



PLURALISM OF MEDIA OWNERSHIP IN THE NEW MEDIA ENVIRONMENT

A Study for the Agency for Audio and Audiovisual Media Services

Jean-Francois Fùrnemont

Snezana Trpevska

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Council of Europe Programme Office in Skopje
Soravia Business Centre, Filip Vtori Makedonski,
no. 3
1000 Skopje, North Macedonia

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About the authors

Jean-François Furnémont

Jean-François Furnémont is the Founder and CEO of [Wagner-Hatfield](#), a research and consulting company that works globally with international organisations, Ministries and independent regulatory bodies. Wagner-Hatfield is particularly active in the media sector and the digital economy, with a specific interest for issues related to freedom of expression and media freedom & pluralism.

He holds a BA in Journalism and Communication Studies from the Université Libre de Bruxelles – ULB, a MA in International Relations and European policy from the Université de Liège – ULG and a MA in Public Finances from the Université Catholique de Louvain – UCL. Former freelance journalist and former spokesman of a political party, he is the author of several books of political science and a number of publications on media policy and regulation.

He held the position of Director General (2003-2014) of the audiovisual media regulatory authority ([CSA](#)) of the French speaking Community in Belgium. He has also been actively involved in the Board of the European Platform of Regulatory Authorities ([EPRA](#)) as vice-Chairman (2008-2011) and as Chairman (2011-2014).

As the author of many studies, research projects and publications, his main field of expertise is audiovisual media regulation, with a specific focus on the following issues: drafting and reviewing of media primary/secondary legislation and broadcasting codes, advice and capacity building for media regulatory authorities and ministries, material scope of media regulation (online media, social networks, video-sharing platforms), jurisdiction issues, licensing and related systems, media concentration and transparency of media ownership, promotion of domestic and European works and financial support schemes to audiovisual creation, hate speech, fight against disinformation, protection of minors, commercial communications, articulation between self- and co-regulation and statutory regulation.

Snezana Trpevska

Snezana Trpevska is a media expert and researcher affiliated with the [Research Institute on Social Development RESIS](#) from Skopje, a multi-disciplinary research organisation, founded in 2017 as a result of the growing need for applied research aimed at providing new ideas for pressing public policy issues. RESIS applies research in several social fields and works in partnership with NGOs, regulatory bodies, public institutions and academic communities.

She holds a MA in Communication Studies and a PhD in Sociological Sciences from the University of “St. Cyril and Methodius” from Skopje, North Macedonia. Until July of 2009 she was employed by the Broadcasting Council as Head of the Research and Strategic Development Department. Since 2008, she has taken the position of a lecturer at the School of Journalism and Public Relations and since 2013 she has also been a professor at the Institute of Communication Studies in Skopje. She was teaching Media Law and Media and Audience Research Methods.

Her research interests extend over several fields: Media Policy and Regulation, Media Literacy, Journalism and Media studies, Sociology of Mass Communication and Audience Research. She has

participated in numerous academic and applied research projects related to the freedom of expression and media pluralism, media concentration and broadcasting regulation, audience opinions and preferences, ethics in journalism, media and conflicts etc.

1. Introduction

Concentration of media ownership has been one of the main regulatory issues since the liberalisation of media markets in all European countries. This issue was normatively recognised in the Republic of North Macedonia in the first Broadcasting Law of 1997, but elaborated in more details in the provisions of the Broadcasting Law of 2005, which were almost entirely transposed in the third set of legislative acts, i.e. the Law on Media and the Law on Audio and Audiovisual Media Services, adopted in December 2013. These expanded and liberalised the applicable rules, but, although adopted after a wide public debate with all relevant stakeholders, they haven't resulted in the expected capital integration and growth of the broadcast industry.

Today, these issues are gaining new relevance in the context of digital technologies, convergence, proliferation of new online media and fragmentation of the market and the audience. As the existing legal rules are outdated (being created to regulate ownership concentration on the traditional broadcasting markets), the Council of Europe, in partnership with the Agency on Audio and Audiovisual Media Services of the Republic of North Macedonia, commissioned the present study as part of the Action Freedom of Expression and Freedom of the Media in North Macedonia (JUFREX 2)¹. The main objective of the study is to make assessment of the current legal provisions on ownership concentration in the audiovisual sector and to recommend future policy steps which may result in preparation of amendments to the Law on Media and, mainly, the Law on Audio and Audiovisual Media Services.

The study begins by providing a brief elaboration of the key conceptual issues relevant for the regulation of media ownership in the audiovisual sector (Chapter 2) and continues with an overview of the recent developments at EU level and legislative framework in a selection of EU member states (Chapter 3). Next, an outline of the media ownership rules in four neighbouring countries is presented (Chapter 4).

The analysis and assessment of the current legal provisions of the Law on Media and the Law on Audio and Audiovisual Media Services and the practical aspects of their implementation are elaborated in Chapter 5, which also presents summarised views and positions of relevant stakeholders (representatives of the media industry, experts from the NGO sector and from the regulatory bodies). The main findings from the study with appropriate recommendations given by the experts are presented in Chapter 6.

¹ The Action on Freedom of Expression and Freedom of the Media in North Macedonia is implemented by the Council of Europe in a joint initiative with the European Union - the "Horizontal Facility for the Western Balkans and Turkey 2019-2022". This initiative enables the beneficiaries to meet their reform agendas in the fields of human rights, rule of law and democracy and to comply with the European standards, including where relevant within the framework of the EU enlargement process.
<https://www.coe.int/en/web/skopje/freedom-of-expression-and-freedom-of-the-media-in-north-macedonia-jufrex>

2. Context: why and how to measure concentration of ownership in the media sector

2.1. Why measuring concentration of ownership in the context of media policy?

2.1.1. Dual status of media concentration as a regulatory goal

Contrary to other areas of media policy which predominantly relate to the pursue of democratic objectives, concentration of ownership in the media sector could be qualified as a “hybrid” issue, as it is related not only to ensuring pluralism and diversity in the media landscape but also to economic concerns. This is also why it is one of the most complex areas to enforce, as it necessarily implies a balance to strike between cultural and democratic objectives on the one hand, and the economic objective to safeguard competition in the media market on the other.

This hybrid status of media concentration as a regulatory goal is acknowledged by the document which serves as one of the basis of competition policy in the European Union (EU), i.e. the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).² This Regulation recognises that “*Member States may take appropriate measures to protect legitimate interests other than those taken into consideration by this Regulation and compatible with the general principles and other provisions of Community law*” and lists, among those legitimate interests, the issues of “*public security, plurality of the media and prudential rules*”.

This double dimension is also recognised and, to a certain extent, taken into consideration by the two Directives which shape the European Union policy regarding electronic communications networks and services, i.e. respectively the Framework Directive³ and the Audiovisual Media Services Directive (AVMSD).⁴ Although being economic policy instruments meant to foster the EU internal market, both of these recognise the importance of media pluralism for democratic societies, the former by stating that “*the separation between the regulation of transmission and the regulation of content does not prejudice the taking into account of the links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection*” and the latter by stressing that “*audiovisual media services are as much cultural services as they are economic services. Their growing importance for societies, democracy — in particular by ensuring freedom of information, diversity of opinion and media pluralism — education and culture justifies the application of specific rules to these services*”. In its revised version from 2018, the AVMSD further stresses, in its new Article 30, that fair competition and media pluralism are among the goals of the Directive and highlights the role of

² Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), article 21 §4.

<https://ec.europa.eu/competition/mergers/legislation/regulations.html>

³ 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), recital 5.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02002L0021-20091219>

⁴ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), recital 5.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02010L0013-20181218>

independent media regulatory authorities in this regard: *“Member States shall ensure that national regulatory authorities or bodies exercise their powers impartially and transparently and in accordance with the objectives of this Directive, in particular media pluralism, cultural and linguistic diversity, consumer protection, accessibility, non-discrimination, the proper functioning of the internal market and the promotion of fair competition”*.

This hybrid status explains why ensuring fair competition on the media market is more fundamental than on any other market: beyond the economic concerns, diversity of media ownership is simply a democratic concern. This question of the relationship between the access of economic operators to the media market and the health of democracy has even been highlighted by the European Court of Human Rights (the Court) in the case *Centro Europa 7 S.R.L. and Di Stefano v. Italy*,⁵ imposing on the State a *“positive obligation”* to safeguard media pluralism. In this landmark judgment, the Court recalls that *“there can be no democracy without pluralism”* and observes that:

- *“to ensure true pluralism in the audiovisual sector in a democratic society, it is not sufficient to provide for the existence of several channels or the theoretical possibility for potential operators to access the audio-visual market. It is necessary in addition to allow effective access to the market so as to guarantee diversity of overall programme content, reflecting as far as possible the variety of opinions encountered in the society at which the programmes are aimed”* (§130);
- *“in such a sensitive sector as the audio-visual media, in addition to its negative duty of non-interference the State has a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism”* (§134).

2.1.2. Economic dynamics of the media sector

The second reason why the safeguard of a plurality of ownership matters in the media sector is because this sector has a natural tendency towards concentration. This can be explained by the following specific features.

The *first* one is that the entry to the media market, even if it has democratised in the past, remains rather expensive as it requires a high initial investment, thus creating barriers to new players, but also difficult, especially lately, due to the dominant position of online players.

The *second* one is that media exploit economies of scale and scope as: *“...For broadcasting and audiovisual businesses especially, the marginal costs can be very low (the cost of an additional reader of a newspaper is just the material cost of the paper, while an additional viewer of a TV or radio show has no additional costs). The low marginal costs and the high initial costs are closely related. Moreover, the low marginal cost is a powerful incentive for firms to attempt to expand into every possible distribution channel in order to maximize their profits. The need for firms to expand is the main cause of the increase in vertical and horizontal integration. [...] Media companies tend to expand horizontally (monomedia), by consolidating their activity into one single medium diagonally, by extending their*

⁵ European Court of Human Rights, case *Centro Europa 7 S.R.L. and Di Stefano v. Italy*, Application n°38433/09, 7 June 2012. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-111399%22%5D%7D>

activities in order to use the same product, or to provide the same product through different means of distribution or on different platforms (multimedia); or vertically, by owning interests in the various parts of a product's value chain. This may help incumbent media organisations to keep their prices low and to make it difficult for new players to access the market. The final effect is, again, an increase in concentration and a potential threat to content diversity".⁶

Third, as media markets have the characteristic to be two-sided (media players sell their product to the audience on one side of the market and their audience to the advertisers on the other side of the market), this reinforces the incentive to concentration: "The fact that media are platforms means that, in order to remain profitable in the market, players must be able to engage both sides of it. Competition for the audience and for advertisers are therefore intertwined and market dynamics are characterised by strong feedback effects or, as it is often called, by a 'chicken-and-egg' dynamic: to attract advertisers it is necessary to be able to attract an audience, but only by being able to attract advertisers it is possible to raise the amount of revenue needed to invest in quality content that is desirable to viewers/readers. This is due to the existence of indirect externalities among the consumers in the two sides of the market or, in other words, to the fact that the utility of consumers on one side of the market (advertisers), increases with the number of consumers on the other side of the market (readers/viewers). The two-sided nature of media markets reinforces their natural tendency towards concentration due to the above-described phenomena (high initial costs of investment and economies of scale). This is because, in these markets, the ability to control key resources, such as attractive content (especially 'premium' content), confers on market players an advantage in attracting advertising resources, through a process that has mutually reinforcing (i.e. feedback) effects".⁷

2.2. How to measure concentration of ownership in the context of media policy?

2.2.1. Defining relevant markets and indicators

Measuring the degree of concentration on a specific market starts with determining the relevant market to analyse, both in its geographical aspect and in terms of products. The relevant geographic market "comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas, because the conditions of competition are appreciably different in those areas"⁸ (usually a country, or a broader market such as the European Union), while the relevant product market "comprises all those products and/or services which are regarded as interchangeable or substitutable by reason of product characteristics, prices and intended use"⁹ (which in the media sector can be either the sector as a whole, or a specific sub-sector such as

⁶ 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.

<https://cadmus.eui.eu/handle/1814/26056>

⁷ *Idem*, p. 26.

⁸ European Commission (2002) *Glossary of terms used in EU competition policy, Antitrust and control of concentrations*, p. 40.

https://ec.europa.eu/translation/spanish/documents/glossary_competition_archived_en.pdf

⁹ *Idem*, p. 39.

TV or radio or press or online). In the new media environment and in an era of “platformisation”, the latter has become one of the greatest challenges in terms of regulation of media concentration.

Measuring the degree of concentration also implies determining the indicators used for such a measurement, which are mainly indicators of ownership concentration (by sector and all media), of audience concentration per owner (by sector and all media), of advertising concentration (by sector and all media) and of time use concentration (by sector and all media).¹⁰

2.2.2. Using relevant measurement tools

Two analytical tools are predominantly used to measure ownership concentration in the media sector: Concentration Ratios (CR) and the Herfindahl-Hirschman Index (HHI). Both are briefly explained below.

Concentration Ratios (CR) measures the market share of a given number of the most important players on the market. Its result is expressed in percentage, specifying the number of companies taken into consideration. For example, a C1 of 100% means a situation of monopoly, a C2 of 100% a situation of duopoly and a C3 of 70% means that the combined market share of the largest three companies in the relevant sector is 70% of the total size of this sector.

The thresholds which provide evidence of a low, medium or high level of concentration are not unanimously agreed among those who use this tool:

- According to the authors of the *Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach*, done for the European Commission in 2007, when a C4 is above 50% and a C7 above 70% “undesirable concentration or control is said to be evident”.¹¹
- According to the Council of Europe Group of Specialists on Media Diversity, a C3 between 0 and 35% means low concentration, a C3 between 36 and 55% moderate concentration and a C3 above 56% high concentration.¹²
- According to the Canadian Media Concentration Research Project, a C4 above 50% and a C8 above 75% are considered to be *prima facie* indicators of high levels of concentration.¹³
- The Commissariaat voor de Media – CvdM (the media regulatory authority of the Netherlands), analyses the market using C1, C2 and C3, but does not provide any threshold above which concentration would require regulatory intervention.¹⁴

¹⁰ For further details on the indicators, see the following study: Katholieke Universiteit Leuven – ICRI, Jönköping International Business School – MMTC, Central European University – CMCS, Ernst & Young Consultancy Belgium (2009) *Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach*. Leuven: Katholieke Universiteit Leuven. https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/final_report_09.pdf

¹¹ *Idem*, p. 73.

¹² Council of Europe Group of Specialists on Media Diversity (2009) *Methodology for monitoring media concentration and media content diversity*, p. 11.

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b18>

¹³ <http://www.cmcrp.org/about/methodology/>

Latest reports available at: <http://www.cmcrp.org/publications/>

¹⁴ For further details, see: <https://www.mediamonitor.nl/english/>

Latest reports available at: <https://www.mediamonitor.nl/publicaties/>

- The Vlaamse Regulator voor de Media – VRM (the media regulatory authority of the Flemish Community of Belgium) analyses the market using C2, C3 and C4, but does not provide any threshold either.¹⁵

Herfindahl-Hirschman Index (HHI) measures the level of concentration by squaring the market share of each company in the market and then summing the results obtained, which might range from close to zero point (for example in an atomistic market where 1000 companies would all have the same market share of 0,1%) to a maximum of 10.000 points (such as in a case of monopoly). For example, a market in which five companies would have respectively 40%, 35%, 15%, 5% and 5% would have an HHI of 40^2 (1600) + 35^2 (1225) + 15^2 (225) + 5^2 (25) + 5^2 (25) = 3.100 points. This method is usually considered a better tool, as it takes into consideration the market share of all players (instead of the bigger players with the CR method).

Like for CRs, the thresholds which provide evidence of a low, medium or high level of concentration are not unanimously agreed among those who use this tool, yet the first threshold mentioned below is the most commonly used:

- According to the US Department of Justice and the US Federal Trade Commission, an HHI below 1.500 points means low concentration, an HHI between 1.500-2.500 points moderate concentration market and an HHI above 2.500 points high concentration.¹⁶ In its reports, the Vlaamse Regulator voor de Media – VRM uses the same thresholds.
- According to the European Commission, the respective thresholds are rather below 1.000 points, between 1.000-2.000 and above 2.000 points.¹⁷
- According to the Council of Europe Group of Specialists on Media Diversity, the respective thresholds are even lower: below 1.000 points, between 1.000-1.800 points and above 2.000 points.¹⁸

¹⁵ For further details, see: <https://www.vlaamseregulatormedia.be/nl/mediaconcentratie>

Latest report available at:

https://www.vlaamseregulatormedia.be/sites/default/files/pdfversions/mediaconcentratierapport_2019_zonder_afloop.pdf

¹⁶ U.S. Department of Justice and the Federal Trade Commission (2010) *Horizontal merger Guidelines*, p. 19.

<https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>

¹⁷ European Commission (2004) *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, §§ 19-20.

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52004XC0205%2802%29>

¹⁸ Council of Europe Group of Specialists on Media Diversity (2009) *Methodology for monitoring media concentration and media content diversity*, p. 11.

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b18>

3. Legal framework: concentration of ownership rules in a selection of EU countries and European trends

3.1. Recent developments at the EU and Council of Europe level

This Study focuses on the concentration in the business/economic sense of media services and does not elaborate on rules and regulations around the media plurality aspect. As detailed earlier, it should be noted, however, that the economic concentration policies have an underlying public policy goal in mind – that of pluralism of ideas and opinions – which makes the issue of limitation of ownership and concentration in the media industry a complex areas of competition policy and one of the most essential issues of media policy, in order to ensure media pluralism, protect freedom of expression and preserve diverse views and opinions, as a cornerstone of a democratic society. Mechanisms applied to achieve this include limitations to broadcasting licences in a geographic (local, regional, national) area/market, cross-media restrictions, merger control rules to control/voting rights, audience share ceilings, foreign ownership rules, etc.

At the level of the EU, among the most important documents are the aforementioned Merger Regulation (highlighting that Member States *“may take appropriate measures to protect legitimate interests other than those taken into consideration by this Regulation and compatible with the general principles and other provisions of Community law”*) and the Framework Directive (stressing that *“the separation between the regulation of transmission and the regulation of content does not prejudice the taking into account of the links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection”*). The previous version of the Audiovisual Media Services Directive (AVMSD) from 2010 stressed that: *“audiovisual media services are as much cultural services as they are economic services. Their growing importance for societies, democracy — in particular by ensuring freedom of information, diversity of opinion and media pluralism — education and culture justifies the application of specific rules to these services”*. The revised version from 2018 also stresses that *“convergence of media requires an updated legal framework in order to reflect developments in the market and to achieve a balance between access to online content services, consumer protection and competitiveness”*, in addition to emphasizing the need for transparency of media ownership.

After the 2007 attempt of the adoption of a set of rules in relation to media pluralism and freedom of expression failed at the level of EU, the European Commission commissioned a study, which was published in 2009, aiming to identify the indicators to be adopted to assess media pluralism in Europe.¹⁹ This, in turn, resulted in the Media Pluralism Monitor (MPM), a yearly monitoring carried out by the Centre for Media Pluralism and Freedom (CMPF), including the issues related to concentration

¹⁹ Katholieke Universiteit Leuven – ICRI, Jönköping International Business School – MMTC, Central European University – CMCS, Ernst & Young Consultancy Belgium (2009) *Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach*. Leuven: Katholieke Universiteit Leuven.
https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/final_report_09.pdf

of media ownership.²⁰ The elements which are used to assess the risk of media ownership concentration affecting media pluralism, are the following:

- horizontal concentration, that is concentration of media ownership within a given media sector (press, audiovisual, etc.);
- cross-media concentration across different media markets;
- transparency of media ownership.

Also, worth mentioning is that in January 2018, the European Commission set up a High-Level Group of Experts (HLEG) to advise on policy initiatives to counter fake news and disinformation spread online. The main deliverable of this group was a report from March 2018, with one of its recommendations being that the diversity and sustainability of the European news media should be safeguarded.²¹

Most European countries have adopted sector-specific rules about media concentration with notable examples found in the subsequent sections of this Chapter.

At the level of the Council of Europe, promotion of media pluralism and limitation of media concentration have been widely discussed issues in different fora, with numerous resolutions, recommendations, declarations by the Committee of Ministers, and studies by experts' groups addressing it. One of the latest documents adopted is the Recommendation CM/Rec(2018)1[1] of the Committee of Ministers to member states on media pluralism and transparency of media ownership.²² The recommendation stresses that *"As part of their obligation to guarantee pluralism in their jurisdictions, States are encouraged to develop and implement a comprehensive regulatory framework that takes particular account of media ownership and control and is adapted to the current state of the media industry"*. It also reiterates the importance of enforcement of competition law, in order to preserve the main public policy goal in terms of media pluralism, and encourages states to *"develop and apply suitable methodologies for the assessment of media concentration, in respect of both the influence of individual media and the aggregated influence of a media outlet/group across sectoral boundaries. In addition to measuring the availability of media sources, this assessment should reflect the real influence of individual media by adopting an audience-based approach and using appropriate sets of criteria to measure the use of individual media and their impact on the forming of opinions. This audience-based approach should take into consideration the offline and online footprint of the media. The measurement exercise should be carried out by an independent authority or other designated body"*. Finally, it also stresses the importance of transparency of media ownership.

²⁰ Media Pluralism Monitor (MPM) <https://cmpf.eui.eu/media-pluralism-monitor/>

²¹ Final report of the High Level Expert Group on Fake News and Online Disinformation, 12 March 2018.

<https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>

²² Recommendation CM/Rec(2018)1[1] of the Committee of Ministers to member States on media pluralism and transparency of media ownership (Adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies).

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13

3.2. Austria

Austria ranks high in the area of media diversity, due to the fact that *“the very foundations of the democratic media system are intact and strong: freedom of expression is well protected. The viability of the media market is not at risk. Journalism is in many ways legally recognised not a product, but primarily a service. Media authorities work independently and effectively. Public Service Media (PSM) journalism is strong, but – equally important – there is a rich and varied supply of media services, including a lively community media sector. Broad access to media by regional and local communities supports the idea of a federalist state. Based on these viable foundations, it is up to all stakeholders to remedy the shortcomings and prepare not only for tomorrow’s media infrastructure development, but also, most importantly, for the challenges of a democratic and diverse society”*.²³

3.2.1. Procedure

The matters in relation to media concentration are dealt with the following laws that provide for a number of limitations and the procedures in these matters:

- Federal Act on Audio-visual Media Services;²⁴
- Federal Act enacting provisions for private radio broadcasting;²⁵
- Federal Media Act.²⁶

Audiovisual Media Services (AVMS) providers are obliged to report on their ownership structure in the licence application process, but also in case of any changes that might have occurred to the national regulatory authority KommAustria.²⁷ While assessing whether the limitations foreseen by the legislation are satisfied, KommAustria has a possibility even to revoke the licence, after a public hearing *“if the television broadcaster transferred the shares contrary to this finding”*.²⁸ In addition to reporting obligations to the national regulatory authority, the media players are obliged to transparently report on their ownership to the public. This is ensured with provision in the Federal Media Act, stipulating the obligation of the media to disclose, at all times, the following information: *“name or company name, including the object of the company, residential address or registered office (branch office) and the names of the executive bodies and officers of the media owner authorised to represent the company and, if there is a supervisory board, its members. In addition, the ownership, shareholding, share and voting rights proportions shall be stated in respect of all persons holding a direct or indirect share in the media owner. Furthermore, any undisclosed shareholdings in media owner and in persons holding a direct or indirect share in the media owner as specified in the previous sentence shall be stated, and fiduciary relationships shall be disclosed for each level. In the case of direct or indirect shareholdings of foundations, the founder and the relevant beneficiaries of the foundation shall be disclosed. If the*

²³ Media Pluralism Monitor 2016, Monitoring Risks for Media Pluralism in the EU and Beyond, Country report: Austria.

<https://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/austria/>

²⁴ Federal Act on Audio-visual Media Services (Audio-visual Media Services Act – AMD-G)

http://www.ris.bka.gv.at/Dokumente/ErV/ERV_2001_1_84/ERV_2001_1_84.pdf (in German and English)

²⁵ Federal Act enacting provisions for private radio broadcasting (Private Radio Broadcasting Act – PrR-G)

http://www.ris.bka.gv.at/Dokumente/ErV/ERV_2001_1_20/ERV_2001_1_20.pdf (in German and English)

²⁶ Federal Act dated 12th June 1981 on the Press and other Publication Media (Media Act – MedienG)

https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1981_314/ERV_1981_314.pdf (in German and English)

²⁷ KommAustria <https://www.rtr.at/en/rtr/OrganeKommAustria>

²⁸ Article 10 paragraphs (7) and (8) of the Federal Act on Audio-visual Media Services.

*media owner is an association or an association holds a direct or indirect share in the media owner, the management board and the purpose of the association shall be stated in respect of such association”.*²⁹

Austria is judged as one of the countries where transparency of media ownership is high, both in terms of legal provisions, but also in practice.³⁰

It has also a high level of transparency in public bodies spending,³¹ who are obliged to report on their spending on advertising and subsidies to any kind of media. This is indeed an important feature, as the lack of transparency of public advertising can lead to limitations to freedom of expression which are not visible at the first glance, such as self-censorship. This can also seriously distort the media market, by giving undue economic advantage to certain media outlets.

3.2.2. Criteria

Criteria in relation to limitation of media concentration applied in Austria include the following:

1. Horizontal

One media group's offer at one particular part of the country is not allowed to include:

- more than two analogue terrestrial radio channels;
- more than two digital terrestrial radio channels;
- more than one terrestrial radio channel and two terrestrial television channels.

These criteria do not include the technical spill-over that might occur.

Further, television broadcasters are considered to belong to the same media groups when the group, one person or partnership or media owner holds more than 25% of the share capital or the voting rights of a media owner or exert a dominating influence or have one of the possibilities to exert an influence.

2. Vertical

A company that has more than 30% of coverage to the population by means of cable network on the national territory cannot own a television channel.

3. Diagonal

²⁹ Article 25 paragraph (2) of the Federal Media Act.

³⁰ Access Info Europe and the Open Society Program on Independent Journalism Report: “The transparency of media ownership in the EU and neighbouring states”.

https://www.access-info.org/wp-content/uploads/Transparency_of_Media_Ownership_in_the_EU-09-26-2014.pdf

³¹ Since the adoption in 2011 of the Federal Constitutional Act on Transparency in Media Cooperation and of Advertising Orders and the Funding of Media Owners of a Periodical Medium (MedKF-TG).

https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2011_1_125a/ERV_2011_1_125a.pdf

A company that has more than 30% of a nationwide range radio service, or more than 30% of a nationwide range of the daily or weekly press cannot be a television broadcaster.

4. Geographical

A television broadcaster can hold several licences for digital terrestrial television as long there is no licence overlap in more than 3 coverage areas. For a radio broadcaster, there cannot be any coverage area overlap and one radio broadcaster can be assigned one dedicated coverage area. Same limitation applies for analogue terrestrial broadcasting. For digital services, rules stipulate that a radio broadcaster can hold several licences for digital terrestrial radio broadcasting as long as there is limited allocation of frequency resources in maximum of 2 coverage areas. Finally, a media group may provide the same location in the national territory simultaneously with only one channel licensed and a maximum of 1/3 of the terrestrial television channels that can be received in that location.

In addition to these main criteria, other criteria are also applicable. Hence, for radio, the criteria refer to population it covers, in a manner that one media group can cover the maximum of 12 mil. inhabitants, while that number is maximum 8 mil. inhabitants when attributed to a person or partnership of the media group. For TV, additional criteria take into account shares transfer and stipulates that when more than 50% of shares are transferred, KommAustria must be notified, which then assesses it, as stipulated above.

Finally, foreign ownership for TV services cannot exceed 49% of the shares³².

3.3. France

Generally described as a country that ranks high in media freedoms, France shows low risks in terms of concentration of media ownership, transparency of media ownership, as well as concentration of cross-media ownership. It should be stressed that *“several policies approved from 2014 to date within the frame of the fight against terrorism have allowed surveillance of the Internet and telephone communications to political powers, which is considered to imply restrictions to certain rights (The Intelligence Act of 24 July 2015)”*.³³

3.3.1. Procedure

The Law on freedom of communication of 30 September 1986 is the main legislative act in relation to these issues.³⁴ The Law n° 86-897 of 1 August 1986 on reform to the legal regime of the press establishes the rules on concentration and transparency for newspapers.³⁵ Further, the Commercial

³² It should be noted that individuals and legal entities of the European Economic Area have equal status as Austrians.

³³ Media Pluralism Monitor 2016, Monitoring Risks for Media Pluralism in the EU and Beyond, Country report: France. <https://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/france/>

³⁴ Loi n°86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard). <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000512205&categorieLien=id> (in French)

³⁵ It prohibits the same person, or group of persons, or entities to own, control or edit daily publications of political and general information whose total distribution exceeds 30% in the national territory of publications of the same kind. Loi n° 86-897 du 1 août 1986 portant réforme du régime juridique de la presse.

Code stipulates that the Competition Authority oversees securing transparency in concentration transactions.³⁶

The issue of content concentration is dealt with by the licencing procedure, during which the national regulatory authority (Conseil Supérieur de l'Audiovisuel – CSA)³⁷ has to take into consideration the legal framework and ensures that the media pluralism is respected. Apart from the consideration of criteria in relation to concentration of the media (in the subsequent section), the CSA is also in charge of providing the prior and conditional approval of mergers and acquisitions, when it conducts an economic analysis in each case.

When it comes to newspapers, the Ministry of Economy and Finance, through the Competition Authority, must secure transparency in concentration transactions.

3.3.2. Criteria

Criteria in relation to limitation of media concentration applied in France include the following:

1. Horizontal

A service provider cannot usually hold more than one licence (but, there are some exceptions, depending if it is a radio or a television service provider, if the service is broadcast in analogue or in digital and if the service has a national or a local coverage; it can go as high as 7 licences for digital terrestrial broadcasting). A national terrestrial television service provider cannot hold, directly or indirectly, more than 49% of another terrestrial television service whose annual average audience share exceeds 8% of the total audience of television services.

2. Diagonal

A national service provider active in radio, television and/or press faces limitations to expansion depending on its situation in these different markets (threshold of 4 million people in television, 30 million people in radio and 20% of distribution in the press); local service providers also face similar limitations, with lower thresholds.

3. Geographical

A local terrestrial television service provider cannot become the holder of a new licence relating to a service of the same nature, if this licence should have the effect to bring its cumulative potential audience to more than 12 million people.

4. Audience share

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000687451&categorieLien=id> (in French)

³⁶ Code de commerce.

<https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000005634379> (in French)

³⁷ Conseil Supérieur de l'Audiovisuel

<https://www.csa.fr/>

A national terrestrial television service cannot hold, directly or indirectly, more than 49% another terrestrial television service whose annual average audience share exceeds 8% of the total audience of television services. Also, national analogue or digital terrestrial radio service cannot hold licences whose potential cumulative terrestrial audience exceeds 20% of the potential cumulative audience of all terrestrial radio services.

Additionally, there are the criteria of coverage of a certain amount of the population: an analogue terrestrial radio service provider cannot cover a cumulative potential audience of more than 150 million people (the French population is 67 million, but all the networks do not cover 100% of the population).

Another provision worth highlighting is the fact that an independent radio whose programming is similar to more than 50% to the programming of a network is then considered as being part of this network with the view of calculating the thresholds.

Foreign ownership of terrestrial television service providers is limited to a maximum of 20% of the shares.

The French case is interesting to note because it does not include vertical ownership concentration, which is indeed present on the market, all the telecommunication operators (Orange, Bouygues, Altice-SFR and Iliad-Free) being increasingly present in various segments of the media market.

3.4. Germany

Germany ranks high in media freedoms, with its media system being determined by the Constitution and the settled case law of the Constitutional Court. Media affairs fall under the legislation of the sixteen Federal States and, in part, on an Interstate Treaty. Most regulatory measures, as far as the media are concerned, focus on television. It shows some risk in horizontal media ownership in TV market, as: *“the public broadcasters and the three largest commercial broadcasters together hold a market share of 88%”*.³⁸

3.4.1. Procedure

While radio broadcasting falls exclusively under the jurisdiction of Federal States (*Bundesländer*), and each State having its own media law and regulatory authority, television broadcasting is regulated both at the level of the States and, according to the Interstate Treaty on Broadcasting and Telemedia,³⁹ at the national level via a joint management office (*Die medienanstalten – DLM*).⁴⁰

³⁸ Media Pluralism Monitor 2016, Monitoring Risks for Media Pluralism in the EU and Beyond, Country report: Germany.

<https://cmpf.eu.eu/media-pluralism-monitor/mpm-2016-results/germany/>

³⁹ Interstate Treaty on Broadcasting and Telemedia

<https://www.die-medienanstalten.de/en/service/legal-basis/> (in English)

⁴⁰ Die medienanstalten

<https://www.die-medienanstalten.de/en/>

Germany is the only country which has created a specific public body exclusively in charge of concentration issues in the media, the Commission on Concentration in the Media (*Kommission zur Ermittlung der Konzentration im Medienbereich – KEK*),⁴¹ whose duty is to monitor and enforce compliance with the provisions on media concentration and media pluralism of the Interstate Broadcasting Treaty.

As will be seen under section 3.4.2., the German system relies exclusively on the criteria of audience share, with detailed provisions for the procedure of determining it and procedural remedies to be taken by the KEK in case of thresholds are reached. In that sense, the KEK establishes the audience share and commissions this task to a specialized company. The average audience share over a period of 12 months is used as a reference.

The procedure stipulates the obligation on the part of broadcasters to assist the KEK in this task, failure of which can result on licence revocation. Further, the remedies include the following:

- no additional licence can be delivered to the provider found to have reached the criteria of audience share which puts him in a dominant position;
- subsequently, the KEK can:
 - propose to the service provider to give up its participating interests in services attributable to it until its audience share falls below the threshold;
 - propose to the service provider to limit its market position in media-relevant related markets until its audience falls below the threshold;
 - propose to the service provider to grant broadcasting time to independent third parties;
 - propose to the service provider to establish a programme advisory council.

The KEK engages in discussions with the service provider. However, in case of no agreement made, or in case the measures agreed upon are not implemented within a reasonable period, the regulatory authority DLM can revoke the licences of as many of the services as necessary to ensure that the service provider no longer exercises dominant power of opinion.

3.4.2. Criteria

Unlike the examples shown earlier (under 3.2. and 3.3.), the German system almost entirely relies on the criteria of audience share. There are no limitations to horizontal, vertical or diagonal concentration as long as a service provider does not acquire dominant power of opinion.

The dominant power is presumed:

- when a service annual average audience share exceeds 30%;
- when a service provider holds a dominant position in another media-relevant related market and reaches an overall share of 25%;

⁴¹ Kommission zur Ermittlung der Konzentration im Medienbereich – KEK
<https://www.kek-online.de/en/>

- when an overall assessment of its activities in television and in media-relevant related markets shows that the influence on the formation of opinion obtained as a result of these activities corresponds to that of a service provider with a 30% audience share.

Important to note is that, if a service provider reaches an annual average audience share of 10% with a general channel or an information-oriented thematic channel, it must allocate broadcasting time to independent third parties.

4. Comparative analysis with other countries of the region with similar features

4.1. Introduction

This part of the analysis covers four countries in the Western Balkans where the development of legislation and regulatory measures in terms of media concentration in the audiovisual sector took place in a relatively similar way as in the Republic of North Macedonia, as well as due to the proximity and similarities of media markets. In addition to Albania, Montenegro and Serbia, Croatia is also included, although already a member of the EU. The missions of media regulators in these four countries to monitor and prevent impermissible levels of media concentration are given primarily in order to protect media pluralism and diversity. Yet, it can be noted that although the four countries have similar socio-political background, the concepts and regulatory mechanisms for preventing media concentration do not follow entirely similar patterns.

4.2. Albania

A recent comprehensive mapping study conducted in this country suggests that the perception of plurality in the Albanian media market *“is an illusion, as audience and revenues remain concentrated in the hands of a few, family owned groups, which dominate the media market”*.⁴² TV market, for example, sees the operation of services owned by four major players that, according to some audience measurements, control 58.6 % of the audience share, which suggests high concentration. Concentration is even higher in the radio market, where the four major players control almost two thirds – 63.96% – of the listeners share. Ownership across the different sectors – TV, print and radio – is also rated high, demonstrating influence of some media owners on the public opinion: eight major owners reach across different media sectors even 80.1%, according to audience measurements data. The analysis of market shares for TV provides even more evidence of concentration. Based on the 2016 financial reports, the four major owners in the free-to-air TV have a combined market share of 89.6%.

⁴² The Media Ownership Monitor Albania was conducted by a local research team from Balkan Investigative Reporting Network (BIRN) Albania in collaboration with Reporters Without Borders (RSF).
<http://albania.mom-rsf.org/en/findings/media-concentration/>

4.1.1. Procedure

The rules related to media concentration in the audiovisual media sector in Albania are incorporated in the Law no. 97/2013 on audio and audiovisual media services in the Republic of Albania.⁴³ Another piece of legislation laying down rules for regulating monopolies is the Law no. 9121/2003 on the protection of competition.⁴⁴ This law sets out general rules for all types of businesses and addresses vertical control as well as indirect control issues.

Media Ownership Monitor Albania reports that the biggest TV operators in Albania “*filed a lawsuit in the Constitutional Court, asking that any media ownership restriction to be considered as unconstitutional. In May 2016 the Constitutional Court ruled in their favour,*⁴⁵ *practically giving a green light for the monopolization of the audiovisual media market. With the restrictions on ownership lifted, Albania Media Authority (AMA) proceeded to award the digital terrestrial transmission licences to Top Channel TV, TV Klan, DigitAlb, Media Vizion and Albanian Digital Television Network (ADTN) – a new company wholly owned by DigitAlb*”.⁴⁶

The Law on audio and audiovisual media services contains only provisions related to limitation of concentration in the terrestrial broadcasting, i.e. audiovisual media services which are transmitted through analogue and digital terrestrial networks (Article 62). Licences for audio broadcasting (radio) and for audiovisual broadcasting (television) can be only granted to companies registered in the Republic of Albania, which exclusively work in the audiovisual field. When applying for a licence, among the general requirements, the applicant is obliged also to provide information on the ownership structure of the company and its shareholders (Article 56 paragraph 8). However, the Law does not contain any other provisions that oblige licence holders to disclose regularly or periodically data on their ownership structure and sources of financing.

Also, there are no explicit provisions which define the procedure according to which a licence holder is allowed to change its ownership structure: whether it is obliged to notify the Audiovisual Media Authority (or other public body) about the intention to change the ownership structure, whether the regulator issues an approval, what happens if the regulator determines a possibility for impermissible media concentration, etc.

The Law also does not explicitly mention that monitoring of media concentration and ownership transparency is a competence of the Audiovisual Media Authority, although Article 29 gives the authority general competence to evaluate the effects on the broadcasting market and for that purpose to cooperate with other relevant public institutions.

⁴³ <http://ama.gov.al/wp-content/uploads/2018/10/LIGJI-NR.-972013-%E2%80%9CP%3%8BR-MEDIAT-AUDIOVIZIVE-N%3%8B-REPUBLIK%3%8BN-E-SHQIP%3%8BRIS%3%8B%E2%80%9D-I-NDRYSHUAR.pdf> (in Albanian)

<http://ama.gov.al/wp-content/uploads/2016/06/LAW-NO-97-2013-ON-THE-AUDIOVISUAL-MEDIA-AUTHORITY.pdf> (in English)

⁴⁴ http://www.caa.gov.al/uploads/laws/Law_nr_9121_date_09.05.2012.pdf

⁴⁵ With its Decision no. 56 of 27.07.2016, the Constitutional Court abolished Article 62 point 3 of the Law, which stipulated that “*no natural or legal person, domestic or foreign, may have more than 40% shares in the total capital of a joint stock company which holds a national lice for audio or for audiovisual broadcasting*”.

⁴⁶ Media Ownership Monitor Albania

<http://albania.mom-rsf.org/en/context/law/>

4.1.2. Criteria

The rules for preventing various types of illegal media concentration in the audiovisual sector of Albania are stipulated in Article 62 of the Law on audio and audiovisual media services, which regulates in detail the ownership in the terrestrial broadcasting sector.⁴⁷

1. Horizontal

- A physical or legal entity that has shares in a company that holds a national terrestrial licence for television (audiovisual broadcasting), is allowed to own up to 20% of the capital in a second company which holds a national licence for television.
- A physical or legal entity that has shares in a company that holds a national terrestrial licence for radio (audio broadcasting), is allowed to own up to 20% of the capital in a second company which holds a national licence for radio.
- For analogue radio it is permitted to own up to 10% in the capital of a third national radio company. In this case, it is not allowed to have neither audio nor audiovisual broadcasting licence at regional or local level.
- A physical or legal entity that has shares in a local or regional radio is allowed to own up to 40% shares in the capital of a second local or regional radio.
- A physical or legal entity that has shares in a local or regional television is allowed to own up to 40% shares in the capital of a second local or regional television.

2. Vertical

The Law does not contain provisions that limit the integration of capital between companies that work in the advertising field, transmission of audiovisual services or other sectors which are part of the vertical supply chain. Vertical control issues are regulated only by the Law on the protection of competition, which is also applicable to the audiovisual sector. However, the Audiovisual Media Authority does not have a clear mandate to operate in this area and *“the Competition Authority recently held that it is not competent to review a complaint against an audio-visual medium, as the media field falls exclusively under the jurisdiction of the AMA”*.⁴⁸

3. Diagonal

A physical or legal entity that has 100% of shares in a local or regional television (audiovisual broadcasting) can be granted only one additional licence for local or regional radio, and *vice versa*.

There are no other rules that limit the integration between broadcasting/audiovisual media services and services in other media sectors, such as newspapers or news agencies.

⁴⁷ Article 62, paragraph 11, however, stipulates that these rules *“are applicable also to legal entities authorized for the provision of audio programme services and authorizations of audiovisual programme service supported in satellite networks”*.

⁴⁸ Dorian Matlija, *Legal Assessment: Media Ownership Monitor Albania*, 2018.
http://albania.mom-rsf.org/uploads/tx_lfrogmom/documents/237.pdf

4. Advertising

Article 62 paragraph 12, introduces a type of threshold on the audiovisual broadcasting market, stating that “no holder of national licences for audio broadcasting and for ...audiovisual broadcasting, including ... audiovisual programme service supported in satellite networks, ... can broadcast more than 30% of advertising in the audiovisual broadcasting market”. The Audiovisual Media Authority is authorised to monitor and to publish periodic information on the volume of advertising broadcasted by national providers of audiovisual media services.

According to the expert legal analysis published within the Project Media Ownership Monitor Albania, “the restriction imposed by law whereby only 30% share of the advertising market is permitted cannot be easily applied in practice, as the law does not specify how to measure the advertising share, whether this percentage refers to the value of the advertisements or to the advertising airtime”.⁴⁹

4.3. Croatia

According to the study of media pluralism in Croatia, conducted within the 2017 MPM study, the market plurality area was assessed with a medium risk: “Television is the most consumed medium with foreign-based companies having the largest audience shares. The market share of the Top4 audiovisual media (PSM included) was 96%, while audience concentration of the Top4 television channels was 59%. The market share of Top4 media owners across different media markets is 67%. There is a very complicated mechanism for monitoring cross-media ownership concentration which involves several bodies with overlapping competencies. A burning issue is also the commercial and media owners influence over the editorial content. This is reflected in either direct promotion of favourable reports, or in a general lack of reports and negative views about major advertisers”.⁵⁰

4.3.1. Procedure

The rules related to media concentration in different media sectors in Croatia are incorporated in the following two laws which are inter-related, and both regulate competition in the audiovisual media sector and protection of media pluralism and diversity: Media Act⁵¹ and Electronic Media Act.⁵²

The transparency of ownership is regulated in both legal acts: all media publishers are obliged to provide public bodies with the required data on their company, headquarters, names and place of residence of all physical and legal entities that own shares (directly or indirectly) in the specific media

⁴⁹ Idem.

⁵⁰ Monitoring Media Pluralism in Europe: Application of the Media Pluralism Monitor 2017 in the European Union, FYROM, Serbia & Turkey, Country report: Croatia.

https://cadmus.eui.eu/bitstream/handle/1814/61133/2018_Croatia_EN.pdf?sequence=1&isAllowed=y

⁵¹ The media act (Consolidated version, Official Gazette of the Republic of Croatia 59/04, 84/11, 81/13)

<https://www.aem.hr/zakonski-akti/> (in Croatian)

https://www.dzs.hr/Eng/important/PressCorner/Zakon%20o%20medijima_EN.pdf (in English)

⁵² Electronic Media Act

<https://www.aem.hr/zakonski-akti/> (in Croatian)

<https://www.epra.org/articles/media-legislation> (in English)

outlets as well as the percentage of the total share. Media publishers are also obliged to provide regular updates to the ownership information. The laws also stipulate sanctions for non-reporting of ownership information. According to the Media Act, the intention for mergers in any media sector must also be notified to the Agency for Market Competition Protection.

The Electronic Media Act obliges the broadcasters and media service providers to report on any change in their ownership structure to the Electronic Media Council. If the regulator determines that these changes resulted in an impermissible media concentration, it can issue an order to respective media companies to conform their ownership structure with the Law. Non-compliance with the order of the Electronic Media Council may result in termination of the licence. In addition, during the procedure for awarding licences the Electronic Media Council is obliged to take into consideration whether the award of a licence would create an impermissible concentration. This law also defines the meaning of “linked persons”, which are taken into account when determining concentration.

4.3.2. Criteria

Media-specific rules in relation to limitations of media concentration in the audiovisual sector are stipulated in the articles 54, 59, 60 and 61 of the Electronic Media Act:

1. Horizontal

- The television broadcaster at state level is allowed to own up to 25% share in the capital of another TV broadcaster (at state, regional, county, city or municipality level), and *vice versa*;
- The television broadcaster at local or regional level is allowed to own up to 30% share in the capital of another television broadcaster at local or regional level, in the same area;
- The radio broadcaster at state level is allowed to own up to 25% share in the capital of another radio broadcaster (at state, regional, county, city or municipality level), and *vice versa*;
- The radio broadcaster at local or regional level is allowed to own up to 30% share in the capital of another radio broadcaster at local or regional level, in the same area.

2. Vertical

Companies that work in the advertising sector (marketing agencies), or physical entities affiliated with them (which own more than 10% share in their capital or more than 10% of management or voter's rights), may not be founders of radio or television broadcasters, nor can they own shares in the capital of the television or radio broadcasters.

Companies that perform the activity of distribution of audiovisual or radio services cannot be also providers of television, radio or other audiovisual media services.

3. Diagonal

In general, the Electronic Media Act does not allow diagonal integration between television and radio – Article 59 provides that “*a particular broadcaster may perform either television media service or radio media service*”. However, paragraph 2 of the same Article allows an exemption for this rule – the

Electronic Media Council may issue an approval for such integration, in case when television and radio media services are not broadcasted in the same area.

There are several other rules that limit the integration between broadcasting/audiovisual media services and services in other media sectors:

- The television or radio broadcaster at state level is allowed to own up to 10% share in the capital of a publisher of *daily newspapers* which is printed in more than 3,000 copies, and *vice versa*;
- The television or radio broadcaster at state level is allowed to own up to 10% share in the capital of a legal person that performs the activity of a news agency, and *vice versa*;
- The television or radio broadcaster at state level is not allowed to simultaneously publish a daily newspaper printed in more than 3,000 copies;
- The television or radio broadcaster at regional or local level is not allowed to simultaneously publish a daily newspaper of local importance, in the same or in the neighbouring area;
- The provider of media service (television or radio) aimed for satellite, internet, cable or other type of transmission is not allowed to simultaneously publish a daily newspaper which is printed in more than 3,000 copies;
- The provider of media service (television or radio) aimed for satellite, internet, cable or other type of transmission is allowed to own up to 10% share in the capital of a daily newspaper which is printed in more than 3,000 copies, and *vice versa*.

4.4. Montenegro

The media market in Montenegro “offers plurality of views with five national and ten local TV stations, more than 40 radio stations, five dailies, and four significant news portals”.⁵³ However, the number of media is considered as relatively high for a population of around 660.000 inhabitants, which has impact on “the economic fragility of most of these outlets, who would not survive without benefiting from the various supports from the State... and from the fact that they belong to companies who are also active in other sectors of the economy and can “afford” the losses of the media branch of their economic group”.⁵⁴ Most of these players are not driven by the economic sustainability of their activity but by other purposes such as influence on political decision-making processes. Thus, there is a general assessment that the media scene is deeply divided along political lines between some media which are considered as close to the Government and the others to the political opponents. Although the ownership transparency is regulated in the legislation and data on ownership of the audiovisual media are regularly published by the regulator, “there is a gap between the official information provided and the real ownership of several media outlets ...The Agency for Electronic Media (AEM) also recognises

⁵³ Media Pluralism Monitor 2016, Monitoring Risks for Media Pluralism in the EU and Beyond, Country report: Montenegro. <https://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/montenegro/>

⁵⁴ Council of Europe/European Union, *Montenegro Media Sector Inquiry with Recommendations for Harmonisation with the Council of Europe and European Union standards*, 29 December 2017, p. 79. <https://rm.coe.int/montenegro-media-sector-inquiry-with-the-council-of-europe-and-europea/16807b4dd0>

this problem of hidden ownership and rightly explains ...that in order to identify the real owners, it should have the powers to investigate ownership of media outlets until the final beneficiary owner...”.⁵⁵

4.4.1. Procedure⁵⁶

The Media Law,⁵⁷ which stipulates the basic conditions for the establishment and work for all media outlets, contains only a general provision that monopolies are not allowed in the media field and that *“the protection against the monopoly in media activities shall be provided by a separate law”* (Article 5). This Law also obliges all media, including broadcasters, to publish data on *“the name of the medium and name or company and residence or seat of the founder”* (Article 18).

Ownership transparency and media concentration in the Montenegrin audiovisual media sector are regulated in detail in the Electronic Media Law.⁵⁸ The providers of audiovisual media services are obliged to inform the regulator – AEM – on all the changes in their ownership structure, on their ownership stake as well as on their media owners’ share in other providers of audiovisual media services. The regulator is obliged to publish these data in the Official Gazette of Montenegro (Article 129). In addition, service providers are obliged to inform the regulator in writing of any changes in their ownership structure, while for the change in ownership structure exceeding 10% share to obtain a prior written approval. Domestic companies having foreign legal persons as founders established in countries in which it is not possible to establish the origin of founding capital, are not eligible for granting a licence (Article 135). The regulator may revoke the licence, temporary or permanently, if the service provider doesn’t comply with the provisions of the Law governing unlawful media concentration.

The Agency will not grant a licence if that would lead to unlawful media concentration. The applicant for a licence, for that purpose, is obliged to submit a certified statement, but if the Agency still establishes that following the granting of a licence unlawful media concentration would occur, it will order the broadcaster to rectify the irregularities, within three months. In contrary, the Agency shall revoke its licence (Article 134).

4.4.2. Criteria

Articles 131 and 132 of the Electronic Media Law define the types of media concentration that are legally permissible in Montenegro:

⁵⁵ Idem, p. 75.

⁵⁶ At the time of writing this analysis, a new procedure for amending the media legislation in Montenegro was underway. In particular, for the new Media Law, the amendments have already been adopted by the Government in December 2019 and the Parliamentary discussion has been put on hold due to the COVID-19 pandemic, while a new Audiovisual Media Service Law is being drafted to replace the current Electronic Media Law. This process is done with the support of the Freedom of Expression and Freedom of the Media (JUFREX) Action in Montenegro.

⁵⁷ Media Law

<https://aemcg.org/wp-content/uploads/2018/06/Media-Law-30.06.2004.pdf> (in English)

⁵⁸ Electronic Media Law (Official Gazette of Montenegro no. 046/10 of 6 August 2010, 040/11 of 8 August 2011, 053/11 of 11 November 2011, 006/13 of 31 January 2013, 055/16 of 17 August 2016)

<https://aemcg.org/wp-content/uploads/2011/11/Electronic-Media-Law-17.08.2016.pdf> (in English)

1. Horizontal

- A broadcaster (television or radio) holding a licence for national coverage is allowed to own up to 25% share of the capital or voting rights in the capital of another broadcaster at national level;
- A broadcaster (television or radio) licensed for broadcasting at local or regional level is allowed to own up to 30% share in the founding capital of another broadcaster with regional or local coverage in the same area.

2. Diagonal

- A broadcaster (television or radio) is allowed to own up to 10% share in the capital of a company that publish daily print media with the circulation exceeding 3,000 copies, or *vice versa*;
- A broadcaster (television or radio) is allowed to own up to 10% share in the capital of a company that performs the activity of a news agency, or *vice versa*;
- A broadcaster (television or radio) is not allowed to simultaneously publish a daily newspaper with circulation exceeding 3,000 copies;
- A broadcaster (television or radio) is not allowed to simultaneously publish a local daily newspaper (in the same or in neighbouring areas);
- A broadcaster (except the national public broadcaster) is not allowed to broadcast in the same area more than one television and one radio programme.

4.5. Serbia

The media market in Serbia is very fragmented. There are 2000 media registered with the official Media Registry – over 800 printed publications, more than 300 radio stations, over 200 TV channels and 600 online media⁵⁹. The average annual market value of advertising is estimated at around €197 million, which is not enough to support the economic survival of all active media. The state still has a significant influence on the media market because it continues to control the media through direct ownership and through different models of state financing.⁶⁰ It is difficult to find relevant data on the radio and television market, such as market share of the Top4 television or radio owners in the respective media markets. The Media Sustainability Index published by IREX in 2017 raised concerns about concentration of media ownership in the country, warning that the different regulations applied to electronic and print media may constitute a significant risk-factor and stressing that both the Agency for Protection of Competition and the Regulatory Body for Electronic Media have so far failed to properly address media concentration.⁶¹ In 2019, the same study emphasised that “A plurality of

⁵⁹ The Media Ownership Monitor Serbia is conducted by a local research team from Balkan Investigative Reporting Network (BIRN) in collaboration with Reporters Without Borders (RSF).

<http://serbia.mom-rsf.org/en/findings/transparency/>

⁶⁰ Idem.

⁶¹ IREX Serbia Sustainability Index 2017. <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2017-serbia.pdf>

affordable public and private news sources (e.g., print, broadcast, Internet) exists...media ownership is not concentrated in a few conglomerates".⁶²

4.4.1. Procedure

Media ownership and media concentration in Serbia are regulated by two laws: the Law on Public Information and Media⁶³ and the Law on Electronic Media.⁶⁴

The Law on Public Information and Media stipulates that any kind of monopoly in the field of public information is banned in order to protect competition and diversity of ideas and opinions (Article 6), guarantees a general principle of transparency of information about the media (Article 7) and imposes obligation (Articles 34-44) for all types of media, including radio and television, to publish imprint and to submit various data in the respective Media Registry (name of the medium, name and head office of the publisher, ownership structure etc.). Chapter VII of this Law is related to the protection of pluralism in the print (daily newspapers) and audiovisual sectors. For the audiovisual sector, a threshold is introduced for determining excessive influence of two or more service providers on the public opinion: their aggregated share is not allowed to exceed more than 35% of the total listening (radio) or viewing (television) share in the area of coverage, in the year preceding the merger (Article 45). Media concentration between daily newspapers and audiovisual sector is also limited, while distribution companies are allowed to perform the publishing activity but only through a related legal entity (Article 46). The existence of a risk to media pluralism for the print media is determined by the Ministry of Culture and Information, and in the case of a cross-acquisition with at least one electronic media, the responsible institution is the Regulatory Authority for Electronic Media (Article 47).

The Law on Electronic Media determines the conditions under which a physical or legal entity may obtain a licence, as well as legal obligations of the providers of these services in terms of programming, technical and other requirements. The applicant for a terrestrial licence for television or for radio broadcast service is obliged to provide also information on the ownership structure of the applicant's capital, including information on a legal entity or physical entity which directly or indirectly participates in its ownership structure (Article 95). The regulator will not issue a licence if that violates media pluralism rules (Article 104). In addition, it may revoke a licence for audio or audiovisual media services if it establishes that the media service provider gave incorrect information when applying for a licence or if it determines that the provider violates the provisions on protection of media pluralism (Article 89).

The Law on Electronic Media also contains a separate chapter focused on media pluralism protection (Articles 103-106). These provisions are complementary to the media concentration rules stipulated in the Law on Public Information and Media and regulate the procedure to be carried out by the regulator when dealing with cases of mergers in audiovisual sector or with cross-acquisitions. If the regulator determines the existence of a violation of media pluralism, it shall require from the media service

⁶² IREX Serbia Sustainability Index 2019.

<https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2019-serbia.pdf>

⁶³ Law on Public Information and Media

<http://www.rem.rs/uploads/files/Zakoni/Zakon%20o%20javnom%20informisanju%20i%20medijima.pdf> (in Serbian)

⁶⁴ Law on Electronic Media

<http://www.rem.rs/uploads/files/Zakoni/Zakon%20o%20elektronskim%20medijima.pdf> (in Serbian)

provider to conform its activity with the law within six months and to submit evidence for that (Article 103). Service providers should inform the regulator in advance about their intention to make changes in their ownership structure, while the regulator will investigate the planned changes and if determined that they may lead to violation of the legal rules, it will recommend to the holder of the licence to adjust the changes in such a way as to avoid this situation. If the licensee fails to comply with the recommendation, the Regulator shall revoke his licence (Article 105).

4.5.2. Criteria

Criteria in relation to limitation of media concentration applied in Serbia are determined predominantly in Chapter VII of the Law on Public Information and Media and include the following.

1. Vertical

Distribution companies are allowed to perform audiovisual activity only indirectly, through a related legal entity (Article 46). The Law does not contain provisions that limit the integration of capital between companies that work in the advertising field or in other fields which are part of the supply chain.

2. Diagonal

Media service providers are allowed to own up to 50% share in the capital of a company that publishes daily print media with the circulation exceeding 50,000 copies, or *vice versa*.

The integration of capital between radio and television sectors is not limited.

3. Audience

Article 45 of the Law on Public Information and Media determines a threshold for measuring undue influence of two or more providers of audio or audiovisual media services on the public opinion: the aggregated share is not allowed to exceed more than 35% share of the total listening (for radio) or viewing (television) in the area of coverage, in the year preceding the merger (Article 45).

5. Analysis of the legal framework and assessment of the practical aspects of its implementation

This part of the Study analyses the relevant provisions of the legal framework regarding media ownership and describes the actual state of the audiovisual market in terms of capital integration, initiated procedures by the regulatory body for detecting illegal forms of concentration during 2018 and 2019 and summarizes the views⁶⁵ of various stakeholders on the current problems in the audiovisual sector in terms of transparency of media ownership and media concentration rules. The opinions and proposals of the interviewed stakeholders on the direction in which the existing provisions of the legislation should be amended are also presented in the end of this Chapter.

5.1. Analysis of the laws

The Law on Audio and Audiovisual Media Services (hereinafter “the Law”)⁶⁶ lists among the missions of the media regulatory authority (Agency for Audio and Audiovisual Media Services, hereinafter “the Agency”) to:

- *“be responsible for the protection and development of pluralism in the audio and audiovisual media services, encourage and support the existence of diverse and independent audio and audiovisual media services”*
- and in particular to *“determine the existence of illegal media concentration”* (Article 6).

Article 18 of the Law, which further details the competencies of the Council of the Agency, provides for several competencies which can be exercised in order to prevent illegal concentration, such as adopting decisions:

- *“for awarding, revoking or extending licences for television or radio broadcasting;*
- *permitting or prohibiting the changes in the ownership structure of a broadcaster;*
- *for annulment of the decision permitting the changes in the ownership structure of the broadcaster;*
- *for initiating an ex-officio procedure for determining illegal media concentration;*
- *for determining the existence of illegal media concentration”.*

The provisions of the Law related to limitation of media concentration are to be found in Chapter IV of the Law (“Protection of pluralism and diversity of audio and audiovisual media services”), in articles 34 to 43.

⁶⁵ For the purposes of this study, 10 interviews were conducted with representatives of the media industry, telecommunication sector, non-governmental organizations and regulatory bodies. In order to ensure openness in the communication and confidentiality of the personal data, all interviews were conducted anonymously.

⁶⁶ Law on Audio and Audiovisual Media Services (“Official Gazette of the Republic of Macedonia” no. 184/2013, 13/2014, 44/2014, 101/2014, 132/2014, 142/2016, 132/2017, 168/2018, 248/2018 и 27/2019 and “Official Gazette of the Republic of North Macedonia” no. 42/2020).).

These provisions can be classified as follows:

- ban of hidden ownership (Article 34);
- ban of foreign ownership if it is not permitted or not possible to establish the origin of the initial capital (Article 35);
- rules about ownership by related persons, i.e. legal or physical entities mutually through the management structure of a media service provider (Article 36);
- rules about horizontal and geographical concentration (Article 37);
- ban of ownership by specific legal or physical entities: political parties, state bodies, bodies of the state administration, public enterprises, local self- government units, public office holders and members of their families (Article 38);
- rules about vertical and diagonal concentration (Article 39);
- rules about changes in the ownership structure of media service providers (Articles 41 and 42);
- rules of procedure for determining illegal media concentration (Articles 40 and 43).

The Law appears very strict in terms of media concentration, as it combines bans or restrictions in terms of horizontal, vertical, diagonal and geographical concentration. Yet, the case studies have shown that these restrictions are rarely all combined, but that the lawmaker rather makes choices between different options, depending on the domestic context. Some countries, like Germany, even rely on one single criterion (audience) to measure media concentration.

These limitations vary in their intensity, but the importance of all of them combined is questionable in a small and currently fragmented market, where potential revenues for media service providers are rather low and where economies of scale might be necessary in order to achieve sustainability for market players.

The Law appears unclear regarding some provisions. For example, Article 39 (2) indent 7 states that illegal media concentration exists when the broadcaster “is simultaneously involved in broadcasting radio and television program”. Although this provision refers to simultaneous broadcasting of radio and television services, it may create confusion and be interpreted as if banning cross-ownership between television and radio, despite the fact that, in Article 37 there is no explicit prohibition against concentration of capital between radio and television. A full ban on cross-ownership between television and radio is not found throughout Europe, except in very large markets like France for example.

Next, Article 39 (2) indent 2 states that there is illegal media concentration when a broadcaster “*participates in the foundation capital of a publisher of print media that prints a daily newspaper or a news agency*” (total ban) while Article 39 (2) indent 8 states that there is illegal media concentration when a broadcaster “*broadcasts radio or television programmes and publishes daily newspaper distributed on the territory where the radio or television programmes are broadcasted*” (only geographical ban).

Another unclear provision can be found in Article 37 (2), according to which “*A physical or legal entity that appears as a majority co-owner or share-holder in a broadcaster with a licence for television broadcasting on national level, as well as person related to a co-owner or a shareholder in a broadcaster with a licence for television broadcasting on national level may appear as majority co-*”

owner or shareholder, that is, participate in the ownership of only one more broadcaster that holds a licence to pursue broadcasting activity for television broadcasting on a regional level provided that areas are in a non-neighbouring region, and in the ownership of no more than two broadcasters with a licence for television broadcasting on local level, provided that the regions of local level do not share a common border”: ownership of a regional broadcaster by a national broadcaster seems allowed by the first part of this provisions, but banned by the second part of the provision, as by definition a national broadcaster would cover all the regions of the country. The Law sometimes contains measures in terms of geographical concentration that can be counterproductive in terms of pluralism. For example, if a broadcaster wishes to launch a new regional or local service, but is forbidden to do so because it has already reached the threshold fixed by Article 37 (2), this might lead to the fact that new services which could contribute to pluralism and diversity of supply would not be created. Another example is that a broadcaster facing a difficult financial situation might be saved by merging with another broadcaster, but this merger would be forbidden due to the limitations of Article 37. This might lead to the shutdown of this broadcaster instead of its survival through the creation of synergies with another broadcaster.

The application of these rules is further complicated by the unclear provisions of Article 36 in the text of which cases are defined when media concentration is created through related persons. Except for the first paragraph and the first two lines of the second paragraph, all further provisions of this Article are very vaguely defined, so one cannot even hypothetically imagine the situations in which illegal concentration would be created through the related persons. On the other side, some of these lines (lines 3 and 4 which introduce a threshold of at least 25% of the voting rights) are even contradictory to the provisions stipulated in the Article 39 paragraph 2, which entirely bans participation in the ownership of certain legal entities.

The rules on transparency of all media publishers⁶⁷ are defined in detail in Articles 14 and 15 of another piece of legislation, i.e. the Law on Media.⁶⁸

First, broadcasters, as all the other media publishers, are obliged to publish the following data at the beginning or at the end of the audio/audiovisual programmes: name and the address of the headquarters and of the editorial board, name of the authorised person, as well as names of the Editor-in-Chief and other editors in its internal organisation (Article 14, (1), indents 1, 2, 3).

Second, broadcasters are obliged to submit a range of data to the Agency for Audio and Audiovisual Media Services once a year, but not later than 31st March in the current year (Article 15, (1) indent 1, 2, 3, 4, 5). These data should be filled in in a special form prescribed by the Agency and should comprise the following information:

- *“the ownership structure, that is, data on the name and head office address of the legal entity or the name and place of residence of the physical entity who possess shares or holdings of the*

⁶⁷ Article 2 (1) point 4 of the Law on Media defines media publisher as “...natural or legal person who publishes print media, electronic publications or transmits radio and television programmes (broadcasters)”.

⁶⁸ Law on media (“Official Gazette of the Republic of Macedonia” no. 184/2013 and No.13/2014).
<https://avmu.mk/en/legislation/domestic-legislation/laws/>

media publisher, including the percentage of acquired shares or holdings and the date of acquisition thereof;

- *data on the editor-in-chief/ editors;*
- *data on sources of financing for the broadcaster in the previous year (advertisement, sponsorships, sales of content, services provided to third parties and similar);*
- *data on the total revenues and expenditures realized by the broadcaster in the previous year from the provision of its activities and*
- *data on the average viewership or number of listeners of the broadcaster in the previous year”.*

Third, the broadcasters are also obliged to publish some of these data (referred to in the first three indents of Article 15), *“on their own programme, at least three times a year, during prime-time slots, and submit a recording of the announcement to the competent regulatory body within 15 days from the date of broadcasting in a manner prescribed by the regulatory body”.* It should be noted that the last obligation seems obsolete and is a kind of a burden for the broadcasters, since these data are regularly published and updated by the Agency on its website.

Finally, the Law on Media also provides that *“the regulations for protection of the competition ... shall adequately apply to media publishers”* (Article 16).

5.2. Types of capital integration and practices of the market players

5.2.1. Horizontal integration and practices

Article 37 of the Law on Audio and Audiovisual Media Services contains quite restrictive rules regarding the concentration of ownership among broadcasters on the same relevant market - television or radio. For example, the same (physical or legal) entity that owns a television broadcaster with a licence at state level may own up to 50% of the capital of only one more television at state level, at most one more regional television and at most two local television stations in non-adjacent areas. Next, the person who owns a regional television may be a major shareholder in at most one regional television from a non-adjacent region and at most two local televisions (in non-adjacent areas). And third, a person owning a local television station can own a majority stake in two other local television stations, in non-adjacent areas. The same applies to the radio market.

At the end of April 2020, a total of 47 TV stations operated on the television market, of which 11 at national, 17 at regional and 19 at local level. From the data published by the Agency,⁶⁹ only two cases of horizontal capital integration can be identified, between: (1) TV Shenja, television station at state level licensed for cable distribution and TV Era, regional television from the Skopje region licensed for digital terrestrial transmission;⁷⁰ and (2) TV Polog, a regional television station in the Polog region

⁶⁹ Radio and TV Broadcasters

<https://avmu.mk/en/broadcasters/>

⁷⁰ These two TV stations are owned by the legal entity Company for trade and services MEDIA WORLD NEWS DOOEL Skopje (in original: Drushtvo za trgovija i usluzi MEDIA VORLND NEVS DOOEL Skopje).

(Tetovo and Gostivar) licensed for cable distribution and TV Uskana Media, local TV station from Kichevo town licensed also for cable distribution.⁷¹

On the radio market, there were a total of 65 commercial radio stations, of which 4 at state, 16 at regional and 45 at local level. Only one case of horizontal integration has been identified, between Metropolis Radio, which broadcasts at the state level and City Radio which broadcasts in the region of Skopje.⁷²

The interviewed stakeholders themselves agree that there are no dominant individual owners nor formally connected broadcasting companies with excessive influence in the specific relevant markets - television and radio. In this regard, no concern was expressed, and on the contrary, the prevailing view is that there is too much fragmentation that prevents economically viable operations and professionalization of the activity.

However, some of the interviewees pointed out to a problem with the ownership pattern of the national terrestrial televisions that has existed for a long time and has been identified in previous media policy analyses. Behind the biggest and most influential TV stations are only domestic physical or legal entities that have other businesses and for whom television is predominantly considered as a tool for achieving their political and business interests. None of the commercial terrestrial TV stations at national level is owned by a media company which is registered as having media as its core business and *“the fact that media owners have other activities that depend on the executive power makes them more susceptible to pressures, self-censorship and maintaining of clientelist relationships with elites”*.⁷³ This ownership pattern greatly affects the market behaviour and the editorial policy of these media outlets, which was clearly visible in the past years. The editorial leaning of some of these TV stations depends on the political affiliation of their owners, which very often follows the changes in the political power. On the other side, when it comes to the business interests of the owners or companies behind the television, these topics are not subject of journalistic reporting at all.

Indeed, in 2019, a kind of “coordinated” behaviour has been identified from the association of national terrestrial televisions in an attempt to protect their business interests on the TV market. According to several interviewed stakeholders, they misuse their influential position on the market to put a kind of “pressure” on the politicians in power to accomplish their goals. One such example was the pressure on the Government⁷⁴ to amend the provisions of the Law, in order to impose an obligation on the electronic communication networks to provide legal evidence that the foreign channels they retransmit respect copyright for all content in their program services⁷⁵. Similar remarks on national

⁷¹ The two TV stations are owned by the physical entity Munir Mehdiu.

⁷² The physical entity Darko Gelev appears as the owner of both radio stations, in City Radio he has a share of 100% while in Metropolis Radio his share is 50.04%.

⁷³ *“Ownership and Financial Models of the Most Influential TV-Channels in Macedonia, Croatia and Slovenia”*, Macedonian Institute for Media, Skopje, 2017, p. 5.

<https://mim.org.mk/en/research/1035-analysis-ownership-and-financial-models-of-the-most-influential-tv-channels-in-macedonia-croatia-and-slovenia>

⁷⁴ *“A silent boycott of the Government, national television stations do not publish ministers’ statements in their news bulletins”* (in original: Тивок бојкот на владата, националните телевизии во вестите не објавуваат изјави на министрите), IRL, January 23rd 2020.

<https://irl.mk/tivok-bokot-na-vladata-natsionalnite-televizii-vo-vestite-ne-obavuvaaat-izavi-na-ministrите/>

⁷⁵ *“National television stations vs. operators: who is pirating and who is blackmailing?”* (in original: Национални телевизии против операторите: Кој пиратира, а кој уценува?), Deutsche Welle, February 27th 2020.

<https://www.dw.com/mk/nacionalni-televizii-protiv-operatorite-koj-piratira-a-koj-ucenuva/a-52549489>

television's behaviour were made in connection with their alleged boycott to the public officials' statements given during the health crisis in April and May 2020, although the representatives of these televisions publicly denied that.⁷⁶ The aim of the pressure on the Government, according to the reactions of the cable operators, was for the Government to adopt an ordinance according to which these five televisions would receive financial support, support to be provided by the cable operators.⁷⁷

5.2.2. Vertical integration and practices

Article 39 of the Law determines the following activities in the vertical supply chain as incompatible with broadcasting: advertising and marketing, distribution of audiovisual works, film production, public opinion and market research and transmission of radio/television programs through electronic communication networks. This implies that a commercial radio or television broadcaster must not be connected, either through direct or indirect ownership, with companies that perform these activities. Formally, there are no identified cases of such capital integration, but there have been some complaints submitted to the regulator for an alleged hidden vertical media concentration.

The Agency has in the past two years initiated, *ex-officio*, several procedures to detect hidden vertical concentration. In 2018, for example, a total of five proceedings were initiated.⁷⁸ Two of them were related to the concentration between a broadcaster and an electronic communication network. In the first case, the local radio station TRD Endzels FM LLC Shtip was connected through a physical entity with the cable operator TV ROBI LLC Shtip. This physical entity withdrew from the ownership of the local radio, by which the reasons for the existence of illegal media concentration were removed and the Agency stopped the procedure. In the second case, the TV station at state level licensed for cable retransmission TRD 24 VESTI DOOEL Shtip appeared connected to the cable operator ROBI DOOEL Shtip. In this case, the Agency concluded that all the collected documentation did not provide relevant material evidence that there was unlawful media concentration and decided to suspend the proceeding.

Two procedures in 2018 were initiated for the unlawful ownership concentration between broadcasters and film production companies⁷⁹ and one for the concentration between a broadcaster and a company performing advertising and marketing activities⁸⁰. All three proceedings were resolved because the legal entities removed the reasons for the unlawful concentration. During 2019, the Agency identified another case of unlawful concentration between a local broadcaster and a film

⁷⁶ "Boycott of the five national televisions - AVMU is monitoring the situation" (in original: Божкот на петте национални телевизии – АВМУ ја следи состојбата) TV 24 Vesti, April 24th 2020.

<https://www.24.mk/details/bojkot-na-pette-nacionalni-televizii-avmu-ja-sledi-sostojbata>

⁷⁷ "Cable operators will increase the prices if the Government oblige them to provide funds for a support fund for televisions", (in original: Кабелските оператори ќе ги зголеат цените ако Владата им наложи да финансираат Фонд за помош на телевизиите), SDK.MK, May 14th, 2020.

<https://sdk.mk/index.php/makedonija/kabelskite-operatori-ke-gi-zgolemat-tsenite-ako-vladata-im-nalozhi-da-polnat-fond-za-pomosh-na-televiziite/>

⁷⁸ "Report on Media Ownership: With changes in ownership and media concentration in 2018".

<https://avmu.mk/wp-content/uploads/2017/06/REPORT-ON-MEDIA-OWNERSHIP.pdf>

⁷⁹ The first case was between TRD ALPHA TV LTD Skopje and the Company for production, manufacturing, trade, transport and services PRODUCTION EFTOV VASKO LTD Skopje, and the second case between the legal entity which was owner of the TRD Vision BM-TV CHANNEL VISION LLC Prilep and the Company production, marketing and services ART KOMUNIKESHN Ltd. Prilep.

⁸⁰ Between SUPER RADIO Ohrid Ltd. And the Company for production, trade and services FILM PRODUCTION 2018 Ltd. Ohrid.

production company⁸¹. Following the initiated procedure, the broadcaster complied with the legal provisions.

According to the interviewed representatives of the media industry, currently the only problem is the hidden media concentration between a broadcaster and a cable network. Their opinion is that, although the regulator initiated several procedures, it eventually failed to resolve this case of illegal concentration.

5.2.3. Diagonal integration

Article 39 of the Law provides for a restriction on the integration of capital between print media and broadcasters. A person who is a founder of a radio or television station must not be a founder of a daily newspaper that is distributed at the same time in the area where the radio and/or television program is broadcast, nor of a news agency. In terms of concentration of capital between television and radio, the Law is currently unclear, as explained in more details above.

At the end of April 2020, only one case of integration of capital between television and radio broadcasters was identified: this is the case of Nasha TV, a television station with a satellite broadcasting licence and the regional radio station RFM DOOEL from Skopje. Both media outlets are owned by the same individual.⁸²

In the conducted interviews, there was a common expressed view that the restriction between broadcasting and daily newspapers should be removed, because the integration of capital in these two activities could help the development of daily newspapers, which have almost disappeared.

5.3. Transparency of ownership and financial sources

The Law on Media contains several provisions that oblige broadcasters to provide the public information and data about their ownership and operations: by submitting a range of data to the regulatory body, once a year (Article 15, paragraph 1) and by publishing relevant data on their programs, three times a year (Article 15, paragraph 3). The Agency regularly monitors the implementation of these provisions and in recent years almost all broadcasters have regularly submitted and published data on ownership, operations and financing. Thus, in 2019, only a few broadcasters were warned by the Agency, and after the indication by the regulator all of them fulfilled their obligations.⁸³

⁸¹ Between the founder of Radio Sveti Nikole and a company for film production.

⁸² Source: Registry of the Agency for Audio and Audiovisual Media Services.

<https://avmu.mk/radiodifuzeri-mk/>

⁸³ Annual report of the Agency for Audio and Audiovisual Media Services in 2019.

<https://avmu.mk/%D0%BF%D1%80%D0%BE%D0%B3%D1%80%D0%B0%D0%BC%D0%B0-%D0%BF%D0%BB%D0%B0%D0%BD%D0%BE%D0%B2%D0%B8-%D0%B8-%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D0%B8-%D0%B7%D0%B0-%D1%80%D0%B0%D0%B1%D0%BE%D1%82%D0%B0/>

In addition, the regulator itself publishes and regularly updates on its website the data on the ownership structure, headquarters, governing bodies and a number of other information about the broadcasters. Since June 2019, the Agency started publishing special reports with detailed information about the legal provisions, ownership structure of broadcasting media and initiated procedures for unlawful media concentration.⁸⁴ Also, the data on the ownership and financing of the broadcasting media are regularly published in the annual reports of the Agency and in the annual analyses of the broadcasting market.⁸⁵

In the conducted interviews it was confirmed that there is no problem with the publication of data and transparency of ownership for almost all broadcasters. However, both in the interviews and in the research published on this topic so far, it is concluded that the transparency of ownership most often formally meets the legal requirements, but in practice there are doubts about hidden ownership and links with the ruling elites, especially when it comes to the most influential media.⁸⁶

In 2019, the Central Registry announced the establishment of the so-called Register of real owners arising from the provisions of the Law on Prevention of Money Laundering and Financing of Terrorism⁸⁷. In this register, in addition to the direct owners, all other physical entities who indirectly own shares or otherwise control the work of the commercial companies should be recorded. The introduction of this Register is expected to help the regulatory body in detecting cases of unlawful media concentration.

5.4. Attitudes and opinions about the future media ownership concentration rules

5.4.1. General attitudes about the current rules

From the interviews conducted for the purpose of this analysis, it can be concluded that the provisions in the media legislation no longer correspond to the changes in the technological and market environment and that there is a need for a comprehensive debate on the necessary changes to be made to the two relevant laws - the Law on Media and the Law on Audio and Audiovisual Media Services. This is especially relevant for the provisions governing the protection of pluralism and the rules for media ownership concentration. For example, broadcasters are seriously considering the need for investment in other media sectors, but it seems to them that the existing legal restrictions hinder their business development plans.

⁸⁴ "Report on Media Ownership: With changes in ownership and media concentration in 2018".

<https://avmu.mk/wp-content/uploads/2017/06/REPORT-ON-MEDIA-OWNERSHIP.pdf>

⁸⁵ <https://avmu.mk/en/economic-analyses/>

⁸⁶ "Ownership and Financial Models of the Most Influential TV-Channels in Macedonia, Croatia and Slovenia", Macedonian Institute for Media, Skopje, 2017, p. 6.

<https://mim.org.mk/en/research/1035-analysis-ownership-and-financial-models-of-the-most-influential-tv-channels-in-macedonia-croatia-and-slovenia>

⁸⁷ Law on Prevention of Money Laundering and Financing of Terrorism ("Official Gazette of the Republic of Macedonia" no.120/18)

Both the NGO experts and the media industry representatives are of the opinion that a debate should be opened on a well-defined regulatory policy that takes into account both the development of new technologies and the protection of pluralism. They stress the need to develop a comprehensive strategic document that will answer the question in which direction the various media sectors should be developed, while preserving media pluralism and content diversity. In the broadcasting sector in particular, care should be taken that the regulator has an obligation to take care of the quality of the programs, and not just of media pluralism as a number. It is emphasized also that pluralism as a regulatory goal has so far been mostly declarative, because no media outlet can work profitably in such a fragmented market environment.

There is general agreement that the current legal provisions were too restrictive and deterred companies in the audiovisual media sector from their intentions to merge and consolidate their business in order to achieve economic profitability, but also to raise the professionalism and quality of the program they offer to the audience. Therefore, both the television and the radio markets are still too fragmented while the broadcasting business remains unprofitable in such a market environment. The data presented in the market analyses conducted by the regulator itself confirm this claim: except for the national terrestrial televisions, almost all other broadcasters operate with negative financial results.⁸⁸

This eventually reflects negatively on the entire media pluralism, especially at the regional and local levels. In such a small fragmented market dominated by national media companies, the conditions for economic operation of broadcasters at the regional and local level are very unfavourable. Local and regional broadcasters face serious financial problems and are unable to invest in the professionalisation of their newsrooms and in other quality programs that meet the needs of the local population. On the other hand, regional and local events are not sufficiently covered either by the public broadcasting service or by the private national broadcasters.

Therefore, all interviewed stakeholders are of the opinion that the legal rules should be liberalised, but the future regulatory model for media concentration should be thoroughly discussed and carefully designed. Opinions and suggestions of the interviewed stakeholders on which issues to be taken into consideration and what mechanisms to be designed to monitor and protect media pluralism are given in the next point.

5.4.2. Issues to be taken into consideration in future regulation

Horizontal integration:

- (1) The first issue to be considered is whether the existing definition of regional markets is appropriate for broadcasting, because currently regional markets are defined according to the coverage of the technical signal (allotment zones) and not according to economic criteria (number of inhabitants, development of the industry, etc.). If the rules on horizontal concentration of media ownership are liberalised and certain thresholds are defined to

⁸⁸ Economic Analyses of the Agency
<https://avmu.mk/analiza-na-pazar/>

prevent possible excessive influence, then it is important to redefine regional markets according to clear economic criteria. When the regional markets are demarcated in terms of their capacity and viability, it will be possible to estimate how much broadcasters can work in that area and then to define the threshold or number of licences that a founder can have in that market. In this way, it will be possible to predict the economic sustainability of the media outlets in that area. This can be a good basis for a future regulatory policy, because when markets are defined the structure and diversity of media in those markets can be taken into consideration while granting and renewing licences. This was also in line with some previous media policy analyses made by the NGO sector: *“The regulator should conduct an analysis of the advertising capacities of the market, in terms of how many TV channels and broadcasters in general it can maintain. In granting of licences to broadcasters, lack of particular specific formats should be taken into consideration, as well as meeting the ownership, genre, cultural and geographical dimensions of pluralism that the regulator should take into account.”*⁸⁹

- (2) In order to overcome the existing ownership pattern of the most influential media, it is necessary to consider the possibility of introducing new models of ownership for the terrestrial television stations at national level – to stimulate the creation of consortia of local investors in joint stock companies.⁹⁰ Therefore, it is advisable to reconsider the possibility to introduce an obligatory type of a legal form for the founders of the most influential media. For example, as in some other sectors, they could be organised as joint stock companies, whose shares will be traded on the stock exchange. Also, the possibility to limit the maximum share of one natural or legal person (whether domestic or foreign) in the capital of these media companies should be examined. It should also be assessed how to regulate the cases when in some smaller areas there is only one broadcaster which has too much influence on the audience.

Vertical integration:

- (3) The prevailing opinion in the interviews was that most of the existing restrictions on vertical concentration should be lifted. The restriction for only two forms of concentration should remain: between a broadcaster and an electronic communication network and between a broadcaster and a marketing agency. However, for the former type of concentration the opinions are divided: the representatives of the media industry claim that this restriction is still necessary, while the telecom operators argue that this restriction should be removed, because this segment of the domestic industry is the only one that has the capacity to invest in new and quality domestic program services.
- (4) Some of the interviewed stakeholders believe that the Law must define more precisely what a marketing agency is, or even to consider the possibility of drafting a special law that would regulate all the issues and relations among the entities in the field of advertising. Some

⁸⁹ Recommendation given in the analysis: *“Ownership and Financial Models of the Most Influential TV-Channels in Macedonia, Croatia and Slovenia”*, Macedonian Institute for Media, Skopje, 2017, p. 20.

<https://mim.org.mk/en/research/1035-analysis-ownership-and-financial-models-of-the-most-influential-tv-channels-in-macedonia-croatia-and-slovenia>

⁹⁰ Idem, p. 19.

stakeholders also suggested to consider the possibility to allow the larger media groups to set up their sister companies that would perform all the marketing activities only for their affiliated media companies.

Diagonal integration:

- (5) In terms of diagonal capital integration, the proposals are to lift the only existing restriction - between a broadcaster and a publisher of a print media, or a daily newspaper, in order to encourage the investment in print journalism that suffers the most from both new technologies and the Internet as well as from market fragmentation.

Thresholds for measuring the influence on the market:

- (6) Most of the stakeholders agreed that if the ownership concentration rules are liberalised, it is also necessary to establish some thresholds for measuring the influence of certain media groups on the market. In doing so, it should be borne in mind that both types of thresholds (audience share and revenues share) have their advantages and disadvantages. The data on the audience shares largely depends on the scope and precision of the audience measurements, and for the time being, they can mainly be applied to the national television market. On the other hand, revenue share data is available for the radio and television markets.

6. Conclusions and recommendations

Based on the lessons learned from the analysis of the relevant legal framework in some EU countries as well as in some countries of the region and of the opinions gathered among the relevant stakeholders, the experts recommend the following policy orientations or initiatives.

First of all, the experts believe that it should be recalled, as detailed many times in the Study and in particular in Chapter 2, that safeguarding media pluralism is a fundamental public policy objective where, according to the European Court of Human Rights, *“in addition to its negative duty of non-interference the State has a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism”*. Avoiding excessive media concentration is one of the measures meant to safeguard media pluralism. As other rules pertaining to media policy, they consist in limitations to some freedoms. Freedom of expression and freedom of information, as well as the other rights protected in the European Convention on Human Rights (ECHR), are not absolute and therefore may be subject to certain restrictions, conditions and limitations, and this includes limitations to media ownership. However, Article 10.2 of the ECHR clearly provides that such limitations are exceptional and must respect a series of requirements, known as the three-part test. This test requires that: 1) any interference must be provided by law, 2) the interference must pursue a legitimate aim included in such provision, and 3) the restriction must be strictly needed, within the context of a democratic society, in order to adequately protect one of those aims, according to the principle of proportionality.

Recommendation 1: When reviewing the existing rules, the Macedonian policy makers should make sure that all the future limitations, which each individually probably pursue a legitimate aim, collectively respect the principle of proportionality and do not harm the development of a sustainable audiovisual sector.

It is certain that the restrictions in the current Law on Audio and Audiovisual Media services, designed almost 15 years ago, no longer strike a balance between the objective of safeguarding pluralism and diversity and the objective to have a thriving audiovisual marketplace. On one side, there is an evident change in the consumption patterns of the public which consumes different kinds of content on different kinds of platforms, thus leading to more fragmentation of the audience. On the other side, the increasing convergence requires sometimes heavy investments from players who at the same time face more and new kinds of competitors. All this requires media service providers to adapt, innovate in order to retain their audience, invest in new technologies, which can be eased by creating synergies between different sectors and by gathering revenues on different markets. This is even more relevant in small markets (since the economy of the audiovisual sector is highly influenced by economies of scale) and in times of economic crisis (since too heavy concentration rules might lead to the disappearance of some media instead of their survival in a different ownership framework).

The Law remains focused on a “traditional” media environment (radio, television, press...) and does not take into consideration the take-up of new services and platforms (non-linear services, online media, portals, video-sharing platforms, social networks, search engines...) through which a significant and ever-growing number of people are informed, educated and entertained. In addition, the Law is

quite strict in terms of limitations on geographical concentration, both in terms of licences and coverage areas.

Recommendation 2: The experts strongly advice to review the concentration rules in order to make them fit for a “new” media environment. It is advised to review all current limitations and assess which of them remain proportionate and legitimate in the current media environment, particularly the rules related to non-adjacent areas. It is advised to include in this review the assessment of potential alternative measures to concentration meant to safeguard media pluralism. For example, concentration in terms of ownership could be allowed under certain conditions meant to safeguard pluralism and diversity in terms of content produced and broadcasted (percentage of in-house production, coverage of the events in the region, separate newsrooms ...).

Recommendation 3: The proposal given by various stakeholders to redefine the regional markets according to determined economic criteria is very valid and the experts recommend the regulatory body to consider the possibility for commissioning a separate economic analysis that would define the future broadcasting regions.

Recommendation 4: The experts recommend lifting entirely the ban on cross-ownership between broadcasting and newspapers which is rarely applied elsewhere in Europe and, when it is, it is only applied in large markets. In addition, the experts propose to delete the provision under Article 39, paragraph 2, indent 7 which states that “illegal media concentration, within the meaning of this Law, shall be determined if the broadcaster is simultaneously involved in broadcasting radio and television programme, with the exception of the Public Service Broadcaster”. This is necessary in order to avoid confusion that the ban on simultaneous broadcasting also means acquisition of capital of both television and radio.

Recommendation 5: Given the current market situation and the lack of agreement on these issues among stakeholders, it is advisable to maintain the restriction for the concentration of ownership between a broadcaster and a company performing advertising and marketing activities, while to consider carefully together with various stakeholders all the pros and cons arguments for lifting the ban on concentration of ownership between broadcasting and provision of electronic communication services. All the other restrictions for vertical concentration do not seem necessary and proportionate.

Recommendation 6: The Law also contains quite unclear provisions about the cases of media concentration created through related persons. Although detailed, the specific aspects of the definition of related persons are very vaguely described, so the experts recommend clarifying these provisions taking into account the practical situations in their application.

Recommendation 7: Having in mind that a new quite liberalised model of ownership concentration is recommended, it is still necessary to consider the possibility for establishing certain thresholds for determining possible excessive influence of certain media groups on the market. It is advisable to open a wider debate with all relevant actors on which type of threshold is most appropriate in this local context, given the availability and reliability of the data on which that threshold will be determined (audience share, revenue share, etc.).

Finally, regarding the Law on Media, the experts consider that it contains detailed and appropriate provisions about transparency of ownership (towards the Agency but also towards the public). The only exceptions are the provisions of the article 15 paragraph 3 which impose an excessive obligation on broadcasters to publish data on their program three times a year and to submit evidence for that to the Agency. All the other policy and regulatory measures meant to ensure that the provisions of media transparency continue to be enforced should be maintained and supported, as they are in line with the standards of the European Union and the Council of Europe. In particular, the publication of yearly reports on ownership is an excellent initiative of the Agency which should be supported, as they contribute to public awareness and scrutiny.

Recommendation 8: The experts recommend that the provisions on transparency towards the public are adapted to the online environment, in order to make sure that ownership data are made public in an efficient and adapted manner by online media service providers, as long as their principal purpose or a dissociable section thereof is devoted to providing of audiovisual content. In addition, the excessive obligations on broadcasters stipulated in the Article 15 paragraph 3 to publish data on their program three times a year and to submit evidence for that to the Agency should be abandoned.

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*Jean-François Furnémont
Wagner-Hatfield*

*Snezana Trpevska
RESIS*

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8. Annexes

Austria

Federal Act on Audio-visual Media Services

§ 10. (1) Media service providers or their members must be Austrian citizens or legal entities or partnerships under business law having their domicile in Austria.

(2) This Federal Act precludes the following entities from providing audiovisual media services:

1. legal entities under public law with the exception of the churches and religious associations and the Federal Ministry of National Defence for the purpose of operating information broadcasting services, especially in the case of deployments according to § 2 (1) a) to d) of the 2001 Defence Act, Federal Law Gazette I No. 146/2001;

2. parties as defined by the Political Parties Act;

3. the Austrian Broadcasting Corporation;

4. foreign legal entities that shall be considered equivalent to the legal entities listed in items 1 to 3;

5. legal entities or partnerships in which the legal entities listed in items 1 to 4 hold a direct share.

(3) The restrictions of paragraph 2 shall not apply to:

1. legal entities under public law, parties as defined by the Political Parties Act and legal entities and partnerships in which these hold a direct share, with regard to the following services:

a. television channels which are not channels as specified in Article 1, paragraph 1 of the Federal Constitutional Law on Guaranteeing the Independence of Broadcasting, Federal Law Gazette No. 396/1974;

b. on-demand audiovisual media services.

2. legal entities under public law and legal entities and partnerships in which these hold a direct share, with regard to the following services:

a. cable television channels which are restricted exclusively to the presentation of transmission sequences (images and sequences of images) automatically recorded and

transmitted by weather cameras, including directly related self-created factual information;

b. cable television channels with a duration of not more than 120 minutes per day, with repetitions of the channels or parts thereof, as well as the transmission of sessions of general representative bodies not being included when calculating this period, as well as channels in a building or complex of buildings that are in a functional connection with the tasks being performed there, cable information channels that do not contain any advertising, and teletext.

(4) In the event that the media service provider is organised under the legal structure of a corporation, a partnership or a cooperative, a maximum of 49 per cent of the shares may be held by foreigners or held by legal entities or partnerships that are under the uniform leadership of a foreigner or an undertaking which has its domicile abroad, or where foreigners or legal entities or partnerships having their domicile abroad have possibilities to take influence as it is regulated in § 244 (2), in connection with paragraphs 4 and 5 of the Business Code.

(5) Nationals of the Contracting Parties to the Agreement on the European Economic Area shall have equal status as Austrian citizens, and legal entities and partnerships having their domicile on the territory of one of the Contracting Parties to the Agreement on the European Economic Area shall have equal status as those domiciled in Austria.

(6) The shares of a media service provider of a media service subject to a licence requirement (§ 3) and its shareholders or partners shall be registered in the name of the owners. Fiduciary relationships shall be disclosed. Shares held on a fiduciary basis shall have equal status as the shares of the trustor. Shares in a private foundation pursuant to the Private Foundation Act, Federal Law Gazette No. 694/1993, shall have equal status as the shares of the founder, to the extent that the founder has an influence upon the activities of the foundation on the basis of factual circumstances, which is comparable to the influence defined in § 11 (5). The present provision shall also apply to foreign legal entities that have equal status as foundations.

(7) The media service provider shall communicate to the regulatory authority the ownership relations or membership relations, existing at the time when an application is filed for being granted a licence or when a report is filed, together with the application or the report, and any change in these relations within two weeks of the legal effectiveness of the assignment or transfer of shares. In the event that shares of the media service provider are held, directly or indirectly, by corporations, partnerships or cooperatives, these must also communicate their ownership relations and disclose their fiduciary relations. These obligations shall not affect any other statutory disclosure obligations.

(8) In the event of a transfer to third parties of more than 50 per cent of the shares held by the television broadcaster at the time when the licence is granted or a finding is made pursuant to this paragraph, the television broadcaster shall report this transfer in advance to the regulatory authority. Several transfers shall be added together. The regulatory authority shall find no later than within a period of eight weeks of the report whether the provisions of § 4 (3), § 10 and § 11 are still complied with under the changed circumstances. The licence shall be revoked after a public oral hearing has been conducted if the television broadcaster transferred the shares contrary to this finding.

§ 11. (1) A person or partnership may hold several licences for digital terrestrial television, as long as not more than three coverage areas included in the licences overlap.

(2) A media owner shall be precluded from providing television channels within the meaning of the Federal Constitutional Law Guaranteeing the Independence of Broadcasting, Federal Law Gazette No. 396/1974, according to this Federal Act if the media owner exceeds the following ranges or levels of coverage in one of the listed markets:

- 1. terrestrial radio programmes (more than 30 per cent of a nationwide range),*
- 2. daily press (more than 30 per cent of a nationwide range of the daily press),*
- 3. weekly press (more than 30 per cent of a nationwide range of the weekly press),*
- 4. cable networks (more than a level of 30 per cent of coverage to the population by means of cable network on the national territory).*

(3) A media owner shall be precluded from providing terrestrial television services if the media owner exceeds the below ranges or levels of coverage in the respective coverage areas in more than one of the listed markets:

- 1. terrestrial radio programmes (more than a range of 30 per cent in the coverage area),*
- 2. daily press (more than a range of 30 per cent in the coverage area),*
- 3. weekly press (more than a range of 30 per cent of the coverage area),*
- 4. cable network (more than level of coverage of 30 per cent of the population by means of cable networks on the national territory).*

(4) Except for any technically unavoidable overlapping (spill over), a media group may provide the same location in the national territory simultaneously with only one channel licensed under the Private Radio Broadcasting Act and a maximum of one third of the terrestrial television channels that can be received in that location. If no licences as defined in the Private Radio Broadcasting Act belong to a media group, the media group may provide the same location in the national territory with not more than one third of the terrestrial television channels that can be received in that location.

(5) Those persons or partnerships are deemed to belong to a media group

- 1. who/which hold more than 25 per cent of the share capital or the voting rights of a media owner or exert a dominating influence or have one of the possibilities to exert an influence as defined in § 244 (2) in connection with paragraphs 4 and 5 of the Business Code;*
- 2. where one of the persons or partnerships listed in item 1 has more than 25 per cent of the share capital or voting rights or a dominating influence or one of the possibilities to exert an influence as defined in § 244 (2) in connection with paragraphs 4 and 5 of the Business Code;*

3. where a media owner holds more than 25 per cent of the share capital or voting rights or exerts a dominating influence or has one of the possibilities to exert an influence as defined in § 244 (2) in connection with paragraphs 4 and 5 of the Business Code.

For the purposes of the present paragraph it shall be tantamount to a direct capital interest of more than 25 per cent if there are one or several interests and the interest on every level is more than 25 per cent. Interests by media owners, or persons associated with them according to the present paragraph, on the same level shall be added together when determining the limit of 25 per cent.

(6) The ranges and levels of coverage according to paragraphs 2 and 3 shall be determined by the regulatory authority or third parties commissioned by the latter, on the basis of scientific methods and analyses. The results of that determination shall be published in suitable form by 31 March of every year. In the event that the accuracy of the established ranges is contested, the regulatory authority shall issue a decree on the established ranges, upon application by the media owner concerned. In any event, the ranges and levels of coverage shall be established and published prior to any invitation to tender for a licence under this Federal Act.

(7) The provisions of the 2005 Cartel Act, Federal Law Gazette I No. 61/2005 shall remain unaffected.

Federal Act enacting provisions for private radio broadcasting

§ 9. (1) A person or partnership may hold several licences for analogue terrestrial radio broadcasting as long as the coverage areas of such licences do not overlap. In addition, the analogue terrestrial coverage areas attributable to any person or partnership must not overlap. Moreover, a person or partnership may hold several licences for digital terrestrial radio broadcasting as long as no more than two of the coverage areas covered by such licences overlap. In addition, more than two of the digital terrestrial coverage areas attributable to any person or partnership must not overlap. A coverage area is to be attributed to a person in such case when such person is directly in possession of control possibilities as defined in para 4 sub-para 1 through equity interests.

(2) The total number of inhabitants in an analogue coverage area attributable to a media group must not exceed twelve million people, and the number of inhabitants in an analogue coverage area attributable to a person or partnership of the media group must not exceed eight million people. For the purposes of this paragraph a service area is to be attributed to a media group when a person or partnership of the media group is a licensee for such coverage area or is in possession of shares or control possibilities of a licensee as defined in para 4 sub-para 1.

(3) Apart from technically unavoidable spill over, persons or partnerships of the same media group must not provide one particular part of the federal territory

1. with more than two analogue terrestrial radio channels,
2. with more than two digital terrestrial radio channels,

3. with more than one terrestrial radio channel and two terrestrial television channels. This provision shall not apply to television channels broadcast via a multiplex platform for mobile terrestrial broadcasting.

(4) Persons or partnerships considered associated with one particular media owner are:

1. those who hold more than 25 percent of the equity share or voting rights or control of one media owner or one of the control possibilities laid down in § 244 para 2 in connection with paras 4 and 5 of the Business Code;

2. in which one of the persons or companies as per sub-para 1 holds more than 25 percent of the equity share or voting rights or is in control of one media owner or of one of the control possibilities laid down in § 244 para 2 in connection with paras 4 and 5 of the Business Code;

3. in which one media owner holds more than 25 percent of the equity share or voting rights or is in control of one media owner or of one of the control possibilities listed in § 244 para 2 in connection with paras 4 and 5 of the Business Code;

For purposes of this paragraph it is of equal status with an equity share holding of more than 25 percent if there are one or more indirect equity share holdings and the equity share holding on each level exceeds 25 percent. Equity shares of media owners or of persons associated with them on the same level as defined in this paragraph are to be counted together when ascertaining the 25 percent limit.

(5) A media owner must not be a member of a radio broadcaster organised as an association.

Federal Media Act

§ 25. (1) The media owner of each periodical media product shall publish the information stated in paras 2 through 4. In the case of periodical media products, the imprint shall also include information as to the web address at which the information will, on a constant basis, be easily and directly retrievable, or such information shall be added in the relevant medium. For broadcast programmes all above information shall either be constantly available on an easily retrievable teletext page or be published in the Official Gazette of “Wiener Zeitung” within one month after the broadcast starts and within the first month of each calendar year. In the case of periodically published electronic media the information shall either state under which web address the information will be constantly easily and directly retrievable, or such information shall always be added in the respective medium. If the media owner is a provider of services in terms of § 3 para 2 Electronic Commerce Act, promulgated in Federal Law Gazette I No. 152/2001, the information for disclosure can be made available together with the information pursuant § 5 Electronic Commerce Act.

(2) The media owner shall be specified by name or company name, including the object of the company, residential address or registered office (branch office) and the names of the executive bodies and officers of the media owner authorised to represent the company and, if there is a supervisory board,

its members. In addition, the ownership, shareholding, share and voting rights proportions shall be stated in respect of all persons holding a direct or indirect share in the media owner. Furthermore, any undisclosed shareholdings in media owner and in persons holding a direct or indirect share in the media owner as specified in the previous sentence shall be stated, and fiduciary relationships shall be disclosed for each level. In the case of direct or indirect shareholdings of foundations, the founder and the relevant beneficiaries of the foundation shall be disclosed. If the media owner is an association or an association holds a direct or indirect share in the media owner, the management board and the purpose of the association shall be stated in respect of such association. Persons holding a direct or indirect share, trust makers, founders and beneficiaries of a foundation shall be obligated, upon request by the media owner, to communicate to the media owner the details required for the media owner to comply with his/her/its disclosure obligation.

(3) If a person to be disclosed under the aforementioned provisions is also owner of another media undertaking or media service, the name, object and registered office of such company shall also be stated.

(4) A declaration on the basic line represented by the periodical print product or any other periodical medium shall also be published. In terms of § 2, any modifications of and additions to the basic line shall not become legally effective before being published.

(5) For a medium in terms of § 1 para 1 sub-para 5a b) and c) that does not contain any information exceeding the presentation of the personal lifestyle or the presentation of the media owner, being suitable to influence public opinion, only the name or the company, possibly the object of the company, as well as the residence or the registered office of the media owner are to be indicated. Paras 3 and 4 shall not apply to such media.

Law of 30 September 1986 on to the freedom of communication

Article 29. Subject to the provisions of Article 26 of this Law, the use of frequencies for terrestrial radio broadcasting services is licensed by the Council under the conditions laid down in this Article. [...]

The Council grants the licences by assessing the interest of each project for the public, with regard to the priority imperatives which are the safeguard of the pluralism of the currents of socio-cultural expression, the diversification of the operators, and the need to avoid abuses of dominance as well as practices hindering the free exercise of competition.

It also considers:

1° The experience acquired by the candidate in broadcasting activities;

2° Financing and prospects for operating the service, in particular depending on the possibilities of sharing advertising resources between print media companies and audiovisual media services;

3° Participations, direct or indirect, held by the candidate in the capital of one or more advertising agencies or in the capital of one or more companies publishing press publications;

4° For services whose programs include broadcasts of political and general information, provisions envisaged with a view to guaranteeing the pluralist nature of the expression of currents of thought and opinion, the honesty of information and its independence from the economic interests of shareholders, in particular when they hold public contracts or public service delegations;

5° Contributing to the production of locally produced programs;

6° For services whose musical programs constitute a significant proportion of the programming, arrangements envisaged in favour of musical diversity with regard, in particular to the variety of works, performers, new talent programmed and their programming conditions;

7° In the case of the issue of a new licence after the previous licence has expired, compliance with the principles mentioned in the third paragraph of Article 3-1.

The Council takes care, on the whole of the territory, that a sufficient part of the frequencies resources is allocated to the services provided by an association and fulfilling a mission of proximity social communication, understood as the fact of promote exchanges between social and cultural groups, the expression of different socio-cultural trends, support for local development, environmental protection or the fight against exclusion.

The council also ensures a fair balance between national broadcasting networks, on the one hand, and independent local, regional and thematic services, on the other.

It ensures that the public benefits from services whose programs contribute to political and general information. [...]

Article 30. Subject to the provisions of Article 26 of this Law, the use of frequencies for digital terrestrial television broadcasting services is licensed by the Council under the conditions laid down in this Article. [...]

I.-The Council defines categories of services and launches a tender whose geographic zone is equivalent to the whole metropolitan territory for the services with national coverage. For the services with local coverage, the geographical zones are previously determined by the Council. It fixes the deadline within which the applications must be filed and publishes the list of frequencies which can be allocated in the zone considered [...].

III.-The Council holds to a public hearing of the applicants. It grants the licences by assessing the interest of each project for the public, with regard to the priority imperatives which are the safeguard of the pluralism of the currents of socio-cultural expression, the diversification of the operators, and the need to avoid abuses of dominance as well as practices hindering the free exercise of competition and the criteria mentioned in Articles 29 and 30, as well as the applicant's commitments in terms of coverage of the territory, production and distribution of audiovisual works, and French and European films. It also takes into account the consistency of the proposals made by candidates in terms of technical and commercial consolidation with other services and in the choice of service distributors, as well as the need to offer services that meet the expectations of a large audience and likely to encourage rapid development of digital terrestrial television.

To the extent of their economic and financial viability, in particular with regard to the advertising resource, it favours services which do not ask for remuneration from users and which contribute to the diversity of operators as well as to reinforcing pluralism of information, all media combined. [...]

Article 35. It is prohibited to lend one's name, in any way whatsoever, to any person who is applying for the issue of a licence relating to an audiovisual communication service or who owns or controls, within the meaning of Article L. 233-3 of the Commercial Code on commercial companies, a company holding such a licence.

Article 38. Any physical or legal entity who comes to hold any fraction greater than or equal to 10% of the capital or voting rights at general assembly of a company holding a licence under this law is required to inform the Council within one month as from the crossing of these thresholds.

Article 39. I. A same physical entity or legal entity acting alone or in concert may not hold, directly or indirectly, more than 49 % of the capital or of the voting rights of a company holder of a licence for a national terrestrial television service whose annual average audience via an electronic communications network within the meaning of 2° of Article L. 32 of the Code of Posts and Electronic communications, both in analogue mode and in digital mode, exceeds 8% of the total audience of television services.

For the application of the previous subparagraph, the audience of each service consisting, within the meaning of 14° of Article 28, in the replay, full or partial, by an electronic communications network within the meaning of 2° of Article L. 32 of the Code of Posts and Electronic communications, of a television service broadcast is counted jointly with the one of the rebroadcast service.

A decree of the Council of State specifies the terms of application of the previous two subparagraphs. Notably, it establishes the conditions in which the Council fixes the audience share of television services and, in the case of reach of the level of audience mentioned above, gives to the persons concerned a period which may not be greater than one year, to be in compliance with the above rule.

When a physical or legal entity owns, directly or indirectly, more than 15% of the capital or of the voting rights of a company holder of a licence for a national service of terrestrial television in analogue mode, it may not hold, directly or indirectly, more than 15% of the capital or of the voting rights of another company holder of such a licence.

When a physical or legal entity owns, directly or indirectly, more than 5% of the capital or of the voting rights of two companies holders of a licence on a national terrestrial television service in analogue mode, it may not hold, directly or indirectly, more than 5% of the capital or of the voting rights of another company holder of such a licence.

II. A same physical entity or legal entity may hold, directly or indirectly, more than half of the capital or of the voting rights of a company holder of a licence relating to a television service in analogue mode exclusively on the frequencies assigned to the radio and television by satellite.

When a physical or legal entity owns, directly or indirectly, more than a third of the capital or of the voting rights of a company holder of a licence relating to a television service in analogue mode exclusively on the frequencies assigned to radio and television by satellite, it cannot hold, directly or indirectly, more than a third of the capital or of the voting rights of another company holder of such a licence.

When a physical or legal entity owns, directly or indirectly, more than 5% of the capital or of the voting rights of two companies holders of a licence relating to a television service in analogue mode exclusively on the frequencies assigned to radio and television by satellite, it cannot hold, directly or indirectly, more than 5% of the capital or of the voting rights of another company holder of such a licence.

III. A same physical or legal entity holder of a licence for a national terrestrial television service whose audience exceeds the threshold referred to in I may not hold, directly or indirectly, more than 33% of the capital or of the voting rights of a company holder of a licence relating to a service other than national and which does not primarily consist in the rebroadcast, in the French overseas territories, of a national television service. [...]

Article 40. Subject to the international commitments of France, the licence relating to a radio or television terrestrial service broadcast in French language cannot be granted to a company in which more than 20% of the registered capital or of the voting rights are owned, directly or indirectly, by persons of foreign nationality.

Subject to the same reservation, no person of foreign nationality may make an acquisition having the effect of bringing, directly or indirectly, the share of the capital held by foreigners to more than 20% of the share capital or the voting rights in the general assembly of a company holding such a licence.

For the purposes of this Article, a foreign national is considered a person of foreign nationality, any company whose majority of the share capital is not owned, directly or indirectly, by physical or legal entities of French nationality and any association whose leaders are of foreign nationality.

This Article does not apply to service providers whose capital and voting rights are at least 80% owned by public broadcasters belonging to Council of Europe States and whose share of the capital and voting rights held by one of the companies mentioned in Article 44 is at least equal to 20%.

Article 41. The same physical or legal entity cannot, on the basis of licences relating to the use of frequencies of which it is the holder for broadcasting one or several terrestrial radio services in analogue mode, or by the means of a program that it provides to other holders of a licence for terrestrial radio in analogue mode, have in law or in fact, several networks to the extent that the sum of the populations covered in the areas served by these different networks does not exceed 150 million inhabitants.

No one may be the holder of two licences relating each to a national terrestrial television service. This provision does not apply to services broadcast via personal mobile television.

No one can be simultaneously the holder of a licence for a national terrestrial television service whose audience exceeds the threshold mentioned in Article 39.I and of a licence for a service of the same nature in analogue mode other than national. A same person may however be simultaneously the holder of a licence for a national terrestrial television service and several licences relating to services of the same nature, each covering a different geographical area located in an overseas department in an overseas community or in New Caledonia.

However, the same person may be the holder, directly or indirectly, of a maximum number of seven licences relating each to a national service other than personal mobile television broadcast in digital terrestrial mode when these services are edited by separate companies or when they are allowed under the conditions laid down in the second subparagraph of iii of Article 30-1, in its drafting prior to the entry into force of Act No. 2007-309 of 5 March 2007 relating to the modernization of the audiovisual broadcast and to the television of the future, or in the last paragraph of Article 30-1-III.

A person may not be the holder of more than two licences relating each to a television service broadcast in analogue mode exclusively on the frequencies assigned to radio and television by satellite.

A person who is the holder of one or more licences relating each to a terrestrial television service in analogue mode other than national cannot become the holder of a new licence relating to a service of the same nature other than national if this licence should have the effect to bring to more than 12 million inhabitants the population in the zones covered by all the services of the same nature for which it would be the licence holder.

A person who is the holder of one or more licences relating each to a terrestrial television service in digital mode other than national cannot become the holder of a new licence relating to a service of the

same nature other than national if this licence should have the effect to bring to more than 12 million inhabitants the population in the zones covered by all the services of the same nature for which it would be the licence holder.

A person who is the holder of a licence for the operation of a terrestrial television service in analogue mode in a specific area may not become the holder of a new licence relating to a service of the same nature broadcast in full in the same area in analogue mode.

A person who is the holder of a licence for the operation of a service of terrestrial television in digital mode in a specific area may not become the holder of a new licence relating to a service of the same nature broadcast in full in the same area in digital mode.

No one may be the holder of one or more licences relating each to a radio service whose potential cumulative terrestrial audience exceeds 20% of the potential cumulative audience of all radio services, public or licensed, broadcast terrestrially.

No one may be the holder of one or more licences relating each to a service broadcast on personal mobile television if the potential cumulative terrestrial audience of this or these services exceeds 20% of potential cumulative terrestrial audience of all television services, public or licensed, broadcast on personal mobile television.

Article 41-1. In order to prevent violations of pluralism at the national level in analogue mode, no licence relating to a terrestrial radio or television service in analogue mode can only be issued to a person who would be, of this fact, in more than two of the following situations:

1° be the holder of one or more licences relating to terrestrial television services allowing the person to reach a population of 4 million inhabitants;

2° be the holder of one or more licences relating to radio services allowing the person to reach a population of 30 million inhabitants;

3° [repealed];

4° edit or control one or more daily printed publications of political and general information representing more than 20% of the total circulation, on the national territory, of daily printed publications of the same kind, assessed over the last 12 known months preceding the date when the application for a licence was submitted.

However, a licence may be granted to a person who would not comply with the provisions of this Article if it is brought into conformity with these provisions within a time frame which is fixed by the Council and which cannot be more than six months.

Article 41-1-1. In order to prevent violations of pluralism at the national level in digital mode, no licence relating to a terrestrial radio or television service in analogue mode can only be issued to a person who would be, of this fact, in more than two of the following situations:

1° be the holder of one or more licences relating to terrestrial television services allowing the person to reach a population of 4 million inhabitants;

2° be the holder of one or more licences relating to radio services allowing the person to reach a population of 30 million inhabitants;

3° [repealed];

4° edit or control one or several daily printed publications of political and general information representing more than 20% of the total distribution on the national territory, of daily printed publications of the same kind, assessed over the last 12 months preceding the date when the application for a licence was submitted.

However, a licence may be granted to a person who would not comply with the provisions of this Article provided that it is brought into conformity with these provisions within a time frame which is fixed by the Council and which cannot be more than six months.

Article 41-2. In order to prevent violations of pluralism on the regional and local level in analogue mode, no licence relating to a service other than national terrestrial radio or television in analogue mode may be issued for a specific geographical area to a person who would be of this fact in more than two of the following situations:

1° be the holder of one or more licences relating to television services, of national character or not, broadcast terrestrially in the area concerned;

2° be the holder of one or more licences relating to radio services, of national character or not, whose potential cumulative audience, within the considered coverage zone, exceeds 10% of the potential cumulative audience, in the same area, of all the services, public or licensed, of the same nature;

3° [repealed];

4° edit or control one or several daily printed publications, of political and general information, of national character or not, distributed in this area.

However, a licence may be granted to a person who does not satisfy the provisions of this Article, provided that it is brought into conformity with these provisions in the conditions laid down in the last paragraph of Article 41-1 above.

Article 41-2-1. In order to prevent violations of pluralism on the regional and local level in digital mode, no licence relating to a service other than national terrestrial radio or television in digital mode may be issued for a specific geographical area to a person who would be of this fact in more than two of the following situations:

1° be the holder of one or more licences relating to television services, of national character or not, broadcast terrestrially in the area concerned;

2° be the holder of one or more licences relating to radio services, of national character or not, whose potential cumulative audience, within the considered coverage zone, exceeds 10% of the potential cumulative audience, in the same area, of all the services, public or licensed, of the same nature;

3° [repealed];

4° edit or control one or several daily printed publications, of political and general information, of national character or not, distributed in this area.

However, a licence may be granted to a person who does not satisfy the provisions of this Article, provided that it is brought into conformity with these provisions in the conditions laid down in the last paragraph of Article 41-1 above.

Article 41-3. For the application of Articles 39, 41, 41-1, 41-1-1, 41-2 and 41-2-1:

1° [repealed];

2° any physical or legal entity who controls, in the light of the criteria contained in Article L. 233-3 of the Commercial Code, a licensed company or has placed it under its authority or its dependency is regarded as the holder of a licence; is also regarded as the holder of licence any person who operates or controls a terrestrial radio service or a television service broadcast exclusively on the frequencies assigned to radio and television by satellite, from abroad or on the frequencies assigned to foreign States, and normally received in the French language, on French territory;

3° any physical or legal entity who controls, within the meaning of Article 11 of the Law No. 86-897 of 1 August 1986 on the reform of the legal regime of the press, the company editing a publication is regarded as the editor of this publication;

4° in the sector of terrestrial radio:

a) constitutes a network any service or group of services broadcasting a same program during the majority of broadcasting time of each service;

(b) constitutes a broadcast network of national character any network that covers a zone in which the population is greater than 30 million inhabitants;

5° any terrestrial television service, which covers a geographical zone for which the population is greater than 10 million inhabitants, is considered as a service of national character;

6° any terrestrial service broadcast simultaneously and fully on the frequencies assigned to radio and television by satellite is regarded as a single service broadcast by terrestrial;

6°bis any terrestrial service in digital mode, licensed after a tender and consisting in full rebroadcasting overseas of a national program licensed on the metropolitan territory, edited by the same legal entity, is regarded as a single service broadcast by terrestrial;

7° the potential audience of a service means the population in the municipalities or parts of municipalities located in the coverage zone of this service. For the calculation of the potential audience of the services on personal mobile television, programs consisting, under the conditions laid down in Article 28 14°, in the full or partial replay of a same service are regarded as separate services.

Article 41-4. When a concentration operation concerning, directly or indirectly, a provider or a distributor of radio and television services is the subject of a detailed examination in application of the last paragraph of III of Article L. 430-5 of the Commercial Code, the Competition Authority collects, before ruling in application of Article L. 430-7 of the same Code, the opinion of the Audiovisual Council. The Competition Authority communicates to this effect with the Council any referral relating to such operations. The Council transmits its observations to the Competition Authority within one month following the reception of this communication.

The Competition Authority also receives the opinion of the Council on the anticompetitive practices of which it is seized in the sectors of the radio, television and on-demand services. To this end, it communicates to it any referral on such cases. The Council transmits its observations to it within one month following the reception of this communication.

The Council seizes the Competition Authority of the anti-competitive practices of which it is aware in the sectors of the radio, television and on-demand services. This referral may be accompanied by a request for provisional measures under the conditions provided for in Article L. 464-1 of the Commercial Code.

It can refer competition and concentration issues of which it has knowledge in radio, television and on-demand services for opinion to the Competition Authority.

Article 42-3. The licence may be withdrawn, without prior notice, in the event of a substantial modification of the data on the basis of which the licence had been issued, including changes which have occurred in the composition of the share capital or the management bodies and in the methods of funding. The Council cannot however approve a modification of the direct or indirect control, within the meaning of Article L. 233-3 of the Commercial Code, of the company holder of licence granted in application of the Article 30-1 of this law occurring within five years of this issue, except in the event of economic difficulties threatening the viability of this company.

While respecting the criteria mentioned in Article 29, including the right balance between the national networks and the local, regional and independent thematic services, the Council can give its approval to a change of holder of a licence for the broadcasting of radio services when this change benefits the legal entity which controls or is controlled by the initial licence holder with regard to the criteria set out in Article L. 233-3 of the Commercial Code. On the occasion of this change of licence holder, the Council may, under the same conditions, give its approval to a change in the category for which the service is

licensed. This change cannot be approved outside a tender by the Council if it is incompatible with the preservation of the balances of the advertising markets, including local ones.

This change of licence holder is not open to the services mentioned in Article 80 and to local, regional and independent thematic services.

Subject to the respect of Articles 1 and 3-1, the Council can, by reasoned decision, give its approval to a modification of the funding methods when it relates to the recourse or not to a remuneration on the part of users. Prior to its decision, it conducts an impact study, including an economic one, made public while respecting business secrets. It also conducts a public hearing of the licensee and hears third parties who request it. This modification of the licence can be approved if the balances of the advertising market of the terrestrial television services are taken into account.

Without prejudice to the application of the first paragraph, any service provider holding a licence delivered in application of Articles 29, 29-1, 30-1, 30-5 and 96 must obtain an approval of the Council in the event of a change in direct or indirect control, within the meaning of Article L. 233-3 of the Commercial Code, of the company holding the licence. This approval is the subject of a reasoned decision and is issued taking into account the service provider's compliance, during the two years preceding the year of the application for approval, with its contractual obligations relating to the programming of the service.

When the change in control relates to a national television service licensed under Article 30-1 of this law or a radio service belonging to a national broadcasting network, within the meaning of Article 41-3, and that this change is likely to significantly modify the market in question, the approval is preceded by an impact study, in particular economic, made public while respecting business secrets.

If it considers it useful, the Council can carry out such a study for the other licensed services.

Interstate Treaty on Broadcasting and Telemedia

Article 21. Principles for the Licensing Procedure

(1) The applicant shall provide all information and documents required for the consideration of his licence application.

(2) The obligation to provide information and documents in particular relates to:

1. a description of the direct and indirect interests in the applicant as defined in Article 28 and of the capital and voting rights in the applicant and associated companies as defined in the German Company Law;

2. information about relatives as defined in Article 15 of the Fiscal Code²⁹ among the parties pursuant to no. 1. The same shall apply to representatives of the person or partnership or of the member of a body of a legal entity;

3. the Articles of association and the statutory provisions of the applicant;

4. agreements existing among the parties holding a direct or indirect interest in the applicant within the meaning of Article 28 relating to the joint provision of broadcasting as well as to trustee relationships and relationships that are significant pursuant to Articles 26 and 28;

5. a written statement of the applicant to the effect that the documents and information pursuant to nos. 1 to 4 have been provided in full.

(3) In the event that a matter relating to events which lie outside the scope of this Interstate Treaty has some relevance for the licensing procedure, the applicant must provide an explanation and the necessary evidence. In so doing he must exhaust all legal and actual possibilities. The applicant may not claim that he is unable to provide explanations or evidence if, in the circumstances, he could have made it possible for himself to do so or could have acquired such a possibility when devising the circumstances.

(4) The obligations pursuant to (1) to (3) shall apply accordingly to physical and legal entities or partnerships holding a direct or indirect interest in the applicant within the meaning of Article 28, or who represent an undertaking associated with the applicant, or who may exercise influence on him in some other manner within the meaning of Articles 26 and 28.

(5) In the event that those required to provide information or to submit documents do not fulfil their obligations pursuant to (1) to (4) within a period set by the competent state media authority, the licence application may be refused.

(6) Those obliged to provide information and to submit documents during the licensing procedure must notify the competent state media authority of any change in circumstances without delay which may have occurred since the application was submitted or the licence was issued. Paragraphs (1) to (5) apply accordingly. Article 29 remains unaffected.

(7) Notwithstanding any other notification requirements the broadcaster and the parties holding a direct or indirect interest in the broadcaster within the meaning of Article 28 are required to submit a statement to the competent state media authority upon expiry of the calendar year without delay, indicating whether and to what extent any change has occurred within that calendar year with regard to relevant participating interests and facts necessitating attribution pursuant to Article 28.

Article 25. Plurality of Opinion, Regional Windows

(1) The editorial content of commercial broadcasting shall convey plurality of opinion. The major political, ideological and social forces and groups shall be granted adequate opportunity for expression in the general channels; minority views shall be taken into account. The possibility to offer thematic channels remains unaffected.

(2) A single service must not exert a highly unbalanced influence on public opinion.

(3) In the licensing procedure the state media authority shall seek to ensure that interested parties providing cultural contents are also able to participate in the broadcaster. There is no legal entitlement to participation.

(4) The two general channels transmitted nationally with the largest audience reach shall incorporate window services providing up-to-date, authentic presentations of the political, economic, social and cultural life in the respective state at least in line with the scheduled and regionally differentiated extent of the programme activities as per 1 July 2002 pursuant to the respective state law. The main service provider shall guarantee the editorial independence of the window service provider by its organisation. The window service provider shall be granted a separate licence. Window service providers and main service providers should not be related to one another in the form of affiliated undertakings pursuant to Article 28, unless independence is secured in other ways through state provisions in force per 31 December 2009. Licences in place on 31 December 2009 shall remain unaffected. An extension shall be admissible. The organisation of the window services shall also comprise their funding by the main service providers. The state media authorities shall coordinate the scheduling and technical organisation of the window services, taking into account the interests of the main service providers affected.

Article 26. Ensuring Plurality of Opinion on Television

(1) An undertaking (physical or legal entity or partnership) may itself or through undertakings attributable to it provide an unlimited number of television services transmitted nationally in the Federal Republic of Germany unless this results in the undertaking acquiring dominant power of opinion as specified in the following provisions.

(2) If the services attributable to an undertaking reach an annual average audience share of 30 per cent of all viewers, dominant power of opinion shall be assumed to be given. The same applies for an audience share of 25 per cent if the undertaking holds a dominant position in a media-relevant related market or an overall assessment of its activities in television and in media-relevant related markets shows that the influence on the formation of opinion obtained as a result of these activities corresponds to that of an undertaking with a 30 per cent audience share. In the calculation of the relevant audience share pursuant to sentence 2, two percentage points shall be deducted from the actual audience share if window services are included in the general channel attributable to the undertaking with the highest audience share pursuant to Article 25 (4). If at the same time broadcasting time is included for third parties in accordance with (5), a further three percentage points shall be deducted from the actual audience share.

(3) If an undertaking has acquired dominant power of opinion with the services attributable to it, no licence may be issued for further services attributable to this undertaking, nor may the acquisition of further participating interests in broadcasters attributable to it be confirmed as being acceptable.

(4) If an undertaking has acquired dominant power of opinion with the services attributable to it, the state media authority shall, through the Commission on Concentration in the Media³³ (KEK, Article 35 (2) sentence 1 no. 3), propose the following measures to the undertaking:

- 1. The undertaking may give up its participating interests in broadcasters attributable to it until the attributable audience share of the undertaking falls below the limit pursuant to (2) sentence 1, or*
- 2. it may, in the case specified in (2) sentence 2, limit its market position in media-relevant related markets or give up its participating interests in broadcasters attributable to it until dominant power of opinion pursuant to (2) sentence 2 no longer prevails, or*
- 3. it may, with regard to service providers attributable to it, take the measures within the meaning of Articles 30 to 32 in order to ensure plurality of opinion.*

The KEK shall discuss the possible measures with the undertaking with the objective of reaching mutual agreement. If agreement cannot be reached or if the measures which the undertaking and the KEK have mutually agreed upon are not implemented within a reasonable period, the state media authorities may, after the KEK has established the facts, revoke the licences of as many of the services attributable to the undertaking as may be required to ensure that the undertaking no longer exercises dominant power of opinion. The KEK shall select the licences to be revoked, taking into account the specificities of each case. No compensation shall be granted for any financial loss incurred as a result of the revocation of the licence.

(5) If a service provider reaches an annual average audience share of 10 per cent with a general channel or an information-oriented thematic channel, the service provider must allocate broadcasting time to independent third parties as specified in Article 31 within six months after this fact has been established and after having been informed accordingly by the state media authority. If a service provider reaches an annual average audience share of 20 per cent with services attributable to him without one of the general channels or information-oriented thematic channels reaching an audience share of 10 per cent,

the obligation pursuant to 1 shall apply to the service provider of the service attributable to the undertaking with the highest audience share. If the service provider does not implement the required measures, the licence shall be revoked by the competent state media authority after the facts have been established by the KEK. Paragraph (4) sentence 5 applies accordingly.

(6) Every three years or upon the request of the states, the state media authorities shall jointly publish a KEK report on the development of concentration and on measures to ensure plurality of opinion in the commercial broadcasting sector, taking into account:

- 1. interdependencies between television and media-relevant related markets;*
- 2. horizontal interdependencies between broadcasters in different areas of transmission, and*
- 3. international interdependencies in the media sector.*

The report should also comment on the application of Articles 26 to 32 and on any necessary amendments to these provisions.

(7) The state media authorities shall publish an annual list of services to be drawn up by the KEK. The list of services shall include all services, their broadcasters and parties with participating interests.

Article 27. Establishing Audience Shares

(1) The state media authorities shall establish the audience share of each service through the KEK, taking into account all German language services broadcast by the public service broadcasters and the services of commercial broadcasters which can be received nationally. Decisions shall be based on the average audience share reached by the services to be included during the preceding twelve months and prevailing at the time of the commencement of the proceedings.

(2) Following a decision by the KEK, the state media authorities shall commission an undertaking to determine the audience shares. The contract shall be awarded in accordance with the principles of efficiency and economy. Audience shares shall be established by means of representative surveys among viewers aged three years and older, using generally accepted scientific methods. The state media authorities should agree with the undertaking that the data collected in establishing audience shares pursuant to (1) sentence 1 may also be used by third parties on a contractual basis. In this case the costs to the state media authorities shall be reduced accordingly.

(3) The broadcasters are required to assist in establishing the audience shares. In the event that a broadcaster does not comply with this obligation, his licence may be revoked.

Article 28. Attribution of Services

(1) All services that an undertaking provides itself or that are provided by another undertaking in which it has a direct interest of 25 per cent or more of the capital or voting rights shall be attributed to this undertaking. Furthermore, all services shall be attributed to it which are provided by undertakings in which it has an indirect interest insofar as those undertakings are affiliated undertakings within the

meaning of Article 15 of the German Company Law and hold a share of 25 per cent or more of the capital or voting rights of a broadcaster. The affiliated undertakings within the meaning of sentences 1 and 2 shall be deemed to be a single undertaking and their shares in the capital or the voting rights shall be added up. If as a result of an agreement or otherwise, several undertakings cooperate in such a manner that they can jointly exert a dominant influence over an undertaking holding an interest, each of them shall be deemed to be a dominant undertaking.

(2) An interest pursuant to (1) also exists if an undertaking is able either by itself or together with others to exert a comparable influence on a broadcaster. Furthermore, a comparable influence exists if an undertaking or an undertaking already attributable to it for other reasons pursuant to (1) or (2) sentence 1:

- 1. regularly provides programming for a significant proportion of the broadcasting time of a broadcaster;*
- 2. by virtue of contractual agreements, stipulations in the statutory provisions and in the Articles of association or in any other manner holds a position which makes the fundamental decisions of a broadcaster concerning the design, acquisition and production of programming subject to its approval.*

(3) The attribution pursuant to (1) and (2) shall also include undertakings established outside the scope of this Interstate Treaty.

(4) The analysis and assessment of comparable influences on a broadcaster shall also take into account existing family relationships. It shall apply the principles of commercial or fiscal law.

Article 29. Changes in Participating Interests

The competent state media authority must be notified in writing of any planned change in participating interests or other influences prior to their implementation. Notifications shall be made by the broadcaster and by parties holding a direct or indirect interest in the broadcaster within the meaning of Article 28. The competent state media authority may confirm that no objections exist to such changes only if a licence could still be issued under such changed conditions. If a planned change is implemented to which confirmation pursuant to sentence 3 cannot be given, the licence shall be revoked. The revocation procedure shall be governed by state law. For minor interests in public limited companies the KEK may issue directives detailing exemptions concerning the obligation to report changes.

Article 30. Measures Ensuring Plurality

As far as the aforementioned provisions aim at measures ensuring plurality, concerning a broadcaster or undertaking, such measures shall include:

- 1. granting broadcasting time to independent third parties (Article 31),*
- 2. establishing a programme advisory council (Article 32).*

Law no. 97/2013 on audio and audio-visual media services - 04.03.2013

Article 29 - Evaluation of effects on the broadcasting market

1. The Audiovisual Media Authority (AMA), for performing the evaluation of effects in the broadcast field examines the amount in which the broadcast development affects: (a) quality, possibility of providing and choice as well as reception of services from viewers and listeners, (b) existence of such services in the broadcasting sector, (c) effects of technologic developments, novelties and investments in this field, (ç) broadcast-related markets (d) other issues that AMA assesses reasonable for this purpose.

2. The AMA makes the periodical analysis of various effects in the broadcasting market with the aim of exerting its regulatory functions as appropriately as possible. For this aim, the AMA can cooperate with the relevant public institutions and with the broadcasts.

Article 56 - General requirements of the application for the licence and/or authorization

The application for obtaining any licence and/or authorization shall contain:

1. Name, location, legal form of the applying subject along with the name and signature of the person who is entitled to represent it.
2. Documents proving the bank and official information on the financial capital of the applying juridical or physical entity.
3. The name of the programme and network it will be supported to.
4. The object and the general characteristics of service, data for the duration of the programme and the territory that will cover, as well as the technical installation and use of the devices.
5. List of administrators, projections of expenses and incomes, origin and amount of funding provided for the duration for which the licence and / or authorization is required.
6. List of names of board members and their curriculum vitae.
7. Content of programs that will be broadcasted and programme structure proposed for broadcasting, which clearly express their general pluralism and impartiality of information.
8. The application must include information on the ownership structure of the company and its shareholders. 9. The applicants must answer any questions of the regulatory authority during the application examination

Article 62 - Property/Ownership regulation in terrestrial audio and audiovisual broadcasting

- 1. National licence of audio broadcasting and national licence of audiovisual broadcasting is granted only to joint stock companies registered in the Republic of Albania, which have as their exclusive object the audiovisual activity.*
- 2. The shares representing the capital in a company that holds a national licence of audio broadcasting or a national licence of audiovisual broadcasting, are nominative.*
- 3. No physical or legal entity , domestic or foreign, may have more than 40 per cent of the total capital of a joint stock company, which holds a national licence for audio broadcasting or a national licence for audiovisual broadcasting.*
- 4. A physical or legal entity who has shares in a company that holds a national licence for audio broadcasting or a national licence for audiovisual broadcasting, cannot have more than 20 percent of the total capital in a second company which holds a national licence for audio broadcasting or a national licence for audiovisual broadcasting. For analogue audio broadcasting it is permitted to own up to 10 percent in the capital of a third national company. Such a person is not allowed to obtain neither audio nor audiovisual broadcasting licence, at regional or local level.*
- 5. The national licences for the audio and/or audiovisual programme services are also subject to the above conditions.*
- 6. Local or regional licence for audio broadcasting and local or regional service licence for audiovisual broadcasting are granted to physical or legal entities registered in the Republic of Albania, which have as their exclusive object the audiovisual activity.*
- 7. A physical or legal entity that has 100% of shares in a company which holds a local or regional audiovisual licence, can be given only one additional (second) licence for local or regional audio broadcasting. A physical or legal entity that has 100% of the shares in a company which holds a local or regional audio licence, can be given only a second licence for local or regional audiovisual broadcasting.*
- 8. A physical or legal entity, that has shares in a company which holds a local or regional audio licence, cannot have more than 40% of the general capital in a second company which holds a local or regional licence for audio broadcasting.*
- 9. A physical or legal entity, that has shares in a company which holds a local or regional audiovisual licence, cannot have more than 40% of the general capital in a second company which holds a local or regional licence for audiovisual broadcasting.*
- 10. In the sense of this Article, a shareholder is considered a holder of shares and persons related to him up to the second level.*

11. The above conditions are applicable also to legal entities authorised for the provision of audio programme services and authorizations of audiovisual programme service supported in satellite networks.

12. No holder of national licences for audio broadcasting and for national licences of audiovisual broadcasting, including AAMSP-s licensed for the provision of audio programme services and authorised for audiovisual programme service supported in satellite networks, according to this law, can broadcast more than 30 percent of advertising in the audiovisual broadcasting market. The AMA monitors and publishes periodic information on the volume of advertising broadcasted by national AAMSP-s.

Media Act

Article 31. Stocks and shares in a publisher who engages in the activity of public informing shall be made out to a name.

Article 32. (1) The publisher shall be obliged to forward to the Croatian Chamber of Economy, by January 31 of each calendar year, data on the company and its seat, that is, names, surnames and permanent residence of all legal and physical entities who have direct or indirect ownership of stocks or shares in that legal entity, with the information on the percentage of stocks or shares.

(2) By the deadline referred to in paragraph 1 of this Article, each publisher shall be obliged to forward to the Croatian Chamber of Economy the verified copies of the deeds of acquisition for the stocks or shares acquired in that publisher in the course of the preceding year. The deeds of acquisition of the stocks or shares up to 1% of the capital value shall not be forwarded.

(3) For persons referred to in paragraph 1 of this Article, publishers shall be obliged to forward data if those persons hold stocks/shares for themselves or other persons in enterprises to which this Act applies, and data if these persons are members of management, supervisory boards or management councils in such enterprises.

(4) The Croatian Chamber of Economy shall forward a written warning to a publisher which fails to perform the obligation referred to in paragraphs 1, 2 and 3 of this Article with the explanation of possible sanctions for the non-fulfilment of the obligation.

(5) The publisher shall be obliged to publish data referred to in paragraph 1 of this Article in the "Official Gazette" by 28th February of each calendar year. Data on stockholders and shareholders up to 1% of the value of the capital shall be published collectively.

(6) The concealing of the ownership structure of the publisher or the acquirer's ownership of the stocks or shares in the publisher on the basis of any legal act shall be prohibited. The legal acts concealing the ownership structure of the publisher or the acquirer's ownership of the stocks or shares in the publisher shall be null and void.

Article 33. Legally established provisions on the limitation of ownership shall also apply to foreign legal and physical entities, regardless of the country of their seat or permanent residence, unless otherwise determined by law.

Article 34. (1) By 30th April of each year publishers shall be obliged to submit to the Croatian Chamber of Economy a report on their financial transactions for the previous year, containing data on the income and market share realised in the market of readers and/or viewers and/or listeners, data on the income and market share realised in the advertising market, as well as data on advertisers or marketing agencies through which more than 10% of the publisher's annual marketing income was realised.

(2) Media distribution companies shall be obliged to forward to the Croatian Chamber of Economy data on the contracts with publishers or appropriate data on the general business conditions pertaining to the distribution of electronic media programmes and general information press, the sold circulation of which exceeds three thousand copies, if this press is being sold at the market of several towns or counties, or exceeding a thousand copies, if it involves local market press.

(3) The publisher shall be obliged to publish data on the realised total income and average sold printing run, that is, average listening/viewing ratings in the previous year, in his media by 30th April of each calendar year.

Article 35. Regulations on the protection of competition shall apply to publishers, legal entities engaged in media distribution, and other legal entities performing tasks related to public informing.

Article 36. (1) Publishers participating in a concentration of undertakings shall be obliged to submit an application on their intent to conduct concentration in the form and manner stipulated by regulations on the protection of competition.

(2) The obligation of submitting an application shall emerge regardless whether the conditions referred to in Article 22, paragraph 4 of the Competition Act, were fulfilled in that particular case.

(3) The application referred to in paragraph 1 of this Article shall be submitted with the Croatian Competition Agency.

(4) The concentration of undertakings, registered in compliance with the provisions of this Article, shall be evaluated by the Croatian Competition Agency in compliance with the regulations on the protection of competition.

Article 37. (1) Impermissible concentration of enterprises in the market of general information daily newspapers or general information weekly magazines shall be considered to exist if the market share of participants in that particular enterprises' concentration after its implementation exceeds 40% of all the sold copies of general information daily newspapers or weekly magazines at a relevant market.

(2) A publisher with an impermissible concentration referred to in paragraph 1 of this Article may not own or acquire stocks or shares of other general information press.

Electronic Media Act

Article 52. (1) By January 31 of each calendar year, media service providers shall be obliged to forward to the Electronic Media Council the data on a legal entity and its seat, i.e. name, surname and permanent residence of all legal and physical entities who have directly or indirectly become holders of stocks or a share in that legal entity, along with the data on the percentage of stocks or the share they possess.

(2) Media service providers shall be obliged to deliver certified copies of documents on the acquisition of stocks or shares in the media service provider during the preceding year to the Electronic Media Council within the period referred to in paragraph 1 of this Article. Documents on the acquisition of shares shall not be delivered for stocks or shares up to 1% of the capital value.

(3) The Electronic Media Council shall forward a written warning to a media service provider which fails to perform the obligation referred to in paragraphs 1 and 2 of this Article with the explanation of possible sanctions for the nonfulfillment of the obligation.

(4) A media service provider shall be obliged to publish the data referred to in paragraph 1 of this Article in the Official Gazette. Data on holders of stocks or share up to 1% of the capital value are published collectively.

(5) The concealment of the ownership structure of the media service provider as well as the ownership of the acquirer of the stocks or shares in the media service provider by means of any legal transaction shall be prohibited. Legal transactions which conceal the ownership structure of the media service provider as well as the ownership of the acquirer of the stocks or shares in the media service shall be null and void.

Article 53. (1) Linked persons, pursuant to this Act, shall be the persons who are mutually linked by way of management, capital or in another manner which enables them to jointly shape the business policy, conduct business in a coordinated manner with the intention of achieving mutual objectives, or in such a manner that one person has the possibility to direct another person or influence him/her in a significant manner while deciding about the financing and business management, i.e. deciding about the programme basis of the media.

(2) Persons linked in the following manner shall be considered linked persons: – blood relatives, such as members of the immediate family (parents, children, brothers and sisters, adopters and adoptees), – by marriage or extramarital community, – in-laws, as members of the immediate family of a spouse, – when a person, or persons, holds a total business share, stocks or other rights on the basis of which they participate in the management of another person with at least 25% of the voter's rights, – when the same person has a total business share, stocks or other rights in both persons, on the basis of which they participate in the management of each of them with at least 25% of voter's rights, – when they earn more than 30% of income from advertising by way of marketing contracts or other contracts, through a period of three months or a longer period within a year, – when they form linked companies pursuant to the Act on Trading Companies, – when they are members of the management or supervisory board in a company in which they perform this duty, as well as persons who are considered to be linked with the heads of management or supervisory board of that company, in the manner determined in this paragraph.

Article 54. The following shall be considered as an impermissible concentration within the meaning of this Act:

– the television and/or radio broadcaster who has concession at the state level and a share exceeding 25% of the capital of another broadcaster who has the same kind of concession or a concession on the regional, county, city or municipality level, and vice versa,

– the television and/or radio broadcaster who has concession at the state level and a share exceeding 10% of the capital of publisher who publishes daily newspapers printed in more than 3,000 copies, and vice versa,

– the television and/or radio broadcaster who has concession at the state level and a share exceeding 10% of the capital of a legal entity who performs the activity of a newspaper agency, and vice versa, – the television and/or radio broadcaster who has concession at the state level and simultaneously publishes daily newspapers printed in more than 3,000 copies,

– the television and/or radio broadcaster with a concession at the local or regional level of coverage and shares exceeding 30% of the capital of another such broadcaster with the concession at the local or regional level of coverage in the same area, – the television and/or radio broadcaster who has a concession at the regional or local level of coverage and simultaneously publishes daily newspapers of local importance in the same or in the neighbouring area,

– the media service provider set out in Article 79 of this Act who simultaneously publishes daily newspapers printed in more than 3,000 copies,

– the media service provider set out in Article 79 of this Act who has a share exceeding 10% of the capital of a publisher who publishes daily newspapers printed in more than 3,000 copies, and vice versa.

Article 55. It shall also be considered that impermissible concentration exists in the area of media also when, in cases referred to in Article 54 of this Act, a physical or legal entity, who is the founder of the television and/or radio broadcaster or the media service provider set out in Article 79 of this Act, or a founder, or persons related to him/her in the sense of Article 53 of this Act, has a share in the capital of another television and/or radio broadcaster, newspapers publisher of a daily newspaper or news agency, above the determined amount of capital.

Article 56. (1) The Electronic Media Council shall not grant a concession to the most advantageous tenderer who applies to the procedure for the award a concession, if it has been determined that the award of a concession would create an impermissible concentration in the sense of this Act.

(2) Each tenderer who applies to the published notice of intent to award a concession shall be obliged to enclose a verified statement along with the tender indicating that impermissible concentration in the sense of this Act shall not be created by a possible award of concession.

(3) The media service provider set out in Article 79 of this Act shall be obliged to enclose a statement along with the request for issuing licence for satellite, internet and cable transmission of the audiovisual and/or radio programme indicating that the licence issuing shall not create impermissible concentration in the sense of this Act.

Article 57. (1) The television and/or radio broadcaster and the media service provider set out in Article 79 of this Act shall report in writing on any change in the ownership structure to the Electronic Media Council.

(2) Should the Electronic Media Council determine that the occurred changes in the ownership structure resulted in an impermissible concentration in the area of media, it shall give an order to the television and/or radio broadcaster and the media service provider set out in Article 79 of this Act to conform its ownership structure, within a certain deadline, in a manner which is not contrary to the provisions of this Act.

(3) Should the television and/or radio broadcaster fail to comply with the order of the Electronic Media Council, the provisions of this Act stipulating the termination of validity of the concession prior to the expiration of the deadline for which it was granted shall be applied, and the decision on the cancellation of the concession shall be passed by the Electronic Media Council.

(4) Should the media service provider set out in Article 79 of this Act fail to comply with the order of the Electronic Media Council, the provisions of this Act stipulating the termination of validity of the licence for satellite, internet and cable transmission of the audiovisual and/or radio programme shall be applied.

Article 58. (1) A domestic legal entity , whose founders include also foreign legal entities registered in countries in which, according to those countries' regulations, it is not permissible or it is not possible to determine the origin of the founding capital, may not participate in a procedure for a concession grant in compliance with this Act.

(2) Should it be subsequently determined that one of the founders of the television and/or radio broadcaster to whom a concession was awarded is a foreign legal entity referred to in paragraph 1 of this Article, the provision of Article 57 paragraph 2 and 3 of this Act shall apply.

Article 59. (1) A particular broadcaster may perform either television media service or radio media service.

(2) The provision of the previous paragraph shall not apply if the broadcaster obtains, pursuant to this Act, the approval of the Electronic Media Council, in the case when the broadcaster does not provide television and radio media services in the same area.

Article 60. (1) A legal entity whose activity is collection, shaping and mediation in advertising, as well as a physical or legal entity , or a group of connected persons, which has more than 10% of the ownership share in the capital, i.e. property of that sort, or which has more than 10% of management or voter's rights, may not be a television and/or radio broadcaster and/or founder of radio and/or television broadcaster, nor can it have ownership of stocks or shares in the capital of the television and/or radio broadcaster.

(2) Should the Electronic Media Council determine that the impermissible changes in the ownership structure referred to in paragraph 1 of this Article have occurred, it shall give an order to the television and/or radio broadcaster to conform its ownership structure within a certain deadline in a manner which is not contrary to the provisions of this Act.

(3) Should the television and/or radio broadcaster fail to comply with the order of the Electronic Media Council, the provisions of this Act stipulating the termination of validity of the concession prior to the

expiration of the deadline for which it was awarded shall be applied, and the decision on the cancellation of the concession shall be passed by the Electronic Media Council.

Article 61. An operator who performs the activity of audiovisual and/or radio programme transmission may not be the television and/or radio broadcaster as well as the media service providers referred to in Articles 79 of this Act.

Article 62. The provisions on ownership and concentration shall also apply to foreign legal and physical entity, regardless of the state in which they have their seats, i.e. permanent residence, save if otherwise stipulated by this Act.

Media Law

Article 5. A monopoly shall not be allowed in performing media activities. The protection against the monopoly in media activities shall be provided by a separate law.

Article 18. The imprint of a medium shall contain the name of the medium and name or company and residence or seat of the founder and shall be clearly separated from the rest of the medium's content.

The imprint of a print medium shall also contain the name and seat of the printing company, the date of publication or re-publication and the number of printed issues.

The imprint of radio and TV programme shall be broadcast at the beginning and the end of daily broadcasting, or between midnight and 2 a.m. if the programme is broadcast permanently.

The imprint of news agency service shall be publicised at least once a day.

Short imprint of a print medium shall be at the margin of every page and shall contain the name of the medium and the date of publishing.

Short imprint of a TV programme shall contain the identification sing of the TV programme and shall be broadcast during the whole programme.

Short imprint of radio-programme shall include the name of the radio-programme and shall be broadcast at least once in every two hours of programme broadcasting.

Short imprint of news agency shall include name of the service and date and time of issuing information and shall follow every publicised information.

Short imprint of other media as well as of publications and information repositories that are not media shall be publicised in an appropriate way in compliance with previous paragraphs of this Article.

Electronic Media Law

Article 129. (1) An AVM service provider is obliged, by 31 December of the current year, to provide to the Agency the data on physical and legal entities (name, head office/residence) that over the year have directly or indirectly become holders of share or a stake in the given AVM service provider, giving details of the actual percentage of such a share or stake.

(2) An AVM service provider is obliged, by 31 December of the current year, to provide to the Agency the data on: 1) own ownership stake in other legal entities providing AVM services; 2) more than 10% share held by its owners in other legal entities providing AVM services.

(3) The Agency is obliged to publish the data from paragraphs 1 and 2 above in the Official Gazette of Montenegro.

(4) Data on share and stake holders up to 1% of capital value shall be published collectively.

Article 130. (1) Related persons, within the meaning of this Law, shall be the persons mutually linked by management, capital or in some other way which enables them to jointly set business policy, operate in accord with the intention of attaining shared goals, or so that one person has the possibility of guiding another or to substantially affect their financial and business decisions, or decision on programme base of electronic media.

(2) Related persons, within the meaning of this Law, shall be:

- 1) closer family members (parents, children, siblings, adoptive parents and children);*
- 2) persons related by marriage or common law marriage;*
- 3) in-laws as close family members of the spouse;*
- 4) holders of a stake or share in business or other titles that give them right to participate in management of another entity with at least 20% of voting rights;*
- 5) the same person holds a stake or share in business or other titles that give them right to participate in management of another entity with at least 20% of voting rights in both legal entities;*
- 6) through a marketing or other agreement, when over three months or longer within one year they receive over 30% of advertising revenues;*
- 7) by being members of management bodies of a legal entity in which they perform this function and persons deemed as related persons with members of management bodies of that legal entity in the manner envisaged by this paragraph.*

Article 131. (1) Media concentration shall exist when a broadcaster:

- 1) has a share in the founding capital of another broadcaster, a legal entity publishing a daily newspaper or a legal entity performing the activity of an information agency or vice versa;*
- 2) concurrently holds several broadcasting licences;*
- 3) concurrently broadcasts radio and television programme;*
- 4) concurrently broadcasts radio and/or television programme and publishes daily newspapers distributed within the area of the said radio and/or television programme coverage; 5) concurrently broadcasts radio and/or television programme and pursues the activity of news agencies.*

(2) Media concentration shall also exist when broadcaster's founders are physical or legal entities who are at the same time:

1) founders of another broadcaster;

2) founders of a legal entity publishing a daily printed media within the area of radio or television programme coverage;

3) founders of an information agency;

4) spouses and common law spouses up to the second degree in the direct or side-line of physical entities referred to in paragraph 2 indents 1, 2 and 3 above.

(3) A broadcaster holding several licences for provision of AVM services is obliged to keep separate accounting in compliance with the law governing accounting practices.

Article 132. Unlawful media concentration shall exist when a broadcaster:

1) holding a licence for national coverage broadcasting:

- holds a stake in the founding capital of another broadcaster with such licence with more than 25% share of capital or voting rights,*
- holds more than a 10% share in the founding capital of a legal entity publishing daily print media with the circulation exceeding 3,000 copies, or vice versa,*
- holds more than a 10% share in the founding capital of a legal entity performing the activity of a news agency and vice versa,*
- concurrently publishes the daily print media with the circulation exceeding 3,000 copies;*

2) except the national public broadcaster, broadcasts over the same area more than one television and one radio programme with the same or similar programme base;

3) radio or television programme licensed for broadcasting with local or regional coverage:

- holds more than 30% share in the founding capital of another broadcaster with regional or local coverage over the same area,*
- concurrently, over the same or in neighbouring areas, publishes local daily print media.*

Article 133. It shall be deemed that unlawful media concentration exists even when in cases from Article 132 of this Law a physical entity who is a founder of a broadcaster or persons who are his/her relatives in direct line up to the second degree or his spouse holds a stake in the founding capital of another broadcaster, founder of a daily print media or news agency.

Article 134. (1) The Agency shall not grant a broadcasting licence if it is established that its granting would lead to unlawful media concentration within the meaning of this Law.

(2) An applicant for broadcasting licence is obliged, together with the application to the public competition for granting broadcasting rights or the request for granting a broadcasting licence, to submit a certified statement that no unlawful media concentration would occur with possible granting of the licence.

(3) Should the Agency establish that, following granting of a broadcasting licence, unlawful media concentration occurred, it would order the broadcaster, not later than within three months from establishing such a fact, to rectify the irregularities regarding unlawful media concentration.

(4) Should a broadcaster, though no justifiable reason, fail to act in accordance with paragraph 3 above, the Agency shall revoke his licence.

Article 135. (1) A broadcaster is obliged to notify the Agency in writing of any changes in its ownership structure.

(2) A broadcaster shall procure a prior written approval of Council for any change in ownership structure exceeding a 10% share.

(3) A domestic legal entity having as its founders also foreign legal entities incorporated in countries in which it is not possible to establish the origin of founding capital shall not be eligible as a licence holder.

(4) Should it be established, following licence granting, that one of the co-owners of the broadcaster is a foreign legal entity from paragraph 3 above, the licence shall be revoked.

Article 138 (1) Supervision over the implementation of this Law shall be exercised by the Agency through its authorised person in compliance with the law governing inspection supervision.

(2) The Agency shall particularly supervise whether AVM service providers adhere in all respects with the requirements from the licence.

(3) With a view of implementing the competences envisaged by law, an AVM service provider is obliged, at the Agency's request, to make available all data, information and documents needed for performing the regulatory function in this field, within the time set by the Agency, which may not be shorter than 7 days.

Article 142. (1) Licence for provision of an AVM service shall be temporarily, for 30 days, revoked if the AVM service provider:

1) failed to start providing service in the time stipulated;

2) failed to act in accordance with Agency's orders as regards compliance with the provisions of this Law governing unlawful media concentration;

3) even after being issued a warning and pronounced a fine continues to violate provisions of this Law on programme standards;

4) even after being issued a warning fails to settle the annual licence fee;

5) as a non-for-profit broadcaster changes its status or if broadcasting audiovisual commercial communications in contravention to this Law;

6) after the issuance of warning measures, it fails to implement the program structure and other program obligations in accordance with the submitted application for a public call for competition or a request for licence.

(2) Should an AVM service provider previously been pronounced the measure of temporary licence revocation twice, the licence shall be revoked permanently.

Law on Public Information and Media

Article 6 - Protection of Media Pluralism and Ban on Monopoly in the Public Information Sector

In order to enable citizens to form their own opinions of occurrences, events and persons, the versatility of sources of information and media content shall be provided.

In order to protect competition and diversity of ideas and opinions, any form of monopoly in the field of public information is forbidden.

No one shall have the monopoly over the publication of information, ideas and opinions in a public medium.

No one shall have the monopoly over the establishment or distribution of the media.

Article 7 - Public Availability of Information about the Media

In order to enable citizens to form their own opinions about the authenticity and reliability of information, ideas and opinions published in the media, in order to be able to identify the possible influence of the media on public opinion and in order to protect media pluralism, the public availability of information about the media shall be granted.

Article 34 - The Obligation to Publish

Every medium must display basic information about itself in the form of imprint, imprint summary or identification.

Article 35 – Content

The imprint shall contain: the name of the medium, the name and the address of the publisher, the e-mail address or website, full names of the editor-in-chief and editors responsible for specific issues, sections or programme units, information about the responsible regulatory and/or supervision bodies and the registration number of the medium.

In addition to the information referred to in paragraph 1 of this Article, the imprint of the provider of audiovisual media services must contain the date when the programme is broadcasted, the time when the imprint is broadcasted, the frequency symbols and the TV channel where the programme is broadcasted, whilst a news agency imprint must contain the date when the information is sent.

A newspaper imprint summary shall show the name and the date of the issued newspaper.

An identification of a television programme shall show the characteristic symbol of the audiovisual media service or television programme.

An identification of a radio programme shall contain the title of the radio programme and the radio frequency on which the programme is broadcasted.

An imprint summary for a news agency shall contain the name of the service and the date when the information is sent.

Article 36 - Publishing the Imprint

The imprint shall be shown in full and visibly and it shall be clearly separated from the other content of the medium.

A newspaper imprint and the imprint summary shall be put on every issue and of every copy of the newspaper.

A newspaper imprint summary shall be placed on the margin of every page.

A television or radio programme imprint shall be broadcasted at the beginning and at the end of the programme, every day when the programme is broadcasted, and if the programme is broadcasted continuously, every day between midnight and 2 a.m.

The identification of a television programme shall be broadcasted for the entire duration of the programme.

The identification of a radio programme shall be broadcasted at least once in two hours for the duration of the programme.

A news agency imprint shall be published at least once a day.

An imprint summary of a news agency shall be published with every published piece of information.

The imprint, imprint summary and identification of other media shall be published in an appropriate manner, in accordance with the provisions hereof.

Article 37 - Media Register

The Media Register (hereinafter: Register) shall be kept by the Serbian Business Registers Agency (hereinafter: Agency) in accordance with the law governing the legal status of the Agency, the law governing the procedure of registration with the Agency and in accordance with this Law.

Article 38 - The Purpose of the Register

The purpose of the Media Register is to provide public availability of the information about the media.

Article 39 - The Content of the Register and the Subject of Registration

The following information shall be entered in the Register:

- 1) Name and registration number of the medium referred to in Article 29 hereof;*

2) Full name and JMBG (Unique Master Citizen Number) of a physical entity who is the editor-in-chief of the medium or, where a foreign person is editor-in-chief, the passport number and the country where the passport was issued;

3) Media Service Licence Number for electronic media;

4) Information about the language in which the medium is issued or in which the media service is provided;

5) Information on the Internet, electronic and other formats of the media;

6) Website, where the media is exclusively distributed via the Internet;

7) Business name/title, address and Company Number of the media publisher/provider of media service;

8) Document containing the information about the physical and legal entities who directly or indirectly have more than 5% share in the authorised share capital of the publisher, the information about associated persons as defined under the law governing the legal status of companies, and the information about other publishers in whose authorised share capital these persons have more than 5% share;

- 1) Information on the amount of funds granted to the medium as state aid, in accordance with the provisions hereof;
- 2) Information on the amount of funds received from public authorities (hereinafter: public authority), including state authorities, the authorities of the territorial autonomy, the authorities of local self-government, organisations vested with public powers, and legal entities founded or funded, fully or mostly, by a state authority.
- 3) Information on the average media circulation sold in a calendar year;
- 4) Other documents based on which the registration was done;
- 5) Date and time of registration;
- 6) Changes in the registration information;
- 7) Date and time of changes in the registration data.

The document referred to in paragraph 1 point 8) of this Article shall contain the name/commercial name, address and Company/Registration Number of the legal entities, full name and JMBG of the domestic physical entity or the passport number and the country where the passport was issued of the foreign physical entity, and their respective shares in the management rights, in percentages.

The applicant for the registration of the information referred to in paragraph 1 points 9) and 10) of this Article is a public authority.

The financial information referred to in paragraph 1 points 9) and 10) of this Article shall be entered in the Register within 15 days of the day of the day the decision on the allocation of funds was made.

The information on average circulation referred to in paragraph 1 point 11) of this Article for the previous calendar year shall be entered in the Register by 31 March of the current year.

Registered and/or published information about the physical entity shall not be available to the public, with the exception the person's full name.

Article 40 - Changes in Registered Information and Documents

Changes in registered information shall be entered in the Register within 15 days of the day the change occurred.

Article 41 - Deletion of Media from the Register

A medium shall be deleted from the Register following the publisher's notice.

The registrar, acting in official capacity, shall delete the medium from the Register:

- 1) Based on a decision of the responsible authority referred to in Article 47 hereof*
- 2) Following the deletion of the publisher from the register where he was entered*
- 3) For any other reason prescribed under a special law.*

Article 42 - Decision on Registration

The decision of the registrar who keeps the Register (hereinafter: registrar) is final and an administrative dispute may not be initiated against it.

Article 43 - Registration Documents

The ministry responsible for the public information sector shall prescribe the documents to be submitted when registering a medium in the Media Register.

Article 44 - Consequences of Failure to Register

The Republic of Serbia, Autonomous Province and a local self-government unit, as well as an institution, a company or another legal entity whose majority shareholder is the state or which is entirely or predominantly funded from public revenue, may not co-finance projects of or in any other way allocate state aid to a medium or a publisher not entered in the Register.

The Republic of Serbia, Autonomous Province and a local self-government unit, or an institution, company or another legal entity whose majority shareholder is the state or which is entirely or predominantly funded from public revenue may not advertise in or use other services of the media referred to in paragraph 1 of this Article.

Article 45 - Prohibition of Violation of Media Pluralism

In order to prevent the occurrence or strengthening of a predominant influence in the public information sector – which considerably restricts media pluralism – it is forbidden to merge the following:

- *Founding and management rights of two or more publishers of the daily newspapers publishing information from all areas of social life whose total annual circulation exceeds 50% of sold or in another way realised newspaper circulation on the territory of the Republic of Serbia in a calendar year preceding the year of merging;*
- *Founding or managerial rights of two or more publishers that provide audio and/or audiovisual services – if the ratings shares of these publishers in the calendar year preceding the merger would, when combined, exceed 35% of the total combined ratings of all publishers that provide services within their zone of coverage in the said year.*

Merging of founding and/or management rights, means having a decisive influence on how the business is run in two or more publishers, especially in the capacity of controlling (parent) company, or controlling member or shareholder, based on the property or other ownership rights pertaining to a property or part thereof, based on the rights stemming from a contract, agreement or securities, based on claims or negotiable instruments or in accordance with business practice.

Paragraphs 1 and 2 of this Article are without prejudice to the provisions of the law governing protection of competition.

Article 46

It is forbidden to acquire over 50 % of share in the authorised share capital between a publisher of a daily newspaper that publishes information from all areas of social life whose average realised circulation exceeds 50,000 copies a year, and a publisher that provides audio or audiovisual media services.

A person that, apart from the activity of media publishing, also deals in the distribution of media content shall be obligated to carry out their media publishing activities through an affiliated legal entity.

Affiliated legal entities within the meaning of this law are the persons that are affiliated in such a way so that one or more of them have the possibility of defining influence on the management of operations of the other legal entity or other legal entities, and especially influence that arises from:

- 1) the role of controlling (parent) company, i.e., controlling member or shareholder, independently or through joint activity, according to the rules on affiliated companies within the meaning of the law that governs the positions of companies;*
- 2) ownership or other kind of rights to property or part of property of another legal entity;*
- 3) a contract, agreement, or ownership rights to securities;*

4) accounts receivable, security means, or business practice terms whose holder is or that are determined by a controlled person.

Article 47 - Identifying a Threat to Media Pluralism

A threat to media pluralism in case of printed media shall be identified by the ministry responsible for information, and if there is merging or cross-acquisition of shares, where at least one electronic medium is involved, the threat shall be identified by an independent regulatory body, in accordance with the law regulating electronic media.

The ministry responsible for information shall initiate the procedure referred to in paragraph 1 of this Article following a report of an interested party.

Where the ministry referred to in paragraph 2 of this Article, has established that media pluralism has been threatened, it shall notify the publisher about it and order that proof of the actions taken in order to remove the causes of threat to media pluralism be submitted within six months of the day of receipt of the notification.

The ministry referred to in paragraph 2 of this Article, acting in official capacity, shall inform the Registrar about the notification issued to the publisher.

If the publisher of a printed media fails to act in accordance with the notification referred to in paragraph 3 of this Article, the Registrar shall, in accordance with the decision of the ministry, delete the medium in question from the Register.

Law on Electronic Media

Article 103 - Establishing the existence of violation of media pluralism

The violation of media pluralism envisaged by the provisions of the law governing public information and media (in the case of unifying the founding or the management rights of two or more publishers of electronic media, or cross acquisition of the share whose participant is at least one electronic medium) shall be determined by the Regulator, by the application of an interested party or ex officio.

If the Regulator determines the existence of violations of media pluralism, s/he shall warn the holder of the licence for the provision of media services and instruct them to, within six months from the date of receipt of the notice, submit evidence that his/her acts ended the practice which led to the violation of media pluralism.

The Regulator shall issue ex officio a warning referred to in paragraph 3 of this Article on its web site, enter it in the Register of media services and notify the authority responsible for maintaining the Register of media.

If the holder of the licence for the provision of media services does not comply with the warning referred to in paragraph 2 of this Article, the Regulator shall revoke it in accordance with the provisions of this Law.

Article 104 - Issuing licences for the provision of media services and protection of media pluralism

The Regulator shall not issue a licence for the provision of media services if s/he determines that this would lead to the violation of media pluralism in terms of the law governing public information and media.

Article 105 - Report on change in the structure of share in the capital assets

In the case of any change in the ownership structure of the issued capital (changes of the founder or changes in the founder's participation in the capital), the holder of the licence for the provision of media services has to report to the Regulator in writing.

If the Regulator determines that the planned changes in the ownership structure of the capital assets could lead to the violation of media pluralism, s/he shall recommend to the holder of the licence for the provision of media services to coordinate changes in a way that would prevent this situation.

If the holder of the licence for the provision of media services does not act in accordance with the recommendation of the Regulator, which leads to cases of violating media pluralism foreseen by law, the Regulator shall revoke the licence in accordance with the provisions of this Law.

If the structure of the share in capital assets of the licence holder changes, the programme concept on the basis of which the licence was issued cannot be changed without the consent of the Regulator.

The Regulator shall specify the actions according to the reported changes in ownership structure.

Article 106 - Obligation of transfer as a measure to protect media pluralism

The Regulator periodically, at least once every three years, in the national, provincial, or specific geographic relevant market (in terms of regulations governing the protection of competition) shall establish a list of radio or television programmes that shall be transmitted by operators whose electronic communications network for distribution and broadcast media content is used by a significant number of end users as the sole or primary method for receiving media content, in order to protect the public interest and media pluralism.

In compiling the list referred to in paragraph 1 of this Article, the Regulator shall observe the principle of proportionality and transparency, bearing in mind that the obligations prescribed for the Operator shall not be unreasonable.

Request for determination the obligation of broadcast, together with the list referred to in paragraph 1 of this Article, shall be submitted to the Regulatory body in charge of electronic communications.

MORE INFORMATION

Council of Europe Programme Office in Skopje
Soravia Business Centre, Filip Vtori Makedonski, no. 3
1000 Skopje, North Macedonia
E-mail: coe.skopje@coe.int

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**This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.*

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