Chapter 4

Media

Particular regulatory barriers to competition in the media sector were identified in publishing activities, programme production, radio and pay-TV broadcasting activities. These are often created by the non-implementation of legislation that is both outdated and fragmented. For example, the most recent legal framework for radio licensing has been in force since 2007, yet the relevant tenders have never been issued. The legal framework should be codified and various obsolete provisions should be removed. Restrictions regarding years of previous operation or circulation for radio licences, and public subsidies for the printed press have also been addressed. Limitations to the selection of programme suppliers to pay-TV broadcasters, as well as outdated licensing procedures and costs, reduce incentives to invest and adopt new technologies. Finally, the production of audio-visual content only by producers fulfilling specific requirements constitutes a barrier to entry in the profession and to the development of independent audiovisual producers. The following recommendations should contribute to simplifying the business environment and increasing consumer choice.

4.1. Definition and economic overview

Today, "information" or "information goods" encompass anything that can be digitised. This means that all types of printed, audio, visual or audiovisual content are considered to be information goods, and therefore part of the media sector. For these information goods to be supplied on a one-to-many basis, a distribution channel of some kind is needed, be it a book, newspaper, radio, television or the Internet. It is therefore generally possible to draw a distinction between the information good itself and its method of distribution.

However, many of the markets across the media sector have experienced, and continue to experience, rapid change. The main aspect of that change related to this project is the phenomenon of convergence, or the coming together of media, telecommunication and information technologies into unified platforms and networks.

For this reason, the relevant legislation for media covered in the project includes the following activities:

- **Publishing activities** (NACE 58): "This division includes the publishing of books, brochures, leaflets, dictionaries, encyclopaedias, atlases, maps and charts; publishing of newspapers, journals and periodicals; directory and mailing list and other publishing, as well as software publishing."[1]

- **Motion picture, video and television programme production, sound recording and music publishing activities** (NACE 59): "This division includes production of theatrical and non-theatrical motion pictures whether on film, video tape or disc for direct projection in theatres or for broadcasting on television; supporting activities such as film editing, cutting, dubbing etc.; distribution of motion pictures and other film productions to other industries; as well as motion picture or other film productions projection. Buying and selling of motion picture or other film productions distribution rights is also included."[2]

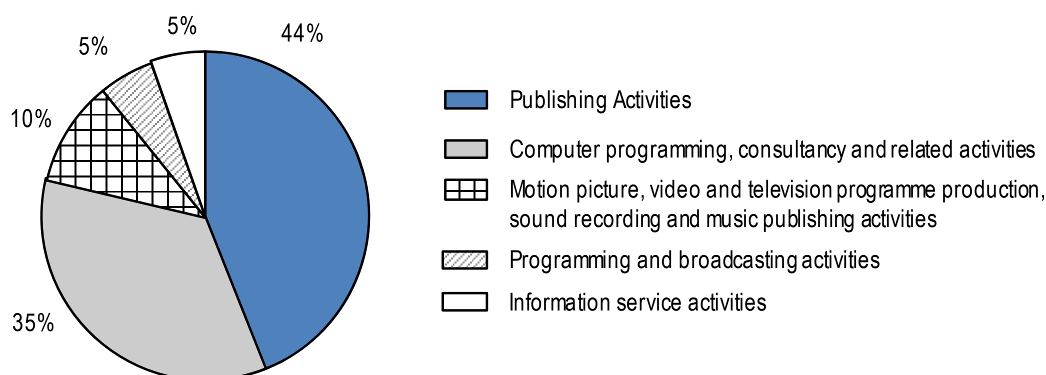
- **Programming and broadcasting activities** (NACE 60): "This division includes the activities of creating content or acquiring the right to distribute content and subsequently broadcasting that content, such as radio, television and data programs of entertainment, news, talk, and the like. Also included is data broadcasting, typically integrated with radio or TV broadcasting. The broadcasting can be performed using different technologies, over-the-air, via satellite, via a cable network or via Internet."[3]

- **Computer programming, consultancy and related activities** (NACE 62): "This division includes the following activities of providing expertise in the field of information technologies: writing, modifying, testing and supporting software; planning and designing computer systems that integrate computer hardware, software and communication technologies; on-site management and operation of clients' computer systems and/or data-processing facilities; and other professional and technical computer-related activities."[4]

- **Information service activities** (NACE 63): "This division includes the activities of web search portals, data processing and hosting activities, as well as other activities that primarily supply information."[5]

Media accounted for 1.1% of GDP in Greece in 2013, compared with a figure of 3.5% for the European Union on average. When measured in terms of employment, the sector represents 1.5% of the Greek economy, while the corresponding figure for the European Union is on average 2.1%. According to the latest data from Eurostat,[6] in 2013[7] the media sector in Greece had a total turnover of about EUR 3 billion, and 11,438 enterprises employing 51,126 people. Figure 4.1 shows data on the breakdown of turnover into each sub-sector .

Figure 4.1. **Contribution to media sector's total turnover – Greece**



Source: Eurostat, Annual detailed enterprise statistics for services (NACE Rev. 2, H-N and S95), Database [sbs_na_1a_se_r2], *http://ec.europa.eu/eurostat* (accessed 4 April 2016).

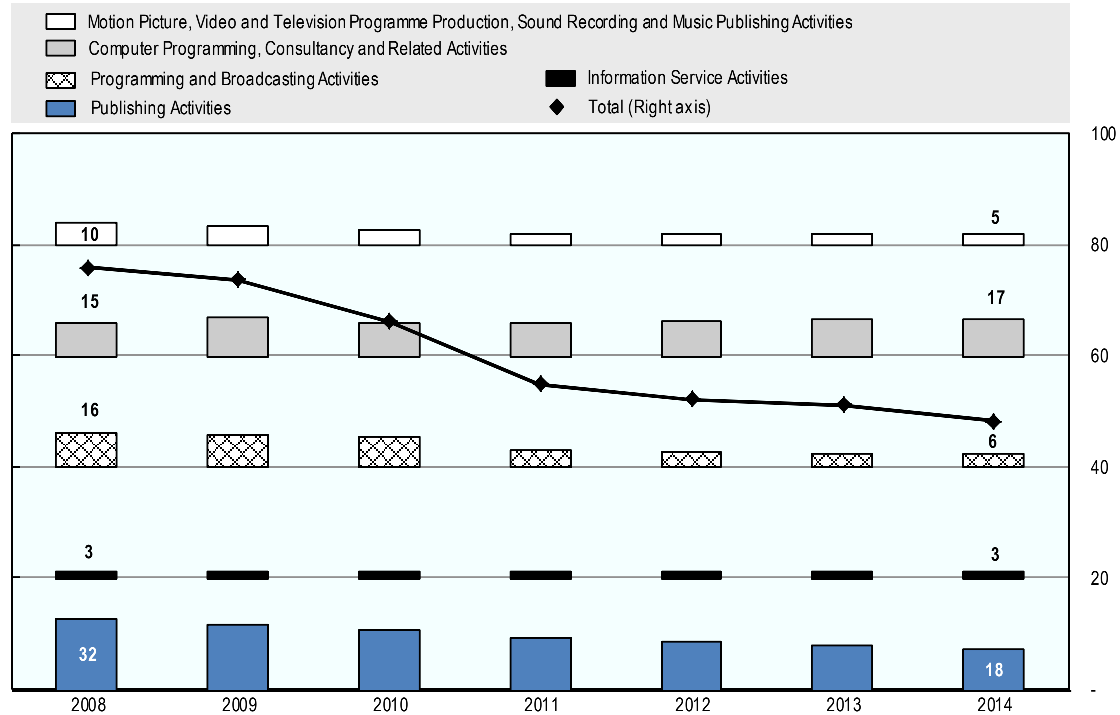
Not all sub-sectors share the same importance in terms of turnover. Almost 80% of the total turnover is produced by publishing activities and computer programming, consultancy and related activities, while the remaining 20% is accounted for by the other three sub-sectors. While prominent in public discourse and heavily regulated,[8] programming and broadcasting activities only account for 5% of the media sector's total revenue.

The economic crisis since the 2008 financial crisis has undoubtedly had substantial effects on the sector. From 2008 to 2013, the number of active enterprises fell cumulatively by 10% in Greece. The relevant figures regarding employment and turnover are more striking: the former declined cumulatively by 33%, the latter by 49.5%. In other words, income in the media sector has been declining over the six-year period of 2008-2013 by 10.7% a year on average.

Since Eurostat data for 2014 are available only for the total number of persons employed, Figure 4.2 presents the breakdown of total employment across the five subsectors over the 2008-2014 period. The picture regarding the total number of enterprises and total turnover is quite similar.

The make-up of employment across the media sector largely mirrors that of revenue and has fallen in recent years (Figure 4.2)

Figure 4.2. **Breakdown of total employment in the media sector – Greece**



Source: Eurostat, Annual detailed enterprise statistics for services (NACE Rev. 2, H-N and S95), Database [sbs_na_1a_se_r2], *http://ec.europa.eu/eurostat* (accessed 4 April 2016).

The total number of persons employed in the five sub-sectors has declined by 37%. The largest decreases have taken place in programming and broadcasting (-64%) and publishing (-44%). On the other hand, the computer programming and consultancy, as well as information services have seen increases in employment by 8% and 6% respectively (over the same six-year period).

4.2. Overview of the legislation

Legislation mapping for the sector in Greece took in 251 laws and regulations. European Union (EU) legislation in this sector is limited and mainly concerns TV content, advertising and production.

Out of these 251 pieces of legislation, the following subcategories of legislation were identified.

- About 100 regulations deal with free-to-air TV and radio licensing, as well as pay TV/radio. This regulatory framework is extremely complex, fragmented and in some cases, outdated. Law 2328/1995[9] was the first law to set out the criteria for the tendering of the licensing procedure for free-to-air radio and TV broadcasters. However, it has been implemented only once, in relation to radio licensing in Attica. Law 3592/2007[10] on the licensing of media was promulgated without explicitly abolishing the provisions of Law 2328/1995. More recently, Law 4339/2015[11] regulating TV licensing came into force without having explicitly amended Law 3592/2007. Law 2644[12] regarding pay TV/radio came into force in 1995 and is still valid as slightly amended, although it clearly does not reflect the significant technological developments that have happened since 1995.

- With regard to publishing activities, many regulations have been identified that date back to the 1930s and 1940s, and that, although superseded and/or not enforced, were never explicitly abolished. The few applicable regulations in this subcategory concern state subsidies for the printed press.

- The mapping of legislation also includes laws and regulations on audiovisual productions, TV advertising and film-making. While TV advertising is mainly regulated by EU law transposed into the Greek legislation (Presidential Decree 109/2010[13]), the main laws for film-making and production of audiovisual works are Law 3905/2010[14] and Law 2328/1995 and stem from the national legislator.

- There are few regulations for computer programming, consultancy and related activities, mostly dealing with personal-data protection, domain names and copyright. The same applies in relation to information -service activities.

- Lastly, there are many administrative decisions by the National Council for Radio and Television (NCRTV) and the National Telecommunications and Post Commission (EETT), the competent regulatory authorities in the media sector, which interpret or implement in detail the relevant legislation.

4.3. Publishing activities

Public announcements in Greek newspapers

Greek newspapers publish public-interest publications/announcements paid by the state. There are specific criteria with which the newspapers should comply in order to be eligible for these publications/announcements.

More specifically, Article 2, Paragraph 1 of Law 3548/2007[15] provides that daily newspapers need to be published for at least two years and weekly newspapers need to be published for three years with the same title to be eligible to publish public announcements. Moreover, a minimum number of copies of the newspapers must be printed and sold per print: at least 500 copies for regions with populations of over 80 000 inhabitants; 350 copies a year for regions with populations under that figure. Other criteria, including that the eligible newspapers have sufficient and original content written by their journalists, also apply.

According to the official recital, the provisions are necessary to demonstrate that a newspaper is known to the public, as well as the sustainability of the company that publishes it, and its independence. The ultimate aim is the widest possible publicity for state-paid announcements and the widest possible distribution of information.

Harm to competition

Criteria for selecting which newspapers can publish public announcements should be implemented because not all newspapers can serve the policy objective. As mentioned, these requirements are necessary for achieving the biggest possible distribution of public announcements, as well as providing solid newspapers with financial support. Although the criteria on the minimum number of copies that need to be sold and on the minimum number of pages are restrictive, they are justified in light of the policy maker's objective of securing the widest possible publicity and transparency of state announcements. However, some criteria are harmful in terms of competition.

Restrictions on years of operation (two or three years) pose a direct barrier to entry by favouring incumbent businesses against new entrants. If new entrants can issue and sell the number of copies of the newspapers required by the law, as well as fulfil the other requirements, there is no sufficient justification for excluding them from this indirect subsidy.[16] A time period over which the minimum number of copies printed and sold is calculated should be introduced, however, to avoid cases of newspapers that reach the minimum number of copies only for a couple of days or one month. Given that the decision regarding which newspapers are eligible for publish public announcements is issued once a year, the minimum number of copies required by the law can be calculated on the basis of the previous year or the previous six months.

Recommendation

The requirement for previous years of circulation (two years for daily newspapers and three years for weekly newspapers) should be abolished. Instead of this requirement, the necessary time for calculating the minimum number of printed and sold copies should be provided, a period that could range from six months to one-year maximum.

Preferential postal rates

As in other European countries, Greek newspapers receive indirect public support due to the public-interest value of information. Subsidies to newspapers, from reduced telecommunication tariffs and air-transport charges, were abolished in Greece in 2011,[17] but preferential postal rates still act as indirect subsidies.

Press -subsidy schemes exist across Europe, most frequently taking the form of tax breaks. For example, in Belgium, Denmark, Norway and the UK, newspaper sales are completely exempt from VAT.[18] An example of increased indirect and direct newspaper support is France. In 2009, the total budget for subsidies for the private press was increased by EUR 600 million. Specifically, EUR 70 million were set aside to fund home delivery.[19]

As a result of new eligibility criteria in Joint Ministerial Decision 16682/2011,[20] public funding for special postal rates for the printed press (both newspapers and magazines) has dramatically decreased, as shown in Table 4.1.

Table 4.1. **Public aid to the Greek press, 2009-2012 (€ million)**

Year	Postage	Telephones	Air transport in Greece	Air transport outside Greece
2009	32.7	0.77	5.48	0.62
2010	27.8	0.65	5.95	0.47
2011	16.9	0.31	1.79	0.16
2012	5.7 (estimate)	Abolished	Abolished	Abolished

Sources: Secretariat-General of Mass Media; Papathanassopoulos, 2014b

According to the aforementioned Joint Ministerial Decision 16682/2011, special postal rates apply only for the distribution of Greek printed press in Greece and only for newspapers issued at least once a month and magazines issued at least every three months.

Apart from the aforementioned prerequisites, newspapers or magazines must also meet at least one of the following criteria:

- they are eligible and selected for state announcements;
- their owners are members of the Hellenic Union of Editors of Periodical Press (HUEPP); or
- their owners are qualified to be members of the Union, but have not registered while at the same time they 1) exercise the profession of editor; 2) have the status of journalist; and 3) their newspapers[21] and/or magazines have been on the market for at least two years.

The official recital states that the criteria are necessary for excluding advertising brochures or other commercial documents from taking advantage of the special postal pricing. Setting specific and strict criteria is considered the only way to stop the distortions that occurred prior to the amendment of the Joint Ministerial Decision. In the OECD's understanding, preferential postal rates constitute indirect and steady public support to the printed press, which is struggling to compete with newer media outlets, such as TV/radio broadcasting and Internet, in terms of revenue and popularity. The fact that advertising revenues are increasingly absorbed by Internet platforms, such as social networks or sharing economy databases, has an even greater impact on newspapers.[22]

Harm to competition

Although the minimum frequency of circulation of the newspapers and magazines could be characterised as restrictive, it is justified in light of the policy maker's objective to financially support indirectly the printed press with a regular and serious presence in the market.

However, the compulsory direct link of the preferential postal rate to the membership or the potential membership of the owners to a particular professional union; the practice of specific professions (editor *and* journalist) by the owner; and the minimum two-year presence of their newspapers/magazines in the market, all pose a direct barrier to entry not only to new entrants that have not yet been in the market for two years, but also to printed-press owners who do not want to or who cannot join the specific union stated in the law. It should be noted that there are also other unions for printed-press owners[23] whose members do not have the privilege of preferential postal rates.

Moreover, as was mentioned, the criterion of years of previous circulation excludes newspapers and/or magazines issued by viable and successful companies simply because they have been in the market for less than two years. Finally, the requirement for the owner to be an editor and journalist prohibits other professionals from running print-media businesses, even if they could secure the minimum quality of their newspaper/magazine by employing professional editors and journalists.

Recommendation

OECD recommends abolishing the requirements regarding an owner of a newspaper/magazine's membership or potential membership of the Hellenic Union of Editors of Periodical Press; the number of years of prior circulation before becoming eligible for preferential postal rates; and the compulsory requirement that the owner of a newspaper also be an editor and journalist.

Ownership Rules

According to Article 13, paragraphs 10 and 11 of Law 2328/1995 strict ownership rules apply to newspapers. The provisions lay down that any person (legal entity or individual) can own, participate or hold stocks in a company that owns or controls in any way or participates in another company that owns or controls: 1) up to two daily news newspapers, published in Athens or Piraeus or Thessaloniki,

distributed through press distribution agencies, one of which is published in the morning and the other in the afternoon; 2) up to one daily financial newspaper and up to one daily sports newspaper published in Athens, Piraeus or Thessaloniki; 3) up to two daily regional newspapers, but in different prefectures; 4) up to two not -daily regional newspapers, but in different prefectures; and 5) only one Sunday edition of a daily newspaper either with the same or similar title or as an independent newspaper (news or financial or sports).

The same restrictions apply also for the spouse and the relatives up to fourth degree of any individual who has any of the capacities mentioned above as long as they do not have and they do not prove that they are independent from a financial or business point of view. It should be noted that restrictions regarding relatives' ownership apply also for TV and radio (Law 3592/2007), but applies only to relatives up to third degree. The competent authority to supervise the implementation of the above rule is the National Council for Radio and Television (NCRTV).

These ownership restrictions regarding newspapers are still included in Law 2328/1995, in which TV and radio ownership rules also used to be included. Article 5 of Law 3592/2007 inserted new, less restrictive rules, regarding rules for TV and radio ownership and these are now in force. Yet those found in Law 2328/1995 have not been explicitly abolished. Following the legal principle that a newer law takes precedence over an older one, Article 5 of Law 3592/2007 should be applicable. However, the fact that Article 5 includes neither specific provisions regarding ownership rules for newspapers nor any provision explicitly abolishing Article13, paragraphs 10 and 11 of Law 2328/1995 creates legal uncertainty about whether the restrictions on newspaper ownership are still in force or not. In a 2011 study,[24] it is noted that press ownership restrictions have been abolished and that the authority charged with implementing them (NCRTV) has not contested them. Yet the Secretariat General for Information and Communication states that the provisions are in force.

Ownership restrictions on the number of newspapers aim to enhance and protect media pluralism and transparency. In principle, media plurality has an important contribution to make to a well-functioning democratic society, ensuring the diversity of viewpoints that are available and consumed. The restrictions on spouses and relatives aim to prevent existing players from controlling the market and threatening pluralism through the use of surrogates or family members as nominal owners.

It should be noted, that there are no Europe-wide media ownership rules. In the early 1990s the European Commission tried to assess whether extensive concentration could damage media pluralism. In the Green Paper (EC, 1992)[25] the European Commission stated that the safeguard of pluralism falls under the member states' competencies and that they should design the national ownership rules. The Commission's role is limited to protecting the proper functioning of the internal market.[26]

Nevertheless, a 2007 European Commission Staff Working Document[27] regarding regulations of media ownership, shows that no other member states, except Greece, apply a priori specific ownership restriction rules on print media. In other words, the regulatory frameworks of other member states do not include rules providing the specific number of printed -media outlets that an investor or his/her spouse or relatives can own or participate in without combining these rules with others.

More specifically, to ensure that the media operates in the public interest by promoting plurality and preventing undue influence by any media owner, other member states' rules require a case-by-case examination of the country's market conditions, and especially the power of influence of each newspaper and its circulation. More specifically, relevant rules (for instance, in Italy,[28] France,[29] Ireland,[30] the Netherlands,[31] Poland,[32] Slovenia,[33] and United Kingdom[34]) call the competent authorities to test the real impact of multiple ownerships on the market at the moment of the circulation of the new newspaper

and/or whether this results in distortion of competition in the market and in harm to plurality. In other words, relevant rules restrict media concentration in a particular market and aim to hinder the creation of an enormous opinion-forming power.

Similar rules about media concentration based on market share that corresponds to 12-month total advertisement expenses, as well as to sales revenues are also in force for newspapers in Greece and are included in Article 3 of Law 3592/2007. The Hellenic Competition Commission (HCC), the competent authority to oversee the rules, acts independently of NCRTV, which is in charge only of the implementation of ownership rules. Any potential investor who wants to enter the media market must comply with both ownership and media -concentration rules.

Harm to competition

There is legal uncertainty as to whether the provisions of Law 2328/1995 are obsolete or not. While the majority of ownership and concentration rules regarding the media market are included in Law 3592/1997, restrictions on ownership of newspapers are found also in Law 2328/1995, as well as several provisions that are obsolete or not in force. This difficulty in identifying the applicable law means potential entrants to the printed-press market face legal and compliance costs and business uncertainty.

Similarly, the compulsory use of the press distribution agencies for the distribution of newspapers has been abolished.[35] Reference to press distribution agencies may therefore cause further legal uncertainty and related costs for clarifying its validity.

It is not clear if Article 13, paragraph 10 of Law 2328/1995 concerning the core ownership rule has a net negative or a net positive effect on competition in the newspaper market. On the one hand, investment choices of potential investors are limited by particular restrictions to the number and type of newspaper ownership. On the other hand, the provisions on ownership rules may prevent *a priori* situations of over-concentration in the market. The objective of freedom of entrepreneurship, however, should be counterbalanced by the objective of pluralism.

It should be taken into account that the implementation of both a priori ownership and media-concentration rules by both NCRTV and HCC, acting in parallel and independently, creates extra cost for potential investors.

Finally, regarding the restrictions on spouses and relatives (Article 13, paragraph 11 of Law 2328/1995), the competent authorities admit that although this rule targets problematic cases in terms of pluralism and transparency, it cannot be efficiently enforced because there are no specific criteria to define “financial and business independency”. The lack of specific criteria that act as the basis upon which a competent authority and/or the Court can issue decisions, the wide discretion given to authorities, as well as the lack of significant case law on this issue,[36] all result in legal uncertainty. They also constitute a barrier to entry for potential investors who wish to invest in a particular market, but are relatives of an already operating player.

Recommendations

Streamline the provisions of Article 13, paragraphs 10 and 11 of Law 2328/1995 and Articles 3 and 5 of Law 3592/2007. As part of this exercise, the correlation between a priori newspaper ownership restrictions in Law 2328/1995 and the media concentration rules of Article 3 of Law 3592/2007 should be reviewed with the objective of seeing if they can be combined and so focus more on the real impact of newspaper acquisition in the market and in the shaping of public opinion (i.e. apply criteria such as market share, daily circulation, share of newspaper supply in the market).

Specific criteria for the proof of financial and business independency of spouses and relatives before the competent administrative authorities and the courts should be provided.

References to press distribution agencies should be abolished.

4.4. Audiovisual production and content

Limits to the outsourcing of TV-programme production

Apart from ownership of media enterprises, media content and its production also affect the plurality in media.[37]

Article 1, paragraph 12 of Law 2328/1995 stipulates that licensed TV broadcasters have to manage and run TV broadcasting businesses themselves. Article 10 of the same law allows broadcasters to outsource the production of specific programming to independent producers of audiovisual works up to a level of 30%.

Article 11, paragraph 5 of Law 3592/2007, however, reiterates that both TV and radio broadcasters should operate the channel themselves, but that they can outsource the production of their programming to companies within the same group, as well as assign the production of specific programmes to production companies or the production of "specific broadcasts (emissions)" to independent producers. In this provision, there is no reference to a specific percentage of programming that can be outsourced. Yet Article 1, paragraph 12 of Law 2328/1995 has never been explicitly abolished.

Recently, Article 14, paragraph 4 of Law 4339/2015 provided that content providers (TV broadcasters) cannot assign the management or the use of their programmes or of their company to third parties. However, they can outsource the production of their programming to companies that belong to the same group. The outsourcing of the production of specific programming to production companies and of the production of "specific broadcasts (emissions)" to independent producers is also permitted.

It appears that all these provisions aim to forbid cases where the licensed TV broadcasters serve as nominal owners and in practice all ownership and concentration rules are contravened by using others to control the programming and content broadcast. These provisions can therefore be seen as aiming to enhance pluralism and transparency.

Nevertheless, the overlapping provisions result in legal uncertainty on the crucial issue of whether TV programmes may be outsourced, to whom, and up to what percentage of programming.

Harm to competition

Overlapping and partially conflicting provisions – namely Article 1, paragraph 12 of Law 2328/1995, Article 11, paragraph 5 of Law 3592/2007, and Article 14, paragraph 4 of Law 4339/2015 imposing restrictions on TV broadcasters outsourcing their programming – create legal uncertainty and confusion that may increase compliance and operating costs for TV broadcasters.

Extra costs and limitations on the ability of TV broadcasters to choose their suppliers may also be caused by the fact that the terms "programme" and "specific broadcasts (emissions)" used in the provisions have not been clarified. Similarly, the difference between production companies and independent producers has not been clarified. Rules, such as the fact that specific programmes can be assigned to production companies and specific broadcasts (emissions) to independent producers, result in

restrictions on TV broadcasters' choices that are not clear and could also create barriers to entry in the market of audiovisual content production.

Once again, a balance needs to be found. On the one hand, restrictions on the sources of programming limit the freedom of TV broadcasters to outsource their programming according to their choices and business plan, and so limit their ability to invest their money in what they consider the most efficient way. On the other hand, the objective of protecting pluralism and transparency could counterbalance such restrictions, a position that becomes more obvious in cases such as news production.[38]

Finally, the requirement of broadcasters to outsource a minimum of 10% of their transmission time to independent audiovisual producers, as provided in the relevant Audiovisual Media Services Directive (AVMS Directive, 2010/13/EU)[39] and in the Greek legislation of Article 18 of Presidential Decree 109/2010[40] that transposed it, should also be taken into account (also see next paragraph "Independent producers of audiovisual works").

Recommendations

Consolidate and streamline rules of Article 1, paragraph 12 of Law 2328/1995, Article 11, paragraph 5 of Law 3592/2007 and Article 14, paragraph 4 of Law 4339/2015, while defining which programming can be freely outsourced and to whom; any restrictions should be maintained only on the grounds of pluralism and transparency, and the requirements of EU law, notably the AVMS Directive.

Independent producers of audiovisual works

Directive 89/552/EEC[41] – the "Television without Frontiers" directive – promoted the compulsory proportion of broadcasts for independent production in Europe. Although, the Directive did not contain a definition of independent producer, Recital 31 of its revised version in 1997 states that the definition should take account of criteria such as "the ownership of the production company, the amount of programming supplied to the same broadcaster and the ownership of secondary rights". Therefore, it was left to member states to define what was meant by "independent producer".[42]

This Directive was transposed into Greek legislation by Presidential Decree 100/2000[43] in which independent producers were defined as producers independent of broadcasters, as they are defined in Article 10 of Law 2328/1995.

The AVMS Directive that replaced the "Television without Frontiers" directive also has no definition of an independent producer. Only Recital 71 states that, "When defining 'producers who are independent of broadcasters' as referred to in Article 17, Member States should take appropriate account notably of criteria such as the ownership of the production company, the amount of programming supplied to the same broadcaster and the ownership of secondary rights".[44]

Presidential Decree 109/2010 transposed the new Directive into Greek legislation. Article 18 of that decree does not repeat that the independent producer is the same as defined in Article 10 of Law 2328/1995 and given that the relevant provision of Presidential Decree 100/2000 has been abolished, the term independent producer is now only defined in Article 10 of Law 2328/1995 under "Independent Producers of Audiovisual Works".

More specifically, paragraph 1 of that article stipulates that independent producers of audiovisual works have the exclusive right to sign contracts between intellectual-property rights (IPR) holders and

TV broadcasters, advertising companies, cinema companies or other relevant companies for the production of films, advertisements or audiovisual works longer than two minutes.

In addition, according to paragraph 2 of that article, the definition of independent producer is also linked to the definition of the producer of audiovisual works in Law 2121/1993[45] on Intellectual Property Rights. Article 47, paragraph 2(b) of Law 2121/1993[46] stipulates that the producer of audiovisual works is any natural or legal person who initiates and is responsible for the realisation of a first fixation of a series of images with or without sound. This definition is further broadened with a phrase in paragraph 2 of Article 10 of Law 2328/1995, which states that the independent producer prepares and realises audiovisual works, takes care of the supply of all essential means of production, undertakes the responsibility of technical and financial issues that are linked with the production, signs all the contracts and makes all the agreements with regards to the production. An extremely wide range of professional and economic activities are therefore defined as "producers of audiovisual works", particularly, as the title of the relevant article suggests, as "independent producers". Furthermore, paragraph 3 of Article 10 stipulates that independent audiovisual producers must register and pay the relevant fees before the relevant professional chamber.

Paragraph 3 of Article 10 also provides for specific and strict criteria that a person must fulfil in order to be accepted for registration. These qualifications include among others, relevant academic titles, any criminal record, a certificate of non-bankruptcy, previous experience of at least two consecutive years or three years in total as an independent producer or as employee of a production company, and having worked on the production of at least one feature film or eight TV programmes of a specific duration, or similar productions as evaluated by a committee convened by the Minister in Charge of Media and Press Issues.

Paragraph 4 of Article 10 provides that the producer of audiovisual works or the person who is a shareholder in a production company or a member of a production company's governing body cannot be a public servant or have any contractual relation to the public sector as widely defined in Greek law or be an owner, shareholder or member of the governing body or employee of an advertising company. It has not been possible to identify the objective of this provision.

Audiovisual production companies should be signed up to a special section of the professional registry, according to Article 10, paragraph 5 of Law 2328/1995. Also, the unlimited liability partner/manager of personal-liability production companies, the manager of limited-liability audiovisual production companies (ΕΠΕ) who signs audiovisual production agreements on behalf of the company, and the CEO of société anonyme (SA) audiovisual production companies, should be also registered with the professional chamber and fulfil the relevant requirements. Moreover, the shares of audiovisual production companies with the structure of an SA should be registered (Article 10, paragraph 5(c), Law 2328/1995).

According to the official recital of Law 2328/1995, these provisions aim to protect the existence of the profession of the producer of audiovisual works and therefore promote the interests of those who fulfil the qualifications necessary to belong to the profession.

Harm to competition

Article 10, paragraphs 1 and 2, of Law 2328/1995 does not define independent audiovisual producer on the basis of criteria related to the ownership of the production company and the broadcasters or the amount of programming supplied to the same broadcasters (see Recital 71 of the AVMS Directive), but on the basis of specific tasks and activities they undertake. This creates legal uncertainty regarding the

definition of independent audiovisual producer, which is crucial also for the application of rules relating to restrictions facing broadcasters in outsourcing TV programmes.

Article 10, paragraph 1 of the same law provides for the exclusive competence of independent audiovisual producers, as restrictively defined, to act as intermediaries between the IPR holders and any organisations concluding contracts related to the production of audiovisual works (broadcasters, film or advertising companies and any other organisation/company of the public or private sector). This compulsory intermediation restricts competition at various levels. It also limits IPR holders' chances of finding potential investors themselves, as well as deciding on the terms and conditions of use, development and production of their works.

Paragraphs 3, 4 and 5 of Article 10 limit competition in the market of audiovisual productions by creating entry barriers to the profession of producers of audiovisual works and the economic activity of audiovisual productions and as a result hamper innovation and the development of new content. Barriers include registration before the relevant professional chamber, fulfilment of strict requirements and a submission of numerous supportive documents that limit the access to the profession and economic activity without sufficient justification for the necessity of such restrictions. These restrict the chances for new talented creators who wish to enter the market as individuals. Indeed, as the Greek Council of State stated in Decision 1667/2012, recital 7, registration with a professional chamber cannot be compulsory for prominent professionals who exercise tasks of a scientific or artistic nature.[47]

The prohibition on audiovisual producers or members, shareholders or managers of audiovisual production companies owning, participating or working for an advertising company (in Article 10, paragraph 4 of Law 2328/1995) is considered as another unjustified restriction to entry to the profession. While it might be argued that such a restriction is put forth in order to prevent vertical integration between advertising and audiovisual production companies, there is no real justification for stricter regulations of this particular market than for other sectors of the economy, which are regulated by the general laws of competition.

Regarding the restriction on audiovisual production companies and their producers, members, shareholders or managers being employed under whatever contractual relation with the public administration and the wider public sector, as defined by the Greek law, we note that the relevant provisions of the Code of Public Servants constitute the prominent legal framework for the employment status of public servants. According to Article 31 of Law 3528/2007 ratifying the Code of Conduct for Public Administrative Employees,[48] public servants can exercise private remunerated activities as long as a special committee confirms that there is no conflict with their activities in the administration. Applying stricter rules for audiovisual production activity creates an unnecessary barrier to entry in the market.

Finally, obliging SA audiovisual production companies to register their shares may further increase administrative costs and hinder entry in the market. However, it can be characterised as proportionate to the wider objective of transparency in the media sector without being particularly harmful to competition.

Recommendations

Define the term "independent producer" of audiovisual works in line with the AVMS Directive on the basis of criteria related to the ownership of the production company, as well as the amount of programming supplied to the same broadcasters. Any restrictions, such as the compulsory registration of company's shares, provided in Article 10, paragraph 5(c) of Law 2328/1995 should be treated within the said definition.

Abolish the provision of Article 10, paragraph 1 of Law 2328/1995.

Abolish compulsory registration for audiovisual producers, audiovisual production companies and their members, shareholders and/or managers with a professional chamber in order to exercise the relevant profession or activity.[49]

The ban on audiovisual producers participating in advertising and/or being employed in the public sector, as set out in Article 10, paragraph 4 of Law 2328/1995, should be explicitly abolished. Any eventual conflicts of interest may be treated within existing regulations such as Article 31 of the Code of Conduct for Public Administrative Employees.

Broadcasters' obligation to invest in cinema production

According to Article 8 of Law 3905/2010, both public and private television broadcasters have an obligation to invest in the production of Greek cinematographic films as defined in Article 3[50] of the same law.

Public broadcaster ERT is obliged to invest 1.5% of its annual revenue in cinema production. Similarly, private free-to-air TV broadcasters have the legal obligation to invest 1.5% of their annual advertisement income in cinema production. Lastly, pay-TV broadcasters, as well as providers of IPTV and VOD, now have the legal obligation to invest 1.5% of their annual total revenue in film production.

According to the same provisions of Article 8 of Law 3905/2010, ERT and free-to-air private TV broadcasters may legally substitute half of this financial investment with "in-kind" investment in the promotion of Greek films. Pay -TV broadcasters, as well IPTV and VOD, are not provided with this alternative. (Pay TV with advertising time available was given this option until the end of 2014, in accordance with the same provisions.) More specifically, free-to-air public and private TV broadcasters may reduce by half their obligation for direct financial investment in film production by granting to the Hellenic Film Centre free advertising time for the advertisement and promotion of cinematographic works of a total value that equals half of the amount they are obliged to invest in production.

Non-compliance with these provisions entails the imposition of an administrative fine equalling the amount that should have been invested. The fine must be paid to the Ministry of Culture and is ultimately passed to the Greek Film Centre by the ministry, essentially becoming a third-party levy.

According to the official recital, this provision aims to support Greek cinema production, which is considered to be an important cultural asset. In addition, private funding for film production stemming from big companies will be increased and different sources of funding will be used, contributing to pluralism.

Harm to competition

Enforcement of the above legal obligations has not been consistent in the case of public broadcasters and very limited in the case of private TV broadcasters who have refused to pay owed amounts and repeatedly challenged the provisions.[51] On the other hand, pay-TV broadcasters have regularly invested significant amounts in the production of Greek films.

From a competition-assessment point of view, the amount due to be paid (which turns into a levy if not invested in cinema production in any given year) is a significant cost for broadcasters. It may distort the audiovisual market against TV broadcasters and in favour of film producers by violating the freedom of the former to choose how to invest and distribute their resources.

However, the objectives of the provision regarding the support of Greek film and the promotion of Greek culture are important and justify the harm caused to TV broadcasters. The support of film production is a common policy in almost all EU countries,[52] despite there being no EU regulation that imposes the obligation to support film production. Countries with mandatory investment in film production by TV broadcasters include Belgium, Spain, France and Italy. It should be mentioned that these mandatory obligation on linear and non-linear services are national and apply only on services that originates in the given country.[53]

The "in-kind" investment given to public and private free-to-air broadcasters for the promotion of Greek films, which takes the form of granting free airtime to the Hellenic Film Centre for the advertisement and promotion of Greek films, as implemented after 2015, is discriminatory against pay-TV broadcasters as it increases their costs and limits their investment choices. Moreover, in an era of financial crisis, given the extreme circumstances that companies face in managing their cash flows, this alternative should apply to all TV broadcasters, particularly in the face of difficulties not only in collecting the money due for direct investment in film production, but also in finding productions in which they can profitably invest. More flexible methods for complying with the legal requirement of compulsory investment in film production should therefore be implemented.

In addition, the equal treatment between free-to-air TV broadcasters and pay-TV broadcasters requires that they are both obliged to invest according to their financial standing. Yet the amounts due are calculated differently between free-to-air and pay-TV broadcasters. For the former, the calculation is based upon their advertising revenues (an amount equal or less than their total gross revenues), while for the latter, it is based on total gross revenues. This discrepancy between the two amounts can lead to increased costs for pay-TV providers, while their free-to-air counterparts are left with more resources to allocate to investments of their choice. In order to keep a level playing field for all businesses in the sector the calculation of the amount due should be based upon the same criteria, whether this is total gross revenue, net revenue or any other amount directly comparable between the two different business models.

Recommendations

The OECD has no recommendation on the obligation to invest in film production.

The OECD recommends that pay-TV broadcasters also be allowed to opt to grant the Hellenic Film Centre free airtime for the advertisement and promotion of works of a total value that equals half the amount they are obliged to invest in the production of Greek films, thus reducing by half their obligation to invest directly in film production, similar to free-to-air TV broadcasters. Also, that both pay-TV broadcasters and free-to-air TV broadcasters' film-investment contributions be calculated on the same basis according to their financial standing.

Presumption regarding the competences of collecting societies (IPR law)

According to Article 55, paragraph 2 of Law 2121/1993, copyright -collecting societies[54] are presumed to have the competence to administer and/or protect the rights in all works or in respect of all authors about which or whom a written declaration of transfer to the society has been effected, or for which it has been granted power of attorney. In particular, where a collecting society exercises the specific right to a single equitable remuneration as described in Article 49, Paragraph 1 of the same law,[55] it is presumed that such a collecting society represents without exception all beneficiaries, both national and foreign, and all their works (independently of any written declaration effected by the collecting society concerning the rights holders and/or the works represented by the latter). In such a case, the same is presumed where, for each category of beneficiaries there are more collecting societies,

given that the rights are exercised by the competent collecting societies altogether (as added with article 46 of Law 3905/2010). Regardless of whether its authorisation rests on a transfer of rights or on power of attorney, a collecting society shall in all circumstances be entitled to initiate judicial or extrajudicial action in its own name and to exercise in full legitimacy all the rights transferred to it, or for which it holds power of attorney.

It is our understanding that this provision aims 1) to facilitate the protection of beneficiaries, their rights and the collection of royalties through collecting societies, and 2) to further facilitate the specific right of collection of equitable remuneration provided in Article 49 of Law 2121/1993. It further helps collecting societies representing various categories of rights to exercise in common their rights and negotiate together with users/radio-TV broadcasters about the determination and the collection of remuneration.

Moreover, while collecting societies need a written declaration of transfer of rights to them in order to be presumed to have the competence to administer and/or protect the relevant rights holders and works, there is no such requirement regarding collecting societies collecting equitable remuneration. For the latter, it shall be presumed that the relevant collecting society represents without exception all beneficiaries and all their works without any written declaration needed.

In the same context, Article 55, Paragraph 4 of Law 2121/1993, as amended by Article 46 of Law 3905/2010 regarding the liability of collecting societies, states: "If a rights holder disputes a collecting society's competence over a work which is assumed to be included under the declaration referred to in paragraph (2)[56] and which has, accordingly, on the basis of that declaration, been included in a contract concluded by the collecting society with a user, the collecting society shall defend the case of the user and offer all possible assistance in any court action which may follow. If the collecting society is adjudged not to have competence over the work, it shall, in addition to any penalty imposed upon it, be liable for the payment of compensation to the user with which it signed the contract, the amount of which shall be determined pursuant to the special safeguarding measures." This does not apply for the collection of equitable remuneration.

Harm to competition

The provisions have resulted in legal uncertainty, including conflicting case-law,[57] on whether users (including radio and TV broadcasters) should pay equitable remuneration in respect of audio, visual and/or audiovisual works of rights holders who are not members of collecting societies and who do not wish to receive fees from them; and whether the presumption provided in Article 55, paragraph 2.2 is rebuttable or non-rebuttable for users and rights holders given that it is presumed that the relevant collecting society represents without exception all beneficiaries and all their works without any written declaration needed.

The legal uncertainty regarding the fees users (including radio and TV broadcasters) have to pay to collective societies creates disincentives to enter the market and freely choose works to broadcast. In other words, given that the provision states that the collecting society represents without exception all beneficiaries and all their works, but that there is uncertainty whether this is a rebuttable presumption or not, users who choose to broadcast works not represented by the collecting society do not know whether they have to pay equitable remuneration and whether they can prove that they have not .

In addition, it should be taken into consideration that the costs for users increase further if they have to prove that they are not obliged to pay the collecting society. The only way to defend themselves is to go before the courts, and relevant court proceedings in Greece are extremely time-consuming and costly.

Recommendations

It should be clarified either in the law or in a circular that the legal presumption of Article 55, paragraph 2.2 of Law 2121/1993 is rebuttable, so that users who opt to broadcast specific works that are not represented by collecting societies (i.e. their rights holders do not wish to receive the equitable remuneration) are not obliged to pay the relevant fees to collecting societies.

An independent alternative dispute-resolution mechanism could be established (see also the option provided by Article 34 of Directive 2014/26/EU[58]) to give users, collecting societies and rights holders the option to settle their disputes in a less time-consuming and costly manner than the courts.

4.5. Free-to-air media

Ownership/ cross-ownership rules

The important role that the media play in shaping public opinion serves as a basis for special regulations that aim to secure media pluralism (the presence of a number of different and independent voices) and diversity (the presence of different political opinions and representations of culture). Under Article 10 of the European Convention on Human Rights[59], states should take all measures, including restrictions or penalties, necessary in a democratic society to ensure freedom of expression and freedom to hold opinions.[60] Therefore, merger and acquisition activity can give power to media outlets and thus may endanger media pluralism.[61]

In Greece, Law 1866/1989[62] abolished the state monopoly in the television sector by allowing the operation of private TV stations. [63] It attempted to limit concentration of media ownership, providing that shareholding in television companies could not exceed 25% of the company's capital. Law 2328/1995 introduced more restrictive rules, prohibiting participation in more than two different categories of media (press, radio, TV). The "two out of three" model was supplemented by provisions precluding ownership of more than one TV and radio station and press-ownership restrictions. Shareholding in a television enterprise was kept to a maximum of 25% of the company's capital and a similar ceiling was introduced for foreign ownership in electronic media. However, despite of the enactment of a strict regulatory framework, concentration of media ownership occurred.[64]

In the Greek state's latest attempt to create a less restrictive regulatory approach to both media ownership (Article 5) and media concentration (Article 3) is Law 3592/2007, a potential investor should comply with both set of rules (Article 5, paragraph 9) in order to enter the media market. NCRTV is the competent authority for supervising compliance with ownership and cross-ownership restrictions, while HCC is competent for the compliance with concentration rules.

The provisions regarding ownership rules are included in Article 5 of Law 3592/2007. According to paragraph 1, the control of more than one electronic media of the same type (TV and radio) is prohibited. According to paragraph 3 of Article 5, control is the exercise of substantive influence over media management and operation. Being the owner, executive director, manager or member of the board of directors in more than one electronic media automatically denotes control. This is also the case with partners and shareholders who hold at least 1% of the capital of more than one electronic media and figure among the 10 most important partners or shareholders of the media concerned in terms of shares or voting rights; or who enjoy the right to appoint at least one member of the board of directors of the media involved. Media control can also be established via "intermediaries" (i.e. spouses and relatives up to third degree), provided that "unfair influence", determined by a final judicial decision, is exercised over media management to the detriment of pluralism and competition. This rule applies only for spouses

or relatives of individuals with Greek nationality as long as they are shareholders of companies not registered in stock markets in EU and OECD member states.

Paragraph 2 permits sole ownership up to 100% of a licensed TV and of a licensed radio broadcaster of informative content.[65] Paragraph 6(a) also allows participation (shareholding) in an electronic media of the same type of informative content unless control, as defined above, is established.

Paragraph 6(b) limits participation in media enterprises of non-informative content to:

- one TV broadcaster of non-informative content (national or regional) and one (national or regional) of informative content or two of non-informative content (national or regional);
- 15% of the total number of radio licences of non-informative content (regional) and a maximum of three radio broadcasters in total.

Media concentration rules in Article 3 of Law 3592/2007 insert special provisions regarding the concentration of informative-content media so as to control the impact on media diversity. For media of non-informative content (paragraphs 1 and 2), the general competition rules set out in Law 3959/2011 apply. To avoid the creation of dominant positions of media of informative content, the Greek legislator has established specific "dominance thresholds", ranging from 25% to 35%, depending on the number of the media markets under examination.[66]

However, according to Article 5, paragraph 10 of Law 3592/2007, these restrictions on the participation (shareholding) in TV and radio broadcasters of informative and non-informative content, as defined in paragraph 6 of Article 5,[67] and the concentration thresholds of Article 3 with which the potential investor should comply, apply for owners, shareholders, managers or members of the board of directors of companies that operate in Greece under the condition that these companies are not registered in stock markets of EU or OECD member states.

Finally, paragraph 14 of Article 5 stipulates that all restrictions regarding media ownership rules apply only for natural or legal entities that own or participate in media enterprises in Greece and only for their domestic business activity.

As mentioned above, the overall objective of these provisions is to protect pluralism and diversity of opinion in the media, as well as to enhance transparency and competition among media enterprises. It was not possible to identify the specific objective of each one of the provisions described above.

Harm to competition

The state's aims are to accommodate economic competition, the freedom of doing business and economic efficiency in general, while at the same time fortifying pluralism by promoting transparency in the ownership of media enterprises. So while this may limit potential investors' investment choices, it prevents situations of over-concentration and allows the objective of pluralism, diversity and transparency to be achieved.

It might still be argued that the cut-off point of ownership of 1% of the capital of a media enterprise in paragraph 3 of Article 5 is too strict for investors to exercise real control over a particular media company. And assessing control in this way is certainly not common practice in other sectors of the economy, where more conventional criteria (such as shareholder majority) are followed.

As discussed, paragraph 3(b) aims to prevent cases that may affect pluralism and diversity and so extends media ownership rules to the spouse and relatives up to the third degree. It cannot be efficiently enforced, however, because there are not specific criteria to define "unfair influence". The result is legal uncertainty as competent authorities and the courts are unable to justify their decisions; there is also a lack of significant caselaw on the issue.[68] Together this constitutes a barrier to entry for potential investors who want to enter and invest. Moreover, the fact that this rule applies only to Greek shareholders of companies not registered in stock markets in EU or OECD member states distorts competition and raises costs of these firms, without obvious justification by favouring foreigners and Greek shareholders registered in foreign stock markets. The aim of this kind of provision is to protect pluralism and diversity and to promote competition, which such an exception undermines, while creating an uneven playing field.

The exception inserted into paragraph 10 of Article 5 regarding the application of ownership rules and concentration thresholds only on owners, shareholders, managers or members of the board of directors of media companies operating in Greece, only if not registered in stock markets of EU or OECD member states, is not justified. As a result, potential harm to competition cannot be counterbalanced by a valid public -policy objective. The provision not only favours owners, shareholders and managers of companies that are registered in stock markets against those that are not, but also it jeopardises the aim of this set of rules to protect pluralism, diversity, transparency and to enhance competition.

In Greece, according to the literature (Anagnostou et al., 2010), "Scholars have also drawn attention to the fact that the exclusive use of economic criteria for the establishment of a dominant position, based on advertising expenditure and sales income, is inappropriate. They have claimed that the assessment of whether a media enterprise enjoys a dominant position in the market or not must also be based on criteria related to the influence it exerts on the public, usually reflected in audience shares… The endorsement of a pure economic approach, coupled with the fact that concentration control follows and does not precede operators' merging plans, could substantially undermine the ability of competition law and policy to support citizen access to a wide range of media outlets and voices".[69]

Finally, to promote diversity of media ownership, all adequate information about media ownership structures should be made available and accessible by interested parties and the civil society.[70]

Recommendations

Competent administrative authorities and the courts should be given specific criteria for the proof of unfair influence and abolish the exception currently in Article 5, paragraph 3(b) of Law 392/2007 that provides for foreigners and Greek shareholders of companies registered in stock markets of EU and OECD member states.

Article 5, paragraph 10 of Law 3592/2007 should be abolished since it favours companies registered in stock markets of EU and OECD member states.

Ownership and cross-ownership rules should be reviewed in combination with media concentration rules (as is done with newspapers), so as to conclude whether they can be updated to focus more on the real impact of media in the market and the shaping of public opinion (for instance, apply the criterion of audience share).

Box 4.1. **International media-ownership rules**

Media pluralism and freedom of expression is supported by the European Union, but there are no specific EU rules concerning limits on media ownership and cross-ownership. The regulation of media ownership is subject to national regulations influenced by the history and the cultural background of each country.

France

In broadcasting, the Conseil Supérieur Audiovisuel (CSA, Higher Audiovisual Council) enforces ownership limits based on three criteria: capital share, number of licences and audience share. Nobody can hold – either directly or indirectly – more than 49% of any national broadcast licence holder whose average annual audience share exceeds 2.5%. A national broadcaster is defined as having a potential reach of over 10 million people (around 15% of the national population) and includes radio, cable and satellite. Shareholders must inform the competent authority when their holding exceeds 10% in any given company. These limits apply to both analogue and digital television, but there are other analogue-only restrictions. A “15/15” rule means that nobody holding an interest of over 15% in a national analogue licensee can hold over 15% in any other; a “5/5/5” rule prevents anyone from holding an interest of over 5% in more than two. In addition, no entity can hold more than one licence for national analogue television, more than seven for digital television, or more than two for satellite television.

Finally, there are restrictions based on audience share:

- no one can own both a national TV licence (analogue or digital) with an audience share of over 2.5% *and* a licence for local analogue TV;
- no one can hold local analogue TV licences with a cumulative reach over 12 million people, or digital TV licences with the same cumulative reach, and these limits do not work in combination;
- no one can hold more than one local TV licence (analogue or digital) in the same broadcast area.

Germany

Media regulation in Germany falls to individual state governments, but in the 1990s they mutually established the Kommission zur Ermittlung der Konzentration im Medienbereich (KEK, Commission on Concentration in the Media). KEK can intervene in TV or radio markets if a company’s combined media holdings (including newspapers) comprise more than 30% of annual viewer (or circulation) share. A 25% holding of the television market can also trigger intervention. Germany has a complex approach to measuring audience share across mediums, and KEK applies different weightings to shares in different formats, on the basis that different kinds of media exert varying influence on the public sphere.

United Kingdom

The British Parliament has over the years put in place rules related to media ownership. These include:

- the national cross-media ownership rule, which prohibits a newspaper operator with a market share of 20% or more circulation from holding a Channel 3 licence or a stake in a Channel 3 licensee greater than 20%;
- regulator Ofcom’s public interest test, which allows the secretary of state to intervene in a merger involving a broadcaster and/or a newspaper enterprise if certain conditions are met;* the secretary of state may decide to issue an intervention notice that triggers a review of whether the merger might result in harm to the public interest;
- the disqualified persons restrictions, which prevent certain bodies or persons from holding any broadcast licences, others from holding certain kinds of broadcast licences, and still others from holding broadcast licences, unless Ofcom has determined that it is appropriate for them to do so.

* The Secretary of State may intervene if the enterprises cease to be distinct; the value of the enterprise being taken over exceeds GBP 70 million; and/or the merger results in at least a 25% share of supply of goods or services in the UK (or substantial part of the UK), or involves an enterprise that has a 25% share of supply of newspapers or broadcasting. Ofcom (2015), ibid.

Sources: France and Germany - “The elephant next door: a survey of international media ownership regulations”, Media Reform Coalition (2015), www.mediareform.org.uk/wp-content/uploads/2015/11/The_Elephant_Next_Door-A_Survey_of_International_Media_Ownership_Regulations.pdf.

UK - Ofcom (2015), "Report to the Secretary of State on the operation of the media ownership rules listed under Section 391 of the Communications Act 2003, http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-ownership/morr_2015.pdf.

Radio licensing

Overview of radio licensing

The state's radio-broadcasting monopoly was abolished with Law 1730/1987,[71] which allowed the establishment and operation of local radio stations following administrative authorisation based on criteria provided by the law, without the provision of a prior tender procedure.

Pursuant to this law and Presidential Decree 25/1988, radio licences were issued by the administration. However, from 1989 several private radio stations began operating without any administrative authorisation. This uncontrollable situation of illegal establishment and operation of radio stations[72] led to the introduction of Law 2328/1995. This new law contained a set of provisions regarding the licensing procedure that introduced a competitive process, criteria for rating bidders, a four-year period of validity of licences, and the possibility of their renewal. Once in force, calls for radio licences were issued only in the prefecture of Attica and Thessaloniki. In 2001, 20 radio licences were finally granted in Attica[73] and in 2002, 15 additional licences were added.[74] In the prefecture of Thessaloniki, the procedure stayed pending and no licences have yet been granted. In other regions, the licensing procedure never even began.

In 1999, Article 53, paragraph 1 of Law 2778/1999[75] came into force. It provided that: "Radio stations which were in operation on 1 November 1999, are considered as legally operating until the decision of the Minister of Press and Media provided in Article 7, paragraph 2 of Law 2328/1995 regarding the launch of the tender for licensing radio stations is issued." By virtue of this provision, all radio stations that could prove by any means that they had been operating since at least that date applied to the NCRTV to obtain a certificate of a legally operating radio station.

A tender was in progress in Attica and so radio stations operating there at that time could not take advantage of this provision. However, when radio licences in Attica expired, Article 15, paragraph7(a) of Law 3444/2006 was enacted to extend them until 30 June 2006, when a new tender for radio licences was to have been issued. Instead, over the following years several provisions[76] delayed the launch of the tender process for radio licences and so in effect extended the validity of existing radio licences. Even in the new Law 3592/2007, regarding the criteria for radio licensing, whose provisions abolished de facto but not explicitly the relevant provisions of Law 2328/1995, Article 5, paragraph 7 (b) stated that all radio stations (licensed according to Presidential Decree 25/1988 or after a tender, such as in Attica, or those that are considered as legally operating) could continue their operation until tenders that followed the new criteria set out by Law 3592/2007 were issued. In the same law, Article 20, paragraph 5 provided an extension until 31 December 2007 for radio licensing.

In 2009, Article 50 of Law 3801/2009 provided the possibility for radio stations owned by political parties represented in parliament, which had been broadcasting before the promulgation of Law 3592/2007 and which fulfilled its criteria, to continue their operation and be considered as legally functioning until the launch of the tender process for radio licensing. It was not possible to identify the objective of this provision, but in our understanding, these radio stations were not able to prove their operation before 1 November 1999.

Despite the existence of a new legal framework (i.e. Law 3592/2007) for radio licensing that could be applied and which is still in force, consecutive provisions for extension of the deadline for launching a tender were regularly enacted.[77] The most recent was Article 86, paragraph 1 of Law 4313/2014, which provided a deadline for radio licence tenders of 31 December 2015.

Since this date, the licences of radio stations in Attica, the validity of which depend on the launch of the tender for radio licensing, have typically expired. Nevertheless, all radio stations in Attica continue broadcasting without any action taken by the administration to stop their operation. Radio stations operating in all other Greek prefectures, besides Attica, can continue to broadcast legally as long as they have or can get the certificate of legally operating radio broadcasters as laid out in Law 2778/1999.[78] It is not clear though whether the expiration of the extension of the tender deadline has had an impact on the validity of their certificates.

The Council of State has already ruled that the indefinite tolerance of the operation of radio stations that started their operation illegally, but are now considered as legally operating just because they were broadcasting before 1 November1999 runs contrary to the Constitution. This is justified in two ways. First, the provisions are not in conformity with the constitutional principle that the state has to ensure the applicability of laws in force, and second, they violate the principle of equality because they establish a differential treatment between individuals who wanted to and could have afforded to run a radio station but did not because it was illegal, and those who illegally occupied a radio frequency and simply started broadcasting.[79]

In addition to the indefinite extensions of the radio-licence tender process, other provisions show the administration's inaction in establishing a consistent legal framework regarding the operation of radio stations and their licences.

More specifically:

- Article 6, paragraphs 3 and 4 of Law 4279/2014 allows radio broadcasters with an informative-content licence to change their content category to non-informative simply by submitting a declaration to NCRTV, and then continue operating under the same licence;

- Article 8, paragraph 9 (στ) of Law 3592/2007 allows the licence of a radio station to be recalled from the licensee and directly granted to its employees by virtue of a decision of the Minister of Press and Media if it ceases or suspends operations for a period of at least six months or delays payment during at least four months of one third of its employees or one third of its personnel's total salaries.

Harm to competition

The above legal framework severely limits competition in the radio-broadcasting market. These provisions are damaging competition because the market is essentially sealed from new entrants: no new licences are currently available and incumbent broadcasters have their expired licences continuously renewed on a temporary basis.[80] Therefore, the only way for a potential new entrant to invest in the market is to acquire one of the existing firms holding a temporary licence.

Furthermore, the fact that these licences are only renewed on a temporary basis creates uncertainty in the market and limits competition, because it is very likely that under these circumstances, potential investment plans by incumbent and new-entrant businesses are put on hold until a proper licensing procedure is launched and the rules are clearly stated.

More specifically, the provision of Article 8, paragraph 9 (στ) of Law 3592/2007 that enables the employees of a bankrupt radio station to gain control of the company and therefore of the radio licence, distorts market conditions. In general, in other industries, a bankrupt company is driven into liquidation and in this way resources are released from an unsuccessful business for a new venture in the market.

This way resources released back onto an open market (e.g., a radio frequency) would be purchased by the most efficient purchaser. On the contrary, the provision in this case distorts the market by allowing bankrupt radio stations to operate on different terms to those of their non-bankrupt competitors with dubious results with regards to economic efficiency and consumer welfare.

Article 6, paragraphs 3 and 4 of Law 4279/2014 enables radio stations of informative content to switch to non-informative content simply by submitting a declaration to NCRTV. As the limited number of analogue radio frequencies means that only a fixed set of radio stations may be licensed in any given prefecture, the state wants to optimally distribute those frequencies between informative and non-informative content. If a company is not able to operate by providing the content for which it is licensed, then the licence should be returned to the state and re-auctioned. This will keep a level playing field between all broadcasters and retain the desired ratio between informative and non-informative radio stations, and so maximise consumer welfare.

Recommendations

After completing the relevant technical analysis and issuing a map of frequencies, the authorities should launch tenders for each prefecture with a specific number of licences both for radio stations of informative and non-informative (music, sports) content.[81] This will establish a stable investment environment with legal certainty and specific conditions known to all participants from the outset. All other provisions that insert derogations to the licensing procedure should be abolished.

Article 6, paragraphs 3 and 4 of Law 4279/2014 should be abolished.

Article 8, paragraph 9 (στ) of Law 3592/2007 should be abolished.

Specific criteria for licensing

Overall legal framework

Law 3592/2007, the legal framework for launching a tender for radio licensing, has been in force since 2007, but it has never been properly applied and no tenders for radio licensing have been published. It de facto replaced (according to the legal principle that a newer law overrides a predecessor if they regulate the same issue) the relevant articles of Law 2328/1995, without specifically abolishing them. As a result, there is legal uncertainty regarding the validity of provisions included in Law 2328/1995.

Harm to competition

Legal uncertainty raises legal and compliance costs and may act as a disincentive to enter or remain in the relevant market.

Recommendation

Law 2328/1995 and Law 3592/2007 should be streamlined, so as to establish a definitive legal framework for radio licensing.

Corporate structure

Article 6, paragraph 6(a) of Law 2328/1995 provides that: "If the shares of an SA which is a radio licence holder are owned by another SA, the shares of the latter should be registered and owned by an individual. There is no possibility of an SA being owned by another SA." This obligation for company

structures is not repeated in Law 3592/2007 and it is therefore unclear whether it has been abolished or not.

Assuming that it is still in force, radio stations that want to hold a licence have to fulfil this requirement, raising an issue about obligatory company structure.

The OECD's understanding is that this provision's objective is to enhance transparency of the ownership of licence-holding radio stations, allowing the public the possibility of knowing who is broadcasting. However, given that all shareholders in an SA with a radio licence have to be registered, the aim of transparency could be achieved even if there were more than two SAs among the owners.

Harm to competition

As long as the rules for registering shareholders of all holding companies of media enterprises remain in place, there is no justification to enforce a particular corporate structure on a media group. Transparency can still maintained by applying the same rules to all holding companies and to the persons who own them.

Recommendation

The requirement that all shares be registered is justified by the policy maker's objective of protecting pluralism and objectivity in the media sector. If this condition is met, however, it removes any necessity to dictate the exact corporate structure of media organisations. This restriction should therefore be abolished.

Minimum staff requirements

Article 8, paragraph 14 of Law 3592/2007 provides that radio stations should employ a minimum number of full-time staff calculated according to the population of the region and the kind of the radio licence (informative/non-informative) they hold.

- In regions where the population is more than 2 million inhabitants, radio stations of informative content must have at least 20 employees, and non-informative stations must have 5.
- In regions where the population is less than 2 million inhabitants, radio stations of informative content must have at least 12 employees, and non-informative stations must have 5.
- In regions where the population is less than 1 million and more than 500 000: radio stations of informative content must have 9 employees and non-informative stations must have 5.
- In regions where the population is less than 500 000 and more than 150 000: radio stations of informative content must have 7 employees and non-informative stations must have 4.
- In regions where the population is less than 150 000 and more than 100 000: radio stations of informative content must have 6 employees and non-informative stations must have 4.
- In regions where the population is less than 100 000: radio stations of informative content must have 5 and non-informative stations must have 3.

According to the official recital of the law, this provision aims to protect pre-existing jobs in the case of new radio licences, while providing radio-licence holders with the minimum staff required for their smooth and efficient operation.

Harm to competition

A state-imposed minimum staff requirement can be acceptable in cases of services of high social importance, such as hospitals or childcare facilities,[82] where providers must provide sufficient numbers of suitably qualified, competent, skilled and experienced staff to meet the needs of service users. These are cases where quality is difficult to monitor/observe and respond to, hence providers may cut costs and endanger quality with potentially serious consequences. However, as a general rule, state intervention in employee numbers in a private company cannot be justified in terms of public interest.

Setting minimum employment requirements can be extremely restrictive to competition and to business freedom. Due to this restriction, radio stations have extremely similar employment structures and are unable to manage their resources optimally. Eventually this may lead radio broadcasters to suffer higher variable costs, which in turn may lead to higher prices in the upstream market of advertising and less innovation in the market.

Recommendation

Abolish the minimum-staff requirement for radio-licence holders.

Grandfathering clauses

The licensing procedure for radio stations contains a set of provisions where radio licensing is based on a points system that favours radio stations already operating during the procedure. Article 9(a) of Law 3592/2007 states that a radio broadcaster receives half a point for each year of its operation with a renewed licence or as a "legally operating" radio station. An incumbent radio station can get up to 120 points through this criterion. Article 9(a.4) decreases this bonus by up to half for radio stations wishing to receive a licence in a prefecture different to the one in which they had been operating. In other words, incumbent radio stations are given preferable treatment over prospective entrants to the market. This restriction also works horizontally with radio stations that remain in the same region given favourable treatment in any potential licensing procedure over those that choose to move from another region.

Although it was not possible to identify the objective of these provisions, it is the OECD's understanding that they aim to protect existing stations' investments, as well as jobs.

Harm to competition

Both these provisions have been recognised[83] as creating obstacles to new entrepreneurs. They greatly distort competition by treating incumbent businesses more favourably than potential entrants to the market (the so-called grandfather clause). The regulation may discourage new players entering the market, and as a result reduce the overall number of participants in the market or may reduce the costs of inefficient incumbents keeping them in the market when they should not be.

Recommendation

These provisions should be explicitly abolished.

Prior experience and operation

Articles 9(b) and 9ΣΤ of Law 3592/2007 also focus on the existing market presence of radio stations as part of the criteria for licensing radio stations. Article 9(b), for example, provides that during the competitive process, existing radio stations that have been fined for breaches of operations provisions have points docked at a level dependent on the seriousness of the violation and the fine. Article 9ΣΤ I/II states that existing radio stations are given extra points for the quality and variety of their programming, as reviewed by the NCRTV.

These provisions aim to improve the quality and variety of programming and create incentives for existing radio stations to follow both legal and content-related rules. Indeed, according to the official recital of Article 9ΣΤ, the provision aims to guarantee the qualitative level of radio stations' programming and the fulfilment of radio broadcasting's social mission.

While this evaluation system raises the chances of a good player capable and willing to obey the rules and offer good services, it also takes in existing radios that have been operating for many years without proper licensing and control by NCRTV; given that the NCRTV cannot be in plenary and exercise its powers [84] regarding the regulation and supervision of the radio market (and not only) for more than one year, these provisions cannot be equally implemented for all existing radio stations. Moreover, it should be noted that both negative and positive criteria provided in the law are not sufficiently defined.

The points deducted for each radio station in case of fines and sanctions are calculated proportionally and based upon the number of fines or sanctions imposed on other radio stations participating in the licensing procedure. The evaluation of the quality and variety of programming gives NCRTV wide discretion in awarding 75 points to the best in terms of quality and variety programme and proportionally fewer points to the programme of other radio stations. Despite this, the law does not actually provide specific criteria for assessing programming quality and variety.

This means that participants cannot know how many points will be deducted/added before the start of the licensing procedure and so cannot assess whether it is worth their participating or not.

Harm to competition

It is not harmful to competition if, in a licensing procedure of a limited public resource such as the analogue radio frequencies, the state reserves the right to evaluate that resource's previous usage (positive or negative), as long as the evaluation criteria are clear, known and applicable to all players in the market.

Recommendation

The state should define and publish in advance all proportionally awarded positive and negative criteria that are applicable to all players in the market (both incumbent and new entrants).

TV

The present draft does not include the assessment of Law 4339/2015 and of Joint Ministerial Decision 7577/2016 in relation to digital free-to-air TV licences, due to ongoing administrative and legal procedures.

TV network provider

Removal of multiplexes

Article 80(ιη) of Law 4070/2012, as amended by Article 19 of Law 4339/2015 on the licensing of digital-TV broadcasting, stipulates that the Minister of Infrastructure, Transport and Networks reserves the right, following a substantiated opinion by the competent regulator (EETT), to issue a Ministerial Decision that withdraws from a network provider the usage and exploitation of any multiplex that has not been sufficiently used for four months in total, provided that the content of the multiplex can be broadcast by the remaining multiplexes managed by the network provider of digital terrestrial broadcasting. "Non-sufficient use" is further explained as the situation where the multiplex does not contain a minimum of four standard-definition (SD) digital broadcasts or a smaller number of high-definition (HD) digital broadcasts. By virtue of the same Ministerial Decision, the exploitation of a recalled multiplex can then be assigned to a new network provider for broadcasting digital content regionally or nationally.

According to the official recital, the removal of a multiplex can be done only for public-interest reasons and the better exploitation of public frequencies.

Harm to competition

The provision is aimed at encouraging the full use of the spectrum by network providers. It is very difficult to define the meaning of "use", however, and therefore to identify the conditions under which a spectrum may be taken away. In particular, the unclear and potentially broad definition of "public interest" may lead to a wide variety of reasons why the State might remove an underused multiplex. Article 10, paragraphs 2 and 5 and Article 14 of Directive 2002/20/EC on licensing electronic communications networks and services, provide the legal framework under which national regulatory authorities may trigger a suspension or withdrawal of usage rights: first, if the undertaking is infringing the conditions of its licence, and second, as a last resort of repeated breaches.

Without further clarification of the situations that can trigger such a unilateral action from the state, the provision creates legal uncertainty and disincentives for potential investors to enter the market in the future or for current players to invest in infrastructure.

Moreover, there may be legitimate reasons why the spectrum holder is not using its resources fully. This provision should also be viewed in the light of the number of licensed TV broadcasters in the (national and regional) market. A limited number of licences, for example, will inevitably result in the network provider having unused frequency bandwidth due to limited demand.

Recommendations

The provision should be abolished or amended in order to provide a restrictive reference of the public-interest criteria that can trigger such unilateral action from the state, in accordance with Directive 2002/20/EC on licensing electronic communications networks and services. It should also be made clear that limited usage of multiplexes should be directly attributed to the network providers, such as cases of technical inefficiencies by the network provider or non-compliance with its licensing conditions.

ERT SA as a network provider

Article 2, paragraph 11 of Law 4173/2013 provides that the Greek public broadcaster ERT is a network provider for its own programming, as well as for third-party content providers. For these

functions, ERT is exempt from any kind of licensing procedures. Additionally, the competent ministers provide it with the frequencies it needs without charge.

It was not possible to identify the objective of this provision. However, OECD understands that it allows ERT as a network provider to carry and broadcast third-party content and thus to enhance pluralism and to supply the public with information that meets a level of quality, and standards of completeness and versatility.

Harm to competition

This provision may be harmful to competition if ERT by virtue of its capacity as a network provider is allowed to broadcast the commercial content of private third-party content providers. ERT's network is provided by the state for free and is exempt from licensing, creating an uneven playing field for commercial network providers, who pay the state for their marketed frequencies (multiplexes) and have to go through costly licensing procedures. Differential treatment between companies offering the same service for commercial purposes is discriminatory and an obstacle to competition. ERT must comply with all the regulations relating to commercial broadcasters if it wishes to compete with them, otherwise ERT may act only as a network provider to carry public interest content (usually provided by other public owned broadcasters).

Recommendation

The phrase "third party" should be deleted, otherwise it should be further clarified in the law, in order to make sure that ERT cannot use its state-subsidised frequencies and premises to compete with commercial network providers.

TV advertising

Article 23(1) of Directive 2010/13/EC provides that the proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20%. This hourly limit on admissible advertising protects the integrity of programming.[85]

According to Article 23(2) of Directive 2010/13/EC, announcements made in connection with a broadcaster's own programmes, including ancillary products directly derived from them, are exempt from Article 23(1)'s limits.[86] In order to avoid distortions of competition, this derogation should be limited to announcements concerning products that fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned. The term "ancillary" refers to products intended specifically to allow the viewing public to benefit fully from, or to interact with, these programmes.[87]

This Directive was transposed into Greek law by Presidential Decree 109/2010, and the initial version of the relevant provision regarding the derogation (Article 23, paragraph 3) was in line with the Directive.[88] However, following an amendment of the decree by virtue of Article 6, paragraph 8 of Law 4279/2014, the provision was amended and new derogations were added. This meant that what is not considered as advertising time was extended to cover announcements made by the broadcaster in connection with the rest of its activities, as well as the activities of other enterprises belonging to the same media group, such as informative or entertainment services offered over the Internet, the production and distribution of audio and/or audiovisual works, and technical training for providing services in the above sectors. These derogations do not meet the dual condition of being both ancillary to, and directly derived from, the programmes as defined by the Directive. They are not indeed products intended specifically to allow the viewing public to benefit fully from, or to interact with, the programmes of the TV broadcaster.

Similarly, Article 5, paragraph 16 of Law 3592/2007, as amended by Article 6, paragraph 2 of Law 4279/2014, provides that TV and radio broadcasters belonging to the same media group and having the same management control, can promote their programmes, services, activities through self-promoting announcements set out in Article 23, Paragraph 3 of Presidential Decree 109/2010.

Harm to competition

The derogations added by the Greek legislator implicitly raise advertising costs for purchasers of advertising time that are not part of a particular media group compared to those that are. The latter take advantage of free advertising that is extra to the permitted time for advertising in a given clock hour. As a result, these companies have a cost advantage over their competitors, while the ability of new entrants (not belonging in a media group) to inform potential customers of their market presence is restricted.

Recommendation

The amendment of Article 23, paragraph 2 of Presidential Decree 109/2010 made by Article 6, Paragraph 8 of Law 4279/2014 should be abolished and the first version of the provision should be revived in line with Article 23, paragraph 2 of Directive 2010/13/EC. Accordingly, Article 5, Paragraph 16(b) of Law 3592/2007 should be abolished.

4.6. Pay TV

The presence of pay TV in Greece has increased significantly over the past few years, and by 2015, total subscribers exceeded 1 million. In 2011, penetration of pay TV was measured at 9%; in 2013 at 18%; and in 2014 at 23%.[89] The main players in the market are NOVA, OTE TV, Cyta and Vodafone TV. The first two are the dominant players in terms of market share, based on subscriber numbers, followed by Cyta and Vodafone, which have a total of 100 000 subscribers.

Table 4.2. **Number of subscribers, 2013-2015**

	2013	2014	2015
NOVA	452 000	507 261	494 643
OTE TV	255 000	353 000	450 000

Source: Companies' annual financial statements.

Law 2644/1998, which constitutes the main legal framework for the supply of subscription broadcasting services and so regulates pay-TV services regardless of their platform (digital or analogue) or delivery system (terrestrial, cable or satellite), dates back to 1998.

While the law has been amended for particular issues since its promulgation, it has not been updated. Its provisions do not therefore reflect the new technology and innovative media products that have appeared since 1998. For example, content and services have been digitalized and over-the-top (OTT) services[90] such as non-linear content have arrived and replaced some traditional pay-TV services.[91] In the United Kingdom, for example, recent market research shows that revenues from subscription video on demand (SVoD) services, which are dominated by OTT services, have grown substantially in recent years. Netflix, for example, accounts for almost half of total SVoD revenues, and this share is expected to rise further in the future.[92]

At a European level these new challenges are currently under discussion in the context of the Digital Single Market (DSM) policy. A recent report to the European Parliament found that: "applying the notion of 'imposing similar obligations on OTT services to those imposed on equivalent traditional services' is exceedingly challenging in practice. To what degree are the services in fact equivalent? Does the OTT service in fact raise the same issues as those to which regulation of the corresponding traditional service seeks to respond? Given the implementation differences between traditional versus online services, to what degree is it proportionate or realistic to impose equivalent obligations?"[93]

Corporate Structure

Article 2, paragraph 1 of Law 2644/1998 stipulates that licences are granted only to particular business entities (SA), whose shares must be registered. If the holder of the shares of the licensed SA is another SA, then these shares should be owned by individuals and be registered. A corporate structure featuring another SA as a licence holder is prohibited.

Article 2, paragraph 2 then states that this obligatory share registration does not apply to non-Greek SAs as long as, 1) they can prove they have high solvency; 2) they have been in the market of media or telecommunications for at least three years; and 3) they do not have to declare registered shares in the law of their country of origin. Moreover, the obligation of registered shares does not apply to shares held in stock markets of EU or OECD member states.

According to the official recital, share registration enhances transparency and pluralism in the media sector. The policy maker's objective for foreign companies with market experience of at least three years is to attract companies that are reliable, solid and responsible in doing business. The required participation in stock markets confirms that a company has complied with strict rules and requirements of operations that should guarantee transparency.

Harm to competition

As long as the rules for registering shareholders of all holding companies of media enterprises remain in place, there is no justification in continuing to enforce a particular corporate structure on a media group. Transparency can still be maintained by applying the same rules to all holding companies and to the persons who own them.

The exclusion of Article 2, paragraph 2 regarding companies that participate in the stock market from the obligation to register shares, is reasonable since it is indeed the case that stock -market regulations require that a company complies with strict rules and conditions of operation, which also meet the requirements of transparency.

It is not clear how the high-solvency criterion affects the market. On one hand, it is vague and results in higher costs for the foreign company (which has the burden of proof). On the other hand, it may favour foreign companies against local ones, which have no other option but to enter the market by declaring registered shares. In either case, it provides the administration with wide discretion to interpret and implement the criterion *ad hoc*.

The obligation of foreign companies to have at least three years' presence in a media or telecommunications market is unnecessary. It hinders competition by creating barriers to entry to the relevant market, especially for new formed companies that may otherwise have the financial capacity to invest in the industry. There is no such restriction in the licensing procedures of free-to-air TV broadcasters and new companies may enter that market.

Recommendation and benefits

The policy maker's objective to protect pluralism and objectivity in the media sector justifies the restrictions on share registration. If this condition is met, however, there is no reason in going a step further and dictating the exact corporate structure of media organisations. The obligation to register shares easily allows regulators to trace ownership of media groups, if needed.

The high-solvency criterion for foreign companies should be abolished.

The requirement for foreign companies to have at least three years' previous presence in a media or telecommunications market should be abolished.

Licensing restrictions and costs

According to Article 2, paragraph 3(a) of Law 2644/1995, an SA can be granted one licence for one delivery system (terrestrial, cable or satellite), and then hold one more licence for broadcasting the same services through another delivery system. The competent Minister decides the number of licences for terrestrial distribution and the scarcity of the resources/frequencies means they are granted through a competitive procedure.[94] For satellite and cable services, licences are granted upon application to SAs that fulfil all the requirements provided by the law.[95]

On top of other requirements, Article 9, paragraph 7 of Law 2644/1998 states that an SA has to pay a one-off fee of almost EUR 44 000 per 24 hours of the total daily programming (in the law the amount of money is still in drachmas: 15 million) and almost EUR 8 000 (3 million drachmas) for 24 hours of radio programming. Moreover, an annual fee corresponding to a percentage of the annual revenue of the pay-TV provider using satellites or cable is applied. This percentage begins at 0.5% for the first two years and increases gradually throughout the following 10 years until it reaches 3%. For terrestrial delivery systems, the annual fee amounts to 3.5% of the revenues starting from the first year.

According to the official recital, the first provision aims to the avoidance of horizontal concentration in the field of broadcasting services, while the second helps fund NCRTV in its supervisory role and to develop services provided by public broadcaster ERT.

Harm to competition

In an effort to avoid the creation of dominant positions, the law limits the number of licences that one party can hold.[96]

A party can have only one pay-TV/radio licence for each method of distribution (e.g. satellite, cable, terrestrial). This can be justified for terrestrial distribution on the basis of scarcity of resources, but for satellite and cable distribution, it limits freedom of business and harms competition. It is therefore difficult to justify the prohibition on holding more than one satellite licence, particularly as pay-TV services have been chosen explicitly by consumers who pay for the product, and that pay-TV content in Greece is non-informative and therefore cannot be seen as influencing public opinion.

The restriction on the number of distribution methods a party can use to broadcast harms competition by limiting the freedom of businesses to adopt new technologies and by providing disincentives for innovation. Due to the advent of new technologies, it should be left to the businesses to choose the means by which they broadcast their content, particularly given that, as mentioned above, pay-TV services constitute commercial products that require consumers' explicit willingness to buy and use. It is understood that the policy maker's aim here is to avoid a "spill-over" of a possible dominant

position into neighbouring technologies. To go as far as limiting the number of technological distribution methods, however, may severely hinder competition intensity in any given distribution channel by forcing companies to focus on one particular technological field, and so limit competition in others.

The lack of an updated and streamlined definition of the term “delivery system/means of distribution” also causes barriers to entry for businesses that want to invest in pay TV/radio and offer new subscription services such as non-linear services and subscription VOD through new technologies such as broadband networks (IPTV) or free Internet (OTT). Although Article 15 of Law 3592/2007 describes a licensing procedure for providers of radio and television services through broadband networks (IPTV), the competent authority, NCRTV, does not apply it to web television/radio services.[97]

More specifically, Article 15 of Law 3592/2007 stipulates that radio and television services through broadband networks (IPTV) should be licensed by NCRTV in terms of their content, unless the same content has been already authorised for broadcast through another platform. To broadcast this content, the network provider can be the same company as the content provider and should have been “granted a General Authorisation”[98] by EETT. Television over the Internet (OTT) does not fall under this regulatory framework and in general, it is not regulated.

As a result, there are currently three parallel systems offering similar products. Although they cannot yet be characterised as direct substitutes, in the near future, as Internet penetration progresses, they will be increasingly addressed to the same consumers. Pay TV has to fulfil all the requirements concerning company structure, capital, ownership rules provided by Law 2644/1998; IPTV delivered over broadband networks is licensed by EETT for the network and by NCRTV for content, but the requirements are much more relaxed than for pay TV; and finally, TV programming over the Internet, one type of so-called OTT services, can be freely broadcast without a license, control or authorisation.

It should also be noted that each system has different licensing fees. For pay TV, they are provided by the law and amount to almost EUR 44000 for every 24 hours of daily programming, plus 3% (or less depending on the years of operation) of the company revenues. Fees for networks used by IPTV are paid to EETT and are comparatively less[99] than those paid by pay TV, while OTT services pay no licence fees.

Having different regulatory regimes creates an uneven playing field for businesses and thus distorts competition, while considerably raising business costs; this is likely to feed through into prices.

The one-off licence fee that pay-TV/radio service providers have to pay to obtain their licence and the annual fee based on their revenues is collected for public-interest purposes (funding the regulatory authority and contributing to the development of ERT’s services). Moreover, licence fees often exist in other European countries such as the Netherlands, Sweden and the United Kingdom.

However, the fact that the size of the fee is set out in a law dating back to 1998, and in the meantime, the economy, business environment and technology have all changed, may create uncertainty and give the impression of an unreliable market. This may in turn deter new entrants from investing in the pay-TV/radio market. Furthermore, the law should be updated so as to take into account all technological distribution methods used by the different various subscription-TV products currently available in the market and so allow licensing procedures and fees to converge and be reviewed to reflect the current economic and financial circumstances. This should create a more level playing field.

Recommendations

The restriction on the number of licences that a party using other technological methods of distribution than terrestrial can hold should be abolished.

The restriction on the number of delivery systems/means of distribution that a licensed pay-TV/radio broadcaster can use for transmitting its programming should be abolished.

The distribution means of pay-TV/radio broadcasters should be streamlined to create a level playing field for pay TV, IPTV and OTT (where possible, and especially for the last).

Update the one-off licence fee and annual fee paid by pay TV/radios, so as to correspond to new market conditions including IPTV and, if possible, OTT.

Cross-ownership rules

According to Article 2, paragraph 4 of Law 2644/1998, the licence holder of pay TV/radio services cannot simultaneously own a free-to-air broadcasting licence (taken out under Law 2328/1995). On the contrary, it can participate in a company that holds a free-to-air broadcasting licence, as long as there is no harm to competition, dominant position is not abused and pluralism is protected. Besides, the shareholders of licence-holding company can own or participate in a company that owns free-to-air licence only if the previous requirements are met.

Article 2, paragraph 5 of Law 2644/1998 stipulates that pay TV/radio licence holders, its shareholders as well as the shareholders of its shareholders, are prohibited from participating in more than two categories of media (any kind of television, radio, newspapers).[100]

According to the official recital, both provisions are an attempt to avoid the creation of horizontal concentration in broadcasting services.

Yet, more recent legislation on cross-ownership rules (Article 5, Law 3592/2007) regulates the same issues differently, without explicitly abolishing these provisions. More specifically, this article states that a licensed television broadcaster may own only one television licence and one radio licence (of informative content), but places no restriction on newspaper ownership. These licence holders may also participate in a company that holds a television licence, as long as they do not control it. (The term "control" is defined in great detail by the law.)

Harm to competition

Article 2, paragraphs 4 and 5 of Law 2644/1998 may constitute a barrier to new entrants. Moreover, there is legal uncertainty regarding their validity, resulting in legal and compliance costs for both companies already in the market and new entrants.

If the provisions are still in force, then they regulate the same issues in a completely different and far stricter way than those the Greek legislator decided to adopt in Law 3592/2007.

There is no obvious reason for having stricter cross ownership rules for pay-TV/radio services than for free-to-air TV/radio services, particularly as they create barriers to potential investors. While protecting pluralism and transparency is important and should be taken into account, pay TV/radio constitutes a product that consumers consciously decide to buy and it is often of purely entertainment (e.g. music, films, sports) content. Therefore it may have less of an impact on plurality in terms of its influence on civic engagement.[101]

Recommendation

Amend the provisions of Article 2, paragraphs 4 and 5 of Law 2644/1998 so as to provide the same cross-ownership restrictions as those set out in Law 3592/2007.

Suppliers of programming

Article 3, paragraph 1 of Law 2644/1998 provides that pay-TV/radio broadcasters can either produce their own programming or buy in content from managers or suppliers[102] (each of those defined in detail in the law and hereinafter referred to jointly as "supplier"). Suppliers must have the form of an SA with registered shares

Each supplier can provide up to 30% of a pay-TV/radio licence holder's monthly programming. If the supplier or its shareholders participate in the share capital of another supplier of the pay TV/radio licence holder, total programming time for the two suppliers jointly cannot exceed 40% (Article 3, paragraphs 2 and 3 of Law 2644/1998).

The spouse or the relatives up to the fourth degree of an individual who holds a pay -TV/radio licence or is a shareholder in a licensed pay -TV/radio company or is a supplier of a pay -TV/radio company or participates in similar companies (licence holders or suppliers), cannot participate in a supplier's company structure unless they can prove their financial and business independence (Article 3, paragraph 4 of Law 2644/1998).

Finally, the suppliers, their shareholders and the shareholders of the latter, are not allowed to participate in licensed free-to-air radio broadcasters and newspaper publishers if they supply programmes to pay TV, and vice versa, i.e. supplying programming to pay radio prohibits participation in free-to-air licensed TV broadcasters and newspaper publishers (Article 3, paragraph 6 of Law 2644/1998).

Contracts signed between pay-TV/radio licence holders and suppliers, according to Article 4, paragraph 1 of Law 2644/1998, are invalid if they are not submitted and certified by the Minister in Charge of Press and Media (or NCRTV, if competence has been transferred).

All the aforementioned provisions constitute an extremely detailed legal framework for regulating the supply of programmes to pay-TV/radio broadcasters. According to the official recital, their purpose is to avoid interdependencies between pay-TV/radio licence holders and suppliers, and so to safeguard pluralism and impartiality. For the detailed rules concerning the participation in another supplier's company, the official recital argues that it is essential for avoiding the use of surrogates who breach the rule in practice. Moreover, in order to justify the restrictions on cross-ownership, the official recital points out the equal importance of both the license holder and the supplier of programme in protecting pluralism and transparency. Thus ownership restrictions are introduced in order to avoid horizontal and vertical concentration in the media market. Finally, it is argued that the contracts between suppliers and licensed pay -TV operator should be checked to ensure enforcement of the aforementioned provisions.

Harm to competition

The restrictions provided by the law on the supply of pay -TV/radio programming cannot be sufficiently justified on the basis of transparency, pluralism and content impartiality. As already noted, pay TV/radio is a product that consumers buy consciously after having examined its content and qualities. Restrictions on who supplies this programming limit pay -TV/radio broadcasters' investment choices and optimal allocation of resources. They also raise operational costs and may result in higher prices and limited choices for consumers.

More specifically, the supplier's obligation to have a particular corporate structure (SA) with registered shareholders hinders competition and raises costs, as companies that have chosen another structure cannot participate in this market. The transparency required can be achieved through other corporate structures – as long as all participants are required to be disclosed and registered.

The limit on the supply of programming by one particular supplier limits pay-TV/radio broadcasters' choices and subsequently, consumer choice. Moreover, it deters suppliers from producing more programming as, a small Greek pay-TV/radio market could leave them without a buyer.

The unclear definition of financial and business independence creates legal uncertainty and barriers to entry since its exact meaning cannot be known in advance and it is left to the competent authority's discretionary power to check it case by case.

The restrictions on participation in free-to-air broadcasters go beyond the relevant ownership restrictions provided in Law 3592/2007 for free-to-air broadcasters. It should therefore be clarified whether they have been updated or not. If they are still in force, they create entry barriers and restrict potential entrants in both markets (free-to-air and pay TV) and cannot therefore be justified.

Finally, there exists legal uncertainty about who is the competent authority to verify the contracts signed between suppliers and pay-TV/radio broadcasters, as well as under which terms such a verification takes place. The obligation to have a contract verified is also extremely restrictive and increases administrative costs for all affected businesses.

Recommendations

The compulsory corporate structure of an SA for suppliers should be abolished as other corporate structures can also guarantee the transparency required as long as they have to disclose their participants (Article 3, paragraph 1 of Law 2644/1998).

The limit on the hours of programming that can be supplied by one supplier should be abolished (Article 3, paragraphs 2 and 3 of Law 2644/1998).

The competent authorities should be provided with clear criteria so they can examine the "financial and business independence" of relatives in accordance with Article 3, paragraph 4 of Law 2644/1998.

Restrictions on the participation of suppliers in free-to-air broadcasters should be abolished (Article 3, paragraph 6 of Law 2644/1998).

The compulsory verification of contracts between suppliers and pay-TV/radio licence holders should be abolished (Article 4, paragraph 1 of Law 2644/1998).

Taxation on the bills of pay TV/radio

A recent provision, Article 54 of Law 4389/2016, imposes a tax of 10% on consumers' monthly bills for pay -TV/radio services in Greece.

Harm to competition

As mentioned, the advent of new technologies has resulted in new distribution channels for pay TV/radio, as well as new products not included in the legal framework of Law 2644/1998. Therefore, this taxation affects only the companies (and subsequently their consumers) that fall under Law 2644/1998, whereas companies offering similar products (e.g. pay TV on demand) are not similarly regulated.

Recommendation

Streamline the provision (either expand or abolish) so as to create a level playing field for all competitors.

Notes

1. Division as defined by United Nations Statistics Division, *http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=27&Lg=1&Co=58*

2. Division as defined by United Nations Statistics Division, *http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=27&Lg=1&Co=59*

3. Division as defined by United Nations Statistics Division, *http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=27&Lg=1&Co=60*

4. Division as defined by United Nations Statistics Division, *http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=27&Lg=1&Co=62*

5. Division as defined by United Nations Statistics Division, *http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=27&Lg=1&Co=63*

6. Eurostat, Annual detailed enterprise statistics for services (NACE Rev. 2, H-N and S95), Database [sbs_na_1a_se_r2], *http://ec.europa.eu/eurostat* (accessed 4 April 2016).

7. 2014 data were available only for the number of persons employed.

8. About 40% of the total legal documents that consist the legal mapping of the media sector, regulate issues of the programming and broadcasting activities; this is in direct contrast to the 5% that this particular sub-sector contributes to the total turnover of the sector.

9. Official Gazette A'159/3.8.1995

10. Official Gazette A'161/19.7.2007

11. Official Gazette A'133/29.10.2015

12. Official Gazette A'233/13.10.1995

13. Official Gazette A'190/5.11.2010

14. Official Gazette A'219/23.12.2010

15. Official Gazette A'68/20.3.2007

16. See Legal Opinion 241/2011 of the Greek Legal Council of State (Νομικό Συμβούλιο του Κράτους) in which it is mentioned that a newspaper that entered the daily market after previously circulating on a weekly basis could not publish state announcements, although it was well known and it fulfilled the other requirements of the law, simply because it did not have daily circulation for two years.

17. Article 48, Law 3986/2011.

18. Schweizer, C., M. Puppis, M. Künzler, S. Studer, (2014), "Public Funding of Private Media", *Media Policy Brief 11*, LSE Media Policy Project, March 2014.

www.lse.ac.uk/media@lse/documents/MPP/LSE-MPP-Policy-Brief-11-Public-Funding-Private-Media.pdf, p.5.

19. Article 19 (2012), Regulation on State Aid to Print Media,. *www.article19.org/data/files/medialibrary/3554/State-subsidies-press.pdf,* p.5.

20. Official Gazette B'2032/13.9.2011

21. Newspapers and magazines should be issued periodically at least once every month for newspapers and three months for magazines

22. Schweizer, C., et al, (2014), ibid, p.8

23. See *http://media.gov.gr/index.php/εποπτεια-των-μ-μ-ε/επαγγελματικές-ενώσεις-μμε* (accessed 26.09.2016).

24. Anagnostou D., E. Psychogiopoulou & A. Kandyla (2011), "Does media policy promote media freedom and independence? The case of Greece", MEDIADEM, *www.mediadem.eliamep.gr/wp-content/uploads/2012/01/Greece.pdf*, p.21

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27. European Commission (2007), Commission Staff Working Document: "Media Pluralism in the Member States of the European Union" ({SEC(2007)32}), Brussels, 16 January 2007, *http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/media_pluralism_swp_en.pdf.*

28. In Italy, no one owner may control more than 20% of the total daily newspaper circulation or more than 50% of a total regional or inter-regional circulation. Any purchase which breaches these limits is liable to be declared void in court, but the limits may be exceeded in the normal course of organic business growth. See, EC (2007), ibid.

29. In France, companies are not allowed to acquire a new newspaper if the acquisition pushes their total daily national circulation to over 30%. See, EC (2007), ibid.

30. No specific limit, but the Minister for Enterprise and Employment has the power to refer any proposed takeover, merger or investment to the Competition Authority to determine whether such an action would lead to a distortion in trade or lessening of commercial competition. See, EC (2007), ibid.

31. The Competition Authority must be notified of any merger in which participating companies have a combined turnover of over EUR 113.5 million and at least two of them have a turnover within the Netherlands of minimum EUR 30 million. See, EC (2007), ibid.

32. Dominant market position is defined as a company's ability to prevent effective competition and conduct business independently of its competitors and customers to a significant extent. A dominant position is when its share of the market exceeds 40%; there are not separate circulation thresholds at local, regional and national level. See, EC (2007), ibid.

33. If any publisher controls over 50% of the market, it has to be reported to the authorities. Source: EC (2007), ibid.

34 In the UK, "The Media Public Interest Test" allows the Secretary of State to intervene in a merger involving a broadcaster and/or a newspaper enterprise if certain conditions are met. The Secretary of State may intervene if 1) the enterprises cease to be distinct; 2) the value of the enterprise being taken over exceeds GBP 70 million; and/or 3) the merger results in at least a 25% share of supply of goods or services in the UK (or substantial part of the UK) or involves an enterprise that has a 25% share of supply of newspapers or broadcasting. See Ofcom (2015) "Report to the Secretary of State on the operation of the media ownership rules listed under Section 391 of the Communications Act 2003, *http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-ownership/morr_2015.pdf.*

35. The compulsory distribution of newspapers through press distribution agencies was abolished by virtue of Art.1 IΔ.4 of Law 4093/2012 (A’222/12.11.2012).

36. See the Decision of the Greek Council of State, No. 2952/2004.

37 EC (2007), ibid.

38. For instance, the appointed news provider rule in UK, which provides that the channel 3 licence holder needs to source its news from a single news provider that is suitably well-funded and independent of the BBC. See Ofcom (2009), Media Ownership Rules Review, Ofcom, London, *www.ofcom.org.uk/__data/assets/pdf_file/0026/38375/Media-Ownership-Rules-Review.pdf* , p.74.

39. 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), Official Journal L 95, 15.4.2010, p. 1–24

40. Official Gazette A’190/5.11.2010

41. Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (Official Journal L298, 17.10.1989).

42 See Graham D. et al. (2005), “Impact Study of Measures (Community and National) Concerning the Promotion of Distribution and Production of TV Programmes Provided under Article 25(a) of the TV Without Frontiers Directive: Final Report”, David Graham and Associates for The Audiovisual, Media and Internet Unit Directorate-General Information Society and Media European Commission, *www.pedz.uni-mannheim.de/daten/edz-du/gda/05/TV_Progr_25a_finalrep.pdf.*

43. Official Gazette A’98/17.3.2000

44. Recital 71 of AVMS Directive states “When defining ‘producers who are independent of broadcasters’ as referred to in Article 17, Member States should take appropriate account notably of criteria such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights.” Directive 2010/13/EU, ibid.

45. Official Gazette A’25/4.3.1993

46 An amendment of Art.47 of Law 2121/1993 made after the promulgation of Law 2328/1995 changed the numbers of the paragraphs in Article 47. However, the reference that is made in Art.10, par.1 of Law 2328/1995 to par.2(b) has not been accordingly corrected to reflect that par.2(b) corresponds to par.3(b).

47. According to the Decision of the Greek Council of State, the professional chambers are addressed to professionals whose activity is purely commercial and their main aim is to enter the market and make profit.

48. Law 3528/2007 ratifying the Code of Conduct for Public Administrative Employees (Official Gazette A'26/26.09.2007).

49. See also OECD recommendation in row 65 of Media Recommendations Table to explicitly abolish Ministerial Decision 84148/1376//1402/2005 on the exercise of the professions of technicians in the film and TV industry. This administrative regulation provided for compulsory licensing by the Culture Ministry of anyone who wished to work in the film and TV industry, including production manager, director, photographer, editor, on the basis of strict requirements. The regulation is considered abolished since its enactment was based on authorisation of Art.1 of Law 358/1976, which provided the legal framework of the licensing of such professions, and which was abolished by Art. 1, par.H(2) of Law 4254/2014.

50. Article 3 of Law 3905/2010 states that:

"A 'Greek film work' is a film work that meets the requirements of Article 4 and two of the three following criteria: (A) the original version is in proportion at least 51% in Greek language, (B) at least 51% of the shooting to having been carried out on Greek territory (C) at least 51% of the budget to having been spent on the Greek territory. […] In exceptional cases, a movie production which does not meet the criteria A, B and C of Article 3, but is related to Greece because of copyright and its content, or special production conditions, may be considered as Greek, after a special decision of the Greek Film Centre."

Article 4 of Law 3905/2010 provides a detailed point system for different film categories (fiction, documentaries, animated). Films should meet the minimum points required by the law. The point system is related to the citizenship of members of a film's creative team, its actors and technical crew, as well as filming and post-production locations. More specifically, members are required to be Greek citizens or citizens of another member state of the European Union and/or a state included in the Council of Europe European Convention on Transfrontier Television and/or nations included in Council of Europe European Convention for the Cinematographic Co-production ratified by Law 3004/2002 (Official Gazette A'76/08.04.2002) and/or states outside Europe with which Greece has signed bilateral agreement related to film co-production, or they must be a permanent resident of Greece if they come from a country outside the European Union; the legal person is required to have its head office or branch in Greece or in one of the member states of the European Union; the location of shooting shall lie within the Greek territory.

51. See Opinion of the Legal Council of State 54/2016

52. The four main sources of public financing for the film and audiovisual sector in Europe are: 1) public funding; 2) fiscal incentives; 3) mandatory obligations for broadcasters to invest in film and audiovisual production; 4) guarantee facilities (facilitation of access to finance). For instance, there is a mechanism of direct funding that takes the forms of: own production; co-production; direct funding and of indirect funding that include payments to film funds (or similar bodies); payments to film distribution funds; active participation in film funding institutes; taxes (used by the state to support film); broadcasting fees (indirectly used to support film); media services (provision of advertising time, active publicity for films, etc); provision of technical equipment or personnel; special access to picture archives; purchase of rights to films (including presales). See European Audiovisual Observatory (2016), "Funding for film and TV content in Europe rocketed by 13.4% between 2010 and 2014", *www.obs.coe.int/en/-/funding-report-pr-2016*; and EAO (2006), Broadcasters' Obligations to Invest in Cinematographic Production, Iris Special, European Audiovisual Observatory, Strasbourg.

53. Cabrera Blázquez F., M. Cappello, C. Grece, S. Valais (2015), *Territoriality and its impact on the financing of audiovisual works*, IRIS Plus, European Audiovisual Observatory, Strasbourg, 2015,, *www.obs.coe.int/documents/205595/8261963/IRIS+plus+2015en2.pdf/ad5c5a8f-4e85-4e3c-b763-9c763895da1e*, p.47.

54. Copyright collecting societies or collective rights management organisations are: “a type of licensing body which grants rights on behalf of multiple rights holders in a single (‘blanket’) licence for a single payment. Generally speaking, rights holders will join a CMO as members and instruct it to license rights on their behalf. The CMO charges a fee for the licence, from which it deducts an administrative charge before distributing the remainder as royalties. They are typically not for profit organisations and are owned and controlled by their members, the right holders.” UK Intellectual Property Office, *www.gov.uk/guidance/licensing-bodies-and-collective-management-organisations*.

55. Art.49, par.1 provides: “When audio recordings (or visual or audio/visual recordings) are used for a radiotelevision broadcast by any means, such as wireless waves, satellite or cable, or for communication to the public, the user shall pay a single and equitable remuneration to the performers whose performances are carried on the recordings and to the producers of the recordings. This remuneration shall be payable only to collecting societies. The said collecting societies shall be responsible for negotiating and agreeing the remuneration levels, raising the claims for the payment and collecting the remuneration from the users. Where there is a dispute between the users and the collecting societies, the level of the equitable remuneration and the terms of payment shall be determined by the single-member court of first instance pursuant to the cautionary measures procedure at the request of collecting societies (as amended with Art. 46 of L.3905/2010). The final judgment concerning the remuneration shall be rendered by the competent court.”

56. Article 55 of Law 2121/1993.

57. See the interpretation of Article 49 of L. 2121/1993, Vagena, E. et al (2012) “Law of Intellectual Property Rights,”, Sakkoulas Publications, Athens-Thessaloniki, pp.883-884; Mpampetas G., (2015), “‘Legitimation’ of collective societies based on the presumption of article 46§3 of L. 3905/2010”, Chronica Idiotikou Dikaiou IE/2015, pp.164-172, argues that the presumption regarding the collection of the equitable remuneration is irrebuttable.

58. Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (Official Journal L84/20.3.2014).

59. ARTICLE 10 of ECHR, "Freedom of expression". 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

60. Leandros N. (2010), “Media Concentration and Systemic Failures in Greece”, International Journal of Communication, 4(2010), pp.886-905. The European Parliament, the Commission and the Council of Europe have all underlined, in many reports and resolutions, the special democratic role of the media and the related need for pluralism, tolerance, and openness (European Parliament, 2008, 1994; European Commission, 2005a; Council of Europe, 2003).

61. Iosifidis, P. (2014), ibid.

62. Official Gazette A’222/6.10.1989

63. Iosifidis, P. & I. Katsirea (2014), "Public service broadcasting in the Era of Austerity", *International Journal of Digital Television*, 5(1), *http://dx.doi.org/10.1386/jdtv.5.1.103_7,* pp.103-106.

64. In 2001 an ex-member of the National Council for Radio and Television revealed that the Council examined the shareholders lists of the television stations of national range and discovered a number of infringements; see Iosifidis, P. & D. Boucas (2015), "Media Policy and Independent Journalism in Greece", Open Society Foundations, *www.opensocietyfoundations.org/sites/default/files/media-policy-independent-journalism-greece-20150511.pdf.*

65. According to Art.5, par.5 of L. 3592/2007, media of informative content have daily programming that includes frequent and original news, political commentaries and programmes with analysis regarding the actual political and economic situation. Media of non-informative content have programming that exclusively concerns entertainment; for instance, music, sports, films, documentaries, and children's programming. The latter can broadcast non-original news lasting a maximum of one minute an hour.

66. Any natural or legal entity is deemed dominant if active, 1) in media undertakings of the same type, when it has obtained at least 35% market share in the relevant market of each medium in the same range; 2) in media undertakings of different types, when it has obtained either at least 35% market share in the relevant market of each medium or at least 32% market share in the aggregate of two markets, when active in two different media undertakings in the same range; 3) at least 28% market share in the aggregate of three markets, when active in three different media undertakings in the same range; 4) at least 25% market share in the aggregate of four markets, when active in four different media undertakings in the same range.

67. Art.5, par.6 states that: "a) The participation (shareholding) in media of informative content (TV, radio) is permitted without limits regarding the percentage, under the restrictions of paragraphs 2 and 3; b) the participation in media of non-informative content is permitted under the condition that it does not go beyond: a) one TV broadcaster of non-informative content (national or regional) and one (national or regional) of informative content or two of non-informative content (national or regional); b) the percentage of 15% of the total number of radio licences of non-informative content (regional) and maximum 3 radio broadcasters in total."

68. See the Decision of the Greek Council of State No. 2952/2004.

69. Anagnostou D., E. Psychogiopoulou & A. Kandyla (2010), "Media policies and regulatory practices in a selected set of European countries, the EU and the Council of Europe: The case of Greece", MEDIADEM, *www.mediadem.eliamep.gr/wp-content/uploads/2010/05/Greece.pdf*, p.23; and Iosifidis, P. (2014), ibid.

70. Transparency of Media Ownership in Europe: A report for the High-Level Group on Media Freedom and Pluralism, Open Society Media Programme (2012), summary at *www.opensocietyfoundations.org/sites/default/files/Transparency_Media_Ownership_Europe_20121217_0.pdf.*

71. L.1730/1987 (Official Gazette A'145/18.08.1987); see, Karakostas I. (2012), *Media Law*, Nomiki Vivliothiki, Athens, p.136.

72. See the explanatory report of Law 2328/1995 (*http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=292c430b-f747-4f6c-a560-920bfce9151b*).

73. Official Gazette B'631/25.5.2001.

74. Official Gazette B'304/14.3.2002.

75. The explanatory report of art. 53 of L. 2778/1999 states that the frequency maps and relevant tenders for certain prefectures of the country have been issued and in a short time the relevant procedures in all prefectures will have been completed so as the effort to establish legitimacy and transparency in the radio landscape in the country to be achieved.

76. L. 3444/2006, Art.15, par.7(b): extension until 30.06.2006; Law 3548/2007 art.9, par.2: extension until 30.06.2007.

77. After L. 3592/2007, which is the legal framework in force for radio licencing, nine provisions added in several laws with irrelevant content have been promulgated.

Legal provisions	Extension of the deadline for launching a tender
Law 4313/2014 art.86, par.1	Until 31.12.2015
Law 4279/2014 art.6, par.4(a)	Until 31.12.2014
Law 4208/2013 art.17	Until 31.12.2013
Law 4038/2012 art.8, par.4	Until 31.12.2012
Law 3905/2010 art.49, par.8	Until 31.12.2011
Law 3838/2010 art. 29 par. 4	Until 31.12.2010
Law 3775/2009 art.38	Until 31.12.2009
Law 3723/2008 art.9	Until 30.06.2009
Law 3640/2008 art.2, par.1	Until 31.10.2008

78. The provision of L. 2778/1999 regarding the possibility of radio stations to be recognised as legally operating just because they have started their operation before 1.11.1999 is still in force.

79. See Decisions 1206/2012 and 3315/2014 of the Greek Council of State.

80. The same remark was made by the Greek Council of State under the constitutional principle of equality (see endnote 86).

81. According to Art.8, par.3 of L. 3592/2007, the Minister of Infrastructure, Transport and Networks together with the Minister in Charge of the Media Sector, based upon the opinion of the national regulator for networks (EETT), should issue a joint ministerial decision (JMD) with the map of frequencies for radio broadcasting. More specifically, the map of frequencies defines the technical requirements for radio broadcasting including ERT SA, the restrictions with which the broadcast centre should comply, the prefecture/ geographic coverage area of each broadcast centre and thus the map of frequency for each prefecture / geographical area is formed, according also to the International Telecommunication Convention and the Radio Regulation attached to it as well as the International Conventions for assignment frequencies in radio stations. Finally, in the JMD the procedures for the periodic inspection of the restrictions above are included.

82. See "For instance, English nurseries can look after up to four two-year-olds for every member of staff, compared to six two-year-olds per member of staff in the Netherlands and Ireland, and eight two-year-olds in France. Other countries – such as Denmark, Germany and Sweden – do not set national mandatory ratios for children of any age," UK Department of Education (2013), "More great childcare: Raising quality and giving parents more choice", Department of Education, London, *www.gov.uk/government/uploads/system/uploads/attachment_data/file/219660/More_20Great_20Childcare_20v2.pdf, p.8*.

83. "Generally, from the standpoint of standard theory, there are at least four ways in which regulation may create obstacles to entrepreneurs seeking to enter an industry with service-improving innovations: (i) By increasing the overall cost of doing business within an industry; (ii) by explicitly treating incumbents more favorably than new entrants, (iii) by implicitly imposing a regulatory risk on new entrants that is greater than that faced by incumbents; (iv) By creating regulatory complexity that favors incumbents

who have already worked their way down "compliance learning curves," Auerswald P.E. (2015), "Enabling Entrepreneurial Ecosystems", Kauffman Foundation, Arlington, p.14.

84. A brief presentation of NCRTV and its powers is available at *www.esr.gr/arxeion-xml/pages/esr/esrSite/list_docs?section=1a6156445e291e7983571826e98263e5&categ=3d4eee4d84a11e7d83571826e98263e5&last_clicked_id=link2*.

85. See Recital 85 of Directive 2013/13/EC , *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:en:PDF.*

86. According to the Directive's recitals, daily transmission time allotted to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from these, or to public service announcements and charity appeals broadcast free of charge, should not be included in the maximum amounts of daily or hourly transmission time that may be allotted to advertising and teleshopping. See Recital 97 of Directive 2013/13/EC.

87. Recital 98 of Directive 2013/13/EC.

88. "Ανακοινώσεις που γίνονται από τηλεοπτικό οργανισμό για τα δικά του προγράμματα και δευτερεύοντα προϊόντα που παράγονται απευθείας από τα προγράμματα αυτά, κοινωνικά μηνύματα, ανακοινώσεις χορηγίας και τοποθέτηση προϊόντος, δεν προσμετρώνται στον ως άνω διαφημιστικό χρόνο."

89. See "Pay TV: Content, mobile apps and commercial policy define the scene", Marketing Week Online (23.09.2015), *www.marketingweek.gr/default.asp?pid=9&la=1&cID=3&arID=56037* (accessed on 10.09.2016).

90. An over-the-top service is digital content bought by end-users from a third party and for which an ISP's only role is to transport the data.

91. See Digital TV Europe (2015), "Friend or foe: OTT and Pay-TV services", *www.digitaltveurope.net/410341/friend-or-foe-ott-and-pay-tv-services/* (accessed 11.9.2016).

92. See Ofcom (2015), The Communications Market Report, *www.ofcom.org.uk/research-and-data/cmr/cmr16*.

93. Directorate-General for Internal Policies of the European Parliament (2015), Over -the-Top players (OTTs), Study for the IMCO Committee, 2015, *www.europarl.europa.eu/RegData/etudes/STUD/2015/569979/IPOL_STU(2015)569979_EN.pdf*

94. Art. 5 of L. 2644/1998.

95. Art 6 of L. 2644/1998.

96. OECD, Competition issues in television and broadcasting, Contribution from Greece, DAF/COMP/GF/WD(2013)44, 28/02/2013.

97. The official NCRTV website mentions that Article 15 applies to broadband networks, but not web TV/radio. See, *www.esr.gr/arxeion-xml/pages/esr/esrSite/view?section=e5f2cfb3c0aa1e7683571826e98263e5&categ=87af05904c851e7b83571826e98263e5*.

98. Administrative Regulation EETT 676/41 (B'298/14.02.2013) "Regulation for General Authorisation", *www.eett.gr/opencms/export/sites/default/admin/downloads/telec/apofaseis_eett/kanonistikes_apofaseis_eett/AP676-041.pdf.*

99. "B. Annual Fees. 1. All persons operating under a General Authorisation regime and providing public communication networks or publicly available electronic communication services shall have to pay an annual administrative fee, calculated as a percentage of the total gross income derived from the provision of public communication networks or publicly available electronic communication services under a General Authorisation regime as follows:

Zone of total annual income (E) in EURO million	Administrative fee factor per zone
E ≤ 0.15	0
0.15 < E ≤ 250	0.0025
250 < E ≤ 750	0.004
750 < E	0.0005

"For each calendar year, the annual administrative fee, which shall be calculated based on the above table, shall be paid no later than 30 June of the following calendar year, and shall necessarily be accompanied by the Declaration of Payment of Fees (Annex C) without requiring any relevant prior written notification by EETT". See Administrative Regulation EETT 676/41, ibid.

100. This provision is in line with the rule "two out of three" provided by Law 2328/1998, updated by Law 3592/2007, which includes the same rule.

101. This statement is not necessarily true in other countries, but in Greece almost all available subscription-TV products are entertainment content (such as films and sport) and not informative content (such as news and political talk shows).

102. According to Art.3, the distinction between managers (διαχειριστής) and suppliers (προμηθευτής) of the programme is based on the duration of the supplied programme and the logo used during its broadcasting. Manager is the company that either supplies at least 20 hours of programme a day and in this case the use of its logo is compulsory or uses its logo even if the programme is less than 20 hours. In all other cases, the company is called supplier.

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