PROPOSALS FOR REVIEW OF CHAPTER 4 OF THE LAAMS – PROTECTION OF PLURALISM AND DIVERSITY OF AUDIO AND AUDIO-VISUAL MEDIA SERVICES

POLICY BRIEF

MEDIA DEVELOPMENT CENTER

EUROPEAN ENDOWMENT FOR DEMOCRACY

SKOPJE
MARCH 2025

CONTENT

3 INTRODUCTION

4 ONE BROADCASTER – ONE LICENCE

5 PLURALISM AND DIVERSITY OF CONTENTS

6 OWNERSHIP AND MEDIA CONCENTRATION

8 RECOMMENDATIONS

INTRODUCTION

The oversaturation of the media scene, especially the audiovisual media services sector, i.e. the existence of far more active players than what the advertising market can sustain (assuming that is, as all broadcasters claim, that it is their main source of income), has long been recognized as the most fundamental problem of our broadcasting sector.

The oversaturation has detrimental effect on the diversity and quality of programming contents offered to the audience (dominance of news and information contents, the so-called "daytime talk TV" and the more accessible, from financial point of view, serial feature programmes mostly of Turkish or Latin American production). That pushes the audiences to foreign TV companies to satisfy the needs for other types of contents, above all, quality drama, live sports and other types of specialized services and contents.

The reasons lie, in part, in the fact that our regulation was always several steps behind the "situation on the ground", but also in some approaches and policies that influenced the way in which licenses to broadcast programmes and the criteria for allocation of those licenses.

In this document, the Media Development Centre focuses on the policy "one entity - one programming service", and on provisions of Chapter 4 of the Law on Audio and Audiovisual Media Services on protection of pluralism and diversity of audio and audiovisual media services.

This document is prepared with support of an institutional grant by the European Endowment for Democracy (EED).

ONE BROADCASTER - ONE LICENCE

The "One Broadcaster – One Licence" policy was one of the factors that contributed to the creation of the broadcasting sector we have in North Macedonia today – oversaturated with low, almost non-existent sustainability. The tie goes both ways, in the sense that the way the sector developed contributed to the establishment of that approach to the distribution of available resources for transmission of radio and television programming services.

The emergence of such a policy is not ready caused by some legal limitations. The LAAMS never mentions that, in order to secure a new licence to broadcast programmes (terrestrially, over cable or satellite), one has to incorporate a completely new legal entity. It is, rather, a consequence of the policy, established in the early 1990's, the time of no regulation of broadcasting, that it was on the market forces to resolve that situation.

The policy of maintaining the situation on the ground has had negative impact on media pluralism. Of course, not on the numerical pluralism of media – the conclusion that North Macedonia has far too many media compared to the size of its population or capacities of national economy is now the accepted truth - but on the far more important pluralism and variety of contents offered to the audiences. With few exceptions, the contents offered to the audiences by the television broadcasters are uniform – emphasis is placed on news and information, talk shows and generally cheaper feature series, mainly of Turkish production. Specialized thematic programming services that would offer contents to more narrowly defined (or niche) audiences are non-existent (with the exception of one specialized music television that broadcasts on regional level).

The lack of political will to change that situation (the political parties avoid any situation that would bring them in position to be accused of "shutting down" media) and the fact that politics finds this situation favourable to its interests, meant that whenever an opportunity arose for regulatory intervention, the regulatory authority was faced with a fait accompli, denied of any opportunity to adopt measures or policies aimed to rationalize and consolidate the scene, and to ensure a more diverse offering.

Obviouisly, there is no need for any special recommendation for legislative change other than a possible recommendation for the LAAMS to state explicitly, in the definitions or in Chapter V.3 (on linear media services) that one broadcasting organisation may hold more than one licence and to broadcast more than one programming service.

Also, considering the lack of political will to "reset" the system for distribution of available resources for transmission of television programmes, the Agency for Audio and Audiovisual Media Services should "test" the interest and possibility for some of the existing broadcasters (or perhaps a foreign media company that may be interested to enter the market) to establish specialized programming services. Knowing that a number of analyses published by the Agency indicate a dearth of specialized thematic programming services, AVMS should open, without waiting for an initiative of an interested party, a public competition for allocation of one or two licences to broadcast specialized thematic programming services over the digital terrestrial multiplexes. What kind of thematic or specialized services would those be – for example, the lack of specialized educational programming services is frequently mentioned – we leave that decision to the best judgment of the regulatory body.

PLURALISM AND DIVERSITY OF CONTENTS

All visible trends point out that the future of audiovisual media services lies in the digital domain, i.e. on the internet and it is the highest time to start thinking and talking about television in "post-terrestrial" and even "post-linear" context. That is, we should prepare for gradual shutdown of terrestrial broadcasting and transfer of contents from linear transmissions to different video-on-demand or streaming services (the latter are, by nature, also on-demand services).

In the preparation for that digital future and the adaptation of providers of audiovisual media services for the challenges brought about by the move to the internet as the dominant platform for distribution of audiovisual media contents, we should certainly consider the provisions of Chapter IV of the LAAMS on "Protection of Pluralism and Diversity of Audio and Audiovisual Media Services". The provisions of Chapter IV cover, above all, the pluralism of media ownership and the need to prevent an entity from gaining too great and influence on the audiences, primarily in the context of creation of public opinion. On the other hand, the same provision contribute to the preservation of the "atomized" broadcasting scene, with farm more active players than the market can objectively sustain.

A number of provisions in that Chapter arise from international documents and are aligned, for instance, with the recommendations of the Council of Europe (CM/Rec(2018)[1] and CM/Rec(2007)[2]) dealing with media pluralism and transparency of ownership, and media pluralism and diversity of media contents, respectively. Therefore, we believe that provisions prohibiting secret co-owner and the prohibition on ownership for entities for which it is not possible to establish the origin of the initial capital are appropriate and should note be changed. Similarly, provisions that define the "related persons" (article 36) should be kept, as well as the provisions on mandatory reporting of any changes in ownership structure to be approved by the Agency.

Finally, the special prohibition of Article 38, prohibiting political parties, state bodies, public administration bodies, public enterprises, units of local self-government, holders of public offices and members of their families to perform the broadcasting activity remains necessary, especially in the case of political parties and holders of public offices. A note of reminder: these provisions were carried over from the 2005 Law on the Broadcasting Activity and were adopted in response to the fact that, at that time, several leaders of political parties (represented in the Parliament) owned television companies[3].

On the other hand, in view of the need (and obligation) to provide local reporting and information – news from a given local community for that local community - we should perhaps consider the possibility to reintroduce the local public broadcasting, meaning that the local self-government could establish local public broadcasting enterprises. Having in mind the financial situation of majority of local self-governments, we would recommend that such local public broadcasting should be possible only for radio broadcasting[4].

1. Reccomendation CM/Rec(2018)1, Council of Europe, available on URL
2. Reccomendation CM/Rec(2007)2, Council of Europe, available on URL
3. It is necessary to point out that allocation of licenses for television broadcasting to political parties, while extremely rare, is not unprecedented. There is the example of Malta (EU member-state), where the first licenses outside of the system of public broadcasting, in the early 1990s, were given to the two leading political parties.
4. MDC has covered this issue earlier, in the document "How to get quality local reporting in the digital future?", published in July 2020, available on URL. One conclusion of that document was that we need to redefine the local markets, with consolidation of existing regional and local allotment zones resulting in two levels of coverage – national and regional (i.e. local) – in terrestrial digital television (a situation that already exists on the ground).

OWNERSHIP AND MEDIA CONCENTRATION

One thing we have never seen in our media market are attempts for take-over, merger, buy-out or acquisition between broadcasters, in an effort to consolidate the market. The assumption is that, if we had fewer television broadcasters but with far more diverse portfolios of programming services (for instance, one flagship generalist channel and several specialized, thematic channels), the audience would get a much more diverse, higher quality offering of contents. Having in mind that the media pluralism is viewed holistically, and not only within different segments or sectors of the scene (broadcasting, print, internet), the emerging scene of new online media takes sufficiently good care for structural pluralism understood as functioning of numerous and divers media outlets.

In that context, the issue of media pluralism, as already noted, has been reduced primarily to the question of pluralism of ownership, which is reflected in mere numerical pluralism, i.e. a huge number of broadcasters active in a very limited market (viewed in terms of the size of the population, but also in terms of the capacities of the national economy). That approach has had negative impact on the diversity of contents, as another aspect of media pluralism.

Articles 37 and 39 of Chapter IV of the LAAMS must be viewed as a package. The first covers the limitations to acquisition of ownership in broadcasting organisations, and the latter covers the issue of illegal media concentration. The two articles refer to both horizontal and vertical concentration of ownership. Article 37 limits the right of a broadcaster to hold shares of ownership in other broadcasting companies in different allotment zones (national, regional and local). Such provisions may make sense in strictly regulated markets where licences to broadcast programmes are distributed carefully and where it is important to not have the same persons or entities holding ownership in the two, or in two of the three national television or radio broadcasters. In addition, in our case, those limitations contributed to the situation in which all broadcasters opt, by necessity, for generalist programming services, each the same as the next, with very similar offering. The positive consequence is that, due to the inability to invest in more expensive quality feature programming (TV films of series) or even more costly rights to broadcast quality sports competition (interestingly, there is little interest in the national leagues in a number of sports, the TV rights for which they could secure at much lower cost), the broadcasters invest the bulk of available finances in information and current affairs programmes, i.e. political panel shows.

Of special importance is paragraph (5) of Article 37, which prohibits horizontal acquisition of ownership (for broadcasters in print, radio, news agencies but, significantly, not in websites) and in companies for production and distribution of audiovisual media contents (vertical concentration).

Such provisions in practice ignore the dominant global practice of consolidation of ownership of all types of mass media[5]. Such consolidation may prove particularly important as preparation for the likely "digital future", in which the media companies will be expected to offer different types of media contents (video, audio, text, images) distributed over online platforms. The print is already

5. See, for example, "Vivendi" in France, or "Bertelsmann" in Germany and their diverse interests that cover print media, radio and television. Closer to us, there is the example of "Vijesti" newspaper and TV Vijesti (now owned by major regional player United Group) in Montenegro.

living that future and we see a growing number of examples in our country of publishers of print media investing in video production (video news, video podcasts, etc.).

The provisions prohibiting acquisition of ownership in companies that work in advertising and propaganda, market and public opinion research, are acceptable, due to the influence such entities may have on the financial operations (for instance, redirecting the advertisers' budgets towards their own media outlets), or to prevent unwanted political influence.

Article 39 practically copies the provisions of article 37 in the process of determining the existence of illegal media concentration. That is especially the case with paragraph (5) of Article 37, i.e. the different forms of horizontal or vertical concentration of ownership, which are totally eliminated as a possibility in the country.

RECOMMENDATIONS

The Media Development Centre proposes several interventions:

First, the approach to media concentration inside the broadcasting sector of the media scene, both in terms of horizontal and vertical concentration, should abandon the principle of judging concentration as a function of shares of ownership (as co-owner or single owner) and to accept the principles of market share - whether as share in total revenue generated by the industry or as a share of total audience (viewers/listeners). The actual percentage that would be set up as the upper limit is to be decided, but such limits usually range from 20 to 40 percent.

Therefore, we should allow it (and in view of global trends, even encourage) that approach to consolidation of the media scene through investment and acquisition of ownership in other types of media (print, radio, news agencies).

Second, the process of integration of online media in the regulatory framework should contribute to them being covered also by the regulation on prevention of media concentration. They should not be viewed only as mere online extensions of the traditional media, but as a separate investment that is increasingly important from the point of view of access to audiences, in terms of share of total viewers/listeners/readers as criteria for determination of existence of illegal media concentration (with is already the case in Croatia, for example).

Third, the limitations on holding shares of ownership, as founder or co-owner, in advertising and propaganda companies, or companies the work in market and public opinion research, are acceptable and should remain.

The fourth is the matter of retransmission platforms, i.e. the public electronic communications networks (cable, satellite, IPTV). At this moment in time, the large telecommunications companies are the only entities that could provide the necessary investments in production of quality domestic feature contents (TV films or series), but also in acquisition of foreign quality drama (the same is valid for the expensive rights on live broadcasts of most popular sports competitions). Aware of the fact that some of them already operate non-linear on-demand services (Max TV's "Videoteka", Vip Now on Demand, Move TV), the question that emerges is if we should consider allowing them some form of investment in partnership with existing broadcasters (an option they may find less attractive) or in specialized channels for aggregation of TV drama and other serial production, or sports channels, in order to terminate the dependence of Macedonian audiences on the offering of major regional players. Naturally, they shouldn't be allowed investments in general purpose programming services or specialized news and information channels.

Fifth, any eventual changes in policies on illegal media concentration, such as transition from shares of ownership to share of total audience (viewers/listeners) or share of total generated revenue in the industry, should be reflected in the provisions on media concentration and changes of ownership structure, directly related to the provisions of corresponding articles 34, 35 or 38 of the Law.

Finally, as a general conclusion, we believe that all proposed changes would facilitate the entry of interested foreign (regional, European or global) media companies in the national mar-

ket. They already have equal rights and obligations under the Law with domestic broadcasters, while the lack of will or capacities for additional investments in higher quality and more diverse offering among domestic broadcasters indicates that foreign investments are necessary for further development of audiovisual media services in the Republic of North Macedonia.

POLICY BRIEF

PROPOSALS FOR REVIEW OF CHAPTER 4 OF THE LAAMS – PROTECTION OF PLURALISM AND DIVERSITY OF AUDIO AND AUDIO-VISUAL MEDIA SERVICES

MEDIA
DEVELOPMENT
CENTER

MARCH 2025