

**MEDIA OWNERSHIP:
BETWEEN
CONCENTRATION AND
PLURALISM**

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INTRODUCTION

The Media Development Centre is continuously involved in the ongoing public debate on the necessary reforms in the media sector in the Republic of Macedonia. MDC believes that the adoption of the changes to the audiovisual media services legislation, currently stuck in parliamentary procedure without any indication when they may be adopted, doesn't mean we should refrain from continuing discussions about future steps in reforms of legislation and other reforms in the media sector.

The reforms in the media sector should primarily assist us in the elimination of detected weaknesses that contributed to the high level of vulnerability of the media sector to various forms of pressure. Those pressures are commonly manifested as economic pressures, regardless of their actual motivation or goal, abusing the low sustainability of the media market in the country. Ultimately, the reforms should contribute to the creation of a free, democratic, pluralist and sustainable media system.

The Media Development Centre, under the auspices of its activities for promotion of public discussion of open issues in the Macedonian media sector and possible future solutions that need to follow the adoption of the Law on Changes and Amendments to the Law on Audiovisual Media Services, prepared this document that aims to open the issue of media ownership, with all the related questions such as transparency of ownership or prevention of media concentration.

This document aims not to offer a finite list of ready-made solutions, but to identify the main points that need to be discussed and considered, so that they can move to the focus of the future legislative solutions, in the context of ongoing and coming reforms of the media eco-system. Naturally, the future legislative solutions must arise from a comprehensive public debate, with involvement of all stake-holders and the general public, fully taking into consideration the international standards and prevalent global trends in the area of broadcasting/audiovisual media services.

The activities for preparation of the document, in line with MDC's long-standing practice to collect the opinions and positions of the stakeholders and the expert community on the matter at hand, included a public discussion, held on September 7, 2018, before the final draft is presented. We also sent a questionnaire to a number of representatives of interested parties, as another method of collection of their views and positions on this issue.

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ANAMNESIS OF THE CONDITION

All international rankings on the situation in freedom of press/media, or freedom of expression, list the fragmented, oversaturated and unsustainable market as main reason for the vulnerability of the media to all sorts of pressure. The financially weak players “fighting” for survival in the increasingly impoverished and small market (both in terms of population or households and as absolute number of available advertising spending) are easily forced into “collaboration” with centres of economic and political power.

The abuses of economic power were especially evident during the reign of previous government of VMRO-DPMNE, through its control over the so-called „government advertising” and access to lucrative public tenders, as fundamental economic interest of owners of biggest and most influential media and their diverse business portfolios. Essentially, the previous government established an elaborate hidden system of media “subsidies” financed from public funds, but not with the aim to protect some form of public interest, but to secure for itself friendly editorial policies of most powerful media companies, primarily in the broadcasting sector.

That situation is a consequence of the unregulated period that started with the declaration of independence of Macedonia in 1991 to the adoption of the first Broadcasting Law in 1997. The establishing of broadcasting media – primarily television but also to some extent radio – ignored the fact that market entry is expensive and costly, due to large initial investment required in both technology and programming contents that would attract the audiences from already existing players in the market¹. Also, that policy, or the absence of any actual policy², was under the influence of the spirit of the age of general liberation, including in the area of freedom of expression, which viewed the establishment of media as a democratic task, not as commercially and economically motivated venture that should bring an investor some earnings and profit. Therefore the huge number of broadcast media that remains large to this day – at this moment, there are more than 50 TV stations airing programming services in Macedonia with various areas of geographic coverage and on different transmission platforms, together with about 70 radio stations. All those broadcasters are assumed to expect to make profits in a limited market of about 560,000 households, with total advertising spending estimated at, at most, 30 million Euro, or about 20 million in broadcasting³.

The period of regulated broadcasting, which started in 1997 with the adoption of the first Law on Broadcasting⁴, didn’t bring about any significant effort to “introduce order” in the inherited chaos,

¹ On the high costs of market entry, see in “Center for Media Pluralism and Media Freedom – CMPF (2013) European Union Competencies in Respect of Media Pluralism and Media Freedom”. Fiesole: European University Institute, p. 25. Available on the URL

https://www.researchgate.net/profile/Alina_Dobrova/publication/274636255_European_Union_competencies_in_respect_of_media_pluralism_and_media_freedom/links/55e865a008ae65b638997f6a/European-Union-competencies-in-respect-of-media-pluralism-and-media-freedom.pdf?origin=publication_detail

² The authors believe that, with the benefit of hindsight, the legislation regulating the area of broadcasting needed to be one of the first law that ought to have been adopted after Macedonia declared its independence and adopted the first Constitution.

³ Macedonia lacks systemic measurement of such data and we usually rely on estimates and assessments of advertising industry insiders. Some of them note, for example, that the total advertising spending in Macedonia doesn’t exceed 18-19 million EUR, 60% of which are spent on advertising time on broadcast media.

⁴ The legislative framework went through several changes, first with the 2005 Law on the Broadcasting Activity and then with the 2013 Law on Audio and Audiovisual Media Services, including a number of supplements and amendments to those two laws.

due to the absence of true policies, primarily in terms of policy of management of available resources, the policy of allocation of licenses (initially concessions) for broadcasting of programmes, but also due to the really strict rules on prevention of media concentration (strict on paper but, as was proven, easy to evade by the true owners, through selection of proxies that will be listed as owners in the registration papers) which effectively prevent the consolidation of the market and growth of active players.

The ownership structure is an important element of the whole issue of media pluralism. The rules for the regulation and control of media ownership should provide for prevention of abuse of power by media owners, media colonisation and the danger of unification-standardization of programming offer of cheap TV production and contents, delineation of editorial and ownership competences and responsibilities.

An additional problem is presented by the fact that the owners of majority of most influential broadcasters, especially those with national coverage, are corporations with diverse investment portfolios and not companies for which publishing or media are core business and core activity. That situation has resulted in the fact that majority of such owners use their media primarily to support their other business ventures. The companies and corporations especially interested to participate in the lucrative public tenders distributed at different levels of government use their media outlets as negotiating tools to secure government contracts, pressuring the editorial offices towards friendly and positive reporting on the government, its activities and policies.

The problems with ownership, lack of transparency of ownership structure and manners of financing of broadcast media, and the media sector in general, were specially noted in the two Priebe reports, published in mid-May 2015 and September 2017, respectively.

We believe that the most significant reforms to resolve the identified existing problems need to concern the policy of licensing, that is, the policy of management of available broadcasting resources⁵. The issue of ownership and concentration of ownership of the media is probably the most important component of that policy of licensing and management of resources. It is especially important in the area of the limited public resource, that is, the terrestrial digital broadcasting. The new licensing policies will have to ensure that the media sector shall function as a sustainable market, but also to ensure that the market will ensure a maximum level of fulfilment of obligations and expectations of the public related to the representation of social and political pluralism of views and opinions and representation of all groups in society.

The licensing policy is evidently important on the global level, due to the huge changes brought about the digital era – the digitalisation of broadcasting and the emergence of new online services that are growing into strong competition for legacy broadcasters both as distributors and, significantly, producers of TV contents.

⁵ The significance of licensing policies globally, not only in Macedonia, is confirmed by the major international conference “Licensing in the New Audiovisual Context”, organized by the Council of Europe, through the European Audiovisual Observatory, in Athens, Greece, on September 25, 2018. For additional information, visit the URL <https://www.obs.coe.int/en/web/observatoire/-/licensing-in-the-new-audiovisual-media-context>

GLOBALISATION, TECHNOLOGY AND PLURALISM

The questions of regulation of media ownership and prevention of media concentration are important because they are the focal point in which issues related to free functioning of the market, rights to private property and entrepreneurship, functioning of media in society and media pluralism converge. In this day and age, those aspects can't be viewed out of the context of globalisation and the new situation brought about by the new technology and digitalisation.

Therefore, all efforts to solve that riddle, should ensure that the right of entrepreneurs to invest in new media outlets and growth of existing media is aligned with the right and the need to represent the whole diversity of a society and reconciled with the disruption brought about by the new technologies and globalisation.

The globalisation of the economy, led by big transnational companies, is evident in the media sector, too. The media market continuously consolidates and integrates, through series of mergers, takeovers and acquisitions, and the area of broadcasting is dominated by major international players that own media outlets in many countries at the same time (such as RTL, CME or, in our region, KKR through its media subsidiary United Media, etc.).

So far, those trends have avoided the Macedonian broadcasting market, for a number of reasons: The market is small, poor and underfinanced so profits are difficult to expect; the market is oversaturated and the entry and winning over audiences is an uncertain prospect; the rules on media concentration are too strict, especially in terms of the evident prevalence of "one entity one programming service (one license)" approach.

Investments by international media companies in Macedonian media market could have positive impact on media business, competition and result in offer of quality and diverse programming contents. So far we have had only a handful of such investments. One explanation for their absence from Macedonia, in a situation when foreign media companies increasingly dominate the broadcasting markets in the countries in the region, may be that, in addition to being a small underfinanced market, the law treats equally the foreign and domestic entities, which means that the former, too, are subject to same restrictions and limitations to the growth of local media portfolios⁶. This is of great importance having in mind that the experience in the region shows (after the establishment of the regional subsidiary of Al Jazeera and the N1 network as regional partner of CNN) that such major international companies have the necessary economic and financial power to resist the attempts of the local centres of political power to impose dominance over their editorial policies.

Another important issue, related to the trends brought about by the globalization, is the increased practice to consolidate ownership in the hands of big telecommunications operators, that is, the possibility to allow them to operate as providers of audiovisual media services, that is, individual television programming services. That may prove important in small markets like the Macedonian media market, where domestic broadcasters often cannot afford investments in popular contents, for instance, the rights to broadcast popular sports competitions. For such contents, for instance, the Macedonian audiences are dependent on the specialized foreign programming services.

⁶ Media industry representatives note, among other things, the fact that potential foreign investors avoid Macedonia because of the unstable regulatory environment and the lack of systematically collected data on market's potential.

NEW TECHNOLOGY AND DIGITALISATION

The digitalisation of television released new signal transmission resources. Although a part of the radio spectrum was taken away as part of the so-called "digital dividend" and repurposed for other digital services, the number of available channels for broadcasting in the digital terrestrial broadcasting has greatly increased.

Macedonia traditionally distributes the available transmission resources in line with the principle "one broadcaster one programming service, that is, one license", although Article 39 of the Law on Audio and Audiovisual Media Services doesn't mention such a criteria among the limitations of media ownership. In Croatia, which has two general interest broadcasters on national level in the terrestrial DVB sector, each of them with three terrestrial programming services (TV Nova and RTL), the regulatory body doesn't consider such a situation a violation of provisions on prevention of media concentration. That doesn't mean that, in the terrestrial segment, they can establish as many specialized services as they wish with a single license, but have to compete, with all other interested parties, in the calls for application for allocation of new national broadcasting concessions.

The current rules based on the regulatory principle of one company one license are, at the same time, rather liberal in the sense that they make the access to the market easy through the related intent to allocate all available resources. On the other hand, the application of such a strict approach doesn't promote the need for consolidation and growth of media companies in their struggle for survival in the regional and the global media market.

There we may find useful the example of Great Britain, where, on basis of the policy that all terrestrial broadcasters have certain public service obligations⁷, the regulator has adopted rather restrictive policies of allocation of digital resources, especially for the general interest channels that offer diverse programmes that need to satisfy diverse needs and interests.

The question is why we don't allow the broadcasters to expand their operations with several specialized TV or radio channels, naturally, after they secure the proper license or permit, similar to the Croatian example.

At the same time, the limitations are sufficiently strict to prevent any attempt for consolidation of the market through mergers, takeovers or acquisitions of broadcasting companies, which is the second and faster manner of consolidation.

The growing prevalence of different forms of pay TV, that is, the transmission of signals through public electronic communication networks – cable TV or IPTV networks, also opened new additional opportunities.

The cable networks are a special matter altogether and majority of regulatory areas insist on registration (although the document is ultimately called a license) and not necessary on licensing. It means that there is not need of feasibility study for entry of new broadcasters in the market or a public call for applications although the technical, HR, programming terms and criteria are identical as with the terrestrial broadcasting licenses. Macedonian market is different from most markets by the fact that we have never had a case, nor is there real interest or market justification in the current situation, for a broadcaster to extend into several specialized channels (similar to the "Tring" media

⁷ Their mission is to inform, educate and entertain, with additional obligations regarding the amount of religious programmes they need to carry, etc.

company in Albania, Sport Klub in the region) that would be intended for distribution through pay TV platforms or satellite.

Having in mind the fact that the regulation of audiovisual sector/broadcasting arises from the need to distribute and manage a limited resource, the frequency spectrum which consists a public good, we believe that that part of the legislation shall require serious consideration and an overhaul, especially due to the fact that the catalogues of cable and IPTV network operators present the largest source of competition coming from major international broadcasting companies. The approach to the regulation of Pay TV platforms will have to take into consideration the fact that pay TV is the main channel for access to TV contents for a huge majority of the population (according to some surveys, up to 90 percent of all viewers use cable or IPTV networks to access TV contents, and the fact that terrestrial broadcasting hasn't been any privilege for license holders in Macedonia for quite some time.

We need to try and allow the media to strengthen their operations through creation and ownership of additional specialized programming services (especially on platforms that don't use a limited public resource), thus securing for themselves additional revenue lines which are technologically convergent, but currently practically illegal. Media business will be more viable and competitive and may be able to resist the influence and dependence on government and political centres of power. At the same time, it will improve the protection of national and linguistic identity with emergence of channels and platforms airing in Macedonian language. The existing strict legal restrictions for prevention of media concentration render the contemporary trends in broadcasting inapplicable, especially the trend for lateral expansion with existing broadcasters investing in several programming services with specialized format.

Some states influence the ownership relations and structure through policies of license allocation and the amount of licence compensations.

In US and several years ago in Greece⁸, the national broadcasting licenses, in addition to prescribing clear set of technical criteria, were issued in an auction with licenses going to the highest bidder. A total of €275 million were bid for the four commercial national licenses in Greece, for example.

In Croatia, the license compensation is calculated on basis of population in the area of coverage, that is, 500 HRK for each 50,000 citizens, plus a variable part that amounts to 0.15 percent of the annual income for the previous year, but only for the media that reported income of over 5 million HRK (app. €600,000).

Specialized non-terrestrial licenses – for broadcasting over platforms that don't use limited public resource – are allocated on non-exclusive basis, without public competition and the compensation paid for the use of license is, almost without exception, much lower than what is paid for terrestrial licenses. In Bosnia and Herzegovina, for example, the licence compensation for cable television is set at 1500 BAM annually.

⁸ After the Constitutional Court of Greece stroke down the decision of the Government to redesign the terrestrial broadcasting market through reduction of the number of DVB-T licences from seven to four as unconstitutional, on grounds that the Government has no competence to make such a decision and that the competences lay with the audiovisual regulatory body, the latter went through with the redesign, with the difference that it allocated five instead of the initially proposed four licenses.

On the other hand, although in Macedonian market still not at the level sufficient enough to start dictating the trends, the emergence of increasingly popular “streaming” services on the internet, such as Netflix, Amazon Prime and others, as competition to the linear television services will soon present us with the need to seriously deal with that issue. That is especially true of specialized thematic channels that offer quality drama series and other contents.

OWNERSHIP AND PLURALISM

One of the main reasons to restrict media ownership and prevent media concentration is the effort to prevent the consolidation of the market - which is a natural tendency of the media market - to the extent that a handful of players, in addition to dominating the advertising market, will dominate the area of public opinion, practically dictating the public discourse and the issues and questions to be subject of public debate. Those are the main two lines followed by efforts to limit media concentration – some countries rely on thresholds of market share, while other countries limit the influence on the public opinion, viewed as a share of total audience, that is, viewers or listeners.

Macedonia has pluralism of media ownership, but no media pluralism defined as diversity of programming contents that offer different political, cultural, ethnic, regional aspects. We primarily understand the pluralism to be a matter of simple math - the more media we have, the greater the pluralism of our media. All the while, the actual programming offer and influence remain largely the same.

We believe that one of the reasons for that situation, probably the most significant one, lies with the unsustainability of the fragmented and underfinanced media market in which a huge number of media publishers fight for a very limited advertising revenue. The real question is if the existing regulation and restrictions to ownership consolidation and integration, –whether horizontal, vertical or diagonal, is too restrictive to prevent the proper development of media sector and media business?

The restrictions on the media concentration in the Law on Audiovisual Media Service quickly turn outdated. The convergence dictated by the digital era and the multimedia is doing its share and every media that wants to be taken seriously and reach the widest possible audience distributes its contents through unification of all of its platforms.

The provisions prohibiting broadcasters from owning newspaper or news agency are outdated, unproductive and ineffective. In the case of print media which, according to all indicators, may be near their final demise and are heavily dependent on subsidies, merging with other media companies should be motivated, not prohibited. It seems that only that would ensure their prolonged survival in this digital age.

In accordance with new trends, we believe that we need to fully reform and change the regulatory approach to media ownership and media concentration. Below are some examples from practices in different European countries in terms of regulation and restriction of media concentration that may offer some directions for our future reforms in that area.

Serbia, for instance, ties the unacceptable media concentration with the influence on public opinion, that is, doesn't permit mergers of publishers that would result in a joint share of more than 50 percent of total sold circulation of all papers in the country, nor does Serbia allow mergers of

broadcasters that, if completed, would allow them to have more than 35% share of the audience in the respective area of coverage.

In Croatia, the illegal media concentration is tied to the shares of ownership or founding capital in other media, both horizontally and across media sectors (the Croatian law doesn't prohibit simultaneous operation of radio and television programming services and/or publication of print media, or ownership of news agency, but it does set limits on the circulation that may be distributed and on the maximum shares of ownership that may be acquired). The permitted levels of participation in the capital assets of another broadcaster depend on the type of media and their coverage area.

Majority of European countries limit the horizontal, vertical and cross-media concentration primarily through restrictions of shares of ownership that publishers and broadcasters may own in other publishers or broadcasters. Some countries limit the number of licenses that may be allocated to one broadcaster, while some apply combination of the two methods. Switzerland, for instance, uses just the limitation of the number of licences, while Slovenia and the Frankophoneregionals of Belgiums don't have limitations on the number of licenses that may be held by one broadcaster)⁹.

Seven regulatory areas¹⁰ use the approach to limit the share of total audience (viewers/listeners), and those are the Frankophone community in Belgium, Germany, Spain, France, Hungary, Norway and Romania). French regulation, for instance, combines the share of audience with the share of ownership in another broadcaster that shall not exceed 49%. The same rules apply even before merger, or if no merger or acquisition is in play, but when single broadcaster exceeds the allowed thresholds of audience share.

Germany is the most characteristic example of regulation of media ownership with the aim to promote media pluralism. Germany has established a special regulatory body – the Media Concentration Commission KEK (Kommission zur Ermittlung der Konzentration im Medienbereich) - to regulate issues related to media concentration. The measures that KEK may implement in cases of violation of positive legislation may include revocation of broadcasting license, but also somewhat unexpected measures such as the possibility to order the broadcaster found in breach of regulation to give some of its prime-time slots to independent producers.

The model is known as restriction of ownership aggregation. The law doesn't prescribe any limitation on number of broadcasters or licenses that one entity may own, for as long as they are not used to achieve dominant influence on the public opinion and domination in the market.

In some regulatory areas, the geographic concentration is also regulated with the goal to prevent control of national over regional and/or local broadcasters, the regional and local media

⁹ A fine overview of various practices is available in “Media Ownership and Concentration in Europe: a comparative analysis with reflections on situation in Slovenia”, published by the Slovenian communications regulator AKOS, available on URL https://www.akos-rs.si/files/Elektronski_mediji/Medijska_ucilnica/Raziskave_in_analize/WH-20150126-ownership-concentration-report-final.pdf. Also, ahead of the September 25 Athens conference, the European Audiovisual Observatory published its mapping report “Mapping of licensing systems for audiovisual media services in EU-28”, available on URL <https://rm.coe.int/licensing-mapping-final-report/16808d3c6f>

¹⁰ We use the term “regulatory areas”, due to the fact that there are countries that have different regulatory approaches in different parts of the country. Belgium, for instance, has separate regulatory bodies for the Flemish, French-speaking and German-speaking parts of the country.

concentration, as well as the vertical concentration along the chain of production and distribution of contents.

Macedonia has past experience with prescribed thresholds for market share and influence on the public opinion. Article 17 of the 2005 Law on the Broadcasting Activity prescribed thresholds which, if exceeded, were grounds for emergence of illegal media concentration: If a merger would create for the broadcasters a dominant position in the advertising market, that is, if their combined advertising sales exceed 30% of the total advertising time sales in the market; if a merger creates for the broadcasters a dominant position in the area of creation of public opinion, that is, if their combined shares of audience exceed 40% of the total number of viewers/listeners.

In the drafting of the existing Law on Audio and Audiovisual Media Services, those thresholds were deleted without any debate. During the period of validity of the 2005 Law, there were no concrete cases of media mergers that would result in them exceeding the legal thresholds. It did happen, however, for individual broadcasters to reach a dominant position both in the advertising markets and in viewers' ratings, often exceeding 50% share of the total audience.

The former Broadcasting Council sent several carefully phrased letters to the Commission for Protection of Competition, but the responses it got commonly stated that the dominant position is not prohibited unless it is abused at the expense of the other players in the market. One case that was investigated was the cartel-like behaviour and the illegal competition by a radio station that acted on behalf and signed agreements with advertizers for three radio stations.

One approach that would allow for greater editorial independence and limit the ability of owners to use the media for their direct benefit is to promote the share-holding as form of ownership of nationally broadcasting media, including forms of employee shareholding. Such an approach would include legal obligations for clear division between managerial and editorial policies in a media outlet. The latter is extremely rare, due to it being in violation of the rights to entrepreneurship and rights related to private property. One of those cases could be found in Croatia, in the second half of the 1990s, where the first law that regulated broadcasting set a limit of 25% of the shares in a broadcaster that could be held by a single entity.

The transparency of the media, their operations, ownership structures and sources of financing is of huge importance. First of all, the media, because of their role of check to power and democratic watchdog that ensures that public and government institutions will be transparent, need to ensure that they, the media, are equally transparent.

The transparency of ownership and sources of finances in particular, should assist the citizens in the identification of possible political, ideological or business relations that the media may have with other entities, as well as the possible influence of the major advertisers and those who finance the media. The legal obligations and limitations on ownership and media concentration are formally observed, but the legislation often proves easy to be circumvented. For instance, the leading party in the previous government, through members who don't officially hold high-level party or public offices, and using services of third parties, persons or companies from Macedonia and abroad, secured control over several national and regional media. Also, in several of the most influential media, the true owners hide behind a series of proxy owners.

There is also the issue of media outlets being owned, in most cases, by oligarchs and corporations with diverse business portfolios. One possible solution is to legally limit the possibility to own nationally broadcasting media only to companies for which media publishing and broadcasting is the

core business, not just a minor interest which can be used as support to other, more lucrative business ventures. Another rather radical solution would be, and in order to prevent conflict of interests, to prohibit the companies owned by persons or entities that own the major broadcasting media from entering bids for lucrative public contracts and tenders. It could lead to consolidation of the market and would certainly contribute to greater independence and freedom of editorial offices.

One crucial question which we have persistently avoided so far is whether we need some sort of regulation of ownership of online media (registration, notification) or if it should remain liberal. The transparency of ownership of news sites and their financing is almost non-existent. Several bih pro-political party news sites, for example, are owned by companies registered in tax haven countries such as Belize. In view of the growing popularity and significance of streaming services such as Amazon Prime or Netflix, which present traditional broadcasters with stiff competition not only in distribution but increasingly in production of audiovisual contents, the possible regulation of their operations is of great importance. From regulatory point of view, especially in the restrictive regulatory context in Macedonia, of great interest is the status of the internet extensions of broadcasting media, that is, the common practice to stream, as simulcast, their programming services. At the same time, there is the possibility to stream linear programming services over the internet (although such a venture sounds absurd and goes against basic tenets of the internet which is better suited to on demand services) by new or existing players in the market. At the moment, it is not clear if the existing audiovisual legislation should apply to such services, although MDC stands on the position that such activities would certainly fall within the scope of competences and coverage of LAAVMS.

THE REGULATORY AUTHORITY AND MEDIA CONCENTRATION

One essential issue refers to the status, composition, independence, competences and the very concept of the regulatory body in Macedonia. From the point of view of current efforts and activities to reform the media sector, the question we need to ask is whether and which segments of licensing policies, including the matter of media concentration and its prevention should be regulated in primary legislation and if there are issues related to those policies that need to be left to the regulatory body to cover with secondary legislation.

Recently, AVMS has implemented a number of specific research activities and acted *ex officio* in cases of suspect illegal media concentration. The AVMS administration checked allegations presented in complaints and other submissions, provoked by media coverage, about alleged illegal media concentration (article 36) arising through legal persons related by common management, capital assets, and entities that, with marketing and other agreements realize more than 30% of their advertising income from a single buyer.

In spite of possibly correct excuses offered by the Agency about its limited competences to act, we believe that a more active approach and greater initiative on its behalf could prove useful instruments in the efforts to define and create fair competitive media market. The Agency also has to be able to rely on a more systematic complementary action that would involve other state bodies and institutions – anti-trust, anti-corruption, tax authority, the Central Registry, the stock exchange and securities authorities, etc.

What is the point of installing legal restrictions to media ownership if they are so easy to circumvent and the Agency is powerless to do anything to prevent such behaviour. The legal provisions on prevention of media concentration seem *de facto* absurd and non-functional. Instead of securing

media pluralism and transparency of ownership, they are easy to circumvent and could distort the media market, resulting in unequal treatment of all players that may suffer damages because of unfunctional protections for fair competition.

The regulator itself acknowledges the difficulties noted above. The former Broadcasting Council noted in the Strategy for Development of Broadcasting 2013-2017 that: "In cases of hidden ownership relations, practice demonstrates that the Council lacks sufficient competences and authority to take actions to disclose the true owners of some broadcasters. With the aim to overcome that situation, in 2007 the Council signed a Memorandum of Cooperation with the Commission for protection of competition, but that cooperation has not achieved the expected results and outcomes".

CONCLUSIONS, RECOMMENDATIONS, PROPOSALS

The questions of regulation of media ownership and prevention of media concentration need to be an important element of the future reforms of the media sector, especially in terms of regulation of media legislation, due to their decisive influence on media pluralism.

Macedonian audiovisual media services market is overcrowded and fragmented, with huge number of players compared to its size, both in terms of population (number of households) and available advertising spending on national level.

Media pluralism exists only formally, viewed as a number of players in the market. That multitude of broadcasters, due to the internal weaknesses of the market, doesn't materialize as a true pluralism of views and interests represented in the programming offer of the broadcasters.

The danger for media pluralism does not lie, in our view, in the concentration of ownership as it does in the invisible, hidden ownership, spread through diverse companies, off-shore funds and "anonymous" persons that stand behind powerful companies.

We need to pay attention to transparency of ownership and securing proper and effective instruments that will provide the public with information and insight in ownership structure of the media.

There is little interest among potential foreign investors in our radio or television companies, nor true interest, due to the limited possibilities, for consolidation of the market and growth of domestic companies through investments in new channels or through mergers and mutual acquisitions.

On the other hand, we need to intervene to clear the situation with the current dominant interpretation of provisions on media concentration reflected in the principle that one broadcaster may air a single programming service, fact that prevents the lateral expansion of broadcasters through investments in new, specialized channels. We also need to make the necessary distinction between the broadcasting using a limited public resource and other types of broadcasting over public electronic communication networks or over the satellite.

We need a new approach to licensing, especially to specialized TV channels broadcast over pay TV platforms that don't use a limited public resource - cable TV or IPTV.

We need to change the concept of media concentration through introduction of thresholds for allowed influence on public opinion expressed as shares of advertising market and shares of audience (ratings, circulation, income, etc.).

The media, especially the most influential national broadcasters are usually owned by larger corporations or oligarchs with diverse interests and portfolios. On the other hand, shareholding is almost non-existent in the ownership structure of the media.

Just as the large number of owners doesn't necessarily translate into greater media pluralism, the concentration of ownership doesn't necessarily result in threat to media pluralism.

Media pluralism should be secured with solutions that will guarantee the independent of editorial offices from media owners.

The regulatory bodies need to be fully independent from executive power, politics, but also from the influence of media owners. At the same time, they need to be provided with necessary competences, authority and instruments to efficiently act to disclose hidden owners, related persons and 150idedprohibited financial and management ties.

The regulation needs to be adapted to the new market situation brought about by the digital era. The internet offers excellent opportunities for distribution of contents while, on the other hand, the new streaming platforms for audiovisual contents represent a significant regulatory challenged that will have to be addressed sooner or later.

The globalisation and the new technology lead to media concentration. The consolidation of the markets may play a positive role in securing the survival of regional and local media and some programmes and contents, as well as provide the financial basis for production of costly types of programmes, thus contributing to strengthened pluralism of the audiovisual market. The legislation shouldn't be seen as restrictive by the foreign investors, but provide clear provisions to protect the free market in order to prevent abuses of their financial power.

ANNEX 1: VIEWS OF THE MEDIA COMMUNITY AND OTHER STAKE-HOLDERS

During the preparation of this document MDC, in line with its long-standing practice, consulted the stakeholders and the media community in order to collect their views and opinions on the subject matter before the final draft is presented. For that purpose, we prepared a list of questions that we send to a number of stake-holders and representatives of the media community and media industry in Macedonia, and we also organized a public discussion that concerned the final draft of the document. Below are compiled and summarized views and positions of the media community.

1. Representatives of media community responded that there is media pluralism in Macedonia, but a large majority of them noted that the pluralism is mostly quantitative, expressed as a huge number of players active in the market, while programming and content-wise the situation is quite different, that is, the offer available on the existing broadcasters is rather uniform. They also noted the lack of more specialized broadcasters.
2. The representatives of the media community believe that, counterintuitively, a reduction of the number of media outlets would contribute to improved media pluralism through increase sustainability and financial independence of the remaining players. Nevertheless, several of them believe that it shouldn't be a result of a regulatory action and that in not so long run, the market will manage to regulate the matter itself. In their view, two conditions have to be met – the first is to establish a quality public service broadcaster that will provide the quality benchmarks, and the second is to allow the entry of major foreign companies that will impose new and higher standards of quality.
3. The majority of the people that answered the questionnaire believe that the existing regulation on restrictions of ownership and prevention of media concentration is too strict and ignores the technological progress and the latest trends in broadcasting. At the same time, they noted that the regulation is inefficient and is easy to circumvent.
4. There is a general agreement that we shouldn't allow cross ownership of different types of media – both inside the broadcasting, that is, simultaneous ownership of television and radio broadcasters, and in terms of simultaneous ownership of TV/radio and print media. Some of the people who completed the questionnaire do believe that it could be useful and that the existing legislation was motivated by the old fears and anxiety of possible creation of monopolies. They believe expansion, especially online and through multimedia, cannot be avoided.
5. The consulted representatives of media community agree that we need to abandon the one broadcaster one programming service approach and to liberalize that segment of the legislation to allow for easier establishing of specialized sub-channels. On the other hand, there is the unanimous position that in the current market situation, there is no business rationale to enter such a venture, at least until the market is somewhat consolidated.
6. There is general agreement that Macedonia needs foreign investors in the media market to bring new quality, focus on the audience and, significantly, sufficient financial capacities to oppose any attempts to put them under political control. Several people issued warnings about past negative experience with foreign investors, especially during the period when foreign investments, using companies registered in various off-shore tax-havens, were used as cover for the return of money illegally siphoned out from the country into the national financial system.
7. The people who answered the questionnaire believe that, in order to avoid the existing situation in which majority of such owners use their media primarily to support their other business ventures, the regulator need to be given greater powers of investigation of true

- owners.. Also, the respondents expressed an opinion that the regulation may be needed to allow only entities for which publishing and media are the core activity and not an auxiliary or additional activity.
8. Related to the previous point, the persons who completed the questionnaire believe that we could consider the possibility to introduce mandatory share-holding status for media companies. They do warn, however, that the introduction of such mandatory dispersion of ownership doesn't ensure the necessary pluralism by default, and that the duty of a media publisher to function as share-holders' company can't truly function and be mandatory on all levels of zones of coverage.
 9. As far as the regulation of the online domain is concerned, in addition to the general legislation in a number of areas (defamation, copyrights, hate-speech, etc.), there is an agreement that some form of partial regulation is necessary. Judging from the answers, the main issue that legacy and mainstream media have with the online domain is the latter's ability to attract advertising.
 10. The respondents agree that examples from other countries provide fine directions and examples that we could follow, but not without prior proper analysis of our specific needs and the outcomes that such practices would produce, and if the effects they may produce would be close to the effects we desire.
 11. The media community agrees that the regulatory body AVMS lacks legal competences and power, as well as adequate instruments to properly implement the legal provisions on prevention of media concentration. In addition to providing it with such competences and powers, the future changes of the legislation, they emphasize the need for greater cooperation with and involvement of other institutions and regulatory authorities in investigation of such cases, primarily, the anti-trust bodies and institutions.
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