18 December 2007 (accessed 28 January 2008).

¹⁶ Media professionals were left out. For example, the media expert Stanislava Benická, who in October 2007 prepared an analysis of the state of news on STV for the station’s Director-General and who was a candidate for the STV Board, received only one vote when the board was appointed in January 2008.

¹⁷ Act No. 167/2008 of the Collection of Laws on Periodic Press and News Agencies, *Official Gazette* 69 of 15 May 2008 (came into force 1 June 2008).

¹⁸ “Statement on the Draft Slovak Act on Periodic Press and News Agencies, Commissioned by the Representative on Freedom of the Media of the Organisation for Security and Cooperation in Europe, Organisation for Security and Cooperation in Europe”, Office of the OSCE Representative on Freedom of the Media, London, February 2008, available (in English) at http://www.osce.org/documents/rfm/2008/02/29687_en.pdf (accessed 30 April 2008).

¹⁹ The law was criticised by Freedom House, Reporters without Borders and others, as well as by the OSCE.

²⁰ All major daily newspapers appeared twice (on 26 March 2008 and 11 April 2008) with blank front pages, as a protest against the legal attack on their editorial freedom. The only previous such protests occurred in 1995 and 1997, against the Mečiar Government’s proposal to increase VAT.

newspapers to publish any additional information next to the reply. The publishers believe that the law intervenes in the autonomy of editors' work and violates the democratic principles of press freedom. There is a danger that politicians could use the law as a tool to paralyse critical newspapers by flooding them with replies. Despite much internal and external criticism, the ruling coalition made only minor changes to the bill and adopted the law in April 2008. It came into force on 1 June 2008.

1.2 Broadcasting market

There have been no major changes in the broadcasting market over the past three years. The main players still include STV with its two channels. STV's first channel, Jednotka, reaches 95.1 per cent of the population, and the second channel, Dvojka, reaches 97.18 per cent.²¹ The two main commercial TV stations with a national reach are TV Markíza, which is accessible to 90.88 per cent of households, and TV Joj, which can be received by 67.8 per cent of the population.²² In 2006, the Broadcasting Council extended their licences until 2019.

At the end of 2007, there were 120 holders of licences for TV broadcasting.²³ These included 15 multiregional²⁴ commercial stations, comprising six generalist and nine thematic stations. Besides the two major players (TV Markíza and TV Joj), other stations include the news channel TA3, the documentary channel Nautik TV and the music channel Music Box. Recently, the Broadcasting Council licensed two new multiregional broadcasters: TV Ring, which focuses on interactive games for adults (2006), and Bebe TV (in 2007), which is focused on children. Five broadcasters (TA3, TV Patriot, Nautik TV, TV Ring and Bebe TV) transmit via satellite. According to the Broadcasting Council, the TV market is saturated and with the stagnation of the advertising market, there is no need to bring in more competitors.²⁵

²¹ Broadcasting Council, "Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2007" (Annual Report on the state of broadcasting in the Slovak Republic and on the activities of the Council for Broadcasting and Retransmission for the Year 2007), Bratislava, 2008, p. 117, available (in Slovak) at <http://www.rada-rtv.sk> (hereafter, Broadcasting Council, Annual Report 2007), accessed 1 July 2008.

²² Broadcasting Council, Annual Report 2007, p. 117.

²³ Broadcasting Council, Annual Report 2007, p. 19.

²⁴ Multiregional broadcasters cover more regions and are accessible to at least 30 per cent, but not more than 80 per cent, of the population.

²⁵ Broadcasting Council, "Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2006" (Annual Report on the state of broadcasting in the Slovak Republic and on the activities of the Council for Broadcasting and Retransmission for the Year 2006), Bratislava, 2007, p. 50, available (in Slovak) at <http://www.rada-rtv.sk> (hereafter, Broadcasting Council, Annual Report 2006), accessed 1 July 2008.

There are 28 regional and 77 local TV licence holders. Many still face economic hardships, and are often subsidised by municipalities. Although an increasing number of regional and local TV channels are raising their professional standards, dependence on local authorities often raises concerns about their editorial independence. The radio market comprised 34 private stations at the end of 2007. Nine of them have multiregional coverage.²⁶

Following the introduction of people-metering in October 2004, some TV stations, in particular STV, made changes in their programme structures and staff. The system helped the advertising industry to obtain data that are more accurate. At the same time, it helped the television sector to become more attractive as an efficient marketing tool. However, the system brought no significant changes in the ratings of the TV stations.

Commercial TV Markíza, still the dominant player, has continued to strengthen its position. Jednotka (which has seen its ratings drop) and commercial TV Joj vie for second place. STV's Dvojka has also lost viewers. Overall, STV's decline reflects its declining credibility and inability to appeal to a broad spectrum of viewers.

Table 1. Audience share of the main TV channels in 2006–2008

Channel	Share (%)		
	Feb. 2006	Feb. 2007	Feb. 2008
TV Markíza	30.4	33.4	37.6
Jednotka	20.2	16.8	17.6
TV Joj	16.3	16.3	15.6
Dvojka	8.3	5.1	4.7
TA3	1.7	1.3	1.5
Czech TV channels	9.3	10.6	9.3
Hungarian TV channels	-	8.1	5.7
Other	13.8	8.5	8.1

Source: Medialne.sk²⁷

Cable coverage increased only modestly over the past three years, from 39.2 per cent in 2003 to 40.7 per cent in 2006. In 2006, satellite penetration hovered at around 13 per cent.²⁸

²⁶ Broadcasting Council, Annual Report 2007, p. 14.

²⁷ Medialne.sk (available at <http://medialne.etrend.sk/televizia/grafy-a-tabulky.php> (accessed 25 January 2008).

²⁸ The source of this information is IP International Marketing Committee.

2. REGULATION AND LICENSING OF THE TELEVISION SECTOR

2.1 Regulatory authorities and framework

The bodies involved in broadcast regulation are the Council for Broadcasting and Retransmission (the Broadcasting Council), the Telecommunications Office and the Anti-monopoly Office (PMÚ, *Protimonopolný úrad*). The Law on Digital Broadcasting, which came into force on 31 May 2007, changed the functioning of the Broadcasting Council and Telecommunications Office. Additionally, the law enlarged the range of bodies involved in digital regulation to include the Ministry of Culture, the Ministry of Transport, Posts and Telecommunications (MDPT, *Ministerstvo dopravy, pôšt a telekomunikácií*) and the Ministry of Finance.

Along with the MDPT, the Telecommunications Office manages the frequency spectrum.²⁹ The PMÚ's remit is to protect and support the competitive environment, investigating cases of ownership concentration and abuses of dominant position.³⁰

The authority with the highest competence in broadcasting remains the Broadcasting Council, as established on the basis of the Law on Broadcasting and Retransmission.³¹ With the Law on Digital Broadcasting, which also amended the Law on Broadcasting and Retransmission, the position and tasks of the Broadcasting Council saw some changes.

The Broadcasting Council's basic task is to promote the right to information, freedom of expression, and access to culture and education. The Broadcasting Council must also ensure, through regulation, pluralism of information in the news provided by the media. Since 2005, the Council has gained additional tasks:

- to inform the European Commission on a regular basis about broadcasters' compliance with their obligations;
- to deal with complaints alleging violations of the law;

²⁹ 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 (came into force 1 January 2004), last amended 29 December 2007 (see OSI/Slovakia, p. 1402).

³⁰ The Anti-monopoly 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* 57 of 13 April 2001 (came into force 1 May 2001), last amended 1 March 2005 (see OSI/Slovakia, p. 1402.)

³¹ Law No. 308/2000 of the Collection of Laws on Broadcasting and Retransmission, *Official Gazette* 128 of 4 October 2000 (came into force 4 October 2000), last amended 15 May 2008.

- to oversee Slovakia's adherence to the Audiovisual Media Services (AVMS) Directive.³²

In 2006, the Broadcasting Council purchased a new automatic recording system that has enhanced its monitoring. It also purchased software that allows more accurate data on the territorial coverage of various broadcasters to be obtained.

Table 2. Budget of the Broadcasting Council in 2002–2007

Budget (€)	2002	2003	2004	2005	2006	2007
Actual expenditures	493,208	519,089	558,799	592,683	802,797	902,443
Capital expenditures	7,666	35,264	29,867	4,017	105,486	73,041
Total budget	500,874	554,353	588,666	596,700	908,283	975,484

Source: Broadcasting Council³³

2.2 Licensing system

There have been no major changes in the licensing system over the past three years. The Broadcasting Council is in charge of granting broadcast licences for terrestrial broadcasting.³⁴ Public tenders for licences should be published on the Council's website as well as in at least two national daily newspapers. Licences for radio broadcasting are granted for eight years, whereas licences for TV broadcasting are valid for 12 years.

The applicant who receives a broadcast licence must pay a one-off administrative fee, which was significantly reduced from April 2006. This fee could range between SKK 20,000 (€500, in 2005) and SKK 10 million (€250,000, in 2005) depending on the power of the transmitters used for carrying the signal. From 31 May 2007, after the adoption of the Law on Digital Broadcasting, the fee for analogue licences was reduced to a maximum of SKK 8,000 (€245) for nationwide broadcasters. The fee for digital licences was set at up to SKK 20,000 (€613) for nationwide TV and SKK 10,000 (€307) for nationwide radio.

³² Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, *Official Journal of the European Union*, 18 December 2007, L 332/27.

³³ Annual reports on the state of broadcasting in the Slovak Republic and on the activities of the Council for Broadcasting and Retransmission for the years 2002–2007.

³⁴ Law on Broadcasting and Retransmission, art. 45–55.

The main change in the licensing procedure was introduced by the Law on Digital Broadcasting, which gives the Telecommunications Office the right to authorise multiplex operators and entitles the Broadcasting Council to license content-providers.³⁵

Commercial broadcasters managed to postpone the launch of digitalisation, thereby keeping fresh competition out of the market. The first and only commercial multiplex is to be launched by 2011. The entire process is not likely to encourage the existing stations to give up their licences for analogue terrestrial broadcasting voluntarily. The current licences of the two major TV players, TV Markíza and TV Joj, will not expire until 2019.³⁶

The Telecommunications Office did not reach any agreement with the broadcasters on the Conditions for Transition and it says that TV stations want to dictate the conditions of the tender for multiplex operators. Broadcasters are concerned about losing their privileged position in the media and advertising markets.³⁷ According to the Conditions of Transition, the first digital multiplex should be launched within one year of granting a licence to a multiplex operator; the second multiplex by 31 January 2012; and the public service multiplex by the end of 2012. The deadline for analogue switch-off on the frequencies used by digital multiplexes is the end of 2011. All other analogue transmitters will be turned off no later than 31 December 2012.

In mid-2007, half of the population watched TV via analogue terrestrial reception. They are mostly people in the countryside and with low incomes. To receive the digital signal, they will have to buy either digital TV sets or digital set-top boxes. The latter are now sold at approximately SKK 1,500 (€46). The delay in digital terrestrial rollout may, however, lead to uneven results, prompting households to seek alternative methods of reception. Satellite providers, for example, have already updated their infrastructure allowing them to air digitally. In 2006, the Deutsche Telekom-owned utility Slovak Telekom started to offer TV via Internet Protocol (IPTV). Mobile operators such as Orange and T-Mobile plan to build a high-speed optical network, able to carry broadcasting, in several Slovak towns.³⁸

Digital transition is expected to cost the stations a loss of viewers for a certain period. The head of TV Markíza, Václav Mika, threatened to sue the State if the transition

³⁵ Law on Digital Broadcasting, art. 24–32.

³⁶ While a licence for analogue broadcasting can be extended only once (for 12 years for television stations and eight years for radio stations), a licence for digital broadcasting is granted for an unlimited period.

³⁷ Tomáš Czwitkovicz, “Podľa Telekomunikačného úradu televízie blokujú digitalizáciu” (According to the Telecommunications Office digitalisation is blocked by the TV channels), *Trend*, 28 January 2008, available (in Slovak) at <http://medialne.etrend.sk/televizia/sprava.php?sprava=6173> (accessed 15 February 2008).

³⁸ *Ibid.*

process damaged his station. Commercial stations that seek damages in court for losses caused by digitalisation will probably win. As a compromise, Parliament dropped the restrictions on commercial broadcasters owning more channels. According to the Law on Digital Broadcasting, TV stations will be able to own more thematic channels. They can thus prevent newcomers from entering the market.³⁹ However, after issuing the Conditions for Transition in April 2008, the Telecommunications Office stated that “digital broadcasting creates an opportunity to establish new TV channels, increasing competition and thus also pressure to improve quality programming”.⁴⁰

The Broadcasting Council continues to be responsible for ensuring that broadcasters comply with broadcast legislation. The regulator carries out this duty by receiving complaints and monitoring broadcasters’ programming. According to the Law on Digital Broadcasting, the Broadcasting Council can fine broadcasters up to SKK 5 million (€153,300) for violating legal provisions on cross-ownership. The Telecommunications Office can fine multiplex operators the same sum for the same reason.⁴¹

The Council can also fine TV broadcasters up to SKK 5 million (€153,300) and radio stations up to SKK 1.5 million (€46,000) for major violations of the Law on Broadcasting and Retransmission.⁴² It can remove a broadcaster’s licence if the broadcaster repeatedly, intentionally and in a serious manner violates provisions on the protection of human dignity and humanity.⁴³ Commercial broadcasters continued to attract most of the content-related sanctions. In 2005 and 2006, the number of sanctions on TV broadcasters remained stable. A significant increase in warnings was registered in 2007.

³⁹ Tomáš Czwitkovicz, “Televízie si s poslancami poradili, digitálny zákon sa prepisoval” (Television channels have controlled MPs, digital law has been overwritten), *Medialne. sk*, 11 April 2007, available (in Slovak) at <http://medialne.etrend.sk/televizia/clanok.php?clanok=3046> (accessed 25 February 2008).

⁴⁰ “Začína reálny prechod na digitálne televízne vysielanie” (There begins a real transition to digital TV broadcasting), available on <http://www.teleoff.gov.sk/sk/Press/2008/TPP.html> (accessed 24 April 2008).

⁴¹ Law on Digital Broadcasting, art. 60(2), 60 (4).

⁴² Law on Broadcasting and Retransmission, art. 67(5).

⁴³ Law on Broadcasting and Retransmission, art. 67a.

Table 3. Content-related sanctions imposed by the Broadcasting Council in 2005–2007

Type of sanction	Year	Public service broadcasters		Commercial broadcasters		Total	
		TV	Radio	TV	Radio	TV	Radio
Warning	2005	10	0	45	5	55	5
	2006	16	0	58	7	74	7
	2007	15	3	96	7	111	10
Obligation to air announcement on the breach of law	2005	1	0	4	1	5	1
	2006	1	0	1	0	2	0
	2007	0	0	2	0	2	0
Fines	2005	30	1	62	3	92	4
	2006	26	0	38	4	64	4
	2007	22	1	57	2	79	3
Total	2005	41	1	111	9	152	10
	2006	43	0	97	11	140	11
	2007	37	4	155	9	192	13

Source: Broadcasting Council⁴⁴

⁴⁴ Annual reports on the state of broadcasting in the Slovak Republic and on the activities of the Council for Broadcasting and Retransmission for the years 2005–2007.

Table 4. Content-related fines imposed on TV broadcasters in 2005–2007

Broadcaster	Year	Number of fines	Value of fines (total in €)
STV	2005	30	309,098
	2006	26	779,798
	2007	20	331,330
TV Markíza	2005	42	644,874
	2006	18	61,329
	2007	34	515,164
TV Joj	2005	18	115,605
	2006	17	98,740
	2007	20	214,192
Total	2005	90	1,069,578
	2006	61	939,867
	2007	74	1,060,685

Source: Broadcasting Council⁴⁵

The Council's decisions have not been controversial over the longer period and the body appears to have gained a respectable reputation.

3. REGULATION AND MANAGEMENT OF PUBLIC SERVICE TELEVISION BROADCASTING (PSB)

3.1 PSB legislation and policy

The responsibilities of public broadcasters have remained unchanged in the past three years. The Law on Slovak Television⁴⁶ and the Law on Slovak Radio provide the legal basis of public service broadcasting.

The Law on Digital Broadcasting (2007) largely supported the interests of the major broadcasters. Its adoption was preceded by a memorandum of co-operation signed by

⁴⁵ *Ibid.*

⁴⁶ Law No. 16/2004 of the Collection of Laws on Slovak Television, *Official Gazette* 7 of 15 January 2004 (came into force 1 February 2004), hereafter the Law on STV, last amended on 4 March 2008; Act No. 619/2003 of the Collection of Laws on Slovak Radio, *Official Gazette* 252 of 31 December 2003 (came into force 1 January 2004) (hereafter the Law on Slovak Radio), last amended on 4 March 2008.

the four major TV players (STV, TV Markíza, TV Joj and TA3). Politicians accepted their requirements as they wanted to avoid an open conflict.

The first draft of the Law on Digital Broadcasting did not envisage an entire multiplex for public service media. However, the STV management under Hreha lobbied for this provision. Hreha said that in addition to the two existing channels, STV had intended to launch two thematic channels (on sports and news). STV wanted to launch the sports channel named Trojka (the third channel)⁴⁷ by the planned deadline of August 2008, in time to air the Beijing Olympic Games.⁴⁸ Initially there appeared to be little hope of success, as the 2008 STV budget did not include €3.07 million earmarked for launching the sports channel. In May 2008, however, the Broadcasting Council issued a nationwide digital licence to STV's Trojka, and a week later the newly appointed Director-General, Štefan Nižňanský, succeeded in gaining State financial support, when the Government decided to provide around €2.79 million to launch this channel.⁴⁹ Trojka was on air in time for the Olympics.

In draft form, the Law on Digital Broadcasting tried to prevent the creation of dominant positions in the audiovisual market, for example by prohibiting a company from being licensed to operate more than one multiplex. Such provisions did not pass into law. According to the Law on Digital Broadcasting, the licensing of multiplex operators was given to the Telecommunications Office. This is worrisome as the European Commission criticised the Telecommunications Office for lacking independence.⁵⁰ The telecom regulator is financed by the Ministry of Transport, Post and Telecommunications, which is a shareholder in Slovak Telekom.⁵¹ The company Radio-communications, which plans to apply this year for a licence to operate a

⁴⁷ According to a May 2008 survey by the Institute for Public Affairs, some 39 per cent of respondents said that they welcomed the STV sports channel while 45 per cent had no interest in this idea (IVO, *op. cit.*).

⁴⁸ Tomáš Czwitkovicz, "Slovenská digitalizácia sa odkladá", *op. cit.*

⁴⁹ "STV môže spustiť športový okruh, TASR bude verejnoprávna" (STV can launch the sports channel, TASR will be a public service), *E-katalóg.sk*, 28 May 2008, available (in Slovak) at <http://www.e-katalog.sk/spravodajstvo/12700/> (accessed 5 June 2008).

⁵⁰ "MDPT pripravuje prevod akcií Slovak Telekomu" (MDPT prepares transfer of shares of Slovak Telekom), 27 March 2007, available (in Slovak) at <http://www.24hod.sk/clanok-28371-MDPT-pripravuje-prevod-akcii-Slovak-Telekomu.html> (accessed 13 January 2008).

⁵¹ Slovak Telekom is owned by Deutsche Telekom AG (51 per cent) and the Slovak Republic (49 per cent). By the end of 2007, the smaller share was held by the Ministry of Transport, Post and Telecommunication (34 per cent) and the National Property Fund (15 per cent). The Ministry is in process of transferring its share to the Ministry of Development, in response to long-standing criticism by the European Commission.

multiplex, is a branch of the Telecommunications Office.⁵² Complaints about the concentration of multiplex ownership will be dealt with only by the PMÚ.

3.2 PSB governance structure

Under the management that took over in 2003, STV made significant progress in restructuring, especially in organisational and economic terms. By the end of 2004, within two years of his appointment as Director-General, Richard Rybníček had halved STV's staff. By slashing costs, he balanced the budget in 2005. However, there was concern in some quarters that the price of better financial health was the abandonment of STV's public-service mission, with Jednotka becoming more commercial in order to beef up the station's overall ratings.

Following Rybníček's departure and the elections in 2006, STV's reputation has steadily declined. Instead of strengthening its public service character, STV in general, and its news and current affairs department in particular, were subject to intensifying political interference. Since the 2006 elections, STV has come under constant pressure from the ruling coalition, which interfered more or less openly in both the appointment of Radim Hreha in December 2006 (after Rybníček's resignation) and the election of the governing structures in early 2008. Following Hreha's arrival as STV's thirteenth Director-General since 1989, the media and opposition politicians speculated that his appointment was meant to allow the ruling coalition to influence STV. Senior members of the coalition openly admitted as much; for example, the Vice-Chairman of the ĽS-HZDS party, Milan Urbáni, said that parties in the coalition had agreed to gain influence over some of STV's activities, mostly news.⁵³

In December 2007, the STV Council decided to sack Hreha. He was accused of repeated failures to implement the resolutions of the STV Council,⁵⁴ increasing the budget deficit, failing to submit the station's draft budget and programme concept for 2008, and failing to meet certain statutory programme obligations, such as the quota of

⁵² Slovak News Agency (SITA, *Slovenská tlačová agentúra*), "Digitalizácia na Slovensku výrazne mešká" (Digitalisation in Slovakia is significantly delayed), *Mediálne.sk*, 30 January 2008, available (in Slovak) at <http://medialne.etrend.sk/televizia/sprava.php?sprava=6193> (accessed 17 February 2008).

⁵³ Karol Sudor, "Milan Urbáni: Mečiar bol hlúpy a dnes to už vie" (Mečiar was stupid and today he knows it already), *SME*, 8 January 2007, available (in Slovak) at <http://www.sme.sk/c/3074730/milan-urbani-meciar-bol-hlupy-a-dnes-to-uz-vie.html> (accessed 16 February 2008).

⁵⁴ During Hreha's 11 months as Director-General, the STV Council said that out of its 121 resolutions, 17 were not met, one was met only formally, seven after the deadline and three incompletely; the deadline was postponed in the case of six resolutions. (Minutes from the session of the STV Council of 15 November 2007, available (in Slovak) at <http://www.stv.sk/stv/rada-stv/uznesenia/> (accessed 20 February 2008).

independent European production.⁵⁵ The search for a new head was launched in early April 2008. On 16 April 2008, Štefan Nižňanský, a news anchor of Czechoslovak Television in communist times, was selected in the second round of the competition from among three candidates. The first round was contested by 19 applicants who met the conditions out of 27 initial applicants. Although Nižňanský rejected all accusations of political bias, the selection procedure was surrounded by speculation that his candidacy was supported by the ruling SMER-SD.⁵⁶ (In 2007, he was a media adviser to the Minister of Labour, Social Affairs and the Family, Viera Tomanová, who was nominated by Smer-SD.)

The new Director-General intends to reduce the number of directors, cooperate closely with the STV Council, change the STV logo and return to the old names of STV channels (STV1 and STV2). He is also considering shutting down STV's affiliate companies, established by the former director, Rybníček, and incorporating them into the STV structure.⁵⁷ He wants a balanced budget based on various new sources with a gradual reduction of advertising, the renewal of original production and the introduction of new programmes with a European dimension, all aimed at boosting STV's public service character.⁵⁸

During the negotiations among the ruling coalition in December 2007, political parties identified the people they would push on to the councils of public broadcasters. Early in 2008, the ruling coalition elected close allies to the managing boards of the station, with the clear consent of the Prime Minister. The Chair of the STV Council, Bohumír Bobocký, said: "No illusions are necessary; so far each council was created on the basis of political agreements."⁵⁹ The former Chair of the STV Council, and a member until March 2008, Miroslav Kollár, said that the move had demonstrated a complete misunderstanding of the task of public service media. "I consider the intervention [of the ruling coalition] in the independence [of the STV Council] to be unprecedented," he said. He added that the winner-takes-all philosophy of the ruling coalition showed how they imposed a tyranny of the majority. He warned that in the past, staffing the public service media on political grounds rather than by criteria of competence had led to their marginalisation, wrecking their hopes of prosperity.⁶⁰

⁵⁵ Minutes from sessions of the STV Council of 15 November and 11 December 2007, available (in Slovak) at <http://www.stv.sk/stv/rada-stv/uznesenia/> (accessed 20 February 2008).

⁵⁶ "Nižňanský je jednou nohou v STV" (Nižňanský is in STV by one foot), *SME*, 14 April 2008, available (in Slovak) at <http://www.sme.sk/c/3826225/Niznansky-je-jednou-nohou-v-STV.html> (accessed 16 April 2008).

⁵⁷ "Nižňanský vedenie STV zatiaľ nemení", *op. cit.*

⁵⁸ Štefan Nižňanský, *STV – Tvorivá autorská dielňa* (STV – Creative author's studio), the management and development project, available at <http://www.stv.sk/stv/o-stv/zakony-a-dokumenty/> (accessed 1 May 2008).

⁵⁹ "Nižňanský vedenie STV zatiaľ nemení", *op. cit.*

⁶⁰ *Ibid.*

3.3 PSB funding

The most important source of income for the public service media is the licence fee, which since 1 April 2008 has been linked to electricity utility bills; all consumers of electricity have to pay the licence fee as well. This formula was introduced by the Law on Remuneration for Services to the Public (Law for Services), adopted in early 2008.⁶¹ In the past, all owners of TV sets and radio receivers were obliged to pay the fee. In the case of companies, the size of the fee is calculated according to the number of employees. The public service broadcasters also generate funds from advertising.

Table 5. STV budget: breakdown by revenue source in 2005–2008

Revenue source	Income (€ million) ⁶²				Share of total revenue for 2008 (per cent)
	2005	2006	2007	2008 (approved budget)	
Licence fees	43.63	46.17	45.78	52.68	72.3
Advertisements	16.87	18.06	16.34	18.4	25.2
State subsidies	0	0	3.07	0	0
Revenues from sale of properties	5.52	1.69	1.13	0.46	0.6
Other	3.48	2.99	2.63	1.35	1.9
Total	69.5	68.91	68.95	72.89	100

Source: STV⁶³

⁶¹ Law No. 68/2008 of the Collection of Laws on Remuneration for Services to Public provided by STV and SRo and on Amendment and Supplement of Some Other Laws, *Official Gazette* 26 of 29 February 2008 (came into force 1 April 2008).

⁶² This report uses the official exchange rate of the Slovak National Bank as of 31 March 2008: €1 = SKK 32.611.

⁶³ STV, “Výročná správa o činnosti Slovenskej televízie za rok 2006” (Annual STV Report of 2006), June 2007 (available in Slovak at http://www.stv.sk/chillout_items/4/5/1/45144_00b93d.pdf (accessed 20 March 2008)). Data for 2007 provided by Miroslav Kollár, former member of the STV Council.

Table 6. STV total income and expenditure in 2005–2008 in € million

	2005	2006	2007	2008 (approved budget)
Total income	69.49	68.9	68.95	72.89
Total expenditure	68.75	68.48	73.88	77.39
Balance	+0.74	+0.42	-4.93	-4.5
Cash-flow	10.74	10.16	6.34	0.66

Source: STV⁶⁴

The licence fee remained SKK 140 (€4.3) a month. As of 1 April 2008, this fee is paid by all households connected by the electricity grid. The revenue is collected by *Rozhlasová a televízna spoločnosť*, a joint company established by STV and SRo for this purpose; this company then divides the money between both public broadcasters (STV receives 70 per cent of the sum and SRo gets the remainder). Only households that prove they have disabled people are exempted. Retired people and low-income households pay half the fee. Until April 2008, companies paid according to the number of receivers they used. Under the new provisions, all companies with up to nine employees will pay SKK 140 (€4.3) and companies with more than 1,000 people will pay SKK 4,000 (€123) a month.⁶⁵ Thanks to this change, the public service broadcasters are expected to gain the licence fee from a third of the TV households that were estimated to have avoided payment in the past.⁶⁶ STV hopes to use the extra funds to launch a new sports channel and make more documentaries and original feature films. The money will also allow STV to modernise its equipment.⁶⁷

However, the changes to the licence fee payment were criticised in some quarters. The public service broadcasters will still need money from the Government and therefore will continue to depend on political power, according to Tomáš Galbavý of the Slovak Democratic and Christian Union–Democratic Party (SDKÚ-DS, *Slovenská demokratická a kresťanská únia – Demokratická strana*). Galbavý said that it was unacceptable to force people to pay the licence fee through the electricity bill; for there are citizens who use electricity but not radio and television. The SDKÚ-DS wants to scrap the licence fee completely and have STV and SRo funded through the State budget. The party submitted its proposal in September 2007, but gained support from

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ “Poplatky naše každodenné” (Our daily fees), available (in Slovak) at http://celamko.blogspot.com/2008/02/poplatky-nae-kadodenn_15.html (accessed 3 March 2008).

⁶⁷ *Ibid.*

only two other opposition parties. However, Galbavý has promised to resubmit the proposal until it is accepted.⁶⁸

The Minister of Culture, Marek Maďarič, opposed the SDKÚ-DS idea. Licence fee collection had to be improved to prevent the repeated financial crises of public service media. If they are financed by the State, he added, the public service media tend to air more advertisements than if they are funded by the licence fee. Maďarič said the fee is currently too low, but could only be increased if the broadcasters raised the quality of their programming. Maďarič said the Government should finance only certain programmes in the public service media. Agreements on financing these programmes from the State should extend beyond the Government's term, to avoid political interference.⁶⁹

In a separate move, the economist Richard Šulík, a former adviser to Minister of Finance Ivan Mikloš, and the co-author of Slovakia's flat tax reform, launched an initiative in January 2008 called "Stop the licence fee". He wants to collect signatures to organise a referendum on the licence fee. Šulík considers this fee to be a relic that is "unfair" and "unsocial". As for an alternative, he says that public service media could be funded through contributions from commercial TV stations, the State budget or commercial income such as advertising, sponsorship or subscriptions.⁷⁰ According to the latest surveys by the Institute for Public Affairs, 58 per cent of respondents would prefer STV to be funded directly from the State budget. Some 17 per cent expressed support for the licence fee as the main source of financing, and the same proportion backed advertising. Some 59 per cent of respondents said that they were ready to take part in a potential referendum on abolishing the licence fee, with 88 per cent of those 59 per cent saying that they would vote for the elimination of the fee.⁷¹

Nižňanský stressed after his appointment that STV was "in a complicated situation" due to debts stemming from lost lawsuits, unpaid bonuses for weekends in 2005–2006, and fines imposed on STV for accounting errors in their VAT.⁷² As well as the licence fee, he counts on two other sources of funds in order to balance STV's books: first, up to €61 million from the State (based on the so-called contract between STV and the State) and second, income from grants and STV projects.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ Tomáš Czwitkovicz, "Petícia chce zrušiť koncesionárske poplatky" (Petition wants to cancel licence fees), *Medialne.sk*, 23 January 2008, available (in Slovak) at <http://medialne.etrend.sk/televizia/sprava.php?sprava=6126> (accessed 4 March 2008).

⁷¹ IVO, *op. cit.*

⁷² Pravda.sk, "Nižňanský vedenie STV zatiaľ nemení", *op. cit.*

3.4 Editorial standards

The internal editorial regulations at STV have not changed. The station's journalists are guided by the Charter for News and Current Affairs Programmes, which drew inspiration from the BBC's editorial guidelines.⁷³ It sets standards and principles for programme production, including ways of implementation.⁷⁴ The STV Charter states that the station's news and current affairs programmes should provide topical and unbiased information and create a forum for discussion to help viewers make their own opinions. They should also protect and strengthen national identity and culture. The Charter also contains guidelines on production and provisions on legal aspects of broadcasting such as the protection of sources' identity, unfounded accusations, privacy, ethnic and racial hatred, and so forth. Breaching the STV Charter may even lead to the termination of a journalist's contract. As well as the Charter, journalists in Slovakia must abide by the Code of Journalistic Ethics, adopted in the early 1990s by the Slovak Union of Journalists (*Slovenskej syndikát novinárov*).

The STV Council is obliged by law to cooperate with the Broadcasting Council in ensuring the implementation of legal provisions on programmes. The Broadcasting Council can thus impose sanctions on STV if it violates the obligation to air objective and impartial news and political programmes.

With the change of management in 2006, STV news programming underwent major reforms. Previously, STV had started to use a more dynamic and streamlined visual format. When he took over, Hreha pledged to revitalise the news and current-affairs output. He said the station would focus on improving the quality of newscasts, which would contain topical and complete information.⁷⁵ In fact, STV's output deteriorated, becoming highly politicised, prompting 15 journalists, an unprecedented number, to leave the station in 2007.

Soon after taking over, Hreha sacked Roland Kyška, the director of STV's news department, and Eugen Korda, the editor-in-chief of the investigation programme "*Reportéri*" (Reporters). According to Korda, the Director-General said that he could not resist the "pressures exerted by political circles to remove him".⁷⁶ Another dubious move was the sacking in 2007 of Štefan Hríb, followed by the cancellation of the programme that he presented called "*Pod lampou*" (Under the lamp). Hríb was sacked

⁷³ See <http://www.bbc.co.uk/guidelines/editorialguidelines/> (accessed 19 August 2008).

⁷⁴ STV, "Charta spravodajstva a publicistiky Slovenskej televízie" (Charter for news and current affairs of STV), available online (in Slovak) at <http://www.stv.sk/files/fusellxoqf.pdf> (accessed 12 April 2008) (hereafter the STV Charter).

⁷⁵ Radim Hreha, "Televízia na mieru" (Taylor-made TV), Bratislava, September 2006, available (in Slovak) at <http://medialne.etrend.sk/uploady/projek-radim-hreha.pdf> (accessed 13 March 2008).

⁷⁶ Tomáš Czwitkovicz, "Eugen Korda: Hreha na vedenie STV nemá" (Eugen Korda: Hreha is not capable of managing STV), 17 January 2007, *Medialne.sk*, available (in Slovak) at <http://medialne.etrend.sk/televizia/clanok.php?clanok=2715&RSS> (accessed 10 February 2008).

for inviting Korda to speak on-air about the reasons behind his removal, and then inviting his other guests to terminate the programme forthwith, in protest at the lack of freedom at STV. Both programmes were among the highest-quality productions at STV; they had won the prestigious “*Novinárska cena*” (Journalism Award) in Slovakia and were considered during Rybníček’s tenure (when STV was criticised for commercialism) to be among the only shows that truly served STV’s public role. As mentioned, in the summer of the same year, one third of STV’s news team left the station, complaining about the lack of editorial freedom.

STV news journalists complained about lack of independence or even censorship by the editor-in-chief, Ján Šmihula. They claimed that they were asked to report positively about the Government and the ruling coalition parties.⁷⁷ Jaroslav Barborák, a news editor with STV since November 2006, said that after the change of management, he noticed a trend of management interference with journalists’ work. Michal Petruška, script editor in the news department since June 2005, said that the management tended to be “sterile” and avoid conflict. Šmihula himself admitted that the Ministry of Culture had once required him to hold a particular report until the ministry had prepared “a more comprehensive response”.⁷⁸ After Hreha’s arrival, STV’s main newscast lost 2.5 per cent of its audience.⁷⁹

In summer 2007, against this background, the STV Council stated: “The newscasts of STV do not fully meet the requirements of public-service broadcasting, especially from the viewpoint of quality, professionalism and diversity of information, which is a consequence of a long-term process of weakening, instability and high turnover of staff.”⁸⁰ The Council required the Director-General to submit a plan for improving the quality and technical equipment of the newsroom, and to ask the news department management to raise its professional standards, for example by permanent training and study trips abroad. The Council also asked Hreha to start monitoring how balanced the station’s newscasts were. Hreha commissioned an independent analysis of the news department at STV. The study found inefficient management at the level of editor-in-chief, an inability to set targets, efficiently communicate with the editorial team, motivate journalists or assess their work. The analysis also concluded that there was no trust or openness in the news department. The human-resources policy did not respond to the real needs of the newsroom, and STV did not look for the best

⁷⁷ Marek Vagovič, “Redaktori STV hovoria o censure” (STV journalists speak about censorship), *SME*, 28 July 2007, available (in Slovak) at <http://www.sme.sk/c/3414182/redaktori-stv-hovoria-o-censure.html> (accessed 25 January 2008).

⁷⁸ Marek Vagovič, *op. cit.*

⁷⁹ Tomáš Nejedlý, “Spravodajstvo STV narazilo na dno sledovanosti” (The news of STV hurt the ratings), *Hospodárske noviny*, 23 January 2008, available (in Slovak) at <http://hn.hnonline.sk/c1-23337405-spravodajstvo-stv-narazilo-na-dno-sledovanosti> (accessed 3 February 2008).

⁸⁰ Minutes of the STV Council meeting of 8 August 2007, available (in Slovak) at <http://www.stv.sk/stv/rada-stv/uznesenia/> (accessed 20 February 2008).

journalists. The crisis of 2007 further damaged STV's reputation among journalists, seriously denting the possibility of attracting skilled and high-quality journalists. According to this analysis, the core problem was the lack of a concept for the news service.⁸¹ In spite of this strong criticism, Hreha made no changes and Šmihula stayed in position even after Hreha himself was removed.

4. COMMERCIAL BROADCASTING

4.1 Regulation and management

The main changes in the regulation of commercial broadcasting came with the Law on Digital Broadcasting. The Broadcasting Council remains the main regulator of the broadcasting sector, but its powers are set to decrease with the introduction of digitalisation. The licensing procedure has been simplified by the Law on Digital Broadcasting, which abolishes the tender procedures, replacing them with individual applications. The Broadcasting Council will be obliged to grant digital licences to any applicant who complies with all legal conditions.⁸² With their broadcast licences prolonged until 2019, TV Markíza and TV Joj will have an important say in setting the actual timetable for switchover.

4.2 Ownership and cross-ownership

The PMÚ regulates ownership concentration and its impact on the market, in the framework of the Law on Protection of Competition. However, it does not look into issues of diversity of information. The Broadcasting Council regulates ownership, cross-ownership and diversity. As the Broadcasting Law does not require the Council to approve ownership changes taking place on the level of affiliate companies (which co-own the licence), provisions forbidding cross-ownership in the media are inapplicable in reality.

Although TV Markíza still dominates the commercial broadcast market, it is more vulnerable today than in the past. At the end of 2005, the US Central European Media Enterprises (CME) increased its stake in TV Markíza to 80 per cent by buying out

⁸¹ Stanislava Benická, "Kríza ako príležitosť k zmene" (Crisis as a chance to change), available (in Slovak) at <http://medialne.etrend.sk/print.php?clanok=3793> (accessed 16 February 2008).

⁸² Tomáš Czwikovicz and Miroslav Kollár, "Médiá", in M. Kollár, G. Mesežnikov and M. Bútorá, *Slovensko 2006. Súhrnná správa o stave spoločnosti* (Slovakia 2006. A Global Report on the State of Society), IVO, Bratislava, 2007, p. 523.

František Vizváry, who was a close ally of the station's previous owner, Pavol Rusko.⁸³ When Rusko entered politics, he sold his share to Vizváry, who was then hired as Rusko's adviser at the Ministry of Economy. These changes were generally considered to have improved TV Markíza's market position, as they led to the removal of managers whose main priority lay in supporting Rusko's political ambitions. CME's acquisition was meant to avoid further problems of the kind that the company had encountered with its partner in TV Nova in the Czech Republic, Vladimír Železný.⁸⁴

Under its new director, Václav Míka, TV Markíza has taken clear steps to improve its tarnished image.⁸⁵ With its new programme schedule since September 2006, it has retrieved one third of the audience that it had lost over the previous few years.

In July 2007, CME became the full owner of TV Markíza by purchasing the remaining stake from Media Invest.⁸⁶ Slovak legislation requires a TV station to be co-owned and represented in the company's executive boards by a Slovak citizen. CME⁸⁷ managed to acquire the entire station, as ownership changes occurred at the second level of ownership, in one of Markíza-Slovakia's shareholders, namely Media Invest.⁸⁸

TV Joj's ownership has also changed. In early 2007, the Grafobal Group, headed by Ivan Kmotřík, sold the station to J&T Media Enterprises, owned by the J&T Finance Group. In May 2007, Richard Flimmel replaced Milan Knažko to become TV Joj's new director. Patrik Tkáč, one of the owners of J&T Finance Group, pledged that they were "not going to interfere with the channel's editorial policy". However, he also admitted that owning a TV station meant "protection in case someone spreads lies or

⁸³ The licence-holder Markíza-Slovakia was owned by three private companies: ARJ (50 per cent), Media Invest (16 per cent) and CME (34 per cent). The changes included moving 4 per cent of ARJ shares to Media Invest. As such, Ján Kováčik and Milan Filo, who were behind Media Invest, had 20 per cent of the station. CME purchased the remaining 46 per cent from ARJ to increase its stake to 80 per cent.

⁸⁴ As with TV Nova, CME initially did not own the licence of TV Markíza, but only STS Slovakia, the servicing organisation, which runs the station. (For the CME saga in the Czech market, see "Czech Republic" in Open Society Institute, *Television across Europe: regulation, policy and independence*, Budapest, 2005, pp. 529–532.)

⁸⁵ Prior to his appointment at TV Markíza in February 2006, Václav Míka worked as a director of Rádio Expres. Under his leadership, Rádio Expres became the most listened-to radio station in Slovakia.

⁸⁶ CME bought the 20 per cent stake from Media Invest, owned by Slovak entrepreneurs Ján Kováčik and Milan Filo, for SKK 1.9 billion (€58.26 million).

⁸⁷ A stake of 49.7 per cent in CME is now owned by the venture-capital firm Apax Partners. A former US ambassador and the heir to the Estée Lauder fortune, Ronald S. Lauder, controls the remainder.

⁸⁸ According to the Law on Broadcasting and Retransmission, transactions at the second level of ownership in television (affiliate companies that co-own the licence) do not need the Broadcasting Council's approval.

defamatory comments about us”.⁸⁹ The deal included the sale of the all-news TV station, TA3 (previously owned by J&T Finance Group) to Kmotřík’s Grafobal Group, which had been considered to be TA3’s unofficial owner for some time, though this was not something that Kmotřík ever admitted. The Broadcasting Law forbids ownership of two nationwide TV stations.

The media group controlled by Rusko, which owned – directly and indirectly – TV Markíza, the lifestyle weekly *Markíza*, Rádio Okey,⁹⁰ and the now defunct newspaper *Národná obroda*,⁹¹ lost its dominant position in the media. However, the media group concentrated around Kmotřík continues to be an important player. In addition to CEN (TA3 licence holder), the group owns the publishing houses SPN Mladé Letá, Kalendárium Prešov and Slovart Print, the printing houses Slovenská Grafia, Polygraf Print Prešov, Bratislavské tlačiarne and Versius. It also controls the advertising agencies Euro RSCG Artmedia and Euro RSCG New Europe and the largest newspaper distributor and retailer Mediaprint & Kapa. Whereas Rusko did not hesitate to use his media for political purposes, there is no evidence that Kmotřík has tried to do something similar.

4.3 The advertising market

The advertising market in Slovakia was worth almost €1.019 billion in 2006. Television pulled in the bulk of this spending, with around €800 million gross. However, it is estimated that the real value of the market (net) is much smaller. Its share of the total advertising spend increased between 2003 and 2006 by more than eight percentage points.

TV Markíza continues to dominate the market. However, its share of the advertising spend has decreased dramatically over the past three years. In 2003, it attracted 52 per cent of the national advertising spend and some 80 per cent of TV advertising. In 2006, its share of TV advertising was 53.8 per cent.⁹²

⁸⁹ “Patrik Tkáč: J&T vládu nekritizuje, radšej zarába” (Patrik Tkáč: J&T does not criticise the government, it prefers to earn money), *Trend*, 7 August 2007, available (in Slovak) at <http://firmy.etrend.sk/107592/firmy/patrik-tkac-jt-vladu-nekritizuje-radsej-zaraba> (accessed 30 April 2008).

⁹⁰ The French media group Lagardère (which owns Frekvence 1 and Evropa 2 in the Czech Republic) entered the Slovak media market by acquiring a majority stake in Rádio Okey (previously owned by the companies Forward and R-Media).

⁹¹ In 2005, *Národná obroda* folded due to long-standing financial problems. It was replaced in 2007 by the free-of-charge daily *24 hodín*, which did not achieve much success either, shutting down in early 2008.

⁹² Source: IP International Marketing Committee, *Television 2007. International Key Facts*, October 2007.

Table 7. Share of TV advertising spending in 2003–2006 (as percentage)

Medium	2003	2004	2005	2006
TV	70.1	74.9	76.4	78.5
Print media	19.4	16	14.6	13.1
Radio	7.2	6.3	5.9	5.2
Internet	n.a.	n.a.	n.a.	n.a.
Other	3.3	2.7	3.1	3.3

Source: IP International Marketing Committee

4.4 Editorial standards and independence

Slovakia's media environment has become more standardised over recent years. Foreign ownership in most of the significant private media has brought financial stability, which has in turn strengthened editorial independence. The use of private broadcasters for political purposes, as seen at TV Markíza, is no longer common. Likewise with conflicts of interest; there was a case when three TV Markíza reporters decided to contest the 2006 local elections. The station forced them to drop out of the race.

More worryingly, the increasing commercialisation of nationwide broadcasters has had a negative impact on public interest news and current-affairs coverage of the changes in civil society since Slovakia joined the EU in 2004.

Regrettably, the present Government has ratcheted up the pressure on independent media. Some of its members, most often Prime Minister Fico himself, characterise the media as a political opposition. They try to belittle the media, accusing them of bias and lack of professionalism.⁹³ For a year and a half after taking office, Fico refused to take part in televised debates with opposition politicians. Some broadcasters accept his idiosyncrasy and usually have their journalists debating with him. Fico has the right to choose how to appear in the media, but at the same time his move, along with his disdain for the opposition, journalists and any critics of the Government, is seen by some as a symptom of decline in the democratic culture.⁹⁴

The Slovak media are somewhat myopic in their factual output, focusing on a relatively narrow national agenda. The broadcasters need to improve their coverage of issues that

⁹³ Tomáš Czwitkovicz and Miroslav Kollár, "Média", *op. cit.*, p. 550.

⁹⁴ Mirka Kernová, "Fico nie je prvý, kto sa obáva debát" (Fico is not the first one who is afraid of debates), *SME*, 28 January 2008, available (in Slovak) at http://www.sme.sk/clanok_tlac.asp?cl=3699394 (accessed 15 February 2008).

affect Europe as a whole. Programme-makers should be encouraged to seek innovative, modern platforms that expand regional, international and ethnic coverage.

Editorial standards and practice are improving, but there are still problems. Years of theoretical study at university do not prepare young journalists properly for their jobs. They lack practice and training in critical thinking, how to select important information, and how to analyse and have a critical overview on various matters. Another worrying fact is that the number of journalists with higher education (especially those below 30 years of age) is decreasing, according to a 2006 survey by the Slovak Union of Journalists.

Information has become merely a commercial product, which is one reason why high-quality journalism is endangered. Slovak journalism has celebrities but not elites. It is still waiting for strong personalities who would also be real professionals and opinion-makers on a more regional or global level. For example, very few columnists focus on specific topics, including foreign policy and EU-related issues. Encouraging civil society's participation in broadcasting would foster a broader representation of civic issues in the media. Professional associations of journalists are effective only if journalists themselves initiate them. Many media observers and journalists, especially the younger ones, criticise or ignore the Union of Journalists, yet no one has created an alternative. During their transformation, the media clearly lacked self-reflection on the changes that they were undergoing.

Broadcasters should also pay more attention to cultural diversity, as a means of shifting the viewers' interest from narrow national concerns and often biased coverage of ethnic groups. Monitoring by the Bratislava-based media watchdog MEMO 98 revealed that broadcasters still air news depicting the life of the Roma in a negative, stereotypical way.⁹⁵

4.5 Regional and local broadcasting

Media content at the regional and local levels desperately needs to be improved. From a legal point of view, local TV stations are commercial broadcasters working under the same set of obligations as any other commercial broadcaster (except for the quota on European production). They face economic hardships that push them into the hands of the municipalities, which finance approximately 80 per cent of their budgets. This has enabled stations in towns such as Nitra and Trenčín, and also in the capital Bratislava, to improve their financial situation. However, this support obviously increases their dependency on the local authorities and reduces editorial independence.

⁹⁵ MEMO 98, "Obraz menšín vo vysielaní vybraných elektronických médií" (The picture of minorities in broadcasting selected electronic media), 13 March 2008, available (in Slovak) at http://www.memo98.sk/data/_media/sprava_memo_mensiny_2008.pdf (accessed 30 April 2008).

Some other local stations, such as Košice-based TV Naša, are financed mainly from advertising, as they receive no financial backing from municipalities.

Local TV stations cooperate with the nationwide channels, especially those that put an emphasis on regional news coverage, such as TV Joj, which is, in fact, the inheritor of a regional network of local TV channels, TV Global. In general, all the largest channels – TV Markíza, TV Joj, TA3 and to some extent STV's Jednotka – cooperate with local channels or local stringers who are paid per piece of news. Sometimes the same local correspondent produces news for all nationwide TV stations. The result is that the same face appears on the news on different TV channels.

Generally, local TV content has been improving due to the professionalisation of their journalists and the slow but steady growth of local markets. Thanks to participation in various competitions for journalists and increased cooperation with the main TV stations, local channels have gained better access to information. At the same time, they have more opportunity to compare their output, which motivates them to improve. However, when it comes to regional news, the main TV channels are usually interested in sensationalism and less in issues relevant for the region. This affects local TV channels as it limits their room for improvement.

Local TV channels focus mainly on regional news, talk shows and discussion programmes on local topics, music, information and announcements relevant for their community. Only the larger local stations cover national news, and air talk shows on wider problems and issues, entertainment programmes and investigative reports. Some local stations have tried to expand their coverage. For example, the Žilina-based TV Patriot, broadcasting nationwide via satellite, also airs regional news from other parts of Slovakia. Another project, Media Screen, which aims to air via satellite, wants to offer programmes by several local TV channels from Eastern Slovakia; this would divide the broadcast time and transmission costs, and reach a wider audience from other parts of the country (through Nitra-based TV Central).

5. PROGRAMMING

5.1 Output

In 2007, STV broadcast a total of 15,067 hours, down by 1,308 hours from 2006. Compared with the period between 2001 and 2003, when the station aired some 10,000 hours of programming, the station has significantly increased its output since 2004.⁹⁶

⁹⁶ Since 2004, the Broadcasting Council has not provided data on the total output by commercial broadcasters.

Table 8. STV programming – breakdown by genre in 2005–2007

Genre	(per cent)		
	2005	2006	2007
News	16.98	12.66	14.01
Political current affairs	9.71	13.0	14.39
Documentaries	10.67	10.06	11.9
Religious programmes	0.59	0.88	1.01
Drama	34.45	37.71	42.32
Entertainment	9.07	7.54	6.59
Sport	4.13	6.16	5.4
Education	1.55	1.24	0.97
Music	3.24	1.55	3.42
Other broadcasting	6.38	6.0	–
Commercials	3.23	3.21	–

Source: Broadcasting Council⁹⁷

5.2 General provisions on news

The Broadcasting Law obliges broadcasters, both public and commercial, to broadcast impartial and unbiased news and political programmes, and to ensure diverse information and pluralism of views.⁹⁸ They are also obliged to separate opinions and commentaries from factual reporting and to ensure that programmes during election campaigns comply with the legislation on elections.

Since the arrival in 2006 of the new management at STV, including the head of the News Department, Ján Šmihula, the broadcaster has sometimes failed to follow these requirements.

According to monitoring by MEMO 98 during February and March 2007, the Government had advantageous coverage in the news, with its share in the newscasts increasing steeply to almost 75 per cent of the political coverage.⁹⁹ Since 1998, when

⁹⁷ Annual reports on the state of broadcasting in the Slovak Republic and on the activities of the Council for Broadcasting and Retransmission for the years 2005–2007.

⁹⁸ Law on Broadcasting and Retransmission, art. 15.

⁹⁹ In the previous monitored periods all the broadcasters devoted some 50 per cent of the political news coverage to the Government.

the Mečiar Government fell, triggering changes at STV, the Government has been presented mostly in neutral and critical tones. But in 2007, STV showed the least critical approach towards the government among all monitored media outlets.¹⁰⁰

5.3 General programme production guidelines

STV has continued its strategy of differentiating its two channels. The station also promotes its programming more effectively, for example by previewing on Jednotka programmes that will air on Dvojka. Production changes, especially on Jednotka, have made STV's output more attractive.

The core of Jednotka programming consists of films, foreign drama series and entertainment, with less attention to documentaries, current-affairs programmes and news. Jednotka's programming concentrates on strengthening its position in prime time. However, in commercial terms, this strategy has not been very lucrative, as some primetime programmes cannot carry advertising. Although the station was previously often criticised for becoming too commercial, under Hreha's management its programming did not actually change much.¹⁰¹ The visuals on Jednotka were changed in April 2007, as part of an attempt to position it as Slovakia's leading family-oriented channel.¹⁰² The new Director-General intends to continue in this direction; he wants STV1 to target the masses, without tabloid news or blatantly commercial programmes. He wants to emphasise original drama production, to the detriment of light entertainment.

In 2007, Dvojka's core schedule consisted of documentaries and sports. It aired a significant quantity of public interest programmes, regional information and political current-affairs programmes. It focused on presenting the life and culture of national minorities. The channel also gave airtime to religion and specific social and professional groups.¹⁰³ Nižňanský wants Dvojka to continue to cater for more demanding viewers, showing mostly informative and educational programmes.¹⁰⁴

¹⁰⁰ MEMO 98, "Prezentácia politických subjektov, vlády a prezidenta SR (15.2–7.3.2007)" (Presentation of political subjects, the Government and the President of the Slovak Republic (15 February–7 March 2007), available (in Slovak) at http://www.memo98.sk/index.php?base=data/spravy/2007/2007_02-03.txt (accessed 14 April 2008).

¹⁰¹ Tomáš Czwtkovicz and Miroslav Kollár, "Médiá", *op. cit.*, p. 564.

¹⁰² Broadcasting Council, Annual Report 2007, pp. 16–18.

¹⁰³ Broadcasting Council, Annual Report 2007, pp. 16–18.

¹⁰⁴ Štefan Nižňanský, *STV – Tvorivá autorská dielňa* (STV – Creative author's studio), p. 15, available on http://www.stv.sk/chillout_items/1/1/5/115384_221683.pdf (accessed 17 April 2008).

In 2007, Jednotka aired 37.62 per cent of original, first-shown programmes, representing a year-on-year increase of 3.42 per cent. However, repeats still accounted for almost two-thirds of its output. Dvojka aired 42.94 per cent of original programming. On Jednotka, the share of domestic production was 30.54 per cent, a decrease year-on-year by 7.7 per cent. On Dvojka, domestic production represented 68.25 per cent, almost the same as in the previous year. The share of STV's own production was 26.50 per cent on Jednotka and 53.72 per cent on Dvojka.¹⁰⁵

The programming of both major private TV channels continued the trends they established in a long period. In 2007, TV Markíza's core programming was based on films and foreign series. It also aired drama, entertainment and current-affairs programmes. TV Joj's own production¹⁰⁶ constitutes an important part of the channel's programming.¹⁰⁷ Viewers' complaints decreased significantly in 2006 and 2007. The regulator received 216 complaints in 2007, which was half the number in 2005. The complaints were mainly about reality shows such as *"Big Brother"* and *"Vyvolení"* (The Chosen).

5.4 Quotas

Broadcasting for national minorities and ethnic groups rose from 127 hours in 2004 to 264 hours in 2007. The Hungarian minority receives the lion's share, with up to 60 per cent of this time. Nevertheless, the quantity of programming for minorities is still insignificant, with only 1.75 per cent of total programming for 13.2 per cent of the population.¹⁰⁸

As in the past, STV has had problems fulfilling the EU's independent production quota.¹⁰⁹

5.5 Obligations on PSB

STV failed during several months in 2007 to fulfil its obligation to ensure diverse programming, mainly programmes of public interest. The programming strategy for 2008 lacked guarantees that it would be implemented, which led the STV Council to

¹⁰⁵ *Ibid.*

¹⁰⁶ For example, a popular anchor, Róbert Krajcer, who had been with TV Markíza since its beginning in 1996, moved in 2006 to TV Joj together with his political talk show *"De Facto"*, which was known as *"Sito"* on TV Markíza. Since then TV Markíza airs only one political talk show, moderated by Zlatica Puškárová.

¹⁰⁷ Broadcasting Council, Annual Report 2007, pp. 19–20.

¹⁰⁸ Broadcasting Council, Annual Report 2003, p. 21, Annual Report 2005, p. 29, Annual Report 2006, p. 28, Annual Report 2007, p. 18.

¹⁰⁹ Tomáš Czwitkovicz and Miroslav Kollár *"Médiá"*, *op. cit.*, p. 564.

reject the strategy.¹¹⁰ This was one of the reasons behind Hreha's dismissal in December 2007. (See section 3.2.)

5.6 Obligations on commercial broadcasters

The Broadcasting Law has not changed significantly the obligations on commercial broadcasters.¹¹¹ The list of events of major importance to society, which is compiled by the Broadcast Council in cooperation with the ministries of culture and education, is available on the Council's website.

6. CONCLUSIONS

Under the Government of Robert Fico, the media have been targets of frequent verbal attacks by State representatives, primarily the Prime Minister himself, who has described the media as political opposition, blamed them for bias and lack of professionalism, and boycotted the "opposing" media outlets. Some politicians in the ruling coalition have repeatedly tried to promote the idea that they have the right to interfere in the work of the media. The President has even suggested that the State authorities should have their own outlets.

The most worrying legal development was the adoption of a controversial Press Law, prepared by the Ministry of Culture. The wording of certain provisions, in particular the right to reply, may have negative repercussions for media freedom. Numerous international organisations, the media themselves, professional associations and NGOs have criticised the regressive character of this law.

Another regressive development has been the growing politicisation of STV's governing structure. Under Director-General Hreha, as political interference with STV escalated, the public service broadcaster's credibility and finances worsened. Once again, as in the past, STV depends on the government for State subsidies. In April 2008, a former news anchor at Czechoslovak Television during communism became STV's new director. It remains to be seen whether he will be able or willing to strengthen the concept of public service media, which today appears to enjoy less public support than ever.

Attacks on journalists, such as the attempt to burn down the house of an investigative journalist or the use of excessive force by police to stop a peaceful, authorised demonstration by a Kazakh journalist against the anti-democratic policies of the

¹¹⁰ *Ibid.*

¹¹¹ OSI/Slovakia, pp. 1445–1447.

President of Kazakhstan, also give grounds for concern about the attitude of the authorities to media freedom.

The commercial sector has seen increased transparency, which was another step in the process of the standardisation of the market. In 2006, local entrepreneurs sold their shares in TV Markíza and the daily newspaper *Pravda* to foreign groups. This move was seen as helping to reduce pressure on those outlets, especially given their owners' business and political interests. The nationwide private broadcasters have consolidated their positions in the market, creating a solid sector, helped by STV's ebbing credibility. TV Markíza, which still dominates the market, stopped a recent slide in ratings by returning to the format of family television, with which it made its fortune in the mid-1990s.

With the political elite openly ambitious to gain control over the public service media, there is a growing danger that also regulatory bodies like the Council for Broadcasting and Retransmission may be harnessed for political ends, as it was under Prime Minister Mečiar.

Despite the fact that Slovakia's accession to the European Union in 2004 has not yet brought significantly intensified assistance from other EU countries, there is a general expectation that membership will improve journalists' professionalism in the longer term. It should also broaden the focus of media attention from local tabloid news to encompass wider international affairs.

The largest Slovak media have scrambled to get a presence on new platforms. As elsewhere, the number of blogs and the quantity of audiovisual content on the Internet has boomed. Media professionals face the challenge of providing viewers with better analysis and contextual information, amid circumstances that do not encourage such old-fashioned journalistic skills. At the same time, new skills, including citizen-oriented techniques that can enlarge the sphere of journalism in the digital era, await to be learned.

The process of digitization has, however, lost momentum; and this has in turn had a chilling effect on the development of the media sector overall. Nevertheless, the 2012 switchover – together with the growing portfolio of audiovisual services offered by mobile operators – may create opportunities for specialist journalism, as well as a broader diversity of information.

ANNEX 1. LEGISLATION CITED IN THE REPORT

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- Act No. 220/2007 of the Collection of Laws on Digital Broadcasting of Programme Services and Provision of Other Programme Services via Digital Transmission and on Amendment and Supplement of Some Laws, *Official Gazette* 99 of 5 May 2007 (came into force 31 May 2007).
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