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Analysis and Comments

on

Draft Amendments to Law Nr. 8410, dated 30 September 1998, on "Public and Private Radio and Television in the Republic of Albania", regarding the Introduction of digital terrestrial broadcasting

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FOREWORD

The present review, commissioned jointly by the Media Division of the Council of Europe and the Office of the OSCE Representative on Freedom of the Media, aims at establishing the compatibility of the present amendments with European standards. Given that the digital switchover is a major process of change in broadcasting and general technological development, some consideration must also be given to the social and cultural issues involved in digital switchover plans.

By "European standards" will be meant primarily standards defined by the Council of Europe, derived from Article 10 from the European Convention on Human Rights, and developed further in a number of conventions, Committee of Ministers recommendations and declarations, as well as in the case-law of the European Court of Human Rights.

With a view to Albania's future accession negotiations with the European Union, also some EU criteria will be applied.

PURPOSE

Law No. 8410 "On Public and Private Radio and Television in The Republic of Albania" seems to assume a static situation from a technological point of view. Given that its provisions refer to traditional broadcasting technology, it certainly fails to provide a legal framework for the introduction of digital terrestrial broadcasting, its amendment is clearly necessary.

The present draft amendments are designed to do that and also to improve or complement some other provisions.

GENERAL ASSESSMENT

The amendments constitute a good starting point for the development of a legal framework for digital terrestrial broadcasting. However, they fail to regulate many aspects of the system (e.g. conditional access systems, electronic programme guides, technical standards and interoperability of equipment, etc.) and leave too many key decisions (e.g. the composition of multiplexes) to market forces.

No mention is made in the amendments of public service broadcasting and its role in the digital switchover. This is a serious omission and should be rectified, along other issues mentioned in the General Comments below.

Unless this is done, the amended law will promote a purely market-led process of digital switchover which may:

- Be unsuccessful and incomplete, as commercial operators find that not enough money can be made (in part due to the unlimited period of simulcasting, which is not conducive to a successful switchover);
- Reduce prospects for the achievement of public policy goals in digital broadcasting.

A Council of Europe report (Media diversity in Europe. Report prepared by the Advisory Panel to the CDMM on media concentrations, pluralism and diversity questions) H/APMD (2003) 1. Media Division. Directorate General of Human Rights
Strasbourg, December 2002) states:

> Many European governments are committed to the introduction of DTT, in large part due to its democratic potential and opportunities for more diversity. Although countries are at different stages with the deployment of this new technology, most are moving in this direction. One of the key elements which governments recognise is needed for the deployment of DTT is an effective and well-managed digital switch-over policy.

Both this law and other plans and strategies developed in Albania need to be oriented to creating and executing an effective and well-managed switchover policy. From this point of view, these amendments require improvement and extension, as suggested below.

GENERAL COMMENTS

1.

Recommendation (2003) 9 of the Council of Europe Committee of Ministers on Measures to Promote the Democratic and Social Contribution of Digital Broadcasting recommends that member states:

> *a. create adequate legal and economic conditions for the development of digital broadcasting that guarantee the pluralism of broadcasting services and public access to an enlarged choice and variety of quality programmes, including the maintenance and, where possible, extension of the availability of transfrontier services;*
>
> *b. protect and, if necessary, take positive measures to safeguard and promote media pluralism, in order to counterbalance the increasing concentration in this sector;*

The present amendments are a positive contribution to the achievement of those goals. They create a basic legal framework for the initiation of the digital switchover, at least so far as licensing procedures for digital networks and programme services are concerned, and they extend to this new field safeguards against excessive media concentrations.

However, the amendments provide no response to the other main recommendations of the CoE Committee of Ministers:

> *c. be particularly vigilant to ensure respect for the protection of minors and human dignity and the non-incitement to violence and hatred in the digital environment, which provides access to a wide variety of content;*
>
> *d. prepare the public for the new digital environment, notably by encouraging the setting-up of a scheme for adequate information on and training in the use of digital equipment and new services;*
>
> *e. guarantee that public service broadcasting, as an essential factor for the cohesion of democratic societies, is maintained in the new digital environment by ensuring universal access by individuals to the programmes of public service broadcasters and giving it inter alia a central role in the transition to terrestrial digital broadcasting;*
>
> *f. reaffirm the remit of public service broadcasting, adapting if necessary its means to the new digital environment, with respect for the relevant basic principles set out in previous Council of Europe texts, while establishing the financial, technical and other conditions that will enable it to fulfil that remit as well as possible.*

2.

The Recommendation also says:

> *4. When awarding digital broadcasting licences, the relevant public authorities should ensure that the services on offer are many and varied, and encourage the establishment of regional/local services that meet the public's expectations at these levels.*

The amendments create a new category of regional licences and stations (which has been missing from the law) and provide for licences to be awarded also to local digital programme services. In that sense, the amendments follow the recommendation of the CoE Committee of Ministers.

3.

At the same time, the amendments fail to address many issues which need to be regulated to ensure a successful process of switchover. They are partly listed in the Appendix to Recommendation (2003) 9 of the Council of Europe Committee of Ministers on Measures to Promote the Democratic and Social Contribution of Digital Broadcasting:

> 1. *In order to guarantee the public a wide range of programme content, member states should take measures aimed at a high degree of*

interoperability and compatibility of reception, decoding and decrypting equipment and of systems granting access to digital broadcasting services and related interactive services.

2. *With a view to bringing forward the date of the digital switch-over, member states should facilitate the public's change over to digital broadcasting. For example, they could encourage the industry to make available to the public a variety of decoding devices, including a basic decoding apparatus giving access to a range of minimum services.*

3. *Specific measures should be taken to improve access by people with hearing and visual disabilities to digital broadcasting services and their related content.*

4. *In order to help the public find its bearings in the new digital environment, member states should encourage broadcasters to produce information on their services for electronic programme guides (EPGs), as well as encourage manufacturers of digital set-top-boxes to include functions allowing information concerning programmes and services to be displayed, so as to give television viewers the basic information they need to make an informed choice among the myriad of programmes/channels and services available to them via digital platforms.*

5. *Without prejudice to complementary EPGs provided by broadcasters to present their own programming offer, providers of EPGs should propose to all service providers who so request, under fair, reasonable and non-discriminatory terms, a position on the EPGs which they operate. However, public service channels should be prominently displayed and easy to access. Providers of EPGs should also offer a clear classification of programme services by subject, genres, content and so on.*

6. *EPGs and digital decoders should be designed to be user-friendly for consumers, notably allowing them to decide on the display of programmes and services according to their preference. Particular attention should be paid to the specific needs of people with disabilities or people who lack knowledge of foreign languages. The use of EPGs as an advertising medium should prejudice neither their functionalities nor the integrity of programmes.*

The amendments include some regulation of multiplexes, but make no mention of conditional access systems and electronic programme guides. This means that important aspects of the system of digital terrestrial broadcasting are completely unregulated.

4.

The digital switchover strategy should acknowledge the special role and needs of public service broadcasting in the process. This is pointed out in the Appendix to Recommendation (2003) 9 of the Council of Europe Committee of Ministers on Measures to Promote the Democratic and Social Contribution of Digital Broadcasting:

a. Remit of public service broadcasting

19. Faced with the challenges linked to the arrival of digital technologies, public service broadcasting should preserve its special social remit, including a basic general service that offers news, educational, cultural and entertainment programmes aimed at different categories of the public. Member states should create the financial, technical and other conditions required to enable public service broadcasters to fulfil this remit in the best manner while adapting to the new digital environment. In this respect, the means to fulfil the public service remit may include the provision of new specialised channels, for example in the field of information, education and culture, and of new interactive services, for example EPGs and programme-related on-line services. Public service broadcasters should play a central role in the transition process to digital terrestrial broadcasting.

b. Universal access to public service broadcasting

20. Universality is fundamental for the development of public service broadcasting in the digital era. Member states should therefore make sure that the legal, economic and technical conditions are created to enable public service broadcasters to be present on the different digital platforms (cable, satellite, terrestrial) with diverse quality programmes and services that are capable of uniting society, particularly given the risk of fragmentation of the audience as a result of the diversification and specialisation of the programmes on offer.

21. In this connection, given the diversification of digital platforms, the must-carry rule should be applied for the benefit of public service broadcasters as far as reasonably possible in order to guarantee the accessibility of their services and programmes via these platforms.

c. Financing public service broadcasting

22. In the new technological context, without a secure and appropriate financing framework, the reach of public service broadcasters and the scale of their contribution to society may diminish. Faced with increases in the cost of acquiring, producing and storing programmes, and sometimes broadcasting costs, member states should give public service broadcasters the possibility of having access to the necessary financial means to fulfil their remit.

All these issues (and especially must-carry rules for PSB services, extension of the remit of PSB to new technologies and adequate financing to cover both running costs and additional costs incurred in the process of digitization) should be addressed in the amendments.

DETAILED COMMENTS

No comments are made with regard to articles which do not raise issues requiring additional discussion.

Article 1

This article amends Art. 3 by deleting two phrases:

That "radio-television activity" is conduced in conformity i.a. "with the international acts ratified by the Republic of Albania",

And that "In order to exercise a private radio-television activity, any natural or legal person is issued a license".

Deletion of the second phrase is consistent with changes in the licensing system in Art. 19, which will be discussed below. However, deletion of the reference to international acts ratified by the Republic of Albania is more difficult to understand. After all, Article 5 of the Constitution of Albania states that "*The Republic of Albania applies international law that is binding upon it*". Perhaps the reason is that Art. 3 also mentions "other legal provisions effective in the Republic of Albania" and that – in the light of Article 5 of the Constitution – could also be said to cover international agreements. However, this phrase was included in Art. 3 also in the original law, alongside the reference to international acts ratified by Albania.

In order to prevent any misunderstanding, this reference to international agreements binding on Albania should be reinstated.

Article 2

This article adds regional broadcasters to the list of broadcasters whose news programmes are monitored by NCRT. This is consistent with the addition of a new category of regional broadcasters in Art. 19, alongside national and local broadcasters.

Article 3

The main change introduced by this amendment in Article 10 consists in the replacement of the following sentence "*The NCRT administration's organizational structure comprises departments and directories*" by this text "*The employees of the management of the National Council of Radio and Television are part of the civil service of the Republic of Albania. Civil service management, as well as the regulation of the working judicial relationships between civil servants and the NCRT are regulated according to law no. 8549, dated 11.11.1999 'Civil Servant Status'*".

The article then goes on to say, as previously, "*Management administration, employment qualifications, and salary structures shall all be defined by the NCRT in accordance with any such models as may have been established for other similar independent institutions*".

Though according to Art. 8 the NCRT is to "act independently", its real independence is very much in doubt[1]. Repetition of the word in Article 10 does not change this situation, all the more so that the employees of the NCRT are now to be given the status of civil servants, potentially making them all the more subordinated to the government.

More effective safeguards of the NCRT's independence should be built into the law, as called for in Recommendation (2000) 23 of the Council of Europe Committee of Ministers on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector.

Article 4

Article 11 is amended by the addition of the following provision: "*The annual fees for licenses for broadcasting programs shall be respectively in the amount of 50% of the fees for digital radio and television broadcasting*".

This amendment, therefore, amounts to the introduction of a new fee to be paid by broadcasters.

Care should be taken not to impose excessive financial burdens on broadcasters which would deprive them of funds needed to offer comprehensive, high-quality programme services to the public.

Article 5

This article amends Article 19 so that it covers "licenses for establishing and using radio-television networks" (instead of licences to broadcast, as before) and by revising the first sentence to read as follows: "*Licenses for radio-television broadcasting (network license) serve as permission to install technical equipment and establish and maintain a (analogue or digital) network*"**.**

It must be noted that this is not compatible with the general authorisation regime[2] for the provision of electronic communications networks and services, introduced by Directive 2002/20/EC of the European Parliament and of the Council of

[1] See the present author's Analysis and Review of Law No. 8410 of 1998 (As Amended) On Public And Private Radio And Television In The Republic Of Albania, commissioned by the Office of the OSCE Representative on Freedom of the Media (August 2004).

[2] Art. 2.2 (a) of the directive defines general authorisation as "*a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive*".

7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive).

Article 3.2 of the Directive states: "*The provision of electronic communications networks or the provision of electronic communications services may, without prejudice to the specific obligations referred to in Article 6(2) or rights of use referred to in Article 5, only be subject to a general authorisation. The undertaking concerned may be required to submit a notification but may not be required to obtain an explicit decision or any other administrative act by the national regulatory authority before exercising the rights stemming from the authorisation. Upon notification, when required, an undertaking may begin activity, where necessary subject to the provisions on rights of use in Articles 5, 6 and 7*".

This means that Article 19, if amended as proposed here, will be found to violate the provisions of the Directive.

It would be a different matter if the "licence" referred to in this article meant a decision to grant the use of a frequency or frequencies and/or the right to install facilities. Here a decision of the appropriate authority is of course required, but the provision of a service with the use of the frequency or facilities cannot be licensed under EU law.

Article 6

Addition of Article 19/1 is proposed, to deal with licences to broadcast (provide a content service).

Two aspects of this provision merit attention.

1.

It provides for two methods of licensing programme services: each programme service separately, or the whole package of services (probably this could refer to all the services offered on one multiplex) together.

This matter must be considered in a broader context, also encompassing the projected role of the programme packager (e.g. multiplex operator). Depending on the legal and administrative solution adopted, that role might be passive or active. In the first instance, it is the regulatory body which determines the composition of the package (e.g. in order to ensure such criteria as freedom of expression, accessibility, pluralism, cultural diversity etc.) are met. In the second instance, the packager determines the composition of the package – and then obtains a licence for the package. While different methods are applied, the first method is more widespread, giving the regulatory authority a better chance to ensure implementation of public policy goals in digital broadcasting. Moreover, the method of licensing whole packages creates the need to amend the licence for the whole package when one programme service is dropped from the package for whatever reason.

In the proposed amendment, the choice between the two approaches appears to be open, leaving the matter to the discretion of the regulatory authority. This deprives

market operators of legal certainty and potentially enables the regulatory authority freely to choose either method, as it sees fit. This should be avoided, so preferably the method of licensing each programme service should be chosen.

2.

The proposed amendment states: "Network operators have the right to be issued a license for broadcasting radio-television programs and vice-versa".

Again, the meaning of the term "licence" is not clear. As is pointed out in recital 20 of the preamble to the Authorisation Directive, "*The same undertaking, for example a cable operator, can offer both an electronic communications service, such as the conveyance of television signals, and services not covered under this Directive, such as the commercialisation of an offer of sound or television broadcasting content services*". In such a case, the network operator is also a programme packager, offering to the public programme services delivered to him by the original broadcaster, i.e. a physical or legal person holding a licence to broadcast.

If, however, the article means that the network operator can also be a broadcaster in this sense, then this should be considered very carefully. It is true that the merger of technical operators with content providers is now frequent throughout Europe. However, network operators should offer their services to broadcasters on a fair and non-discriminatory basis. Network operators who are also broadcasters are naturally in competition with other broadcasters. Therefore, they may be neither fair, nor non-discriminatory in choosing programme services to distribute on their network, should those services compete with their own programme offer. In short, a potential conflict of interest is created when a network operator is given a chance to be a broadcaster as well.

Some safeguards against the abuse of the network operator's position are created by proposed versions of articles 19/3, 23 and 35, but the matter should be given further consideration.

Articles 8 and 9

Article 8

Article 20, which used to deal with "General licensing provisions" now deals with "General licensing provisions for establishing and using radio or television networks". While previously it dealt with broadcasters alone, it now deals with both broadcasters and network operators. **This can sometimes create confusion and overlap with the new article 20/1 which deals with broadcasters alone.**

Regarding operators of national, regional and local networks, the amended article specifies requirements concerning them as follows:

Requirements regarding operators of national, regional and local networks

	National	Regional	Local
Legal form	Joint stock company, nominal shares, established in Albania, sole purpose: broadcasting activities	Legal persons registered in Albania, sole purpose: broadcasting activities	Legal persons registered in Albania, sole purpose: broadcasting activities
Types of licence	-	-	For a district and for a prefecture
Territorial reach	70% in 3 years, 90% in 6 years	1/3 of country's territory, coverage of 70% of that area in 2 years	Coverage of 70% of respective area in 2 years
Restrictions on share-ownership	40% of capital	1 person: no more than 1 licence	
Media concentrations restrictions (1)	1 person: no more than 20% of licences for national networks	1 person: only one licence for regional network	
Media concentrations restrictions (2)			Local operators: 1/3 of available frequency number in one point

In addition, the amended article contains the following anti-concentration measures:

Regular and special shareholders' meetings of a joint stock company, whose sole purpose is the conduct of radio-television broadcasting activities, shall be recognized only if no less than two-thirds of shareholders are present.

Any natural or legal person who holds shares in a national radio or television company shall not be permitted to hold shares, directly or indirectly, in a second national radio or television company; nor shall such a person be issued a broadcasting license for local radio or television.

A person to whom a local television broadcast license has been issued may only be granted a second local radio broadcast license.

A person to whom a local radio broadcast license has been issued may only be granted a second local television broadcast license.

Any legal person, national or foreign, who has applied for a radio or television broadcast licence, shall be prohibited from using another name in any manner.

Article 9

A new Article 20/1 is to be added, dealing with "General licensing provisions for broadcasting of radio or television programs".

It provides for two types of licenses for broadcasting of radio or television programs: for one programme service and for a package of programme services.

Regarding broadcasters of national, regional and local programme services, the amended article specifies requirements concerning them as follows:

Regarding operators of national, regional and local broadcasters

	National	**Regional**	**Local**
Legal form	Joint stock company, nominal shares, established in Albania, sole purpose: broadcasting activities	Legal persons registered in Albania, sole purpose: broadcasting activities	Legal persons registered in Albania, sole purpose: broadcasting activities
Types of licence	-	-	For a district and for a prefecture
Territorial reach	-	1/3 of territory	-
Restrictions on share-ownership	1 person: no more than 40% of shares in a broadcasting company		
Media concentrations restrictions (1)	1 person: no more than 20% of all licences to broadcast		
Media concentrations restrictions (2)	1 person: no shares in a second national and local radio or television company	1 person: no more than 20% of regional licences	1 person: no more than 1 local radio and 1 local television licence
Media concentrations restrictions (3)			Local operators: 1/3 of available frequency number in one point

In addition, Article 20/1 lays down the following requirements:

- Regular and special shareholders' meetings of a joint stock company, whose sole purpose is the conduct of radio-television activities, shall be recognized only if no less than two-thirds of shareholders are present.
- Any legal person, national or foreign, who has applied for a radio or television broadcast license, shall be prohibited from using another name in any manner.

Unless there is a mistake in translation, it is clear that the separation of provisions concerning network operators (Art. 20) and broadcasters (Art. 20/1) is not complete. Article 20 still contains anti-concentrations requirements which concern broadcasters. They are then repeated, or new ones are added in Art. 20/1. This overlap should be removed. Art. 20 should deal with network operators alone, and Art. 20/1 should deal solely with broadcasters.

Comments with regard to Art. 6 concerning two types of licences to broadcast (for each programme service separately, or for a package of programme services) apply to Art. 9 as well.

Article 10

Article 20/2 is to be added, dealing transitional arrangements during the digital switchover period and the analogue turn-off (ATO) procedure.

Transitional arrangements imply a period of simulcasting, with the same broadcasting companies providing both analogue and digital services for an indefinite period of time. The proposed article sets out the procedure for obtaining second digital licences for that purpose.

The date of ATO is to be determined separately, by law. No criteria for the determination of this date have been specified.

The provisions of this article are of crucial importance for the success of the digital switchover. Simulcasting of the same programme services in analogue and digital drives up the costs that have to be borne by broadcasters. It also uses up many additional frequencies in an unproductive manner. At the same time, the public is not motivated to invest in set-top-boxes, since it can continue receiving the same programme services via analogue transmission and television sets. This can discourage advertisers from buying advertising time on the new digital channels, as they might not achieve high audience shares.

This has been the experience of some of the countries which have adopted the same switchover strategy. Moreover, a long period of simulcasting, where it is left to broadcasters whether to apply for a digital licence or not, can mean that migration to digital may not reach critical mass any time soon. The "island" method applied by some countries, where full conversion to digital proceeds region by region, helps avoid these dangers, but at the same time requires a very disciplined process of switchover, with a clear time-table of action by all stake-holders.

A well-considered choice of the method of switchover must be made. Therefore, adoption of this law should necessarily be accompanied by the adoption of a national digital switchover strategy designed to ensure a successful switchover.

This would be in line with Recommendation (2003) 9 of the Committee of Ministers to Member States on Measures to Promote the Democratic and Social Contribution of Digital Broadcasting, which states in part:

1. Given that, from a technological point of view, the development of digital broadcasting is inevitable, it would be advantageous if, before proceeding with the transition to digital environment, member states, in consultation with the various industries involved and the public, were to draw up a well-defined strategy that would ensure a carefully thought-out transition, which would maximise its benefits and minimise its possible negative effects.

2. Such a strategy, which is particularly necessary for digital terrestrial television, should seek to promote co-operation between operators, complementarity between platforms, the interoperability of decoders, the availability of a wide variety of content, including free-to-air radio and television services, and the widest exploitation of the unique opportunities which digital technology can offer following the necessary reallocation of frequencies.

The Albanian strategy should guide the process in such a way that all the stake-holders (broadcasters, network operators, producers and suppliers of set-top-boxes and receivers, as well as of production and transmission equipment, the general public, etc.) understand the process and the time-table for its implementation, know how to adjust to particular stages of this process, and are motivated to undertake the necessary effort and expenditure at each stage.

Otherwise, there is a real danger that switchover may take a very long time, or may even be unsuccessful, with only some broadcasters and a part of the public migrating to digital, and the rest remaining in the analogue environment for the foreseeable future.

Also the criteria for ATO (including penetration of digital broadcasting, level of take-up, affordability of set-top-boxes etc.) should be announced in advance. If that is done in this law, there will not be a need to adopt a separate law, dealing with the ATO alone. The date could be determined by the NCRT in consultation with the government.

Articles 11 and 12

These articles provide for amendment of Article 23 and addition of Article 23/1, so as to regulate procedures of applying for licences to establish and use radio-television broadcasting networks on the one hand, and to broadcast on the other.

Article 23 provides that the applicant must specify the ratio between the channels to be used by the holder of a license for establishing and using networks (if he intends to apply for a programs broadcasting license) and the channels that are made available for third parties licensed for programs broadcasting. This is important in the context of remarks made in connection with Article 6 of the amendments (see above).

Article 12 creates new Article 23/1, by adding the following requirements for the content of the licence application:

1. the territory [the programme service] will cover;

2. the structure of every program or package of programs, the place that information, art, culture, entertainment, sports, children programs, advertisement, the content of some main programs and the weekly program take in this structure.

3. the ratio between broadcast time of self-produced programs and the purchased, donated or exchanged programs,

4. the commitment to respect the principle of impartiality, completeness, and pluralism of information.

5. the commitment to respect human rights in general and children and adolescents' rights in particular, as well as the commitment for not broadcasting programs forbidden by law.

6. The commitment to use and protect the Albanian language in all programs to be broadcast;

7. The commitment to respect the requirements of the law on broadcasting advertisement and sponsor messages.

On the whole, these are welcome additions. However, a requirement should also be added about serving national minorities in their languages.

Article 14

Article 25 is amended to differentiate the duration of licences to broadcast analogue and digital (national or regional/local) programme services, as follows:

- At the national level, a period of up to six years for analogue radio broadcasting and eight years for analogue television broadcasting; and for a period of up to fifteen years for digital radio-television broadcasting

- At the regional and local levels, for a period of up to three years for radio broadcasting and five years for television broadcasting <u>based on analogue terrestrial technology and on the digital technology</u>, and for a period of up to seven years for radio and television broadcasting based on digital terrestrial technology.

Unless there is a mistake in translation, the article introduces two different periods of duration for regional/local digital licences. This must be a mistake and should be corrected.

Also the phrase "for a period up to" is a cause for concern. This would appear to leave the NCRT discretionary power to determine the duration of the licence as it sees fit. The licence duration should either be fixed, or clear and justifiable criteria for varying the duration of the licence should be laid down in the law.

The article also regulates the procedure for licence renewal. It appears that the NCRT is under an obligation to renew the licence almost automatically on request, if the broadcaster has not violated the law.

This regulation might profit from further consideration. At the very least, the NCRT should also have the duty to determine whether the broadcaster fully met the obligations laid down in the licence.

Article 16

Article 34 is amended to take into consideration potential reasons for licence revocation in the digital, as well as in the analogue environment.

On the whole, the provisions are unobjectionable, except para. 6 which defines the following reason for potential licence revocation: "*changes have occurred with the license holder making it impossible to meet the conditions defined in the contract*". Given that revocation of a licence to broadcast is an extreme measure which should only be applied if absolutely necessary and on a fully justifiable basis, this particular reason is a cause for concern. It may lead to licence revocation on the basis of a subjective judgment that changes affecting the broadcaster may prevent him/her from meeting licence conditions – even before that has happened. This should be reformulated to state that persistent violation of licence terms and conditions (irrespective of the reasons for that) can offer grounds for licence revocation.

The same is true of para. 7 "*the property of the license holder is available for auction*". This can certainly serve as an indication that the licence-holder is experiencing difficulties, but if the broadcaster continues transmitting the programme service described in the licence, then the fact of property being available for auction is irrelevant. This paragraph should be deleted or reformulated.

Article 17

Article 35 is amended by the addition of new provisions, referring to changes introduced by the introduction of digital technology. Much of the new content is descriptive, but three provisions are particularly important:

Para. 7 sets the proportion of encrypted and unencrypted channels within one platform/multiplex (50%-50%). Para. 8 sets the proportion of encrypted and unencrypted programme items within the same programme service (30%-70%). Para. 9 sets the

proportion of programme services transmitted by the network operator (should the operator also be a broadcaster) and those offered by other broadcasters (50%-50%).

It is to be assumed on this basis that 70% of channels will be free-to-air, and that – in cases where the network operator is also a broadcaster – at least half the number of channels on the network must be available to other broadcasters.

On the first issue, a preference for free-to-air programme services is to be welcome, as this will help promote migration to the digital environment. Switchover strategies based on the assumption of subscription-based services have mostly proved unsuccessful. It is to be hoped that this decision is based on market analysis which shows that broadcaster will be able to cover the cost of offering digital programme services on this basis.

Also the obligation for broadcaster-network operators to leave 50% of capacity for other broadcasters is welcome. However, that does not remove the problem of such operators potentially refusing carriage to channels which might compete with their own. Art. 19/3 (see below) is designed to prevent this, but its effectiveness remains to be established.

The provision that up to 30% of content on an open programme service might be encrypted requires further consideration. Programme services should either be encrypted, or not. It is not clear how this provision is compatible with that of para. 8. Encrypting a part of the programme service that is otherwise broadcast in the clear will create an additional difficulty for the audience.

Article 18

Article 19/3 is added to regulate relationships between network operators and holders of licenses for broadcasting programs in the following way: "*Network operators provide free capacities to operators licensed for broadcasting radio-television programs at equal, transparent and non-discriminative conditions*".

As noted above, this is an important provision, but there would be no need for it if network operators were to concentrate on that role alone. If that is not the case, then special precautions should be created to avoid situations of conflict between competing broadcasters, some of whom are also network operators.