



Broadcasting council of the Republic of Macedonia

**MANUAL
FOR CREATING MARKET CONDITIONS FOR SUSTAINABLE
ECONOMIC GROWTH
OF THE MEDIA INDUSTRY AND FAIR COMPETITION**

Skopje, November 2012

1. For the Manual

In Article 21, paragraph 3 of the Law on Broadcasting, which determined the basic role of the Broadcasting Council, stated that the Council in exercising its statutory powers, among other things, concerns and "... economic and technological development activities".

This task of the Council is related with the need to ensure the implementation of the basic objectives of the Broadcasting Act, including "the promotion and encouragement of competition and development of broadcasting" (Article 2, paragraph 1, item 4 of the Law on Broadcasting).

The purpose of this manual is to enable more effective implementation of the legislation aimed at providing conditions for free and fair competition between the entities of the broadcasting industry and the development of the industry.

2. Specificity of the broadcasting industry

Specificity of the broadcasting industry compared to other industries due to the fact that media services do not constitute ordinary goods that are sold in the market, but they greatly affect the formation and maintenance of social values. Hence, although the underlying motive of commercial broadcasters profit, they also realize and objectives of public interest and its operations are required to meet the set of obligations in terms of program content broadcast.

Therefore, the broadcast media are subject to dual regulation:

- (1) in terms of content in order to ensure the achievement of certain objectives in the public interest, to guarantee the editorial independence of the media and to ensure pluralism and diversity of content, and
- (2) in terms of ensuring free and fair competition or the effective functioning of market mechanisms.

These European standards are implemented in the legislation of the Republic of Macedonia, particularly in the Law on Broadcasting (Official Gazette br.100/2005) and the Law on Protection of Competition (Official Gazette of RM no. 145 / 10 and 136/11). Broadcasting Act contains measures and mechanisms to prevent illegal media concentration in order to prevent excessive influence of one subject on public opinion, and the Law on Protection of Competition contains a range of measures to prevent media mergers and market actions that can distort competition.

3. Defining media market

The report prepared in November 2002 for the Department of Media to Directorate-General for Competition of the European Commission states that "market definition is a tool by which are identified and defined the boundaries of competition between companies", whose main objective is " systematic way to identify competing constraints faced by companies operating in that market."¹

Starting from European Commission experiences to define the relevant market², the same approach can be applied to market and media in the Republic of Macedonia. In this definition, it is started from two aspects: in terms of product and in terms of geographic area.

In the Law on Protection of Competition (Official Gazette to RM 145/10 and 136/11) these terms are defined as follows:

- "**Relevant market**" is a relevant product market and relevant geographic market,

¹ Market Definition in the Media Sector - Economic Issues , Report by Europe Economics for the European Commission, DG Competition, November 2002, http://www.reckon.co.uk/open/Market_definition_in_the_media_sector

² http://ec.europa.eu/comm/competition/antitrust/relevma_en.html

- **"Relevant product market"** is a market for all goods and / or services which are regarded as interchangeable or substitutable by the consumer, according to their characteristics, their prices and their intended use,

- **"Relevant geographic market"** is a market area in which the concerned undertakers are involved in the supply and demand of goods and / or services, in which the conditions of competition are sufficiently homogeneous and can be distinguished from neighbouring areas, according to conditions of competition which are significantly different in those areas,

According to this definition, the relevant market is a combination product market and geographic market³. Hence, from the point of view of the product in the broadcasting sector in the Republic of Macedonia can be distinguished two relevant markets: market radio and television program services market, in terms of geographical area of coverage of program services on television and radio market vary market, state, regional and local level.

The broadcasting industry has a range of features that have to be taken into account because of the important implications they have in the process of defining markets⁴:

(1) First, the cost structure in the media industry often involves economies of scale, as on the level of production of content also on distribution level. For example, once created, the media content can still be additionally supplied to new users without new production costs. This is the fundamental economic characteristics of the media sector. Therefore, the economy of scale is an essential feature of media markets: the more consumers consume content so reduces the average cost of production of that content;

(2) The second feature of the media sector is that many companies operate in several mutually related markets. For example, a TV provides services to viewers and advertisers, that is what she sells to advertisers is not advertising time but viewers who are their potential customers. Her success in the first market is a prerequisite for the success of the latter.

(3) The media industries are often characterized by complex supply chains that involve a number of production stages (eg, broadcasting transmissions or recordings of football games includes shooting contest, packaging or processing the content, sale of broadcasting rights, access to satellite or cable distribution networks, access to software platforms etc.);

Defining the markets to which the contents are freely delivered to users and where market participants are competing for advertising has its own specifics which have to be taken into account⁵. Commercial broadcasters offer their services to the two types of markets: the market viewers / listeners and advertising market. What the advertiser actually buys from the owner of the program service is not just "time for publicity", but access to a specific audience. The specifics of individual authors emphasize the following: "Their business consists of producing audiences. This audience or the way how to get to it is sold to advertisers. The product on TV channel is measured by dimensions "people" and "time."⁶ "In fact, when people see a commercial television station or listen commercial radio at the same time the process of production and consumption process take place.

4. Pluralism and control of media ownership

In order to protect media pluralism and diversity of media content on the one hand, and to provide a competitive and innovative market environment on the other hand, in Chapter III of the

³ http://ec.europa.eu/comm/competition/antitrust/relevma_en.html

⁴ See: Market Definition in the Media Sector - Economic Issues , Report by Europe Economics for the European Commission, DG Competition, November 2002, .7

⁵ See Market Definition in the Media Sector - Economic Issues , Report by Europe Economics for the European Commission, DG Competition, November 2002, page 37

⁶ Owen and Wildman, S (1992) Video Economics, London: Harvard University Press, page 3

Law on Broadcasting control measures for broadcasters ownership and for determining illegal media concentration are included. Taking into account the various forms of capital integration in the broadcasting and other sectors, these measures can be related to participation in the ownership control of broadcasters and other companies, as well as the so-called thresholds broadcasters' share in advertising revenues (advertising cake), share ratings in the level of coverage of the general population.

Broadcasting Law allows horizontal integration, but provides restrictions on participation in the share capital, as well as in terms of number of broadcasters that a natural or legal person may possess. Namely, in accordance with paragraphs 1 and 2 of Article 14 of the Law on Broadcasting, a natural or legal person can simultaneously participate in the ownership of up to five broadcasters, including: a broadcasting license to broadcast on the state level, another broadcaster who has a license to broadcast on the state level, but not more than 50% of the capital of such entity or 50% of the right to decide, no more than one broadcaster who has permission to broadcast regional level and no more than two broadcasters who have licenses to broadcast local level, where these areas are distant.

According to paragraph 3 of the same Article, the natural or legal person, the majority partner, shareholder or related person, the broadcaster who has permission to broadcast on the regional level, it may be the founder of no more than one broadcaster who has a license for broadcasting activities at the regional level, in the distant area and at most two broadcasters who have licenses to broadcast on the local level, where these areas are distant.

According to paragraph 4 of Article 14, a natural or legal person, may occur simultaneously as the founder of a maximum of three broadcasters that broadcast locally, but distant areas.

In Article 17 of the Law are provided thresholds of participation of broadcasters in advertising revenues, the total audience / rating and coverage of the population, over which a particular merger will be considered illegal media concentration. More specifically, the illegal media concentration is considered to exist when broadcasters are subject to the merger are gaining a dominant position and when:

- Merger of capital, leading broadcasters in a dominant position on the advertising market, ie the merger of their share in total advertising time sales is over 30 percent;
- Merger of the capital, leads the broadcasters in a dominant position in the formation of public opinion, particularly proportion in viewership / rating is more than 40 percent;
- With capital merger broadcasters on regional and local level achieved coverage to a maximum of 50 percent of the population of the Republic of Macedonia.

In Article 13 of the Law on Broadcasting as related activities, ie activities whose connection creates illegal media concentration in relation to the vertical integration of certain advertising, film production and distribution of audiovisual works and telecommunication services. Broadcaster or the founder of a broadcaster must not participate in the equity of companies that are registered for these activities.

In terms of integrating capital broadcasters with print media, the restriction applies only to daily newspapers, that neither the broadcaster nor its founder can participate in the ownership of the company in the field of press that publishes daily. As far as the diagonal integration between television and radio sector, subject to the same restrictions as in the horizontal integration, defined in Article 14 of the Law.

The law establishes and other activities inconsistent with performance Broadcasting. Namely, in terms of this Act is deemed that illegal media concentration exists when a broadcaster or founder broadcaster participate in the share capital of the company for market research and public opinion company, conducting investigation and security activities, as well as the news agency.

Using the unique identification numbers of natural and legal persons who appear as founders, as well as the unique identification numbers of managers broadcasters, Internet Broadcasting Council checks in the distribution system of the Central Registry of RM that other companies these persons appear as founders.

If you conclude that created illegal media concentration in accordance with the provisions of Article 15, paragraph 2, the Council shall order the broadcaster within a period not exceeding three months from the date of determination of the existence of illegal media concentration, to align its operations with the provisions of the Broadcasting.

If the broadcaster does not comply with paragraph 2 of this Article, the Council shall proceed to revoke the license for broadcasting.

According with definition given in "Independent study on indicators for media pluralism in the Member States - to the risk-based approach" to European Commission from July 2009, "pluralism and control of media ownership refers to the existence of media and media platforms that are owned or controlled by a multitude of independent and autonomous actors; it involves a multitude of actors at the level of media production, media supply and distribution media (ie diversity of media sources, media, suppliers and distribution platforms). "

Pluralism and control of media ownership, according to this study represent only one of the six areas (the other five are: basic prerequisites, pluralism of media types and genres, political pluralism, cultural pluralism and geographic pluralism) that certain indicators against which will be evaluated media pluralism.

In Article 13 of the Broadcasting Law, advertising and publicity, film production and distribution of audiovisual works and telecommunication services are defined as related activities i.e. activities whose association creates illegal media concentration in relation to the vertical integration. The broadcaster or the founder of the broadcaster may not participate in the equity of companies that are registered for these activities.

In relation to the integration of the broadcasters' capital with the print media, the limitation refers only to daily newspapers, more specifically neither the broadcaster nor its founder can participate in the company's ownership in the field of press that publishes a daily newspaper. With regard to the diagonal integration of television and radio sector, the horizontal integration has the same restrictions, defined in Article 14 of the Law.

This Law provides and other activities that are incompatible with carrying out broadcasting activity. Namely, in the context of this Act, it is considered that illegal media concentration exists when a broadcaster or a founder of the broadcaster, participates in the share capital of the company for market research and public opinion, company for conducting investigation and security activities, as well as the Press Agency.

By using the unique identification numbers of physical and legal entities who appear as founders, as well as the unique identification numbers of the broadcaster managers, the Broadcasting Council shall verify which other companies in the Internet distribution system of the Central Registry of the Republic of Macedonia these persons appear as their founders.

In case it is stated that it has been created an illegal media concentration, in accordance with the provisions of Article 15, paragraph 2, the Council shall order the Broadcaster to coordinate his operations with the regulations of the Law on broadcasting activity, within a period no longer than three months, following the date of determination of the existence of illegal media concentration.

If the broadcaster does not comply with paragraph 2 of this Article, the broadcasting Council shall proceed to revoke his broadcasting license.

According to the definition given in the "Independent study on indicators for media pluralism in the Member states – to the risk-based approach" of the European Commission in July 2009 , "Pluralism and control of media ownership refers to the existence of media and media platforms that are owned or controlled by a multitude of independent and self-reliant actors; it involves a multitude of actors at a media production level, media offer and media distribution (i.e. diversity of media sources, media, bidders and distribution platforms)."

The pluralism and the control of media ownership, according to this study are representing only one of the six areas (the other five are: basic preconditions, pluralism of media types and genres, political pluralism, cultural pluralism and geographic pluralism) by which the media pluralism will be evaluated according to certain indicators.

Taking into account the current competences of the Council, out of the total of 10 fields of risk in this area, only those indicators for pluralism and the control of ownership regarding the broadcaster are listed below.

Field of risk	Indicator
High ownership concentration in terrestrial TV stations	Ownership concentration in terrestrial television stations (horizontal)
	Audience concentration in terrestrial television
	Regulatory guarantees against high concentration of ownership in the terrestrial TV stations
High concentration of ownership in radio stations	Ownership concentration in radio stations (horizontal)
	Audience concentration in radio stations
	Regulatory guarantees against high concentration of ownership in radio stations
High concentration of ownership in cable / satellite TV	Concentration of ownership in cable / satellite TV (horizontal)
	Audience concentration in Cable / satellite TV
	Regulatory guarantees against high concentration of ownership in cable / satellite TV
High concentration of cross-media ownership (diagonal)	Number of sectors in which the 8 most important companies / owners are active
	Regulatory guarantees against high concentration of ownership between/in television and radio stations
	Regulatory guarantees against high concentration of ownership between/in print media and broadcasters
High vertical concentration	Regulatory guarantees against creating bottlenecks in the distribution / networks as a result of vertical integration
	Regulatory guarantees against the high level of integration between/in advertising and media activities
Lack of transparency of the ownership structure	Regulatory guarantees for transparency of the ownership structure and / or control to the public
	Regulatory guarantees for transparency of the ownership structure and / or regulatory control

5. Ruining competition by means of forbidden contracts, decisions and joint venture behavior

As the Law on Protection of Competition (Official gazette of the Republic of Macedonia no. 145/10) states, its main purpose is to assure fair home market competition with the aim of enhancing financial and consumer welfare. This Law regulates forbidden patterns of constraining or ruining competition, actions and procedures concerning competition constraints.

As the Law on Protection of Competition defines:

- **“cartels”** are contracts and decisions and/or joint venture behavior among two or more companies whose main aim is the coordination of their behavior as rivals on the market and/or influencing rivals relevant patterns, mostly by means of fixing prices, or other terms of trade, limiting production and establishing selling quotas, market and tenders sharing, restraining the import/export and/or anti-rival behavior towards other companies rivals to cartel companies,

- **“joint venture behavior”** is the resulting coordinate behavior among two or more companies, with no concluded agreement among them, which leads to intended replacing rivalry environment with resulting actual collaboration among companies. Direct or indirect contacts of companies can lead to joint venture behavior aiming to or resulting in behavioral influence.

Pursuant to Article 7 of the Law “all agreements concluded between companies, concerning companies’ decisions on joint venture behavior aiming to or resulting in ruining competition are forbidden, with special attention paid to:

- direct or indirect price fixing or other terms of trade;
- restraining or controlling production, market, technical development or investment;
- sharing market or market resources;
- implementation of different terms and conditions on same or similar legal issues with other trade partners, thus putting them in less favorable trading position or
- conditioning contracts concluding by means of accepting additional liabilities and obligations, which by nature or regarding trade principles do not relate to the subject of the contract”.

In 2007, the Broadcasting Council has signed a Memorandum of Collaboration with the Commission for Protection of Competition assuring close and effective mutual collaboration for augmenting efficiency in competencies achievement of both authorities in the field of competition protection in broadcasting. Both parties have agreed on collaboration by means of:

- Constant exchange of data and information
- Mutual informing of initiation procedures
- Preparation of expert opinion upon request and for the needs of the other party of the Memorandum
- Constant direct contacts between the parties of the Memorandum
- Constant expert training of the parties of the Memorandum in the field of protection of competition and related fields through exchange of notifications for seminars, conferences etc., by mutual invitation to seminars and other forms of educational programs organized by one of the parties of the Memorandum, as well as participating in educational programs organized by a third party or organization for the benefit of one of the parties
- Coordination of activities related to the amendments of the existing legal provisions of mutual interest.

When there is no formal ownership relation, and the Broadcasting Council is uncertain of the existence of market joint ventures through forbidden contracts and/or joint venture behavior among broadcaster and companies registered in any of the activities that pursuant to the Broadcasting Law are irrelevant to broadcasting (advertising or publicity, film production, distribution of audiovisuals, telecommunication services, public opinion and market research companies, companies conducting investigation and security activities or press company which publishes daily newspaper or news agency), the Council shall inform the Commission for Protection of Competition and administer necessary information and data so that Commission could act upon Law regulation.

6. Application of rules for awarding state aid

In order to establish a legal basis and rules for communication, approval, awarding and monitoring of state aid, with the purpose of implementation of principles of market economy, maintaining fair competition and implementation of commitments undertaken by international

agreements ratified by the Republic of Macedonia containing state aid provisions, in 2010 in Macedonia has been pronounced a Law on State Aid (Official gazette of the Republic of Macedonia no. 145/2010), which regulates forms of state aid, general terms and rules of communicating upon state aid and assessment and supervision of state aid awarding.

Pursuant to Article 5 of the Law, state aid is *“Any State aid, irrespectively whether it is granted under an aid scheme or as an individual aid award, which distorts or threatens to distort competition by favoring certain companies and undertakings or certain products or services, which could not be possible without the granted state aid.”*

The following article defines subjects (state aid provider and beneficiary) as follows:

- **State aid provider** is: Government of the Republic of Macedonia, state administrative organs, units of local self-government and other organ of institution providing or planning to provide state aid.

- **State aid beneficiary** is an undertaking which participates in products and/or services trade, while using some form of state aid.

State aid granting provisions are due to apply for public broadcasting service funding.⁷ Hence, it's necessary to precisely define functions and responsibilities of public broadcaster and monitoring of their fulfillment. On the one hand, the public broadcaster obtains public funds, and, on the other it acts as rival company to commercial broadcasters on the market in terms of advertising time sale, purchase of rights to broadcasting programs, etc. Therefore, public funds should be awarded thoughtfully in order to prevent overcompensation, thus creating financial advantage of the public company because their prime goal is to maintain fulfillment of public interest goals and not to become a tool for ruining competition. Having in mind that public broadcaster, apart from realizing activities of public interest (funded by commercial income) it's necessary to have separate book accounts for the two separate activities to assure monitoring and prevention of the possible overcompensation.

Alike, it's essential to apply these provisions for all advertising videos whose broadcasting is funded by public funds irrespectively whether they are public or commercial broadcasters. In addition, allocation of transparent and clear criteria is crucial for providing greater accessibility to the target audience to which the campaigns are intended and to take into consideration wider social media community interests.

Pursuant to Article 10 of the State Aid Law, competent authority for education and monitoring of any form of State aid is the Commission for Protection of Competition.

7. Regular Council activities for competition protection

In regards to promotion and protection of competition on the market, Broadcasting Council shall contribute within its legal liabilities framework by monitoring the fulfillment of the obligations of the Law and consequently imposing sanctions on those broadcasters that fail to meet these liabilities and obligations.

Council shall continually monitor market situation and take actions for preventing unfair competition by broadcasting program content with no copyright regulated by broadcasters as well as broadcasting and rebroadcasting foreign channels, also, with no copyright regulated by operators of public communication networks.

When issuing new broadcasting licenses for broadcasting activity, it's essential to set clear, transparent and concise conditions for candidates to fulfill. Possibilities for new subjects to enter market should be open, but before awarding broadcasting licenses Council should meticulously confirm all necessary technical and financial capacity, personnel and programming requirements fulfillment of applicants, as well as quality content offered increasing pluralism and quality enrichment of program scheme confirmation for the purpose of meeting audience needs, as well as contributing to competition promotion on the market.

⁷ EC statement of the application of state aid provisions in the public broadcaster

Council should continue preparing regular annual broadcasting market analysis, and resulting data and conclusions arising from stated analysis should serve as a framework in designing its regulatory licensing policy, competition promotion and protection, assuming actions for consolidation and market development enhancing.

**Broadcasting Council
President**

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