

## **Telecommunication , Broadcasting and Tajikistan's WTO Commitments**

Conference Organized by the Ministry of Economic Development and Trade and the OSCE Office in Tajikistan  
(OiT)

# Telecommunication and Broadcasting Regulation in Europe

- A need for convergent Regulation?

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# Agenda

1. Introduction
2. Converging Media
3. A need for regulation
4. Independent regulation
5. Media Convergence = Convergent Regulator?
6. Conclusion

# 1. Introduction

- The Media Authority of North-Rhine Westphalia (LfM)
- Responsible for regulatory issues concerning private broadcasting in the Federal State of North-Rhine Westphalia
- Financed from broadcasting fees
- Legal entity under public law

## Tasks:

- Authorisation / Licensing
- Monitoring / Controlling
- Information / Consultation
- Promotion / Qualification
- Research / Support

## 2. Converging Media

### a. Technical perspective

- ⇒ A progressive merger of different technologies which can be used via one single device (e.g. Smartphone, Connected TV, etc.)
- ⇒ The audiovisual and the telecommunications sector (electronic communications) are extremely intertwined

### b. Consumer perspective

- ⇒ New forms of communication (social networks, Video-on-Demand, Voice over IP, etc.)
- ⇒ The consumer no longer consumes content but also creates content (e.g. youtube, blogs, etc)

### c. Legal perspective

- ⇒ Different regulated areas on one screen (linear vs. non-linear content)
- ⇒ Data protection issues

# 3. A need for regulation

- Telecommunications sector

- In the Telecommunications sector the need for regulation is mainly driven by the aim of creating/securing a competitive market
- The reference paper of the WTO regards a regulatory entity as a „(...) crucial factor in the liberalisation of telecommunications services (...)“<sup>1</sup>
- => The regulator should act as a referee

- Legal sources:

WTO Reference Paper, EU Framework Directive<sup>2</sup> , etc.

<sup>1</sup>“Exploring the Reference Paper on Regulatory principles“ by Boutheina Guermazi, [http://www.wto.org/english/tratop\\_E/serv.../guermazi\\_referencepaper.doc](http://www.wto.org/english/tratop_E/serv.../guermazi_referencepaper.doc)

<sup>2</sup> 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)

### 3. A need for regulation

- Audiovisual services sector

- Need for regulation in the audiovisual services sector is mainly driven by the aim of securing media pluralism, freedom of expression, but also by securing/creating a competitive market.
- Moreover, the audiovisual media sector needs adequate access to spectrum as it is a finite resource
- Legal sources:

Recommendation Rec(2000)23 Committee of Ministers to Member States (Council of Europe)<sup>3</sup>, Art. 10 ECHR (European Convention on Human Rights)<sup>4</sup>, Art. 19 International Covenant on Civil and Political Rights<sup>5</sup>, Recital 5 of the AVMS (EU Audiovisual Media Services Directive)<sup>6</sup>, etc.

<sup>3</sup> [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec\(2000\)023%26expmem\\_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec(2000)023%26expmem_EN.asp)

<sup>4</sup> [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>5</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

# 3. A need for regulation

- Instruments for regulatory authorities in both sectors:
- Legal basis to:
  - grant licences
  - impose sanctions
  - be involved in the planning and allocation of national spectrum
  - resolve disputes between different parties

## 4. Independent regulation

- In order to carry out the above mentioned tasks, the regulators of both sectors should be independent.
  - Every legal source that refers to the need for a regulator also stresses that this regulator should be independent!
  - => the regulator must be protected against too much influence from industry and state.
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- **Criteria of independence<sup>7</sup>** :
    - a) Financial Autonomy
    - b) Autonomy of Decision Makers
    - c) Status & Powers
    - d) Knowledge

<sup>7</sup>EU Study: INDIREG Indicators for independence and efficient functioning of audiovisual media services regulatory bodies - a study conducted on behalf of the European Commission, [http://ec.europa.eu/avpolicy/docs/library/studies/regulators/final\\_report.pdf](http://ec.europa.eu/avpolicy/docs/library/studies/regulators/final_report.pdf)



# 5. Media Convergence = Convergent Regulator?

- **Different approaches across Europe:**
  - Convergent Regulator responsible for Telecommunications and Broadcasting (e.g. Ofcom, UK or BAKOM, Switzerland)
  - Separated Regulators, one for Broadcasting, one for Telecommunications (e.g. Media Authorities and Federal Network Agency (BNetzA), Germany)
- **The EU calls for cooperation in both sectors**
- Establishment of BEREC (Body of European Regulators for Electronic Communications) and ERGA (European Regulators Group for Audiovisual Media Services)
- **However, the decision about the structural design of the regulator (convergent regulator, or separate entities) is up to the Member States!**

## 6. Conclusion

- We live in a convergent world in which the boundaries between content (audiovisual media services) and infrastructure (telecommunications services) are blurring
- Infrastructure as well as content both need a certain degree of regulation in order to fulfil their legal responsibilities, such as: the creation of a competitive market, or the promotion of media pluralism.
- Regulation has to be based on a stable legal basis in order to be effective
- In this context, the independence and impartiality of the regulator is essential
- Media convergence does not mean that convergent regulation is compulsory
- Regulators have to cooperate and strive for best practice solutions
- The EU sets up legal frameworks which call for cooperation between regulators

**Thank you very much for your attention!**

# Questions?

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